

# Marshall the Man Who Made the Supreme Court

## High School AP US History: Chief Justice Marshall's Court & Cases

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

- discover the importance of major landmark Supreme Court cases during the tenure of Chief Justice John Marshall; draw conclusions as to how Marshall shaped the role of the court and the power of the federal government;
- write a paragraph including contextualization and;
- attempt to write a thesis statement.

## Standards

**APUSH: Key Concept 4.1** B) Supreme Court decisions established the primacy of the judiciary in determining the meaning of the Constitution and asserted that federal laws took precedence over state laws.

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

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

**HOOK:** To prepare students for this lesson, demonstrate the use of contextualization by reviewing the dispute over the creation of the Bank of the United States and the Virginia & Kentucky Resolutions, as they should already know this. Begin by explaining to students that one point on the APUSH DBQ and LEQ questions is awarded for proper and accurate *contextualization*. Provide students with the definition of contextualization by either projecting or writing the following on the board:

According to the College Board, contextualization refers to a:

*Historical thinking skill that involves the ability to connect historical events and processes to specific circumstances of time and place as well as broader regional, national, or global processes.*

[\*\(College Board AP® Course and Exam Description, AP® US History, Fall 2015\)\*](#)

Explain to students that they will be researching and presenting major landmark cases decided under the Chief Justice John Marshall, but to fully understand the importance of these decisions, they must be able to understand the context in which they were decided. To do this, they will simply brainstorm and list what they know about a few topics.

Write on the board "Bank of the United States," "Alien & Sedition Acts," and "Virginia & Kentucky Resolutions." You can either have students voluntarily go up to the board and write a word or two under each topic they wish or have them discuss each topic and write what they know underneath the appropriate topic. Make sure they understand the debate over whether the B.U.S. was constitutional or not, as well as the Sedition Act, and then stress the fact that, until John Marshall clarified it, states felt they could declare federal law or action unconstitutional, as in the Virginia & Kentucky Resolutions.

Once you have had a good discussion of these topics, they should be ready to dive into the court cases and have a better understanding of the context in which they were decided.

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**Activity:** Divide students into 5 groups and assign one case per group. Students should use the corresponding web source and video clips for information. You can also provide them with a handout of information (at the end of the lesson) if digital access is limited.

Students will:

1. research the case,
2. create a visual presentation for their case (digital or poster),
3. present it to the class as the other students take notes using the Landmark Cases of the John Marshall Court (1801-1835) NOTES Student Handout (3), and
4. write a paragraph that includes contextualization and a thesis statement responding to a prompt.

**Cases:**

1. Marbury v. Madison 1803  
[http://www.pbs.org/wnet/supremecourt/democracy/landmark\\_marbury.html](http://www.pbs.org/wnet/supremecourt/democracy/landmark_marbury.html)
2. McCulloch v. Maryland 1819  
[http://www.pbs.org/wnet/supremecourt/antebellum/landmark\\_mcculloch.html](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_mcculloch.html)
3. Gibbons v. Ogden 1824 [http://www.pbs.org/wnet/supremecourt/antebellum/landmark\\_gibbons.html](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_gibbons.html)
4. Dartmouth v. Woodward 1819 <https://www.britannica.com/event/Dartmouth-College-case>
5. Cherokee Nation v. Georgia 1831  
Worcester v. Georgia 1832  
[http://www.pbs.org/wnet/supremecourt/antebellum/landmark\\_cherokee.html](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_cherokee.html)

## Marshall the Man Who Made the Supreme Court Video Clips (12):

### **Marbury v Madison (same as APGOPO Lesson)**

Midnight Judges—Lead Up to Marbury (3.5 minutes)

Marbury (9 minutes)

Judicial Review (30 seconds)

### **Dartmouth**

Dartmouth Case Detailed Background (3 minutes)

Dartmouth Simple Background (4.5 minutes)

Continuation of Dartmouth Case & Decision & Impact (4 minutes)

### **McCulloch**

McCulloch Background (10 minutes)

### **Gibbons**

Introduction to Gibbons (4.5 minutes)

Gibbons Decision (3.5 minutes)

### **Cherokee Cases**

Cherokee Cases Background (4 minutes)

Cherokee Nation v Georgia (4 minutes)

Worcester v Georgia (5.5 minutes)

**Assessment:** After you have collected information on Chief Justice John Marshall's landmark decisions, use that information to write a paragraph that includes contextualization and a thesis statement responding to this prompt:

**Evaluate the extent to which Chief Justice John Marshall increased the power of the federal government through major landmark decisions.**

**Note:** Teachers should make sure students understand how to write contextualization (more than just one sentence) for students to get the point. Also, teachers have different preferences for how to write a thesis statement as well. Use whatever resources you have and prefer for this, but remember, this is just an introductory/practice as these skills should be developed throughout the course.

