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## Yes, there were chief justices before Marshall

In the history of the U.S. Supreme Court, there have been 17 chief justices. Many consider John Marshall to be the first, including one of my students who opened a paper by stating he was the first chief.

Notwithstanding that Marshall served the longest in that role and that his court's decisions established the court as the final arbiter of the Constitution and established its powers, three chiefs preceded Marshall.

### The first

The inaugural session of the Supreme Court began Feb. 2, 1790, in the new nation's capital, New York City. Presiding over the first Supreme Court was Chief Justice John Jay, a Founding Father of our country.

A New Yorker, Jay became a member of the Committee of Correspondence in 1774. He drafted the Constitution of New York and was one of the three delegates to the Treaty of Paris to end the Revolutionary War.

He did not sign the Declaration of Independence (his New York role prevented him from voting on it) and was not at the Constitutional Convention but was one of the authors of the Federalist Papers.

President George Washington originally offered Jay the position of secretary of state, which Jay rejected. When offered the newly created position of chief justice (pursuant to the Judiciary Act of 1789), he accepted.

Jay's court heard only three cases in his five-year tenure, the only significant one being *Chisholm v. Georgia* (the genesis of the 11th Amendment). In 1795, Jay resigned as chief justice to become the governor of New York.

### COTTER'S CORNER



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### No. 2

John Rutledge was a delegate to the Continental Congress and a delegate to the Constitutional Convention from South Carolina. Rutledge was a slave-owner and argued that any prohibition on slavery in the Constitution would prevent the Southern states from supporting the Constitution.

In 1789, he was nominated as the Supreme Court's first associate justice and was confirmed. He resigned in 1791 without having heard a single case to become the chief justice of the South Carolina Supreme Court.

Rutledge became a recess appointment when Jay resigned, and his term began immediately on June 30, 1795. Rutledge gave a speech roundly criticizing the Jay Treaty. That speech cost him support of the Washington administration and many senators, and eventually, his nomination was rejected.

Rutledge resigned on Dec. 28, 1795, and the rejection of his nomination ruined the man. He attempted suicide back in South Carolina and withdrew from public life.

### On to 3

Upon the resignation of Rutledge, Washington nominated William Cushing, but Cushing rejected the nomination in February 1796. (The position obviously did not have the prestige and honor or responsibilities it eventually would post-Marshall.) Washington turned to Oliver Ellsworth, nominating him on March 3, 1796. The Senate unanimously approved Ellsworth the next day.

Ellsworth was a delegate to the Constitutional Convention from Connecticut and one of many lawyers at the convention. He was one of the drafters of the Constitution and one of the main proponents of the bicameral legislative setup.

He left the convention before signing and eventually became a big advocate of judicial review as a drafter of the Judiciary Act of 1789.

Ellsworth served until Sept. 30, 1800, when he resigned due to poor health. His tenure was short, although two of his court's decisions — *Hylton v. U.S.* and *New York v. Connecticut* — established the court's power of judicial review (fleshed out by Marshall a few years later) and witnessed the first exercise of the court's original jurisdiction in state disputes.

Ellsworth also established the precedent of unified court opinions, which Marshall would adopt and enforce.

### Conclusion

John Marshall may be seen as the father of the Supreme Court. He might also be considered first when it comes to legacy and assessment of accomplishment.

But he wasn't the first chief justice. Three esteemed contemporaries set the tone, and Marshall expanded and strengthened what his predecessors had established.