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"John Marshall: The Great Chief Justice
Transforms the Court"

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Two centuries after his service to the United States as Chief Justice of the Supreme Court, virtually no one doubts John Marshall's preeminent status in America law. Justice Oliver Wendell Holmes, widely regarded as deserving of a seat on a judicial Mount Olympus, observed, "If American law were to be represented by a single figure, skeptic and worshipper alike would agree without dispute that the figure could be one alone, and that one, John Marshall."

President John Adams, who nominated Marshall to be Chief Justice, reflected years later on the importance of his decision. "My gift of John Marshall to the people of the United States," he said, "was the proudest act of my life."

Chief Justice Marshall transformed the Supreme Court, elevated the independence and reputation of the judiciary, cemented the union and defended and preserved the supremacy of the federal government. He was, to be sure, an expounder of the Constitution, but he was more than that, as he rendered its provisions and clauses into a living, breathing constitutional law, one that could be adequate to the needs of a young nation and its citizenry. President James A. Garfield captured his importance: "Marshall found the Constitution paper and made it power. He found a skeleton, and he clothed it with flesh and blood."

Marshall's unique, likely indelible status in American law is literally carved into the Supreme Court Chamber in Washington. The north and south walls of the Chamber present two marble panels in which there is carved a procession of great lawgivers. There are 18 figures, but only one is there because of his work as a judge, and only one is an American. That one is John Marshall.

Marshall is depicted among historical figures who created and shaped the law in their countries and communities: scholars such as Sir William Blackstone, who wrote a magisterial three-volume study in the mid 1760s, "Commentaries on English Law"; Hugo Grotius, the Dutch analyst recognized as the father of the Law of Nations; and others, much more familiar to Americans, including Moses and Hammurabi. It is Marshall and not a delegate to the Constitutional Convention such as James Madison who is featured as the great lawgiver in our nation.

Such was Marshall's influence on the development of American constitutional law that we may fairly say his fingerprints are all over our Constitution. He wrote roughly half the Court's 1,106 opinions during his 34-year tenure, still the longest in our history. He wrote 40 of the 64 opinions in constitutional law cases, dissenting only eight times. Marshall truly *led* the Court during his years as Chief Justice.

Marshall transformed the Court from a lowly institution into a truly co-equal branch of government. He did this in large measure by ceasing the Court's practice, modeled after the English approach, of issuing seriatim opinions, that is, each judge writing his own opinion. When Marshall was appointed to the Court in 1801, he introduced the idea of issuing "the Court's opinion," a single decision that Marshall, as Chief Justice, assigned the announcement of which to himself. This new practice created an institutional

voice, a single judicial ruling on the case before the Court, with the happy result of strengthening the High Tribunal by unifying it with an authoritative voice.

This important innovation, perhaps his most important structural change in the conduct of the Court's business, generated newfound respect for the Supreme Court Justices. The word was out: this Court would command attention when it delivered its decisions. The days of Supreme Court nominees who declined appointment in favor of positions or even jobs in their states seemed a thing of the past. A Supreme Court nomination was coveted by attorneys.

Chief Justice Marshall believed it was his responsibility to educate a populace untutored in constitutional law and principles. His opinions sought to legitimate the Court's role in the scheme of governance, an extremely important function as the Court wrestled with controversial issues affecting the country, including resolution of the legal tensions surrounding questions of state versus federal authority. His opinions would read like state constitutional papers, providing deep but accessible explanations of constitutional principles which, when applied to the facts of a case, seemed to drive logically to a conclusion that reflected concise, cogent thinking manifested in elegant expression and writing.

It was the Marshall Court that first exercised the power of judicial review; it hammered home, repeatedly, the theme of the supremacy of the federal government; it rejected state sovereignty in favor of popular sovereignty, and it established the jurisdiction of the Supreme Court to review decisions made by the highest state courts. It also established the meaning of the Contract Clause, the Commerce Clause, and a slew of other constitutional provisions.

Chief Justice Marshall's constitutional opinions resembled state papers. They were comprehensive and compared favorably to the Federalist Papers. The difference was his opinions constituted the law of the land.

How can we explain the enormous influence that John Marshall wielded in the development of our constitutional jurisprudence? Who was this famous man, the most famous of our Supreme Court Justices? What was he like as a person, and what formed his personality and character? We address these, and other questions, next week.