

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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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



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?

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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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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.



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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 7



The Bill of Rights and State Rights

Slaughterhouse Cases, 1873

***** Background of the Case *****

In 1869 the Louisiana government granted the Crescent City Stock Landing and Slaughterhouse Company a monopoly on licensed butchering in New Orleans on the grounds that the action protected public health.

Local butchers, who were excluded from the monopoly, opposed it with legal action in the state courts. Losing there, they appealed to the federal courts and then to the United States Supreme Court. The butchers argued that they had been deprived of their livelihoods by the state's deliberate discrimination against them. Therefore, the law violated the Thirteenth Amendment's ban on involuntary servitude, as well as the 1866 Civil Rights Act, which had been passed to enforce that ban. In addition, they argued, the state law violated the Fourteenth Amendment's guarantees of equal protection under the law and of due process.

The state responded by claiming that no federal constitutional question was involved since both the Thirteenth and Fourteenth Amendments were irrelevant to the case. If, in fact, the Court did apply these amendments to the case, the federal system would be revolutionized by exempting individuals' claims from state regulation.

Constitutional Issue *****

Before the Civil War, individuals who believed they had been deprived of their rights and liberties had only their state constitution to rely on for protection. According to an 1833 Supreme Court decision, the Bill of Rights of the United States Constitution applied only to the national government. In 1868, however, the Fourteenth Amendment was added to the United States Constitution. Although the amendment was intended to protect formerly enslaved people, who had been given their freedom by the Thirteenth Amendment, the Fourteenth Amendment contained a sentence that could be interpreted as applying to all persons in the United States: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

If the Supreme Court interpreted this sentence as applying to all persons, then the way was open to conveying to the national government the enforcement of rights that earlier had been limited to the states and denied to the national government.

The *Slaughterhouse* cases were the first involving the Fourteenth Amendment to be heard by the Court. The constitutional issues in the *Slaughterhouse* cases concerned the extent to which the Thirteenth and Fourteenth Amendments applied to all Americans, not only to formerly enslaved people.

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***** The Supreme Court's Decision *****

A majority of the Court held that the monopoly on butchering granted by Louisiana did not violate the rights of the other butchers. Justice Samuel F. Miller, writing the Court's opinion, dismissed the butchers' claim that the state law violated their rights under the Thirteenth Amendment. The monopoly created by the state law, he held, could not be interpreted as imposing servitude.

Miller now turned to the Fourteenth Amendment. This amendment, he wrote, "declares that persons may be citizens of the United States without regard to their citizenship of a particular state, and it overturns the *Dred Scott* decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt."

Justice Miller assigned to the states, rather than the federal government, the protection of basic civil liberties. This meant that everyone, not just formerly enslaved people, who had assumed the federal government was their "guardian of democracy," had to look to the states to protect their rights. The Court agreed that there were certain "federal privileges and immunities," such as the right to petition for redress of grievances, which states were bound to respect, but otherwise the Court concluded a state determined the privileges and immunities of its citizens.

***** Dissenting Opinion *****

Four justices dissented from the Court's decision. Justice Joseph P. Bradley emphasized both the Privileges and Immunities Clause and the Due Process Clause. He insisted that both clauses protected an individual's right to choose a vocation or business. In denying that right or subordinating it to police powers, the states abridged the privileges and immunities of citizens, thus depriving the affected persons of both liberty and property, violating the Due Process Clause.

Also dissenting, Justice Stephen J. Field argued that the Thirteenth Amendment ban on involuntary servitude had been violated by creating the butchering monopoly. As for the Fourteenth Amendment, it embraced all the fundamental rights belonging to free men. "The amendment," he wrote, "does not attempt to confer any new privileges or immunities upon citizens or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to citizens as such, and ordains that they shall not be abridged by state legislation."



