The Supreme Court of the United States in the twenty-first century and throughout most of the twentieth century was, and is, an institution that wields great power. It has almost complete control over which cases it will hear and only occasionally will it get a case of original jurisdiction or one it must hear on appeal pursuant to specific legislation. It has become a policy-making body deciding the great issues of the day.

The issues and interests that dominate the life of the United States eventually become the business of the Supreme Court. It has become the final arbiter rarely held accountable for its actions. It is the Court that decided that mentally retarded people may not be put to death, that affirmative action is acceptable is some cases, that states may not criminalize the act of abortion, or whether a drug-sniffing dog can be used in a routine traffic stop.[1] It is also the Court, some will argue, that chose the President of the United States in 2000.[2] Recent vacancies on the Court have interest groups of all persuasions raising millions of dollars to wage a campaign for or against the next nominee to the high court.

This is not a Supreme Court that citizens of this country from the nineteenth century would recognize, for the Court during that century was a vastly different institution than what exists today. The Supreme Court during the nineteenth century, particularly the first six decades, was a re-active rather than pro-active institution. The Court's power was dictated by congressional acts addressing jurisdiction, circuit duties, the length and frequency of their terms, and the number of justices. Furthermore, acts of Congress and ensuing litigation predetermined much of the Court's docket. From the outset of the century, it was apparent neither the executive or legislative branches considered the Supreme Court an equal. The majority opinion in

[1] *Atkins V Virginia*, 536 U.S. 304 (2002)., *Grutter V Bollinger*, 539 U.S. 306 (2003)., *Roe V Wade*, 410 U.S. 113 (1973)., *Illinois V Caballes*, 125 S. Ct. 834 (2005).
[2] *Bush V Gore*, 531 U.S. 98 (2000).

Marbury v Madison, 5 U.S. 137 (1803) not withstanding – or the popular misperception the opinion immediately made the Court an equal – the nineteenth century Court was not an equal branch. This paper begins to address the reasons the Court assumed the role of an unequal branch of government during the nineteenth century. Among the several reasons to be examined is the relationship between the Court and the other two branches of the federal government, decisions of the Court, the battles with the states, the Court's personnel, acts of Congress directly and indirectly affecting the Court, events and issues during the nineteenth century, and the publics perception of the Court as represented through the eyes of the press.

The relationship the Court sustained with the presidents during the nineteenth century – with the exception of Jefferson, Jackson, and possibly Lincoln – was quite benign. Relative to Congress, the presidency and the Court developed, as institutions, at about the same rate during this century. The president who may have done the most to inhibit the institutional growth of the Court was Thomas Jefferson due to his significant role in the Republican's battles against the Federalist judiciary in the first decade of the century. While Jefferson was a moderating influence relative to many Republicans, during the impeachment and trial of Justice Samuel Chase in 1804-1805 he helped in resisting Federalist attempts to increase the power of the national courts and nationalize them.[3] Furthermore, he helped initiate impeachment proceedings against Federal Judge John Pickering in 1803 and actively worked to obtain his conviction in the Senate.[4] His actions, along with those of Congress in the Pickering affair coupled with the impeachment of Chase certainly gave pause to the Marshall Court as it considered cases. While the impeachment of other justices in the nineteenth century might now seem a remote possibility, those justices serving on the Marshall Court must have considered it a distinct possibility.

[3] Richard E. Ellis, "Thomas Jefferson," in *Oxford Companion to the Supreme Court of the United States*, ed. Kermit Hall (New York: Oxford University Press, 1992).
[4] Ibid.

An example of the Marshall Court's timidity in the early nineteenth century is the decision in *Stuart v Laird*, 5 U.S. 299 (1803). Argued two weeks after *Marbury* with the decision delivered less than a week after *Marbury*, the Court had been asked to decide if Congress could abolish the circuit courts created by the Judiciary Act of 1801 thus depriving the appointed judges of their positions and require the justices to sit as circuit judges. The Court answered yes to both questions. Justice William Paterson, writing for a 5-0 Court with Marshall not participating because he was the circuit justice who heard the case, wrote on very narrow and technical grounds thus avoiding the constitutional issues and challenges of the case.[5] The manner in which the opinion was written side-stepped a confrontation with the Republican dominated Congress and the executive. The Marshall Court recognized what Robert McClosky in 1960 claimed that the Dred Scott Court had forgotten: "their power was built on a lively sense of the Courts limitations."[6]

The only other nineteenth century president to present any serious confrontation with the Court was Andrew Jackson who claimed that the constitution required him, as president of the people, to interpret the document as he saw fit. He argued that the three branches were to interpret the constitution independent from each other, thus claiming that Supreme Court opinions could be ignored.[7]

The nineteenth century Supreme Court did not seem concerned in its decisions about conflict with the presidency. They issued nineteen rulings against twenty-two presidents (there were only four rulings that were expressly pro-president) which compares to fifty-seven rulings against sixteen presidents in the twentieth century, although without the Nixon presidency it

[5] *Stuart V Laird*, 5 U.S. 299 (1803).
[6] Robert G. McCloskey, *The American Supreme Court* (Chicago: University of Chicago Press, 1960)., 91
[7] Robert V. Remini, *Andrew Jackson and the Course of American Democracy, 1833-1845*, 3 vols., vol. 3 (New York: Harper & Row, Publishers, 1984)., 338-339

would be thirty-two decisions against fifteen presidents.[8]; [9] One should note that during the presidencies of Jefferson and Jackson – both avowed states rights advocates – only four state constitutional or statutory provisions and municipal ordinances were declared unconstitutional.[10] One of these was in the last three weeks of Jefferson's second term and the other three were in the first three years of Jackson's first term before he had the opportunity to significantly influence the Court through appointments. The remainder of the nineteenth century saw the Court declaring state statutes or local ordinances unconstitutional 176 times.[11]

Potentially, greatest effect presidents had on the Court was their appointment of justices. In this respect the executive branch did stunt the institutional growth of the Supreme Court. The nineteenth century Supreme Court did not receive many quality appointments. Of the forty-five justices who were appointed and served on the Court during the century only eleven were accorded the status of "great" or "near great" by a 1970 poll of sixty-five law school deans and professors of law, history, and political science conducted by law professors Albert P. Blaustein of Rutgers and Roy M. Mersky of the University of Texas-Austin.[12]This contrasts with seventeen justices in the first seventy years of the twentieth century.

Only two distinct times during the century did three or more justice serve together who were given the rating of near-great or above in the 1970 poll. From 1812 through 1834 Chief Justice Marshall along with Justices William Johnson and Joseph Story served together. In 1863, starting with the service on the Court of Justice Stephen Field, there were three together until 1874 and, with the appointment of Chief Justice Morrison Remick Waite, there were four who

[8] Lee; Jeffrey A. Segal; Harold J. Spaeth; Thomas G. Walker Epstein, *The Supreme Court Compendium: Date, Decisions, and Developments*, 3 ed. (Washington, D.C.: Congressional Quarterly Press, 2003)., 681.
[9] *Martin V Mott*, 25 U.S. 19 (1827).; *Foster V Neilson*, 27 U.S. 253 (1829).; *Prize Cases*, 67 U.S. 635 (1863).; *Ex Parte Garland*, 71 U.S. 333 (1867).
[10] Epstein, *The Supreme Court Compendium: Date, Decisions, and Developments*., 167.
[11] Ibid.,167-168.
[12] Henry J. Abraham, *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Clinton* (New York: Rowman and Littlefield Publishers, Inc., 1999)., 367.

have earned the near-great or above distinction. With the addition of John M. Harlan in 1877 through the time of Waite's departure in 1888 there were a total of five justices rated near-great or better. This is the best "natural court" from the nineteenth century. A comparison with the twentieth century shows the best "natural court" in that century from 1956 when William Brennan received a recess appointment until Felix Frankfurter's retirement in 1962 when there were six justices who were rated in the two top categories serving together.[13]

The nineteenth century does not fare well in comparison. Is this significant or did it really make a difference? Possibly it did not; but it could not have been beneficial to the development of the Court to have thirty-four of forty-five justices who were rated average or below average (none in the century were rated as failures). If Taney had spent more than one year with two justices of his caliber would the Court have acted differently? Even though in Taney's case Justice Benjamin R. Curtis was a Whig (Justice Stephen J. Field, the third, was a Democrat appointed by the Republican President Lincoln), the three may have worked together through their decisions to further develop the Court as an institution and as an equal branch of government. On the other hand, a "natural court" may have nine justices rated as great and if there are several political agendas on the court that might inhibit growth rather than encourage it.

Of course, the president does not appoint justices to the Supreme Court with a free hand. The Constitution states "the President shall nominate and, by and with the advice and consent of the Senate, shall appoint…."[14] Excluding the nominees whose names were withdrawn or who declined nominations there were sixty names submitted to the Senate as nominees to the Supreme Court in the nineteenth century.[15] Of those sixty, eleven were rejected or postponed.[16]

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[13] Ibid., 367.
[14] David P. Currie, *The Constitution in the Supreme Court, the First Century: 1789-1888* (Chicago: University of Chicago Press, 1990)., 466.
[15] Epstein, *The Supreme Court Compendium: Date, Decisions, and Developments*. , 352.

