

APPENDIX 2



Supreme Court Decisions that Shaped the Constitution

Judicial Review: *Marbury v. Madison* (1803). On the last night of his Presidency, John Adams appointed a number of Federalists to office, just before Thomas Jefferson and the Democratic-Republicans assumed power. Among these, Adams appointed William Marbury of Maryland to be a justice of the peace in the District of Columbia. When James Madison took over as the new secretary of state, he declined to deliver Marbury's commission to him. Marbury sued directly to the Supreme Court, as was permitted under existing law. Chief Justice John Marshall was a Federalist who had also been one of Adams's late appointees. Although Marshall sympathized with Marbury, he knew that the Court had no power to enforce its decision against Jefferson's will and would look weak. Instead, Marshall wrote an opinion that the law under which Marbury brought suit had been unconstitutional. Rather than weakening the Court, the ruling strengthened it, as this marked the first time that it had expressed the right of judicial review.

The Constitution and State Authority: *Trustees of Dartmouth College v. Woodward* (1819). In 1814 the board of trustees of Dartmouth College voted to remove the school's president, John Wheelock. The state legislature responded by voting to lift the private college's old royal charter and to restore Wheelock as president. The board of trustees appealed to the U.S. Supreme Court. Defending them in court was an alumnus of the college, the American statesman Daniel Webster. He argued eloquently that the state legislature had violated the constitutional ban on states passing laws that would break contracts. Writing for the Court, Chief Justice John Marshall agreed that a charter was a contract and the state legislature therefore lacked the power to void it. This ruling boosted the authority of the federal Constitution over the states.

Federal Supremacy: *McCulloch v. Maryland* (1819). A Maryland law required the federally chartered Bank of the United States to pay a state tax. Joseph McCulloch, the cashier in the bank's Maryland branch, refused to pay the tax or any penalty. The bank sued in Maryland courts and eventually the case went to the U.S. Supreme Court, where Daniel Webster defended the bank. Chief Justice John Marshall wrote the Court's opinion in favor of the bank based on the supremacy clause. The Court found that allowing a state to tax an institution of the federal government violated the concept of federal supremacy. Later, Joseph McCulloch was caught embezzling money from his bank, and this news emboldened the state of Ohio to enact its own taxes against the bank. In the case of *Osborn v. Bank of the United States* (1824), the Supreme Court upheld its earlier

reasoning, once again asserting the national government's primacy over the states.

Regulating Interstate Commerce: *Gibbons v. Ogden* (1824). A New Jersey steamboat operator, Aaron Ogden, purchased monopoly rights on the Hudson River, the state of New York. His former partner, Thomas Gibbons, who had a federal license, challenged the state monopoly. Ogden then sued Gibbons. The case made its way to the Supreme Court, where Daniel Webster, who defended Gibbons, argued that the Constitution gave Congress the power to regulate interstate commerce, regardless of laws enacted by individual states. Chief Justice John Marshall, writing for the Court, agreed that federal law was superior to state law. The ruling furthered future interstate transportation and commerce.

Permitting State Improvements: *Charles River Bridge v. Warren Bridge* (1837). In 1785 the state of Massachusetts incorporated a group of businessmen to build a toll bridge over the Charles River, replacing an earlier ferry service that had operated as a monopoly. As Boston grew so did the need for new bridges, but the owners of the Charles River Bridge argued that such competition would diminish the value of their property. The Charles River Bridge proprietors sued the builders of the Warren Bridge, and hired Daniel Webster as their attorney. Before the case reached the Supreme Court, John Marshall died and Roger B. Taney became chief justice. In contrast to the earlier Dartmouth College case, which had upheld original contracts, the Supreme Court now voted 7 to 2 against the Charles River Bridge, finding that the contract did not create an "exclusive privilege" and that signing additional contracts was within the state's authority.

Claiming Freedom: *Dred Scott v. Sandford* (1857). When Dr. John Emerson, an army surgeon, left St. Louis for service in Illinois and Wisconsin, he took with him as a servant Dred Scott, a slave who belonged to the Emerson family. Scott lived in free territory for five years before returning to Missouri, where slavery was permitted. After Dr. Emerson died, his widow moved to New York and left Scott with Henry Blow, who personally opposed slavery. Seeking to set a precedent, Henry Blow arranged for Dred Scott to sue for his freedom on the grounds that he became free when he left the slaveholding South. The case was appealed to the Supreme Court at a time when the nation was divided over whether to permit slavery in the new western territories. The case was filed by John F. A. Sanford, the legal administrator for the woman who owned Dred Scott. Due to a clerical error, the court recorded his name as Sandford. Seeking to settle

this contentious issue, Chief Justice Roger Taney and a majority of the justices ruled that, as a slave, Scott was not a citizen and could not use the federal courts. The majority then went further and declared the Missouri Compromise unconstitutional because Congress had no right to limit the spread of slavery. Rather than restore harmony, the ruling inflamed antislavery passions. Having lost the case, Henry Blow granted Dred Scott his freedom.