Questions *****

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

1. How did the Court limit the protections of the Thirteenth and Fourteenth Amendments?
2. What effect did the Court's ruling in the *Slaughterhouse* cases have on the *Dred Scott* decision?
3. Suppose you had been a butcher in New Orleans. How would the Court's decision have affected you?
4. Who gained from the Court's decision, state governments or the federal government? Explain.
5. With whose opinions do you agree, those of the Court or the dissenting justices? Explain.

Supreme Court Case Study 11



Wartime Freedom of Speech

Schenck v. United States, 1919

***** **Background of the Case** *****

The freedom of speech guarantee of the First Amendment was not tested in the Supreme Court for more than 100 years after the adoption of the Constitution, despite the number of federal and state laws that placed limits on free speech during that period. When the United States entered World War I in 1917, the federal government felt that it had to protect itself against efforts to influence people to oppose the war. Therefore, it passed the Espionage Act, which made it a crime to cause or attempt to cause insubordination in the armed forces, obstruct recruitment or enlistment, and otherwise urge, incite, or advocate obstruction or resistance to the war effort.

Charles Schenck, who was general secretary of the Socialist Party in the United States, carried on a campaign encouraging young men to resist the wartime draft. He mailed thousands of circulars to men who had passed exemption boards and to men who had been drafted. In the circulars he declared that the draft was unconstitutional despotism and urged the men to assert their rights to resist the draft. Further, he claimed that the Thirteenth Amendment, which banned involuntary servitude except as punishment for committing a crime, was violated by the conscription act and that a conscript was little better than a convict. The circular declared, "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." He described arguments in favor of the draft as coming from cunning politicians and a mercenary capitalist press. For these actions Schenck was convicted of conspiracy to violate the Espionage Act by attempting to obstruct the recruitment of men into the United States's armed forces. Schenck challenged his conviction on the grounds that his First Amendment rights had been violated.

Constitutional Issue *****

The Court had to decide whether Schenck had been properly convicted and whether the Espionage Act was constitutional in the light of the free speech guarantees of the First Amendment. Was such a broad limitation on the right of free speech as the Espionage Act allowed a violation of the First Amendment? Or was the fact that the Espionage Act was designed to protect the nation's war effort a sufficient enough reason for the Supreme Court to reject Schenck's First Amendment defense?

***** **The Supreme Court's Decision** *****

The Court ruled unanimously that the Espionage Act was constitutional and affirmed that Schenck was guilty of having violated the act. Justice Oliver Wendell Holmes, Jr., wrote the Court's opinion. The opinion was based on the idea that the First Amendment guarantees are not absolute and must be considered in the light of the setting in which supposed violations occur. Holmes wrote, "We admit that in many places and in ordinary times the defendants in

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saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic." Holmes then enunciated a principle that he felt defined the true scope of the First Amendment as it applied to political expression. "The question in every case," Holmes wrote, "is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. . . . When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."

The *Schenck* case clarified some limitations on free speech and supported the notion that the rights of the people are not absolute but must be balanced with national interests that are judged to be essential.



Questions



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

1. Why was the Espionage Act passed?
2. Explain the clear and present danger principle that Justice Holmes enunciated in the *Schenck* decision.
3. According to Holmes, what factor made Schenck's actions, which at other times would have been protected by the First Amendment, illegal at the time he performed them?
4. How far do you think the government should go in trying to protect itself against threats to its policies in times of war?
5. Eight months after the *Schenck* decision, the Court again applied the clear and present danger principle. Holmes dissented in that case, stating that unlike the *Schenck* case, actions of the convicted man in the second case had little or no effect on the nation's war effort. What do you think this reveals about Holmes's attitude toward free speech guarantees?

Supreme Court Case Study 14



Evidence from Tapped Phone Lines

Olmstead v. United States, 1928

***** **Background of the Case** *****

Roy Olmstead and his partners imported and supplied alcoholic beverages. They were prosecuted, tried, and convicted in federal court for conspiracy to violate the National Prohibition Act. Much of the evidence presented at their trials was gathered by wiretapping three telephone lines used by Olmstead's office. None of the taps had been placed as a result of physical trespass on any defendant's property.