That is just under twenty percent of the nominations during the century that were not successful. If one out of every five nominees of the president were unsuccessful, presuming some were quality nominees whom the Senate did not like for political reasons, then the Senate should take partial blame for the lack of quality justices during this century. Once again, Congress may be affecting the institutional prestige of the Supreme Court.

Andrew Jackson, for example, appointed six justices to the Court with only Chief Justice Roger B. Taney reaching a rating of above average, had political considerations as his primary focus in making his appointments.[17]; [18] Taney, who, in at least one poll of scholars, was rated as great served with twenty different justices during his tenure.[19] Sixteen of those rated average or below; during nine of his twenty-eight years on the bench he was the only justice who received an above average rating, for sixteen years he served without a great or near great justices, and only in his last two years did he serve at the same time as two other justices rated as near-great. Taney's opinions are generally given high marks, but his leadership was lacking as he was unsuccessful in his attempts to direct his Court in one direction and this caused a lack of institutional development and unity. The blame, then, for the Court not developing as an equal institution during the Taney years might be laid to two causes. One is Taney's lack of leadership and the other was the mistake of presidents appointing mediocre justices.

Following Taney as Chief Justice was Salmon P. Chase, Lincoln's first treasury secretary. The Chase Court was driven by the Civil War and the Civil War amendments and litigation resulting from the amendments. The industrial revolution and westward expansion

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[16] Ibid., 352.
[17] Abraham, *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Clinton*., 72.
[18] Epstein, *The Supreme Court Compendium: Date, Decisions, and Developments*., 353. There seems to be a conflict amongst sources to the number of appointments Jackson actually made. The SCOTUS site lists 5, Epstein et al lists 6. Others have 5 or 6 as well. For the purposes of this paper I am going with Epstein et al.
[19] Abraham, *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Clinton*., 369.

generated legislation which brought business to the Supreme Court. The Chase Court was liberal in its interpretation of congressional power as evidenced by many of its decisions.[20] Just as in *McCulloch* and *Gibbons* they did insist there were limits to that power. In *United States v Dewitt,* 76 U.S. 41 (1869), Chase for the Court wrote that Congress could only limit the flammability of oil if the oil was involved in interstate or foreign commerce. The opinion stressed the fact that Congress only had the powers that the Constitution enumerated.[21]

Chase, in many of his opinions, acted more as a politician than a jurist or legal craftsman in order to prevent further strain on the relationship between the Congress and the Court. In *Mississippi v. Johnson,* 71 U.S. 475 (1867) the Court held that the President could not be restrained by injunction from carrying out the Reconstruction acts because the Court had no jurisdiction to enjoin the president in the performance of his official duties. In *McCardle* he prevented the Court from invalidating a Reconstruction act and saved the Court from the retribution of the Radical Republicans who had easily passed through the House legislation requiring six justices to concur in order for the Court to overturn federal legislation, an effort that ultimately died in the Senate.[22] Prior to the handing down of the decision, but after oral arguments, Congress repealed the provisions of the Habeas Corpus Act allowing for appeals to the Supreme Court. In *McCardle*, Chase's opinion for a unanimous Court bowed to Congress by dismissing the case for lack of jurisdiction without ruling on the substance of the Reconstruction Act.[23] Chase also gave the Radical's theory regarding the constitutionality of secession judicial endorsement in *Texas v White* by supporting the Republican position that the Union was

[20] In these cases, used as an example, the Court gave to Congress powers assumed to be beyond the scope of Congressional Power. *Ex Parte Mccardle*, 74 U.S. 506 (1868)., *Texas V White*, 74 U.S. 700 (1869)., *License Tax Cases*, 72 U.S. 462 (1867).
[21] Currie, *The Constitution in the Supreme Court, the First Century: 1789-1888*., 352.
[22] Stanley I. Kutler, *Judicial Power and Reconstruction Politics* (Chicago: University of Chicago Press, 1968)., 35.
[23] *Ex Parte Mccardle*.

perpetual and that reconstruction was a political problem that lay within the scope of congressional power.[24] In *United States* v *Klein* (1871), likely in response to *McCardle,* he asserted the Court's ultimate independence from Congress by holding that Congress may not limit the Court's jurisdiction to control the results of a particular case.[25]

The Waite Court was generous in the freedom given to congressional authority in constitutional issues. Cases involving the commerce clause found the Court limiting state power while reaffirming the power of Congress. In *Henderson v New York,* 92 U.S. 259 (1876), *Hall v Decuir,* 95 U.S. 485 (1878), and *Wabash, St. Louis & Pacific Railway Co. v Illinois,* 118 U.S. 557 (1886) the Court struck down state statutes because they invaded the domain of legislation that belonged exclusively to Congress. These were three of eight times, using the *Congressional Quarterly* list of major decisions, during the century that the Court specifically struck down a state statute in favor of congressional power. In contrast, the Fuller Court was not hostile to either state or federal authority as it struck down only one act of Congress, *Pollock v Farmer's Loan and Trust* (1895), and only three state statutes or local ordinances.[26]; [27]

The decisions of the Supreme Court were not a source of power in the nineteenth century as they have been in the twentieth. The *Supreme Court Compendium* has *Congressional Quarterly's* list of Major Supreme Court Decisions, 1789-2002 and it includes ninety-four decisions from the nineteenth century.[28](See Table 1 for a list of the cases) A study of these cases demonstrates the Court was cautious when ruling against Congress, but no other entity.

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[24] *Texas V White*.
[25] *United States V Klein*, 80 U.S. 128 (1871).
[26] David P. Currie, *The Constitution in the Supreme Court, the Second Century: 1888-1986* (Chicago: University of Chicago Press, 1990)., 4.
[27] *Chicago, Minneapolis & St. Paul Ry. Co. V Minnesota*, 132 U.S. 472 (1889).; *Allegeyer V Louisiana*, 165 U.S. 578 (1897).; *Smyth V Ames*, 169 U.S. 466 (1898).
[28] Epstein, *The Supreme Court Compendium: Date, Decisions, and Developments*., 86-96.

Only six times, out of *Congressional Quarterly's* ninety-four cases, in the century did the Court rule an act of Congress unconstitutional.[29] Two of those – *Marbury* (1803) and *Dred Scott* (1857) – were prior to the Civil War and after each of those decisions the Court – possibly in fear that they had antagonized members of Congress – made a noticeable retreat in the manner in which it attempted to yield its power. Using the six major decisions from *CQ's* list places the influence of the Court into better perspective than the aggregate of twenty-three acts of Congress ruled unconstitutional in the century. In addition to the acts ruled unconstitutional there were four cases in which, arguably, the Court ruled against the intent of an act of Congress.[30]

Twenty-seven times out of approximately forty cases the Court ruled to uphold or extend the powers of Congress including decisions in which the opinion of the Court purposely was written to avoid antagonizing a potentially hostile Congress. There was four times the Court either expanded its own jurisdiction or claimed jurisdiction. However, there were five times, including three during Reconstruction that the Court deferred to Congress at its own expense, perhaps realizing its own limitations.

When it came to the states and the Supreme Court, the decisions were quite evenly divided. Included in *Congressional Quarterly's* list of ninety-four cases were twenty-one state statutes that were struck down and eleven anti-state decisions. Twelve times the Court upheld state statutes and an additional eighteen times the Court issued rulings that favored states.

Congress was the primary reason for the manner in which the Court developed as an institution during the nineteenth century. Legislation passed by Congress directly and indirectly affected the Supreme Court. Epstein et al's *Supreme Court Compendium* lists fourteen acts

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[29] Ibid., 163.

[30] *Slaughterhouse Cases*, 83 U.S. 36 (1873)., *United States V Cruikshank*, 92 U.S. 542 (1876)., *Kilbourn V Thompson*, 103 U.S. 168 (1881)., *Plessy V Ferguson*, 163 U.S. 537 (1896). These four as being "anti-intent" of Congress is a subjective decision made by the author.

passed by Congress directly affecting the Court.[31] (See Table 2 for a similar list of legislation) Seven of those changed the size of the Court, four changed the Court's jurisdiction, and others addressed the circuit duties of the justices.

The size of the Court was changed by Congress seven times during the nineteenth century – the only instances after the Judiciary Act of 1789 this has happened. While a few of the changes were genuinely needed, most of the changes were a result of political battles with the Court caught in the crossfire, between the Congress and president or political parties. The debates in Congress over the legislation that became the Judiciary Act of 1863 (the first post-Dred Scott act) adding a tenth justice, mentioned the anger over the *Dred Scott* decision only occasionally.[32] If there was a time that Congress might change the size of the Court as a result of a decision that they deemed unacceptable, this was that time. In addition to the notorious substance of the decision, it was also only the second time the Court had ruled an act of Congress unconstitutional since *Marbury v Madison* (1803).[33]

Of the seven Judiciary Acts affecting the size of the Court, perhaps only the 1807 Act did not reflect political interests. The other six acts involved a variety of different political battles. Congress wanting to give or deny to the president additional appointments, sectional politics, presidential politics and partisan politics all played a role in the acts changing the size of the Court. What seems less certain is that any of the acts intended to punish the Court for a specific decision it had rendered. Regardless of the reasons for the changes, they demonstrated the Court was vulnerable to manipulation for political purposes. If it were a co-equal branch it would not have been used in the same manner as a pawn during political battles.

