Seriatim

Gerber, Scott Douglas

Published by NYU Press

Gerber, Scott Douglas.
Project MUSE. muse.jhu.edu/book/10631.

For additional information about this book
https://muse.jhu.edu/book/10631

For content related to this chapter
https://muse.jhu.edu/related_content?type=book&id=279427
Abraham, Henry, on early Supreme Court appointment process, 5
Ackerman, Bruce, 275, 284
Adams, Abigail, on William Cushing, 106; on Oliver Ellsworth, 307
Adams, John, ix, 6, 7, 19, 106, 172, 182, 210, 281, 322, 327, 330; on William Cushing, 100, 119n. 13; and A Defense of the Constitutions of Government of the United States of America (1787), 120n. 30; and Oliver Ellsworth, 310–11; on political conservatives, 36; on John Rutledge, 86; on trade, 44; turning down the chief justiceship, 28
Administrators of Moore v. Cherry (1792), 84
Admiralty jurisdiction, 164
Advisory opinions, 179; and Oliver Ellsworth, 293–96, 297, 304, 305, 314–16
Agrarianism, John Jay’s reliance upon, 44–45; and morality, 63n. 60
Alien and Sedition Acts: and William Cushing, 106; and Oliver Ellsworth, 308–11; and James Iredell, 211; and Bushrod Washington, 330–31
American Bible Society, 328, 336
American Revolution: impact on Jay Court, 29; and John Jay’s contributions to, 52–54; and relationship to John Jay’s career, 30–31; role of James Iredell in, 204–6
Anti-Federalists, 164, 166, 168, 173–74, 177, 183, 189n. 25
Appleby, Joyce, 277
Articles of Confederation, 102; disintegration of, 31; and John Jay’s experience with, 37; and state obstructionism, 42
Bankruptcy law, 333–35, 338–41, 342
Bar admission, and William Cushing, 115n. *; of John Jay, 30
Bas v. Tingy (1800), 247, 328–29
Bayard v. Singleton (1787), 200–201
Beard, Charles, 290n. 71
Bellamy, Joseph, 293–96, 315–16
Berger, Raoul, 260, 285n. 3, 291n. 90
Beveridge, Albert, and John Marshall’s apotheosis, 8
Bill of Rights, 188n. 21; William Cushing on, 104
Bingham v. Cabot (1795), 121n. 35
Biography, insights from, 4–7
Blackstone, William, and John Rutledge, 74
Bobbitt, Philip, on constitutional interpretation, 112; on textualism, 123n. 68
Bork, Robert, 287n. 17
Bradford, William, 176
Brailsford v. Georgia (1792, 1793), relationship of, to Chisholm v. Georgia (1793), 48–50
Bright, General Michael, 342
British debt cases, 164, 169–70, 178
Burke, Edmund, 267, 283, 289n. 56
Butler, Pierce, 210
Call, William, 186n. 12
Calvinism. See Bellamy, Joseph
Casto, William, 164, 196n. 52; on Samuel Chase, 18, 291n. 95; on James Iredell and William Paterson, 121n. 46; on pre-Marshall Court, 3–4
Chandler v. Secretary of War (1794), 114, 124n. 79
Christianity, 336; and James Wilson, 129, 146n. 12
Circuit courts, U.S., 6, 22n. 17, 167–69; and William Cushing, 103; and Oliver Ellsworth, 300, 303–7; and James Iredell, 215–18; and John Rutledge, 81–82, 87, 89; Bushrod Washington on, 323, 328, 330, 332–33, 341–43
Citizenship: internationalization of, 45; John Jay on rights and obligations of, 52–53; John Jay’s use of grand jury charges to teach rudiments of, 47, 66n. 71; John Jay’s views of, 32
Clay, Henry, 327
Coke’s Institutes, and John Rutledge, 82
Committee of Sixty, and John Jay, 31
Committees of Correspondence and Safety, and John Jay, 31
Common law, 331, 334, 336, 345; James Wilson on, 140–42, 153n. 97
Common law crimes, 263–64, 267, 269; and Oliver Ellsworth, 308–11
Common Pleas and General Sessions, S.C. Court of: John Rutledge as chief justice, 82–85
Commonwealth v. Caton (1782), 159–60, 175
Commonwealth v. Posey (1787), 159–60
Confiscation of Tory estates, 200–201
“Considerations on the Bank of North America,” 148n. 42
“Considerations on the Nature and Extent of the Legislative Authority of the British Parliament,” 128
Constitutional Convention of 1787, 4, 162, 164; and Oliver Ellsworth, 297–98; and John Rutledge, 75–80
Constitutional reform: and John Jay, 38; and separation of powers, 38–39; and weakness of federal judiciary, 51
Continental Congress, 4, 159, 186n. 10; and Oliver Ellsworth, 297; and John Jay’s presidency, 31; and John Jay’s role as secretary of foreign affairs, 37; and reputation in Europe, 40–42
Contract clause, 336–41, 344–45
Contract law: and John Jay, 43; and centrality of, in John Jay’s jurisprudence, 52–53
Convention of 1800. See Treaty of Mortefontaine
Cooper v. Telfair (1800), 11, 114, 247, 344–45
Corfield v. Coryell (1823, 1825), 345–46
Corwin, Edward, on pre-Marshall Court, 3 “Court” and “Country” philosophies, 270–71
Court reform (in Virginia), 160–61
Cover, Robert, on slavery in the Massachusetts judicial process, 115, 116–17
Currie, David, on William Cushing, 107, 111–12; on James Iredell and William Paterson, 121n. 46
Cushing, John, on William Cushing, 99, 118n. 4
Dallas, Alexander, 108, 110
Dartmouth College v. Woodward (1819), 337
Davie, William, 201, 208, 209, 210
Debt problems, in U.S. in the 1780s, 160, 163–64
Declaration of Independence, 4; and James Wilson, 128
Definitive Treaty of Peace with Britain (Paris Treaty of 1783), and John Jay, 42
De Longchamps Affair, and James Wilson, 152
Depression of the 1780s, in U.S., 163
Dewey, Donald, on William Cushing, 99, 118n.*; 121n. 41
Diplomacy: and John Jay’s return to, in 1794, 47, 50–51; John Jay’s views about, 31, 40
Dr. Bonham’s Case (1610), 9
Duxbury, Neal, 274, 284
Easterbrook, Frank, on William Cushing, 100n.*
Eastern Circuit, and John Jay’s grand jury charges, 41
Economic theory: historiography of, 64n. 58; and John Jay, 29; and protectionism, 44; relationship to John Jay’s jurisprudence, 32–45, 54
Education, of John Jay, 29–30
Eleventh Amendment, 28, 178; and
Index 357

