



## Scholar Exchange: Landmark Supreme Court Cases Briefing Document

### INTRODUCTION

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#### Big Question

- Why is it important to study landmark cases?
- What are some of the big themes in the Court's key cases over time?

#### Big Idea

The Supreme Court has been at the center of some of the most important constitutional debates in American history. Over time, the Court's landmark decisions have shaped constitutional law across a range of areas, including the powers of the national government, the meaning of the [Constitution](#)'s promise of freedom and equality, and the balance of power between the national government and the state governments.

#### Questions from the Judicial Learning Center:

##### Why Study Landmark Cases?

- To understand how the judicial branch works
- To see how past judicial decisions have affected the law
- To see how past court cases have affected your everyday life, and your individual rights
- To predict how past decisions will be applied to current cases and issues

##### What is a landmark case?

A **landmark case** is a court case that is studied because it has historical and legal significance. The most significant cases are those that have had a lasting effect on the application of a certain law, often concerning your individual rights and liberties.

##### How do court cases affect law?

Though the judicial branch does not directly make laws, the courts interpret laws through the cases brought before them. The American legal system is a **Common Law system**, which means that judges base their decisions on previous court rulings in similar cases. Therefore, previous decisions by a higher court are binding, and become part of the law.

What are some of the big themes in the Court's key cases over time?

**THEME #1: SUPREME COURT FOUNDATIONS**

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**Marbury v. Madison (1803)**

In the Supreme Court's **first landmark decision** (Marbury v. Madison), the principle of "judicial review"—the power of the court to decide whether something the government did was constitutional or unconstitutional—was established by the Court.

The case centers around President John Adams' so-called "**midnight appointments**" of justices of the peace in the District of Columbia. The **Election of 1800** between Adams (a Federalist) and Thomas Jefferson (a Democratic-Republican) was hotly contested, and Jefferson narrowly won the election, only securing the presidency after Congress was forced to split the tie in the Electoral College between him and his running mate Aaron Burr.

When Congress met in December 1800, Federalists still controlled the government until March 4, 1801. Adams appointed John Marshall as Secretary of State, and then also appointed him as Chief Justice of the United States—weeks before Jefferson took office. Meanwhile, the Federalist-dominated Congress passed the **Judiciary Act of 1801**, which created circuit courts of appeal much like they are today, and Adams immediately appointed 16 new judges to these courts—all Federalists—and all were confirmed by the Senate.

Marbury was a Federalist appointed to one of the newly created Justice of the Peace offices. Marbury and several others brought a lawsuit to force Madison to deliver their commissions. They asked the Supreme Court, under its original jurisdiction (meaning that the case started before the Supreme Court rather than by appeal), to issue a **writ of mandamus** – a court order directing Madison (but really Jefferson) to carry out his lawful duty to deliver the commissions.

Marshall and a unanimous Court declined to issue the order. Marbury did not get to be a Justice of the Peace. Instead, the Court declared the part of the **Judiciary Act of 1789** granting the court power to act unconstitutional. The opinion of the court said that:

1. by signing the commission of Mr. Marbury, President Adams appointed him a justice of peace for D.C. and giving him a legal right to the office for five years; thus,
2. refusal to give him his job by the Jefferson administration was wrong, but
3. while he was entitled to his job, the Court had no power to order the Jefferson administration to give it to him.

Thus, the Court both stated the power of judicial review while striking down an act of Congress. At the same time, they concluded that Marbury should have been given the commission—only to also conclude that the Court did not have power to enforce that.

**Key Take-Home Points:**

- The Marbury decision represents the Supreme Court's most important early defense of **judicial review**—a court's power to determine the constitutionality of a law.
- While judicial review isn't mentioned explicitly in the Constitution, many scholars draw on the Constitution's text and history to support its validity.

