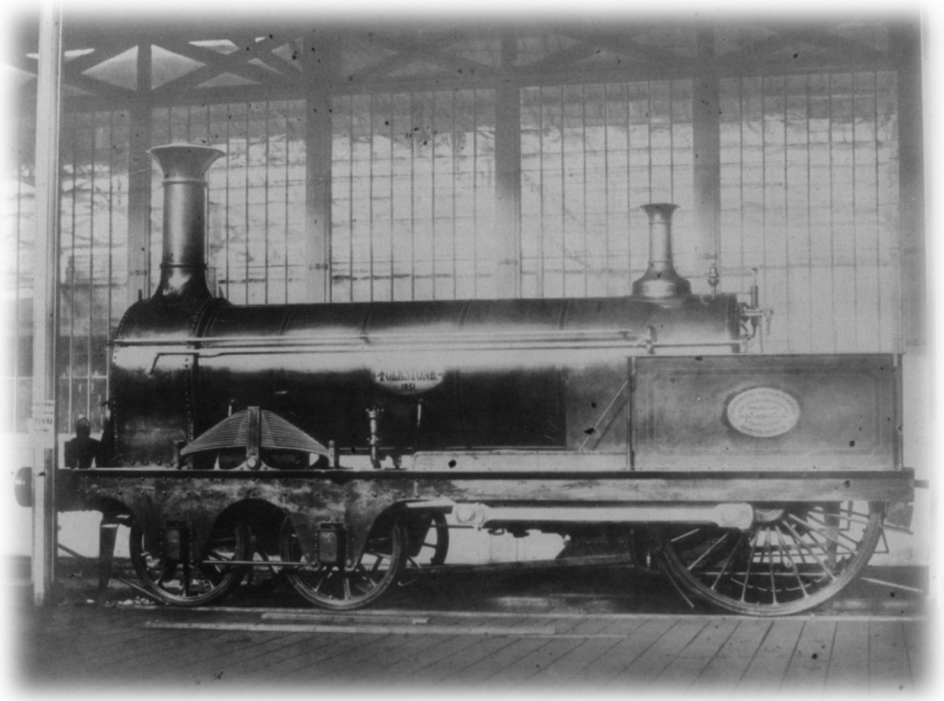
Cases that Shaped the Federal Courts

Louisville, Cincinnati, and Charleston Rail-road Co. v. Letson

1844



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Central Question

Should a corporation be considered a citizen of a state for purposes of federal jurisdiction?

Historical Context

The United States experienced what historians have called a "market revolution" in the early decades of the nineteenth century. Advances in transportation and communication facilitated the faster movement of people and goods, helping to foster industrialization, westward migration, and the growth of interstate commerce. The rise of the railroads was perhaps the most important cause of the dramatic changes sweeping the nation. The railroad boom began in earnest in the 1830s and was well underway by 1850, with thousands of miles of track having been laid east of the Mississippi River.

Accordingly, many of the largest corporations in nineteenth-century America were railroads. By their very nature, railroads did business across state lines and made frequent contacts with employees, passengers, farmers, and businesses all over the country. As a result of these contacts, railroads were constantly involved in litigation arising from personal injury, breach of contract, and other business disputes. Because corporations were artificial creations rather than natural persons, the problem of determining the courts in which they could sue and be sued was a significant one. The issue became more important as the decades after the Civil War witnessed a virtual explosion in the size of railroads and the scope of their interstate activities. The *Letson* case, coming near the beginning of the railroad boom, was an important doctrinal step along the path of defining the federal courts' jurisdiction over corporations.

Legal Debates Before *Letson*

Under section 11 of the Judiciary Act of 1789, the U.S. circuit courts had jurisdiction over cases "between a citizen of the State where the suit is brought and a citizen of another State"—more commonly known as diversity jurisdiction. In 1806, the Supreme Court held in *Strawbridge v. Curtiss* that the invocation of diversity jurisdiction required complete diversity, meaning that no plaintiff could share common citizenship with any defendant. While determining the citizenship of an individual litigant was typically a straightforward matter, the citizenship of a corporation, composed of multiple stockholders, was more complicated. In *Bank of the United States v. Deveaux* (1809), the Court held that corporations, being artificial beings, could not themselves be citizens for purposes of federal jurisdiction. Instead, the ability of a corporation to sue and be sued in the federal courts on the basis of diversity jurisdiction would be determined by the citizenship of its constituent

individuals. If the corporation were sued by a plaintiff—or sued a defendant—whose citizenship was different from that of all of the corporation's shareholders, the suit could be maintained in federal court. As corporations grew in size, did business more widely, and had more shareholders, it became increasingly difficult for federal courts to assert jurisdiction over them. More than three decades later, the Court had an opportunity to revisit the issue presented in *Deveaux* when it heard the *Letson* case.

