



What Kind of Nation: Thomas Jefferson, John Marshall, and the Epic Struggle to Create a United States

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The bitter and protracted struggle between President Thomas Jefferson and Supreme Court Chief Justice John Marshall defined the basic constitutional relationship between the executive and judicial branches of government. More than one hundred fifty years later, their clashes still reverberate in constitutional debates and political battles.

In this dramatic and fully accessible account of these titans of the early republic and their fiercely held ideas, James F. Simon brings to life the early history of the nation and sheds new light on the highly charged battle to balance the powers of the federal government and the rights of the states. A fascinating look at two of the nation's greatest statesmen and shrewdest politicians, *What Kind of Nation* presents a cogent, unbiased assessment of their lasting impact on American government.

What Kind of Nation: Thomas Jefferson, John Marshall, and the Epic Struggle to Create a United States Details

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From Reader Review What Kind of Nation: Thomas Jefferson, John Marshall, and the Epic Struggle to Create a United States for online ebook

Mike Hankins says

The history of the United States has been marked by continual debate about the nature of the country itself. Present day debates about the size and role of the federal government are in many ways analogous to the debates between Republicans and Federalists in the late eighteenth and early nineteenth centuries. In *What Kind of Nation?* James F. Simon explores those debates as they are manifested through the legal decisions of John Marshall's Supreme Court. Although Simon's writing is excellent, he fails to truly articulate a main thesis, and the work essentially remains a descriptive narrative rather than a focused argument. Nonetheless, Simon leaves the reader with a sense that the period was marked not by political unity, but by intense political and legal debate, and that Marshall, perhaps more than any other chief justice, powerfully transformed the Supreme Court into the institution it is today.

Simon is in an excellent position to explore these legal issues. Although not trained as a historian, he did study law at Yale and later at New York Law School, where he once served as the Martin Professor of Law and as Dean. He also spent time as a correspondent for *Time* magazine. His legal experience allows him to thoroughly explore the cases he discusses, while his journalistic skill renders his explanations of these potentially dense legal matters simple for uninitiated readers to comprehend.

The book begins by establishing the tension between Federalists and Republicans in the late eighteenth and early nineteenth centuries, specifically as represented by John Adams and Thomas Jefferson, respectively. During the fierce controversy surrounding the Alien and Sedition Acts, Simon paints a picture of a Federalist-dominated Supreme Court led by Samuel Chase, who vigorously prosecuted Republicans. Jefferson led the opposition to this, eventually drafting the Kentucky Resolutions (and inspiring James Madison's similar Virginia Resolutions) that asserted strong state's rights, including the right to nullify federal laws.

After Adams nominated Marshall to the position of Supreme Justice, these two camps remained in political opposition. Simon emphasizes that both Jefferson and Marshall sought bipartisan unity and wanted to forge cooperation between these groups, as demonstrated in the results of the *Schooner Peggy* case that established the binding legal power of U.S. treaties, yet Simon also characterizes both men as heading toward a constitutional showdown. To illustrate this, Simon examines several landmark court cases in detail, beginning with *Marbury v. Madison*. Simon's interpretation highlights the dilemma Marshall was placed in, essentially that of choosing between relinquishing Federalist control of the courts, or making the Supreme Court a target for Republican attacks and possible impeachments. Declaring the *Judiciary Act* unconstitutional was a way for Marshall to cut through this Gordian Knot. For Simon, the doctrine of Judicial Review and the massive increase in the power of the court angered Republicans, although its full implications were not felt immediately. His interpretation pursues an interesting angle, presenting the concept of Judicial Review as an outgrowth of the political conflict of the time.

Further emphasizing that political debate framed these landmark legal battles, Simon spends more time examining the treason case against Aaron Burr. This case represented a role reversal for Jefferson and Marshall. In pursuing Burr, Jefferson ignored concerns for civil liberties of the accused, a standard Republican principle, while Marshall, normally the defender of a strong, powerful central government,

argued for limits in federal power in favor of individual rights of a criminal suspect. Marshall's stance in this case actually contradicted one of his earlier rulings. Simon implies that these arguments grew from the mutual conflict between Marshall and Jefferson, although he tempers this by acknowledging that any President would have found it in their interest to act as Jefferson had done, in the interests of national security.