Chisholm v. Georgia (1793), 3, 17, 49–50, 122n. 47; and sovereign immunity, 48–49; and state drive toward, 49–50

Equity jurisprudence, John Blair on, 171–72

Executive branch: and cooperation with judicial branch, 46, 55; John Jay’s view of, 31

Executors of Rippon v. Executors of Townsend (1795), 82–83

Federal criminal law, and John Jay, 66n. 70

Federalism: and John Jay, 29, 39, 42, 55; James Wilson on, 132–34, 139–40

Federalist Papers, 9, 120n. 30, 202, 208, 264


Federal jurisdiction: alienage, 164, 178; diversity, 164; over states as defendants, 164, 177–78

Fishe, David Hackett, on John Jay, 26

Flag Amendment, 278

Founding fathers, compared to John Jay, 27

Fowler v. Lindsey (1799), 123n. 67

Fries Rebellion, 264–65

Galloway Plan, and John Jay’s position, 30

Georgia, and limitation of federal courts, 49

Georgia v. Brailsford (1793, 1794), 170–72, 182

Glass v. Sloop Betsy (1794), 47, 50, 180

Goebel, Julius, Jr., on William Cushing, 111

Golden v. Prince (1814), 337–38

Goldstein, Leslie, on textualism, 113n.∗

Grand jury charges: and William Cushing, 101–2, 105–6, 114, 115–16, 117, 120n. 33; and Oliver Ellsworth, 303, 306, 310; Ralph Lerner on, 105

Grayson et al. v. Virginia (1793), 50

Great Britain: and commerce, 36; and example of the French, 62n. 40; and John Jay’s deference to, in law practice, 39–40, 51; John Jay’s posture toward, 34–36

Great Compromise, and William Paterson, 236–37

Green v. Biddle (1821, 1823), 337

Grinnell, F. W., on the origins of judicial review, 113

Haakonssen, Knud, 273–74

Haines, Charles Grove, on Jay Court, 28

Hamilton, Alexander, ix, 2, 7, 165, 177–80, 184, 196n. 53, 286n. 7; and debt assumption, 47; and Federalist Papers, 202; and informal advice, 46; and manipulation of election returns in 1800, 55; on John Rutledge, 84; on stability of states, 211, 212

Hamilton v. Eaton (1796), 304–5, 312

Hancock, John: on judicial federalism, 50; and ratification of U.S. Constitution, 102–3, 120n. 27

