

# Supreme Court Case Study 1



## The Supreme Court's Power of Judicial Review

### Marbury v. Madison, 1803

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

The election of 1800 transferred power in the federal government from the Federalist Party to the Republican Party. In the closing days of President John Adams's administration, the Federalists created many new government offices, appointing Federalists to fill them. One of the last-minute or "midnight" appointments was that of William Marbury. Marbury was named a justice of the peace for the District of Columbia. President Adams had signed the papers, but his secretary of state, John Marshall, somehow neglected to deliver the papers necessary to finalize the appointment.

The new president, Thomas Jefferson, was angry at the defeated Federalists' attempt to "keep a dead clutch on the patronage" and ordered his new secretary of state, James Madison, not to deliver Marbury's commission papers. Marbury took his case to the Supreme Court, of which John Marshall was now the Chief Justice, for a *writ of mandamus*—an order from a court that some action be performed—commanding Madison to deliver the commission papers in accordance with the Judiciary Act of 1789.

#### Constitutional Issue \*\*\*\*\*

Article III of the Constitution sets up the Supreme Court as the head of the federal judicial system. Historians believe that the Founders meant the Court to have the power of judicial review, that is, the power to review the constitutionality of acts of Congress and to invalidate those that it determines to be unconstitutional. The Constitution, however, does not specifically give the Court this right.

Chief Justice John Marshall, as a Federalist, believed strongly that the Supreme Court should have the power of judicial review. When the *Marbury* case presented the perfect opportunity to clearly establish that power, Marshall laid out several points which the court believed supported the right of judicial review. At the time, the decision was viewed as a curtailment of the power of the president, but people today recognize that the case established, once and for all, the importance of the Supreme Court in American government.

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

Justice Marshall reviewed the case on the basis of three questions: Did Marbury have a right to the commission? If so, was he entitled to some remedy under United States law? Was that remedy a writ from the Supreme Court?

Marshall decided the first question by holding that an appointment is effective once a commission has been signed and the U.S. seal affixed, as Marbury's commission had been. Therefore, Marbury had been legally appointed, and Madison's refusal to deliver the

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# Supreme Court Case Study 1 (continued)

commission violated Marbury's right to the appointment. In response to the second question, Marshall held that Marbury was entitled to some remedy under United States law.

The final question examined whether the Court had the power to issue the writ. Marshall explained that the right to issue writs like the one Marbury was requesting had been granted the Court by the Judiciary Act of 1789. This law, however, was unconstitutional and void because the Constitution did not grant Congress the right to make such a law. In his written opinion, Marshall defended the right of the Court to declare a law unconstitutional: "It is emphatically the province and duty of the judicial department to say what the law is . . . . If two laws conflict with each other, the courts must decide on the operation of each." The Supreme Court thus became the final judge of constitutionality, thus establishing the principle of judicial review.

At the time, observers were much more interested in the practical result of the ruling—that the Court could not issue the writ, and could not, therefore, force the appointment of Marbury. Congress could not expand the Court's original jurisdiction, and the Constitution does not give the Court the authority to issue a writ. They paid much less attention to the long-term implications of the decision. Here is how a constitutional scholar evaluates the *Marbury* decision:

"Over the passage of time [the] *Marbury* [decision] came to stand for the monumental principle, so distinctive and dominant a feature of our constitutional system, that the Court may bind the coordinate branches of the national government to its rulings on what is the supreme law of the land. That principle stands out from *Marbury* like the grin on a Cheshire cat; all else, which preoccupied national attention in 1803, disappeared in our constitutional law."

Not until fifty years after rendering the *Marbury* decision did the Court again declare a law unconstitutional, but by then the idea of judicial review had become a time-honored principle.



## Questions ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

- 1. Why is the *Marbury* case important in the history of the Supreme Court?
- 2. In what way did the *Marbury* decision enhance the system of checks and balances provided for in the Constitution?
- 3. Constitutional scholars have pointed out there is an inconsistency in Justice Marshall's opinion with respect to what the Constitution specifically provides. What is that inconsistency?
- 4. The United States is one of the few countries in which the highest court of the land has the power to declare a law unconstitutional. Do you believe that such a power is of benefit to a country? Explain your answer.
- 5. Justice John Marshall was a Federalist who believed in a strong national government and certainly moved in this direction with his *Marbury* ruling. Do you think it is proper for a Supreme Court Justice to allow his or her personal political opinions to influence the rulings of the Court? Explain.