In spite of the Burr case, Marshall was most often the champion of Federalist principles, to the consternation of Jefferson and later Republicans, as Simon demonstrates through cases such as *McCullough v. Maryland*, *Cohens v. Virginia*, and *Gibbons v. Ogden*, all which aggrandized the power of the federal government in terms of finance, jurisdiction, and trade regulation. All of these cases, and the reaction against them, demonstrate the strong debate that marked the period.

Ultimately, Simon's work has more in common with Joseph Ellis' *Founding Brothers*, which also emphasizes the continuing presence of nearly even-sided debate between Federalists and Republicans. *What Kind of Nation* functions well as a continuation of Ellis' work, exploring how debate is central or even healthy for early America. Simon relies heavily on printed editions of primary sources, looking far beyond the court decisions themselves and into the personal correspondence and documents of Jefferson and Marshall. These documents allow him to demonstrate the way these men conceived of their positions and reacted to each other privately, which greatly enhances his interpretation of events. While he neglects to clearly state his thesis, his research and interpretation are sound and valuable, and his writing craft is superb.

Jeremy Perron says

Thomas Jefferson and John Marshall were two of the most important men in our nation's history. They both served in the American Revolution, Jefferson more famously as the author of the Declaration of Independence and as diplomat, and Marshall as a junior officer in George Washington's army. Their careers, however, would intersect when they both reached their pinnacle. Thomas Jefferson as President of the United States and John Marshall as the Chief Justice of the United States Supreme Court. The battles between the Jefferson Administration and the Marshall Court were critical in shaping the government that we know today. In his work, *What Kind of Nation*, Simon describes these battles and recreates the world from which they had been fought.

Since Jefferson in this stage of his life, his political career from the 1770s onward, is better known even amongst us plain general knowledge historians, I found some of his descriptions on Marshall's career far more interesting. George Washington's recruitment of him as a congressional candidate, during a visit to Mount Vernon, with the former president's nephew Bushrod, is one such adventure.

"Over the next four days, Washington flattered, cajoled, and entreated both men to agree to become candidates for Congress. Bushrod could not, and did not, refuse his esteemed uncle. But Marshall balked, even when Washington arranged another festive banquet in his honor in nearby Alexandria. He must make good on his debt, Marshall told Washington, and a seat in Congress would not allow him to do so. Finally, on the fourth day, Marshall decided to leave before sunrise to avoid another confrontation with his mentor. But Washington, anticipating his guest's early departure, greeted him on the piazza--in full military uniform--and made a last plea to Marshall." p.68

Marshall would not serve in Congress long. President Adams makes him the country's new Secretary of

State, after getting rid of his previous Hamilton-dominated Cabinet officers. After Adams stunning defeat to his own vice president, Thomas Jefferson, in the election of 1800, Adams begins to stuff the court with Federalist judges, appointing his own Secretary of State, Mr. Marshall, to the top job.

This sets the stage for the great battles that take place between the two American icons. The most famous of these is without a doubt, Marbury vs. Madison. The circumstances for this are very odd, and Simon points out in his book there were many reasons that the Chief Justice could have abstained from the case. Marshall was the Secretary of State whose commissions his predecessor refused to deliver. However, he carefully danced around those issues and gave the most important decision ever. He did not rule against the Jefferson Administration, in fact, they received what they originally asked for. He also ruled a part of the law, the part that gave the Supreme Court more power no less, unconstitutional.

"But although Marshall had satisfied the Republicans' short-term interests by rejecting Marbury's claim, he had purchased an enormous piece of constitutional real estate for the Court. Marbury v. Madison established the Court's authority to declare an act of Congress unconstitutional, a power that would prove to be of historic significance in securing the institution's parity with Congress. Marshall's opinion also served notice that the Court, not the president, would be the ultimate judge of claims or executive privilege, an authority of seismic proportions." p.187

Political battles raged the removal of justices sought through the method of impeachment, once successfully with John Pickering, once unsuccessfully with Samuel Chase. Ironically, the presiding officer of the impeachment trials was outgoing Vice President Aaron Burr who Thomas Jefferson and the Democratic-Republican Party had dumped in favor of George Clinton. The vice president had just been just been acquitted in a murder trial over the death of Alexander Hamilton*. Simon describes a Vice President Burr who is eager to have on grandee final on the stage of American politics, and give Thomas Jefferson more fits**.

