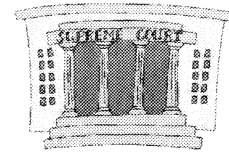


John Marshall & the Impact of the Marshall Court



Despite the growing division over the issue of slavery in America, Chief Justice John Marshall and the Supreme Court worked to **reinforce the feelings of nationalism** that developed after the War of 1812. Marshall was a Revolutionary War survivor, and his experience led to strong feelings of national loyalty. Although he had six colleagues on the Supreme Court, Marshall's position as Chief Justice—along with his personality, logic, and forcefulness—resulted in many rulings that reflected his personal view of the Constitution and his belief in a powerful central government [although justices are not elected nor members of political parties... Marshall was a Federalist, and his decisions did more to further the Federalist cause than Hamilton, Adams, and others during the time of the first two party system. His rulings went far beyond the death of the Federalist Party after Hartford, as well.]

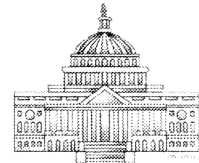
During Marshall's **34 years on the bench**, many important cases were considered by the Court. Several of the most famous cases involved **three major principles**:



1 → **contract rights protection**
Fletcher v. Peck
Dartmouth College v. Woodward

the supremacy of federal legislation over the laws of the states (and role as reviewer)

Fletcher v. Peck
Dartmouth College v. Woodward
Martin v. Hunter's Lessee
McCulloch v. Maryland
Cohens v. Virginia

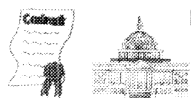


2

3 → **regulation of interstate commerce**
Gibbons v. Ogden



Some Marshall Court Decisions failed to assert itself over states or the executive (i.e. Andrew Jackson; Indian Removal)
Cherokee Nation v. Georgia
Worcester v. Georgia



In 1810, the contract rights case of ***Fletcher v. Peck*** came before the Supreme Court. Members of the Georgia legislature were bribed in 1795 to sell 35 million acres in Mississippi for a small amount to private speculators. The following year, a new Georgia legislature rescinded the sale. The case was taken to the Supreme Court, and Marshall, speaking for the Court, ruled that the original sale was a legal contract—regardless of whether or not it was fraudulent—and therefore protected by the Constitution. The ruling was historically significant because it **protected property rights against popular pressures, and it also clearly asserted the Supreme Court's right to invalidate state laws that conflicted with the Constitution.**



In the case of ***Dartmouth College v. Woodward*** (1819), the state of New Hampshire tried to alter the college's charter, which had been granted in 1769 by King George III. A New Hampshire court ruled that Dartmouth was to be changed from a private to a public institution. Dartmouth appealed the case to the Supreme Court, where Marshall ruled that **the original charter must stand because it was a contract and could not be altered or canceled without consent of both parties.** The Marshall Court ruled that the Constitution protected contracts against state encroachments. The significance of Marshall's ruling was far reaching because it **effectively safeguarded private corporations from domination by the states' governments.** Unfortunately, the case also set the precedent for giving corporations the ability to skirt governmental controls. Once the states became aware of this dilemma, they generally wrote into charters the ability to make changes so that it was part of the contract.



A case in which the Marshall court upheld the power of the federal court over that of the states was the 1816 case of ***Martin v. Hunter's Lessee***. The state of Virginia confiscated land owned by a British **Loyalist** named Denny Martin Fairfax. Virginia granted David Hunter 800 acres of the confiscated lands, and Fairfax brought suit against Hunter for return of the land. The **Treaty of Paris** (1794) and **Jay's Treaty** (1795) seemed to make it clear that Fairfax was the rightful owner of the property, but the Virginia court upheld the grant to Hunter. The Supreme Court and Justice Marshall **overruled the Virginia court**, declaring that the land belonged to Fairfax and voided the grant to Hunter. The Court's ruling **rejected "compact theory,"** the idea that the states were equally sovereign to the federal government. This ruling was significant because it enforced the rights of the Supreme Court, which held appellate jurisdiction over state courts. Thus, Marshall's ruling upheld the **Supremacy Clause** of the Constitution.