The Case

In 1841, Thomas Letson, a citizen of New York, brought a suit for breach of contract against the Louisville, Cincinnati, and Charleston Rail-road Company, a South Carolina corporation, in the U.S. Circuit Court for the District of South Carolina. The railroad moved to have the suit dismissed on the grounds that the federal court did not have jurisdiction based on diversity of citizenship. Several of the corporation's shareholders were not citizens of South Carolina, and therefore not citizens of the state where the suit was brought. These included the state of South Carolina itself, two individuals from North Carolina, and two other corporations, some of whose shareholders were from New York. The presence of the New York shareholders presented an additional issue, as they lacked diversity of citizenship with the plaintiff. The circuit court nevertheless allowed the trial to proceed, and the jury returned a verdict for the plaintiff. The railroad appealed to the Supreme Court of the United States.

The Supreme Court's Ruling

The Supreme Court ruled 5–0 to affirm the judgment of the circuit court, holding that the court properly had jurisdiction over the case based on diversity of citizenship. After explaining that the suit was not barred by sovereign immunity, even though the state of South Carolina was a shareholder of the defendant corporation, Justice James Wayne's majority opinion turned to the alleged lack of diversity of citizenship among the parties. Doing so required Wayne to reflect upon *Deveaux*, a precedent that seemed to apply directly to *Letson*. That decision, he wrote, had "never been satisfactory to the bar," nor "entirely satisfactory to the court." Chief Justice Marshall in particular, who had written the decision, had not been pleased with the outcome of the case. The Court thus overturned *Deveaux*, holding that a corporation, although it might have members from other states, was a citizen of its state of incorporation for the purposes of suing and being sued in the federal courts. The shareholders, Wayne reasoned, were not actually parties to the suit, but merely individuals having an interest in its outcome. The railroad was therefore deemed to be a citizen of South Carolina, regardless of the citizenship of its shareholders, thereby creating diversity of citizenship with the plaintiff.

Aftermath and Legacy

By making it easier for corporations to sue and be sued in the federal courts, the *Letson* decision helped give rise to a system of corporate litigation based on diversity of citizenship that lasted for more than a century. In the second half of the nineteenth century, the United States became both increasingly urbanized and industrialized at an ever-quickening pace. Accordingly, the number and size of corporations grew dramatically. Corporations also engaged in progressively more interstate commerce, aided by the growth of the nation's railroads, and therefore had more contacts with citizens of other states. The increase in transactions occurring across state lines inevitably led to more litigation involving individual plaintiffs suing out-of-state corporations.

Supreme Court jurisprudence in the decades after *Letson* continued to facilitate corporate litigation in the federal courts. In 1870, the Court held in *Railroad Company v. Harris* that a corporation could be sued in a state other than where it was incorporated. *Harris* was extended by *Ex parte Schollenberger* in 1878, which allowed corporations sued in state courts anywhere but their state of incorporation to remove those suits to federal court. Soon thereafter, it became clear that the federal courts were generally more hospitable forums for corporate defendants, and that most plaintiffs preferred to bring their suits in state court. As a result, some states passed laws declaring corporations doing business within the state to be citizens of the state, thereby defeating diversity jurisdiction with respect to local plaintiffs and preventing removal of suits to federal court. The Supreme Court ruled against this practice in *St. Louis and San Francisco Railway Co. v. James* (1896), holding that corporations could limit their citizenship to their state of incorporation.

Corporations continued into the twentieth century to maneuver with the aim of getting lawsuits against them into federal court whenever possible. The Supreme Court's landmark 1938 decision in *Erie Railroad Co. v. Tompkins* somewhat dampened corporate enthusiasm for the federal forum. There, the Court held that federal courts hearing diversity cases not governed by statute must apply the law of the forum state, rather than the more favorable "federal common law" that had developed. In 1958, Congress enacted a statute declaring that corporations were citizens not only of their state of incorporation, but of states where they maintained their principal places of business. The change greatly curtailed the ability of corporations to remove lawsuits to federal court based on diversity of citizenship.

Discussion Questions

- Which Supreme Court ruling makes more sense to you: *Deveaux* or *Letson*? Why?
- Was it wrong for the Supreme Court to abandon the rule it had set forth in *Deveaux*? Why or why not?
- Why might an increased ability to sue corporations in federal court based on diversity of citizenship have been initially advantageous to plaintiffs?
- Why did corporations come to prefer litigating in federal court rather than state court?