A few years after his tenure as vice president, Burr is on trial himself for alleged treason to the country, the judge in his trial was none other than Chief Justice John Marshall who was riding circuit as Supreme Court justices did in Marshall's time***. Simon tells this story in stunning detail and great analysis.

"The Burr prosecution produced an ironic reversal of roles for Jefferson and Marshall. The president, author of the Declaration of Independence and a supporter of many of the individual rights contained in the Bill of Rights, pursued Burr and his associates with a vengeance that ignored basic civil liberties. The chief justice, whose major libertarian concern was the protection of private property, became the vigilant defender of criminal suspects' constitutional rights." p.258

In his battles with Alexander Hamilton, one can conclude that Thomas Jefferson won in life and fame but Alexander Hamilton ended up with the nation that he, not Jefferson, wanted. With John Marshall, Jefferson is still more famous nationally and internationally, but Marshall's career as chief justice surpassed Jefferson's presidency by twenty-six years and his life by nine; in addition, it was Marshall's view on the Constitution that prevailed, not Jefferson's. With a brilliant narrative, James Simon brings these epic legal battles from the past back to life.

*Burr had killed Hamilton in a now famous duel, but the jury ruled it was a 'fair fight' and he was not guilty of murder.

**As if almost stealing the election of 1800 was not enough.

***This process ended in the early twentieth century.

Colleen Browne says

Although there isn't a lot of new information here, it is a good read. The author's affinity for John Marshall is however very clear. A bit of hero worship going on here I am afraid. Never questioning any decision Marshall made, Simon does a disservice to the reader, in my opinion. For example, in his discussion of *Marbury v Madison*, the author explains the meaning of the decision but never delves into Marshall's justification for it in terms of the constitution.

Diana says

This is the first book I listened to about Chief Justice John Marshall. Honestly, the second one I read, *Without Precedent: Chief Justice John Marshall and His Times* by Joel Richard Paul, was far superior.

The conflicting visions of Jefferson and Marshall vis a vis the shape of the United States is fascinating and key to understanding our history and our nation. Simon does a good job laying out a bit of biography of each, and then focusing on the rulings that highlighted their differences.

What I didn't like was that Simon often stated as fact the Jeffersonian view of Marshall, and Adams and the rest of the Federalists for that matter, without explaining the ideological context in which his opinion was formed. With such contentious material, historical, cultural and ideological context and background is really key to understanding both sides of the issues. Simon did not convince me that he was sharing the whole story.

All that being said, learning about John Marshall is absolutely worth it. I read this after reading McCullough's *John Adams* and Chernow's *Hamilton*, and am very glad I did. Although lay people (non-lawyers) may not know and appreciate Marshall's importance, it turns out that he had as much to do with shaping the United States as any founding father. But, I would recommend reading *Without Precedent* to learn about this fascinating, important and inspiring man.

Mike says

Pretty good book about some of the most basic fights among the two most influential founding fathers, Jefferson and Marshall. I recommend to anyone who wants to see how the courts gained the ability to decide on constitutional issues and why the federal government can override the states.

David Eppenstein says

I had forgotten that I read this book until Amazon reminded me. A very interesting history of two men with opposing views of the direction this country should go in. Their disagreement was deeply felt and the manner of their dispute is something present-day politicians should study and learn from.

Derk says

A well written history of the Jefferson-Marshall views concerning how the Federal Government should function. Just enough history was provided to set the context. I learned a lot about Marshall that I never knew before, even though I was familiar with many of his court decisions and views. It was also noteworthy that it was all done in some 300 pages.

Nathan says

I read "What Kind of Nation" concurrently with Ron Chernow's "Hamilton." It is a worthwhile exercise to read about similar timelines from different perspectives. "What Kind of Nation" is a joint biography of Thomas Jefferson and our nation's fourth Chief Justice and Federalist, John Marshall. Because Hamilton (Federalist) and Jefferson (Republican) so often found themselves at odds, it was helpful looking at their disagreements from the perspective of authors who were immersed in the history and character of political foes. Treating "Hamilton" and "Nation" as companion books illuminated the subtleties that transformed a number of our early forefathers from allies to adversaries.