Harrison, Robert H., 198; and pre-Marshall Court, 2, 5

Haskins, George Lee, on pre-Marshall Court, 2

Hayburn’s Case (1792), 3, 11, 46, 114n.∗, 124n. 77, 168, 173–77, 179; and James Wilson, 131, 136–38

Henfield, Gideon, 141

Henry, Patrick, 2, 6, 157, 165, 169–70

Hobson, Charles, on John Marshall, 7; on John Marshall’s apotheosis, 7–8

Hollingsworth v. Virginia (1798), 192n. 31

Holt, Wyrthe, 290–91n. 87

Horwitz, Morton, 276

Houston v. Moore (1820), 348n. 43

Human nature: John Jay’s views of, 32–33, 53–54; James Wilson on, 130, 147n. 18

Hylton v. United States (1796), 3, 11, 139–40, 214, 245

Interdisciplinary scholarship, ix, 12–14, 24–25n. 36, 351

International law, and John Jay, 53–54

Invalid Pensioners Act, 11, 124n. 77; and William Cushing, 114n.∗; and James Iredell, 217

“Iredell’s Revisal,” 203

Izard, Ralph, on John Rutledge, 84

Jay, Peter and Mary Van Cortlandt, 29

Jay, Stewart, 279–83, 285, 288n. 32, 291n. 89
Jay Treaty: and Oliver Ellsworth, 301–4; negotiation of, 50–52; and John Rutledge, 6, 85–87; and Sixth Article, 51
Johnson, Herbert: on William Cushing, 99, 107n.*; on judicial recusal ethics, 122n. 58; on John Marshall, 125n. 88; on pre-Marshall Court, 2
Johnson, Thomas, and pre-Marshall Court, 4, 5
Johnson, William, 331–32; on William Cushing, 99–100
Johnston, Hannah (later Iredell), 199
Johnston, Samuel, 17, 198, 199, 200, 201
Jones v. Walker (1791), 169–70
“Judges’ Remonstrance, The” (1788), 159, 161, 174–75
“Judges’ Resignation, The” (1789), 159, 161, 174
Judiciary Act of 1789, 5, 8n.*, 10, 17, 28, 82, 85, 108, 164, 175, 177, 189n. 25, 193n. 35; and Oliver Ellsworth, 298–300; and William Paterson, 239–40, 253n. 72
Juries: discretion to find law and fact, 269–70; James Wilson on, 140, 151n. 81
“Justice Cushing’s Undelivered Speech on the Federal Constitution,” 102, 103–4
Kerber, Linda, 279
Keynes, John Maynard, 13
King’s College, and John Jay, 29
Kirtland, Robert, 159
Kissam, Benjamin, and John Jay’s legal apprenticeship, 30
Konig, David Thomas, 272–73
Kramnick, Isaac, 277
Law, and John Jay’s intellectual system, 29, 52–54, 67n. 79
Law lectures, by James Wilson, 120n. 30, 129, 142–43, 153n. 101
Lee, Richard Henry, on John Jay, 26; on suability of states, 211
Legal profession in Virginia, 156, 161
Lerner, Ralph, on grand jury charges, 105; on modern republicans, 53
Leuchtenburg, William H., on John Marshall’s apotheosis, 23n. 24
“Liberalism” and “republicanism,” as judicial philosophies, 271–72, 273, 277
Livingston, Robert, Jr., and John Jay, 30
Livingston, Sarah Van Brugh, marriage to John Jay, 30
Llewellyn, Karl, on legal scholarship, 12
Localism v. centralism, as explaining jurisprudence in 1790s, 282
Locke, John, and James Wilson, 147n. 20
Loyalism, and John Jay, 30
Loyalists, 160, 172; and claims of, 50
Maclaine, Archibald, 199, 210
Madison, James, ix, 7, 119n. 15, 162; on Oliver Ellsworth, 298; on suability of states, 211, 212; and James Wilson, 129, 131, 133, 149n. 55
Marbury v. Madison (1803), x, 2, 8n.*, 9–11, 24n. 33, 27, 137, 174, 194n. 42, 202, 264, 267
Marcus, Maeva: on Invalid Pensioners Act, 114n.*; on origins of judicial review, 24n. 33, 124n.79; on pre-Marshall Court, 3