Documents

Supreme Court of the United States, Opinion in *Bank of the United States v. Deveaux*, March 15, 1809

In the Deveaux *case, the Supreme Court established the rule that a corporation's citizenship was equivalent to that of its individual stockholders. A corporation, in the Court's view, was merely a collection of individuals acting under a legal name, and not a citizen in its own right. By making some corporations citizens of multiple states, the ruling made it more difficult for the federal courts to exercise diversity jurisdiction over them.*

That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name. If the corporation be considered as a mere faculty, and not as a company of individuals, who, in transacting their joint concerns, may use a legal name, they must be excluded from the courts of the union.…

However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states. Aliens, or citizens of different states, are not less susceptible of these apprehensions, nor can they be supposed to be less the objects of constitutional provision, because they are allowed to sue by a corporate name. That name, indeed, cannot be an alien or a citizen; but the persons whom it represents may be the one or the other; and the controversy is, in fact and in law, between those persons suing in their corporate character, by their corporate name, for a corporate right, and the individual against whom the suit may be instituted. Substantially and essentially, the parties in such a case, where the members of the corporation are aliens, or citizens of a different state from the opposite party, come within the spirit and terms of the jurisdiction conferred by the constitution on the national tribunals.…

If the constitution would authorize congress to give the courts of the union jurisdiction in this case, in consequence of the character of the members of the corporation, then the judicial act ought to be construed to give it. For the term citizen ought to be understood as it is used in the constitution, and as it is used in other laws. That is, to describe the real persons who come into court, in this case, under their corporate name.…

If a corporation may sue in the courts of the union, the court is of opinion that the averment in this case is sufficient.

Being authorized to sue in their corporate name, they could make the averment, and it must apply to the plaintiffs as individuals, because it could not be true as applied to the corporation.

Document Source: *Bank of the United States v. Deveaux*, 9 U.S. 61, 86–88, 91–92 (1809).

Supreme Court of the United States, Opinion in *Louisville, Cincinnati, and Charleston Rail-road Company v. Letson*, March 15, 1844

Justice James Wayne's majority opinion in Letson *asserted that the Court's opinion in* Deveaux *had come to be disfavored by lawyers and judges, including Chief Justice John Marshall, who had written it. The federal courts had become increasingly unavailable to corporations that had shareholders from multiple states and therefore lacked diversity of citizenship with opposing parties. In* Letson*, the Court changed course, ruling that a corporation was an artificial person whose citizenship derived from its state of incorporation. The decision helped to bring about a system of corporate diversity litigation that lasted for more than a century.*

We will here consider that averment in the plea which alleges that the court has not jurisdiction, "because the Louisville, Cincinnati, and Charleston Rail-road Company is not a corporation whose members are citizens of South Carolina, but that some of the members of the said corporation are citizens of South Carolina, and some of them … are and were at the time of commencing the said action, citizens of North Carolina."

The objection is equivalent to this proposition, that a corporation in a state cannot be sued in the Circuit Courts of the United States, by a citizen of another state, unless all the members of the corporation are citizens of the state in which the suit is brought.

The suit, in this instance, is brought by a citizen of New York in the Circuit Court of the United States for the district of South Carolina, which is the locality of the corporation sued.

Jurisdiction is decreed, because it is said, it is only given, when "the suit is between a citizen of the state where the suit is brought and a citizen of another state." And it is further said that the present is not such a suit, because two of the corporators are citizens of a third state.…

Our first remark is, that the jurisdiction is not necessarily excluded by the terms, when, "the suit is between a citizen of the state where the suit is brought and a citizen

of another state," unless the word citizen is used in the Constitution and the laws of the United States in a sense which necessarily excludes a corporation.

A corporation aggregate is an artificial body of men, composed of divers constituent members *ad instar corporis humani* [in the image of a human], the ligaments of which body politic, or artificial body, are the franchises and liberties thereof, which bind and unite all its members together; and in which the whole frame and essence of the corporation consist. . . . It must of necessity have a name, for the name is, as it were, the very being of the constitution, the heart of their combination, without which they could not perform their corporate acts, for it is nobody to plead and be impleaded, to take and give, until it hath gotten a name.…

Composed of persons, it may be that the members are citizens—and if they are, though the corporation can only plead and be impleaded by its name, or the name by which it may sue or be sued, if a controversy arises between it and a plaintiff who is a citizen of another state, and the residence of the corporation is in the state in which the suit is brought, is not the suit substantially between citizens of different states, or, in the words of the act giving to the courts jurisdiction, "a suit between a citizen of the state where the suit is brought and a citizen of another state?"

Jurisdiction, in one sense, in cases of corporations, exists in virtue of the character of members, and must be maintained in the courts of the United States, unless citizens can exempt themselves from their constitutional liability to be sued in those courts, by a citizen of another state, by the fact, that the subject of controversy between them has arisen upon a contract to which the former are parties, in their corporate and not in their personal character.