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[31] Epstein, *The Supreme Court Compendium: Date, Decisions, and Developments*., 28.
[32] *Congressional Globe, 37 Cong., 3 Session*, 1863., 1100-1200, 1400-1500.
[33] Mark Graber, "Naked Land Transfers and American Constitutional Development," *Vanderbilt Law Review* 53, no. January (2000). In this paper Graber argues that there were several times between *Marbury* and *Dred Scott* that the Court ruled acts of Congress unconstitutional.

Possibly the most controversial of the seven acts to change the size of the Court, and the only one to be repealed, was the Judiciary Act of 1801. While it was enacted in the "eleventh hour" primarily for political purposes, it was not adopted solely because the elections of 1800 had gone against the Federalists. The timing is certainly suspect, but the changes that were made had been suggested during the previous ten years. Indeed, Federalists leaders were certainly growing concerned about the growth of Republican strength and by early 1799 started to turn their attention to the federal judiciary. The bill was actually introduced prior to the elections of 1800. South Carolina Federalist Robert Goodloe Harper introduced a bill in Congress in March of 1800 calling for a reduction in the number of justices as well as abolishment of the district courts in favor of courts exercising only admiralty jurisdiction.[34] The body voted to postpone action on the bill and a telling Federalist argument against postponement and to the political motives involved was "that the close of the present Executive's authority was at hand, and from his experience, he was more capable to choose suitable persons to fill the offices than another.[35]

In 1801 the Supreme Court was in the spotlight as the Republican victory at the polls in November of 1800 and the Judiciary Act of 1801 passed days before Jefferson's inauguration focused attention on the Court. Jefferson publicly took a position of moderation toward the act of 1801, but privately he took a different position. In a September 1801 letter he wrote to Robert Livingston: "I join you in taking shame for the depravity of our judges. Who could have believed that a branch of government which was the last in England to…to the torrent of corruption, should have led the way here? Impeachment is clear but nothing is at present provided."[36] The philosophical and political objection the Republicans had with strengthening

[34] *Annals of Congress, 6th Congress, 1st Session*, 1800.
[35] Ibid.
[36] George Haskins, Herbert Johnson, *History of the United States Supreme Court, Vol. 2* (New York: Macmillan Publishing, Co., 1981)., 149.

the federal courts is they would take business away from the states as well as increasing the strength of the branch which had trodden on peoples civil liberties during the late 1790s in cases involving the Alien and Sedition Acts.

Between the Judiciary Acts of 1801 and 1802 three events intervened, all out of the Supreme Court's control, which further antagonized the Republicans against the judiciary. Two Federalist judges in the new Circuit Court for the District of Columbia instructed the district attorney to institute a common law libel prosecution against the *National Intelligencer*, the administration's newspaper for publishing an attack on the entire judiciary.[37] This was followed by *The Schooner Peggy* case involving the validity of an executive order issued by Jefferson and rebuffed by a circuit court, an opinion which the Supreme Court eventually set aside.[38] Finally, December of 1801 marked the commencement of proceedings in what would become *Marbury v Madison.* The Judiciary Act of 1802 was essentially railroaded through Congress and the act of 1801 was repealed.

In 1807, and with little, if any, controversy the size of the Court was set at seven. In contrast, what eventually became the Judiciary Act of 1837 was decades in developing. As early as 1818 there were calls for a reorganization of the circuits and the potential of adding another justice or so to the Court. Several politically motivated issues led the increase to be delayed for almost twenty years. Between 1807 and 1837 nine states entered the union and usually they came in pairs – one in the south and one in the north. Just as new circuits were being organized and the number of justices increased, new states would be admitted thus complicating the problem. Presidential and sectional politics also delayed the expansion of circuit as well as the number of justices. The seemingly quadrennial presidential candidate Daniel Webster

[37] Ibid., 161.
[38] *United States V the Schoon Peggy*, 5 U.S. 103 (1801).

attempting to portray himself as the champion of the west pushed for the addition of western circuits while others, including future president Martin Van Buren, worked to suppress Webster's efforts. So, for at least twenty years the Court's size remained unchanged as a result of politics. Ultimately, when both houses of Congress did agree to a plan it was because the election of Van Buren guaranteed another four years of Democratic rule and Jackson's appointments constituted a majority of the Court. Thus, there was no longer the fear that the addition of two new justices would change the composition of the Court.[39]

From the Van Buren to Lincoln administrations the south had a strong, if not majority, presence on the Court. In December of 1861 when the Court met for its annual session, there were three vacancies. President Abraham Lincoln, in his first message to Congress, stated he was unwilling to pick all of the nominees for the vacancies from the north and he wanted to save some to award to those states that were currently being overrun by rebellion.[40] The Republican organization act of 1862 equalized the circuits and brought the newer states into the system. This was done with partisan and sectional motivation as, at the time, a majority of the circuits were in the south. This reorganization was first proposed two months prior to the *Dred Scott* decision, so this appears to be a function of more partisan and sectional motivation rather than a reaction to the decision. Although, it is likely that this reorganization may never have occurred had it not been for the catalyst in the form of the Court's decision in *Dred Scott*. However, prior to January of 1862 there was not one Republican on the Supreme Court. The reorganization and the increase that took place in 1863 gave Lincoln and the Republicans the opportunity to limit the southern influence and by the end of 1864 there were five Lincoln appointees on the Court.

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[39] Curtis Nettels, "The Mississippi Valley and the Federal Judiciary, 1807-1837," *The Mississippi Valley Historical Review* 12, no. 2 (1925)., 225.
[40] Fred L. Israel, ed., *The State of the Union Messages of the Presidents: 1790-1966*, 3 vols., vol. 2 (New York: Chelsea House Publishers, 1966)., 1058.

During the debate on the passage of the 1862 and 1863 legislation there was little mention, positive or negative, of the *Dred Scott* decision.[41] So the decision does not seem to have been a significant factor in the enactment of the new legislation.

The Judiciary Act of 1866 allowing for the number of justices to fall to seven was aimed directly at President Andrew Johnson. This action – Republican v Democrat or Congress v President – put the Supreme Court directly in the middle of a battle. As mentioned previously, it was during this time Republicans in the House approved a measure – which never passed the Senate – that would require a two-thirds vote of the Supreme Court to invalidate laws of Congress.[42] While this action must be considered to be a direct shot at the Court, the reduction in the size of the Court was designed to deny Johnson the opportunity to make Court appointments. That the reduction was aimed at the Court does not seem likely. Memories of *Dred Scott* were not gone, but the legislation passed earlier in the decade as well as deaths, resignations, and subsequent appointments to the Court had brought about great changes to the *Dred Scott* Court. There were just three survivors from that Court – all from the majority – and in the interim, the sitting justices had done nothing up to that point to arouse the anger of Congress as a whole.

The final time in the nineteenth century, indeed, the last time the Court's size was changed was 1869. The change back to nine was, once again, Republican v Democrat with the Republicans shaping the judiciary to favor particular sections of the country with circuit alignment. This was not an anti-Court action, but certainly the Republicans were using the Court for political purposes. The bill was in its infant stages when it was learned Johnson would not run for election in 1868 and nowhere in the debates does one find negative comments directed

[41] *Congressional Globe, 37 Cong., 3 Session*.
[42] Kutler, *Judicial Power and Reconstruction Politics*., 35.

toward the justices.[43] Johnson's departure likely helped the bill gain support with the only opposition to the bill coming with objections to organization and circuit matters that some deemed would increase the power of the judiciary excessively. The Judiciary Acts of 1866 and 1869, among other things, helped the Republicans in Congress tailor the judicial system better to meet the demands of the north and this was done through reorganizing the circuits and changing the size of the Court.[44]

In addition to the judiciary acts changing the size of the Court nine times during the century, these acts and others also directly affected the jurisdiction and terms of the Court as well as the justices' circuit duties. Congress controls the jurisdiction of the Court and so the Court may only rule in areas in which the Constitution originally mandated or those in which Congress allows. Most often during the nineteenth century, the Court was a pawn in sectional, partisan, or presidential politics. Even when Congress gave the Court more power there were frequently ulterior motives. For example, the Removal Act of 1875 granted full federal jurisdiction (that is, for the first time giving the federal Courts full jurisdiction over all cases, in law and equity, arising under the constitution, the laws of the United States, and treaties) greatly increasing the power of the courts. The rationale, however, for members of Congress who supported this measure was their concern about business interests being obstructed in state courts.[45] The growing significance of interstate commerce led members of Congress to look for alternative way to protect business interests and granting full federal jurisdiction to the courts was a way to achieve this.