The Eighteenth Amendment, or Prohibition Amendment, effective from 1919 to 1933, was widely violated by ordinary citizens and so-called bootleggers, who supplied illegal liquor, yet these people were rarely prosecuted. Violations of the liquor law were so extensive that the government was unable to prosecute more than a small percentage of the bootleggers; securing evidence that would hold up in court was extremely difficult. One way of obtaining evidence against bootleggers was by wiretapping their telephones.

Constitutional Issue *****

The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." The Fifth Amendment protects a person charged with a criminal offense from being a witness against himself or herself. The question before the Court in *Olmstead v. United States* was whether either of these amendments prohibited evidence obtained from telephone wiretaps.

***** **The Supreme Court's Decision** *****

The Court ruled 6 to 3 against Olmstead. Chief Justice William Howard Taft delivered the opinion of the Court.

Olmstead had argued that because the prosecution's evidence came entirely from the wiretaps, it could not be used against him. He claimed he was protected by the Fourth Amendment against improper search and seizure, and by the Fifth Amendment against self-incrimination.

The Court confined its examination to Fourth Amendment questions. If the Fourth Amendment had not been violated, then neither had the Fifth Amendment since no one had compelled the defendants to speak over the telephone lines.

Justice Taft's decision turned on the issue of whether or not a wiretap was the constitutional equivalent of forcible entry. If so, the evidence obtained would be inadmissible in federal courts in accordance with previous decisions, such as in *Weeks v. United States, 1914*.

Taft held that the Fourth Amendment "shows that the search is to be of material things—the person, the house, his papers or his effects. The description of the warrant necessary to make the proceedings lawful is that it must specify the place to be searched and the person or things to be seized."

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Supreme Court Case Study 14 (continued)



Taft rejected any analogy to sealed letters, which the Court had held to be protected by the Fourth Amendment. Taft explained, "The United States takes no such care of telegraph or telephone messages as of mailed, sealed letters. The Amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants." He insisted that it was an unwarranted expansion of the Fourth Amendment to apply it to hearing or sight.

The Court held further that telephone lines were not protected by the Fourth Amendment, since they "are not part of his house or office any more than are highways along which they are stretched. . . . The reasonable view is that one who installs . . . a telephone with connecting wires intends to project his voice to those outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment."

Finally, Taft ruled that this holding was in accord with the generally accepted common rule that "if the tendered evidence was pertinent, the method of obtaining it was unimportant." He concluded that "a standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore."

***** **Dissenting Opinion** *****

Justice Louis Brandeis disagreed with the Court's narrow view of the Fourth Amendment. He wrote, "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

The decision of the Court was harshly criticized, but it stood until the 1967 *Katz* case when it was overruled on the grounds that a trespass was unnecessary for a violation of the Fourth Amendment and that the Amendment protected intangibles, including conversations.



Questions *****

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

1. Why did the Supreme Court hold that the Fourth Amendment did not apply to wiretaps?
2. What did the Court say about the means by which evidence is obtained?
3. Suppose you had broken a law, and the police found evidence of your crime by breaking into your home. Under the *Olmstead* ruling, would the evidence be admissible in a trial?
4. What did Justice Brandeis mean when he said that in the Court's decision the end justified the means?
5. Do you agree with the decision of the Court? Explain your answer.

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Supreme Court Case Study 26



Right of Free Speech

Feiner v. New York, 1951

***** **Background of the Case** *****

One evening in March 1949, Irving Feiner, a student at Syracuse University, was addressing an open-air meeting on a street corner in Syracuse, New York. Feiner spoke to a mixed race crowd of about 75 people. He denounced various national and local officials and reportedly sought "to arouse the Negro people against the whites, urging that they rise up in arms and fight for equal rights."

