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## The Fourth Chief Justice of the United States, John Marshall

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The fourth Chief Justice of the United States, John Marshall (1755-1835), served a historic thirty-four years (1801-1835) in the United States Supreme Court.<sup>1</sup> During his term, Marshall established a stable foundation for the United States Judiciary, which in turn increased the role and scope of the federal government. Marshall's life and achievements are documented in the biography, *The Great Chief Justice: John Marshall and the Rule of Law* by Charles F. Hobson, the editor of *The Papers of John Marshall*.<sup>2</sup> In his work, Hobson presents the details surrounding Marshall's role as Chief Justice, including Marshall's approach to reaching some of his revolutionary decisions. After reading Hobson's perspective, it can be stated that John Marshall is a significant figure in American history, and more specifically the time period in which he served as Chief Justice, because he founded and secured the authority of the judicial branch within the United States government.

Marshall's significance in the early 19<sup>th</sup> century is clearly displayed in the consequences of his court rulings, as well as his emphasis on the significance of the judicial system and the national government. As the title of Hobson's biography states, John Marshall is "The Great Chief Justice," as he wholeheartedly believed in the importance of the development of the judicial system in a "well regulated democracy."<sup>3</sup> The Federal Judiciary Act of 1789 established the federal court system in the United States. By the time Marshall's took the oath of office on February 4<sup>th</sup>, 1801 the judiciary was evidently still rudimentary.<sup>4</sup> However, in thirty-four years, Marshall transformed the immature institution into a federal

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<sup>1</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), ix.

<sup>2</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), xii.

<sup>3</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 24.

<sup>4</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 1.

power. The steps taken to establish the Supreme Court's jurisdiction ultimately began, and culminated, with the case of *Marbury v. Madison*. In that case, Marshall implemented (but did not invent) the principle of judicial review.<sup>5</sup> This expanded the role of the Judiciary, as it served as an additional "check" on the Legislature by allowing the Supreme Court to determine the constitutionality of questionable laws. According to Hobson, judicial review defined the Judiciary's "right to declare what the law is" while concurrently denying "the right of legislatures to exceed their prescribed boundaries of determining what the law shall be."<sup>6</sup> This power, which had been considered and discussed as early as 1784, established a sense of equality for the judicial branch among the other two sectors of government.<sup>7</sup> With that being said, Marshall only intended to use the power of judicial review as a "defensive weapon to preserve the independence of the judiciary, to resist encroachments by the states on the national government, and to protect private rights against infringement by acts of government."<sup>8</sup> He did not intend to apply it as it is utilized today, as "a sweeping general supervisory power of courts that affects virtually all aspects of modern life."<sup>9</sup> Regardless of its evolution and purpose in modern day, Marshall's initial incorporation of the power was profound for his time because it highlighted the credibility and role of the Supreme Court within the federal government. In addition to establishing a reputation for the judiciary, Marshall enforced the idea of federal supremacy. Many of Marshall's actions and decisions served as a restraint on state sovereignty, as he distrusted the states.<sup>10</sup> The "threat" of state governments overpowering the federal government, paired with Marshall's loose constructionism, gave rise to decisions like that of *Gibbons v.*

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<sup>5</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 55-59.

<sup>6</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 62.

<sup>7</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 62.

<sup>8</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 69.

<sup>9</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 70.

<sup>10</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 24.

Ogden, which enforced federal supremacy by expanding federal power.<sup>11</sup> Marshall's decisions influenced the growth and development of not only the government, but the young nation as well. However, Marshall's significance as a historical figure truly began before he was even appointed to the Supreme Court bench in 1801.

As displayed in his statement to the Virginia Ratifying Convention, Marshall's influence on the development of the federal government commenced before the Constitution was even ratified. In his statement, delivered on June 20, 1788, Marshall displays strong support for the Judiciary outlined in the proposed Constitution.<sup>12</sup> At the outset of his statement to the Convention, Marshall asserts, "... this part of the plan before us is a great improvement on that system from which we are now departing. Here are tribunals appointed for the decision of controversies which were before either not at all, or improperly provided for."<sup>13</sup> In those statements, Marshall introduces the benefits of a judicial system in which individuals are appointed for the purpose of settling disputes. These individuals (judges) would later be viewed as "repositories of virtue and wisdom."<sup>14</sup> As the statement progresses, Marshall provides reasons as to why a federal judiciary would benefit the United States. One of his major arguments is a rebuttal to the claim that a federal court system would dominate and expunge the powers of the state courts. To that assertion, Marshall states, "The state courts will not lose the jurisdiction of the causes they now decide. They have a concurrence of jurisdiction with the federal courts in those cases in which the latter have cognizance."<sup>15</sup> Ultimately, Marshall asserts that the state courts will retain their power, however, will also possess the advantage of the federal court's assistance when it comes to interstate conflicts. Overall,

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<sup>11</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 199.