Constitutional rights and liabilities cannot be so taken away, or be so avoided. If they could be, the provision which we are here considering could not comprehend citizens universally, in all the relations of trade, but only those citizens in such relations of business as may arise from their individual or partnership transactions.

Let it then be admitted, for the purposes of this branch of the argument, that jurisdiction attaches in cases of corporations, in consequence of the citizenship of their members, and that foreign corporations may sue when the members are aliens—does it necessarily follow, because the citizenship and residence of the members give jurisdiction in a suit at the instance of a plaintiff of another state, that all of the corporators must be citizens of the state in which the suit is brought?

The argument in support of the affirmative of this inquiry is, that in the case of a corporation in which jurisdiction depends upon the character of the parties, the court looks beyond the corporation to the individuals of which it is composed for the purpose of ascertaining whether they have the requisite character, and for no other purpose.…

The constitutional grant of judicial power extends to controversies "between citizens of different states." The words in the legislative grant of jurisdiction, "of the state where the suit is brought and a citizen of another state," are obviously no more than equivalent terms to confine suits in the Circuit Courts to those which are "between citizens of different states." The words in the Constitution then are just as operative to ascertain and limit jurisdiction as the words in the statute.…

A suit then brought by a citizen of one state against a corporation by its corporate name in the state of its locality, by which it was created and where its business is done by any of the corporators who are chosen to manage its affairs, is a suit, so far as jurisdiction is concerned, between citizens of the state where the suit is brought and a citizen of another state. The corporators as individuals are not defendants in the suit, but they are parties having an interest in the result, and some of them being citizens of the state where the suit is brought, jurisdiction attaches over the corporation,—nor can we see how it can be defeated by some of the members, who cannot be sued, residing in a different state. It may be said that the suit is against the corporation, and that nothing must be looked at but the legal entity, and then that we cannot view the members except as an artificial aggregate.…

After mature deliberation, we feel free to say that the cases of Strawbridge and Curtis and that of the Bank and Deveaux were carried too far, and that consequences and inferences have been argumentatively drawn from the reasoning employed in the latter which ought not to be followed.… A corporation created by a state to perform its functions under the authority of that state and only suable there, though it may have members out of the state, seems to us to be a person, though an artificial one, inhabiting and belonging to that state, and therefore entitled, for the purpose of suing and being sued, to be deemed a citizen of that state.

Document Source: Louisville, *Cincinnati, and Charleston Rail-road Company v. Letson*, 43 U.S. 497, 551–55 (1844).

Daniel J.H. Greenwood, *University of Illinois Law Review*, 2017

Professor Daniel Greenwood of the Hofstra University College of Law took a critical view of the Court's nineteenth-century jurisprudence on corporate citizenship. Decisions like Deveaux *and* Letson *were motivated by a desire to ensure corporate access to the federal courts, he asserted, rather than on sound constitutional principles. The resulting legal regime, built on the fiction of corporate personhood, allowed corporations to avoid litigating in state courts almost entirely.*

Several of the Supreme Court's earliest corporate cases concern corporate access to the federal courts via the Constitution's Diversity Clause. *Deveaux* contended that for diversity purposes a corporation should be seen as its members, in what has come to be known as the "aggregate" theory. Accordingly, it held that the corporation could bring a federal suit if its "members" were diverse—even though those members would have no standing to bring suit in their own name.

Deveaux's specific rule did not last in the diversity area, where the Court abandoned it as soon as it would have hindered rather than helped corporate access to the federal courts. (The Court, that is, turned out to care about the result—granting corporate elites special access to federal courts—rather than the logic of its position.) But *Deveaux*'s rhetorical trick—disregarding corporate form to treat the entity as if it were just a group of citizens united on all relevant points—influences modern speech and religion cases such as [*First National Bank of Boston v.*] *Bellotti*, *Citizens United* [*v. Federal Election Commission*], and [*Burwell v.*] *Hobby Lobby* [*Stores, Inc.*] even when it is not cited. Each of those cases invokes a Deveaux-like metaphor of the corporation as unproblematically reflecting the views of (some of) the people composing it.…

The Constitution allows the federal courts to hear state law claims only in narrowly specified circumstances. The only relevant one is the Diversity Clause's grant of jurisdiction when the parties are citizens of different states. The Bank, of course, was not a citizen, as the Court recognized: "[t]hat invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen." So the clause is, on its face, entirely inapplicable. The text, then, gives no support to the Bank's claim.…

Nevertheless, the *Deveaux* Court granted political rights to this controversial entity, considered by some contemporaries to be a form of tyranny. The Court rationalized that the Bank could be "considered [not] as a mere faculty, [but] as a company of individuals who, in transacting their joint concerns, may use a legal name …." Accordingly, the corporation would be allowed to assert diversity jurisdiction if all its "members" were diverse to the defendant. In effect, the Court ignored the corporate entity entirely, as if the lawsuit were brought by a group of individuals. Of course, the individuals did not bring the suit. Had they done so, it would have been dismissed for lack of standing and damages: the taxes were the obligation of the corporation alone, not the individuals, and the seized property belonged to it alone, not the individuals.