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# Supreme Court Case Study 2



## Power of the Federal Government v. Power of the State Government

### McCulloch v. Maryland, 1819

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

The Supreme Court first settled a dispute between a national and a state law in 1819. The Second Bank of the United States had been chartered by Congress in 1816. Large sections of the country, especially the West and South, bitterly opposed the Bank. The Bank's tight credit policies contributed to an economic depression, and many states reacted against what they saw as a "ruthless money trust" and "the monster monopoly." Two states even prohibited the bank from operating within their jurisdictions. Six other states taxed Bank operations. In 1818 the Maryland legislature placed a substantial tax on the operations of the Baltimore branch of the Bank of the United States. The cashier of the Baltimore branch, James McCulloch, issued bank notes without paying the tax. After Maryland state courts ruled against McCulloch for having broken the state law, he appealed to the United States Supreme Court.

#### *Constitutional Issues* \*\*\*\*\*

One of the issues that concerned the Founders at the Constitutional Convention was how to divide power between the federal government and state governments. Reconciling national and local interests proved difficult. In the *McCulloch* case, the Supreme Court ruled in favor of federal power.

The constitutional questions in the *McCulloch v. Maryland* case concern both the powers of Congress and the relationship between federal and state authorities.

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

Chief Justice John Marshall wrote the decision for a unanimous Court. He started with the question, "Has Congress the power to incorporate a bank?"

In first determining the extent of congressional power, Marshall held that the Constitution is a creation not of the states, but of the people, acting through statewide constitutional conventions. Therefore, the states are bound in obligation to the Constitution, which is "the supreme law of the land." Marshall summed up the decision based on the Supremacy Clause, saying, "If any one proposition could command the universal assent of mankind we might expect it to be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action . . . The states have no power to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress."

Although the specific powers of Congress do not include the power to charter a corporation, the section enumerating these powers includes a statement giving Congress the authority to make the laws "necessary and proper" for executing its specific tasks. In Marshall's analysis, the terms "necessary and proper" grant Congress implied powers to carry out granted, or enumerated, powers. "Let the end be legitimate, let it be within the scope of the Constitution,

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## Supreme Court Case Study 2 (continued)

and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional," the Chief Justice wrote. The choice of means is for Congress to decide. In the *McCulloch* case, the Court held that Congress had the power to incorporate a bank.

On the question of the validity of Maryland's bank tax, Marshall again noted the Constitution's supremacy, but he also recognized a state's constitutional right to impose taxes. Echoing his earlier argument, Marshall observed that a government may properly tax its subjects or their property. The federal government and its agencies, however, are not subjects of any state. A tax on a national institution by one state would be an indirect tax on citizens of other states, who would not benefit from such a tax.

Furthermore, the power to tax, if misused, is also the power to harm an institution. The power of Congress to establish an institution must imply the right to take all steps necessary for its preservation. In a conflict between the federal power to create and preserve a corporation and a state's power to levy a tax, the state must yield. Therefore, the Court denied Maryland's power to tax the Second Bank of the United States. In this way Marshall ensured the power of Congress to enact legislation "under a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs."

In conclusion, Marshall wrote, "... this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional . . . ."

The Court's decision in the *McCulloch* case brought a storm of abuse raining down on the Court. Virginia passed a resolution urging that the Supreme Court be divested of its power to pass on cases in which states were parties. Ohio, which like Maryland had a tax on the United States Bank, simply continued to collect the tax. The decision was particularly offensive to believers in the strict, literal interpretation of the Constitution because it sustained the doctrine of implied powers. Nevertheless, the *McCulloch* decision, in upholding the principle of implied powers, enlarged the power of the federal government considerably and laid the constitutional foundations for the New Deal in the 1930s and the welfare state of the 1960s.