- The Court's Marbury decision has roots in popular sovereignty—rule by "We the People." Thus, the "original and supreme will" organizes the government, assigns powers to different departments, and establishes limitations on this basis.
- Marshall also found that it was essential to all written constitutions that "a law repugnant to the Constitution is void" (echoing Hamilton) and that "courts, as well as other departments, are bound by that instrument." This sets up a debate going forward about **judicial supremacy**—whether the Supreme Court has the final word in deciding what actions are constitutional or whether the other branches have a say as well.
- Judicial review intersects with important questions about constitutional interpretation and the Supreme Court's proper role in the American constitutional system. On the one hand, judicial review sometimes requires unelected judges to strike down laws passed by the American people's elected representatives. On the other hand, the Constitution itself sets limits on the powers of the elected branches, and judicial review allows an independent judiciary to step in, police those limits, and check abuses by the elected branches (and even popular majorities).

**Famous Quote from the Marbury v. Madison Decision:**

"It is emphatically the province and duty of the judicial department to say what the law is" (as posted in the Supreme Court's halls!), and if two laws conflict with each other, the courts must decide on the operation of each.

**McCulloch v. Maryland (1819)**

The debate over the constitutionality of a **national bank** was one of the most contentious constitutional battles in early American history. Beginning in 1791, when Treasury Secretary Alexander Hamilton introduced his Bank Bill as part of his financial plan for the country. James Madison and Thomas Jefferson fought against it, seeing it as unconstitutional because it exceeded the limited powers of the national government.

Following the chartering of a national bank in 1816, the state of Maryland passed a new law imposing taxes on it. When Baltimore bank cashier James McCulloch refused to pay those taxes, Maryland brought this case to compel him to do so. Maryland also challenged Congress's authority to establish a bank in the first place—arguing that the national bank was unconstitutional.

In a landmark opinion written by Chief Justice John Marshall (McCulloch v. Maryland), the Supreme Court held that under the Constitution's **Necessary and Proper Clause (Article I)**, Congress had powers that were not specifically written into the Constitution and thus could take actions—such as establishing a bank—that were "appropriate and legitimate" in service of the powers that were written in the Constitution. Additionally, the Court ruled that Maryland had no right to tax federal institutions like the national bank, noting that the "power to tax involves, necessarily, a power to destroy."

**Key Take-Home Points:**

- The Marshall Court read the Constitution—particularly [Article I](#)'s Necessary and Proper Clause—in such a way that it gave Congress some flexibility to use powers that weren't explicitly mentioned in the Constitution (e.g., the power to establish a national bank) but were related to other key powers granted explicitly to Congress by the Constitution (e.g., borrowing money and taxing/spending for the general welfare).

- McCulloch promoted national supremacy (protected by [Article VI's](#) Supremacy Clause) by striking down a state effort to undermine a national institution established to carry out powers within the authority of the national government (e.g., using state taxes to try to destroy a national bank).

**Famous Quotes:**

- "[W]e must never forget that it is a constitution we are expounding."
- "Let the end be legitimate, let it be within the scope of the constitution, 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."

**THEME #2: CONSTITUTION'S PROMISE OF EQUALITY**

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**Dred Scott v. Sanford (1857)**

Dred Scott is the most important—and infamous—Supreme Court decision on slavery.

Dred and Harriet Scott were enslaved people brought by a slaveholder into areas where slavery was banned and then returned to areas where slavery was permitted. The Scotts sue for their freedom.

The Supreme Court rejected their claim. Chief Justice Roger Taney concluded that the "People of the United States" and "**sovereign people**" do not include African Americans, who are considered a "subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power the Government might choose to grant them." The Court hoped to solve the slavery issue dividing the country by resolving it in favor of the slaveholders, with pressure from the new President James Buchanan.

Taney reviewed constitutional history, legislation, and even the language of the [Declaration of Independence](#) and concluded that neither African Americans brought to America as slaves nor their children—whether they were free or enslaved—were "acknowledged as part of the people or intended to include in the general words used in" the Constitution." In short, African Americans "had no rights that the white man was bound to respect," and so the Scotts could not sue for their freedom.

The Supreme Court then went on to declare the **Missouri Compromise** unconstitutional, attacking Congress's power to ban slavery in the territories—the core of the Republican Party's political (and constitutional) platform. Taney argued that the Missouri Compromise conflicted with the [Fifth Amendment's Due Process Clause](#)—taking the property of slaveholders without due process of law.

