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The Monumental Ally: Chief Justice John Marshall and the Protection of the United States Constitution

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THE MONUMENTAL ALLY: CHIEF JUSTICE JOHN MARSHALL AND THE PROTECTION OF THE UNITED STATES CONSTITUTION

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Abstract

The culmination of this particular research intends to analyze U.S. Supreme Court Chief Justice John Marshall's judicial opinions with historical perspectives. Special emphasis is placed upon Marshall's motives for promoting the interests of the national government over the interests of the individual states and their respective governments and the interests of the federal judiciary over its fellow branches. Overall, it can be successfully argued that Marshall's influence was not to promote the individual branch of the federal judiciary, but rather promote the necessity of a strong national government. The research utilizes primary and secondary sources including Marshall's judicial opinions, his personal correspondence, and his autobiography. The overall purpose of the research seeks to achieve a sense of Marshall as a historical actor rather than the American iconic figure one generally associates Marshall as being.

Acknowledgments

I would first like to express my deepest appreciation for my mentor and my thesis director, Dr. Patricia Minter, for her constant support and encouragement throughout this lengthy process. It is her urging for excellence and constructive critiquing that has challenged my skills as a student, and now, as a researcher.

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Introduction

The United States Supreme Court under the leadership of the late Chief Justice John Marshall is often regarded as the pinnacle of the Court's attempts to establish itself as the most prominent branch of the federal government. Championed as the premier arbiter of judicial review, Marshall has entered the public mind as nothing more than a Chief Justice who, in reality, influenced little change and whose judicial opinions were nothing more than a political diatribe against the administration. However, the legal genius of John Marshall cannot be limited to the implementation of judicial review. His thirty-four year tenure on the United States Supreme Court should not leave the impression that his motives were self-rewarding in attempting to transform the federal judiciary into the most prominent branch of government

However, Marshall's lasting importance should not be limited to his supposed attempts at strengthening the judiciary branch—his importance is more closely associated with his attempts to secure the United States Constitution from demise and promote interpretations of its plausible meanings that aligned with the standards set forth by the document must be regarded. From personal reflections to individual case studies, one may interpret Marshall's primary goal was to safeguard the Constitution and protect the individual rights of United States citizens, not to establish the judicial branch as the most prominent force within the federal government. As a result, Marshall aided in attempts to secure national unity for the United States of America.

To fully demonstrate Marshall's insistence upon protecting his beloved Constitution, it is necessary to consider the areas of criticism that are presented against the Chief Justice. The Marshall's Court interaction with the other federal branches will be examined by the

first category of correspondence and case opinions. Theses sources will establish Marshall as an ally for the entire national government rather than as the oppressive judge who sought centralized power in one judicial branch. Deemed as the opponent to states' rights, this research will also analyze sources involving Marshall's reactions to states' claims. This research will demonstrate Marshall's desire to uphold the Constitution rather than follow one prescribed set of individual ideologies.

Marshall's interaction and protection of the contract clause will examine his fierce desire to uphold the Constitution despite the potential for media scrutiny or oppressing any form or set of government—whether state or federal. His vehement protection of economic liberty for the nation as a whole is clear and apparent through various cases involving different jurisdictions.

In light of previous research, the need for a broadened perspective of Marshall is apparent. While present scholarship on Marshall has aligned him with specific perspectives—such as judicial review and the assumed power of the judicial branch—my research will explore Marshall as a judicial figure with more than a singular goal in mind. While previous arguments have attributed Marshall as a minor figure within the American scheme of history, this research will examine the possibility that Marshall was a more prominent figure in the strengthening of the early federal government.

Historian David Robarge argues Marshall's animosity towards state-led government was inherited during his tenure in the Virginia state legislature throughout the late 1780s. It was at this time that Marshall was provided a "disillusioning education in the perils of popular politics" leaving him skeptical and pessimistic of the "ability of the state and

Confederation governments to deal with problems besetting the country."[1] However, Robarge relates Marshall's early nationalist sentiments by his argument that Marshall had early desires for a strong judiciary. During the Virginia state convention on the adoption of the Constitution, Robarge argues that Marshall's pleas for a federal judiciary demonstrated his innate desire for a leading, strong judiciary. It would certainly seem to be a correct assumption given Marshall's assertions that the federal judiciary would protect liberty by the implication of judicial review over acts of Congress. However, Marshall's promotion of the federal judiciary was not solely to promote this one branch. His speech was requested by the leaders of the Federalist Party.[2] By promoting the federal judiciary, Marshall was asserting the tenets of the Federalist party—an enlarged federal government.

While Robarge does contend that Marshall's desire for an expanded judiciary grew from his deep nationalism and his desire to uphold the Constitution,[3] he does not expand his argument to include the possibility that Marshall wanted to increase the power of the judiciary for the other two federal branches. Rather, he attributes Marshall's "willingness to rule derived more from his goal of strengthening the courts and asserting their coequality with the other branches."[4] While Marshall is embodied as a "judicial statesman,"[5] his pressure to increase the judicial authority was directly related to upholding the Constitution and the federal government as a whole.

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[1] David Robarge, *A Chief Justice's Progress: John Marshall from Revolutionary Virginia to the Supreme Court* (Westport, Connecticut: Greenwood Press, 2000), 74.
[2] Ibid., 110.
[3] Ibid., 233.
[4] Ibid., 253.
[5] Ibid., 304.

R. Kent Newmyer's well-received study of Marshall's career in the Supreme Court suggests that Marshall's primary goal of his constitutional nationalism was to allocate power to Congress to "facilitate economic development" and "prevent states under control of popular politicians from interfering with property rights, contractual sanctity, and/or federal efforts to facilitate their operation." Newmyer argues that Marshall favored balanced federalism rather than national consolidation.[6] As with this research, Newmyer does not attempt to view Marshall as an adversary to Congress. Rather Marshall is depicted as allowing Congress what constitutionally belonged to them.[7] Contrary to popular notions of Marshall as an "aggressive...nationalizer," Newmyer rightfully regards Marshall as a "beleaguered champion of an increasingly fragile union."[8] In the Court's hour of potential demise, Marshall had to preserve it in order to preserve the nation.[9]

In his biographical work on Marshall, Leonard Baker describes the Chief Justice's appointment as one of the necessary ingredients for making the courts the political battleground.[10] Yet Baker tends to overemphasize the importance of individual cases during Marshall's career as his "shining moments." While such watershed cases, such as *Marbury v. Madison*[11] cannot be separated from Marshall's list of crowning achievements, to limit his accomplishments to one case at the beginning of his Supreme Court career under-emphasizes his career as a whole. Baker further contends that Marshall's decision to have the Court's opinion rendered as one decision and his

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[6] R. Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court*, (Baton Rouge: Louisiana State University Press, 2001), 272.
[7] Ibid., 172.
[8] Ibid., XVI.
[9] Ibid., 395.
[10] Leonard Baker, *John Marshall: A Life in Law* (New York: Collier Books, 1974), 363.
[11] *William Marbury v. James Madison*, 5 U.S. 137 (Cranch) (1803).

establishment of the Supreme Court as the "ultimate arbiter of those disputes which could be framed in legal questions" were Marshall's attempts to broaden the power of the judiciary. It is through these efforts that Baker reasons the Supreme Court "achieved a moral force as great as that obtained by the presidency and the Congress."[12]

Baker's research tends to depict Marshall as the messiah on a personal mission to redeem the judiciary. While it the era of Marshall's leadership is correctly identified as the Marshall Court, Baker uses the term Marshall's Court to demonstrate the dominance of the Chief Justice and the growing "majesty" of the Court.[13]

Moreover, Baker argues that with Marshall, the Supreme Court had asserted its independence from the other branches.[14] While a measure of independence was needed to emphasize the judicial branch and rescue from its then obscure state, it would go against the philosophies of Marshall to assume that his work was designed to obtain complete independence. By demonstrating Marshall's desire to work cohesively with the other branches through the strengthening of all three branches, this research will contradict this faulty assumption.

Some historians view Marshall's early years on the Supreme Court lending more to judicial supremacy, primarily in relation to the executive branch, than branch domination. While his decision in early cases, such as *Marbury*, seemed as offensive to many, Sean Wilentz argues his strategy in ruling was in defense of actions taken against the Court by

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[12] Baker, 413-414.
[13] Ibid., 416-417.
[14] Ibid., 626.

President Thomas Jefferson. Furthermore, Wilentz asserts Marshall was able to obtain a "middle-ground" between his Federalists and Jefferson's Republicans.[15]

As with many popular conceptions, George Lee Haskins also relies upon the prominence of Marshall as the champion of judicial review. Devoting an entire section to *Marbury* in his work, Haskins dissects the importance and evolution of judicial review. However, Haskins contends that the judiciary had began to evolve by the end of the eighteenth century into "a more distinct entity" and had began to separate itself from its supportive role to the executive."[16] To argue that this shift occurred before the appointment of Marshall fails to coincide with others' research that indicates Marshall as the transitional point for the United States Supreme Court. Haskins' research tends to be in more alignment with current research than Baker by conceding the possibility that judicial review did not have a dramatic impact at the time of *Marbury*.[17] As with other previously mentioned research, Haskins also argues that Marshall was responsible for the protection of the judiciary and his choice to "re-emphasize the supremacy of the rule of law in that difficult era when politics were threatening to engulf the judiciary."[18] Overall, Haskins contends that Marshall's primary accomplishments were to define the province of the courts and refute the ability of the courts to hear matters of a political nature.[19]

Early research indicated the predominant notion that Marshall was a better known for his protection of the Constitution than for his position as a "judicial statesman." Utilizing comments from Justice Joseph Story, a friend and associate of Marshall, Samuel

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[15] Sean Wilentz, *The Rise of American Democracy* (New York: W.W. Norton and Company, 2005), 113-114.
[16] George Lee Haskins and Herbert A. Johnson, eds., *Foundations of Power: John Marshall, 1801-15*, vol. 2, *History of the Supreme Court of the United States* (New York: Macmillan Publishing, 1981), 188-189.
[17] Ibid., 196.
[18] Ibid., 204.
[19] Ibid.

