ESTABLISHMENT OF THE U.S. SUPREME COURT POWER

IN THE BEGINNING… the Supreme Court was perceived to be such a weak institution that Former Chief Justice John Jay refused President John Adams reappointment to the Court in 1801 because he had no faith that it could acquire enough "energy, weight, and dignity" to play a salient role in the national government.

—Justices had to attend court in their assigned circuit twice a year, spending a lot of energy in endless travel under semi-primitive conditions. A number of statesmen refused appointments to the Court, and several on it resigned in favor of better opportunities, including Chief Justice John Jay!

—Few cases came to the Court, and even fewer were important

—The Court was reluctant to exercise its authority

The Court had: 1) to establish the **doctrine of judicial independence**, implied in the Constitution with the provision of a lifetime appointment during "good behavior" (while Congress was granted impeachment power and the control over appellate jurisdiction); 2) to establish the **power of judicial review**, to declare an act of Congress or of the state legislatures unconstitutional; and 3) to develop its power into the **doctrine of judicial sovereignty**, the idea that a law may be held unconstitutional if the Court thinks it is and that the Court's opinion is binding on the other branches of government.

Judicial Independence before Chief Justice John Marshall

Refused to give President George Washington advice on questions of international law in connection with the Neutrality Proclamation of 1793, arguing the "advisory opinions" were inconsistent with the judicial function. When Congress invested the judiciary with the authority to settle the claims of invalid war veterans, two Supreme Court justices (riding circuit) sitting with a district judge rejected the assignment; they declared the law unconstitutional because "the business directed by this act [was] not of a judicial nature." In several cases decided by the Supreme Court, the justices assumed in their opinions that they could set aside unconstitutional state or federal laws, but they elected not to do so which disarmed their critics.

Chisholm v. Georgia (1793). Article III of the Constitution extended judicial power to controversies "between a State and citizens of another State." When two citizens of South Carolina brought suit against Georgia for recovery of a debt, Georgia refused to appear in Court in its own defense. The Court held that states could be sued and rendered a judgement of the South Carolina plaintiffs. In the words of Justice Wilson, who sat on the pre-Marshall Court, "as to the purposes of the Union ... Georgia is not a sovereign state," a sensible and inevitable conclusion, but 1793 was too soon to state it so baldly. Immediate opposition and eventual Amendment XI to the Constitution that states could not be sued in federal court. ***The justices had spoken over plainly and they spoke in support of a doctrine that immediately imperiled the concrete interests of the states***.

Chief Justice John Marshall (appointed in 1801). Marshall established the custom of letting one justice's opinion, usually his own, stand for the decision of the whole Court, giving it the appearance of unity. Court opinions were bound in volumes to guide judges in deciding the law. Established the Judicial Conference where cases were argued and voted on, and he determined the order of discussion and voting.

Doctrine of Judicial Review

Marbury v. Madison (1803). William Marbury appointed Justice of the Peace for Washington, DC, by President John Adams, approved by the Senate, but left on the President's desk in the confusion over the "midnight appointments," filling all vacancies with Federalists before Thomas Jefferson assumed office the next day. Marshall, for the Court, held that Marbury's commission was being illegally withheld from him by the Jefferson Administration and that a writ can be directed to a cabinet official when he does not do his duty. However, the Supreme Court was not the proper tribunal to remedy the case because the Court does not have the power to issue writs in such circumstances. Why? Section 13 of the Judiciary Act of 1789 seems to grant that power, but the provision itself is invalid. The Court's original jurisdiction is defined in the Constitution, hence an act of Congress like this one which adds to original jurisdiction, is unconstitutional.

> Wrote Marshall, "the question of whether an Act repugnant to the Constitution can become the law of the land, is a question deeply interesting to the United States; but, happily not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles supposed to have been long and well-established to decide it."

Doctrine of Judicial Independence

John Pickering Impeachment in 1803. U.S. District Court judge in New Hampshire. Hopelessly insane and a drunkard on the bench for three years. Radical Republicans put a spin on the Constitution to try, convict, and remove Pickering. Then turned to Supreme Court Justice Samuel Chase. Impeachment articles brought against Chase charging misconduct in the 1800 sedition trials of Fries and Callender, in his treatment of a grand jury in the same year, and in his political harangue of another grand jury in1803. Indecision in the Senate about criminality v. objectionable conduct, so tangled both, and resulted in not guilty verdict for Chase

Doctrine of Judicial Sovereignty

Fletcher v. Peck (1810). Georgia state legislature bribed into selling property which is the current states of Alabama and Mississippi. Revealed. Sale rescinded by a newly elected reform legislature. Land already sold to innocent third parties, hence Marshall held for a unanimous Court that the law rescinding the sale was invalid, hence declaring a state law unconstitutional.

Official Positions: member, Virginia House of Delegates, 1782-85, 1787-90, 1795-96; member, Executive Council of State, 1782-84; recorder, Richmond City Hustings Court, 1785-88; delegate, state convention for ratification of federal Constitution, 1788; minister to France, 1797-98; member, U.S. House of Representatives, 1799-1800; U.S. secretary of state, 1800-1801; member, Virginia Constitutional Convention, 1829.