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[43] Charles Fairman, *History of the Supreme Court of the United States: Reconstruction and Reunion, 1864-1888, Part One* (New York: Macmillan Publishing, Co., 1971)., 487.
[44] Kutler, *Judicial Power and Reconstruction Politics*., 62.
[45] *The Jurisdiction and Removal Act of 1875, 18 Stat. 470* (Federal Judiciary Center, [cited March 19 2005]); available from http://www.fjc.gov/history/home.nsf.

The notorious Judiciary Act of 1801 made it easier for creditors to recover debts in the federal courts, thus strengthening the federal government. This was one of the portions of the act most alarming to the Republicans who saw this as strengthening the federal government at the expense of the states. The diversity and removal jurisdictional changes present in the 1801 Act were repealed with the Judiciary Act of 1802 and the jurisdiction of the federal courts reverted to pre-1801 rules. However, the Judiciary Act of 1802 did allow that if there was a split decision at the circuit court level that either party could refer the case to the Supreme Court.[46]

Perhaps the most significant piece of legislation in the nineteenth century affecting the Court's jurisdiction was the Act of 1891. This act – in addition to creating circuit courts of appeal and relieving the justices of their circuit riding duties – provided for broadened review of criminal cases as well as some discretionary jurisdiction for the Supreme Court. Immediately, the effect of the act could be seen in the business before the Court. In 1890 there were 623 new cases before the Court while in 1891 there were 379 and in 1892 there were 275 new cases.[47]

At least five pieces of congressional legislation changed the jurisdiction of the Court. The first three, chronologically, were largely political. In 1801 and 1802 partisan politics drove the change in jurisdiction and in 1875 it was partisan or interest group politics driving the expanded jurisdiction of the Court. Seemingly, the only significant piece of legislation affecting the Court's jurisdiction in the nineteenth century passed without ulterior motives was the Act of 1891. Where politics did come into play in the years proceeding passage was the different plans offered. Interestingly, this act was, in its entirety, the most important piece of judicial legislation since the Judiciary Act of 1789.

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[46] *The Judiciary Act of 1802, 2 Stat. 156* (Federal Judiciary Center, [cited March 19 2005]); available from http://www.fjc.gov/history/home.nsf.

[47] Felix and James M. Landis Frankfurter, *The Business of the Supreme Court: A Study in the Federal Judicial System* (New York: Macmillan Company, 1928)., 101.

In addition to using jurisdiction, or lack thereof, to control the power of the Supreme Court, the circuit-riding duties assigned to the justices helped to keep the Court "in check." By most accounts the circuit duties were not a duty enjoyed by the justices and they contributed to the poor health and likely a shortened lifespan of many of the justices. The official rationale for circuit duties was to keep the justices close to the people. These duties also served another purpose not found objectionable to the other two branches: circuit duties kept the justices out of Washington and deprived them of opportunities to stay in town and become involved politically, which would strengthen their position.

The Federalist's Judiciary Act of 1801 replaced the justices on the circuit by creating sixteen judgeships for six circuits.[48] The reason given for this action in debates was it allowed the justices to concentrate on their work in Washington. Two additional reasons may also have been on the Federalist's minds. First, it allowed for the appointment of sixteen additional Federalist judges and, second, it would allow the Supreme Court, controlled by Federalists at this time, to expand the power of the Court and, by extension, the federal government. The Judiciary Act of 1802 restored the justices' circuit duties, although a reorganization of the circuits to make them smaller made the duties less strenuous.[49]

Two acts affecting circuit duties did not seem to involve much, if any, politics. The Act of 1844 relieved the justices of holding more than one term of the circuit court within one district in any year and the Act of 1869 only required the justices to be in attendance in the circuit once every two years.[50] The Judiciary Acts of 1837 and 1866, however, were a different story. The Act of 1837, as mentioned during the discussion on size changes, had been in the process but

[48] *The Judiciary Act of 1801, 2 Stat. 89* (Federal Judiciary Center, [cited March 19 2005]); available from http://www.fjc.gov/history/home.nsf.
[49] *The Judiciary Act of 1802, 2 Stat. 156* ([cited).
[50] *The Judiciary Act of 1869, 16 Stat. 44* (Federal Judiciary Center, [cited March 19 2005]); available from http://www.fjc.gov/history/home.nsf.

each time one house passed a reorganization act with a change in duties, the other house, presidential and sectional politics would prevent passage. The Act of 1866 was a geographical reorganization of the circuits by the Republicans to reduce the southern state influence in the federal government who, prior to this act, controlled five of the nine circuits.[51]

The Act of 1891 set up separate Circuit Courts of Appeal and relieved the justices of their circuit duties. This bill did not come easily as there were many ideas and proposals submitted during the 1870s and 1880s but, because of politics, those plans failed to move forward. It took until 1890 before the House of Representatives overwhelmingly approved a bill relieving the justices of circuit duties and established the United States Courts of Appeal.

The final area to be discussed in which portions of acts of Congress affected the Supreme Court is the terms of the Court. This appears to be the least used of the three as a political tool. Most often the start of the term was changed to lengthen the term in response to a backlog of the Court's docket. The first two changes, however, were quite political. The Judiciary Act of 1801 created new June and December terms to replace the February term. When the 1801 Act was repealed with the Judiciary Act of 1802 and the June and December terms were abolished, this had the effect of preventing the Court from meeting for fourteen months.[52] The Court did not meet from December of 1801 until the first Monday in February of 1803. The other changes were, for the most part, non-political. The first of these came in 1826 when Congress advanced the opening day to the second Monday in January. This actually was a compromise because relief of circuit duties was denied. In 1844 Congress moved opening day to the first Monday in December, an 1866 statute allowed the Court to hold special terms and on their own they expanded their term by convening in October. The Judiciary Act of 1873 formally fixed the

[51] *Judicial Circuits Act of 1866, 14 Stat. 209* (Federal Judiciary Center, [cited March 19 2005]); available from http://www.fjc.gov/history/home.nsf.
[52] *The Judiciary Act of 1802, 2 Stat. 156* ([cited).

second Monday of October as the start of the term, with this taking effect with the beginning of the Waite Court in 1874. Finally, in the twentieth century, Congress formally changed the starting date of the new term of the Court to the first Monday in October.

In addition to examining the relationship between the Court and the other two branches, an analysis was done addressing the view of the Court in the media of the day. In particular, an analysis of newspapers of the century was conducted Readex.com which has a collection of colonial and early national newspapers collected by the American Antiquarian Society supplemented by newspaper collections from institutions and historical societies. There are ninety-seven newspapers in this collection from twenty-two states and the District of Columbia ranging from Maine to Georgia and from Indiana to Louisiana. Within the newspapers available were over 61,000 issues from the nineteenth century. (See Table 3 for complete list)

An analysis was also done of magazines on the Library of Congress' American Memory Collection website which contains twenty-three magazines covering the time period of 1815-1900. The 955 volumes include magazines of general interest, such as *Atlantic Monthly* and *Harper's New Monthly Magazine*, and titles aimed at more specific audiences, such as *Manufacturer and Builder*, *Scientific American*, *The United States Democratic Review*, and *The American Missionary*. (See Table 4 for complete list)

There were hundreds of articles browsed with sixty-two articles selected for analysis. In each of the years there was a case from *Congressional Quarterly's* "Major Decisions of the Supreme Court" a search was conducted for that year using the name of the Supreme Court case and / or Supreme Court as keywords. In the years of the Judiciary Acts addressed in this paper, Supreme Court or Judiciary and / or Act were entered as keywords. When choosing newspaper or periodical articles there was an attempt, if there was a choice, to include for analysis

newspapers or periodicals supporting both sides of the issue. For example, a newspaper supportive of the Jeffersonians would be analyzed as well as a Federalist-leaning paper if both were available. Weaknesses in this approach would be the limitation of having access to only those newspapers that are online and using the wrong, or not enough, keywords. One additional limitation is that while Readex.com claims to have newspapers up to 1876 there were, in fact, none reporting on any cases after 1860.

Areas that will be discussed include the reaction of the media around the country to the Congress changing the size of the Supreme Court, the Judiciary Acts affecting the circuit duties of the justices and jurisdiction of the Court, the decisions of the Court, and what public opinion seemed to be with respect to the Court.

Congress' changing of the size of the Court during the first part of the century did not provoke much attention in the papers. The primary focus of the papers during the battles over the Judiciary Acts of 1801 and 1802 was the reorganization and jurisdiction, i.e., power, of the judiciary as a whole and this will be addressed at a later point. However, in the latter part of the century, several articles published were critical of the many changes to the size of the Court in the 1860s. In its April 1868 issue, *Harper's*, in an article entitled "Congress and the Supreme Court" was critical of Congress for reducing the number of justices to seven as well as other facets of the Judiciary Act of 1866.[53] In May 1881 *The North American Review* published an article "The Needs of the Supreme Court" calling for relief for the Court in addressing its enormous caseload and that a plan to increase, yet again, the size of the Court to twelve was not the answer.[54] Also, in 1881, *The North American Review*, wrote in support of the Court and critical of Congress and the politics that it played with the judiciary.

