The U.S. Supreme Court is an institution whose nature and power evolved gradually in well over 200 years of decision making, punctuated by political turmoil and near disasters that engulfed the Court. In this chapter, we examine the nature and evolution of the Court’s power in American politics by focusing on four areas of Supreme Court development:

1. Ambivalence and uncertainty over the Court’s power and independence;
2. The Judiciary Act of 1789;
3. Foundation of judicial supremacy and the application of judicial review;
4. Constraints on the exercise of judicial power.

**Ambivalence and Uncertainty over Supreme Court Power and Independence**

When the founding fathers assembled in Philadelphia in the summer of 1787 to debate the nature of U.S. Constitution and government, they were particularly interested in preserving *judicial independence*, the principle that judges should be allowed total control over their own decisions in the cases they hear.¹ As indicated in Article 3 of the Constitution, the framers preserved judicial independence by granting federal judges permanent tenure “during good behavior” and prohibited any reduction in their compensation to ensure that neither Congress nor the President can exercise control over the judiciary. Despite this constitutional guarantee of independence, the Supreme Court was quite uncertain about its own power and place in the newly formed government. For the Supreme Court, the road to greatness will be gradual, difficult, and downright contentious.

The first session of the Court opened on February 2, 1790 in the Merchant’s Exchange Building in New York City, then the nation’s temporary capital.² The first justices appointed to the Court by the nation’s first president, George Washington, were all statesmen of great honor and accomplishment. Nearly all of them were present at the constitutional convention and had signed both the Declaration of Independence and the Constitution. John Jay of New York was the chief justice. With him on the original Court
were Associate Justices John Blair of Virginia, William Cushing of Massachusetts, James Iredell of North Carolina, John Rutledge of South Carolina, and James Wilson of Pennsylvania. Washington’s selection of these statesmen was designed in part to foster geographic representation and to appease sectional cleavages.

Low Public Esteem. That these justices agreed to serve stands as a testament to their commitment to the new Constitution. But that commitment will be severely tested soon because during these formative years, the Supreme Court enjoyed very low public esteem. Commenting on the nature of Supreme Court role in society during that time, Justice Sandra Day O’Connor noted that “the Supreme Court possessed neither public trust nor a particularly prominent national role.” The early justices themselves recognized the weak position of the Court. For instance, in 1801 when the nation's second President John Adams asked John Jay to resume as chief justice, Jay declined the offer because he had no faith that the Court could obtain enough “energy, weight and dignity ... nor acquire the public confidence and respect” necessary to play an important part in the national government. Indeed, Jay had resigned from the Court on June 29, 1795 following his diplomatic mission to England without a hint of regret.

One reason for the Court’s low public image was a statutory requirement for justices to engage in circuit riding, essentially turning up twice a year to