<sup>12</sup> John Marshall, *John Marshall's statement to the Virginia Ratifying Convention* (June 20, 1788), PBS, The Supreme Court. [http://www.pbs.org/wnet/supremecourt/democracy/sources\\_document6.html](http://www.pbs.org/wnet/supremecourt/democracy/sources_document6.html) (accessed October 17, 2015), para. 1.

<sup>13</sup> John Marshall, *John Marshall's statement to the Virginia Ratifying Convention* (June 20, 1788), PBS, The Supreme Court. [http://www.pbs.org/wnet/supremecourt/democracy/sources\\_document6.html](http://www.pbs.org/wnet/supremecourt/democracy/sources_document6.html) (accessed October 17, 2015), para. 1.

<sup>14</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 24.

<sup>15</sup> John Marshall, *John Marshall's statement to the Virginia Ratifying Convention* (June 20, 1788), PBS, The Supreme Court. [http://www.pbs.org/wnet/supremecourt/democracy/sources\\_document6.html](http://www.pbs.org/wnet/supremecourt/democracy/sources_document6.html) (accessed October 17, 2015), para. 3.

Marshall's statement to the Virginia Ratifying Convention emboldens his historical significance because it displays Marshall's commitment to the federal judiciary before the institution was even founded. He believed in the importance of the court of law, and fought to have it established. Once established, he worked to gain the Supreme Court credibility. One way in which he achieved this was through the implementation of judicial review, which arose from the landmark case *Marbury v. Madison*.

Marshall's "Majority opinion" in the case of *Marbury vs. Madison* had significant implications, both instantaneous and long-term. On March 2, 1801, President John Adams nominated several "midnight judges" who were confirmed by the Senate on the same day. Adams signed the commissions on his final day in office, and they were to be sealed and sent out in order to confirm the appointments. However, a number of commissions were not received before President Thomas Jefferson assumed office. James Madison, Jefferson's Secretary of State, withheld the commissions, thus hindering the nominees from assuming their position on the Supreme Court bench. William Marbury, one of the prospective judges, sued James Madison for failing to deliver the commission and thereby refusing to confirm his appointment.<sup>16</sup> The case began in December of 1801 and was founded upon three essential questions: "Has the applicant a right to the commission he demands? If he has a right, and that right has been violated, do the laws of his country afford him a remedy? If they do afford him a remedy, is it a mandamus issuing from this court?"<sup>17</sup> Marshall ultimately concluded that Marbury indeed did deserve his commission. However, where Marshall encountered an issue was whether or not the court had the right to issue a writ of mandamus. Marshall notes, "The authority, therefore, given to the Supreme Court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution."<sup>18</sup> Marshall then proceeds to declare, "... if this

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<sup>16</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 47-48.

<sup>17</sup> John Marshall, *Marbury v. Madison, Majority opinion by Chief Justice John Marshall* (February 24, 1803), PBS, The Supreme Court. [http://www.pbs.org/wnet/supremecourt/antebellum/sources\\_document10.html](http://www.pbs.org/wnet/supremecourt/antebellum/sources_document10.html) (accessed October 17, 2015), para. 3.

<sup>18</sup> John Marshall, *Marbury v. Madison, Majority opinion by Chief Justice John Marshall* (February 24, 1803), PBS, The Supreme Court.

court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional.”<sup>19</sup> This very sentiment is the main reason that Marshall decided to implement the concept of judicial review. As aforementioned, judicial review is a power of the Supreme Court that allows judges to determine the constitutionality of laws which are brought up to the Supreme Court. Overall, the case of *Marbury v. Madison* shows Marshall’s importance because he implemented a principle that has become a cornerstone of the American legal system. Additionally, Marshall expanded the role of the judiciary, which consequently led to a more stable legal system. Beyond law principles, Marshall had significant opinions on other topics, such as slavery.