Two policemen, who had been watching from across the street, stepped in to urge people out of the path of traffic and back onto the sidewalk. After a while, the crowd became restless and unruly, and the officers believed that a fight was imminent. Some people in the crowd made comments to the officers about their inability to handle the crowd.

At least one person threatened violence if the police did not act. Several times over the next few minutes the police demanded that Feiner cease speaking. Feiner ignored them. Finally, the police arrested Feiner, charging him with disorderly conduct. He was later convicted by a local court. Two New York courts later upheld Feiner's conviction, after which Feiner took his case to the United States Supreme Court.

Constitutional Issue *****

The First Amendment guarantees the right of free speech and is applicable to the states through the due process clause of the Fourteenth Amendment. The question for the Court to decide was whether the protection of these amendments prevents the police from interfering when they believe free speech threatens to incite listeners to violate public order.

***** **The Supreme Court's Decision** *****

Chief Justice Fred Vinson wrote for the 6 to 3 vote upholding Feiner's conviction as constitutional. The Court found the lower court records persuasive as to the threat of impending crowd disorder. The principle they applied was from a 1940 case in which the Court declared: "When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the state to prevent or punish is obvious."

In agreeing with the lower courts' finding, Vinson wrote, "It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of two New York courts approving the means which the police, faced with crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing situation and the imminence

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Supreme Court Case Study 26 (continued)

of greater disorder coupled with the petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech."

The Court said it was well aware of the dangers of allowing a hostile audience to prevent someone from speaking and is "also mindful of the possible danger of giving overzealous police officials complete discretion to break up otherwise lawful public meetings." Nevertheless, Vinson wrote, the Court was unwilling to rule that the police had not properly used their power to preserve order in this instance.

***** Dissenting Opinions *****

Justices Hugo Black and William O. Douglas (joined by Justice Sherman Minton) wrote dissenting opinions on largely identical grounds. Both thought, in Black's words, that "if, in the name of preserving order, [the police] ever can interfere with a lawful public speaker, they first must make all reasonable efforts to protect him. . . . Their duty was to protect the petitioner's right to talk. . . . Instead, they shirked that duty and acted only to suppress the right to speak." In a strong statement against the Court's ruling, Black wrote, "I think this conviction makes a mockery of the free speech guarantees of the First and Fourteenth Amendments. The end result . . . is to approve a simple and readily available technique by which cities and states can with impunity subject all speeches, political or otherwise, on streets or elsewhere, to the supervision and censorship of the local police. I will have no part or parcel in this holding which I view as a long step toward totalitarian authority."

Justice Douglas argued in his dissent that, "A speaker may not, of course, incite a riot. . . . It is against that kind of threat that speakers need police protection (i.e., against an unsympathetic audience.) If they do not receive it and instead the police throw their weight on the side of those who would break up the meetings, the police become the new censors of speech. But this record shows no such extremes. It shows an unsympathetic audience and the threat of one man to haul the speaker from the stage."



Questions *****

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

1. How did Justice Vinson justify the action of the police?
2. What danger did Justice Black see in the Court's decision?
3. Do you agree with Justice Vinson's ruling or the dissents of Justice Douglas and Justice Black? Give reasons for your opinion.
4. If you had been one of the police officers who was present while Feiner was speaking, what should you have done, according to Justice Black?
5. How might the Court's decision affect how speakers at street meetings conduct themselves?

Supreme Court Case Study 32



Constitutionality of Prayer in Public Schools

Engel v. Vitale, 1962

***** Background of the Case *****

In the early years of the country, prayers in schools had been considered a legitimate, even essential, part of education. Since most of the students were of the same religion, there was no question about the appropriateness of prayer in the schools. However, as the population became more diversified, questions began to be raised as to the legality of this practice. Civil libertarians were prominent in the move to abolish prayer in the schools.