Because Taney's opinion was both textually and historically unmoored, critics, including the two dissenters (Justice Benjamin Curtis and Justice McLean), pointed out that it was an exercise in **raw judicial power**. Leading Republicans—including Abraham Lincoln during the famous **Lincoln-Douglas debates** criticized the Dred Scott decision—and the [Fourteenth Amendment](#) overturned Dred Scott after the Civil War.

**Abraham Lincoln and Slavery in the Court**

Abraham Lincoln responded in the Lincoln Douglas debates in 1858 by noting that he opposed the Dred Scott decision, but he did not propose that violent mobs should settle the rights of slaves to file freedom suits, but that the decision should not be binding on the voter when they vote for members of Congress or the President.

In his first inaugural address on March 4, 1861, Lincoln stated that he did not forget that “constitutional questions are to be decided by the Supreme Court” nor did he deny that such decisions were “entitled to very high respect and consideration” by all departments of the government.

At the same time, Lincoln argued that the “candid citizen must confess that if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in person actions, the people will have ceased to be their own rulers, having, to that extent, practically resign their government into the hands of that eminent tribunal....”

This is important—Lincoln, like Jefferson before him, rejected judicial supremacy and thought all branches of government had an obligation to review government acts for their constitutionality. Otherwise, judicial supremacy would be in tension with popular sovereignty.

### **Plessy v. Ferguson (1896)**

This landmark equality case involved what are known as “**Jim Crow** laws,” which were state laws mandating the segregation of public facilities, spaces, and transportation.

Here, Louisiana passed a law in 1890 to segregate railroad cars in the state between white and African American cars. Homer Plessy was chosen to be part of a “**test case**” in order to challenge the constitutionality of the act—Plessy appeared to be white and was born free but was of mixed-race and therefore “black” under the law. His arrest would prove the arbitrary nature of the law.

In an 7-1 decision, with Henry Billings Brown writing the majority opinion, the Supreme Court upheld “**separate but equal**” laws created under Jim Crow as constitutional. For the Court, these laws did not violate the 13th or [14th amendment](#) because the [13th amendment](#) only guaranteed basic legal equality, while the object of the 14th was “undoubtedly to enforce the absolute equality of the two races before the law but thought it could not have meant to “abolish distinctions based upon color, or to enforce social, as distinguished from political equality.” The Court concluded that Jim Crow laws were proper uses of the “**police power**” (the power of states to regulate the health, morals, and safety of their people) and that “to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it.”

Justice John Marshall Harlan was the lone dissenter. Harlan said everyone understood the real purpose of the law and it was not a neutral purpose to exclude white people from railroad cars occupied by African Americans, but rather to exclude them from coaches occupied by or assigned to white persons and was accomplished under the “**guise of equal accommodation.**”

### **Key Take-Home Point:**

- This is the court case which fixes the constitutionality of Jim Crow for a generation, until *Brown v. Board of Education*. It would require the slow chipping away piece by piece of the system by the NAACP and its legal team over a generation to reach *Brown*. *Brown* finally overturned *Plessy* in 1954.

**Famous Quote:**

"In the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." (From Harlan's Dissent)

**Brown v. Board of Education (1954)**

This landmark Supreme Court case addressed the question of whether state-mandated **segregation** of the races in public schools was constitutional.

In Brown, the Supreme Court combined similar challenges from a variety of locations—namely, Kansas, South Carolina, Virginia, Delaware, and Washington D.C. These cases all involved African American students who had been denied admittance to white public schools. The challengers argued that these segregation laws violated [the Fourteenth Amendment's Equal Protection Clause](#) and that separate could never be equal in public education. However, in [Plessy v. Ferguson \(1896\)](#), the Supreme Court long ago upheld racial segregation law that provided "separate but equal" facilities and institutions for people of different races.

In Brown, the Court unanimously overruled Plessy, holding that "separate but equal" facilities were, in reality, unequal, because separating the races resulted in a damaging brand of inferiority imposed on black children.