The primary precedent cited by the Court was a line of English tax cases holding that a tax assessed on "inhabitants" (understood to mean landowners) includes corporate landowners, even though they do not have habitations. These cases, it contended, show that courts will ignore the ordinary meaning of words and instead look to the "substance" of a corporation rather than "technical" definitions or "a course of acute, metaphysical, and abstruse reasoning." …

As the national economy developed, corporations soon came to have shareholders from many states. *Deveaux*'s reasoning would have prevented such corporations from asserting diversity jurisdiction. The Court preserved *Deveaux*'s result by abandoning its rationale. The new doctrine, announced in the 1844 *Letson* decision, was that because a corporation is a creature of its state of incorporation, it may assert diversity jurisdiction as if it were a citizen of that state, even though it obviously is neither an individual nor citizen. The decision seems to rely on an idea, not unlike [*Trustees of*] *Dartmouth* [*College v. Woodward*], that the corporation is *quasi*-sovereign, partaking of the state's own right to assert diversity.

A few years later, in *Marshall v. Baltimore & Ohio R.R. Co.*, the Court found more privatized language to reach the same result, holding instead that shareholders would be counterfactually presumed to be citizens of the chartering state. *Marshall*, thus, combined *Deveaux*'s view that the corporation has no separate existence with *Letson*'s citizenship fiction to reach a conclusion justifiable, if at all, only on *Dartmouth*'s view that corporations are quasi-sovereigns.

Under the *Letson-Marshall* regime, it is irrelevant whether human beings associated with the corporation would be allowed to pursue diversity actions as individuals. The doctrinal contrast with *Deveaux*, thus, could not be stronger. The older case granted the firm rights in the name of its shareholders by pretending the firm did not exist or was a mere pass-through (conventionally known as the "association" theory). *Letson* grants it rights as an individual itself (conventionally called the "artificial entity" theory). *Marshall* combines the two theories while downplaying the role of the State (the "natural entity" theory).

All three cases agree, however, in granting corporations the rights of human citizens—and in ignoring both the details of corporate law as well as the actual consequences to human beings. In 1844, corporations generally incorporated where they did business, and many states refused to allow out-of-state corporations to do business in the state. Those rules have long since disappeared. Today, every state routinely allows corporations incorporated elsewhere to operate as if they were domestically incorporated. Conversely, states permit corporations to organize under their laws with no more connection to the state than an address at which the company can be served with process. Even in 1844, corporate shareholders were scattered over the country; today, though, it is safe to assume that all publicly traded corporations have shareholders in every state of the union and most countries abroad, many of which are not human, let alone citizens of the state of incorporation. The Dartmouth-Letson-Marshall result, however, continues to be good law.

Under the *Letson-Marshall* Constitution, a corporation may avoid the state courts by the simple expedient of incorporating in a small state where it has no business activities and is therefore unlikely to be engaged in state-law disputes. The rule flies in the face of

the clear text of the Constitution, which grants the privilege of diversity jurisdiction to citizens, not corporations. Moreover, it seriously limits state sovereignty by making it easy for a corporation to avoid state courts even while taking advantage of the state's economy. Apparently, state "police power" (the right to control the state's own economic policy, working conditions, contract and property rights, and tort law) is, in the Court's view, less important than protecting corporate activities from local interference.

Letson does not pretend that the Constitution's language requires, or even permits, the result. The power of the opinion rests, once again, in its metaphor: corporations should be treated as if the legal entity itself were a citizen because that fiction will lead to the desired result. But the *ancien régime* is dead, along with its corporate representation. In a democratic republic, citizenship rights belong to human beings, not institutions.

If *Deveaux* metaphorically looked through an "invisible" corporation, Letson sees more than is there, treating the organization as if it were a citizen. In neither case, however, did the Court take its metaphors seriously. *Deveaux* is not authority for piercing the veil nor for requiring corporate law to grant consumers or employees the right to "opt out" of supporting corporate lobbying or electioneering, and *Letson* is not authority for corporate citizenship—for example, to vote or be subject to jury duty and the draft. It did, of course, prefigure *Santa Clara* [*County v. Southern Pacific Railroad Co.*]'s declaration that corporations are "persons" for purposes of the Due Process Clause (but not the Apportionment Clause) of the Fourteenth Amendment—but that doctrine is similarly one-sided, protecting corporate elites against the citizenry on the authority of words that mean something else entirely.