In 1951 the New York State Board of Regents, which supervises the state's public school system, approved a brief prayer at the start of each day. The prayer read: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country." School districts were not required to use the prayer, and students were not required to recite it. In 1958 the New Hyde Park school board adopted the prayer and directed that it be recited each day in every class, although students could be excused from reciting it.

Steven Engel, the parent of two children in the New Hyde Park schools, objected to this practice and asked a state court to order the prayer dropped. Engel directed his suit against the head of the school board, William J. Vitale, Jr. The state court and the New York Court of Appeals refused to enjoin—prohibit—recitation of the prayer. Engel then appealed to the United States Supreme Court. The question before the Court was whether the daily prayer, although noncompulsory, violated the First Amendment.

Constitutional Issue *****

The First Amendment, applied to the states through the due process clause of the Fourteenth Amendment, prohibits laws respecting the establishment of religion. Did the daily prayer of New York State schools, although noncompulsory, violate the establishment clause?

***** The Supreme Court's Decision *****

The Court ruled in Engel's favor 6 to 1. (Two justices did not participate in the decision.) Justice Hugo Black wrote the majority opinion.

No one had contested the fact that the prayer was essentially religious. The school board had argued, however, that it was permissible because it was "nondenominational"—that is, that it did not relate to any particular religious group. Furthermore, Vitale had noted that no student was compelled either to say the prayer or to remain in the classroom while it was being recited.

The Court disagreed, calling the practice "wholly inconsistent with the establishment clause." It held that a prayer "composed by government officials as part of a governmental program to further religious beliefs . . . breaches the constitutional wall of separation between Church and State." Neither the nondenominational nature of the prayer nor the fact that it was not compulsory could save it from unconstitutionality under the establishment clause.

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Black pointed out, "It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America." He went on, "Under that [First] Amendment's prohibition . . . government in this country . . . is without power to prescribe any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity."

Black specified several purposes of the establishment clause. Among them, the clause sought (a) to prevent the "union of government and religion [which] tends to destroy government and to degrade religion"; (b) to express the principle "that religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate"; and (c) to prevent religious persecutions which have historically arisen from governmentally established religions.

The nation, the Constitution, and the Bill of Rights were all established in order to avoid these sorts of problems, Black concluded. Therefore, "the New York laws officially prescribing the Regents' prayer are inconsistent both with the purposes of the establishment clause and with the establishment clause itself."

***** Dissenting Opinion *****

Justice Potter Stewart challenged the Court's reasoning in the case. He wrote, "The Court does not hold, nor could it, that New York has interfered with the free exercise of anybody's religion. For the state courts have made it clear that those who object to reciting the prayer may be entirely free of any compulsion to do so, including any 'embarrassments and pressures.' . . . But the Court says that in permitting schoolchildren to say this simple prayer, the New York authorities have established 'an official religion.' With all respect, I think the Court has misapplied a great constitutional principle. I cannot see how an official religion is established by letting those who want to say a prayer say it." He went on, "On the contrary, I think that to deny the wish of these schoolchildren to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation."

The Court's decision provoked widespread controversy. Civil libertarians hailed it as a victory. Conservatives attacked it vigorously. One member of Congress from Alabama asserted, "They put the Negroes in the schools [in the *Brown* case]. Now they have driven God out."



Questions *****

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

1. On what basis did the majority of court justices find school prayer unconstitutional?
2. Do you agree with Justice Black's opinion or with Justice Stewart's? Give reasons for your answer.
3. What was the New Hyde Park school district required to do after the Court's decision?
4. United States coins and paper money carry the phrase "In God We Trust." Does this inscription violate the principle of separation of Church and State? Explain your answer.
5. Almost all public schools are closed during certain religious holidays, such as Christmas and Easter. Do you think the *Engel* decision should apply to this custom?

