Constitutional History of the United States

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Only the president really knows why he chooses a particular person for the court. Never the less, there is a number of key factors in considering the selection.

1. Political considerations – It is a fact that party membership has been of upmost importance in the selection of a justice. It is very rare that he does not select a man of his own party. The President is interested in much more than the party label. He wants to place men on the court that shares his view on certain important socio-economic-political views of the day. The Senate plays a role in the selection of the justices. There are hearings before the Senate Judiciary Committee to consider the qualifications of the person. Most presidents have been rather reluctant to appoint men who would be politically unacceptable.

2. Personal friendship – The role of personal friendship in Supreme Court appointment is extremely difficult to measure because other factors of political significance are influential. Nevertheless, it has been of importance. Harry Truman's four appointments indicated the friendship factor. Harry Burton, Fred Vinson, Tom Clark, Sherman Minton.

3. Religious and Ethnic affiliation – The religious factor is often related to other factors. There is a policy of giving broad representation

of the religious affiliations of this country. In recent years there has been a Catholic and a Jew on the court. Thurgood Marshall was a black man. There is now talk of appointing a lady to the Supreme Court.

March 3, 1972

1. Geographical and Sectional – During the first century of our Republic when the judges were required to ride the circuit geographically and sectional considerations were important. By the end of the regular circuit duties these geographical considerations became less important.
2. Prior Judicial Experience – Prior judicial experience is of minor importance but sometimes it can be a crucial factor. Prior judicial experience is not essential because of the peculiar nature of courts work. The Supreme Court is not the usual type of law court concerned with resolving conflicts, or accommodating the rights of individuals but is concerned with resolving the great questions of public law.
3. Miscellaneous service – preeminence at the bar and even chance, the caprice of fortune play a part in Supreme Court appointments.

The justice has no official role in the selection of their associates but there are times when their influence has been felt and it is now generally agreed by legal scholars that the two worse reasons are personal friendships and political experience.

The role of the Chief Justice.

The Chief Justiceship of the United States is probably the most powerful political office in the world. In terms of prestige the Chief Justice ranks next to the President. By custom and tradition the Chief Justice reigns and not rules. The extent of his influence depends upon his ability and personality. In deciding cases he is not any more important than the others. Nevertheless, he occupies a central position because of his special administrative duties in connection with the daily work of the court and the Chief Justice can exert great influence on carrying out three specific functions:

1. As presiding officer he sets the tone for all court proceedings. If he is industrious the court will keep abreast of his work. The attitude of the Chief Justice is invariably reflected on the other judges.
2. He is the moderator of court conferences. This is probably his greatest opportunity for leadership. Conferences in which cases are discussed and decisions rendered. A strong Chief Justice can influence decisions in many ways. He is the discussion leader. He has first opportunity to state his conclusion in the conferences even though he is last to vote.
3. In the assignments of opinion the Chief Justice assigns the writing of the court opinion providing that he is among the majority.

Influences on the Judges.

Our Supreme Court Justices are not influenced by the usual lobbying techniques which put pressure on Congress. The influence is an influence of logic and reason such as a well-reasoned and written brief

or a persuasive oral argument. It might be a convincing or thoughtful speech, a monograph, or a law article.

Influences.

1. Influence of lawyers and the legal profession –Our Supreme Court justices, however varied, are lawyers. They share a common legal knowledge of craftsmanship. Lawyers affect court in other ways. Felix Frankfurter and such teachers help to shape the law. Many times the law clerks (two for each justice and three for the Chief Justice) serve as an important fellow between the justice and school.
2. Influence of administrative officers and lower court judges. Decisions of respected courts, such as New York Court of Appeal, have a marvelous record for protecting people.
3. Influence of organized interest groups. Organized interest groups may attempt to influence decisions off the Supreme Court principally by sponsoring and promoting test cases and then they would enter court cases into amicus curiae. Examples: NAACP, Jehovah Witnesses.

These justices do have the final word on whether or not, if at all, they permit themselves to be influenced within the frame work of the judicial process.

The Impact of Court Decisions.

Once the Supreme Court has made a decision it can do little else. Congress may enact laws to enforce decisions. The government may send in troops to support the law. But the Court itself can do very little. The court itself has no army to protect its decisions. What happens after decisions in a particular case? Doesn't everyone affect? Do other people defy the court or ignore the court? Or attempt to evade decisions? Throughout our history there has been those who opposed the court decisions.

The Constitution contains less than eight thousand words. And in many ways it is a superb piece of work. It is an outline of our system of government. The Constitution roughly maps out the government. It is a directing channel through which the stream of national existence may pass.

March 7, 1972

Marbury versus Madison.

It has been said that in the Marbury VS Madison cases that John Marshall took a code of law and made it into an organ of Government. John Marshall was an ardent Federalist and he had seen his party under the leadership of John Adams who was elected President in 1796. The

major opponents to these Federalist policies came from the Republican Party led by Thomas Jefferson. The Federalist in accordance to the views of Alexander Hamilton favored a strong national government. The Federalist very keenly distrusted the people capacity for self-government. The Jeffersonians were extremely suspicious of federal centralized national authority. And the Jeffersonians had greater faith in the capacity of the masses to govern themselves.

In the summer of 1798 the Adam Administration pushed through the United States Congress the very drastic Alien and Sedition Acts. These Acts were composed of four separate measures.