Document Source: Daniel J.H. Greenwood, "Neofeudalism: The Surprising Foundations of Corporate Constitutional Rights," *University of Illinois Law Review* 2017, no. 1 (2017): 181–84, 194–96 (footnotes omitted).

Christopher J. Wolfe, *Harvard Journal of Law & Public Policy*, 2017

Some scholars and judges have pointed to Chief Justice John Marshall's statement in Trustees of Dartmouth College v. Woodward *(1819) that a corporation is "an artificial being, invisible, intangible, and existing only in contemplation of the law," as evidence that Marshall took a restrictive view of corporate personhood. University of Dallas professor of politics Christopher Wolfe argued in this 2017 piece that Marshall had a broad interpretation of the rights of corporate persons, as evidenced by cases such as* McCulloch v. Maryland*,* Osborn v. Bank of the United States*, and* Dartmouth College *itself. The restrictive statements regarding corporate personhood he made in cases such as* Deveaux *typically concerned the narrower issue of federal jurisdiction. In this context, the Taney Court's strong support for corporate personhood in*

Letson*, resulting in expanded protection for corporate rights, did not represent a fundamental departure from Marshall's jurisprudence.*

The main question of this Article is whether Marshall's view of corporate personhood necessarily entails a restrictive interpretation of the rights of corporate persons. This Article will argue that Marshall's statements suggesting a restrictive interpretation of corporate personhood do not entail a restrictive interpretation of their rights, given the context in which those statements were made.…

For Marshall, the question of whether the court had a duty to defend a corporate person's constitutional rights depended fundamentally on how the corporation in question was created. The restrictive statements Marshall occasionally made concerning corporate personhood did not have to do with whether the court had a duty to protect corporate persons' constitutional rights. Rather, those statements were made regarding either jurisdiction or the additional express powers given to a corporation by its charter. When Marshall did grant a corporation standing in court as an artificial person, there is no question that he considered it a duty to protect its rights.…

Most of the cases Marshall heard concerning corporations during his time on the Supreme Court involved banking corporations, particularly the Bank of the United States. This bank, with its congressional charter, was repeatedly challenged in court when states attempted to impose taxes upon it. Some of those court challenges involved arguments against the Bank based on the mere fact that it was a corporation.…

Even though the Bank of the United States conducted private business as well as public, Marshall held that this did not negate its status as a corporate person created for a public purpose. Corporations are defined as serving the public based on their stated objects found in their charter, not their individual corporate acts after they are created. They are also not absorbed into the state's control by their public purposes.…

Corporations are somewhere in between the public and the private spheres. They cannot be politically controlled by the government in the way a government agency would be, but they also must have some public purpose as their object. Those public objects are the ultimate reason for creating corporations, and are also the reason why government has a duty to protect legitimate corporate rights.…

Marshall also believed there was an implied constitutional duty under the Contract Clause of Article 1, Section 10 to defend the rights of corporate persons. For Marshall, once a corporation was created, a duty to protect its rights against statutory violations kicked in, since the charters of incorporation were constitutionally protected contracts.

Corporate persons had to meet several qualifications in order to be defended by the court, but in general Marshall considered it a matter of justice to defend their

rights. In *Dartmouth College*, Marshall defended the property rights of an eleemosynary corporation.…

For Marshall, the fact that a corporation had been incorporated and made a legal person by the state or national government did not automatically grant it standing in federal court. This was partially because they were artificial creatures of the law, which limited what types of court they could appear in.

The strictest requirement that Marshall imposed on corporations was that their access to federal court was limited by the terms of their charters. In the case of *Bank of the United States v. Deveaux*, Marshall was unwilling to grant standing even to a corporation created by the U.S. Congress, in part because the corporation was not a state "citizen" within the meaning of the Judiciary Act:

> The jurisdiction of this court being limited, so far as respects the character of the parties in this particular case, 'to controversies between citizens of different states,' both parties must be citizens, to come within the description.
>
> That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name. If the corporation be considered as a mere faculty, and not as a company of individuals, who, in transacting their joint concerns, may use a legal name, they must be excluded from the courts of the union.

Furthermore, the charter granted by Congress for the first Bank of the United States only used general language about the bank's standing: to "sue or be sued … in courts of record." Marshall was unwilling to construe this as authorization to sue in federal court.

However, if access to federal court was expressly mentioned in a congressionally-chartered corporation's charter, Marshall was willing to grant it. When the Second Bank of the United States was chartered, Congress made sure to expressly mention a right "to sue and be sued … in every circuit court of the United States." Marshall then confirmed that the court had jurisdiction to hear the corporation's case in *Osborn* ….