Supreme Court Appointment: nominated Chief Justice by President John Adams Jan. 20, 1801, to replace Oliver Ellsworth, who resigned; confirmed by the Senate Jan. 27, 1801, by a voice vote; replaced on court by Roger B. Taney, nominated by President Jackson.

Family: Married Mary Willis Ambler, Jan. 3, 1783, died Dec. 25, 1831; ten children.

Died: July 6, 1835, Philadelphia, Pa.

Personal Background

The first of 15 children, John Marshall was born in a log cabin on the Virginia frontier near Germantown. His father, descended from Welsh immigrants, was an assistant surveyor to George Washington and member of the Virginia House of Burgesses. His mother was the daughter of an educated Scottish clergyman.

As a youth, Marshall was tutored by two clergymen but his primary teacher was his father, who introduced him to the study of English literature and Blackstone's Commentaries.

During the Revolutionary War, young Marshall participated in the siege of Norfolk as a member of the Culpeper Minute Men and was present at Brandywine, Monmouth, Stony Point and Valley Forge as a member of the third Virginia Regiment. In 1779 he returned home to await another assignment but was never recalled. He left the Continental Army with the rank of captain in 1781.

Marshall's only formal instruction in the law came in 1780 when he attended George Wythe's course of law lectures at the College of William and Mary. He was admitted to the bar that same year and gradually developed a lucrative practice, specializing in defending Virginians against their pre-Revolutionary War British creditors.

In January 1783 Marshall married Mary Willis Ambler, daughter of the Virginia state treasurer, and established a home in Richmond. The couple had ten children, only six of whom survived to maturity. Marshall spent many years attending to the needs of his wife, who suffered from a chronic illness and nervousness.

From 1796 until about 1806, Marshall's life was dominated by the pressures of meeting debts incurred by a land investment he had made in the northern neck of Virginia. It has been speculated that his need for money motivated him to write *The Life of George Washington*, which appeared in five volumes from 1804 to 1807. The book was written too quickly, and when Jefferson ordered postmasters, who doubled as salesmen for the book's publisher, not to take orders for it, the opportunity for large sales was lost.

The leisurely pace of the Supreme Court in its early days was well suited to the personality of Marshall, who had grown to enjoy relaxation and the outdoors as a boy. The Chief Justice enjoyed socializing in the clubs and saloons of Richmond and kept a fine supply of personal wines. He is said to have excelled at the game of quoits (similar to horseshoes), and was also known to take a turn at whist, backgammon and tenpins.

Marshall was Master of his Masonic lodge in Richmond and served as Masonic Grand Master of Virginia for several years. He was a member of the American Colonization Society, which worked toward the transfer of freed slaves to Africa, and belonged to the Washington Historical Monument Society and several literary societies.

Public Career

Marshall was elected to the Virginia House of Delegates from Fauquier County in 1782 and 1784. He reentered the House in 1787 and was instrumental in Virginia's ratification of the new U.S. Constitution. At the state ratifying convention his primary attention was directed to the need for judicial review. By 1789 Marshall was considered to be a leading Federalist in the state.

Marshall refused many appointments in the Federalist administrations of Washington and Adams, including U.S. attorney general in 1795, associate justice of the Supreme Court in 1798 and secretary of war in 1800. In 1796 he refused an appointment by President Adams as minister to France, but the following year agreed to serve as one of three special envoys sent to smooth relations with that country. This mission, known as the "XYZ affair," failed when French diplomats demanded a bribe as a condition for negotiation. Congress, however, was greatly impressed by the stubborn resistance of the American emissaries, and Marshall received a generous grant as a reward for his participation.

In 1799 Marshall was persuaded by Washington to run for the U.S. House of Representatives as a Federalist from Richmond. His career in the House was brief, however, for in 1800 he became of secretary of state under Adams. When Adams retired to his home in Massachusetts for a few months that year, Marshall served as the effective head of government.

When Oliver Ellsworth resigned as Chief Justice of the Supreme Court on Sept. 30, 1800, Adams offered the position to John Jay, who had been the court's first Chief Justice. When Jay declined, the Federalists urged Adams to elevate associate Justice William Paterson. But Adams nominated Marshall instead.

As the primary founder of the American system of constitutional law, including the doctrine of judicial review, Marshall participated in more than 1,000 Supreme Court decisions, writing more than 500 of them himself. In 1807 he presided over the treason trial of Aaron Burr in the Richmond circuit court, locking horns with Jefferson, who sought conviction. Burr was acquitted.

In 1831, at age 76, Marshall underwent successful surgery in Philadelphia for the removal of kidney stones. Three years later, he developed an enlarged liver and his health declined rapidly. When Marshall died on July 6, 1835, three months short of 80, the Liberty Bell cracked as it tolled in mourning.

John Marshall
(1801-1835)

Born: Sept. 24, 1755, Germantown, Va.

Education: tutored at home; self-taught in law; attended one course of law lectures at College of William and Mary, 1780; member, Phi Beta Kappa.