Marshall, John, ix, x, 1, 2, 13, 14, 15, 18, 19, 117n.*, 123n. 73, 137, 166, 169, 177, 248–49; apotheosis of, 7–9; compared to John Jay, 26, 27, 56; and William Cushing, 100n.*, 117–18; on William Cushing, 100 n.*; 121n. 35; and innovations on the Supreme Court, 331–32; and judicial review, 113, 114, 202; and Marbury v. Madison (1803), 2, 8n.*, 9–11, 24n. 33; political skills of, 8n.*; profits from public service, 262; and seriatim opinion writing, 20, 106n.*; significance of, 1–4, 6, 117–18, 125n. 88; on suability of states, 211, 212; and textualism, 113n.*; Bushrod
Washington’s differences with, on bankruptcy law, 337–40; Bushrod Washington’s differences with, on interpreting statutes, 333–35; Bushrod Washington’s professional association and friendship with, 322, 324–28, 342; witness at Chase impeachment trial, 266, 267
Marshall Court, compared to Jay Court, 27, 28
Mason, George, objections to the U.S. Constitution, 17, 207–8, 211
Mason v. Haile (1827), 340–41
Massachusetts: and limitation of federal courts, 49; and slavery, 115–17, 125n. 85
McCloskey, Robert G., on John Jay, 28; on pre-Marshall Court, 2
M’Donough v. Danbury (1796), 121n. 35
Middle Temple, 156; and John Rutledge, 82
“Midnight Judges Act” (Judiciary Act of 1801), 266–67
M’Ilvaine v. Coxe’s Lessee (1805), 107n.*
Morale sense, James Wilson on, 130, 146n. 18
Morris, Gouverneur, 33
Morris, Richard, on implied powers of judicial review, 55; on John Jay, 26, 27; on John Jay’s limitations, 56
Morris, Robert, 166, 182; and John Rutledge, 82
Mount Vernon, 325, 327, 343–44
Murray, Lindley, and John Jay apprenticeship, 30; and assessment of John Jay, 53
National unification, and John Jay, 37; and treaties, 48
Newmyer, R. Kent, 274–75, 276, 277; on William Cushing, 100n.*; on John Marshall’s apotheosis, 8–9
New York: John Jay’s tenure as governor of, 52
New York Council of Revision, 46
New York Council of Safety, 33
New York judiciary, and John Jay, 31
New York state constitution, and John Jay, 31
Nietzsche, Friedrich, 117n.*
Nonimportation policies, and John Jay’s position, 30
Objects of government: and Chisholm v. Georgia (1793), 49; and John Jay, 36–37; and John Jay’s fears about, 50
O’Brien, William, on William Cushing, 102–3, 119n. 12; on Invalid Pensioners Act, 114n.*
Ogden v. Saunders (1827), 339–40, 345
Olive Branch Petition, 30, 35
Onuf, Peter, on historiography of American Founding, 24n. 36, 118n.*
Oswald v. New York, 50
Paper money, 163, 167
Parliamentary sovereignty, James Iredell on, 204–5
Pendleton, Edmund, 157–59, 161–62, 165, 175, 189n. 22
Pendleton, Nathaniel, 217
Pennington v. Coxe (1804), 332–33
Pennsylvania constitution of 1790, James Wilson on, 136
Person, Thomas, 208
Peters, Richard, 217, 283
Philadelphia, 323–25, 341–43
Pickering, John, 267
Pinckney, Charles Cotesworth, 2, 5, 188n. 19; on John Rutledge, 70
Planter-mercantile ruling class (in Virginia), 156, 161
Political parties, Bushrod Washington’s exchange with George Washington on, 325–26
Political philosophy: William Cushing’s, 103–6; John Rutledge’s, 72–73, 75–77, 79
Politicians, John Jay’s view of, 34
Popular sovereignty, James Wilson on, 130, 132, 136, 138–40
Positivism, 159, 175–76, 184, 195n. 44
Pound, Roscoe, on James Iredell, 199
Index