Konefsky reasoned Marshall's primary accomplishment was the defense of the Constitution. In the words of Story, "'his peculiar triumph was in the exposition of constitutional law. It was here that he stood confessedly without a rival...His proudest epitaph may be written in a single line—Here lies the Expounder of the Constitution of the United States'."[20] To further his argument, Konefsky also heavily relies on further commentary from other Supreme Court justices. In the words of Justice Frankfurter, "'When Marshall came to the Supreme Court, the Constitution was still essentially a virgin document. By a few opinions—a mere handful—he gave institutional direction to the inert ideas of a paper scheme of government'."[21] Yet Konefsky's presentation also reflects later theories of Marshall as the champion of judicial review and the most influential figure to have worked to increase the influence of the judicial branch as an institution of the government.[22]

In order to better understand Marshall as an important historical figure rather than as a single-minded, minor American figure, his tenure on the Supreme Court must be interpreted with an intention of deciphering his personal motivations. With this in mind, my research will demonstrate that Marshall's opinions and personal correspondence are indicative of his true motivations. Marshall must be regarded as something more than the proponent of judicial review and its implications. What lacks to be examined is Marshall as a prominent American figure who utilized his position of "power" to reinforce the Constitution as the foundational document of American government and society. This

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[20] Joseph Story, *A Discourse on the Life, Character, and Services of the Honourable John Marshall,* pgs. 70-71, in Samuel J. Konefsky, *John Marshall and Alexander Hamilton: Architects of the American Constitution* (New York: Macmillan Company, 1964), 266.
[21] Samuel J. Konefsky, *John Marshall and Alexander Hamilton: Architects of the American Constitution* (New York: Macmillan Company, 1964), 277.
[22] Ibid., 3.

work will demonstrate the necessity of expanding beyond past research to determine whether Marshall's intentions were as single-minded as critics and historians might proclaim. With resounding authority, Marshall's own words show him to be a figure whose love for the nation served as his primary motivation. His efforts on the Supreme Court aided in establishing the United States Constitution as the source of supreme law.

The "Basis of the American Fabric"[23]: Marshall and the Federal Branches

Direct affirmations and statements of philosophies and beliefs from the person in question leave little room for doubt and misconception in historians' interpretations. John Marshall's autobiography offers critical evidence into his own personal convictions and his stance on the national government. As a staunch Federalist it may come as no surprise that Marshall enforced the ideal of his love for the nation and his government. He stated, "I am disposed to ascribe my devotion to the union, and to a government competent to its preservation." The chief justice continues on his evaluation of his nationalist roots by explaining that he had grown in an age when every orthodox American lived by "the maxim 'united we stand, divided we fall'."[24] Marshall contended that every American ought to strive to stand as one unit to protect the rights of each individual. With this implied philosophy, one can understand Marshall's apparent desire for a strong federal government, not just the superiority of one branch.

In 1787, Marshall was elected to the Virginia legislature following his stint in the Army during the American Revolution. It was during this period that the status of the

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[23] Marbury, 176.

[24] John Marshall, *The Events of My Life: An Autobiographical Sketch by John Marshall*, eds., Lee C. Bollinger and John C. Dann (Ann Arbor, MI: Clements Library, University of Michigan, 2001), 17. From 1937 - 2001, this document was not available to the public and was only in print at the Clements Library. Before 2001 this document was seldom used with the exception of Marshall scholars.

individual states was in discussion. When the Constitution was brought before the state legislature, it was the subject of heated debates in the heart of a largely anti-federalist state. The "unceasing efforts of the enemies of the constitution" deeply impressed Marshall. Even at this time Marshall states that he had remained "uniform in support" of the document and its system.[25] Furthermore, while Marshall advocated the adoption of the Constitution, his desire to strengthen the federal government continued to flourish. He reasoned the "general tendency of state politics convinced [him] that no safe and permanent remedy could be found but in a more efficient and better organized general government." This discontent with centralized power in one branch seems to have increased during this period given his hopeful attitudes; in correspondence with James Monroe in January 1784, Marshall declared that his "fears of the power of Congress, I have considered chimerical. I never could bring myself to think that Gentlemen who urged really felt them but conceived they were usd [sic] as a political engine to effect particular purposes.[26] Given his later support for restrictions on the states and more interdependent federal government, he became "a determined advocate" for the Constitution's adoption.[27]

In 1788, Marshall was persuaded to run for office as a representative for the city of Richmond. He states that he was inclined to hold this position because he found the "hostility to the governments so strong in the legislature" that it required "from its friends all they could give it."[28] Yet by December of 1800, he revealed to Charles Cotesworth

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[25] Ibid., 16-17.
[26] *The Papers of John Marshall*, vol. 1, *Correspondence and Papers, November 10, 1775 - June 23, 1788 Account Book, September 1783 - June 1788*, ed. Herbert A. Johnson (North Carolina: University of North Carolina Press, 1974), 114.
[27] Marshall, 17.
[28] Ibid., 18-19.

Pinckney that by March 1801 he was returning to Virginia to continue in his practice as an attorney and his "present wish" was to "never again fill any political station."[29] However, his love and esteem for his country prevented him from fully carrying out this written desire. By February of 1801, Marshall continued to dwell on the state of the union in his private correspondence, especially given the recent election of Thomas Jefferson. In a letter to Rufus King, he declares it was

> beleivd [sic] & feard [sic] that the tendency of the administration will be to strengthen the state governments at the expence [sic] of the Union & to transfer as much as possible the powers remaining with the general government to the floor of the house of representatives.[30]

Marshall had fully allied himself with the federal government and viewed himself as a champion for the unity of the nation—all before he had served on the federal judiciary. It would only be a short period of time before he would accept his unanticipated role as the Chief Justice.

Additionally the autobiography reveals that Marshall had rejected a previous offer of appointment to the Supreme Court in the 1790s. Instead Marshall sought, and achieved, election into the United States House of Representatives.[31] Only two years prior to his appointment to his seat on the Court, Marshall had demonstrated that he had no prevailing preference for the judicial branch. Moreover, his eventual appointment to the position of Chief Justice appears to be coincidental and unintended by Marshall. After the resignation of Chief Justice Oliver Ellsworth, Marshall had recommended William Patteson [sic] to fill the vacant role. In a meeting with President John Adams after another individual had turned down the assignment, Marshall again mentioned the

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[29] *The Papers of John Marshall*, vol. 6, *Correspondence, Papers, and Selected Judicial Opinions November 1800 - March 1807*, ed. Charles F. Hobson (North Carolina: University of North Carolina Press, 1990), 41..
[30] Ibid., 82-83.
[31] Ibid., 26.

possibility of appointing Paterson. Yet Adams replied, "'I shall not nominate him...I believe must nominate you.'" Marshall wrote that he was surprised as he "had not even thought of it."[32] While this may be worded to feign humility, his work during his tenure lends credence to the belief that Marshall had no intentions of establishing an all-powerful judicial branch. His primary goal was to strengthen the federal government in whatever facet he could influence.

Allowing for more interpretation, the following primary documents and court opinions will demonstrate the stance of Marshall in relation to the other branches of the federal government. While it may be contested that Marshall consistently ruled in favor of the judicial branch, these opinions will affirm that Marshall usually sought the best interest of the federal government. To strengthen the national government, he sought to enhance each branch—particularly the legislative branch—in whatever forms the Constitution would allow. If the Constitution expressly defined or implied powers and limitations, the position of the judicial branch was to uphold the Constitution as vehemently as possible.

Even during Marshall's formative years as an attorney, he demonstrated his allegiance to the authority of the central government. Arguing for the defendant in *Ware v. Hylton* in 1796, Marshall reasoned that a constitution alone had the authority to restrain the legislative powers of a country.[33] Additionally, Marshall proclaimed that judicial authority had no right to question the "validity of the law" unless this form of jurisdiction is expressly declared within a constitution. Marshall contends that this principle is innate and "springs from the very nature of a society."[34] With his argument, Marshall did not assert the right of the judiciary—he instead emphasized the necessity of deferring to the

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[32] Ibid., 29.
[33] *Ware, Administrator of Jones v. Hylton, et al.*, 3 U.S. 199 (1796), N.P.
[34] Ibid.

body's constitution for illumination in the powers and divisive boundaries between the branches of government.

In his personal correspondence it is blatantly clear that he feared the downfall of the Federalist Party. Writing to Judge James Iredell in December of 1796, Marshall declared that the current assembly had continued to display its hostilities towards the party. By demonstrating a move away from Federalist candidates for the presidency, such as John Adams, the Virginia assembly demonstrated a denial of wisdom in the occupation of the Executive leader. In this matter, he considered America to have fallen. His earnest pleading to Judge Iredell demonstrated his fears that North Carolina would follow in the "crooked path" that the Virginia legislature had chosen to follow.[35]

His fears of the continual resistance to the Federalist Party would again arise in his first Supreme Court case of importance. The case of *William Marbury v. James Madison*[36] in 1803 has often been regarded as the turning point of Marshall's influence upon the judiciary and his transition from a political player into a judicial authority. However, many may contend that the primary importance of this legal case relies on the introduction of judicial review and Marshall's first assault upon the prevalence of Congress. Instead, emphasis should be placed upon Marshall's deference to the superiority of the Constitution. Instead of increasing the potential for more influence, Marshall instead admits the limitations of the Court based on the limitations of its jurisdiction. *Marbury* could have been decided if it had reached the Supreme Court on appeal. Yet since the case was administered as an original jurisdiction case, the United

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[35] *The Papers of John Marshall*, vol. 3, *Correspondence and Papers, January 1796 —December 1798*, ed. Charles T. Cullen (North Carolina: University of North Carolina Press, 1979), 58-59.
[36] *Marbury*, 137.

