**Judicial Review**

Constitutional Establishment of the Supreme Court:

**Read Article III, Section 2: Judicial power; to what cases it extends. Original jurisdiction of Supreme Court Appellate**

 1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and Citizens of another state, between Citizens of different states, between Citizens of the same state, claiming lands under grants of different states, and between a state, or the Citizens thereof, and foreign states, Citizens or subjects. (This section modified by [Amendment XI](http://avalon.law.yale.edu/18th_century/amend1.asp%22%20%5Cl%20%2211))

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

1. What is the job of the Supreme Court as described by Article III?

2. Is there any indication in this section that the Supreme Court has the “right” or “responsibility” to determine whether laws are constitutional – meaning whether they violate or go against what is written in the Constitution?

3. Are there any references to the term “judicial review” in the Constitution?

4. Does Article III establish the limits of the Court’s powers?

**Research Questions to Guide Your Research**

1. Describe the people involved in the case (Who was the plaintiff? Who was the defendant?)
2. Why was the case brought to court?
3. What constitutional principles were put into question with this case?
4. What did the court decide about the case?
5. How did this case impact the role of the National government long term?
6. Do you see the effects of this court decision in your current lives? How?

**Marbury v. Madison**

**Brief Fact Summary:** Plaintiff, William Marbury, was appointed a justice of the peace in the last days of President of the United States John Adams’ presidency. President of the United States Thomas Jefferson later refused to commission the plaintiff’s appointment. Thereupon, plaintiff sought mandamus relief from the Supreme Court of the United States

**Synopsis of Rule of Law:** The Supreme Court has the implied power from the United States Constitution to review acts of Congress and to declare them void if they are found to be in violation of the Constitution.

**Facts:** Marbury had been appointed a justice of the peace by President Adams in the last days of Adams’ presidency. Plaintiff’s appointment was confirmed by the Senate, but not finalized by commission before Adams’ successor, President Jefferson, took office. Upon seeking delivery of his commission from President Jefferson and being denied in, Plaintiff asked the Supreme Court to compel President Jefferson’s Secretary of State, by Writ of Mandamus, to deliver the commission. Section 13 of the Judiciary Act of 1789, which Marbury used to justify his claim, read, in relevant part, as follows: “The Supreme court . . . shall have power to issue writs of mandamus . . . to persons holding office, under the authority of the United States.”

**Issue:** Does Marbury have a right to the commission he demands?

If he has a right and that right has been infringed, do the laws of this country afford him a remedy? If they do afford him a remedy, is the Supreme Court the place for Plaintiff to get the relief he requests?

**Held:** Yes. Where an officer has been appointed to an office by the President, and such officer is not removable at the President’s will, his appointment cannot be annulled. It has conferred a legal right. Marbury was appointed to an office by President Adams, which was not removable at the President’s will, this, Marbury has a legal right to his commission.

The very essence of civil liberty is that an individual has a right to claim the protection of the laws when he is deprived of a legal right. Moreover, delivering a commission is not a political act subject to the discretion of the President, thus the President’s decision with regard to delivering Marbury’s commission cannot be said to be exempt from judicial examination.

Marbury seeks a remedy, mandamus relief, that only a court having original jurisdiction can grant. The Supreme Court has original jurisdiction only in cases involving ambassadors, other public ministers and consuls or suits in which a state is a party. Therefore, Marbury, who went directly to the Supreme Court has initiated his suit in the wrong forum. The statute on which Marbury based his suit is invalid in his situation. The part of the Act that authorizes the Supreme Court to issue writs of mandamus to persons holding office is unconstitutional.

**Discussion:** The key part of this case is where Chief Justice John Marshall declares that the act is unconstitutional and thereby establishes judicial review. Marshall starts with the proposition that the Constitution sets out the cases over which the Supreme Court has original jurisdiction and the cases over which it has Appellate Jurisdiction. Marshall argued that the jurisdictional arrangement cannot be changed by a mere federal statue because the Constitution is the Supreme law of the land. Marshall further argued that the Judicial branch must say what the law is and review the acts of the Congress if necessary. The job of judge necessarily entails saying what the law is, according to Marshall.