McCulloch v. Maryland (1819) is often considered John Marshall's single most important interpretation of the Constitution, because it dealt with the **division of power between the federal government and the states.** The state of Maryland, in order to protect its local banks, placed an annual tax on the Bank of the United States and other "foreign" banks. The Maryland branch of the Bank of the United States refused to pay, and Maryland brought suit against the chief bank employee, called the "head cashier," John W. McCulloch. Marshall upheld the constitutionality of the Bank of the United States, using Hamilton's bank message of 1791 to support his position. He argued that the Bank's legality was implied in many of the powers specifically granted to Congress. Since the bank was legal, the Maryland tax was unconstitutional, for "the power to tax involves the power to destroy," which was exactly what many states had in mind with respect to the Bank. The Marshall Court's ruling in favor of McCulloch used a **"loose" interpretation** of the Constitution and, with the ruling, strengthened federal authority and the implied powers of Congress.



Two years later in the case of ***Cohens v. Virginia*** (1821), Marshall once again defended the power of the federal government. The Cohen brothers were illegally selling lottery tickets in the state of Virginia, and the state authorities tried and convicted them. The brothers appealed to the Supreme Court, and Marshall upheld Virginia's right to forbid the sale of lottery tickets. **The case reaffirmed the Supreme Court's right to review all state court judgments in cases involving the Constitution or powers of the federal government.**



In 1824, Marshall handed down his last great decision in **Gibbons v. Ogden**, the "steamboat case," which involved the regulation of interstate commerce. In 1808, Robert Fulton and Robert Livingston pioneered commercial use of the steamboat and held a monopoly of steamboat navigation on the Hudson in New York. In 1815, Aaron Ogden purchased exclusive rights to operate a ferry between New York and New Jersey. When Thomas Gibbons, who held a federal trade license, set up a competing line, Ogden sued him. The case was presented to the Supreme Court, where Marshall decided in favor of Gibbons, destroying Fulton's and Livingston's monopoly and **reminding New York that Congress alone controlled interstate commerce**. Marshall's decision once again checked the power of the states and upheld the sovereign power of the federal government.

Many of Marshall's decisions while on the bench aided the economic development of the United States and **created a nationally uniform environment for business**. Marshall's landmark decisions also confirmed the Supreme Court's power of **judicial review** and **firmly established the Judiciary as the most powerful branch of the federal government**. In a broader sense, his decisions acknowledged the idea of judicial limitation on legislative powers and made the Supreme Court a vital part of America's system of government.

From the time the first colonies were settled in America, relations between the Native American Indians and white settlers ranged from respected friends to hated enemies. Into the 1800s, Americans who were still in competition with the Indians for land and resources considered them to be uncivilized and barbaric. But many Americans admired the Indians and valued their contributions to American history and culture. These people hoped that with time the Indians could be peaceably **assimilated** into American society. Even before the Revolution, churches and religious organizations sent missionaries among the Indians to try to convert them to Christianity. In 1787, the Society for Propagating the Gospel among Indians was founded for that purpose. The federal government joined the effort to "civilize" Native Americans that had first been undertaken by the colonies and the churches. **In 1793, Congress designated \$20,000, a substantial sum for the time, to provide literacy, farming, and vocational assistance to Native Americans.**

The United States recognized Indian tribes as **separate nations of people** entitled to their own lands that could only be obtained from them through treaties. Due to inexorable pressures of expansion, settlement, and commerce, however, **treaties** made with good intentions were often perceived as unsustainable within just a few years. The Indians felt betrayed and frequently reacted with violence when land promised to them forever was taken away. For the most part, however, they directed their energies toward maintaining their **tribal identity** while living in the new order.

By 1830, most of the territories east of the Mississippi River had become states. The **Democratic Party**, led by **President Andrew Jackson**, was committed to economic progress in the states and to settlement and development of the western frontier. These goals put the government in conflict with the more than 125,000 Native Americans who still lived east of the Mississippi. By this time, many Indians had given up nomadic hunting and had adopted a more settled way of life. In particular, the **Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles** tried to live in harmony with their white neighbors who called them the **Five Civilized Tribes**. The real conflict between the government and the Indians was the land held by the Indians through legal treaties. White pioneers, frustrated by the lack of opportunity in the settled areas, pushed hard for new lands to purchase and farm, while states containing Indian territories resented the existence of lands within their borders over which they had no authority and from which they collected no revenue.