States Supreme Court did not have the appropriate jurisdiction to rule on the case.[37] While Marshall argued that the court had the final say on interpretations of the Constitution, it self-admittedly could not always enforce its interpretations. In Congress' attempts to nullify the appointment of Marbury, Congress had acted "repugnant[ly] to the constitution" making the legislation void and "that courts, as well as other departments, [were] bound by that instrument."[38] Marshall had not only stressed emphasis of restraint upon the Legislative branch, but also upon the branch that he was supposedly attempting to increase in influence.

Interestingly, Marshall examines the delicacy of a constitution written by the people in attempts to codify and solidify common principles of the territory. From his viewpoint, Marshall clarified his position that the Constitution itself represented the fabrication of the American people. He writes:

> That the people have an original right to establish, for their future government, such principles, as in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected...The principles, therefore, so established are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent...[39]

Noting that all governments can invalidate a law that was in conflict with the Constitution, "this theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society."[40] To alter the principles of the document that supposedly expressed the fabrication of the nation would—to Marshall—destroy the underlying beliefs and

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[37] U.S. Constitution, art. 3, sec. 2.
[38] *Marbury*, 180.
[39] Ibid., 176-177.
[40] Ibid.

promises of the nation. To alter the permanence of a constitution was inexcusable and impermissible.

Furthermore, Marshall argued that there was no middle ground in interpreting the supremacy of the Constitution. In consideration, "the Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the Legislature shall please to alter it."[41] Given that the Constitution had outlined specific definitions of powers and limitations for the branches of government, any act in opposition to its guidelines ought to be voided.[42] If the Constitution was designed for longevity, but had the ability to be altered on a whim, then "written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable."[43] If its limits are rejected or revised, the Constitution should not be in place. To counter-effect the Constitution's potential demise, Marshall had to protect its standards from its own delegations—in this case an overreaching legislative body. While judicial review was prominent in this judicial opinion and serves as an important cornerstone in Marshall's legal reputation, its introduction should not overshadow Marshall's utmost priority in protecting the Constitution.

As historian R. Kent Newmyer contends, *Marbury* did not "put forth the Court as an adversary of Congress."[44] Instead, Marshall clearly distinguished the purpose of the judicial branch. If one regarded the Constitution as the supreme law, the duty of the judiciary was to define the law and ensure that all laws did not conflict with the

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[41] Ibid., 177.
[42] Ibid., 176.
[43] Ibid., 177.
[44] Ibid., 172.

Constitution.[45] If Marshall's sole purpose had been to rise above the legislative branch, his cases throughout the following decades after *Marbury* would have violated his intentions.

The case of *Brig Wilson v. United States*[46] actually began during Marshall's service to the Circuit Court of Virginia in 1820, yet it serves as evidence that his beliefs and judicial reasoning were not limited to the Supreme Court. The facts surrounding the case involved the passage of a law by Congress that emphasized the exclusion of free slaves from slave states, particularly within the South. If a ship owner brought free slaves into the ports, the owner was forced to hand over his vessel. In this particular instance, the *Brig Wilson*, "a private armed cruiser [sic]," came into the port of Norfolk from Buenos Aires. The vessel was operated by men of color. All these men were free and were considered sailors. When three of the men left the vessel and came onshore, it was argued that their coming ashore violated Virginia statutes that prohibited the importation of persons of color. This 1803 act explicitly detailed that no ship or vessel coming into a United States port containing on board "any negro, mulatto, or other person of colour, not being a native, a citizen, or registered seaman, of the United States" would be allowed entry. If the vessel did come into port, the vessel and all its property were to be forfeited.[47]

Marshall defined this situation as a case of navigation, thus allowing it to fall under the umbrella of commerce. However, he did not question the constitutionality of the act. In order not to charge the act as unconstitutional, he ordered the return of the vessel based

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[45] *Marbury*, 177-178.
[46] *Brig Wilson v. United States*, 1 Brockenbrough 423, C.C. Va. (1820), as reprinted in John P. Roche, ed., *John Marshall: Major Opinions and Other Writings* (Indianapolis: The Bobbs-Merrill Company, 1967), 197.
[47] *The Wilson v. United States*, 30 F. Cas. 239 (1820), 243.

on "devious statutory construction." By refusing to comment on the constitutionality of the law, he protected the extent of Congress' power over navigational commerce.[48] In the opinion, Marshall rationalizes the return of the *Brig Wilson* to its owner not because the law was overreaching in regards to commerce, but rather that those aboard were not proven to be "negroes or mulattos," but only identified as "people of colour" allowing the opinion to rest on a mere technicality of vocabulary.[49]

Marshall also expounded the right of Congress to control not only the commerce, but the vessel by which commerce was conducted:

> Let it be admitted, for the sake of argument, that a law, forbidding a free man of any colour, to come into the United States would be void, and that no penalty, imposed on him by Congress could be enforced; still, the vessel, which should bring him into the United States, might be forfeited, and that forfeiture enforced; since even an empty vessel, or a packet, employed solely in the conveyance of passengers and letters, may be regulated and forfeited.[50]

To step around holding the federal law unconstitutional, Marshall persisted that the legislation was a proper utilization of Congress' commerce power. Declaring the vessel as a facet of commerce, the legislation was a legitimate means to the end. He practiced judicial instrumentalism by using the law to rationalize his beliefs and by using the case to expound upon the national government's regulation over commerce. In his judicial wisdom, by neglecting to declare this instance as commerce and remaining silent on the bench, by default, he had reinforced the federal legislature's ability to regulate and control commerce.

Marshall's 1821 opinion in *Cohens v. Virginia*[51] also supported his stance on a strong national government. In 1802 a congressional statute authorized the sale of lottery tickets

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[48] *Brig Wilson*, 197-198.
[49] Ibid., 206.
[50] Ibid., 199.
[51] *Cohens v. Virginia*, 19 U.S. 264 (1821).

within the District of Columbia. However, an 1820 Virginian act had criminalized the sale of lottery tickets within the state except where authorized by the state legislature. The Cohen brothers were agents for the D.C. lottery yet were citizens of Virginia. After being criminally fined by the state of Virginia, the Cohen brothers brought suit against the state.[52] Like *Marbury*, this case involved the Supreme Court's available divisions of jurisdiction. In particular, it questioned whether or not the Supreme Court had the jurisdiction to hear a case between a state and a citizen of that same state. Marshall concluded the Supreme Court jurisdiction was constitutionally acceptable given the express limitations and powers in the second section of the third article of the Unites States Constitution allowing parties "between a State, or the citizens thereof."[53] By allowing the case to be heard, Marshall had broadened the expanse of the judicial branch[54], and thus, that of the federal government—the representation of the entire nation.

Additionally, Marshall emphasized the importance of strengthening all facets of the national government. He states:

> The American States, as well as the American people, have believed a close and firm Union to be essential to their happiness. They have been taught by experience, that this Union cannot exist without a government for the whole; and they have been taught by the same experience that this government would be a mere shadow, that must disappoint all their hopes, unless invested with large portions of that sovereignty which belongs to independent states.[55]

Again Marshall insists that the hopes of the American people and the protection of their individual rights and freedoms relied upon the supremacy of the national government—an uncommon interpretation during this time period. He also reasons that from the

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[52] Newmyer, 363-364.
[53] U.S. Constitution, art. 3, sec. 2.
[54] *Cohens*, 378.
[55] Ibid., 380.

beginning of the inception of the Constitution, it has been commonly understood by the people that a limited amount of the states' sovereignty must be relinquished to make the national government successful. He later adds that this principle is understood by the American people,

> In war we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one, and the government which is alone capable of controling [sic] and managing their interests in all these respects, is the government of the Union...America has chosen to be, in many respects, and to many purposes, a nation...The people have declared, that in the exercise of all powers given for these objects, it [the government] is supreme. It can ...legitimately control all individuals or governments within the American territory...These States are constituent parts of the United States. They are members of one great empire...[56]

The Constitution is only a document and cannot enforce itself. Because the "people made the constitution...the people can unmake it."[57] After all, it is merely a social contract.

Marshall was not alone in his fight with this national supremacy. His ally, friend, and fellow Justice Joseph Story affirmed the necessity of his ruling in this particular case. Writing to Marshall in June 1821, Story explains:

> On subjects like this we are as yet inoculated with no disease. Massachusetts is attached to the Union & has no jealousy of its powers; & no political object to answer in crying up "state rights." We should dread to see the government reduced as Virginia wishes it, to a confederacy; & we are disposed to construe the constitution of the U.S. as a *frame of government* & not as a petty charter granted to a paltry corporation...Allow me to say that no where is your reputation more sincerely cherished than here; & however strange is may sound in Virginia, if you were known here only by this last opinion, you could not wish for more unequivocal fame.[58]

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[56] Ibid., 413-414.
[57] Ibid., 389.
[58] *The Papers of John Marshall*, vol. 9, *Correspondence, Papers, and Selected Judicial Opinions January 1820 — December 1823*, ed. Charles F. Hobson (North Carolina: University of North Carolina Press, 1998), 175-176.

The federal government is not a physical entity and cannot physically enforce itself. As Story demonstrated, Marshall was not alone in his beliefs and arguments. Story and his like-minded comrades understood the importance of aligning the states into one nation rather than existing as a confederation of sovereign powers. The tides of the states were not completely against Marshall—within specific portions of the nation he had the support of the people. For the ideals of each to be carried out, it takes the cooperation of the American people and the individual states. To protect the ideals of the nation—whether civic, socially, or economically—Americans and the states have to provide a uniform front. This cohesion is best achieved when the national government is strong and serves in the best interest of all individuals.

