

Chief Justice John Marshall's Legacy



Throughout our history, many individuals have left a legacy, or something for which they will be remembered. For instance, Dr. Martin Luther King, Jr. is known for his advocacy of civil rights for African Americans. John Marshall is remembered for the decisions he made while Chief Justice of the United States.

Marbury v. Madison was the first case that was heard by the Supreme Court of the United States after John Marshall became Chief Justice of the United States. In the opinion he wrote for that case, Marshall foreshadowed the views he would express in later decisions. Among these cases are *McCulloch v. Maryland*, *Cohens v. Virginia*, and *Gibbons v. Ogden*.

Read the synopsis of each of these cases. As you read, look for commonalities in each of the decisions. When you are finished reading, respond to the questions that follow.

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

At the end of his term, Federalist President John Adams appointed William Marbury as justice of the peace for the District of Columbia. The Secretary of State, John Marshall (yes - the same person who later became Chief Justice) failed to deliver the commission to Marbury and left that task to the new Secretary of State, James Madison. Upon his inauguration, Thomas Jefferson told Madison not to deliver the commissions. Marbury filed suit and asked the Supreme Court to issue a *writ of mandamus*, or a court order which would require Madison to deliver the commission.

In his opinion, Chief Justice Marshall said that while Marbury was entitled to the commission, the Supreme Court did not have the power to issue the *writ of mandamus*. This was because the Judiciary Act of 1789, the act written by Congress which authorized the Supreme Court to issue such *writs*, was unconstitutional. Thus, the Court gave up the power to issue *writs*, but affirmed their power of judicial review, saying that if a law written by the legislature conflicts with the Constitution, the law is "null and void."

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

Many state banks did not like the competition and the conservative practices of the Bank of the United States. As a way to restrict the Bank's operations, the state of Maryland imposed a tax on it. After the Bank refused to pay the tax, the case went to court. Maryland argued that the federal government did not have the authority to establish a bank, because that power was not delegated to them in the Constitution.

The Supreme Court reached a unanimous decision that upheld the authority of Congress to establish a national bank. In the opinion, Chief Justice John Marshall conceded that the Constitution does not explicitly grant Congress the right to establish a national bank, but noted that the "necessary and proper" clause of the Constitution gives Congress the authority to do that which is required to exercise its enumerated powers. Thus, the Court affirmed the existence of implied powers.

On the issue of the authority of Maryland to tax the national bank, the Court also ruled in the Bank's favor. The Court found that "the power to tax involves the power to destroy . . . If the states may tax one instrument [of the Federal Government] they may tax any and every other instrument . . . the mail . . . the mint . . . patent rights . . . judicial process? This was not intended by the American people. They did not

Marbury v. Madison

design to make their government dependent on the States." Furthermore, he said, "The Constitution and the laws made in pursuance thereof are supreme; they control the Constitution and laws of the respective states and cannot be controlled by them."

Cohens v. Virginia (1821)

The Cohen brothers sold D.C. lottery tickets in Virginia, which was a violation of Virginia state law. They argued that it was legal because the U.S. Congress had enacted a statute that allowed the lottery to be established. When the brothers were convicted and fined in a Virginia court, they appealed the decision. In determining the outcome, the Supreme Court of Virginia said that in disputes that involved the national and state government, the state had the final say.

The Supreme Court upheld the conviction. It answered the larger question of whether or not the Supreme Court could review decisions of the highest state courts, including those in which the state was a party, by saying, "When we consider the situation of the government of the Union and of a State in relation to each other; the nature of our Constitution; the subordination of the State governments to that Constitution; the great purpose for which jurisdiction over all cases arising under the Constitution and laws of the United States is confided to the judicial department are we at liberty to insert in this general grant an exception of those cases in which a State may be a party? . . . We think . . . not. We think a case arising under the Constitution or laws of the United States is cognizable in the Courts of the Union whoever may be the parties to that case."

Gibbons v. Ogden (1824)

Aaron Ogden held a Fulton-Livingston license to operate a steamboat on the well-traveled route between New York and New Jersey. The State of New York gave him the license as a part of a monopoly granted to Robert Livingston and Robert Fulton. The route was so successful financially that competitors secured a license from the U.S. Congress to operate a ferry service along the same route. Thomas Gibbons held such a license from Congress. At issue in this case is whether New York's monopoly over steamboat passage in the waters between New York and New Jersey conflicted with Congress' constitutional power to regulate interstate commerce.

Ogden argued that the New York monopoly was not in conflict with Congress' regulation of commerce because the boats only carried passengers between the states and were not really engaged in commerce. Justice Marshall, who wrote the decision, disagreed. He ruled that the concept of commerce included not only the exchange of products, but also navigation and commercial intercourse generally. Since navigation on interstate waterways came under Congress', not the states', power to regulate, the New York monopoly was illegal. Marshall essentially expanded the meaning of commerce and asserted Congress' power over it. In fact, the commerce power now extends to almost every kind of movement of persons, things, ideas, and communication, for commercial purposes or not, across state lines.

Chief Justice John Marshall's Legacy

Questions to Consider:

1. What were Marshall's beliefs regarding the power of the federal government? In your answer, cite evidence from the cases.
2. What were Marshall's beliefs regarding the power of the judicial branch? In your answer, cite evidence from the cases.
3. What is Marshall's legacy? In other words, what long-term impact did his decisions have on future cases and on the United States as a whole?
4. Who would have liked Marshall's decisions? Who would have disliked them?
5. Create a poster in which you commemorate Chief Justice John Marshall as a "National Hero" or a "Wanted" Man. If you choose to do a National Hero poster, list at least two reasons why he is a national hero. On the poster, include the name of the organization that is "honoring" him. If you choose to do a "Wanted" poster, list at least two reasons why he is "wanted". Include the name of the organization that is "looking" for him.