Trying Civilians in Military Courts: *Ex Parte Milligan* (1866). Lambdin P. Milligan was a Northern Democrat who opposed the Civil War—a faction labeled by their opponents as Copperheads. In 1862, President Abraham Lincoln issued a proclamation declaring that anyone who discouraged others from enlisting in the Union Army would be subject to martial law. When Milligan urged men not to enlist, he was arrested by the military, charged with treason, and sentenced to be hanged. When the war ended President Andrew Johnson reduced his sentence to life imprisonment. *Ex Parte* (in the case of) Milligan went to the Supreme Court, which ruled that it had been wrong to try Milligan in a military court when the civilian courts were open and operating.

Striking Down State Regulation of Interstate Commerce: *Munn v. Illinois* (1877). In response to persistent complaints of corrupt business practices, particularly in connection with the railroads, the state of Illinois sought to regulate both the warehouses and the railroads. Having lost in the legislature, business interests turned to the courts for relief from state regulation. The company of Munn & Scott, which operated grain elevators and warehouses, brought suit against the state. To their dismay, the Supreme Court ruled that the Constitution permitted regulation in the public interest. The warehouse operators resigned themselves to accepting state regulation, although by then Munn & Scott had gone out of business.

Separate but Equal: *Plessy v. Ferguson* (1896). Homer Plessy purchased a first-class train ticket in New Orleans, but he was arrested when he refused to leave the first-class car and sit in a car reserved for African Americans. Like other southern states, Louisiana law required racial segregation. Plessy's case was argued before Judge John Ferguson, who ruled against him. The case was appealed and eventually reached the Supreme Court, which ruled that "separate but equal" facilities did not violate the Fourteenth Amendment's requirement of equal protection of the laws. Justice John Marshall Harlan strongly dissented, arguing that arbitrary separation of citizens by race was "a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the constitution."

Congress Has the Authority to Enact Antitrust Laws: *Northern Securities Co. v. United States* (1904). After competing against each other, the Union Pacific Railroad, Great Northern Railroad, and Northern Pacific Railroad were united through a holding company called Northern Securities Co. President Theodore Roosevelt believed that this arrangement violated federal

antitrust laws, and the federal government sued Northern Securities. The majority of the Supreme Court agreed with Roosevelt and held that Northern Securities was an illegal combination. The decision confirmed Congress's authority to enact antitrust laws and gave a boost to the antitrust movement in the Progressive era.

Protecting Women Workers: *Muller v. Oregon* (1908). Portland laundry owner Curt Muller was convicted of violating an Oregon law that prohibited requiring women to work longer than a ten-hour day. Muller appealed his conviction to the U.S. Supreme Court. Attorney Louis Brandeis, known as the People's Attorney for his advocacy of public welfare cases, appeared on behalf of Oregon. Brandeis argued that the state had a right to regulate labor policy to cure social ills. He offered statistics and social evidence concerning the benefits of a shorter workday. The Court accepted this evidence and ruled in favor of the protective legislation.

Delegation of Federal Power: *Schechter v. United States* (1935). In response to the Great Depression, President Franklin D. Roosevelt proposed and Congress adopted a National Recovery Administration (NRA) to regulate various businesses and promote fair wages and hours. Those who participated used its logo, a Blue Eagle with the slogan "We Do Our Part." Despite the agency's popularity, not everyone wanted to participate. The four Schechter brothers who ran a poultry market in Brooklyn objected to federal regulation on the grounds that none of their product was sold outside of New York State. The Supreme Court unanimously agreed with them, ruling that it was unconstitutional for Congress to delegate so much of its power over interstate commerce to the President, and that the federal government could not regulate business that did not cross state lines. President Roosevelt complied by shutting down the NRA, but Congress passed other laws to preserve some of the functions and goals of that agency.

Saluting the Flag: *Minersville School District v. Gobitis* (1940). In 1936 the principal of the Minersville public school sent twelve-year-old Lillian and ten-year-old William Gobitis home until they agreed to salute the flag each morning with the other children in their classes. The Gobitis were Jehovah's Witnesses, for whom saluting the flag ran contrary to their faith. They sued and a lower federal court ruled in their favor. The case then went to the Supreme Court. Writing for the majority, Justice Felix Frankfurter called it a lamentable "clash of rights, not the clash of wrongs." The majority found that the school was within its rights to compel all students to participate in the flag salute. This decision stirred so much controversy that several justices had second thoughts. Three years later, in the case of *West Virginia State Board of Education v. Barnette* (1943), the Supreme Court reversed itself and ruled that governments cannot coerce schoolchildren other citizens into participating in patriotic rituals that violate their religious beliefs.