The "Unceasing Efforts of the Enemies of the Constitution"[59]: Marshall v. the States

As a leading and prominent member of the Federalist Party, it is not surprising that some of Marshall's most fierce opponents would define him as a justice whose sole intent was to repress the states in favor of the union. In correspondence to Justice Joseph Story in July 1821, Marshall acknowledged that his most adamant opponent and cousin Thomas Jefferson spoke with "ill will at an independent judiciary" and considered Jefferson to be contradictory to the thoughts of "any inteligent [sic] man" living in a free country. Yet Marshall demonstrated that his opponents were typically controlled and clouded by their own passions.[60] While it is true that Marshall sought a unified nation, he also sought to uphold the provisions of the Constitution. While Marshall did rule against individual states on many occasions, he also voted in favor of states if it was found that

[59] Marshall, *The Events of my Life*, 17.
[60] *The Papers of John Marshall*, vol. 9, 178-179.

the states had acted in accordance to the Constitution. The following cases is presented to provide a broad view of both sides and will illuminate Marshall as a true arbiter of the Constitution rather than as the only remaining—and struggling—member of the Federalist party.

Justice Story's commentary on his fears of the reduction of the Constitution[61] were merely echoes of Marshall's opinions during the early years of his Supreme Court tenure. In Marshall's 1809 opinion in *The United States v. Judge Peters*, he entertained the plausible future of the Court system if state legislatures were allowed to act in any manner they may choose.[62] During the Revolutionary War, Gideon Olmstead and others, all citizens of Connecticut, were captured by the British. The men were sent to Jamaica on board a sloop where on September 6, 1778, they took command of the sloop and headed to New Jersey. Two days later, the men were taken possession of a commander for Pennsylvania. Those who had assisted in the capture sought to claim a share of the capture. Olmstead and the others also sought to claim the vessel and its cargo as their "exclusive prize." The state court of admiralty ordered that the prize be divided amongst all the parties seeking the reward. However, on appeal to the United States Court of Commissioners of Appeals, the state court's ruling was overturned and the cargo and vessel, or their proceeds from their sale, were to be given to Olmstead and the others.[63]

This particular case in question arose when the Olmstead requested a mandamus from Judge Richard Peters to order the delivery of their prize when the respondents in the previous case had refused to obey the appellate decision. Judge Peter declared his refusal

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[61] Ibid.
[62] *The United States v. Judge Peters*, 9 U.S. 115 (1809), 136.
[63] *The United States v. Judge Peters*, 1809 U.S. Lexis 421, 7-8.

to deliver the mandamus to be blamed on an act of the Pennsylvania that forbade the execution of the appellate decision.[64]

Marshall declared that the act of the Pennsylvania legislature to be in contradiction to the abilities and the powers of the federal courts. He determined that this act of rebellion would only further suppress the Constitution. He writes:

> If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals. So fatal a result must be deprecated by all; and...the citizens of every other state, must feel a deep interest in resisting principles so destructive of the union, and in averting consequences so fatal to themselves.[65]

The ability of the states to override decisions of the federal courts would not only demean the standing of the courts, but it would also serve to undermine the entire federal government. A strike against one branch would expose the remaining branches for potential attacks from the states in the future. To protect the lower federal courts would only serve to strengthen the federal government, and thus, the nation.

With the 1819 opinion in *Sturges v. Crowninshield*, Marshall once again examined the legitimacy and the constitutionality of an act passed by a state legislature. In March of 1811, the two parties entered an agreement that involved the exchange of two promissory notes to be paid on two separate days in the month of August. The defendant, seeking relief from his payment, plead his defense through an April 1811 act of the New York legislature that provided relief for the "'benefit of insolvent debtors'." After proving his

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[64] Ibid., 1, 2.
[65] *The United States v. Judge Peters*, 9 U.S. 115 (1809), 136.

compliance with the provisions, he was released from his obligation of repaying the debt.[66]

On appeal to the Supreme Court, the plaintiff argued that the Constitution had taken away the ability for the states to regulate bankruptcies and had expressly given this power to Congress.[67] In determining the placement of this power, Marshall felt it necessary to revisit the origins of the Constitution and of its expressed powers. When a power is expressly guaranteed as solely belonging to the national legislature, the matter and power is taken completely away from the states legislatures "as if they had been expressly forbidden to act on it."[68] If the power to pass bankruptcy laws was expressly enumerated as a power of the federal legislature, any act of the same manner created by a state legislature would have to be considered void.

However, Marshall found that the power to administer laws concerning bankruptcies was not expressly given to Congress. Because of this, the ability of a state to institute such a law could only be suspended by a general bankruptcy law rather than be completely distinguished.[69] Yet in Marshall's judicial wisdom, he sought to remedy the ruling by utilizing Article I, section 10 of the Constitution in which states are forbidden from impairing the obligation of a contract. If the New York law did not impair contracts, then it could stand.[70] While cleverly acknowledging state powers and privileges, he had also limited the means by which the states could emit such laws. Given that the act of New York, applied retroactively, impaired the defendant's obligation of payment to the creditor, Marshall ruled that the act was contrary to the

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[66] *Sturges v. Crowninshield*, 1819 U.S. Lexis 310, 1.
[67] *Sturges v. Crowninshield*, 17 U.S. 122, 199.
[68] Ibid., 193.
[69] Ibid., 196.
[70] Ibid., 196-197.

principles of the Constitution.[71] Though this case did apply the standards of Article I concerns as will be discussed within this body of research, this case is better examined as a perspective of Marshall's relationship and attitudes toward the states and their respective legislatures. As seen with other cases, like *Brig Wilson*, Marshall sought to remain judicially silent on the main question at hand rather than rule directly against the respective entity—in this case against the state legislature. By ruling in this manner, Marshall was indirectly influencing the superiority of the national government and enhancing the prominence of the Constitution by ruling on an enumerated article that would be less open to scrutiny and dissenting opinion.

In the 1824 case of *Gibbons v. Ogden*, Marshall again relied upon the Constitution to rationalize the expansion of the powers of the legislative branch and suppress the overreaching attempts of the states.[72] To narrowly interpret the Constitution as the state of New York contended would have "cripple[d] the government and render it unequal to the object, for which is declared to be instituted."[73] The Constitution allows Congress "to regulate Commerce with foreign Nations, and among the several States."[74] Under this provision, Marshall allowed that navigational issues would fall under the umbrella of commerce. As such, Congress had the ability to oversee navigation among the states. He reasons, "All America understands, and has uniformly understood, the word 'commerce,' to comprehend navigation...the power of commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must

[71] Ibid., 208.
[72] *Gibbons v. Ogden*, 22 U.S. 1 (1824), 193.
[73] Ibid., 188.
[74] U.S. Constitution, art. 1, sec. 8.

have been contemplated in forming it."[75] If the powers of Congress were forced to stop at "the jurisdictional lines of the several States," the Constitutions' provisions for Congress and regulating commerce would be "useless power[s]."[76]

A State's mere proclamation of sovereignty was not enough to grant it the authority to produce laws in violation of federal rule and law. The framers' structure of the Constitution foresaw such incidents. Above all, the Constitution was to be regarded as the supreme law.[77] To argue that States retained their original powers that existed before the dissolution of the Articles of Confederation would serve to "explain away the constitution...and leave it, a magnificent structure...but totally unfit for use."[78]

With *Gibbons*, Marshall acknowledged the police powers of the states in certain areas but maintained that the Supreme Court retained the ability to determine whether the issue of interstate commerce could become a federal question. Robarge maintains the concession to state power actually worked to give "the Court greater influence than before."[79] Marshall did not argue that the entirety of state sovereignty must be surrendered—but for the government to operate at its highest peak of efficiency, some state sovereignty must be relinquished.

One may recognize that separate entities will generally act in their own best interest. Though the States had existed has sovereign entities yet relinquished this independence with the dissolution of a league into a government of the American people demonstrated this understanding of self-interest.[80] As Samuel Konefsky argues, Marshall utilized

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[75] *Gibbons*, 190.
[76] Ibid., 195.
[77] Ibid., 210-211.
[78] Ibid., 222.
[79] Robarge, 250.
[80] *Gibbons*, 187.

Gibbons to arrest the "commercial self-centeredness" of the states.[81] By allowing the ability to regulate interstate commerce among the states, Marshall emphasized national supremacy and promoted economic unity. If all the states had differing economic viewpoints, there could be no possibility in consistency in economic trade. To standardize commerce among the states would serve in the best interest of individuals.

Two weeks later, Marshall entered his opinion for the case of *Osborn v. the Bank of the United States*.[82] Even following the landmark decision of *McCulloch*, states were continuing to attempt to collect taxes that had been levied on the Bank of the United States. In 1819, the Ohio legislature had created an act to collect a tax from all banks within its state. Those banks that did not follow this guideline were subject to a $50,000 annual tax. Under this act, the auditor—Ralph Osborn—had the authority to enter the bank and demand the money if the payments was not made. If the auditor was unable to collect the tax, the amount was to be levied on the money or goods of the bank. If no effects could be found, the auditor possessing the warrant to collect had authority to raid the bank throughout every room, vault, and chest until the payment was recovered.[83]

Under employment by Osborn, J.L. Harper was commanded to visit the Bank of Chilicothe and collect a payment of $100,000. After proceeding with violence, Harper obtained the sum in specie and bank notes. This money was delivered to H.M. Curry, the Treasurer of the State who had been aware of the means that Harper had employed in obtaining it; this money was kept in deposit with the treasurer even past his successor S.

