Chief Justice John Marshall is perhaps the least appreciated figure in American history. People who have heard of him think he was the first Chief Justice—actually he was the fourth. Some people confuse him with another Marshall, George Catlett Marshall, author of the “Marshall Plan.” Among those who know his work, John Marshall is extremely important. In a survey of lawyers and jurists done in the 1930s, Marshall was unanimously selected as the greatest Chief Justice in American history.

John Marshall was a strong nationalist and held a Hamiltonian view of the Constitution. His decisions constantly favored manufacturing and business interests, advanced economic development, and established the supremacy of national legislation over state laws. In several opinions, the Marshall Court upheld the sanctity of contracts, beginning with *Fletcher v. Peck*, the Yazoo Land Fraud case in 1810.

Marshall also asserted the precedence of federal power over state authority, and in *McCulloch v. Maryland* (1819) the Court affirmed the constitutionality of the Second Bank of the United States, thereby legitimizing the doctrine of implied powers, meaning that where the Constitution bestowed specific powers on Congress, it also implicitly bestowed the lesser authority necessary for carrying out the specified powers. For example, the specific power to levy taxes implies granting Congress the necessary powers required to accomplish that, such as the creation of a depository (bank) or, later, the creation of the Internal Revenue Service.

In *Gibbons v. Ogden* in 1824 the Court defined Interstate Commerce and asserted the right of the Federal Government to exclusive control over that commerce, though later decisions granted the right of states to act where the Federal Government had not done so. Marshall nationalized many issues, and can be said to have made the U.S. far more amenable to capitalism. In 1837, Chief Justice Roger Taney’s ruling in the *Charles River Bridge* case declared that public convenience
superseded the interests of a particular company, thereby endorsing internal improvements and advancing economic development.

Here is a brief chronology of John Marshall's life:

- John Marshall was born September 24, 1755, in Fauquier County, Virginia, oldest of 15 children, 9 boys, six girls. JM was always very close to his family. Much warm correspondence between JM and his father, Thomas Marshall survives; in JM's adulthood he and his father were like close friends and business colleagues.
- JM had a rough outdoor childhood, but was well educated by his father and mother. He had read Alexander Pope's Essay on Man and memorized much of it by age 12. He also read Blackstone's Commentaries on the Law, a leading legal text of the time, and many other works. He loved poetry all his life.
- At age 13 he attended a private academy in Westmoreland County for one year. He walked the 60 to the school by himself.
- May 1775 JM was commissioned a lieutenant in the Fauquier County militia. During 1775 and 1776 he served in the Great Bridge-Norfolk campaign, so bloody it was known as “Little Bunker Hill.” The Virginia troops had “Liberty or Death” sewn on the backs of their uniforms and fought very well. JM soon rose to the rank of captain and was with Washington at Valley Forge, serving as Washington's Deputy Judge Advocate. His military experience provided JM with his first practical legal training, and he got much insight into the workings of the law. He took care of legal problems of soldiers and saw how the law worked on people. At Valley Forge Marshall was the most cheerful man in camp—it was said that “nothing discouraged, nothing disturbed” him. He used humor to ease the suffering of the soldiers and was called “Silver Heels” from stockings his mother sewed him which he wore in foot races. He usually came in first.
- During the Revolution Marshall also formed his ideas about the necessity for a strong central government: the States did not keep up their end of the bargain. Marshall became and remained a Federalist (or Nationalist) in his thinking. He later said, "I went into the war a Virginian, I came out an American."
- In 1780 JM attended Law lectures at William and Mary with the famous law professor George Wythe. (He took voluminous notes, but scribbled “Polly” in all the margins, as he had fallen in love with Polly Ambler, who became his wife.) This was only formal legal training. In August 1780 he was admitted to practice law in the Fauquier County Court. His license to practice in Virginia was signed by Governor Thomas Jefferson.
- In May 1782, JM was elected to the Virginia House of Delegates as a Federalist for the first of eight times. Marshall became the finest lawyer in Virginia; he took over Edmund Randolph's clientele when the latter was elected Governor. He also handled minor legal matters for George Washington.
- In June 1788 JM was a delegate to Virginia Constitutional ratifying Convention. He stoutly supported ratification, making three speeches in favor of the Constitution.
- In 1793 JM was elected Brigadier General in the Virginia Militia, the highest rank he achieved. He was known as a soldier-lawyer and was often referred to thereafter as “General Marshall.” In 1794 Washington offered JM the post of U.S. District Attorney for Richmond. JM declined as it would have conflicted with his law practice.
• In 1795 JM was admitted to practice before United States Supreme Court to plead the case of Ware v. Hylton; although he argued well, he lost the case. Also in that year George Washington offered Marshall the post of United States Attorney General; Marshall declined.

• In June 1797 Marshall was appointed by President John Adams minister extraordinary to France. He became part of the XYZ negotiations. Marshall's diplomatic messages on the proceedings when published helped bring about the great resentment against France, leading to the motto: “Millions for defense, but not one cent for tribute!”

• In 1799 JM was elected to the U.S. House of Representatives, where he pursued an independent course, voting against his party & against part of the Sedition Act, which later caused confirmation problems when he was nominated to the post of Chief Justice.

