Marshall, Marbury and the Saga of the “Midnight Judges”

The Fromm Institute
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Professor Curtis Caton
Justice Sonia Sotomayor
Chief Justice John Marshall
Early Attempts at “National” Government

- 1775-1783: Revolutionary War.
- 1774-1789: Continental Congress evolves in three iterations.
- 1776: Declaration of Independence promulgated by “the Thirteen United States of America” and adopted by the Second Continental Congress.
- 1781: Ratification of the Articles of Confederation which had been approved in 1777 by the Second Continental Congress.
- 1787/1789: Constitution drafted and ratified by the states.
Politically charged factual and legal background.

Solomon-like decision avoids clash with Executive Branch.

“It is emphatically the province and the duty of the judicial department to say what the law is . . . . if a law be in opposition to the Constitution . . . the court must determine which of these conflicting rules governs the case . . . . the Constitution is superior to any ordinary act of the legislature.”

Principle of “constitutional judicial review” has since been applied to invalidate acts of the Executive Branch of the Federal Government as well as to acts of State legislatures, executives and judiciaries.
Questions in the Aftermath of *Marbury*

- If not by the Supreme Court’s exercise of judicial review, how else might our system determine the constitutionality of governmental actions?

- Additional criticisms of the decision and Chief Justice Marshall’s role in it.

- What ever happened to William Marbury?

- The Marshall Supreme Court went on to render several important decisions interpreting the “Necessary and Proper Clause” and the “Commerce Clause” in ways that allowed the growth of a national economy, consistent with the Federalist vision of the Constitution.
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