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[81] Konefsky, 193.
[82] *Osborn and others v. the President, Directors, and Company of the Bank of the United States*, 22 U.S. 738 (1824).
[83] Ibid., N.P.

Sullivan. This money was not kept under the guise of the treasury, but rather as individuals. The bank had brought suit seeking relief and repayment of the sum.[84]

Marshall began his lengthy opinion by reaffirming the necessity of the co-extensive nature of the government. In his seemingly most blatant explanation of the federal government, he expressly defined the obligations of each branch:

> The executive department may constitutionally execute every law which the Legislature may constitutionally make, and the judicial department may receive from the Legislature the power of construing every such law.[85]

Because this case, like *McCulloch*, was obligated to regard an issue depicting conflict between a state and the federal government, the Supreme Court held the appropriate jurisdiction to act in the manner it deemed most wise.

What Marshall deemed unique about this case was that it involved an entity that was created by the same law that was being debated. As a creation of the United States legislature, the Bank of the United States could not acquire any rights, "make no contract," or bring suit without the authorization of Congress. The bank was a "creature of a law" and its actions were dependent upon that law.[86] Given its position, Marshall had to first inquire as to whether this creature had the ability to bring suit or to form a contract.[87] Marshall concluded that only with the authorization of Congress, its creator, could the entity execute a contract—the same applied with its ability to bring suit.[88] As for this case, the bank undoubtedly had the ability to bring forth the suit.

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[84] Ibid.
[85] Ibid., 818.
[86] Ibid., 823.
[87] Ibid,. 823-824.
[88] Ibid., 825.

Marshall cleverly notes that this case was not intended to limit state power in any manner given that the state of Ohio was not listed as a party to the complaint.[89] However, the Court did rule that the act issued by the Ohio legislature was unconstitutional. Therefore, any actions taken to enforce the act were also unlawful.[90] While Marshall had attempted to appease the state governments by his understanding that the state was not a party, it was undoubtedly clear that he had seized the opportunity to reinforce his national government. By declaring the act void, Marshall had once again declared affirmation for the federal legislature and its entities.

A rare event occurred in 1827 when Marshall stepped away from the majority and offered his dissent in *Ogden v. Saunders*.[91] What is blatantly made apparent in the majority written by Justice Bushrod Washington and Marshall's dissent is the neglect of actual discussion over the facts of the case. Rather, more is written about the necessity of deliberating contracts on the part of Washington and the tirade of Marshall in attempts to protect the Constitution. At issue was the dispute of a breach of contract between Saunders, a citizen of Kentucky, and Ogden, a citizen of Louisiana who was residing in the state of New York when the contract was drawn up. After Ogden appealed to an 1801 act of the New York state legislature that provided relief for insolvent debtors, Saunders sought relief claiming the New York law to be repugnant to the Constitution.[92] Contrary to tendencies of Marshall, the majority ruled in favor of the constitutionality of the state-imposed law claiming the state held the authority to impose a bankruptcy law. Washington reasoned that the contract "travels with it wherever the parties to it may be

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[89] Ibid., 868.
[90] Ibid., 870.
[91] *Ogden v. Saunders*, 25 U.S. 213 (1827).
[92] Ibid., N.P.

found."[93] As such, Washington rationalized that the cleansing of one's debts through bankruptcy in one state "should operate as a discharge every where."[94] Furthermore, because the state of New York had not enacted the law retrospectively, the Court could find no reason to hold the law repugnant to the federal Constitution.[95] Washington even went so far as to interpret the framers' intention of allowing Congress to pass all bankruptcy laws in cases of retrospective laws. Their reach did not extend to those enacted prospectively.[96]

It serves as no surprise that Marshall would take the opportunity to uphold the centrality of the federal government. Again, contrary to arguments about Marshall, he did not use the opportunity to enlarge the judicial branch. Marshall was once again found to be enlarging the powers of a state legislative branch. He first makes it apparent that he found it unnecessary for the initial discussion of the importance of the Constitution. By his 26th year on the Supreme Court, the Marshall Court had fully demonstrated the importance and prominence of the Constitution. He writes, "the Court has taken such frequent occasion to declare its opinion, as to make it unnecessary, at least, to enter again into an elaborate discussion of it."[97] By 1827, the Court had demonstrated its "profound and respectful reverence" that was necessary to explore questions involving the Constitution.[98]

Marshall made his discontent with the ruling apparent because of the devaluation of property rights the majority had demonstrated. While Marshall could not be accused of

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[93] Ibid., 259.
[94] Ibid., 260.
[95] Ibid., 267.
[96] Ibid.
[97] Ibid., 332.
[98] Ibid.

supporting individual states' rights, it cannot be argued that Marshall was not aware of the necessity of protecting individuals' rights via the Constitution. In total, he viewed the most important aspects of the Constitution to be those that secured "the prosperity and harmony" of the citizenry.[99] The ability of a state to erase debt did not imply that a breach of contract had not occurred. The ability of the state of New York to enact a law that dissolved the obligations of a contract between two individuals *was* a state-ordained breach of contract.[100] While a law could act upon a contract, it could not be considered as part of the contract.[101] The duty of society, argued Marshall, was to provide remedy for broken contracts rather than encouraging their dissolution. He writes:

> So far as back as human research carries us, we find the judicial power as a part of the executive, administering justice by the application of remedies to violated rights, or broken contracts. We find that power applying these remedies on the idea of a pre-existing obligation on every man to do what he has promised on consideration to do; that the breach of this obligation is an injury for which the injured party has a just claim to compensation, and that society ought to afford him a remedy for that injury.[102]

The submission of a man to his government did not imply his surrender of his right to "enforce the observance of contracts."[103] While Marshall did not deny the power of the legislatures of the States as the supreme powers of the system, this power only existed in cases where the legislatures' actions were not restrained by the Constitution; "where it so restrained, the legislature ceases to be the supreme power, and its acts are not law."[104] Because, in Marshall's opinion, the Constitution could restrain the ability of the legislature to issue laws that could potentially alter contracts, Congress should have the

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[99] Ibid., 339.
[100] Ibid., 340.
[101] Ibid., 343.
[102] Ibid., 344-345.
[103] Ibid., 346.
[104] Ibid., 348.

sole authority to issue bankruptcy laws. Though the authority of contracts belonged to society and the "power of society resides in the State legislatures" the mere possibility of the legislatures acting repugnantly to the Constitution have the power to Congress. The defenders of the Constitution could not leave the document and the issues of contracts to be left "exposed to destruction" by State legislatures.[105]

Thompson Willson v. the Black Bird Creek Marsh Company[106], decided in 1829, served as an additional affirmation of the ability of the Court to override State-imposed laws that were considered repugnant to the Constitution. Unlike its predecessors, this opinion serves as only a mere restatement of the Court's abilities in its dramatically short length. At issue with *Willson* was the ability of a state to regulate intrastate commerce. Chartered by the Delaware legislature in 1822, the owners of Black Bird Creek Marsh Company possessed lands including a marsh, cripple, and low grounds straddling both sides of Black Bird Creek. The company was given authorization, through an act of the State, to construct a dam on this creek. As a result of the dam, the creek's navigation was obstructed. When a sloop owned by Thompson Willson and others was unable to navigate the creek given the aforementioned dam and damage occurred to the dam as a result, the case was brought forth against Willson.[107]

Marshall began his opinion by addressing the issue of the ability of the state of Delaware to pass legislation that would potentially affect the flow of commerce in the state. Willson had argued that the act allowing the construction of the dam across a navigable stream should have been considered a "certain common and public way in the

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[105] Ibid., 352.
[106] *Thompson Willson and Others, v. The Black Bird Creek Marsh Company*, 27 U.S. 245 (1829).
[107] Ibid., N.P.

nature of a highway."[108] Given the creek's use for commerce amongst several parties, the validity of the act in relation to the interstate commerce powers—of those between foreign nations or several states—of the federal government were in question.

Despite Marshall's repeated favoring of the national government, his opinion in this case ruled in favor of the state. Writing for the majority he states,

> The measure authorised [sic] by this act stops a navigable creek, and must be supposed to abridge the rights of those who have been accustomed to use it. But this abridgement, unless it comes in conflict with the constitution or a law of the United States, is an affair between the government of Delaware and its citizens, of which this Court can take no cognizance.[109]

While this declaration may seem as in direct conflict with Marshall's prior decisions and his preference for the federal government, the decision actually supports his deference to the Constitution. Though Marshall had repeatedly demonstrated his convictions that national matters were best taken care of in the hands of the federal government, the Constitution had not taken the ability for states to govern themselves. Because Delaware had not legislated in an area that was involved with foreign or interstate commerce, the act was not repugnant to the Constitution or to any laws passed by Congress.[110]

For Marshall to expound upon the Constitution, he had to follow all its tenets—including those that placed authority in the hands of the states. Because the commerce affected was within the state of Delaware and only affected residents within that state, it was not within the scope of the nation's representatives to legislate for one specific region. In this case, Marshall had demonstrated that the authority of the state was supreme in matters that concerned only its residents—just as the Constitution had prescribed.

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[108] Ibid., 250.
[109] Ibid., 251.
[110] Ibid,. 252.

The "Law and Equity"[111]: Marshall and the Contract Clause

Marshall formed a prominent position within cases involving the protection of the first article of the Constitution. The variety of cases to be found include issues with contracts and commerce with both the federal branches and with the state governments. These cases are so interwoven with Article I, they are better explored as economic issues rather than to be explored as merely cases of state governments or Marshall's response to the other federal branches.