1. Naturalization Act -There was a naturalization law which extended the period of residence in the United States preliminary to citizenship from five to fourteen years.
2. The Alien Friends Act. Designed to deal with aliens in time of peace. It authorized the President to order any alien whose presence he regarded as dangerous to leave the country and if the alien refused to leave he could be imprisoned for three years or imprisoned for as long as the President saw fit.
3. The Aliens Enemy Act. Designed to apply to aliens in time of war. It gave the President the right to order such people out of the country and imprison them at will.
4. Sedition Act. By the terms of which defined as a high misdemeanor punishable by fine of five thousand dollars and imprisonment for five years. If one opposed the legal means of the United States Government, or if anyone interfered with legal measures of the United States Government, or if anyone published any false or malicious material against the President or Congress, could be fined for two thousand dollars or imprisoned for two years.

The Alien and Sedition Acts were very drastic acts. The purpose of these acts were to frighten pro Republican Frenchmen out of this country. But the real reason theses supposedly foreigners were supporters of Jefferson. The Sedition Act specified to subdue any criticism of Federalist administration by the so called Republican Rabble, and the Alien and Sedition Acts were very vigorously enforced by the judges and the Jeffersonians were out raged.

The Alien and Sedition Acts found expressions in the Virginia and Kentucky Resolutions of 1799 by James Madison and Thomas Jefferson. They declared the Alien and Sedition Acts unconstitutional and the American states must assert their rights over Congress. These Resolutions were very bitterly debated as a part of the election of 1800. The great unpopularity of these acts contributed to the downfall of the Federalist and they never again rose as a significant party. In 1800 Thomas Jefferson and the Republicans won a decisive victory. But the Federalist were not to be out done. They were sleek folks. They decided to maintain their influence by finding positions for loyal Federalist before or between the election and inauguration of Jefferson on February 4, 1801. In January of 1801 President Adams decided that he would name his Secretary of State John Marshall to be the Chief Justice of the Supreme Court. John Marshall and Thomas Jefferson found many things to be despicable. They found each other to be distasteful. The Federalist Congress passed the Judiciary Act of 1801 which created a number of new judges in the lower courts. It also provided that the next vacancy on the next Supreme Court should not be filled. Thus reducing membership from six to five. Adams appointed forty two new justices of the peace for the District of Colombia and loyal Federalist were always appointed.

The time was drawing very short. And some of the commissions for office were not signed by the President until February 3, 1801. These

were called the “Midnight Appointees”. A number of commissions were in the office of John Marshall and awaiting delivery when Jefferson became President. Jefferson named James Madison as the new Secretary of State. James Maddison came and said, “Tom, I have all of this stuff on my desk. What do you want me to do “and Jefferson said, “Don’t give them to the “Midnight Appointees.” The stage was set for the Marbury VS Madison case.

William Marbury was one of the “Midnight Appointees” whose commission for justice of the peace of the District of Colombia had not been delivered. And he had eight boys to feed. He petitioned the Supreme Court to compel the Secretary of State, James Madison, to deliver his commission. In December 1801 John Marshall requested very pleasantly that James Madison to show causes why the commission should not be issued. And Madison ignored the request. John Marshall was not a man to be ignored. It was commonly thought that Marshall would order James Madison to deliver the commission and began a struggle between the Supreme Court and the Executive Branch. Marshall did no such thing. He had his man to take a note to Madison and he said, “Jamie, I want you to get scrubbed up like an onion and get over here and lets have a chat”. Madison went to see Marshall and Marshall poured Madison a cup of tea and said, “Jamie, you have been a naughty boy”, Madison got hold of himself and looked at Marshall and said, “You going to make me deliver the commission”. Marshall said, “No”. “I am not going to make you deliver that commission because the stature cited by Marbury is unconstitutional”, said Marshall. William Marbury relied upon section 13 of the Judiciary Act of 1789 which said that the Supreme Court could issue these commissions under the authority of the United States and Marshall said that section 13 of the Judiciary Act of 1789 was unconstitutional. Simply because that act went beyond the boundary stipulated in Article 3 of

the Constitution, original jurisdiction is conferred on the Supreme Court only in two types of cases: Cases involving a public minister or ambassador; and cases in which a state is one of the parties.

Marbury cases did not fall into this category. Therefore by the provision of Article 3 the cases could not be initially brought into the Supreme Court. John Marshall said that he had to uphold the higher law and he said, “I declare this legislation Null and Void”. In that John Marshall established the power of the Supreme Court to declare acts of Congress unconstitutional. The Principal of Judicial Review.

John Marshall actually went out of his way to declare Article 13 void. This may not have happened for a number of reason.

The Supreme Court simply could have refused to hear the case and such action would have left Marbury to bring his case before the proper court. He wanted to meet the question of the constitutionality. His decisions were largely a political one. Marshall had an opportunity to avoid a collision with his enemy Jefferson, and at the same time strike a blow for the judicial branch. It is almost unconceivable that the decision should have emerged out of such trivial set of circumstances. The great principle of Judicial Review was not used again until the Dred Scott decision in 1857.

Actually there are three main questions on the case.

1. Did William Marbury have the right to the commission he demanded? Marshall said, “Yes”. Marbury was appointed by John Adams and the seal of the United States was attached to it. The commission have Marbury the right to the position for five years.

2. If that right had been valid the laws of the United States afford him a remedy. John Marshall again said, “Yes”. Where there is a legal right there is a legal remedy.
3. If this remedy due Marbury and order issuing from the Supreme Court to deliver the commission to him. Marshall said, No”. We have no power on court to order Secretary of State to deliver commission.

This cases derives most of its importance in that it was the first time that the Supreme Court declares an act of Congress unconstitutional.