The Court and Constitutional Interpretation

"The republic endures and this is the symbol of its faith."

—CHIEF JUSTICE CHARLES EVANS HUGHES

Cornerstone Address—Supreme Court Building

"EQUAL JUSTICE UNDER LAW"—These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.

The Supreme Court is "distinctly American in concept and function," as Chief Justice Charles Evans Hughes observed. Few other courts in the world have the same authority of constitutional interpretation and none have exercised it for as long or with as much influence. A century and a half ago, the French political observer Alexis de Tocqueville noted the unique position of the Supreme Court in the history of nations and of jurisprudence. "The representative system of government has been adopted in several states of Europe," he remarked, "but I am unaware that any nation of the globe has hitherto organized a judicial power in the same manner as the Americans. . . . A more imposing judicial power was never constituted by any people."

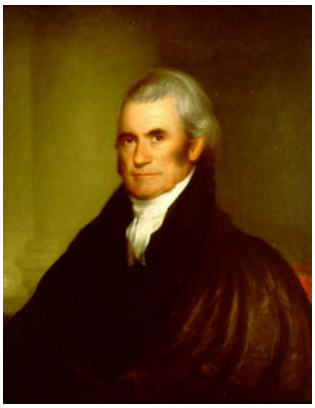
The unique position of the Supreme Court stems, in large part, from the deep commitment of the American people to the Rule of Law and to constitutional government. The United States has demonstrated an unprecedented determination to preserve and protect its written Constitution, thereby providing the American "experiment in democracy" with the oldest written Constitution still in force.

The Constitution of the United States is a carefully balanced document. It is designed to provide for a national government sufficiently strong and flexible to meet the needs of the republic, yet sufficiently limited and just to protect the guaranteed rights of citizens; it permits a balance between society's need for order and the individual's right to freedom. To assure these ends, the Framers of the Constitution created three independent and coequal branches of government. That this Constitution has provided continuous democratic government through the periodic stresses of more than two centuries illustrates the genius of the American system of government.

The complex role of the Supreme Court in this system derives from its authority to invalidate legislation or executive actions which, in the Court's considered judgment, conflict with the Constitution. This power of "judicial review" has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a "living Constitution" whose broad provisions are continually applied to complicated new situations.

While the function of judicial review is not explicitly provided in the Constitution, it had been anticipated before the adoption of that document. Prior to 1789, state courts had already overturned legislative acts which conflicted with state constitutions. Moreover, many of the Founding Fathers expected the Supreme Court to assume this role in regard to the Constitution; Alexander Hamilton and James Madison, for example, had underlined the importance of judicial review in the *Federalist Papers,* which urged adoption of the Constitution.

Hamilton had written that through the practice of judicial review the Court ensured that the will of the whole people, as expressed in their Constitution, would be supreme over the will of a legislature, whose statutes might express only the temporary will of part of the people. And Madison had written that constitutional interpretation must be left to the reasoned judgment of independent judges, rather than to the tumult and conflict of the political process. If every constitutional question were to be decided by public political bargaining, Madison argued, the Constitution would be reduced to a battleground of competing factions, political passion and partisan spirit.



Despite this background the Court's power of judicial review was not confirmed until 1803, when it was invoked by Chief Justice John Marshall in *Marbury* v. *Madison.* In this decision, the Chief Justice asserted that the Supreme Court's responsibility to overturn unconstitutional legislation was a necessary consequence of its sworn duty to uphold the Constitution. That oath could not be fulfilled any other way. "It is emphatically the province of the judicial department to say what the law is," he declared.

In retrospect, it is evident that constitutional interpretation and application were made necessary by the very nature of the Constitution. The Founding Fathers had wisely worded that document in rather general terms leaving it open to future elaboration to meet changing conditions. As Chief Justice Marshall noted in *McCulloch* v. *Maryland,* a constitution that attempted to detail every aspect of its own application "would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. . . . Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

The Constitution limits the Court to dealing with "Cases" and "Controversies." John Jay, the first Chief Justice, clarified this restraint early in the Court's history by declining to advise President George Washington on the constitutional implications of a proposed foreign policy decision. The Court does not give advisory opinions; rather, its function is limited only to deciding specific cases.

The Justices must exercise considerable discretion in deciding which cases to hear, since more than 10,000 civil and criminal cases are filed in the Supreme Court each year from the various state and federal courts. The Supreme Court also has "original jurisdiction" in a very small number of cases arising out of disputes between States or between a State and the Federal Government.

When the Supreme Court rules on a constitutional issue, that judgment is virtually final; its decisions can be altered only by the rarely used procedure of constitutional amendment or by a new ruling of the Court. However, when the Court interprets a statute, new legislative action can be taken.

Chief Justice Marshall expressed the challenge which the Supreme Court faces in maintaining free government by noting: "We must never forget that it is a *constitution* we are expounding . . . intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs."

[The foregoing was taken from a booklet prepared by the Supreme Court of the United States, and published with funding from the Supreme Court Historical Society.]

The Court as an Institution

The Constitution elaborated neither the exact powers and prerogatives of the Supreme Court nor the organization of the Judicial Branch as a whole. Thus, it was left to Congress and to the Justices of the Court through their decisions to develop the Federal Judiciary and a body of Federal law.