Decided in 1810, the case of *Fletcher v. Peck,* [112] served as the "first interpretation of the contract clause,"[113] and prohibited a state from retracting a contract and thus, placed higher national authority over the national economy. In 1795, land had been sold to four emerging companies, collectively called the Yazoo companies, under the authority of the Georgia legislature with the grantees understanding the land to hold a good title.[114] However, when it was discovered that the legislature had accepted bribes from the companies, the newly elected legislature revoked the land charter. Yet the land companies refused to withdraw and continued to speculate the land.[115] In this case, purchasers of this land were seeking repayment when the Georgia legislature revoked the land grants.

First, Marshall had to determine whether the Georgian legislature had the authority to sell the lands and whether the lands had been legally sold to John Peck. Marshall

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[111] *The Trustees of Dartmouth College v. Woodward,* 17 U.S. 518 (1819), 625.
[112] *Fletcher v. Peck,* 6 Cranch 87 (1810), as reprinted in *The Constitutional Decisions of John Marshall,* ed. Joseph P. Cotton (New York: Da Capo Press, 1969), 1: 228.
[113] Samuel J. Konefsky, *John Marshall and Alexander Hamilton: Architects of the American Constitution* (New York: The Macmillan Company, 1964), 120.
[114] *Fletcher,* 228-9.
[115] Konefsky, 122.

answered with a resounding yes on both counts. Secondly, in this case Marshall found the land grants were to be considered contracts made between the state of Georgia and the purchasers. When the land was conveyed to Fletcher, the contract granted by the state was still valid. Under the Constitution, the Georgia legislature was prohibited from nullifying the original contract. Though the acts of the new legislature were noble in attempting to rectify the corruption of the previous administration, the repeal of the act was classified as *ex post facto* and "impairing the obligation" of the original contract."[116] Thus, Marshall identified that a state could not impair a contract that it had previously made. However, Marshall did not deny the existence of state governments and their ability to operate. Speaking for the majority, he rationalized that unless the state constitution had defined prior limitations, the "legislature of Georgia...possess[ed] the power of disposing of the unappropriated lands within its own limits."[117] Overall, he argued that the state legislature had the authority to "devest the vested estate of any man...for reasons which shall, by itself, be deemed sufficient."[118] The problem occurred when the Georgia legislature attempted to negate land contracts. Marshall made it apparent that state legislatures were not without limitations. Marshall writes:

> Georgia cannot be viewed as a single, unconnected, sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution. She is a part of a large empire; she is a member of the American union; and that union has a constitution the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several states, which none claim a right to pass.[119]

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[116] *The Constitutional Decisions of John Marshall*, ed. Joseph P. Cotton (New York: Da Capo Press, 1969) 1:231-46.
[117] *Fletcher v. Peck,* 10 U.S. 87 (1810), 128.
[118] Ibid., 134.
[119] Ibid., 136.

If the Constitution of the United States dictates that state cannot impair the "obligation of contracts,"[120] then state legislatures had limitations that could prevent them from acting in certain areas.

Marshall outlined his personal convictions in debating cases in relation to the U.S. Constitution. In declaring an act of a state legislature void, the Chief Justice stated that a judge should feel "a clear and strong conviction" of the incompatibility between the act and the constitution.[121] Under the United States Constitution, obligations to contracts must be upheld. By limiting a state's ability to impair contracts, Marshall was again placing the majority of economic matters within the national government's hands. Partial suppression of state sovereignty was necessary to stimulate the unity of the national economy. Actions otherwise would have protected the individual and self-serving "rights" of the states.

His reaction to *Fletcher* may have stemmed from his growing fears of state power. Writing to Charles Cotesworth Pinckney in September 1808, it is clear that Marshall was continually growing dissatisfied with the course the Union was following in regards to state versus federal power. He writes:

> The internal changes which have been already made & those further changes which are contemplated by a party always hostile to our constitution & which has for some time ruled our country despotically, must give serious alarm to every attentive & intelligent observer; but these dangers lose their importance in the still greater perils which threaten us from without. Unless that system which has for some time guided our councils with respect to foreign powers can be changed the independence of the United States will soon become an empty name & the name itself I fear will not long survive the substance.[122]

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[120] Ibid.
[121] Ibid., 128.
[122] *The Papers of John Marshall*, vol. 7, *Correspondence, Papers, and Selected Judicial Opinions April 1807 — December 1813*, ed. Charles F. Hobson (North Carolina: University of North Carolina Press, 1993), 182-183.

Marshall understood that the nation and its premier document was in its infancy and needed additional protection in order for its firm establishment. Through his written fears, it is made apparent that Marshall understood the ongoing battle was not between the individual branches of the federal government, but rather the struggle of power between the overall federal government and those of the states.

The overriding prominence of inability to impair contracts—as based on the U.S. Constitution—was further distinguished with the case of *The State of New Jersey v. Wilson.*[123] At issue with this particular case was the ability of a state to impair contractual agreements by issuing taxes. In 1758, a convention was held within the state of New Jersey to determine the ownership of lands that belonged to tribes of Delaware Indians. Indian deputies and state commissioners resolved to allow the state to purchase lands for the Indians to reside on and the Indians release of land claims in certain portions of the state. With this agreement, it was ordered "that the lands to be purchased for the Indians...shall not hereafter be subject to any tax, [or] any law usage or custom to the contrary thereof."[124] The plan was effective until 1801 when the Delaware Indians decided to migrate to the state of New York and sought approval from the state of New Jersey to sell their lands within the state. After lands were sold, in 1804, the New Jersey legislature repealed the ban on taxing the lands first given to the Indian tribes. The buyers of the land sought an injunction claiming the Act of 1804 as a violation of the U.S. Constitution. Marshall distinguished this contractual issue from *Fletcher* by recognizing that while *Fletcher* demonstrated that the Constitution extended to contract issues with a state as a party, "as well as to contracts between individuals," *New Jersey v.*

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[123] *The State of New Jersey v. Wilson*, 11 U.S. 164 (1812).
[124] Ibid., 165.

Wilson narrowed the scope of the case to the actual inquiry of whether a contract actually existed.[125]

Finding that a contract had indeed been established, Marshall argued that all rights given to the Indians would pass to the purchaser—including the exemption from taxation by the state of New Jersey. In his discussion of his reasoning, Marshall contends that the privileges, such as the exemption from taxation, were intended for the benefit of the Indians. However, these privileges bestowed by the state did not attach the tribes, but rather were attached to the land. To attach the privileges to the land would overall, increase the value of the property in case of purchase.[126] With the consent of the state, the land was sold "with all its privileges and immunities." Any act issued by the state that impaired this initial contract—including the Act of 1804—would be considered repugnant to the Constitution and would have to be considered void.[127]

While one may consider this case to limit the ability of state legislatures to act, this case must be considered as strengthening the U.S. Constitution. Marshall did not act in a manner that should have been considered as threatening to state governments. Like his preceding cases, Marshall relied on the language and centrality of the Constitution. Instead of focusing on tenets of individual states, Marshall understood that this document could effectively serve as standardization for all the individual states.

Fletcher was not the last time that Marshall and his court would revisit contracts and their relationship with the Constitution. In 1769, trustees of Dartmouth College were granted a royal charter that offered "corporate privileges and powers" and fill any

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[125] Ibid., 165-166.
[126] Ibid., 167.
[127] Ibid.

vacancies that occurred within the trustee body.[128] Pushing forward to the summer of 1816, the legislature of New Hampshire voted to amend the charter. With the amendments, the corporation of the college was enlarged as well as the number of trustees. The additional seats were to be filled with executives of the state. Moreover a board of overseers was added that had "the power to inspect and control the most important acts of the trustees." These overseers were to include various members of executive positions—governors, lieutenant governors, representatives, etcetera—and were allowed to fill any vacancies.[129]

The case of *Dartmouth College v. Woodward* arose when the sitting trustees refused to accept the amendments passed by the legislature. In Marshall's 1819 decision, he demonstrated no qualms in declaring that the original charter was indeed a contract. Because an application was made for a charter to incorporate the religious and literary institution and because the charter and property were conveyed, a contract did indeed exist.[130] Because it was a contract, Marshall ensured that the Supreme Court could not be "insensible neither to the magnitude nor delicacy" of determining a legislative act to be repugnant to the Constitution.[131] What is made apparent from the beginning of his opinion, Marshall equates the Constitution with the American people. When referencing the document, he writes "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."[132] While at first glance it seems as if Marshall revoking the importance of the legislative branch in composing the document, it should remain more

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[128] *Dartmouth*, 626.
[129] Ibid.
[130] Ibid., 627.
[131] Ibid., 625.
[132] Ibid.; U.S. Constitution, art. 1, sec. 10.

apparent that he is deferring to the Constitution as the epitome of the voice of the American people. Because the Constitution is the voice of the people, the Court must uphold its tenets—including those that demand judicial power in cases where "law and equity" are at question.[133]

Especially in this case Marshall reiterates his personal apprehension of limiting the state legislatures. The position of the Court was to merely uphold the protections expounded upon within the Constitution. In regards to contracts, Marshall indicates the necessity of Constitutional protections to "restrain the legislature from violating the right to property."[134] While the charter for Dartmouth College could be seen as an exception to the comprehension of a contract by the average man, the mere passage of time from its original grant did not strip the contract of its "inviolability."[135] While this type of charter may not have been expressly comprehended by the framers of the Constitution, its mere existence as a contract guaranteed protection from state legislatures who were likely to face more temptation to change its construction given its type and the passage of time since its inception.[136]

Marshall cleverly used this case to expound upon his faith in the Constitution. Though a charter to Dartmouth College would have little national significance, the mere protection of the Constitution allowed this opinion to maintain a monumental ally of the document. The Chief Justice goes as far to elaborately demonstrate the need for protection of interests that many would seem insignificant. He writes:

> Are they of so little estimation in the United States, that contracts for their benefit must be excluded from the protection of words...? Or do such contracts so

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[133] *Dartmouth.* 625.
[134] Ibid., 628.
[135] Ibid., 643.
[136] Ibid., 644.