[53] George B. Butler, "Congress and the Supreme Court," *Harper's New Monthly Magazine*, April 1868.
[54] William Strong, "The Needs of the Supreme Court," *The North American Review*, May 1881.

> There was scarcely an instance in this curious legislative history relating to the Supreme Court where the reduction or increase of the number of judges was not directly the results of an effort to secure a well-defined and clearly understood purpose of political strategy. In some instances the identical purpose of the change was too obvious for concealment and the expected decision of the majority of the court followed the change too closely to leave a doubt of the purpose. Within a few years after the organization of the Supreme Court, the rival parties of the country began to claim it as a right to put judges on the bench who would support their views.[55]

While this article is unusually blunt, most periodicals in the last half of the century were siding with the Court as opposed to Congress in their battles. The one notable exception would be immediately after *Dred Scott v Sanford* (1857) as the Court was on the receiving end of significant criticism in the northern press.

Generally, the further into the century the more supportive of the Supreme Court the papers and, especially, the magazines were. The first decade of the century was the worst as far as partisanship in the papers. As the century progressed and the partisanship of newspapers lessened, the reports on the Court became more objective. During the time of the Judiciary Acts of 1801 and 1802, the "midnight appointments" of Adams, and the appointment of John Marshall to the bench the papers were particularly vicious. The *Richmond Enquirer* on February 6, 1801 in response to the nomination of Marshall wrote that "the very sound of that man's name [Marshall] is an insult upon truth and justice."[56] Two weeks prior, the *Washington Federalist* had a lengthy article extolling the virtues of the Federalists attempts to reorganize the judiciary.[57] Two years later, during the impeachment controversy, the *Washington Federalist* was accused by the *Aurora*, of Philadelphia, of being "under the patronage of CJ Marshall."[58]

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[55] John T. Strong, "Partisanship in the Supreme Court," *The North American Review*, February 1881.
[56] "Federal Judiciary," *Richmond Enquirer*, February 6 1801.
[57] *Washington Federalist*, January 26 1801., 3.
[58] "Mandamus," *The Aurora*, May 16 1803.

In 1838, the *United States Magazine and Democratic Review* carried an article critical of the Judiciary Act of 1837, which increased the size of the Court to nine and expanded its jurisdiction. Entitled "Supreme Court of the United States: Judges and Jurisdiction," the article argued that "this august body" had too much power and that "no act of congress has yet carried into complete effect the full constitutional grant of jurisdiction."[59] Furthermore, it claimed that "the action of this branch of our political system has tended more fatally than any other towards that federal centralization of power deprecated by the State-rights."[60] The other articles examined addressing the jurisdiction and circuit duties of the justices were far more favorable to the Court. Ten years later in July 1848, the same magazine, the *United State Democratic Review*, argued the judiciary must maintain its independence and should ignore popular opinion. Of course, the ten years in between the two articles saw five Democrats appointed to the high court and that may explain the change in attitude of the periodical.

As mentioned previously, *Harper's New Monthly*, in April 1868, argued for more pay for the justices, expansion of the jurisdiction of the Court, and also used examples of significant cases decided to make its argument for the expansion of jurisdiction.[61] Also mentioned earlier was the May 1881 article in the *North American Review* criticizing the twelve-person court plan and, instead, arguing for assistance for the Court in the form of a circuit court of appeals and being released from circuit duties themselves. Finally, appearing in 1881 in the November issue of the *North American Review* was an article by former Associate Justice William Strong who

[59] "The Supreme Court of the United States: Its Judges and Jurisdiction," *United States Magazine and Democratic Review*, January 1838.
[60] Ibid.
[61] Butler, "Congress and the Supreme Court."

served from 1870-1880 making the case for the establishment of a Courts of Appeal and the elimination of circuit duties for the justices.[62]

The vast majority of *Congressional Quarterly's* ninety-four decisions were not found in the searches that were done. There were only three decisions that drew significant criticism in the periodicals examined – *Marbury v Madison,* 5 U.S. 37 (1803), *Fletcher v Peck,* 10 U.S. 87 (1810), and *Dred Scott v Sanford,* 60 U.S. 393. The *Civil Rights Cases,* 109 U.S. 3 (1883) and *Pollock v Farmers' Loan and Trust Co.*, 158 U.S. 601 (1895) were the recipients of subtle criticism in periodicals. All other cases that were found in the papers were reported in a quite neutral manner with, possibly, a word or two giving a positive slant to the decision. However, this author is not making the argument that these were the only cases criticized in the papers of the country.

Reaction to *Marbury* was split according to the party affiliation of the newspaper. The Republican paper of the District of Columbia, the *National Intelligencer*, wrote on March 16, 1803 that "the Court has trespassed upon the powers of the president."[63] The *Washington Federalist* two weeks earlier wrote that the "Court had considered each point at great length and with great ability…interesting and important opinion."[64] Overall, the newspapers seemed to be more in favor of the decision than opposed with most papers maintaining neutrality and just printing either the opinion or the facts and holdings of the case. For example, the *Connecticut Gazette* had a brief piece in its March 16, 1803 edition reporting the main questions considered by the Court and the main points of its decision.[65]

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[62] Strong, "The Needs of the Supreme Court."
[63] Charles Warren, *The Supreme Court in United States History in Two Volumes*, 2 vols., vol. 1 (Boston: Little, Brown, and Company, 1926)., 245.
[64] "Mandamus," *Washington Federalist*, February 25 1803.
[65] *Connecticut Gazette*, March 16 1803., 3.

The great majority of the articles examined addressing *Fletcher v Peck* (1810) was critical of the Court. In *Fletcher,* the Court used the Contracts Clause of the Constitution as an instrument of judicial nationalism which provoked public outcry from proponents of states' rights.[66] The March 8, 1810 edition of the *Richmond Enquirer* stated "whatever may have been the scope and spirit of their reasoning? The opinion of the Supreme Court was improperly and incautiously decided and pronounced."[67] Another Virginia paper, the *Farmer's Repository*, let the headline speak for itself "Another Federal Outrage, or the Reign of Terror Revived."[68]

Scott v Sandford (1857), as might be expected, received positive or negative press depending upon the section of the country in which the newspaper or periodical was published. *Putnam's Monthly Magazine of American Literature, Science, and Art* called the opinion "weak and disingenuous" and picked apart the justices one by one.[69] The *Pittsfield Sun* carried reprints of three articles. Two from the *Washington Union* in Washington, Kentucky were in favor of the decision. One justified the decision justice by justice while the other defended specifically Chief Justice Roger B. Taney.[70] The third reprint was from the *Albany Atlas and Argus* and wrote of the uproar caused by the decision.[71]

The New Englander and Yale Review, in January 1884, carried an article that was mildly critical of the Court in the *Civil Rights Cases* (1883) as it struck down as unconstitutional two sections of the Civil Rights Act of 1875.[72] They wrote that "the decision has caused great consternation in certain circles" and implied that the reputation of the Court was at stake. The

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[66] *Fletcher V Peck*, 10 U.S. 87 (1810).
[67] "Yazoo," *Richmond Enquirer*, March 8 1810.
[68] "Another Federal Outrage, or the Reign of Terror Revived," *Farmer's Repository*, September 21 1810.
[69] "History, as Expounded by the Supreme Court," *Putnam's Monthly Magazine of American Literature, Science, Art*, May 1857.
[70] "Dred Scott," *Pittsfield Sun*, July 9 1857.; "Dred Scott Ii," *Pittsfield Sun*, April 23 1857.
[71] "Dred Scott 3," *Pittsfield Sun*, July 9 1857.
[72] William W. Patton, "The U.S. Supreme Court and the Civil Rights Act," *New Englander and Yale Review*, January 1884.

May 1895 edition of the *North American Review* carried an article by President U.S. Grant's first Secretary of the Treasury that was also mildly critical of the decision in *Pollock v Farmer's Loan and Trust* (1895) where the Court ruled an income tax unconstitutional.[73]; [74]

Cases that are well known today such as *McCulloch v Maryland* (1819), *Dartmouth v Woodward* (1819), and *Gibbons v Ogden* (1824) all received attention in the papers and the reports were generally neutral with a slightly positive slant toward the Court. For example in *McCulloch*, the *Commercial Advertiser* of New York started its report with "we have the satisfaction to report…."[75] The other cases on *CQ's* list that were found reported in the newspapers were written in a neutral, straight news manner.

The issues and interests that dominate the life of the United States eventually become the business of the federal courts. However, before they make their way to the Court, they most often are regulated or affected by Congress in some manner. The nineteenth century Supreme Court can be divided into two eras – 1800-1864 (the Marshall and Taney Courts) and 1864-1900 (the Chase, Waite, and Fuller Courts). Coincidentally, that corresponds with a change in chief justices with the departure of Taney and the arrival of Chase. Not coincidentally, these eras correspond with the nation changing from one era to another.