### Questions

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. What constitutional principle did the Supreme Court establish in the *McCulloch* case?
2. What is the objective of the "necessary and proper" clause?
3. What was the basis for the Court's ruling that Maryland could not tax the Second Bank of the United States?
4. How did the fact that Justice Marshall was a Federalist influence his ruling in the *McCulloch* case?
5. How did the *McCulloch* ruling contribute to the strength of the national government?

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# Supreme Court Case Study 3



## The Meaning of a Contract

### Dartmouth College v. Woodward, 1819

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

Dartmouth College originally had been granted a charter by the British crown in 1769, prior to American independence from Great Britain, for the purpose of educating Native Americans and promoting learning generally. In the early 1800s, the college had become involved in state politics on the side of the Federalists. In 1815 the Dartmouth College trustees decided to remove the president of the college. The state legislature, now controlled by Republicans, sided with the college president against the Federalist trustees and sought to grasp control of the college away from them. In 1816, after independence, the legislature passed a series of statutes that had the effect of converting Dartmouth, a private college, into a state university under public control. The highest court of New Hampshire sustained the state statutes.

The trustees appealed the case to the United States Supreme Court, arguing that the New Hampshire statutes impaired their contractual rights in violation of the Constitution. They had as one of their attorneys the great statesman and orator, Daniel Webster.

#### Constitutional Issue \*\*\*\*\*

Under common law—the principles and rules established through court decisions over the years—a contract was an agreement between two or more parties to perform certain actions. Under Article I, Section 10, of the Constitution, states were prevented from impairing the obligation of a contract.

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

Chief Justice John Marshall wrote the Court's opinion, which held that the state acts placing Dartmouth under state control constituted an impairment of contract, and thus was unconstitutional. The state treasurer, Woodward, was required to return college records, the corporate seal, and other corporate property to the trustees.

The core of the decision was the Court's ruling that a charter for a private corporation, granted by the British crown before independence and the adoption of the Constitution, was protected by Article I, Section 10, of the Constitution. Marshall granted that this clause was not specifically designed to protect charters creating charitable, educational, or other nonprofit corporations of incorporation. "It is more than possible," he wrote, "that the preservation of rights of this description was not particularly in the view of the framers of the constitution when the clause under consideration was introduced into that instrument." On the other hand, according to Marshall, the contract clause provided no exceptions with respect to private, nonprofit entities. "It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people when it was adopted," Marshall wrote. Therefore, he continued, since there was no proof that the language of the Constitution would have been changed if charters incorporating nonprofit entities had been considered, the case fell under the prohibition of state interference with

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## Supreme Court Case Study 3 (continued)

contracts. "There is no expression in the constitution, no sentiment delivered by its contemporaneous expounders, which would justify us in making it." If a charter of incorporation is lawfully bestowed, the charter has "every ingredient of a complete and legitimate contract and is protected from state infringement by the contracts clause."

The *Dartmouth College* decision made it clear that states were not permitted to take over private institutions, such as a private educational institution, and make them public. States, therefore, began to establish their own state universities. By protecting nonprofit entities, the Court was essentially protecting all corporations.

As the economy of the United States grew, the corporate form of business organization became more and more common. Corporate charters, granted by state governments, were increasingly used to establish manufacturing and commercial businesses. The *Dartmouth College* case provided a protection for owners and management interests and a climate of legal stability that promoted economic growth.



### Questions ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. What effect did the Supreme Court's decision have on Dartmouth College?
2. The Constitution did not mention corporations in Article I, Section 10, so how did Justice Marshall justify ruling that Dartmouth's charter was a contract?
3. Why is the *Dartmouth* case considered to be important in the economic history of the United States?
4. Historians point out that the *Dartmouth* decision had an effect on the growth of state universities. Why do you think states established state universities after this decision?
5. Justice John Marshall believed in a strong central government. How did the *Dartmouth* decision relate to this belief?