> necessarily require new modelling [sic] by the authority of the legislature, that the ordinary rules of construction must be disregarded in order to leave them exposed to legislative alteration? All feel, that these objects are not deemed unimportant in the United States. The interest which this case has excited, proves that they are not. The framers of the constitution did not deem them unworthy of its care and protection...They have so far withdrawn science, and the useful arts, from the action of the State governments. Why then should they be supposed so regardless of contracts made for the advancement of literature, as to intend to exclude them from provisions, made for the security of ordinary contracts between man and man? No reason for making this supposition is perceived.[137]

The mere inclusion of perceived minor protections within the Constitution necessitated the limitation of state legislatures to ensure that these protections were not abused. The decision of the state legislature had intended to alter the initial contract by allowing the school to be submissive to the "will of the State" rather than the "will of the donors" as was initially granted.[138] By ruling for the trustees, Marshall was not making an outward attempt to thwart the power of state legislatures and making the judiciary an omnipotent power. Rather, he and the Court were allowing the Constitution to remain supreme and dictate the limitations of the states. If the framers had found it necessary to include the protection of one's property and contracts, then it was necessary for the federal judiciary to define the purpose and manner in which the tenets were carried out.

Only one month following the ruling of *Dartmouth* in 1819, the Marshall Court was again faced with the possibility of limiting the expanse of state governments. From the outset of the opinion, Marshall assures his understanding that this particular case could "essentially influence the great operations of the government" and that any decisions involving acts of the legislature were "not to be lightly disregarded."[139] *McCulloch v. the State of Maryland* vested the protective interests of the national economy within the

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[137] Ibid., 646-647.
[138] Ibid., 652.
[139] *McCulloch v. The State of Maryland, et al.*, 17 U.S. 316 (1819), 400-401.

federal legislature. In justifying the superiority of the decisions of a federal branch, Marshall explained, "the government of the Union…is emphatically, and truly, a government of the people. In form and substance it emanates from them. Its powers are granted by them, and are to be exercised directly on the, and for their benefit." The state of Maryland's defense rested solely upon the notion that the Constitution was not constructed by the people, but by the "sovereign and independent States." As such, it was necessary for the States to hold supreme dominion and the federal government was to remain subordinate.[140] Marshall rebuts by affirming that the Constitution was framed by delegates elected by the state legislatures. However, the states submitted the document as a "mere proposal."[141] It was the Congress of the entire nation that actually put the document into its present standing—the legislature of the people, not of the states. The states, when submitting the proposal, gave deference to the representatives of the American people. In effect, the Constitution—adopted by Congress—"bound the State sovereignties."[142] By promoting national superiority over the individual states, the Court was not intending to suppress states' rights, but to protect the rights of all individuals. Marshall argued that since people surrender their power to the sovereignty of their respective state and states surrender to the sovereignty of the nation as a whole, it is necessary for an "effective government" to possess "great and sovereign powers" to act directly upon the people.[143] As suggested by David Robarge, Marshall was enforcing the

[140] Ibid., 402.
[141] Ibid., 403.
[142] Ibid., 404.
[143] Ibid., 404-405

idea that the Constitution was not a "compact among sovereign states" but rather "the fundamental law of the sovereign people."[144]

In this particular case, Congress acted in a manner to prevent the states' ability to override federal legislation. The state of Maryland's attempts to tax notes issued by the Bank of America would potentially have the effect of destroying its affiliates within that state. Under the United States Constitution, Congress was delegated the "power to lay and collect taxes" and to "pay the debts" ensuing from the operation of the country. To uphold these delegations, Congress was allowed to execute any means that were "necessary and proper."[145] Newmyer asserts that "to deprive Congress of the right to choose laws for the execution of its granted powers would be to take away the power to govern, a power that...any self-respecting national government must have."[146] In chartering the banks for the nation, Congress was demonstrating a means to protect its economic stability. Moreover, as with *Dartmouth*, Marshall reasons that the Constitution does not have to expressly identify powers and prohibitions for these tenets to be judicially considered. He argues that powers that were "incidental or implied powers" were reasonably understood to be factors of the Constitution, and as such had the ability to be examined by the judiciary. The framers of the Constitution had not required that "every thing granted [should] be expressly and minutely described."[147]

Marshall also presents a slippery slope defense that if states were allowed to tax one instrument of the government, then the ability to tax other instruments would ultimately

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[144] Robarge, 264.
[145] U.S. Constitution, art. 1, sec. 8.
[146] Newmyer, 296.
[147] *McCulloch*, 406.

follow and lead to the demise of federal institutions.[148] In his own words, Marshall demonstrates that the opinion would reinforce the "conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."[149] Because Congress was representative of all the people, it was left up to this body to legislate in the name of the people.[150] Marshall's decision to uphold the acts of the legislature exemplifies his use of legal instrumentalism to promote the national supremacy of taxation and successfully placed the burden of the economy upon the nation as a whole. If states were to individually tax whatever government they wished, there would be no unity within the nation's economy. In effect, allowing one state to "tax an instrumentality of Congress" would cause the rights of Americans to be infringed given that all Americans had placed their confidence in this federal entity.[151] While Marshall defended Congress and upheld its legislation, more importantly he defended the Constitution and the need for a stronger, national government—not a stronger branch of government.

After casting such a blow to state governments, Marshall understood the potential for public repercussions. The opinion was handed down on March 6 and by mid-month, scathing editorials had already begun to appear.[152] In correspondence to Joseph Story eighteen days following the opinion, Marshall asserted that the decision in *McCulloch* would serve to rouse "the sleeping spirit of Virginia" and understood the Court's decision

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[148] Ibid., 432.
[149] Ibid., 436.
[150] Ibid., 435.
[151] Newmyer, 298-299.
[152] *The Papers of John Marshall*, vol. 8, *Correspondence, Papers, and Selected Judicial Opinions March 1814 — December 1819*, ed. Charles F. Hobson (North Carolina: University of North Carolina Press, 1995), 282.

would be attacked with asperity.[153] Writing to Bushrod Washington twenty-one days after the opinion was delivered, he demonstrated his full awareness of how the judicial branch—even after years of proving itself against the other branches—would be represented and criminalized. He writes:

> We shall be denounced bitterly in the paper & as not a word will be said on the other side we shall undoubtedly be condemned as a pack of consolidating aristocratics. The legislature & executive who have enacted the law but who have power & places to bestow will escape with impunity, while the poor court who have nothing to give & of whom nobody is afraid, bears all the obloquy of the measure.[154]

If Marshall's goal as Chief Justice had been to strengthen the federal judiciary as the most important branch within the federal government as some would contend, it is unlikely that he would have ruled *McCulloch* in this manner. It is apparent that he knew that a backlash would occur from all sides. With this knowledge, he knew the Supreme Court would lose some of its value in the eyes of the nation. If his intent was to promote this branch above all, he would not have handed down this opinion in the manner in which he chose.

By the first week of April, his prophecies had been realized with a series of attacks published in *The Enquirer* with the simple title of "Amphictyon." These documents—originally written by an anonymous source—criticized the Supreme Court as attempting to endanger states' rights. In response to the continuous barrage of articles being printed under this title, Marshall countered with his own anonymous letters.[155] His series of "A Friend to the Union" articles first went into publication by April 24. Speaking of the Supreme Court as an outside party, Marshall contested the allegations made in the public

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[153]Ibid., 280.
[154] Ibid., 281.
[155] Ibid., 283-284.

accusations. He displays disgruntlement that though the law incorporating the Bank of the United States did not excite "a single murmur," but once it was upheld by the branch that possessed "neither power nor patronage" it served to agitate the "publick mind." In the Court's defense, he argued the hypocrisy of deeming it criminal for the judicial department—"the weakest department"—to sustain a measure that had been enacted by the legislature and enforced by the executive.[156] Despite his own assertions of the necessity of the federal judiciary to interpret law, he had publicly acknowledged the weakness of his branch.

Marshall also took offense to the accusations of the Court acting solely on the whims of the Chief Justice rather than as a body of intelligent justices. Speaking for himself as an anonymous writer, he asserted that the *McCulloch* opinion was delivered in the name of the Court, not one sole member. Never speaking in the singular person, but rather as a body, the Chief Justice served as "the mere organ of the Court." Appealing to sense and reason, Marshall questioned the notions that justices of the Supreme Court—"men of high & respectable character"—would choose to "sit by in silence, while great constitutional principles of which they disapproved, were advanced in their name, and as their principles."[157] It was not reasonable for opposition to believe that a group of intelligent observers would choose to have their names publicly associated with beliefs they did not personally hold. Furthermore, at least four members of the Court had been elected by Jefferson[158], the prophet of Republicanism and in Marshall's opinion—one of the leading opponents of federalism.

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[156] Ibid,. 288.
[157] Ibid., 290.
[158] Ibid., 291.

As for Amphyticon's argument that the state delegated power to the federal government, rather than by the people, Marshall directly referred to the Constitution. Arguing that a document "represent[s] the intention of those who frame it," the Constitution would have read "we the states" rather than "we the people" if this accusation was correctly assumed.[159] The prior confederation had acted as a joint effort between the states. This was directly supported by its organizational documents. It was an act of sovereign states. However, "the constitution [was] a government acting on the people, and purports to be, what it was intended to be, the act of the people." As he argued, even if every *state* legislature had been hostile to the Constitution, it would have still been ratified by the conventions of the *people*.[160] By May, the fervor surrounding the case continued to plague Marshall. Writing to Story, Marshall reasserts his fears of a return to a confederation of states if the fears and principles of his opponents were to prevail.[161]

In an instance only one year later, the Marshall Court once again regarded the constitutionality of acts passed by a state legislature and their intrusion into contracts and the national economy. In 1822, Hiram Craig, John Moore, and Ephraim Moore had taken out promissory notes agreeing to pay the state of Missouri one hundred ninety-nine dollars and ninety-nine cents plus interest. After the three failed to pay, a suit was drawn. After being appealed, the Marshall Court had the opportunity to rule on *Craig v. the State of Missouri*.[162] Moore and his fellow defaulters challenged the constitutionality of the

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[159] Ibid., 293.
[160] Ibid, 294.
[161] Ibid, 313-314.
[162] *Hiram Craig, John Moore, and Ephraim Moore v. the State of Missouri*, 29 U.S. 410 (1830), N.P.

