

# Chief Justice Marshall's Court & Cases

## High School AP US Government

**Objectives:** Students should be able to:

- interpret primary source documents (court decisions) from three major landmark Supreme Court cases (*Marbury v. Madison*, *McCulloch v. Maryland*, & *Gibbons v. Ogden*) decided during the tenure of Chief Justice John Marshall;
- identify and summarize the constitutional question, decision, and outcome (impact) of the case;
- draw conclusions as to how Marshall shaped the role of the court and the power of the federal government; and
- interpret a political cartoon.

## Standards

**AP GOVT: CON-2.B.2** The balance of power between the national and state governments has changed over time based on U.S. Supreme Court interpretation of such cases as *McCulloch v. Maryland* (1819).

**CON-5.A.1** The foundation for powers of the judicial branch and how its independence checks the power of other institutions and state government are set forth in *Marbury v. Madison* (1803).

**National: NSS-USH.5-12.4 Era 4** Expansion & Reform (1801-1861)

**NSS-C.5-8.3** Principles of Democracy

**Approx. Time:** One and one-half 90 minute blocks or three 45 minute blocks

**HOOK:** Show students the video clip (below) about the Supreme Court decision to uphold the Affordable Care Act. If students are not aware of it or the details give them some background before you show the clip. After viewing the clip (2.5 minutes), have students discuss whether or not they agree with the decision. Allow for as much time as you feel you need to get them all engaged in the discussion. After that, ask them a few more questions.

- "Where does the Supreme Court get the power to declare a law, like the ACA, constitutional?"
- "Is buying health insurance classified as "interstate commerce" and, if it is, does Congress have the right to regulate commerce within a state?"

Again, allow for discussion. You may need to explain to students what "interstate commerce" is and give some examples. If students cannot figure it out, tell them they will discover the answer today.

■ SCOTUS ACA Decision video clip:

<https://goo.gl/Y5rRhv>

Today, you will learn about three important Supreme Court cases, decided by Chief Justice John Marshall and the Court, that changed the power of the Supreme Court and the federal government FOREVER!

**Activity:** Divide students into groups of three and give them all three primary source documents. Students should discuss each document and try to determine which case the decision is from (there are clues in each document). Give them sufficient time to do this, but if they are having trouble, call on a group who has finished and have them share their answers and how they figured out which decision went with which case.

Once students have identified each of the cases provide them with the web source or a handout for information. Students should quickly research the case and then find evidence in the primary source document that reflects the decision/reasoning.

Lastly, students will write an essay describing how John Marshall changed the role of the court and the federal government.

**■ Show students the *Justice in the Classroom* Chapter Four video clip BEFORE students complete their essay to reinforce the idea of Marshall's influence and the significance of *Marbury v. Madison*. You may want to assign both the video and essay for homework. (Approx. 10 minutes)**

**Post Assessment:** Students will interpret a political cartoon about *Marbury v. Madison* and judicial review.

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## Landmark Cases of the John Marshall Court (1801-1835)

Today, you will interpret primary source documents in the form of court decisions from three Supreme Court cases decided during Chief Justice John Marshall's tenure on the Supreme Court and then collect research on each case. You will find specific evidence in your primary source document that reflects the decision/reasoning.

After all of the cases have been discussed, you will watch a brief video clip about John Marshall and the *Marbury v. Madison* case and then complete an essay on this question:

**John Marshall significantly strengthened the role of both the Supreme Court and the federal government in relation to other branches and the States. Analyze and discuss how the three court cases support this statement and give historical evidence to support each argument/case.**

**ESSAYS MUST INCLUDE ALL THREE CASES!**

### Cases

- I *Marbury v. Madison* 1803 <http://goo.gl/vWrHln>
- I *McCulloch v. Maryland* 1819 <http://goo.gl/I51qX0>
- I *Gibbons v. Ogden* 1824 <http://goo.gl/8QA75N>

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Name \_\_\_\_\_ Date \_\_\_\_\_

## Landmark Cases of the John Marshall Court (1801-1835) NOTES

Complete the following from your information source:

**Case Name & Year:**

**Brief Details:**

**Constitutional Question:**

**Decision:**

**Outcome (Impact):**

**Evidence from Primary Source Document (Decision):**

# Chief Justice Marshall's Court & Cases

Name \_\_\_\_\_ Date \_\_\_\_\_

## Landmark Cases of the John Marshall Court (1801-1835) Post-Assessment



Cagle.com

Looking at the political cartoon, answer the following questions:

1. Who are the people depicted in the cartoon?

2. What is the argument of the figure on the left?

3. What is the meaning of the statement of the figure on the right?

4. Overall, what message is the cartoonist trying to convey with this cartoon?

5. Do you agree with the message? Why? Why not?

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## Primary Source Document 1 EXCERPTS

At the last term on the affidavits then read and filed with the clerk, a rule was granted in this case, requiring the Secretary of State to show cause why a mandamus should not issue, directing him to deliver to William Marbury his commission as a justice of the peace for the county of Washington, in the district of Columbia.

The authority, therefore, given to the Supreme Court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution; and it becomes necessary to enquire whether a jurisdiction, so conferred, can be exercised.

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

## Primary Source Document 2 EXCERPTS

The first question made in the cause is, has Congress power to incorporate a bank? Although, among the enumerated powers of government, we do not find the word "bank," or "incorporation," we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies...

It is not denied, that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue, and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance...

But the constitution of the United States has not left the right of Congress to employ the necessary means, for the execution of the powers conferred on the government, to general reasoning. To its enumeration of powers is added that of making "all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the [US], or in any department there of."...

After the most deliberate consideration, it is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land...

It being the opinion of the Court, that the act incorporating the bank is constitutional; and that the power of establishing a branch in the State of Maryland might be properly exercised by the bank itself, we proceed to inquire...

2. Whether the State of Maryland may, without violating the constitution, tax that branch?

This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them.

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That the power of taxing by the States may be exercised so as to destroy it, is too obvious to be denied.

The American people have declared their constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States.

If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States...We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

## Primary Source Document 3 EXCERPTS

The words are: Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes. The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration and not of definition, as to certain the extent of the power it becomes necessary to settle the meaning of the word.

Commerce, undoubtedly, is traffic, but it is something more - it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals in the actual employment of buying and selling or of barter. If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen.

The subject to which the power is next applied is to commerce among the several states. The word among means intermingled with. A thing which is among others is intermingled with them. Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior. It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states.

In one case and the other the acts of New York must yield to the law of Congress; and the decision sustaining the privilege they confer against a right given by a law of the Union must be erroneous

But the framers of our Constitution foresaw this state of things and provided for it by declaring the supremacy not only of itself but of the laws made in pursuance of it. The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is supreme law.

## Decree

This court is of opinion that so much of the several laws of the state of New York as prohibits vessels, licensed according to the laws of the United States, from navigating the waters of the state of New York, by means of fire or steam, is repugnant to the said Constitution and void.

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## ***Marbury v. Madison* (1803)**

*Marbury v. Madison*, arguably the most important case in Supreme Court history, was the first U.S. Supreme Court case to apply the principle of "judicial review" -- the power of federal courts to void acts of Congress in conflict with the Constitution. Written in 1803 by Chief Justice John Marshall, the decision played a key role in making the Supreme Court a separate branch of government on par with Congress and the executive.

The facts surrounding Marbury were complicated. In the election of 1800, the newly organized Democratic-Republican party of Thomas Jefferson defeated the Federalist party of John Adams, creating an atmosphere of political panic for the lame duck Federalists. In the final days of his presidency, Adams appointed a large number of justices of peace for the District of Columbia whose commissions were approved by the Senate, signed by the president, and affixed with the official seal of the government. The commissions were not delivered, however, and when President Jefferson assumed office March 5, 1801, he ordered James Madison, his Secretary of State, not to deliver them. William Marbury, one of the appointees, then petitioned the Supreme Court for a writ of mandamus, or legal order, compelling Madison to show cause why he should not receive his commission.

In resolving the case, Chief Justice Marshall answered three questions. First, did Marbury have a right to the writ for which he petitioned? Second, did the laws of the United States allow the courts to grant Marbury such a writ? Third, if they did, could the Supreme Court issue such a writ? With regard to the first question, Marshall ruled that Marbury had been properly appointed in accordance with procedures established by law, and that he therefore had a right to the writ. Secondly, because Marbury had a legal right to his commission, the law must afford him a remedy. The Chief Justice went on to say that it was the particular responsibility of the courts to protect the rights of individuals -- even against the president of the United States. At the time, Marshall's thinly disguised lecture to President Jefferson about the rule of law was much more controversial than his statement about judicial review (which doctrine was widely accepted).

