

Judicial Nationalism

Determining the Boundaries of the National Government

Icons of Judicial Nationalism

John Marshall

- Perhaps, most important chief justice in U.S. history (1801-1835);
- Revolutionary War veteran, Federalist

Daniel Webster

- Important influence in Marshall's decisions;
- Argued before the court & actually "ghost wrote" some of the Court's opinions;
- Often repetitions of arguments he earlier presented to Senate.

Basis for Judicial Review

"It is...rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It, therefore, belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."

- Alexander Hamilton in Federalist 78.

Marbury v. Madison (1803)

Story of the Case:

- Incoming Secretary of State James Madison (Democratic-republican) refused to deliver the appointment of William Marbury (Federalist) to the position of Justice of the Peace of the District of Columbia.
- Marbury, using a *Writ of Mandamus* provided for in the Judiciary Act of 1789. took the case directly to the Supreme Court.

Decision: The Supreme Court refused to hear the case arguing that the Writ of Mandamus is found nowhere in Article III of the Constitution where its jurisdiction is delineated.

Impact/Precedent: For the first time, the Supreme Court declared an act of Congress unconstitutional, declaring, "A law repugnant to the Constitution is void."

Federalism to Judicial Nationalism

- Strengthened the union & power of the national government;
- Helped to create a stable, nationally uniform environment for business;
- Curbed excesses of the popularly elected state legislatures;
- Established the Supreme Court as the tool of Judicial Review in cases of National & State-level appeals.

Partisanship & Judicial Review

Not always a consistent doctrine:

- Utilized a mix of Strict & Loose Construction;
- Depended on what it took to achieve goals.

Ironically, hampered democracy at a time when America was moving toward participatory democracy during the Jacksonian era.

Politics & the Supreme Court

- Many cases involved major political battles between Democratic-Republicans & Federalists (or at least remnants of the party).
- Jefferson & Madison attempted to balance the power of Marshall with Democratic-Republican appointees to the Supreme Court, but with little success.

McCulloch v. Maryland (1819)

Story of the Case

- Maryland argued that the US government did not have constitutional authority to create a National Bank
- Tried to destroy Baltimore branch by taxing its notes (currency)

Decision: Marshall using **Loose Construction** declared US bank constitutional, invoking Hamilton's doctrine of **implied powers** based on the **elastic/ "necessary & proper" clause**

- Denied Maryland the right to tax the bank: "..that the power to tax involves the power to destroy" and "that a power to create implies the power to preserve."

Impact/Precedent: Solidified the Elastic Clause & served as major precedent for Supreme Court reviewing cases already decided by a state supreme court.

Gibbons v. Ogden (1824) (The "steamboat case")

Story of Case:

- NY tried to grant a monopoly of river commerce between NY & NJ to a private company owned by Ogden
- Gibbons had congressional approval to conduct business on the same waters.

Decision: Marshall ruled, based on **Strict Construction**, that the Constitution (Article I, Section 8) conferred on Congress alone the right to control **interstate commerce**.
Impact/Precedent: *Gibbons v. Ogden* became the foot in the door, serving as precedent for almost all cases of federal intervention, economic or otherwise.

Political Nationalism

Rise of New Democracy & Mass Politics

Developments in Political Nationalism

"Era of Good Feelings" followed demise of Federalists;

Rise of the 2nd Party System:

- Democratic & Whig Parties arise out of the West
- Clay's American System & belief that national government could solve society's problems
- "New Democracy" shifted emphasis from "Government for the People" to "Government by the People;"
- Move to Universal White Manhood Suffrage increased voter turnout rises from 25% in 1824 to 78% in 1840;
- Demise of the caucus system for selecting candidates & end to entrenched, corrupt civil service.

Political Nationalism?

- "Era of Good Feelings" ended with "Corrupt Bargain;"
- Political candidates chosen based not on political skill, but on hero status, celebrity;
- Revolution of 1828 shifted balance of power to the West, where populist campaigns won the day;
- "Rotation in Office" quickly devolved into a "Spoils System" where merit & skill replaced by patronage;

Political Division & Sectionalism

Whig Party really no more than an anti-Jackson coalition:

- Not a party of ideals & policies;
- Purely partisan alliance.

Debates over policy escalated:

- Tariffs & National Bank
- Abuse of the Imperial Presidency & threats of Nullification

Clay's American System as a Plan for Fostering Nationalism?

- Internal Improvements--Supported by Westerners;
- 2nd National Bank--Supported by Jeffersonian Southerners;
- Protective Tariffs--Supported by Northern manufacturers.
- Once universally popular:

- Seemed to have something for every region;
- Leaders from both parties supported

Failure of Clay's American System

Created extreme sectional conflict:

- Southerners did not want nation to pay for what was a state responsibility & New Englanders thought would drain population away;
- Those outside urban centers feared Bank of United States (BUS) as a tool of rich;
- Protective tariffs proved to be most divisive.

Failure of Clay's American System--Power Play

Jackson's Vetoes:

- Vetoed both BUS charter & Maysville Road bill;
- Previous vetoes had been used against laws thought unconstitutional, but Jackson vetoed what he felt was against public interest as he defined it;

Jackson goes even further:

- Also used Pet Banks & Specie Circular to weaken BUS;
- Largely responsible for Panic of 1837.

Jackson, Calhoun--Nationalism & Nullification

Tariffs proved to be most divisive issue:

- Protective tariffs benefited industry in North at expense of Southern exports;
- Tariff debates always contentious;
- Tariff of Abominations (1828) passed as a political ploy--raising rate from 23% to 45%--intended to hurt Adams in election;
- But instead led to even more extreme reaction in South.

Jackson, Calhoun--Nationalism & Nullification

Calhoun's "South Carolina Exposition & Protest" called for Nullification;

- Intended to defuse more extreme talk of Secession;
- SC passed legislation to nullify lower Tariff of 1832, diffused by compromise Tariff of 1833.

Congress passed Force Bill allowing use of Army & Navy to collect tariffs in future.

Dinner Party Toasts on Nullification (1830)

"Our Union, it must be preserved."

•Andrew Jackson

"The Union, next to our liberty, most dear."

•John C. Calhoun