Missouri act calling for the organization and establishment of loan offices.[163] They regarded the act unconstitutional in regards to the Article I stipulation that no state had the ability to emit bills of credit.[164]

With this case, Marshall took the opportunity to define a bill of credit as "the emission of any paper medium, by a state government, for the purpose of common circulation."[165] For the notes offered by the state of Missouri, "the denominations of the bills...fitted them for the purpose of ordinary circulation; and their reception in payment of taxes, and debts to the government and to corporations, and of salaries and fees, would give them currency."[166] Despite the difference of terms—credit versus certificates—the Constitution extended the clause to "bills of credits" not just those of a certain name.[167]

Given the certificates issued by Missouri were deemed to be "bills of credit" in accordance with Article I of the Constitution, Marshall found the promissory notes to be invalid. He writes:

> It has long been settled, that a promise made in consideration of an act which is forbidden by law is void. It will not be questioned, that an act forbidden by the constitution of the United States, which is the supreme law, is against law...The loan of these certificates is the very act which is forbidden.[168]

Unlike the case of *Willson*, the act mandated by the state legislature had a potentially far-more reaching impact on citizens outside the state of Missouri. Given the federal government's existence was to protect economic unity of all citizens, it was up to the federal government to handle the distribution of currency in any form.. If each state was to distribute its own currency, the ability of the national economy to thrive would have

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[163] Ibid.
[164] Ibid; U.S. Constitution, art. 1, sec. 10.
[165] *Craig*, 432.
[166] Ibid., 433.
[167] Ibid., 434.
[168] Ibid., 436.

been compromised. To allow each state to dictate its currency and credit would have allowed the nation to return to a league-like form that had existed under the Articles of Confederation. By halting the ability of the individual states to issue forms of currency and credit, Marshall was once again upholding his beloved Constitution.

Marshall would produce yet another opinion on issues involving acts of state legislatures and their possible denial of the Constitution's first article. In 1791, the Rhode Island legislature had issued a charter allowing a group of individuals to incorporate and form a banking company. The individuals incorporated and operated under the name of Providence Bank. However, in 1822 the state legislature had issued an act that imposed a tax upon all banks within the state—with the exception of the Bank of the United States—charging each bank fifty cents for every thousand dollars of capital stock that was paid in. Soon thereafter, this tax was increased to one dollar and twenty-five cents for every thousand dollars of capital stock.[169] On appeal in 1830, the case of *Providence Bank v. Alpheus Billings, etc.* was brought before the Marshall Court. Resisting the tax payment, the bank sought relief arguing that the tax was repugnant to the Constitution by impairing the obligation of their contract created during their incorporation.[170]

As determined in earlier cases, Marshall presented the unquestioned reality that contracts established between a state and an individual was covered and protected under Article I of the Constitution. It was no doubt that the incorporation offered by the Rhode Island legislature was indeed a contract. At issue with this case was whether taxation could affect the original charter granted by the legislature. Despite Marshall's insistence

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[169] *The Providence Bank v. Alpheus Billings and Thomas G. Pittman*, 29 U.S. 514 (1830), 559.
[170] Ibid.

on expounding the Constitution and declaring that not every particular act had to be expressed, he took great issue with this charter not expressly declaring any mention of taxation. He declared that the charter itself held the answer to the accusations posed by the bank. He writes:

> It contains no stipulation promising exemption from taxation. The state, then, has made no express contract which has been impaired by the act of which the plaintiffs complain. No words have been found in this charter, which, in themselves, would justify the opinion that the power of taxation was in the view of either of the parties...[171]

If the charter had contained tenets explaining the potentiality of taxes or the prohibition of taxation, the bank would have held a viable argument. However, unlike the Constitution that was open to interpretation, the charter would have to include directly stated clauses for the state to have impaired the charter. He investigates this issue further by demonstrating the common understanding of incorporation:

> The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men. This capacity is always given to such a body. Any privileges which may exempt it from the [burdens] common to individuals, do not flow necessarily from the charter, but must be expressed in it, or they do not exist.[172]

The banks existence as a corporation was not enough to exempt it from taxation like other individuals or businesses.

Marshall's strict interpretation of this charter was potentially caused by his understanding of the importance of the taxing power. In upholding the ability of a state to tax, a power that was "asserted by all," Marshall was once again promoting unity and solidarity. The power to tax is "essential to the existence of government." As a whole,

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[171] Ibid., 560.
[172] Ibid., 562.

the "community is interested in retaining it undiminished."[173] As he asserted, the power of taxation was operable upon everyone and all property "belonging to the body politic." The very nature of this power of legislation had its foundation in society.[174] Aligning with the opinion in *Osborn*, the Court ruled in favor of the state legislature.[175]

While Marshall again ruled in favor of state authority, his decision did not deter from his ultimate motive of preserving national unity. By aligning himself with the interpretations of the first Article in the Constitution for the protection of contracts, Marshall had preserved its tenets. If the Constitution allowed the concurrent power of taxation between the federal government and state governments, then Marshall would have been hypocritical to decide otherwise. In essence, Marshall had once again strengthened the power of the federal government by acting as the final arbitrator in a state matter. Though power for state legislatures to tax had been preserved, the power of authority was silently declared because the federal judiciary had allowed it to remain so. In all, these cases reiterate Marshall's desire to uphold the economy as the Constitution allowed. The opinions handed down during this period continually indicate the intentional preservation of the Constitution, not merely the preservation of the judicial branch.

Judgment Affirmed

The Supreme Court under John Marshall may be appropriately held responsible for building "a constituency of nationally minded politicians, economic interests...and a unified and stable legal system, and a common market" from the opinions set forth

[173] Ibid., 561.
[174] Ibid., 563.
[175] Ibid., 564.

through their court decisions.[176] Marshall was, overall, nationally minded and understood national uniformity in all matters would lead to the prosperity and protection of the growing nation.[177]

Through the examination and interpretations of Marshall's autobiography, his personal correspondence, and judicial opinions, it must be concluded that his primary goals as Chief Justice were not to empower his single branch of operation, but to reinforce the national government. It is apparent that before his position as Chief Justice, Marshall had began to demonstrate characteristics of a supporter for the Constitution and the necessity of deferring to the document for the boundary lines between the branches and the illumination of its given powers; the Constitution alone had the ability to delegate power amongst the branches. Furthermore, through his opinions, Marshall had repeatedly restricted the authority of the judicial branch while broadening the reach of the legislative branch—his sole purpose was not to gain power for his individual branch. By increasing the powers of all the federal branches, he aided in extending the reach of the national government.

Secondly, while Marshall continued to hold true to his Federalist principles, his judgments in matters of the individual states do not reflect an overall attempt to damper state power. Instead, his affirmations of state power are reflective of his intent to uphold the tenets of the Constitution—whether through provisions or restrictions. While Marshall oftentimes reaffirmed the superiority of the national government, he did not neglect to reiterate that the Constitution had delegated certain powers to the states. What the Constitution had granted, neither Marshall nor the federal branches could take away.

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[176] Robarge, 292.
[177] Newmyer, 316.

Where the Constitution had expressly granted power, Marshall sought to affirm the decisions and the remaining sovereignty of the states over their regional affairs. It is clear that Marshall understood the Constitution allowed the states to handle their own affairs that did not contradict with neighboring states or the nation as a whole. By limiting the powers of the states and inversely protecting powers of the states, Marshall sought to uphold the Constitution.

Thirdly, it must be argued that Marshall's vehement defense of the Constitution in relation to economic matters was reflective of his objective to strike economic harmony within the growing Union. In cases that involved the nation as a whole, Marshall was quick to uphold the federal government as the final say in economic affairs for the protection of collective interests. If Marshall had acted contrary to the Constitution by continually ruling in favor of the states and individual entities, then he would have demeaned the national economy to nothing more than a continual clash of regional concerns. To preserve the collective interests of the nation, regional differences needed a final arbiter—Marshall willingly and successfully filled this role. By ruling in favor of the federal government in affairs of the nation and in favor of the states in cases of solely regional interests—such as intrastate commerce—Marshall again demonstrated his reliance upon the Constitution rather than his own self-motivations.

The Marshall Court should not be remembered as an organization that used its position of increasing prominence to politically dominate other forces with the Union. Rather, it should be noted that the Court under Marshall's leadership attempted to emphasize the promise and necessity of a strong national government. This should be the court's legacy. While the Court did establish itself as a prominent force within the

American system, one should recognize that this was not the primary aim of its justices. A strong national government would not have surfaced under the leadership of one branch. John Marshall recognized this truth and sought to reconcile the individual branches in cooperation for the benefit of American individuals.

The foundations of American government are often associated with historical figures who served as presidents and prominent Congressman, yet Marshall demonstrates that even a member of the self-admitted weakest branch could serve as an arbiter for the protection of the nations' foundations. Amongst such American "heroes" as Washington, Jefferson, and Adams, Marshall used his lesser-known position to offer his contribution to the growth of the infant nation. With the judicial support of Marshall, the United States Constitution had a fighting chance to establish itself as the foundations of the growing nation and allowed the document the opportunity to become the revered source of law celebrated within the modern era.

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