Most of the significant cases handled by the Supreme Court in the last thirty-six years of the century seem to fall into one of three categories; the Civil War, the effect of the commerce clause on state legislation, and interpretation of the Civil War Amendments.[76] The Civil War and its conclusion introduced new political ideas in this country. These were ideas or thoughts of

[73] George S. Boutwell, "The Income Tax. I. The Decision of the Supreme Court," *The North American Review*, May 1895.
[74] *Pollock V Farmer's Loan and Trust*, 429 157 (1895).
[75] "Important Case," *Commercial Advertiser*, March 2 1819., 2.
[76] Currie, *The Constitution in the Supreme Court, the First Century: 1789-1888*., 286.

nationalism, supremacy of national authority, and extension of federal activities.[77] The Civil War also generated many cases including some in which actions of the president or Congress were declared unconstitutional, thus giving the Court a chance to flex its muscles and insert itself into the national debate.

Congressional and state legislation passed as a result of the industrial revolution and the increase in commerce after the war caused a tremendous proliferation in the number of cases coming before the Court. Legislation passed at the national and state level from 1862 to 1875 demonstrates the increased commercial activity of the country.[78] Frankfurter and Landis list twenty-six statutes affecting the railroad alone during this time. In addition to railroad legislation there was also land acts, e.g., the Homestead Act and Morrill Act, both of 1862 as well as other acts addressing the settling of the west. All of this legislation created litigation that eventually found its way to the Supreme Court.

As Congress passed legislation creating controversies that would eventually find their way to the Supreme Court as well as legislation expanding the jurisdiction of the Court, it was better able to assert itself. In the first seventy-five years of its existence, the Court had produced sixty-eight volumes of decisions; the nine terms of the Chase Court produced fifteen volumes of decisions.[79] The increase in constitutional litigation was more remarkable still as in less than nine years under Chase; the Court resolved as many constitutional cases as it had in the preceding twenty-eight years.[80] The increased workload was a double-edged sword for the Court. In 1850 there were 253 cases pending before the Court; in 1870 there were 636; and in 1890 there were 1816. The disadvantage to this is that the Court was overwhelmed, while the advantage was that

[77] Frankfurter, *The Business of the Supreme Court: A Study in the Federal Judicial System*., 57.
[78] Ibid., 57.
[79] Currie, *The Constitution in the Supreme Court, the First Century: 1789-1888*., 286.
[80] Ibid., 286.

it helped to make the point that reform was needed and it came in the form of the Judiciary Act of 1891 creating the Courts of Appeal, relieving the justices of circuit duty, and granting an increased amount of discretionary jurisdiction. But once again it was Congress that was responsible for the increased workload and the relief.

The Supreme Court simply did not enjoy either a position to be assertive or even proactive as an institution throughout the nineteenth century. When it had asserted itself, there were often threats of or even actual retaliation by Congress. Immediately after *Marbury,* the Court handed down the decision in *Stuart v Laird* (1803) stating that the repeal of the Judiciary Act of 1801 – which had strengthened the federal courts – was within the power of Congress. After *Dred Scott* the Court was reminded of its vulnerability just as it was in the 1860s when the House of Representatives passed a bill requiring a two-thirds vote in the Supreme Court to overturn congressional legislation. Chief Justice Salmon P. Chase, during Reconstruction, skillfully wrote opinions that were more political works of art rather than standard legal opinions in order to steer clear of the Radical Republican's wrath.

The justices of the Court during the century lacked the professional quality that emerged in twentieth century. Very few members of the Court came prepared with prior federal judicial experience during this time. On one hand, this should not come as a surprise inasmuch as the "feeder system" for the Supreme Court of the twentieth and twenty-first centuries was not established until 1891, this is to say the Federal Courts of Appeal. Many of the presidents had patronage as a primary objective when considering whom to nominate rather than individuals with at least a modicum of qualifications. This was certainly not a practice that benefited the development of the Court.

If the periodicals of the day are indicative of public opinion, what is learned is that opinion was divided – according to the section of the country and political party. Few decisions of the Court caught the attention of the entire country. Most decisions were reported nationwide in a matter-of-fact manner. Those that were controversial were mainly so in particular sections of the country because they only affected the region.

The events in the nation during the century neatly create two distinct eras of the Court – pre and post-Civil War. During the first era, the Court often reflected the development of the nation as a whole as it ruled on sectional issues and its development was affected by sectional conflict. In the post-Civil War era the Court became more of a national institution as the nation embraced new ideas of nationalism, supremacy of federal authority, and the expansion of federal activities. It was during the second era that the Court inserted itself into the national debates and controversies more often, but only because Congress had expanded the Court's jurisdiction. Prior to the Judiciary Act of 1891, the most significant act of the century was that of 1875 giving the Court full federal jurisdiction. That was done in large part because members of Congress wanted to prevent the state courts from interfering with the expansion of commerce and the industrial revolution that was taking place after the Civil War. So yes, the Court became more active and ruled many more acts of Congress unconstitutional in this era, but it was because the legislative branch had given it the jurisdiction to do so.

The Court was also conscious of the fact that Congress could, and did, change the size of the Court. Seven times in the first sixty-nine years of the century the size of the Court changed and it was most often for political reasons. For almost one hundred years the Supreme Court and its supporters attempted to rid the Court's members of their circuit duties. As early 1791 there was discussion of the elimination of those duties and it was not until one hundred years later

Congress eliminated them as it was deemed to be in the best interest of the other two branches if the justices were kept out of town.

There was, in fact, little over which the Court had control during this century. Its development was predetermined by Congress and impacted by the various events throughout the nation. As the United States began to think more in terms of united states rather than separate states, the role of the Supreme Court increased as the issues and resulting decisions affected the entire nation rather than one portion.

Table 1

94 Supreme Court cases in the 19th Century listed in *Congressional Quarterly's* Major Decisions of the Supreme Court, 1790-2002

[Epstein ,, 86-96.]

Marbury v. Madison, 5 U.S. 137 (U.S., 1803)
Bank of United States v. Deveaux, 9 U.S. 61 (U.S., 1809)
Fletcher v. Peck, 10 U.S. 87 (U.S., 1810)
Martin v. Hunter's Lessee, 14 U.S. 304 (U.S., 1816)
Sturges v. Crowninshield, 17 U.S. 122 (U.S., 1819)
McCulloch v. Maryland, 17 U.S. 316 (U.S., 1819)
Trs. of Dartmouth College v. Woodward, 17 U.S. 518 (U.S., 1819)
Cohens v. Virginia, 19 U.S. 264 (U.S., 1821)
Gibbons v. Ogden, 22 U.S. 1 (U.S., 1824)
Osborn v. President, Directors & Co. of Bank, 22 U.S. 738 (U.S., 1824)
Wayman v. Southard, 23 U.S. 1 (U.S., 1825)
Martin v. Mott, 25 U.S. 19 (U.S., 1827)
Ogden v. Saunders, 25 U.S. 213 (U.S., 1827)
Mason v. Haile, 25 U.S. 370 (U.S., 1827)
Brown v. Maryland, 25 U.S. 419 (U.S., 1827)
Willson v. Black Bird Creek Marsh Co., 27 U.S. 245 (U.S., 1829)
Foster v. Neilson, 27 U.S. 253 (U.S., 1829)
Weston v. Charleston, 27 U.S. 449 (U.S., 1829)
Craig v. Missouri, 29 U.S. 410 (U.S., 1830)
Worcester v. Georgia, 31 U.S. 515 (U.S., 1832)
Barron v. Baltimore, 32 U.S. 243 (U.S., 1833)
New York v. Miln, 36 U.S. 102 (U.S., 1837)
Briscoe v. President & Directors of Bank of Kentucky, 36 U.S. 257 (U.S., 1837)
Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420 (U.S., 1837)
Kendall v. United States, 37 U.S. 524 (U.S., 1838)
Holmes v. Jennison, 39 U.S. 540 (U.S., 1840)
Dobbins v. Commissioners of Erie County, 41 U.S. 435 (U.S., 1842)
Prigg v. Pennsylvania, 41 U.S. 539 (U.S., 1842)
Louisville, C. & C. R. Co. v. Letson, 43 U.S. 497 (U.S., 1844)
Rhode Island v. Massachusetts, 45 U.S. 591, 628-629 (U.S., 1846)
Thurlow v. Massachusetts, 46 U.S. 504 (U.S., 1847)
Luther v. Borden, 48 U.S. 1 (U.S., 1849)
Smith v. Turner, 48 U.S. 283 (U.S., 1849)
Cooley v. Bd. of Wardens, 53 U.S. 299 (U.S., 1852)
Pa. v. Wheeling & Belmont Bridge Co., 54 U.S. 518 (U.S., 1852)
Den Ex Dem. Murray v. Hoboken Land & Improv. Co., 59 U.S. 272 (U.S., 1856)
Dodge v. Woolsey, 59 U.S. 331 (U.S., 1856)
Scott v. Sandford, 60 U.S. 393 (U.S., 1857)
Ableman v. Booth, 62 U.S. 506 (U.S., 1859)
Ky. v. Dennison, 65 U.S. 66 (U.S., 1861)