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# Supreme Court Case Study 4



## Regulation of Interstate Commerce

### *Gibbons v. Ogden, 1824*

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

In 1798 the New York legislature gave Robert Fulton a monopoly for steamboat navigation in New York. In 1811 Fulton's partner, Robert Livingston, assigned to Aaron Ogden an exclusive license to run a ferry service on the Hudson River between New York and New Jersey—a very profitable business. Seeking to take advantage of this flourishing trade, a competitor, Thomas Gibbons, secured a license from the federal government to operate a ferry between Elizabethtown, New Jersey, and New York City.

Claiming that his monopoly rights were being infringed, Ogden obtained an injunction in a New York state court forbidding Gibbons's boat from docking in New York. (An injunction is an order by a court prohibiting a person or a group from carrying out a specific action.) Gibbons appealed the state court's decision to the United States Supreme Court.

#### *Constitutional Issues* \*\*\*\*\*

The Constitution did not make clear what was meant by interstate commerce or the extent to which it could be regulated. At the time of this case in 1824, New York had closed its ports to vessels not owned or licensed by a monopoly chartered by the state. In retaliation, other states passed similar laws that limited access to their ports. The United States attorney maintained that the country faced a commercial "civil war." In the absence of a clear statement of what is meant by interstate commerce, how did the federal government have the power to intervene?

The *Gibbons v. Ogden* case presented the Supreme Court with the first opportunity to consider the ramifications of the commerce clause contained in Article I, Section 8 of the Constitution. This clause gave Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Several constitutional questions were involved in the case, revolving around an interpretation of the commerce clause.

The first question was whether navigation should be considered to be a part of commerce. Then, if navigation should be so considered, to what extent might Congress regulate it? Another question was whether Congress had an exclusive right to regulate interstate commerce or if this was a "concurrent" power to be shared with the states.

#### \*\*\*\*\* The Supreme Court's Decision \*\*\*\*\*

The Court held in favor of Gibbons. Chief Justice John Marshall wrote that commerce "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 navigation . . . ."

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Marshall applied the same reasoning to commerce between states. In fact, he noted, the United States government had always regulated navigation. "All America understands," he wrote, "and has uniformly understood the word 'commerce' to comprehend navigation . . ." Thus the Court held that "a power to regulate navigation is expressly granted as if that term had been added to the word 'commerce.'"

Marshall now turned to the meaning of "among," as in "among the several states." He reasoned that since "among" means "intermingled with," "commerce among the states cannot stop at the external boundary line of each state but may be introduced into the interior." Congress had no power over commerce which was confined to one state alone, but that power was in full force as soon as a state's boundary line had been crossed. And the power to regulate must necessarily follow any commerce in question right across those boundaries."

Marshall concluded that, like other congressional powers, the power to regulate commerce is unlimited so long as it is applied to objects specified in the Constitution.

The case also raised the question as to whether Congress's power to regulate is exclusive. If it is, then a state would be prevented from making its own commerce regulations. Marshall chose not to resolve this question. Instead, he wrote that in the *Gibbons* case there was a conflict between the state's law and a federal statute. "In every such case, the act of Congress . . . is supreme; and the law of the state. . . must yield to it." *Gibbons's* right to operate ferry service in competition with *Ogden* was therefore upheld.

By broadening the meaning of interstate commerce, Marshall laid the groundwork for including not only such clearly interstate activities as railroads and pipelines, but also the minimum wage regulation and prohibition of child labor. Robert Jackson, a Supreme Court justice who served in the mid-1900s, was thus correct when he declared, "Chief Justice Marshall described the federal commerce power with a breadth never exceeded."



## Questions

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. If you operated a trucking service between San Francisco, California, and Portland, Oregon, could you be subject to regulation by either or both of the states and the federal government? Explain.
2. Why was it necessary for Marshall to take the trouble to explain why navigation should be considered as part of commerce?
3. Explain in what way Justice Jackson's characterization of Marshall's *Gibbons* opinion was correct.
4. In what way is Marshall's ruling in the *Gibbons* case consistent with his other decisions, such as *McCulloch v. Maryland*, that related to federal versus state powers?
5. Do you agree with Marshall's ruling that *Gibbons* had a right to compete with *Ogden's* ferry line? Give reasons for your answer.

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