

Landmark Constitutional Cases

***Marbury v. Madison*: Establishing Judicial Review**

This case, which dates back to the early days of the republic, established the key principle of **judicial review**. This principle grants the Supreme Court the power to declare acts of Congress, the executive branch, and the states unconstitutional. In other words, the Court can overturn laws or government actions that do not comply with the Constitution. This principle is not stated directly in the Constitution, though it is implied in Article III, which outlines the Court's judicial powers. It would take the *Marbury* case to make judicial review an accepted principle.

The case had its origins in the election of 1800. That year John Adams, the incumbent president and candidate of the Federalist Party, lost to Thomas Jefferson. Just before leaving office, Adams created dozens of new federal judgeships and appointed Federalists to fill these posts. Since federal judges serve for life, this action would ensure the continued influence of the Federalist Party in the federal government. However, Adams was not able to get all the commissions, or appointments, delivered by the time he left office.

Angered by Adams's "court packing" scheme, President Jefferson instructed his new secretary of state, James Madison, not to deliver the remaining commissions. William Marbury was one of those who failed to receive his commission. Marbury took his case to the Supreme Court. He based his argument on Section 13 of the Judiciary Act of 1789. This section empowered the Supreme Court to issue a "writ of mandamus" to force an official, in this case Madison, to perform a duty for which he was legally responsible.

Chief Justice John Marshall, a firm Federalist who was himself one of Adams's last-minute appointments, faced a delicate dilemma. If he issued the writ, Jefferson and Madison might simply ignore it, thus weakening the Court's authority. If he refused to issue the writ, however, it might imply that the Court had no power to judge the actions of the executive branch. Instead, Marshall did neither.

On February 24, 1803, the Supreme Court issued its decision. Writing for the majority, Marshall said that Marbury deserved his commission and that Madison should have delivered it.

But then Marshall added an unexpected twist. He wrote that Section 13 of the Judiciary Act violated the Constitution. Article III, which established the Judicial Branch, did not, he argued, give the courts power to issue a writ of mandamus. Declaring that a law "repugnant to the constitution is void," the Supreme Court struck down Section 13 of the Judiciary Act as unconstitutional and decided against Marbury.

It was a brilliant decision, both legally and politically. Although Jefferson did not support judicial review, he could do nothing to oppose it because the Court did not ask him to enforce the writ. Marshall had thus preserved the Court's authority and also given it the power to review the constitutionality of acts of Congress and the executive branch.

Judicial review has played a key role in Court decisions since *Marbury*. One of its main consequences has been to allow citizens to challenge in court any law or government action that they believe violates the Constitution. A case such as *Goss v. Lopez* would never have come before the Supreme Court without the establishment of judicial review.

***McCulloch v. Maryland*: Making the Constitution the Supreme Law of the Land**

A second landmark case, *McCulloch v. Maryland*, also came before the Marshall Court in the early 1800s. This case affirmed the supremacy of the national government over the states and upheld the implied powers of Congress under the Constitution.

The case revolved around disputes over the creation of a national bank. In 1791, Congress chartered the First Bank of the United States, even though some national leaders, including Thomas Jefferson, argued that such a bank was not authorized by the Constitution. The bank's charter ran out in 1811 and was not renewed.

In 1816, Congress decided to charter the Second Bank of the United States. Many states opposed the creation of this new national bank, and a number of them—including Maryland—passed laws to tax its branches. The cashier of the Maryland branch, James McCulloch, refused to pay the tax. When Maryland courts ordered him to pay, he appealed his case to the Supreme Court.

On March 6, 1819, the Court issued a unanimous decision in favor of the bank and McCulloch. In his written opinion, Marshall first argued that the federal government's power to establish a bank, though not specifically cited in the Constitution, was supported by the Elastic Clause in Article I, Section 8. That clause allows Congress to make all laws that are

"necessary and proper" to carry out its duties. Marshall asserted that the power to establish a national bank was implied in the enumerated powers of Congress, including the powers to lay and collect taxes, to borrow money, and to regulate commerce. A national bank, he said, would conceivably be useful for carrying out those powers and was therefore constitutional.

Marshall went on to say that no state has the power to tax the national bank or any other arm of the federal government. Such power would make state law superior to federal law, since, as he put it, "the power to tax involves the power to destroy." The people, he added, "did not deign to make their government dependent on the states." In fact, they declared just the opposite when they ratified the Constitution as "the supreme Law of the Land."

The decision in *McCulloch v. Maryland* had far-reaching consequences. By confirming the Elastic Clause, the Court supported a broad expansion of congressional power. It also sent a clear message that in conflicts between federal and state law, federal law would prevail. In both regards, the Court's decision helped to strengthen the national government.

United States v. Nixon: Reaffirming the Rule of Law

A third key case, *United States v. Nixon*, is more recent. This case reaffirmed the rule of law as a key principle of American government.

In the course of its investigation, the Senate discovered that Nixon had made secret tape recordings of his conversations in the Oval Office. Both the

Senate and the special prosecutor asked the president to hand over the tapes. Nixon refused. As justification, he claimed executive privilege. This is the right to keep internal discussions and documents of the White House private. Although executive privilege is not mentioned in the Constitution, various presidents throughout the country's history have claimed this right on the basis of separation of powers and national security.

After Cox demanded the tapes, Nixon had him fired. The public outcry was so great, however, that the president soon agreed to the appointment of a new special prosecutor. Cox's successor, Leon Jaworski, took Nixon to court to force him to release the tapes.

In 1974, the Supreme Court decided unanimously in the case *United States v. Nixon* that the president had to surrender the Watergate tapes. Chief Justice Warren Burger acknowledged that presidents have a legitimate claim to executive privilege. However, this claim, he said, "must be considered in light of our historic commitment to the rule of law." In cases of criminal prosecution, Burger said, executive privilege must give way to the "fundamental demands of due process."

Nixon complied with the decision and handed over the tapes. One of them proved to be a "smoking gun" that implicated the president in efforts to cover up the Watergate crimes. Faced with the prospect of impeachment, Nixon resigned. The Watergate scandal and the Court's decision demonstrated that no one, not even the president, is above the law.

The origins of the case lie in the Watergate scandal of the early 1970s. During the 1972 presidential campaign, burglars broke into the Democratic national campaign headquarters, located in the Watergate complex in Washington, D.C. When evidence tied the break-in to President Richard Nixon, the Senate formed a special committee to investigate the incident. Under mounting pressure, Nixon and his attorney general, Elliot Richardson, also set up a special prosecutor's office to look into the matter. Richardson appointed Harvard law professor Archibald Cox as special prosecutor.

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Section 4.5

Read Section 4.5, and then do the following:

1. Explain the difference between strict and loose construction of the Constitution.
2. On a page in your notebook, complete the table below for the three landmark cases discussed in the section.
 - Enter the case's name and the year it was decided.
 - List two or three main facts of the case.
 - Write a short summary of the Supreme Court's decision.
 - Describe the significance of the decision in terms of its effects on the government and on the interpretation of the Constitution.

Three Landmark Court Cases

Name and Date of the Case	Facts of the Case	Summary of the Decision	Significance of the Decision