Brig Amy Warwick, 67 U.S. 635 (U.S., 1863)
Ex parte Milligan, 71 U.S. 2 (U.S., 1866)
Cummings v. Mo., 71 U.S. 277 (U.S., 1867)
Ex parte Garland, 71 U.S. 333 (U.S., 1867)
Miss. v. Johnson, 71 U.S. 475 (U.S., 1867)
Ex parte McCardle, 74 U.S. 506 (U.S., 1869)
Texas v. White, 74 U.S. 700 (U.S., 1869)
Woodruff v. Parham, 75 U.S. 123 (U.S., 1869)
Paul v. Va., 75 U.S. 168 (U.S., 1869)
Veazie Bank v. Fenno, 75 U.S. 533 (U.S., 1869)
Hepburn v. Griswold, 75 U.S. 603 (U.S., 1870)
Legal Tender Cases, 79 U.S. 457 (U.S., 1871)
Low v. Austin, 80 U.S. 29 (U.S., 1872)
Bradley v. Fisher, 80 U.S. 335 (U.S., 1872)
Slaughterhouse Cases, 83 U.S. 36 (U.S., 1873)
Bradwell v. State of Illinois, 83 U.S. 130 (U.S., 1873)
Minor v. Happersett, 88 U.S. 162 (U.S., 1875)
Walker v. Sauvinet, 92 U.S. 90 (U.S., 1876)
United States v. Reese, 92 U.S. 214 (U.S., 1876)
Henderson v. Mayor of N.Y., 92 U.S. 259 (U.S., 1876)
United States v. Cruikshank, 92 U.S. 542 (U.S., 1876)
Munn v. Ill., 94 U.S. 113 (U.S., 1877)
Hall v. De Cuir, 95 U.S. 485 (U.S., 1878)
Ex parte Siebold, 100 U.S. 371 (U.S., 1880)
Stone v. Mississippi., 101 U.S. 814 (U.S., 1880)
Kilbourn v. Thompson, 103 U.S. 168 (U.S., 1881)
United States v. Stanley, 109 U.S. 3 (U.S., 1883)
Hurtado v. California, 110 U.S. 516 (U.S., 1884)
Ex parte Yarbrough, 110 U.S. 651 (U.S., 1884)
Edye v. Robertson, 112 U.S. 580 (U.S., 1884)
Boyd v. United States, 116 U.S. 616 (U.S., 1886)
Yick Wo v. Hopkins, 118 U.S. 356 (U.S., 1886)
Santa Clara County v Southern Pacific Raily Co., 118 U.S. 394 (1886)
Wabash, St. Louis & Pac. Ry. v. Ill., 118 U.S. 557 (U.S., 1886)
Mugler v. Kansas, 123 U.S. 623 (U.S., 1887)
Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (U.S., 1888)
Kidd v. Pearson, 128 U.S. 1 (U.S., 1888)
Chae Chan Ping v United States, 130 U.S. 581 (1889)
Geofroy v. Riggs, 133 U.S. 258 (U.S., 1890)
Louisville, N. O. & T. R. Co. v. Mississippi, 133 U.S. 587 (U.S., 1890)
Chicago, M. & St. P. Ry. v. Minnesota, 134 U.S. 418 (U.S., 1890)
Counselman v Hitchcock, 142 U.S. 547 (1892)
United States v. Texas, 143 U.S. 621 (U.S., 1892)
Virginia v. Tennessee, 148 U.S. 503 (U.S., 1893)
United States v. E. C. Knight Co., 156 U.S. 1 (U.S., 1895)
California v. Southern Pacific Co., 157 U.S. 229 (U.S., 1895)

In re Debs, 158 U.S. 564 (U.S., 1895)
Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (U.S., 1895)
Allgeyer v. Louisiana, 165 U.S. 578 (U.S., 1897)
Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 (U.S., 1897)
Holden v. Hardy, 169 U.S. 366 (U.S., 1898)
Smyth v. Ames, 169 U.S. 466 (U.S., 1898)
United States v. Wong Kim Ark, 169 U.S. 649 (U.S., 1898)
Williams v Mississippi, 170 U.S. 213 (1898)

Table 2

Landmark Judicial Legislation
http://www.fjc.gov/history/home.nsf

1801
The Judiciary Act of 1801 reorganized the federal judiciary and established the first circuit judgeships.

1802
The Judiciary Act of 1802 abolished the circuit judgeships and reorganized the federal courts.

Amendatory Act of 1802 Revised the terms of the Supreme Court, with the effect of prohibiting the Court from meeting for fourteen months (December 1801 to February 1803).

1807
Establishment of the Seventh Circuit and a seventh seat on the Supreme Court.

1837
Establishment of the Eighth and Ninth Circuits and additional seats on the Supreme Court.

1855
Establishment of a California Circuit.

1863
Establishment of a Tenth Circuit and a tenth seat on the Supreme Court.

1866
Reorganization of the judicial circuits and reduction in the size of the Supreme Court.

1869
Establishment of circuit judgeships and setting the number of the Supreme Court seats at nine.

1873
Act of 1873 formally fixed October as the start of the Court's term.

1875
Authorization for the federal courts to exercise the full jurisdiction allowed under the Constitution.

1891
Establishment of the U.S. Circuit Courts of Appeals.

Table 3

Newspapers found at www.readex.com

Alabama
Alabama Courier (5 issues)
Alabama Watchman (14 issues)
Cahawba Press and Alabama Intelligencer (4 issues)
Huntsville Gazette (1 issues)

Arkansas
Arkansas Gazette (61 issues)

Connecticut
Connecticut Gazette (2898 issues)
Connecticut Journal (2758 issues)
Middlesex Gazette (2372 issues)
Windham Herald (1247 issues)

Delaware
American Watchman (1125 issues)
Delaware Gazette (96 issues)

District of Columbia
National Intelligencer (1873 issues)
National Messenger (453 issues)
Olio (59 issues)
Washington Federalist (1123 issues)

Georgia
Columbian Museum (104 issues)
Georgia Gazette (398 issues)
Milledgeville Republican (2 issues)
Reflector (65 issues)

Indiana
Brookville Enquirer (78 issues)

Kentucky
Eagle (52 issues)
Globe (4 issues)
Kentucky Journal (1 issues)
Mirror (31 issues)
People's Friend (1 issues)
Political Theatre (7 issues)
Reporter (55 issues)
Telegraph (5 issues)
Union (112 issues)
Weekly Messenger (59 issues)

Louisiana
Louisiana Advertiser (77 issues)
Louisiana Herald (35 issues)
Louisiana Planter (1 issues)
Louisiana Rambler (2 issues)
Louisianian (34 issues)

Maine
Cumberland Gazette (347 issues)
Eastern Argus (2487 issues)
Falmouth Gazette (91 issues)

Maryland
Baltimore Patriot (5290 issues)
Federal Gazette (2331 issues)

Massachusetts
Boston Gazette (2117 issues)
Boston Gazette (3718 issues)
Boston News-Letter (3500 issues)
Boston Patriot (541 issues)
Boston Price-Current (91 issues)
Columbian Centinel (3099 issues)
Massachusetts Spy (2371 issues)
New-Bedford Mercury (1374 issues)
Newburyport Herald (3330 issues)
Russell's Gazette (229 issues)
Salem Gazette (2900 issues)
Salem Mercury (168 issues)
Sun (3521 issues)

New Hampshire
Freeman's Journal (95 issues)
New-Hampshire Gazette (4015 issues)

New Jersey
New-Jersey Journal (1830 issues)

New York
Commercial Advertiser (7170 issues)
Rivington's New-York Gazette (12 issues)
Rivington's New-York Gazette (2 issues)
Rivington's New York Gazetteer (136 issues)
Rivington's New-York Loyal Gazette (8 issues)
Royal Gazette (596 issues)

North Carolina
Carolina Centinel (337 issues)
Carolina Federal Republican (191 issues)
Morning Herald (7 issues)
Newbern Herald (24 issues)
North-Carolina Journal (104 issues)
Star (262 issues)
True Republican (29 issues)

Ohio
Cadiz Informant (1 issues)
Impartial Expositor (1 issues)
Independent Press (1 issues)
Ohio Register (49 issues)
Political Observatory (2 issues)
Spirit of Liberty (2 issues)
Weekly Recorder (328 issues)
Western American (100 issues)

Pennsylvania
American Weekly Mercury (1371 issues)
Dunlap's American Daily Advertiser (1496 issues)
Federal Gazette (1629 issues)
Poulson's American Daily Advertiser (6330 issues)

Rhode Island
Newport Mercury (4425 issues)
Providence Gazette (3527 issues)

South Carolina
South-Carolina Gazette and General Advertiser (425 issues)
South-Carolina State-Gazette (1516 issues)
State Gazette of South-Carolina (652 issues)

Tennessee
Clarksville Gazette (38 issues)
Review (32 issues)
Tennessee Herald (12 issues)
Tennessee Weekly Chronicle (16 issues)
Town Gazette (17 issues)
Weekly Chronicle (13 issues)
Western Pilot (1 issues)

Vermont
Vermont Gazette (2199 issues)
Vermont Journal (1901 issues)

Virginia
Enquirer (1905 issues)

West Virginia
Farmer's Repository (659 issues)

Table 4

Magazines found at American Memory

http://memory.loc.gov/ammem/ndlpcoop/moahtml/snchome.html

Title of periodical	Coverage
The American Missionary	(1878 - 1901)
The American Whig Review	(1845 - 1852)
The Atlantic Monthly	(1857 - 1901)
The Bay State Monthly	(1884 - 1886)
The Century	(1881 - 1899)
The Continental Monthly	(1862 - 1864)
The Galaxy	(1866 - 1878)
Garden and Forest	(1888 - 1897)
Harper's New Monthly Magazine	(1850 - 1899)
The International Monthly Magazine	(1850 - 1852)
The Living Age	(1844 - 1900)
Manufacturer and Builder	(1869 - 1894)
The New England Magazine	(1886 - 1900)
The New-England Magazine	(1831 - 1835)
New Englander	(1843 - 1892)
The North American Review	(1815 - 1900)
The Old Guard	(1863 - 1867)
Punchinello	(1870)
Putnam's Monthly	(1853 - 1870)
Scientific American	1846 - 1869)
Scribner's Magazine	(1887 - 1896)
Scribner's Monthly	(1870 - 1881)
The United States Democratic Review	(1837 - 1859)

Works Cited

Connecticut Gazette, March 16 1803, 3.