In John Marshall’s letter to the American Colonization Society, it is revealed that he was involved and had a strong view in regard to slavery. Although he was a slave owner himself, it is historically recognized that John Marshall was opposed to the institution of slavery.<sup>20</sup> During his time as a lawyer, Marshall actually represented the “interest of the slaves” of the Quaker John Pleasants in a lawsuit over their freedom.<sup>21</sup> Even as Chief Justice, Marshall acted as president of the Virginia Colonization Society, a branch of the American Colonization Society, which aimed to emancipate slaves and send them back to West Africa.<sup>22</sup> In his letter to the American Colonization Society, John Marshall discusses the organization’s plans to raise funds for the purpose of sending slaves back to Africa. Marshall notes that this task was “a subject of much delicacy” and would require a complete shift in American routine, as

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[http://www.pbs.org/wnet/supremecourt/antebellum/sources\\_document10.html](http://www.pbs.org/wnet/supremecourt/antebellum/sources_document10.html) (accessed October 17, 2015), para. 5, 29.

<sup>19</sup> John Marshall, *Marbury v. Madison*, *Majority opinion by Chief Justice John Marshall* (February 24, 1803), PBS, The Supreme Court.

[http://www.pbs.org/wnet/supremecourt/antebellum/sources\\_document10.html](http://www.pbs.org/wnet/supremecourt/antebellum/sources_document10.html) (accessed October 17, 2015), para. 17.

<sup>20</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 164.

<sup>21</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 165.

<sup>22</sup> John Marshall, Letter, *American Colonization Society* (December 14, 1831), PBS, The Supreme Court.

[http://www.pbs.org/wnet/supremecourt/personality/sources\\_document15.html](http://www.pbs.org/wnet/supremecourt/personality/sources_document15.html) (accessed October 17, 2015), para. 1.

“our cruisers stationed on the coast of Africa would, at the same time, interrupt the slave trade...”<sup>23</sup>

Throughout the letter, Marshall displays his clear opposition to slavery, as he refers to the institution as “horrid” and “detested by all good men.”<sup>24</sup> Overall, Marshall’s letter to the American Colonization Society further displays his historical significance because it displays Marshall’s focus on the nation, not on his own opinions and perspective. As a Supreme Court Justice, it is understood that personal values and morals must be kept separate when making a decision on a ruling. However, noting that the Supreme Court was still fairly new when Marshall was in power, it would have been simpler to make a decision that was slightly influenced by personal thoughts and feelings. When discussing the topic of slavery, Hobson declares, “In his mind preservation of the Constitution and union took precedence over the immediate eradication of slavery.”<sup>25</sup> This further displays that Marshall’s main focus was the well being of the nation, and therefore, his decisions reflected what he felt was best for the development of the nation. In hindsight, had Marshall made decisions that reflected his anti-slavery sentiment, history could have been very different in that there could have been more violence and greater conflict.

Evaluating John Marshall’s influence and significance, both in the 19<sup>th</sup> century and consequently today, it would only be logical for his life to be documented in a biography. John Marshall is truly the first notable justice. He is the longest-serving Chief Justice in the history of the federal Judiciary and a copious number of cases that he presided over are considered “landmark” cases.<sup>26</sup> Moreover, the consequences of his rulings have continued to shape modern society. For example, Marshall’s decisions in the “contract clause” cases such as *Fletcher v. Peck* (1810), *Dartmouth College v. Woodward* (1819), and *Sturges v. Crowninshield* (1819) have impacted the way modern society conducts business, due to

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<sup>23</sup> John Marshall, Letter, *American Colonization Society* (December 14, 1831), PBS, The Supreme Court. [http://www.pbs.org/wnet/supremecourt/personality/sources\\_document15.html](http://www.pbs.org/wnet/supremecourt/personality/sources_document15.html) (accessed October 17, 2015), para. 2.

<sup>24</sup> John Marshall, Letter, *American Colonization Society* (December 14, 1831), PBS, The Supreme Court. [http://www.pbs.org/wnet/supremecourt/personality/sources\\_document15.html](http://www.pbs.org/wnet/supremecourt/personality/sources_document15.html) (accessed October 17, 2015), para. 2.

<sup>25</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 164.

<sup>26</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), ix.

Marshall's emphasis on the significance of contracts.<sup>27</sup> Furthermore, Marshall was an accomplished individual beyond his achievements in the Supreme Court. According to Hobson, "Marshall was a man of affairs- soldier, legislator, diplomat, statesman, lawyer, and judge."<sup>28</sup> Although his most notable position was Chief Justice, his other titles should not be ignored.