Equality in Education: *Brown v. Board of Education of Topeka, Kansas* (1954). Although separate schools for racial minorities were supposedly equal with schools for white students rarely received the same funding, books, and equipment. Even if the facilities were equal, critics argued that separating students on racial grounds stigmatized the minority students. Lawyers for The National Association for the Advancement of Colored People (NAACP) filed suit on behalf of a number of African American students, among them Louise Brown of Topeka, Kansas. Under Chief Justice Earl Warren, the Supreme Court unanimously ruled that school segregation was unconstitutional because it violated the equal protection clause of the Fourteenth Amendment, thereby reversing the earlier decision in *Plessy v. Ferguson*.

One Person, One Vote: *Baker v. Carr* (1962). For the first time, in 1920 the U.S. census showed that a majority of Americans lived in urban rather than rural areas. Despite the increasing movement of people from farms to cities, state legislative districts remained locked in place. Sparsely populated rural districts outweighed more heavily populated urban and suburban districts. Ruling on a case from Tennessee, the Supreme Court held that these unequal districts violated the equal protection clause of the Fourteenth Amendment. The resulting one person, one vote doctrine soon affected all legislative bodies, from local governments to the U.S. House of Representatives.

Right to Counsel: *Gideon v. Wainwright* (1963). Writing from a Florida prison, Clarence Earl Gideon petitioned the Supreme Court that he had been unjustly convicted of breaking into a pool hall, because he was too poor to hire a lawyer. He argued that this absence of counsel violated due process of the law and was a denial of fundamental fairness. The Supreme Court declared that the right of anyone charged with a crime, even the poorest defendant, to have counsel was fundamental and essential to a fair trial. Gideon stood trial again, this time with a court-appointed lawyer, and was found not guilty.

A Free Press: *New York Times v. United States* (1971). In 1971, the New York Times obtained a set of classified documents from Daniel Ellsberg, a former Pentagon employee who had turned against the Vietnam War. The Pentagon Papers documented how the United States had become involved in the war. President Richard Nixon obtained an injunction from the federal courts to prevent the Times and other newspapers from publishing these still secret documents. The papers argued that such “prior restraint” would violate the freedom of the press and the public’s right to know. The Supreme Court ruled that the government had failed to prove its argument that publication of the documents would jeopardize national security. Justice Hugo Black observed that “The press was to serve the governed, not the governors.”

Abortion Rights: *Roe v. Wade* (1973). In 1970, Norma McCorvey, a pregnant twenty-one-year-old single woman sued to overturn a Texas state law that made abortions illegal. The suit was filed under the name “Jane Roe.” The legal issue was whether individual privacy rights covered a woman’s decision to seek an abortion, even though privacy is not explicitly mentioned in the Constitution. The Supreme Court concluded that personal privacy could be found implicitly in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, and therefore struck down all state laws that banned abortions. Writing for the majority, Justice Harry Blackmun outlined a situation in which a state could not interfere with a woman’s right to choose an abortion in the first three months of a pregnancy, but that in later stages of pregnancy the state could set regulations.

The Limits of Executive Privilege: *United States v. Richard Nixon* (1974). When a Senate committee investigated connections between the White House and the burglary of the Democratic Party headquarters at the Watergate building, it discovered President Richard Nixon had been secretly tape-recording all his conversations in the Oval Office. The committee subpoenaed certain tapes to determine whether the President had been involved in either the burglary or later efforts at a cover-up. Nixon released selected transcripts but refused to comply with everything the committee requested, citing executive privilege. The Supreme Court ruled unanimously that the President must surrender evidence that might be used in a criminal case. The President turned over the material, and the release of a tape made on June 23, 1972 implicated him in the cover-up and led to his resignation.

Reverse Discrimination: *Regents of the University of California v. Bakke* (1978). Allen Bakke was rejected when he applied to the medical school at the University of California, Davis. The medical school had established a special admissions program to ensure the racial diversity of its student body, and some of the minority students admitted had lower scores on the Medical College Admission Test than had Bakke, who was white. Bakke sued on the grounds that the admissions program constituted a racial quota and reverse discrimination. The Supreme Court ruled in Bakke’s favor, striking down racial quotas. The Court agreed that race could be used as one of many criteria in determining admission, so long as it was not the sole criterion.

Gender Equality: *United States v. Virginia* (1996). As a state school the Virginia Military Institute (VMI) could not bar women students. The institute had been founded in 1839 and had a long history as an all-male academy. Virginia argued the benefits of single-sex education and offered to create a Virginia Women’s Institute for Leadership. But this plan did not convince the Supreme Court that the two schools would be equally rigorous in their training. The Court ruled that barring women violated the equal protection clause of the Fourteenth Amendment. Following this decision, VMI admitted women as cadets in 1997.