James Simon did an excellent job of looking at the adversarial nature of early Republicans and Federalists by exploring the interactions between Jefferson and Marshall. Simon is a professor of law at New York Law School, and the book occasionally reads as a case-law summary. The degree of description for some of the cases will be interesting for attorneys, though I suspect less so for non-lawyers. This is a small critique that I only offer for individuals considering the book. Regardless of this, I recommend "What Kind of Nation" for both lawyers and non-lawyers because it provides a helpful foundation for the challenges that faced the early Supreme Court and why those issues matter today.

Simon's book lends insight into the history of legislators criticizing the judiciary, the rural parties arguing with urban, and the states wrestling for power with the federal government. Even if a reader chooses to skim the more detailed case descriptions, I am confident there is still plenty to glean at how the Court fits into the checks and balances of power and how brilliantly Marshall lead the Court before there was a template on what the Court should be. Because of the occasional slow spots in the caselaw, I marked this as a 4-star book, but 4.5 is more accurate. It was a great way to explore the early era of the Supreme Court, and it spurred in me an interest to read more about the significant Justices who served on the bench.

Paul Gibson says

Today many people tend to imagine America's forefathers as a monolithic, Republican group who agreed upon the clear meanings of the Constitution. This book looks at two main views of what the Constitution might mean and intend. It reveals the reasonable (and unreasonable) disagreement between members of Jefferson's Democratic Republicans. Although Jefferson (author of the Declaration of Independence) and Madison (the father of our Constitution) often served closely together, they tended to stress different visions of government. The book shows how Jefferson's vision generally lost in court to his cousin's (John Marshall) Federalist vision. This remained the case even when Republican justices came to be the majority on the Supreme Court. The Federalist constitutional interpretation also turned out to be more realistic, unifying and

long-range. While pointing out how much the Jeffersonian vision of State's rights was mitigated and overruled by the courts, we can also imagine how state's rights values may lead to secession and Civil War. I enjoyed this book even though I didn't prefer the author's style of writing.

Bob says

Summary: Simon's book summarizes the struggle between John Marshall and Thomas Jefferson to define the character of American Federal government, focusing particularly on Marshall's role in creating a strong judicial branch. A good book for anyone interested in post-Revolutionary War American history or in early constitutional law.

About the only thing John Marshall and Thomas Jefferson had in common was that both were Virginians. Jefferson was enamored of all things French while Marshall broke off talks with France following the XYZ Affair, in which French officials basically demanded bribes in order to enter into treaty negotiations with the young country. Marshall risked war rather than be party to this, although he characteristically stopped short of calling for war, showing the measured judgment that would characterize his career.

More than this Jefferson's agrarian vision was for a limited federal government that allowed to states all power not expressly given the federal government. Likewise, Jefferson wanted to limit the Federalist dominated judiciary. Marshall had a very different vision of the needs of the country, and as Chief Justice of the Supreme Court a very different vision for the place of the court as a co-equal branch of the government rather than the poor step-child he inherited.

James F. Simon gives us a vivid account of the tension between the Jefferson the Republican and Simon the Federalist. Unlike Adams and Jefferson, these two men would never be reconciled to one another. Perhaps the most famous encounter, which Simon covers in detail is that resulting in the *Marbury v. Madison* decision, that upheld the Jefferson administration's refusal to deliver Marbury's commission to serve as Justice of the Peace of the District of Columbia. This was one of a number of last minute appointments by John Adams. While this appeared to be a victory for Jefferson, Marshall based his decision on the ruling that the provision of the Judicial Act of 1789 under which Marbury brought his suit was in fact unconstitutional. What Marshall's decision for the Court did was establish the principle of judicial review, which allowed the Supreme Court an expanded role in determining the constitutionality of legislation passed by Congress. No longer was the court the poor step-child or "least dangerous branch."

The book goes on to describe further clashes between the two over attempts to impeach judges including fellow justice Chase, and in the treason trial of Aaron Burr. In each instance, Simon portrays a Jefferson who attempts to use political influence toward these ends only to be countered by the careful legal reasoning of Marshall. In the Burr trial, Marshall made a key ruling against Jefferson's claim of executive privilege in withholding key evidence against Burr. Even after Jefferson was out of office, they continued to be on opposite sides of a series of states rights cases (*Martin v. Hunter's Lessee* and *McCulloch v. Maryland*) that established precedence of federal over state law, nurturing the tensions that would eventually flare up in America's Civil War.