Washington Federalist, January 26 1801, 3.

Abraham, Henry J. *Justices, Presidents, and Senators: A History of U.S. Supreme Court Appointments from Washington to Clinton*. New York: Rowman and Littlefield Publishers, Inc., 1999.

Allegeyer V Louisiana, 165 U.S. 578 (1897).

Annals of Congress, 6th Congress, 1st Session, 1800.

"Another Federal Outrage, or the Reign of Terror Revived." *Farmer's Repository*, September 21 1810.

Atkins V Virginia, 536 U.S. 304 (2002).

Boutwell, George S. "The Income Tax. I. The Decision of the Supreme Court." *The North American Review*, May 1895, 598-601.

Bush V Gore, 531 U.S. 98 (2000).

Butler, George B. "Congress and the Supreme Court." *Harper's New Monthly Magazine,* April 1868, 657-63.

Chicago, Minneapolis & St. Paul Ry. Co. V Minnesota, 132 U.S. 472 (1889).

Congressional Globe, 37 Cong., 3 Session, 1863.

Currie, David P. *The Constitution in the Supreme Court, the First Century: 1789-1888*. Chicago: University of Chicago Press, 1990.

———. *The Constitution in the Supreme Court, the Second Century: 1888-1986*. Chicago: University of Chicago Press, 1990.

"Dred Scott." *Pittsfield Sun*, July 9 1857, 1.

"Dred Scott 3." *Pittsfield Sun*, July 9 1857, 2.

"Dred Scott Ii." *Pittsfield Sun*, April 23 1857, 1.

Ellis, Richard E. "Thomas Jefferson." In *Oxford Companion to the Supreme Court of the United States*, edited by Kermit Hall. New York: Oxford University Press, 1992.

Epstein, Lee; Jeffrey A. Segal; Harold J. Spaeth; Thomas G. Walker. *The Supreme Court Compendium: Date, Decisions, and Developments*. 3 ed. Washington, D.C.: Congressional Quarterly Press, 2003.

Ex Parte Garland, 71 U.S. 333 (1867).

Ex Parte Mccardle, 74 U.S. 506 (1868).

Fairman, Charles. *History of the Supreme Court of the United States: Reconstruction and Reunion, 1864-1888, Part One*. New York: Macmillan Publishing, Co., 1971.

"Federal Judiciary." *Richmond Enquirer*, February 6 1801.

Fletcher V Peck, 10 U.S. 87 (1810).

Foster V Neilson, 27 U.S. 253 (1829).

Frankfurter, Felix and James M. Landis. *The Business of the Supreme Court: A Study in the Federal Judicial System*. New York: Macmillan Company, 1928.

Graber, Mark. "Naked Land Transfers and American Constitutional Development." *Vanderbilt Law Review* 53, no. January (2000): 73-121.

Grutter V Bollinger, 539 U.S. 306 (2003).

Haskins, George, Herbert Johnson. *History of the United States Supreme Court, Vol. 2*. New York: Macmillan Publishing, Co., 1981.
"History, as Expounded by the Supreme Court." *Putnam's Monthly Magazine of American Literature, Science, Art*, May 1857, 538-48.
Illinois V Caballes, 125 S. Ct. 834 (2005).
"Important Case." *Commercial Advertiser*, March 2 1819, 2.
Israel, Fred L., ed. *The State of the Union Messages of the Presidents: 1790-1966*. 3 vols. Vol. 2. New York: Chelsea House Publishers, 1966.
Judicial Circuits Act of 1866, 14 Stat. 209 Federal Judiciary Center, [cited March 19 2005]. Available from http://www.fjc.gov/history/home.nsf.
The Judiciary Act of 1801, 2 Stat. 89 Federal Judiciary Center, [cited March 19 2005]. Available from http://www.fjc.gov/history/home.nsf.
The Judiciary Act of 1802, 2 Stat. 156 Federal Judiciary Center, [cited March 19 2005]. Available from http://www.fjc.gov/history/home.nsf.
The Judiciary Act of 1869, 16 Stat. 44 Federal Judiciary Center, [cited March 19 2005]. Available from http://www.fjc.gov/history/home.nsf.
The Jurisdiction and Removal Act of 1875, 18 Stat. 470 Federal Judiciary Center, [cited March 19 2005]. Available from http://www.fjc.gov/history/home.nsf.
Kilbourn V Thompson, 103 U.S. 168 (1881).
Kutler, Stanley I. *Judicial Power and Reconstruction Politics*. Chicago: University of Chicago Press, 1968.
License Tax Cases, 72 U.S. 462 (1867).
"Mandamus." *The Aurora*, May 16 1803, 1.
"Mandamus." *Washington Federalist*, February 25 1803.
Martin V Mott, 25 U.S. 19 (1827).
McCloskey, Robert G. *The American Supreme Court*. Chicago: University of Chicago Press, 1960.
Nettels, Curtis. "The Mississippi Valley and the Federal Judiciary, 1807-1837." *The Mississippi Valley Historical Review* 12, no. 2 (1925): 202-26.
Patton, William W. "The U.S. Supreme Court and the Civil Rights Act." *New Englander and Yale Review*, January 1884, 1-20.
Plessy V Ferguson, 163 U.S. 537 (1896).
Pollock V Farmer's Loan and Trust, 429 157 (1895).
Prize Cases, 67 U.S. 635 (1863).
Remini, Robert V. *Andrew Jackson and the Course of American Democracy, 1833-1845*. 3 vols. Vol. 3. New York: Harper & Row, Publishers, 1984.
Roe V Wade, 410 U.S. 113 (1973).
Slaughterhouse Cases, 83 U.S. 36 (1873).
Smyth V Ames, 169 U.S. 466 (1898).
Strong, John T. "Partisanship in the Supreme Court." *The North American Review*, February 1881, 176-87.
Strong, William. "The Needs of the Supreme Court." *The North American Review*, May 1881, 437-51.
Stuart V Laird, 5 U.S. 299 (1803).
"The Supreme Court of the United States: Its Judges and Jurisdiction." *United States Magazine and Democratic Review*, January 1838, 143-72.

Texas V White, 74 U.S. 700 (1869).
United States V Cruikshank, 92 U.S. 542 (1876).
United States V Klein, 80 U.S. 128 (1871).
United States V the Schoon Peggy, 5 U.S. 103 (1801).
Warren, Charles. *The Supreme Court in United States History in Two Volumes*. 2 vols. Vol. 1. Boston: Little, Brown, and Company, 1926.
"Yazoo." *Richmond Enquirer*, March 8 1810, 3.

The war of 1904-1905 between Russia and Japan made the first one and Britain nearly enemies, with the end of the war political situation changed. In 1907 the Triple Entente of Great Britain, Russia and France was achieved as a countermeasure to the expansion of the Triple Alliance of Germany, Austria and Italy in Balkans. Still, while the reign of King Edward VII was taking place, many of the British were concerned with domestic matters. Some important changes in the way that people lived and were governed happened.Â Most of the Ireland became the Irish Free State, independent of British rule in all but name. One more result of the disturbances in Ireland was the development of the new Irish Sinn Fein political party. At the turn of the 20th century, the Russian autocracy, as the last, most durable and therefore, arguably, most successful absolute monarchy in modern European history, was rapidly becoming an anachronism in the European state system. Not unlike other European regimes in the past, it faced major and growing political challenges to its continuation and even survival. These challenges were exacerbated by the rapid social and economic growth, starting in the late 1880s-1890s, that was causally linked with and complicated the resolution of political problems. On the one hand, the imperial governme History of the united states. Lecture 2. Questions for discussion. 1. What forces stood behind the United States territorial acquisitions and U.S. westward expansion? 2. What was the victory in the course of the war of 1812 connected in the minds of Americans with? 3. How were first explorers of the West called? What role did they play? Do you know any names?