**Key Take-Home Points:**

- Brown may be the most famous Supreme Court decision in American history—attacking the core of the white South's Jim Crow laws and reinvigorating the Fourteenth Amendment's promise of equality.
- The Brown decision grew out of an extensive litigation campaign led by **Thurgood Marshall and the NAACP Legal Defense and Educational Fund**—a gradual campaign to undermine segregation in other contexts like public universities and law schools before turning to segregation in public schools.
- Following Brown, the Supreme Court extended the reach of the Equal Protection Clause to cover discrimination in other settings.

**Famous Quote:**

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

**Regents of University of California v. Bakke (1978)**

In this landmark decision, the Supreme Court first upheld "**affirmative action**" as constitutional under the [Fourteenth Amendment](#). The Court decided that affirmative action may be constitutional if used to promote diversity in higher education, but **racial quotas** were not acceptable.

Allan Bakke was a veteran Marine officer and an engineer in his 30s who applied to medical school at U.C. Davis. However, he was rejected for because of his age. On the MCAT, Bakke scored in the 97th percentile in scientific knowledge, the 96th percentile in verbal ability, the 94th percentile in quantitative analysis, and the 72nd percentile in general knowledge. His overall MCAT score was 72 while the U.C. Davis average was 69.

The Supreme Court, in a split decision—six opinions were written, with the lead opinion being what is called a "**plurality opinion**." This meant that while five members voted for the outcome, there was no five-member majority for a single

opinion. A majority of the Court decided that U.C. Davis's program went too far and ordered Bakke admitted. Ultimately, the Court decided that racial quotas—here, reserving sixteen seats out of one hundred for minority students, were impermissible, but consideration of race on applications was consistent with the Equal Protection Clause. Diversity was a “compelling state interest” under the Fourteenth Amendment.

**Key Take-Home Points:**

- Racial quotas are suspect, but some affirmative action programs are constitutional—diversity in education is a proper reason to create such programs.
- A series of recent cases out of the University of Texas—*Fisher v. Texas*—upheld racially conscious admissions programs under the Equal Protection Clause.

**Obergefell v. Hodges (2015)**

This landmark Supreme Court decision struck down **same-sex marriage** bans throughout the country.

In this recent landmark Supreme Court decision, the Court extended *Loving v. Virginia*, which struck down acts banning interracial marriage in 1967 based on the **Fourteenth Amendment’s due process and Equal Protection clauses**, to same-sex marriage. Jim Obergefell was a civil rights activist married to John Arthur in a state—Ohio—that would not recognize their marriage and when Arthur died of ALS, the state would not recognize Obergefell as his surviving spouse. The case was in fact a combination of a series of suits against laws in Michigan, Ohio, Kentucky, and Tennessee that culminated in this single case before the Supreme Court. The Court, in a 5-4 decision, reasoned that state laws banning same-sex marriage caused “substantial” and continuing harm to same-sex couples by denying them marriage licenses—and, in turn, access to the institution of marriage. The harm, the Court argued, was significant enough to outweigh the interest in allowing the democratic process to play out.

**Key Take-Home Points:**

- In *Loving*, Chief Justice Earl Warren wrote that, “The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State’s citizens of liberty without due process of law.” Here, the Supreme Court extended that same right to same-sex couples.

**Famous Quote:**

“No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. . . (these men and women) respect (marriage) so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”

**THEME #3: FUNDAMENTAL RIGHTS AND THE CONSTITUTION****Lochner v. New York (1905)**

In a landmark 5-4 decision, the Supreme Court struck down a New York law establishing a 10-hour work-day for bakers within the city under the [14th Amendment](#)'s “Due Process” Clause.

In the case, a German immigrant business owner challenged the New York law, citing evidence that the city's ordinance was **based in animus** against immigrant bakers who tended to set up shops in tenement housing and work longer hours. New York defended the law—arguing that it was consistent with its power to promote the healthy, safety, and welfare of its residents. And Labor lawyer Louis Brandeis supported New York's argument with his first “**Brandeis Brief**”—citing around a hundred pages of studies from Europe on the effects of baking and long hours on the health to show that the law was a proper use of the New York's “**police power**.”

The majority opinion, written by Justice Rufus Peckham, concluded that under “**substantive due process**,” the legislation was arbitrary and was not based in a proper use of the “police power” because there was no legitimate health purpose for the law. Peckham found that it violated “**freedom of contract**” under the “Due Process” Clause.