**McCulloch v. Maryland**

**Brief Fact Summary:** Defendant, James McCulloch, cashier of a branch of the Bank of the United States, refused to pay a tax imposed upon the Bank by the legislature of the state of Maryland

**Synopsis of Rule of Law** (1) The Necessary and Proper Clause authorizes Congress to make laws pursuant to the unenumerated powers of the United States Constitution so long as such laws are necessary and proper for carrying into execution the powers expressly vested in the federal government by the Constitution. (2) The Constitution and the laws made pursuant to it are supreme and control the constitution and the laws of the states and cannot be controlled by them.

**Facts**: Plaintiff, John James, brings suit on behalf of himself and the state of Maryland against the Defendant [McCulloch], cashier for the Bank of the United States. Plaintiff claimed Defendant had failed to pay a state tax assessed against the Bank. Defendant argued that the Bank. Defendant argued that the Bank, as an institution incorporated under the laws of the United States, was not obligated to pay a tax levied upon it by a state and called into question the validity of such a tax.

**Issue:** Does Congress have the power to incorporate a Bank? Was the tax an unconstitutional intrusion upon congressional powers?

**Held:** yes and yes

Congress’ power to incorporate a bank derives from its incidental powers conferred by the Necessary and Proper Clause for carrying into execution the powers vested by the Constitution in the United States government. Although we don’t see the word “bank” or “incorporation” among the enumerated powers of the Constitution, we do see express powers such as to (i) lay and collect taxes, (ii) to borrow money; (iii) to regulate commerce and (iv) to raise and support armies, etc. The fact that the necessary and proper clause was placed among the powers of Congress, not the limitations thereof, is also significant. This placement shows that the framers intended to enlarge, not diminish, the powers vested in Congress. The Constitution and the laws made pursuant to it are supreme and control to constitution and the laws of states and cannot be controlled by them. Thus, the states have no power to impede, burden or in any way control, the operations of the laws enacted by Congress. The Constitution derives its authority from the people, not from the states. The power to tax is the power to destroy. When a state taxes an entity created by the Congress, it acts upon an entity created by people over whom it has no control.

**Discussion:** This case turns on the meaning of the word “necessary” in the Necessary and Proper Clause. Rather than interpret the word narrowly to mean absolutely necessary, Chief Justice John Marshall interprets the word broadly to encompass usages such as needful, useful, incidental, or conducive to.

**Gibbons v. Ogden**

**Brief Fact Summary:** Ogden was given an exclusive license, pursuant to a New York statute, to run a ferry between New York and New Jersey. Gibbons obtained a license, pursuant to federal law, to run a ferry in New York waters, thus running in interference with Ogden’s license. Ogden sought an injunction against Gibbons.

**Synopsis of Rule of Law:** Congress’ power to regulate interstate commerce does not stop at the external boundary line of a State. Congress’ power to regulate within its sphere is exclusive.

**Facts:** The New York legislature enacted a statute granting Fulton and Livingston an exclusive right to operate a steamboat in New York waters. Thereupon, Fulton and Livingston licensed Ogden to operate a ferry between New York and New Jersey. Later, Gibbons began operating a ferry, licensed under a statute enacted by Congress that necessarily entailed Gibbons entering into New York waters, thereby violating Ogden’s monopoly. Ogden obtained an injunction against Gibbons from a New York court.

**Issue:** Was the New York court’s injunction against Gibbons’ license lawful?

**Held.** No. The New York monopoly was invalid under the Supremacy Clause. Gibbons was given a license to move within the New York waterway, i.e., to navigate.

Article I, Section 8 of the United States Constitution granted Congress the power to regulate commerce among the several states. Contrary to Ogden’s assertion, “commerce” means more than traffic. It also encompasses navigation. The phrase “among the several states” means “intermingled with them”. Therefore, Congress’ power to regulate “among the several states” must not stop at the external boundary line of each State. Congress’ power must also extend to each States’ interior. Moreover, the power of Congress to regulate within its proper sphere, e.g., interstate commerce, is exclusive.

**Discussion:** One should note that Marshall in his holding is not saying that commerce that is completely internal and that does not affect States is subject to regulation by Congress under the Commerce Clause.