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Supreme Court Case Study 39



The Rights of the Accused

Miranda v. Arizona, 1966

***** **Background of the Case** *****

Ernesto Miranda had been arrested at his home in Phoenix, Arizona, and accused of kidnapping and rape. Questioned at the police station by two police officers, he was not advised of his right to an attorney nor his right to remain silent. After two hours of interrogation, he signed a written confession to the crimes. At his trial, he was found guilty and sentenced to 20 to 30 years in prison. He took his case to the United States Supreme Court.

Constitutional Issue *****

The Fifth Amendment of the Constitution guarantees that "no person . . . shall be compelled in any criminal case to be a witness against himself . . ." This right was made part of the Bill of Rights to prevent a tyrannical government from forcing accused persons to confess to crimes they may or may not have committed. Miranda's case before the Supreme Court was based on this Fifth Amendment protection. The Court accepted the case in order to explore and clarify certain problems arising from earlier decisions related to the rights of individuals taken into police custody. The precise question that the Court explored was under what circumstances an interrogation may take place so that a confession made during the interrogation would be constitutionally admissible in a court of law.

***** **The Supreme Court's Decision** *****

The Supreme Court overturned Miranda's conviction in a 5 to 4 decision. Chief Justice Earl Warren wrote the majority opinion. The Court's ruling centered on what happens when a person is taken into custody. No statement from the suspect, the Court held, may be used when it stems from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way.

Warren noted that a suspect under interrogation is subject to great psychological pressures designed "to overbear the will" and that questioning often takes place in an environment "created for no other purpose than to subjugate the individual to the will of his examiner." In overturning Miranda's conviction, the Court intended "to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination. . . ."

A person in police custody "or otherwise deprived of his freedom. . . must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires," Warren stated.

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Once these warnings are given, the individual in custody may choose to stop answering questions, or may halt the interrogation until his attorney is present. Otherwise, he may waive his exercise of these rights. In such a case, there would be "a heavy burden . . . on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to . . . counsel."

The *Miranda* ruling applies only to interrogations. The Court emphasized that such safeguards were "not intended to hamper the traditional function of police officers in investigating crime. . . ." The ruling was not meant to bar "general on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process. . . ." In addition, the Chief Justice declared, the Fifth Amendment does not bar voluntary statements from a person who, for example, enters a police station ". . . to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make."

The *Miranda* ruling has led to the practice now followed routinely by arresting police officers and other law enforcement officials during which they read a suspect his or her *Miranda* rights.

***** Dissenting Opinion *****

Justices John Marshall Harlan, Tom C. Clark, Potter Stewart, and Byron White dissented. They saw no historical precedent for the majority position and feared the decision could weaken law enforcement. Justice White condemned the majority for creating law enforcement directives he viewed as inflexible, while at the same time leaving many unanswered questions.



Questions *****

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

1. How has the Supreme Court interpreted the Fifth Amendment's protection against self-incrimination to apply to all persons questioned in connection with a crime?
2. Suppose you were arrested as a suspect in a crime. The arresting officers rush you to a tiny room where they question you for 12 hours without a stop. Then, too weary to protest, you sign a confession. How would the Court's *Miranda* decision protect you in such a situation?
3. At the scene of a crime, a police officer questions witnesses about the details of a holdup. The officer suspects that some of the witnesses are connected with the crime. How does the *Miranda* decision apply in such an instance?
4. What do you think would happen if a person convicted of a crime proved that she or he was not informed of the *Miranda* rights when questioned by the police?
5. In recent years the *Miranda* decision has been criticized by some persons as protecting the rights of criminals and neglecting the rights of crime victims. Do you agree or disagree with this point of view? Why?

Supreme Court Case Study 40



The Nature of a Fair Trial

Sheppard v. Maxwell, 1966

***** Background of the Case *****

Dr. Samuel Sheppard was accused of murdering his pregnant wife at their home in a Cleveland, Ohio, suburb on July 4, 1954. Sheppard claimed that the murderer had been an intruder, with whom he had fought and by whom he had been knocked unconscious. At his trial Sheppard was convicted of the murder of his wife.

