

Chief Justice Marshall's Court & Cases

High School US/VA History

Objectives: Students should be able to:

- analyze, interpret, and synthesize evidence from primary and secondary resources;
- analyze multiple connections across time and place; and
- access a variety of media, including online resources.

Standards

Virginia: VUS.5d The Impact of John Marshall's Precedent-Setting Decisions That Established the Supreme Court as an Independent and Equal Branch of the National Government

National: NSS-USH.5-12.4 Era 4 Expansion & Reform (1801-1861)
NSS-C.5-8.3 Principles of Democracy

Approx. Time: Two 90 minute blocks or four 45 minute blocks

HOOK: Show students the video clip (below; approx. two and one half minutes) 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 prior to showing the clip. After viewing the clip, have students discuss whether or not they agree with the decision. Allow for as much time as you believe you need to get them all engaged in the discussion. After that, ask them a few more questions, for example:

1. Where does the Supreme Court get the power to declare a law, like the ACA, constitutional?
2. 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/Zn1H1k>

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

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Judicial Power: Clear As Mud!

Read the following passage from the Constitution, Article III, Section 1:

"The judicial power of the United States, shall be vested in one Supreme Court..."

1. Does the Constitution give a detailed description of what power the Supreme Court has?

2. What do you think is meant by "judicial power?"

Under George Washington's presidency, the federal court system was created when Congress enacted the Judiciary Act of 1789. Washington signed it into law on September 24, 1789. Because the Constitution was so vague about the powers of the Supreme Court and federal courts, the law also outlined very specific powers the courts had. Below is an example of this from Section 13 of the Judiciary Act:

"The Supreme Court shall...have power to issue...writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States."

1. Using a computer, device, or textbook define "writ of mandamus."

2. So, if someone in the government was refusing to do their job, why might you ask for a writ of mandamus from the Supreme Court?

As you can see, the Supreme Court's power was not really clear. For the most part, the court had very little power. Chief Justice John Marshall will change that forever.

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***Marbury v. Madison* & Judicial Review**

Using the *Justice in the Classroom* Chapter 4 video clip, answer the following questions: (Approx. 10 minutes)

1. **Who did President John Adams appoint as Chief Justice of the Supreme Court?**

2. **Why was the Supreme Court so weak early on?**

3. **Give one example of how John Marshall changed the way the court did business.**

4. **With how many presidents does John Marshall's term overlap?**

5. **What is a "landmark" case?**

6. **What year was the *Marbury v. Madison* case decided?**

7. **Who did President Adams appoint as Justice of the Peace?**

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8. What did President Thomas Jefferson tell Secretary of State James Madison to do about Marbury's commission? WHY did he tell Madison this?

9. What did Marbury do about Madison's actions (writ of mandamus)?

10. The Supreme Court ruled that the Judiciary Act of 1789, that Marbury used to make the Supreme Court force Madison to give him his commission, was unconstitutional. This creates the idea of judicial review. What IS judicial review?

11. The Supreme Court declared that the Constitution is to be considered _____ (a) law that is superior to the "ordinary" _____ (b) _____ of _____ (c) _____ or _____ (d) of the _____ (e) _____.

a.	
b.	
c.	
d.	
e.	

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Judicial Review In Action

Judicial review is not just the power of the Supreme Court to declare laws and actions of the FEDERAL GOVERNMENT unconstitutional, it is also the power to declare STATE laws and actions unconstitutional, making the Constitution SUPREME over ALL laws. One great example of this is the *Loving v. Virginia* case.

Watch the following video (approx. two and one half minutes) and answer the questions below.

I Link : <https://goo.gl/G19jCc>

1. Why were Mildred and Richard Loving arrested in Virginia?

2. What was the punishment for their "crime?"

3. What did the Supreme Court decide?

4. How is this decision an example of judicial review?

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The "Necessary & Proper" Clause & Implied Powers: Vague Much????

Congress has the power "to make 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 United States, or any Department or Officer thereof." **Article I, Section 8 of the Constitution**

1. Looking at this section from the Constitution, what does it mean that Congress can do whatever is "necessary & proper" to carry out the powers listed in the Constitution?

2. The "Necessary & Proper Clause" of the Constitution created the idea "implied powers." Using a dictionary or device, define the word "implied."

McCulloch v. Maryland <http://goo.gl/uD5O3f>

Using the website above or case handout, answer the following questions:

1. What was at issue with the case? (What was being questioned as constitutional?)

2. What state wanted to tax the Bank of the United States?

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3. Who was James McCulloch, and why did the state of Maryland sue him?

4. In the opinion written by Chief Justice John Marshall, what did the Supreme Court decide about the national bank?

5. What clause was used to justify the Bank of the United States?

6. So, if the power to establish the national bank is not DIRECTLY in the Constitution, is it IMPLIED?

7. In the decision, what did Marshall say about Maryland having the power to tax the Bank of the United States?

8. What clause did Marshall cite for his reasoning in not allowing states to tax the Bank of the United States (or the federal government?)

9. So according to this decision, do you think Congress can use the Necessary & Proper Clause to justify requiring Americans to purchase health insurance? Why/Why not?

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The Commerce Clause

The US Constitution gives Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." **Article 1, Section 8, Clause 3**

1. Using a dictionary or device, define the word "commerce."

2. Looking at this clause in the Constitution, what do you think it means that Congress can regulate commerce "among the several states?"

Gibbons v. Ogden & Interstate Commerce <http://goo.gl/yKR3hz>

Using the website above or case handout, answer the following questions:

1. What was the dispute between Gibbons and Ogden?

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2. Who gave Ogden an exclusive license to operate his business between New York and New Jersey?

3. Why did Gibbons claim that HE had a right to operate his steamboats on the same route as Ogden?

4. For whom did Chief Justice John Marshall and the Supreme Court rule?

5. What clause did the court interpret for the first time?

6. How did the court interpret the phrase "commerce among the several states?"

7. So, according to this decision, do you think Congress can regulate goods/services purchased across state lines (like health insurance)? Why/Why not?

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Court Cases Review

REVIEW:

In these three court cases, the Supreme Court MEDIATED/RESOLVED disagreements between competing business interests, levels of government, and branches of government.

Use the corresponding letter to match

- (1) the phrase/clause that applies to it, and
- (2) the competing interests that were in disagreement and mediated/resolved by the Supreme Court.

Marbury v. Madison

1. Phrase/Clause

A) "Implied Powers"

2. Competing Interest

B) Competing Business Interests

McCulloch v. Maryland

1. Phrase/Clause

C) "Judicial Review"

2. Competing Interest

D) Competing Levels of Government

Gibbons v. Ogden

1. Phrase/Clause

E) "Commerce Clause"

2. Competing Interest

F) Competing Branches of Government

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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

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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

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Struggling Learners: If students have trouble understanding the documents or drawing conclusions, you should have them work in pairs or small groups to discuss answers. Have pairs or groups share their answers with the class to guide the others.

Post Assessment:

Struggling Learners: Matching Review—Students will identify

- (i) which case was an example of how the Supreme Court mediated disagreements between branches of government, levels of government, and competing business interests, and
- (ii) the phrase or clause associated with the case.

Advanced Learners: Have students

- (i) review the online article about Supreme Court cases every teenager should know (link below),
- (ii) select a case,
- (iii) create a poster for that case, and
- (iv) explain how it is an example of judicial review.

Have them share with the class and allow sufficient discussion about the cases. (This is great for class discussion!)

Link: <https://goo.gl/kiVz6z>