In Simon's account, Marshall comes out looking far better than Jefferson. I suspect some historians with a stronger states rights bias would see things quite differently. But what Simon makes clear is the distinctive contribution of Marshall to this day in the form of a strong federal government, limits on executive privilege and states rights, and a doctrine of judicial review which truly established the Supreme Court as a co-equal

branch of government.

Aaron says

This book hit my history-book sweet spot. I am inclined to like most history books with lengthy, but well-told, discussions of legal cases. This book is essentially just that: a sophisticated, yet easy to read, narrative about the cases at the Supreme Court that shaped Constitutional Law regarding the powers of the federal government, the separation of powers among the three branches of government, and the limits of what the states can do *viz a viz* the federal government, nearly every one of which pitted Marshall against Thomas Jefferson.

I had read most of these cases for my Con Law classes in law school, but this book put the controversies into much greater historical and political context than my case books did. I loved the author's use of opinion pieces from contemporary newspapers to demonstrate how the politically divided public reacted to each of the controversies underlying the cases. I was struck by how politically polarized the nation was at that time and by how close we were to dividing, even decades before the Civil War. I'm not sure I would recommend this book to non-lawyers or to people without a serious interest in the scope and limits of the power of the federal government, but I find those topics very interesting. And I think this book did a pretty good job of explaining technical concepts in a way that non-lawyers would understand.

Bill Sleeman says

What Kind of Nation : Thomas Jefferson, John Marshall and the Epic Struggle to Create a United States by James Simon offers a fresh and informed consideration of these two giants of the founding era and how they struggled with each other directly and through a host of partisan supporters to shape both the Judiciary and the Constitution. In fact, many of the characters we see in Simon's work are familiar figures but their outright animosity towards one another may not be as familiar. I found particularly interesting the depth of the hate that Thomas Jefferson held for Marshall. I suspect that author James Simon is correct, that their differing views of what the nation should and could be lay so close to the core of who they were as individuals that compromise was never really possible. At best a (VERY) grudging acknowledgement of their differences was all that was achievable. That our current political environment mirrors this 19th century battle in so many ways and the stakes, as they were for Jefferson and Marshall (and for all of us), could not be higher is clear. That Simons hints at this without belaboring it or distracting from his purpose of explaining how we got to where we are today is admirable. The only fault I might offer is that Simon tends to spend too much time on the Burr conspiracy at the expense of the other seminal cases that seemed to be piled up at the end of the book. The absence of any mention of *Barron v. Baltimore* is an unfortunate shortcoming. Overall this is an excellent history and is useful for both the academic and the general history buff.

Chris says

Judicial review of congressional law is presently taken for granted but this hasn't always been so. Before *Marbury v. Madison*, the judicial was seen as the ugly stepchild whom nobody paid attention to while the other two branches of government fought for supremacy. John Marshall, arguably the greatest jurist in the history of America, managed to outmaneuver that great populist, Thomas Jefferson and thus ensured that the Supreme Court was destined to play a HUGE part in shaping American history. These battles still endure and are felt today in the battles over Roe and the confirmation of judges. This book outlines the struggle for the American soul between two of the greatest politicians of the era and how ultimately Marshall's vision of America has proven to be more enduring.

Erik says

Simon's new book is a study of the rivalry between Thomas Jefferson and John Marshall. Joseph Ellis, the author of "Founding Brothers," writes, "No one to the best of my knowledge has chosen to pair Jefferson and Marshall and make the argument between them the focus of book-length treatment. It is the kind of obvious idea that once you see it carried out so capably by Simon, you wonder why no one thought of it before."

Ellis contrasts Jefferson's "core conviction," "that what might be called 'the spirit of '76' had repudiated all energetic expressions of government power" to Marhsall's belief that "the spirit of '87 had trumped the spirit of '76, transforming the loose confederation of states into a coherent nation."

Ellis writes that the "chief virtue" of "What Kind of Nation" is to recover the dialogue between Marhsall and Jefferson "in all its messy grandeur."

Andrew says

This book was off the list of recommended summer reading from ND Law school - I'm probably the only nerd to actually look at the list, let alone read from it. A very compelling read, detailing the intellectual battle between Jefferson and Marshall. Interested to jump more into the implications in the fall