There were two notable dissents. One, Justice Harlan's, was joined by two other justices. Harlan agreed that the Fourteenth Amendment protected “freedom of contract,” but thought that the Court should defer more to the findings of the state in favor of their legislation. Harlan thought courts should only overturn regulations based in the police power when “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” On the other hand, Justice Oliver Wendell Holmes entirely rejected “freedom of contract,” arguing that the majority had “decided upon an economic theory which a large part of the country does not entertain” and the Constitution did not “embody a particular economic theory.” Or perhaps in his most famous quote, “The Fourteenth Amendment does not enact Mr. Spencer's Social Statics.” (Here, Holmes referred to a notable Social Darwinist theorist)

**Key Take-Home Points:**

- The case came to define an entire period of Supreme Court history—known by scholars as the “**Lochner Era**.” During this period, the Court did overrule some state laws regulating business. But the Court upheld far more laws than it struck down. For instance, it frequently allowed state regulations of hours for women.
- The Lochner era ended with the cases of [Nebbia v. New York](#) in 1934 and [West Coast Hotel v. Parrish](#) in 1937.

**Roe v. Wade (1973)**

A Texas woman—“Jane Roe”—sought an **abortion**. However, a Texas law banned abortions except in instances in which a woman's life was endangered. “Jane Roe” challenged the Texas law, arguing that it was unconstitutional.

In a 7-2 decision, the Court held that the right to an abortion fell within the right to privacy previously established in [Griswold v. Connecticut \(1965\)](#). In addition, the Court established a trimester framework for analyzing the constitutionality of abortion regulations. While there could be no restrictions on abortion in the first trimester of a pregnancy, government could begin to place restrictions on abortion in the second trimester—the point at which the Court concluded the fetus was viable (or could live outside its mother's womb) without extraordinary medical assistance.

**Key Take-Home Points:**

- Roe built on previous Supreme Court cases like *Griswold v. Connecticut* (1965). These cases recognized a constitutional right to privacy even though that right isn't explicitly mentioned in the Constitution.
- While the Supreme Court reaffirmed the core of Roe in *Planned Parenthood v. Casey* (1992), it moved away from Roe's trimester framework and established an "undue burden" test for evaluating a government's attempt to regulate abortion after fetal viability.
- In *Casey*, the Court described an undue burden as follows: "A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."

**THEME #4: THE BILL OF RIGHTS**

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**Schenck v. United States (1919)**

During **World War I**, the defendants were charged with mailing printed circulars designed to obstruct the military draft in violation of the **Espionage Act of 1917**. The Espionage Act made it illegal to convey information with the intent of interfering with the operation of the U.S. armed forces or obstructing military recruitment.

Writing for a unanimous Court, Justice Oliver Wendell Holmes upheld the defendants' convictions and ruled that the Espionage Act did not conflict with the [First Amendment](#). In his opinion, Holmes established the "**clear and present danger test**." Under this test, the Court must ask the following question when evaluating a free speech challenge: Were the words 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 was, as Holmes wrote, "a question of proximity and degree," famously explaining, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

**Key Take-Home Points:**

- This is one of the Supreme Court's most important **early free speech cases**—the source of the Court's famous "clear and present danger test." While the First Amendment protects free speech rights, Schenck's "clear and present danger test" is a key reminder that these rights aren't absolute.
- The Supreme Court reversed course in future decades, increasingly protecting free speech over time—following a series of famous dissents by Justice Oliver Wendell Holmes and Justice Louis Brandeis in the 1910s and 1920s.
- By the 1960s, the Supreme Court advanced a broad vision of free speech protections. The **First Amendment** now generally protects speech—including speech by political minorities and even hateful speech—against government regulation unless the speech "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." ([Brandenburg v. Ohio—1969](#)).

**West Virginia v. Barnette (1943)**

This landmark [First Amendment](#) case protected students from being required to salute the American flag or say the Pledge of Allegiance in public schools.