**Fletcher v. Peck**

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| In Fletcher v. Peck (1810), the Supreme Court ruled that a grant to a private land company was a contract within the meaning of the Contract Clause of the Constitution, and once made could not be repealed. In addition to establishing a strict interpretation of the Contract Clause, the case marked the first time the Supreme Court struck down a state law on constitutional grounds. The dispute in the case arose in 1795, when the Georgia legislature granted some 35 million acres of state land, involving vast tracts around the Yazoo River in what is now Alabama and Mississippi, to private speculators for the bargain price of 1.5 cents per acre. It was soon discovered that all but one of the legislators who voted for the grant had been bribed. In 1796, a new state legislature repealed the fraudulent grant; in 1800, John Peck purchased some land that was part of the 1795 grant, and in 1803, he sold 13,000 acres of it to Robert Fletcher for $3,000. When Fletcher discovered the sale of the land had been voided by state law, however, he brought suit against Peck for damages, claiming Peck had lied to him in promising he had good title to the land. A federal circuit court ruled for Peck, and Fletcher appealed to the U.S. Supreme Court. The question before the Court was whether the act of 1796 (repealing the act of 1795) was a violation of Article I, Section 10 of the Constitution -- in other words, whether, once the state of Georgia had finalized the original sale of the land, it could constitutionally repeal that sale, or whether the Constitution prohibited it from doing so. The Supreme Court, in a 4-1 decision written by [Chief Justice John Marshall](http://www.pbs.org/wnet/supremecourt/democracy/robes_marshall.html), ruled that Georgia had violated the Contract Clause of the Constitution when it repealed the grants. The Court conceded that the fraud underlying the grants was "deplorable," but it rejected Fletcher's argument that Georgia had the "sovereign power," as the agent of the people, to repeal this act of public corruption. The Court reasoned that Peck was an innocent third party who had entered into two valid contracts: first when he paid for the land from the original grantee, and second when he sold the land to Fletcher. Peck thus fell outside the original fraud the Georgia legislature sought to undo in its repeal. As Marshall put it, "When a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights." Fletcher's suit against Peck was dismissed, and Georgia's law repealing the grants was struck down. The Court's strict interpretation of the Contract Clause was modified 17 years later by the Taney Court in [Charles River Bridge v. Warren Bridge (1837)](http://www.pbs.org/wnet/supremecourt/antebellum/landmark_charles.html), but for nearly a century the decision served as a major barrier to state economic regulation of business corporations. In Home Building & Loan Association v. Blaisdell (1934), as a response to the massive economic dislocation of the Great Depression, the Court ruled that the state could constitutionally alter the terms of any contract so long as the alteration is rationally related to protecting the public's welfare.  |
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**Dartmouth v. Woodward**

**The Issue:**

Under the Constitution, can a state legislature change the charter of a college?

**What's at Stake?**

Whether Dartmouth College would remain private or become a state school. More broadly, what is protected by the Constitution's "contract" clause?

**Facts and Background**

In 1769 the King of England granted a charter to Dartmouth College. This document spelled out the purpose of the school, set up the structure to govern it, and gave land to the college. In 1816, the state legislature of New Hampshire passed laws that revised the charter. These laws changed the school from private to public. They changed the duties of the trustees. They changed how the trustees were selected.

The existing trustees filed suit. They claimed that the legislature violated the Constitution. They said that Article 1, Section 10, of the Constitution prevented a state from "impairing" (that is, weakening or canceling) a contract.

**The Decision**

By a 5-1 margin, the Court agreed with Dartmouth. The Court struck down the law, so Dartmouth continued as a private college. Chief Justice Marshall wrote the majority opinion. He said that the charter was, in essence, a contract between the King and the trustees. Even though we were no longer a royal colony, the contract is still valid because the Constitution says that a state cannot pass laws to impair a contract.

**The Impact of the Decision**

Historians believe that the decision greatly encouraged business investment and growth. Corporations are also chartered by states. It states can't pass laws to impair those charters, then businesses are more secure. They are also more apt to attract investors, employ workers, and to add to the national prosperity.

**Find Out**

What else are states forbidden to do in Article 1, Section 10? Pick three specific examples. Why do you think the Constitution prohibits them?