The **Treaty of 1791** recognized the Cherokees' right to a substantial portion of northeastern **Georgia**. The Cherokees were very successful at adapting to a new way of life, farming the land, raising cattle, growing cotton, and even owning slaves to work their plantations. Missionaries established schools and helped the Cherokees in their new lives. One Cherokee, **Sequoyah**, devised the Cherokee syllabic alphabet of 85 characters so that his people could write down and preserve their thoughts. With a written language, the Cherokee were able to publish their own newspaper, *The Cherokee Phoenix*.

The Cherokees established their own governing body called the **Cherokee National Council**. In 1808, the Cherokee National Council developed a legal system, and in 1827 wrote a **constitution** enacting a system of tribal government to regulate affairs within the borders of their lands. Their government included an electoral system and a legislative, judicial, and executive branch. One tenet of the constitution was that on their own lands the Cherokee **were not subject to the laws of Georgia**. Treaties with the U.S. government recognized the **Cherokee Nation**, but the **State of Georgia** objected to having an independent Indian nation within its boundaries. Believing that the laws of Georgia should be sovereign throughout their state, Georgians passed legislation claiming jurisdiction over the Cherokee Nation in 1828. These political actions coincided with increasing economic pressures to open this area to white settlement and development. The Cherokee land was coveted for agricultural production at a time when the population of the state was increasing and demand for farmland was high.

In the face of mounting opposition to federal protection for **autonomous Indian nations in Georgia** and other states—opposition that threatened to become violent—**President Jackson** decided to move the Indians to lands west of the Mississippi River. He felt this offered the best hope to preserve peace and protect the Indians from being scattered and destroyed. Opening new land to white settlement would also increase economic progress. Jackson insisted that the Indians receive a fair price for their lands and that the government pay all expenses of resettlement.

In 1830 at the request of Jackson, a bill went before Congress authorizing moving the Indians across the Mississippi. **Daniel Webster** and **Henry Clay** opposed the **Indian Removal Bill**, but its most bitterly outspoken opponent was **Davy Crockett**. Having served in the army under Jackson, Crockett was a Jacksonian Democrat until he and the president parted ways over treatment of the Indians. In the next Tennessee congressional election, the Democrats threw their support to another candidate, and Crockett was defeated. Disgusted with partisanship, Crockett left the arena of national politics and went to Texas, delivering, as was the custom, a resounding rendition of his farewell speech at every stop along the way. Within a year he perished defending the Alamo.

Congress passed the **Indian Removal Act**, which provided for the resettlement of all Native Americans then residing east of the Mississippi to a newly defined Indian Territory in what is now **Oklahoma**. There the Indians were to be free to pursue their lives without interference. This removal was intended to be voluntary, but groups of Indians were strongly pressured to go. The legislation affected not only the Indians in Georgia, but over 100,000 Native Americans in other states, including all of the **Five Civilized Tribes**.

Little recognition was given to the fact that the Indians of the east were not familiar with how to subsist in the harsh conditions of the **Great Plains** or that the remuneration they received for their lands would benefit them little there. In addition, many tribes harbored ancient hostilities for other tribes. The **Indian Removal Act** made little provision for separation of groups. Once in the territory, Indians were left to get along however they might.

Nevertheless, many Indian groups, already surrounded by white settlements, accepted the government decree and moved west. The **Choctaws** of Mississippi made the trek from 1831 through 1833, and the **Creeks** of Alabama in 1836. Only nominally voluntary, these migrations often turned into forced marches during which many perished. The **Choctaws** lost one-fourth of their people before arriving in Oklahoma, while the **Creeks** lost 3,500 of the 15,000 who began the journey. The **Cherokees** were not happy with the relocation plan and resisted being forced to move. In 1831, the Cherokees turned to the courts for defense against the **Indian Removal Act** and against the Georgia Legislature's **nullification** of Cherokee laws. Three times their cases went to the Supreme Court.