Events prior to his trial in October 1954 were described as a "publicity circus." Elements in the "circus" included extensive, sensationalist newspaper articles and editorials containing allegations unfavorable to Sheppard. Coverage included a reenactment of the events of the crime as Sheppard had described it, in front of police officials and news reporters, and a story that Sheppard refused to allow authorities to inject him with "truth serum." An inquest in a school auditorium climaxed in an attempt by Sheppard's lawyers to place into evidence some documents that were then forcibly thrown out of the room by the coroner.

Further, the trial began two weeks before the judge and the chief prosecutor were up for election. The Cleveland newspapers published the names and addresses of the 75 people named as prospective jurors. The jurors then received many letters and phone calls concerning the case.

At the trial, the courtroom was crammed with reporters, and the rest of the court building was largely given over to the media. During the trial, witnesses, lawyers, and jurors were constantly photographed entering and leaving the courtroom. Reporters were so noisy during the trial that the public address system proved inadequate. Information about deliberations that was supposed to remain secret from the jury was leaked and printed in newspapers accessible to the jurors. Jurors were permitted to hear and read all kinds of pretrial and trial publicity, much of it damaging to Sheppard.

The trial judge denied defense motions to delay the trial, move the trial to another location, declare a mistrial, and question the jurors as to their exposure to publicity.

Sheppard was convicted of second-degree murder. His appeals were all denied, including one to the United States Supreme Court.

Several years later, Sheppard filed a writ for *habeas corpus* directed against the warden of the prison where he had been serving his sentence. *Habeas corpus* refers to an order that a prisoner be brought before a court to determine whether he or she has been denied due process. Sheppard's petition was granted and then denied by successive federal courts. He then appealed his case to the United States Supreme Court, which granted relief; Sheppard was ordered released unless Ohio chose to retry him in an orderly proceeding.

Constitutional Issue *****

Every citizen accused of a crime is entitled to a fair trial. But just what does a "fair trial" mean? Was Sheppard denied a fair trial, in violation of the due process clause of the Fourteenth Amendment?

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***** The Supreme Court's Decision *****

The Court ruled for Sheppard in an 8 to 1 decision. (There was no opinion written by the one dissenting justice.) Justice Tom C. Clark wrote for the Court. Clark began by noting the historical importance of a free press in the administration of criminal justice. He stressed that "the press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive scrutiny and criticism."

At the same time, Clark said, fair and orderly judicial administration requires that "the jury's verdict be based on evidence received in an open court, not from outside sources." In the *Sheppard* case, the trial judge had failed to control the manner of press coverage, to shield the jury from its onslaught, or to insulate witnesses from hearing each other's testimony.

Without forbidding press coverage, the trial judge might have taken actions such as preventing lawyers, witnesses, or court officials from discussing certain aspects of the case. He could also have requested that city and county officials regulate the dissemination of information by their employees. The press might also have been warned of the impropriety of publishing material that had not been part of the court proceedings. Had the judge, the other officers of the court, and the police placed the interests of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom—not pieced together from extra-judicial statements. The Court concluded that due process had been violated in Sheppard's trial by the judge's failure "to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom. . . ." In the light of these factors, the Court granted Sheppard's *habeas corpus* petition and ordered his release unless the state retried him in an orderly fashion.



Questions *****

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

1. In what way had due process been violated in the *Sheppard* case?
2. What might the trial judge have done to insure that Sheppard received a fair trial?
3. If you had been one of the news reporters covering the trial, what might have been your reaction to the Supreme Court's decision?
4. Many trials are now being televised. Basing your answer on the Court's ruling, do you think televising a trial deprives a defendant of a fair trial?
5. Sheppard was given a new trial. In what way do you think the second trial probably differed from the first one?

