

7 That in a confederation like the United States the Courts become the pivot on which the constitutional arrangements of the country turn is obvious. Sovereignty is lodged in a body which rarely exerts its authority and has (so to speak) only a potential existence; no legislature throughout the land is more than a subordinate law-making body capable in strictness of enacting nothing but bye-laws; the powers of the executive are again limited by the constitution; the interpreters of the constitution are the judges. The Bench therefore can and must determine the limits to the authority both of the government and of the legislature; its decision is without appeal; the consequence follows that the Bench of judges is not only the guardian but also at a given moment the master of the constitution.⁵⁷ ...

no From the fact that the judicial Bench supports under federal institutions the whole stress of the constitution, a special danger arises lest the judiciary should be unequal to the burden laid upon them. In no country has greater skill been expended on constituting an august and impressive national tribunal than in the United States. Moreover, as already pointed out, the guardianship of the Constitution is in America confided not only to the Supreme Court but to every judge throughout the land. Still it is manifest that even the Supreme Court can hardly support the duties imposed upon it. No one can doubt that the varying decisions given in the legal-tender cases, or in the line of recent judgments of which *Munn v. Illinois* is a specimen, show that the most honest judges are after all only honest men, and when set to determine matters of policy and statesmanship will necessarily be swayed by political feeling and by reasons of state. But the moment that this bias becomes obvious a Court loses its moral authority, and decisions which might be justified on grounds of policy excite natural indignation and suspicion when they are seen not to be fully justified on grounds of law. American critics indeed are to be found who allege that the Supreme Court not only is proving but always has proved too weak for the burden it is called upon to bear, and that it has from the first been powerless whenever it came into conflict with a State, or could not count upon the support of the Federal Executive. These allegations undoubtedly hit a weak spot in the constitution of the great tribunal. Its judgments are without force at any rate as against a State if the President refuses the means of putting them into execution. "John Marshall," said President Jackson, according to a current story,⁵⁸ "has delivered his judgment; let him now enforce it if he can"; and the judgment was never put into force.