In spite of his strict requirements regarding access to federal court, Marshall maintained that a corporation derives its citizenship from the citizenships of the individuals who work for and lead it. This principle was stated most clearly by Marshall's dissent in the case of *Bank of the United States v. Dandridge*. There Marshall contended that the agents of a corporation are themselves the corporate person. To deny this would be to deny the basis for all of corporate law. Marshall wrote, "if this proposition can be successfully maintained, it becomes a talisman, by whose magic the whole fabric which the law has erected respecting corporations, is at once dissolved." Corporate acts are done by natural persons,

since that is the only way they can act given the entities that they are. To separate the legal entity of the corporation from the association of natural persons who run it is to flash the magic talisman to which Marshall referred. In *Deveaux*, Marshall admits that a corporation made of natural persons who are citizens is itself a citizen:

> [T]he term citizen ought to be understood as it is used in the constitution, and as it is used in other laws. That is, to describe the real persons who come to court, in this case, under their corporate name. That corporations composed of citizens are considered by the legislature as citizens, under certain circumstances, is to be strongly inferred from the registering act.

The problem for the first Bank of the United States in Deveaux was merely that the individuals comprising the bank lacked complete diversity of citizenship with the opposing party.

Marshall wanted to maintain the fabric of corporate law in American life for the public purposes that were served through it. He therefore upheld corporate personhood, even though certain courts were off limits to corporate persons due to the way their charters were written.…

In *Dartmouth College* and many other cases, Marshall claimed that the powers of a corporation were "express" powers and powers "incidental to its very existence." Marshall considered several powers to be essential to corporations' very existence as corporations. These implied powers included: immortality (the corporation continuing after its founders passed away or quit the corporation), individuality (including a unique corporate name and seal), the right to manage its own internal affairs, the right to own property, the right to make binding contracts in some mode, the right to assistance of counsel, and the right to sue and be sued in some kind of court. Marshall wrote in *Deveaux*:

> This power [to sue and be sued in some kind of court,] if not incident to a corporation, is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court, but to give a capacity to the corporation to appear, as a corporation, in any court which would, by law, have cognisance of the cause, if brought by individuals.

Marshall defended this essential right of corporate persons and several others in his rulings.…

My interpretation of Marshall's precedents and opinions about corporate personhood is that he followed closely the earlier common law defenses of corporations, applying them to the American context. In that application of common law to the American context, Marshall owed a great deal to Hamilton's arguments about the constitutionality of the Bank of the United States. Marshall's restrictive statements about corporate personhood did not amount to new restrictions on their rights, and were made either in contexts where

he was ruling on their access to federal court or defending prerogatives they had long held, under a new Constitution.…

The Taney Court provided even stronger support for corporate rights, loosening Marshall's restrictions on corporate persons' standing in federal court. In *Louisville, Cincinnati, & Charleston Railroad Company v. Letson*, Justice Wayne held that corporate persons were state citizens for purposes of establishing diversity jurisdiction, explicitly overturning Marshall's early rulings in *Bank of the United States v. Deveaux and Strawbridge v. Curtiss*. Interestingly, Justice Wayne claimed in his *Letson* opinion that in private conversations Chief Justice Marshall himself had changed his mind about the *Deveaux* restrictions on standing for corporations in federal court. Justice Wayne wrote in *Letson*:

> We remark too that the cases of Strawbridge and Curtiss and Bank and Deveaux have never been satisfactory to the bar, and that they were not, especially the last, entirely satisfactory to the Court that made them. They have been followed always most reluctantly and with dissatisfaction. By no one was the correctness of them more questioned than by the late chief justice who gave them. It is within the knowledge of several of us, that he repeatedly expressed regret that those decisions had been made, adding, whenever the subject was mentioned, that if the point of jurisdiction was an original one, the conclusion would be different.

Wayne's assertion about Marshall's ideas on this matter in *Letson* are confirmed by a private letter from Justice Story to James Kent, celebrating the 1844 decision. Justice Story wrote:

I equally rejoice, that the Supreme Court has at last come to the conclusion, that a corporation is a citizen, an artificial citizen, I agree, but still a citizen. It gets rid of a great anomaly in our jurisprudence. This was always [Justice Bushrod] Washington's opinion. I have held the same opinion for many years, and Mr. Chief Justice Marshall had, before his death, arrived at the conclusion, that our early decisions were very wrong.

Marshall may have considered his early opinions on the standing of corporations in federal court such as *Deveaux* to be wrong, but on the whole his jurisprudence consistently defended corporate persons' rights. His statement about corporations not being citizens in *Deveaux* was qualified by a proviso, and was followed ten years later by a strong assertion that corporations were persons in *Dartmouth College*. Marshall was a great supporter, at the end of the day, of corporate persons and their rights.