One of the strengths of Hobson's writing is his inclusion of the "thought process" and justifications for decisions utilized by Marshall throughout his term as Chief Justice. According to Hobson, "Marshall becomes scarcely distinguishable from the history of the Supreme Court."<sup>29</sup> Therefore, in order to understand Marshall wholly, the reader must understand the circumstances of his cases. One landmark case that Hobson discusses is *Gibbons v. Ogden* (1824). Beyond just stating the outcome, in which the federal government expanded its power to include regulating interstate commerce, Hobson describes the steps Marshall took reach his decision. For instance, Hobson explains how Marshall scrutinized the language of the commerce clause to discern what the word "commerce" actually implied. After interpreting "commerce" to include "navigation," along with disproving the proposed arguments that the regulation of commerce was a concurrent power, Marshall concluded that it was a power delegated to the federal government.<sup>30</sup> Through Hobson's detailed account, the reader gains a greater understanding of Marshall and his ideals. With that being said, the biography does lack in certain aspects.

One of the weaker aspects of Hobson's writing was his lack of discussion in regard to Marshall's personal life. The first chapter of the biography, "Republican Revolutionary," focused on Marshall's life until 1801. Additionally, Hobson would sporadically incorporate various details about Marshall throughout the book. However, it overall seemed like Marshall's life was quickly summarized. When one considers a biography, it is typically a book that's primary focus is to discuss a historical figure's life.

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<sup>27</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 78.

<sup>28</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), ix.

<sup>29</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 8.

<sup>30</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 140-147.



While his role as Chief Justice did consume a large portion of his life, that was not the only title he ever possessed. It would have been interesting to learn more about his family or childhood, just to simply know who he was as a person beyond his role as Chief Justice. While he did not mention a copious amount of details about Marshall's life, he did manage to incorporate several key turning points that influenced Marshall and his ideologies.

A key turning point in Marshall's life, according to Hobson, was the American Revolution and the consequential action of the ratification of the Constitution. The Revolutionary War established a concrete set of ideologies for Marshall that would sustain throughout most of his life. As Hobson states, Marshall adhered to "classical values." For example, Marshall rejected the idea of a monarchy and of entitled nobility having the only political power. He supported a popular (republican) government, in which land-owning white males (referred to as "freeholders") had the right to vote. Additionally, he did not support the formation of political parties, or factions, within the government. Although he spoke in favor of the Federalists, he never actually considered himself to be a member of the party. According to Hobson, Marshall simply considered himself "a defender of the Constitution."<sup>31</sup>

An additional turning point in Marshall's life was his time spent with individuals like James Madison. John Marshall's ideologies, which influenced the manner in which he believed the country should be run, were heavily influenced by other historic individuals. Madison, a fellow Virginian, and Marshall associated throughout the years in which John Marshall was a statesman and lawyer. According to Hobson, Marshall was "instructed" by Madison to discern the fact that a successful national government was more than simply promoting commerce and national security. A successful national government would also subdue the states, where the American citizens posed a threat to their own liberty. This idea influenced Marshall as a Chief Justice, as he had a severe distrust for the states. This feeling

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<sup>31</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 16-18.

influenced many of his decisions, specifically those that resulted in greater power being awarded to the federal government.<sup>32</sup>

John Marshall should be incorporated into history lessons because he established the foundation for the judicial system and thus, could be considered solely responsible for the success of the American legal system. Marshall's practices, which were rooted in Western legal philosophy, were not utilized until he personally implemented them.<sup>33</sup> While that may seem minute, it is not, considering what American law gained from Marshall. The principle of judicial review is technically a large enough feat in and of itself. Yet, Marshall achieved more than that. Through his decision in *Gibbons v. Ogden*, he delegated the power of commercial regulation to the United States government. In *Worcester v. Georgia*, Marshall declared the Native American tribes (specifically the Cherokee) their own sovereign nation. While obviously not relevant to all American citizens, this was a landmark decision in a time when Andrew Jackson and the country were betraying the tribes to gain more land. In that case, he ultimately did what no other individual did, and created a status and place for the Native Americans. In his own time period, he worked to prove that the "experiment" of republican government could be successful. Currently, it can be seen that Marshall established precedents and decisions that serve as a guide for the way cases are presided over today.

John Marshall, or "The Great Chief Justice," is important to his time period and to American history because without his work in the American court system, the law may not be as reliable and important as it is today. His belief and motivation to establish a judicial system ultimately made the country and the federal government what it is today, by creating three equal branches of government that have the capability to deal with important, yet sometimes controversial, societal issues. Without Marshall, there may not have been a powerful and dependable Supreme Court, and therefore, there would have been a feeble judicial branch.

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<sup>32</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 21.

<sup>33</sup> Charles F. Hobson, *The Great Chief Justice: John Marshall and the Rule of Law* (Kansas: University Press of Kansas, 1996), 59.