It was in answering the third question -- whether a writ of mandamus issuing from the Supreme Court was the proper remedy -- that Marshall addressed the question of judicial review. The Chief Justice ruled that the Court could not grant the writ because Section 13 of the Judiciary Act of 1789, which granted it the right to do so, was unconstitutional insofar as it extended to cases of original jurisdiction. Original jurisdiction -- the power to bring cases directly to the Supreme Court -- was the only jurisdictional matter dealt with by the Constitution itself. According to Article III, it applied only to cases "affecting ambassadors, other public ministers and consuls" and to cases "in which the state shall be party." By extending the Court's original jurisdiction to include cases like Marbury's, Congress had exceeded its authority. And when an act of Congress is in conflict with the Constitution, it is, Marshall said, the obligation of the Court to uphold the Constitution because, by Article VI, it is the "supreme law of the land."

As a result of Marshall's decision Marbury was denied his commission -- which presumably pleased President Jefferson. Jefferson was not pleased with the lecture given him by the Chief Justice, however, nor with Marshall's affirmation of the Court's power to review acts of Congress. For practical strategic reasons, Marshall did not say that the Court was the only interpreter of the Constitution (though he hoped it would be) and he did not say how the Court would enforce its decisions if Congress or the Executive opposed them. But, by his timely assertion of judicial review, the Court began its ascent as an equal branch of government -- an equal in power to the Congress and the president. Throughout its long history, when the Court needed to affirm its legitimacy, it has cited Marshall's opinion in *Marbury v. Madison*.

**I Source:** [http://www.pbs.org/wnet/supremecourt/democracy/landmark\\_marbury.html](http://www.pbs.org/wnet/supremecourt/democracy/landmark_marbury.html)



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## ***McCulloch v. Maryland* (1819)**

In *McCulloch v. Maryland* (1819) the Supreme Court ruled that Congress had implied powers under the Necessary and Proper Clause of Article I, Section 8 of the Constitution to create the Second Bank of the United States and that the state of Maryland lacked the power to tax the Bank. Arguably Chief Justice John Marshall's finest opinion, *McCulloch* not only gave Congress broad discretionary power to implement the enumerated powers, but also repudiated, in ringing language, the radical states' rights arguments presented by counsel for Maryland.

At issue in the case was the constitutionality of the act of Congress chartering the Second Bank of the United States (BUS) in 1816. Although the Bank was controlled by private stockholders, it was the depository of federal funds. In addition, it had the authority to issue notes that, along with the notes of states' banks, circulated as legal tender. In return for its privileged position, the Bank agreed to loan the federal government money in lieu of taxes. State banks looked on the BUS as a competitor and resented its privileged position. When state banks began to fail in the depression of 1818, they blamed their troubles on the Bank. One such state was Maryland, which imposed a hefty tax on "any bank not chartered within the state." The Bank of the United States was the only bank not chartered within the state. When the Bank's Baltimore branch refused to pay the tax, Maryland sued James McCulloch, cashier of the branch, for collection of the debt. McCulloch responded that the tax was unconstitutional. A state court ruled for Maryland, and the court of appeals affirmed. McCulloch appealed to the U.S. Supreme Court, which reviewed the case in 1819.

In a unanimous opinion written by Chief Justice Marshall, the Court ruled that the Bank of the United States was constitutional and that the Maryland tax was unconstitutional. Concerning the power of Congress to charter a bank, the Court turned to the Necessary and Proper Clause of Article I, Section 8, which expressly grants Congress the power to pass laws "necessary and proper" for the execution of its "enumerated powers." The enumerated powers of Congress include the power to regulate interstate commerce, collect taxes, and borrow money. Said the Court famously, "let the ends be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." In other words, because the creation of the Bank was appropriately related to Congress's legitimate power to tax, borrow, and regulate interstate commerce, the Bank was constitutional under the Necessary and Proper Clause.