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

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

Complete the following from the presentation:

### Case Name & Year:

### Brief Details:

### Constitutional Question:

### Decision:

### Outcome (Impact):

### Case Name & Year:

### Brief Details:

### Constitutional Question:

### Decision:

### Outcome (Impact):

# Marshall the Man Who Made the Supreme Court

## 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.

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# Marshall the Man Who Made the Supreme Court

## 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.

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## Marshall the Man Who Made the Supreme Court

### 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.

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## Dartmouth College case

**Dartmouth College case**, formally **Trustees of Dartmouth College v. Woodward (4 Wheat. 518 [1819])**, U.S. Supreme Court case in which the court held that the charter of Dartmouth College granted in 1769 by King George III of England was a contract and, as such, could not be impaired by the New Hampshire legislature. The charter vested control of the college in a self-perpetuating board of trustees, which, as a result of a religious controversy, removed John Wheelock as college president in 1815. In response, the New Hampshire legislature passed an act [amending](#) the charter and establishing a board of overseers to replace the trustees. The trustees then sued William H. Woodward, college secretary and ally of Wheelock, but lost in the state courts.

Daniel Webster, a Dartmouth graduate and the most famous lawyer of his time, represented the trustees before the U.S. Supreme Court, which reversed the decision of the New Hampshire courts. The Supreme Court held that Section X, Article 1, of the federal Constitution prohibits states from altering the obligations of a contract, in this case, a charter. The founders of Dartmouth, the court ruled, contracted with the trustees for the perpetual application of the funds provided by the founders. The decision had far-reaching impact in its application to business charters, protecting businesses and corporations from a great deal of government regulation.

### CONTRIBUTOR:

[The Editors of Encyclopaedia Britannica](#)

### TITLE

Dartmouth College case

### PUBLISHER

Encyclopædia Britannica

### DATE PUBLISHED

June 06, 2019

### URL

<https://www.britannica.com/event/Dartmouth-College-case>

### ACCESS DATE

December 29, 2020



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## Cherokee Indian cases (1830s)

In the cases *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), the U.S. Supreme Court considered its powers to enforce the rights of Native American "nations" against the states. In *Cherokee Nation*, the Court ruled that it lacked jurisdiction (the power to hear a case) to review claims of an Indian nation within the United States. In *Worcester*, the Court ruled that only the United States, and not the individual states, had power to regulate or deal with the Indian nations.

In 1828, the state of Georgia passed a series of laws stripping local Cherokee Indians of their rights. The laws also authorized Cherokee removal from lands sought after by the state. In defense, the Cherokee cited treaties that they had negotiated, as an independent "nation," with the United States, guaranteeing the Cherokee nation both the land and independence. After failed negotiations with President Andrew Jackson and Congress, the Cherokee, under the leadership of John Ross, sought an injunction ("order to stop") at the Supreme Court against Georgia to prevent its carrying out these laws.

The Court, in *Cherokee Nation v. Georgia*, ruled that it lacked jurisdiction to hear the case and could not resolve it. The Court began by sympathizing with the Cherokees' plight, acknowledging that they had been persecuted and marginalized by America's European settlers, then asserted that Indian nations were both "foreign nations" and people within U.S. boundaries. In other words, the Cherokee, though sometimes viewed as an independent nation, were also dependent people on the nation that envelopes them. Thus, the Court asserted that "foreign nations," as used in the Constitution, could not include "Indian nations." Because the Constitution only authorizes the Supreme Court to hear cases brought by "foreign nations," not "Indian nations," the Court was not authorized to entertain this case and dismissed it. Meanwhile, in 1830, Georgia passed another law requiring its citizens to obtain a state license before dwelling inside the Cherokee Nation. A group of missionaries residing there, including Samuel Austin Worcester, refused to obtain such a license. The missionaries were known supporters of Cherokee resistance to Georgia's removal efforts. Worcester and a fellow missionary were indicted by a Georgia court, brought to trial, and convicted. Worcester appealed to the U.S. Supreme Court, claiming that the Georgia court lacked authority to convict them.

On review of the case, the Supreme Court in *Worcester v. Georgia* ruled that because the Cherokee Nation was a separate political entity that could not be regulated by the state, Georgia's license law was unconstitutional and Worcester's conviction should be overturned. The Court first pointed to evidence proving that the Native American communities were conceived of as "separate nations" dating back to the time of early colonial America. The Court then argued that today's "treaties and laws of the United States [also] contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union." Therefore, only the United States can negotiate the terms of Indian lands and the use thereof. States lack constitutional power to deal with such "nations" at all. Thus, Georgia could not pass the license law and convict Worcester for violation of that law.

The Supreme Court's ruling, however, was neither followed by Georgia nor enforced by the U.S. government. President Andrew Jackson, sensitive to Georgia's claims of independence at a time when the states wielded considerable power, had no interest in enforcing the Court's decree. The missionaries remained imprisoned until 1833, when a new Georgia governor negotiated for their release. The Georgia Cherokees themselves were forcibly relocated in 1838, pursuant to a U.S. treaty, to present-day Oklahoma ("the Trail of Tears"). Today, the substantive ruling in *Worcester* is no longer binding: the Supreme Court holds that, to a certain extent, a state may regulate the Indian territories within its boundaries.

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