Powell, H. Jefferson, 284, 291
Presser, Stephen, on John Marshall's apothecosis, 9; on pre-Marshall Court, 7, 18
Preyer, Kathryn ("Kitty"), 282, 288n. 40
“Principles of an American Whig,” 205
Prize, and prize jurisdiction, 163–65, 172–73
Professionalism, John Jay's view of, 45
Public offices, of John Jay, 30
QuocK Walker case, 115–17
Randolph, Edmund, 168, 175, 179, 186n. 8, 192n. 34, 193n. 35, 198; and Chisholm v. Georgia (1793), 48; at constitutional convention, 77; and revolutionary war debts, 51
Randolph, John, 266
Ratification of the U.S. Constitution, 4; role of William Cushing in, 101–3; role of James Iredell in, 206–10; role of Bushrod Washington in, 326; James Wilson's contribution to, 135–36
Read, William, on John Rutledge, 85
Religion: as foundation for morality and law in thought of Samuel Chase, 270; importance for John Jay, 30, 33–34, 53–54
Reporter, Bushrod Washington as, 327
Revolutionary republican thought: and historiography of, 67n. 83; and John Jay, 31–32; John Jay's critique of, 32; John Jay's place within discourse of, 54; relationship to John Jay's jurisprudence, 32–45, 53–54
Rossiter, Clinton, on William Paterson, 252n. 63
Rugg, Arthur, on William Cushing, 123n. 75
Ruling class (merchants, planters, in Virginia), 156, 161
Rutledge, Edward, 2, 5; on executive autonomy, 38
Schlesinger, Arthur, Sr., 13
Schwartz, Bernard, on pre-Marshall Court, 2
Separation of powers, 19, 161, 179
Seriatim, meaning of, 20–21, 25n. 41; opinions, 331, 339
Shay’s Rebellion, and John Jay, 30
Slavery: William Cushing on, 115–17; and Massachusetts, 125n. 85; and Massachusetts Constitution of 1780, 115, 117; and John Rutledge, 77, 79; Bushrod Washington's involvement with, 343–44
Small States' (New Jersey) Plan, and John Jay, 40; and William Paterson, 234–35
Smith, Jean Edward, on John Marshall, 7
Spaight, Richard Dobbs, 202
Stamp Act, and John Jay, 30
Statesmanship, John Jay's views of, 41
State v. Washington (1791), 83
Statutory interpretation: John Marshall's principles of, 334–45; Bushrod Washington's principles of, 334
Story, Joseph, 323, 326, 336, 337, 344–45
Stuart v. Laird (1803), 243–49
Sturges v. Crowninshield (1819), 338–39
Supreme Court: and informal advice, 46; John Jay's vision of, 29, 45–52; and jurisdictions, 46–47, 65n. 64; legitimacy of, 28–29; and rules of practice, 55; and utility of, 51; James Wilson on, 131, 136–43
Swem, Earl Gregg, on John Blair, 182
Talbot v. Jansen (1795), 87, 214, 244
Term limits, William Cushing on, 104–5, 120n. 24
Textualism: and William Cushing, 106–13, 123n. 67; definition of, 123n. 68; and John Marshall, 113n.
Thompson, Samuel, 103
Treaseon, James Wilson and, 145n. 9
Treaties, and federal courts, 47–50; importance to John Jay, 42–43
Treaty of Mortefontaine, 310–12
Tucker v. Loundes (1791), 83
Turner, Charles, 104
United States v. Callender (1800), 10, 11, 264, 265–66
United States v. Cooper (1800), 265, 277, 287n. 20
United States v. Fisher (1803, 1805), 333–34
United States v. Joseph Ravara (1794), 141, 152n. 94
United States v. La Vengeance (1796), 305
United States v. Peters (1791), 87
United States v. Schooner Peggy (1801), 121n. 35
United States v. Worral (1798), 263
United States v. Yale Todd (1794), 11, 24n. 33, 150n. 60
University of North Carolina, James Iredell as trustee of, 203

VanBerkleio, Sandra, 275–77, 285, 291n. 89
Vanhornes’s Lessee v. Dorrance (1795), 10, 243–44
Van Santvoord, George, on John Rutledge, 72
Vaughan, Benjamin, and John Jay, 44
Virginia, 324–27, 343–44
Virginia Court of Appeals, 159–62, 187n. 16

Ware v. Hylton (1796), 3, 11, 50, 108, 110–12, 122n. 64, 140, 192n. 32, 214, 246, 262–63, 277, 304
Warrington, David, on William Cushing, 106
Washington, George, ix, 6, 7, 17, 19, 114n.*, 119n. 15, 162, 165–66, 178–80, 198, 206, 208, 210, 292, 302, 303, 304, 305, 306, 322, 324, 325–26, 327, 343–44; and William Cushing, 98, 100, 117, 119n. 13; and informal advice, 46; and Neutrality Proclamation, 39; and John Rutledge, 81, 85; signing John Jay’s commission, 28; on Supreme Court, 5, 22n. 14
Weber, Max, 294
West v. Barnes (1791), 167, 189–90n. 26
Whiskey rebellion, 46, 180–81; and James Iredell, 210
Wickham, John, 11
William and Mary, The College of, 322, 324
Williamson, Hugh, 210
Wiscart v. D’Auchy (1796), 151n. 81
Wood, Gordon, 277; on aristocracy, 31; on John Marshall, 7
Wyoming valley case, 144n. 3
Wythe, George, 19, 157–62, 324

XYZ Affair, 308