Second, the Court ruled that Maryland lacked the power to tax the Bank because, pursuant to the Supremacy Clause of Article VI of the Constitution, the laws of the United States trump conflicting state laws. As Marshall put it, "the government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the constitution, form the supreme law of the land." Because "the power to tax is the power to destroy," Maryland was unconstitutionally undermining the superior laws and institutions of the United States.

Finally, the Court held that the "sovereignty" (political authority) of the Union lies with the people of the United States, not with the individual states that comprise it. The United States, not a simple alliance of states, is a nation of "constitutional sovereignty" with its authority resting exclusively with "the people" who created and are governed by the Constitution. To the Court, "the government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit." Maryland's tax, however, violated constitutional sovereignty because it acted as a levy against all the people in the United States by a state accountable to only some of the people.

If *Marbury v. Madison* (1803) "promised" that the Supreme Court would exercise great authority in shaping the laws of the land, *McCulloch v. Maryland* fulfilled that promise for the first time. Arguably no other decision has so profoundly defined national power. In one case, the Court expanded Congress' powers to include those implied by the Constitution, established the inferior status of the states in relation to the Union, and set the constitutional sovereignty of the federal government. *McCulloch* remains today a fundamental and binding bedrock of American constitutional law.

**I Source:** [http://www.pbs.org/wnet/supremecourt/antebellum/landmark\\_mcculloch.html](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_mcculloch.html)



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## ***Gibbons v. Ogden (1824)***

*Gibbons v. Ogden* (1824) vastly expanded the powers of Congress through a single clause in the Constitution: the Commerce Clause of Article I, Section 8. The Court ruled that under that clause Congress had powers to regulate any aspect of commerce that crossed state lines, including modes of transportation, and that such regulation preempted conflicting regulation by the states. Since *Gibbons*, the Commerce Clause has provided the basis for sweeping congressional power over a multitude of national issues.

The dispute in *Gibbons* concerned competing claims of rival steamship franchises. The state of New York gave Aaron Ogden an exclusive license to operate steamboat ferries between New Jersey and New York City on the Hudson River. Thomas Gibbons, another steamboat operator, ran two ferries along the same route. Ogden sought an injunction against Gibbons in a New York state court, claiming that the state had given him exclusive rights to operate the route. In response, Gibbons claimed he had the right to operate on the route pursuant to a 1793 act of Congress regulating coastal commerce. The New York court found for Ogden and ordered Gibbons to cease operating his steamships; on appeal, the New York Supreme Court affirmed the order. Gibbons appealed to the U.S. Supreme Court, which reviewed the case in 1824.

Chief Justice John Marshall ruled for Gibbons, holding that New York's exclusive grant to Ogden violated the federal licensing act of 1793. In reaching its decision, the Court interpreted the Commerce Clause of the U.S. Constitution for the first time. The clause reads that "Congress shall have power to regulate commerce ... among the several States." According to the Court, the word "commerce" included not just articles in interstate trade but also the "intercourse" among the states, including navigation.

Next, the Court examined the clause's phrase "commerce among the several States," concluding that the word "among" means "intermingled with." Accordingly, Congress' power to regulate interstate commerce does not "stop at the external boundary line of each State, but may be introduced into the interior." In other words, Congress may pass any law that regulates commerce, so long as that commerce is not wholly confined within a single state, and its power to regulate such commerce is plenary. Under this interpretation of the Commerce Clause, Congress' clearly had the authority to regulate the commercial steamboat route between New York and New Jersey. It was assumed that the licensing act of 1793 did this and that the New York law in question was in conflict with it. Thus, the New York law was unconstitutional and New York's injunction against Gibbons was overturned. Gibbons was free to operate his steamships.

*Gibbons v. Ogden* set the stage for future expansion of congressional power over commercial activity and a vast range of other activities once thought to come within the jurisdiction of the states. After *Gibbons*, Congress had preemptive authority over the states to regulate any aspect of commerce crossing state lines. Thus, any state law regulating in-state commercial activities (e.g., workers' minimum wages in an in-state factory) could potentially be overturned by Congress if that activity was somehow connected to interstate commerce (e.g., that factory's goods were sold across state lines). Indeed, more than any other case, *Ogden* set the stage for the federal government's overwhelming growth in power into the 20th century.

**I Source:** [http://www.pbs.org/wnet/supremecourt/antebellum/landmark\\_gibbons.html](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_gibbons.html)