Document Source: Christopher J. Wolfe, "An Artificial Being: John Marshall and Corporate Personhood," *Harvard Journal of Law & Public Policy* 40, no. 1 (April 2017): 202, 217–19, 222–25, 228–30 (footnotes omitted).

Cases that Shaped the Federal Courts

This series includes case summaries, discussion questions, and excerpted documents related to cases that had a major institutional impact on the federal courts. The cases address a range of political and legal issues including the types of controversies federal courts could hear, judicial independence, the scope and meaning of "the judicial power," remedies, judicial review, the relationship between federal judicial power and states' rights, and the ability of federal judges to perform work outside of the courtroom.

- *Hayburn's Case* (1792). Could Congress require the federal courts to perform non-judicial duties?
- *Chisholm v. Georgia* (1793). Could states be sued in federal court by individual citizens of another state?
- *Marbury v. Madison* (1803). Could federal courts invalidate laws made by Congress that violated the Constitution?
- *Fletcher v. Peck* (1810). Could federal courts strike down state laws that violated the Constitution?
- *United States v. Hudson and Goodwin* (1812). Did the federal courts have jurisdiction over crimes not defined by Congress?
- *Martin v. Hunter's Lessee* (1816). Were state courts bound to follow decisions issued by the Supreme Court of the United States?
- *Osborn v. Bank of the United States* (1824). Could Congress grant the Bank of the United States the right to sue and be sued in the federal courts?
- *American Insurance Co. v. Canter* (1828). Did the Constitution require Congress to give judges of territorial courts the same tenure and salary protections afforded to judges of federal courts located in the states?
- *Louisville, Cincinnati, and Charleston Rail-road Co. v. Letson* (1844). Should a corporation be considered a citizen of a state for purposes of federal jurisdiction?
- *Ableman v. Booth* (1859). Could state courts issue writs of habeas corpus against federal authorities?
- *Gordon v. United States* (1865). Could the Supreme Court hear an appeal from a federal court whose judgments were subject to revision by the executive branch?
- *Ex parte McCardle* (1869). Could Congress remove a pending appeal from the Supreme Court's jurisdiction?
- *Ex parte Young* (1908). Could a federal court stop a state official from enforcing an allegedly unconstitutional state law?
- *Moore v. Dempsey* (1923). How closely should federal courts review the fairness of state criminal trials on petitions for writs of habeas corpus?

- *Frothingham v. Mellon* (1923). Was being a taxpayer sufficient to give a plaintiff the right to challenge the constitutionality of a federal statute?
- *Crowell v. Benson* (1932). What standard should courts apply when reviewing the decisions of executive agencies?
- *Erie Railroad Co. v. Tompkins* (1938). What source of law were federal courts to use in cases where no statute applied and the parties were from different states?
- *Railroad Commission of Texas v. Pullman Co.* (1941). When should a federal court abstain from deciding a legal issue in order to allow a state court to resolve it?
- *Brown v. Allen* (1953). What procedures should federal courts use to evaluate the fairness of state trials in habeas corpus cases?
- *Monroe v. Pape* (1961). Did the Ku Klux Klan Act of 1871 permit lawsuits in federal court against police officers who violated the constitutional rights of suspects without authorization from the state?
- *Baker v. Carr* (1962). Could a federal court hear a constitutional challenge to a state's apportionment plan for the election of state legislators?
- *Glidden Co. v. Zdanok* (1962). Were the Court of Claims and the Court of Customs Appeals "constitutional courts" exercising judicial power, or "legislative courts" exercising powers of Congress?
- *United States v. Allocco* (1962). Were presidential recess appointments to the federal courts constitutional?
- *Walker v. City of Birmingham* (1967). Could civil rights protestors challenge the constitutionality of a state court injunction, having already been charged with contempt of court for violating the injunction?
- *Bivens v. Six Unknown Named Agents* (1971). Did the Fourth Amendment create an implied right to sue officials who conducted illegal searches and seizures?
- *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982). Did the Bankruptcy Reform Act of 1978 violate the Constitution by granting too much judicial power to bankruptcy judges?
- *Morrison v. Olson* (1988). Could Congress empower federal judges to appoint independent counsel investigating executive branch officials?
- *Mistretta v. United States* (1989). Could Congress create an independent judicial agency to guide courts in setting criminal sentences?
- *Lujan v. Defenders of Wildlife* (1992). Could an environmental organization sue the federal government to challenge a regulation regarding protected species?
- *City of Boerne v. Flores* (1997). Could Congress reverse the Supreme Court's interpretation of the Constitution through a statute purportedly enforcing the Fourteenth Amendment?