In **Cherokee Nation v. Georgia**, Chief Justice John Marshall ruled that the Cherokee had "**an unquestionable right**" to their lands, but that they were "not a foreign state, in the sense of the Constitution" but rather a "**domestic, dependent nation**" and so **could not sue in a United States court** over Georgia's voiding their right to self-rule. Although this was a blow to the Cherokee case against Georgia, it cast doubt on the constitutionality of the **Indian Removal Act**.

In **Worcester v. Georgia** in 1832, the Court reversed itself and ruled that the **State of Georgia could not control the Cherokee** within their territory. The case revolved around two missionaries, Samuel Austin Worcester and Elizur Butler, who were welcomed by the Cherokee but who had not obtained a license under Georgia law to live on Cherokee lands. Worcester and Butler were ordered by Georgia to take an oath of allegiance to the state or leave Cherokee land. They refused and were arrested. The missionaries were consigned to hard labor on a chain gang for 16 months while the case was being decided. Later they would accompany the Cherokees on their long trek to Oklahoma. In 1992, the Georgia legislature formally pardoned Worcester and Butler.

In a third case, the Court agreed that crimes committed in **Cherokee Territory** were beyond the jurisdiction of the **State of Georgia**. This case involved a Cherokee named Corn Tassel who had been convicted in a Georgia court of murdering another Indian. Corn Tassel's attorney appealed the conviction on the grounds that the killing had taken place in Cherokee territory, so Georgia had no right to try him. The Supreme Court sided with the Cherokees and found that the Georgia ruling was unconstitutional. **President Jackson**, however, made it clear that **he would tolerate no independent nation within the borders of the United States**. When he publicly backed Georgia, Corn Tassel was hanged. The Cherokees then understood that **even the Supreme Court could not save their cause**.

In backing Georgia against the Supreme Court, **President Jackson** was responding to pressures in several different areas. Political pressure to open Indian lands to white settlement had been mounting for some time. With increasing conflicts of interest between settlers and Indians came an ever-greater likelihood of violence not only for the Cherokees but for all Native Americans living east of the Mississippi. In addition, Jackson believed in **states' rights** and wanted to **limit federal power, including the power of the Supreme Court**. He was also understandably concerned with the dangers inherent in granting political autonomy to groups of people wanting to establish separate laws and governments that could supersede the laws and government of a state. For these reasons he was at odds with Marshall's Court, which felt obligated to uphold the provisions of the treaties that had already been made with the Indians. **Jackson made no effort to obscure the fact that while the Court might rule whatever it pleased, the executive branch was not constrained to follow the ruling.**

The **Sac** (Sauk), and **Fox** tribes of Illinois and Wisconsin were also affected by the **Indian Removal Act**. One Sac chief signed a treaty abandoning Indian lands east of the Mississippi, and he moved the tribes to **Iowa**. **Chief Black Hawk**, however, along with a faction from the tribes, revolted against forced removal from the land of their ancestors. In 1832, they returned to their **Illinois** lands and conducted a campaign of raids and ambushes. The United States Army responded and violently suppressed what the government considered an **Indian insurrection**. **Black Hawk** was captured and imprisoned in St. Louis in 1833. Among the regular army troops involved in this action was Lieutenant **Jefferson Davis** of Mississippi, while **Captain Abraham Lincoln** served with the Illinois volunteers. Thirty years later these two men would head the Confederate and Union governments during the Civil War.

In the case of the **Seminoles** in **Florida**, callous and misguided decisions by the government contributed to the bloodiest Indian conflict in U.S. history. **The Seminole Indians were ordered to merge with their ancestral enemy, the Creeks**, for relocation. The Creeks were slaveowners, and many of the Seminoles had escaped from Creek slavery. The Seminoles were justifiably outraged and several hundred, joined by runaway black slaves, **refused to leave Florida** and move west. They retreated to the swamps of the **Everglades**, where they fought a bitter and protracted war with the United States Army. Over seven years (1835-1842), this conflict claimed the lives of 1,500 U.S. soldiers. In 1837, **Chief Osceola** was captured by treachery under a flag of truce and sent to a prison where he soon perished. Three thousand Seminoles were then forced to relocate to Oklahoma in a bitter forced march. Another 1,000 hid in the Everglades, however, and continued to fight for five more years. Some were never captured, and the Seminole tribe became divided by this struggle.