The establishment of a Federal Judiciary was a high priority for the new government, and the first bill introduced in the United States Senate became the Judiciary Act of 1789. The act divided the country into 13 judicial districts, which were, in turn, organized into three circuits: the Eastern, Middle, and Southern. The Supreme Court, the country's highest judicial tribunal, was to sit in the Nation's Capital, and was initially composed of a Chief Justice and five Associate Justices. For the first 101 years of the Supreme Court's life—but for a brief period in the early 1800's—the Justices were also required to "ride circuit," and hold circuit court twice a year in each judicial district.

The Supreme Court first assembled on February 1, 1790, in the Merchants Exchange Building in New York City—then the Nation's Capital. Chief Justice John Jay was, however, forced to postpone the initial meeting of the Court until the next day since, due to transportation problems, some of the Justices were not able to reach New York until February 2.

The earliest sessions of the Court were devoted to organizational proceedings. The first cases reached the Supreme Court during its second year, and the Justices handed down their first opinion in 1792.

During its first decade of existence, the Supreme Court rendered some significant decisions and established lasting precedents. However, the first Justices complained of the Court's limited stature; they were also concerned about the burdens of "riding circuit" under primitive travel conditions. Chief Justice John Jay resigned from the Court in 1795 to become Governor of New York and, despite the pleading of President John Adams, could not be persuaded to accept reappointment as Chief Justice when the post again became vacant in 1800.

Consequently, shortly before being succeeded in the White House by Thomas Jefferson, President Adams appointed John Marshall of Virginia to be the fourth Chief Justice. This appointment was to have a significant and lasting effect on the Court and the country. Chief Justice Marshall's vigorous and able leadership in the formative years of the Court was central to the development of its prominent role in American government. Although his immediate predecessors had served only briefly, Marshall remained on the Court for 34 years and five months and several of his colleagues served for more than 20 years.

Members of the Supreme Court are appointed by the President subject to the approval of the Senate. To ensure an independent Judiciary and to protect judges from partisan pressures, the Constitution provides that judges serve during "good Behaviour," which has generally meant life terms. To further assure their independence, the Constitution provides that judges' salaries may not be diminished while they are in office.

The number of Justices on the Supreme Court changed six times before settling at the present total of nine in 1869. Since the formation of the Court in 1790, there have been only 16 Chief Justices* and 97 Associate Justices, with Justices serving for an average of 15 years. Despite this important institutional continuity, the Court has had periodic infusions

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*Since five Chief Justices had previously served as Associate Justices, there have been 108 Justices in all. This included former Justice John Rutledge, who was appointed Chief Justice under an interim commission during a recess of Congress and served for only four months in 1795. When the Senate failed to confirm him, his nomination was withdrawn; however, since he held the office and performed the judicial duties of Chief Justice, he is properly regarded as an incumbent of that office.

of new Justices and new ideas throughout its existence; on average a new Justice joins the Court every 22 months. President Washington appointed the six original Justices and before the end of his second term had appointed four other Justices. During his long tenure, President Franklin D. Roosevelt came close to this record by appointing eight Justices and elevating Justice Harlan Fiske Stone to be Chief Justice.

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The Court and Its Procedures

A Term of the Supreme Court begins, by statute, on the first Monday in October. Usually Court sessions continue until late June or early July. The Term is divided between "sittings," when the Justices hear cases and deliver opinions, and intervening "recesses," when they consider the business before the Court and write opinions. Sittings and recesses alternate at approximately two-week intervals.

With rare exceptions, each side is allowed 30 minutes argument and up to 24 cases may be argued at one sitting. Since the majority of cases involve the review of a decision of some other court, there is no jury and no witnesses are heard. For each case, the Court has before it a record of prior proceedings and printed briefs containing the arguments of each side.

During the intervening recess period, the Justices study the argued and forthcoming cases and work on their opinions. Each week the Justices must also evaluate more than 130 petitions seeking review of judgments of state and federal courts to determine which cases are to be granted full review with oral arguments by attorneys.

When the Court is sitting, public sessions begin promptly at 10 a.m. and continue until 3 p.m., with a one-hour lunch recess starting at noon. No public sessions are held on Thursdays or Fridays. On Fridays during and preceding argument weeks, the Justices meet to discuss the argued cases and to discuss and vote on petitions for review.

When the Court is in session, the 10 a.m. entrance of the Justices into the Courtroom is announced by the Marshal. Those present, at the sound of the gavel, arise and remain standing until the robed Justices are seated following the traditional chant: "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"

Prior to hearing oral argument, other business of the Court is transacted. On Monday mornings this includes the release of an Order List, a public report of Court actions including the acceptance and rejection of cases, and the admission of new members to the Court Bar. Opinions are typically released on Tuesday and Wednesday mornings and on the third Monday of each sitting, when the Court takes the Bench but no arguments are heard.

The Court maintains this schedule each Term until all cases ready for submission have been heard and decided. In May and June the Court sits only to announce orders and opinions. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

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The Justices' Caseload

The Court's caseload has increased steadily to a current total of more than 10,000 cases on the docket per Term. The increase has been rapid in recent years. In 1960, only 2,313 cases were on the docket, and in 1945, only 1,460. Plenary review, with oral arguments by attorneys, is granted in about 100 cases per Term. Formal written opinions are delivered in 80 to 90 cases. Approximately 50 to 60 additional cases are disposed of without granting plenary review. The publication of a Term's written opinions, including concurring opinions, dissenting opinions, and orders, approaches 5,000 pages. Some opinions are revised a dozen or more times before they are announced.

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