• In 1800 JM was nominated to be Secretary of War and a few weeks later Secretary of State, a post he held until the early days of Jefferson's administration. In fact he kept the post even after joining the Supreme Court, which was not very busy in those days. His appointment was “an act of Providence” according to his biographer, Albert Beveridge. Some resented the appointment, but he was approved by Senate.

On February 4, 1801, John Marshall assumed the post of 4th Chief Justice of the United States, beginning a remarkable tenure that lasted through the 8-year administrations of Jefferson, Madison and Monroe, 4 years of John Quincy Adams and 7 of the 8 years of Jackson's presidency. At time of Marshall's accession, the court was very weak. (Only 55 decisions or so had been issued to that point.) The Constitution was “breaking in pieces” according to some, and the status of the national government was shaky. Marshall helped change all that. He brought power and respect to the court and a sense of stability to the federal government. He served with 15 associate justices, seven of whom were with him from 12-30 years; there was great continuity on the court at this time, as well as great congeniality, for which Marshall was personally responsible.

On John Marshall death in 1835 John Quincy Adams wrote that John Marshall was “my father's greatest gift” to the nation.

**MARSHALL'S LEADING DECISIONS**

1803 *Marbury vs. Madison*

- Power of Judicial Review asserted (not a new concept)
- Supremacy of U.S. Constitution over federal law.
- Case came about because of Marshall's own negligence in failing to deliver Marbury's warrant. Marshall might have undermined the court had he defied Jefferson and Madison. What would he have done if they had refused to deliver the warrant?

1810 *Fletcher v. Peck*

- Important for the protection of the vested rights of private property
- Extended the purview of the Contract Clause to public as well as private contracts, thereby making it applicable to transactions to which the state itself was a party.
• First case in which a state statute was held void under the United States Constitution, originated in an action of the Georgia legislature, which in 1795 was induced by bribery to grant public lands, comprising much of what is now the states of Alabama and Mississippi, to four groups of purchasers known collectively as the Yazoo Land Companies.

• Popular indignation forced the legislature in 1796 to rescind the grant, on the ground that it had been secured by fraud. By that time, however, some of the land had been purchased by innocent third parties in New England and other parts of the country. These buyers contested the validity of the rescinding act, contending that the original grant could not be repealed without violating the Contract Clause.

• Marshall, speaking for a unanimous Court, agreed: "Is a clause to be considered as inhibiting the State from impairing the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description." Declaring that a public grant qualified as a contractual obligation and could not be abrogated without fair compensation, he therefore held that the rescinding act was an unconstitutional impairment of the obligations of contract.

1819 *Dartmouth College v. Woodward*

• Sanctity of contracts
• Definition of corporation
• The nature of the government issuing the charter (contract) is not at issue; if change in government can enable the impairment of contracts, then nothing is safe.
• Charter is a contract that creates a corporation
• **Sanctity of Contracts**

  “But the American people have said, in the constitution of the United States, that "no state shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." In the same instrument, they have also said, "that the judicial power shall extend to all cases in law and equity arising under the constitution." On the judges of this court, then, is imposed the high and solemn duty of protecting, from even legislative violation, those contracts which the constitution of our country has placed beyond legislative control; and, however irksome the task may be, this is a duty from which we dare not shrink.”

• Definition of corporation

  “A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs and to hold property
without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities that corporations were invented and are in use.”

1819 *McCulloch v. Maryland*

- Implied powers of Congress
- Reaffirmation of supremacy of Constitution
- Federal immunity from state taxation
- Constitutional power derives from people, not states
- Power to tax is power to destroy
- Divisions of Power: *McCulloch v. Maryland*
- Division of Power between federal government and states
- Supremacy of Federal Law
- Necessary and Proper Clause: implied powers; Hamiltonian view
- Power to tax is power to destroy:
  - “We admit, as all most admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional …”

“That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. …"

“That the power of taxing it by the states, may be exercised so as to destroy it is too obvious to be denied.”

1819 *Sturges v. Crowninshield*

- NY state bankruptcy law unconstitutional because it nullified prior debts, which are contracts; prohibited under Article I, Section 10.

1821 *Cohens v. Virginia*

- “The people make the Constitution and the people can unmake it.” -JM.
States have final jurisdiction in internal matters, but areas that touch federal laws subject to appellate review. (DC lottery tickets sold in VA in violation of state law, but federal law created lottery.)

1824 *Gibbons vs. Ogden*

- Limits on legislative power: Review of State Court decisions OK to insure uniformity.
- Economic expansion dependent on judicial nationalism.

"The word used in the constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation, is as expressly granted, as if that term had been added to the word "commerce." To what commerce does this power extend? The constitution informs us, to commerce "with foreign nations, and among the several states, and with the Indian tribes." It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse between the United States and foreign nations...."

1831 *Cherokee Nation v. Georgia* & (1832) *Worcester v. Georgia*

- Cherokees a "domestic dependent" nation, cannot sue in federal court.

Georgia has no authority on Indian land. Georgia refuses to obey, Jackson refuses to enforce decision. "John Marshall made his decision; now let him enforce it." -Jackson

1837 Chief Justice Roger Taney’s ruling in the *Charles River Bridge* case declared that public convenience superseded the interests of a particular company, thereby endorsing internal improvements and advancing economic development.

Go to Cornell Law School Legal Information Institute for the full texts of all of John Marshall's major decisions.

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