Supreme Court Case Study 42



The Rights of Peaceful Protesters

Gregory v. Chicago, 1969

***** Background of the Case *****

Dick Gregory, an African American comedian and civil rights activist, helped lead a march protesting the slow pace at which Chicago's public schools were being desegregated. The march began at Chicago's City Hall and ended at Mayor Richard J. Daley's house, about five miles away.

The mayor's neighborhood of Bridgeport was an all-white area with a history of hostility to African Americans. A hostile neighborhood crowd soon gathered, attempting in various ways to harass the protesters, most of whom were African Americans. They, in turn, were under strict orders by march leaders to remain orderly and nonviolent, which they did. Over several hours the neighborhood crowd grew from about 150 to more than 1,000 people.

The police made valiant efforts to control the crowd, which had become increasingly violent, hurling eggs and rocks as well as racial abuse at the protesters. The police made repeated requests for Gregory to lead the marchers out of the neighborhood. Three marchers accepted the offer of a police escort from the area. Those who remained, Gregory included, were then arrested and removed in police vans. He and others were later convicted for disorderly conduct.

The Supreme Court of Illinois upheld the convictions. The Illinois court suggested that the demonstrators had been arrested not so much for marching but for refusing to obey the police request to disperse. Gregory took his case to the United States Supreme Court.

Constitutional Issue *****

Group protests, such as a march of a large number of people, about a public issue present the police with a challenge, especially when bystanders who oppose the marchers' cause taunt the marchers and even throw objects at them. If disorder then develops, the police may act in a manner that is possibly unconstitutional. Were the marchers' First Amendment rights to free speech and assembly, as applied to the states by the due process clause of the Fourteenth Amendment, violated in this case?

***** The Supreme Court's Decision *****

The Court ruled without dissent that the defendants had been deprived of their First Amendment rights. Chief Justice Earl Warren wrote for the Court.

Warren described the case as a simple one. "Petitioners' march," he wrote, "if peaceful and orderly, falls well within the sphere of conduct protected by the First Amendment." Since there was no evidence that the marchers had been disorderly, their conduct was constitutionally

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Supreme Court Case Study 42 (continued)



protected. In other words, the demonstrators, consistent with the First Amendment, could not be arrested and convicted for holding a march to express their views.

Warren also responded to the Illinois court's suggestion that the conviction was actually for his refusal to obey a police officer. "However reasonable the police request may have been and however laudable the police motives, petitioners were charged and convicted for holding a demonstration, not for a refusal to obey a police officer." Quoting an earlier Court decision, *Garner v. Louisiana*, he continued, "It is as much a denial of due process to send an accused [person] to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction."

Warren applauded the efforts of both the police and the marchers to maintain peace and order under the most trying circumstances. He cited specifics of the case that showed that Gregory and his group of marchers had maintained a peaceful attitude in the face of an angry mob. They had been told to stop singing at 8:30 that evening and had done so. In spite of the fact that the hostile crowd threw rocks and other objects at them, the marchers did not engage in any acts of violence toward the crowd. The Court agreed the marchers were well within their First Amendment rights.

In a separate opinion, Justice Hugo L. Black concurred. He found the disorderly conduct law itself to be unconstitutionally vague. He argued that a properly drawn statute could constitutionally protect both public order and demonstrators' First Amendment rights, "but under our democratic system of government, law-making is not entrusted to the moment-to-moment judgment of the policeman on the beat. . . . To let a policeman's command become equivalent to a criminal statute comes dangerously near to making our government one of men rather than of laws."



Questions



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

1. What fault did Chief Justice Warren find with the Illinois Supreme Court's reasoning?
2. What was Justice Black's main objection to the disorderly conduct statute?
3. What First Amendment right was reinforced by the Court's decision in the Gregory case?
4. Why do you think the Chicago police chose to ask Gregory and his followers to abandon their demonstration rather than arrest the people who were creating the disturbance?
5. Does the Court's decision make it illegal for a police officer to arrest demonstrators? Explain.