During **World War II**, the West Virginia legislature required all students to learn civics and the "**spirit of Americanism**" and, in 1942, ordered that saluting the flag be mandated as part of that program. Jehovah's Witnesses, a religious minority group who believes God's law to be superior to any man-made laws or government, were persecuted by Nazis at the time for refusing to salute Nazi flags. They also refused to salute the American flag for the same reason (based on Exodus 20:4-5, which says, "Thou shalt not make unto thee any graven image, or any likeness that is in heaven above . . .

thou shall not bow down thyself to them nor serve them") West Virginia's law followed from the Supreme Court's decision in [Minersville School District v. Gobitis \(1940\)](#), which decided public schools could compel students to salute the flag and say the Pledge of Allegiance.

The Barnette children—Marie and Gathie—were Jehovah's Witnesses instructed by their parents to not salute the flag or say the pledge and were expelled for doing so. On Flag Day in 1943, the Court, in a 6-3 decision written by Justice Jackson, overruled Gobitis. Gobitis was not wrong to see the flag as a national symbol, but Jackson did not think compulsion could bring about patriotism. He cited history—the Romans driving out Christians, the Spanish inquisition—as evidence that coercion failed to unify opinion ("Compulsory unification of opinion achieves only the unanimity of the graveyard"). Finally, Jackson also rejected the idea from Gobitis that such rules were about school discipline and the Court should defer to school officials. Jackson insisted that, "We apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization" and argued patriotism flourished when ceremonies were "voluntary and spontaneous instead of a compulsory routine."

As Justice Black and Douglas said in a concurring opinion—two members who changed their minds since 1940—"Words uttered under coercion are proof of loyalty to nothing but self-interest. . . Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions."

#### **Key Take-Home Points:**

- The case considered both **free speech** and **freedom of religion** in striking the laws in question and did so during a time of war.
- In 1972 in [Wisconsin v. Yoder](#), the Court ruled Amish parents did not have to send their children to public schools after the 8th grade.

#### **Famous Quotes:**

Robert Jackson: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."

Roberts Jackson: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act faith therein."

#### [Mapp v. Ohio \(1961\)](#)

In this landmark [Fourth Amendment](#) decision, the Supreme Court "incorporated" or applied the protection against "unreasonable searches and seizures" against the states. In particular, the "exclusionary rule," originally created in the 1914 case of Weeks v. United States, which states that any evidence obtained in an unconstitutional search cannot be used in criminal proceedings, applied to state as well as federal officers and courts.

"Dolly" Mapp was involved in the criminal operations of a local mobster and racketeer, Shondor Birns. Cleveland Police received an anonymous tip that a man involved in illegal "numbers games" set up by Mapp's boyfriend might be at Mapp's house. This man—named Ogletree—was wanted in connection to the bombing of the house of the gambling racketeer and future boxing promoter Don King. When police searched the house, they found gambling slips as well as Ogletree and arrested Mapp. Ultimately, when she would not cooperate to testify against King, Mapp was charged with

"knowingly having had in her possession and under her control certain lewd and lascivious books, pictures, and photographs" in violation of state law, even though there was never a valid search warrant.

In a 6-3 decision, the Supreme Court threw out Mapp's conviction, overruling a previous decision limiting the "exclusion rule" to federal officers. The Court concluded that, "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."

**Take-Home Points:**

- "Incorporation" before and after Mapp was the means by which the Supreme Court over the 20th century (and in recent years) has expanded the Bill of Rights to cover state violations.
- The "Exclusionary rule" before Mapp had been rejected by most states, so the decision was significant because it applied a key constitutional protection against violations of criminal rights ([Fourth](#), [Fifth](#), and [Sixth Amendment](#)) nationally.

**Kelo v. City of New London (2005)**

Susette Kelo's "little pink house" was bulldozed as part of a development plan in the city of New London, Connecticut after it was determined to be "blighted" and was condemned. The [Fifth Amendment](#)'s text declares that "nor shall private property be taken for public use, without just compensation." Kelo sued, claiming that the New London development plan and condemnation of her house was an improper taking because this was not "public use."

The Supreme Court, in a 5-4 decision, concluded that governmental taking of property from one private owner to give to another in furtherance of economic development constitutes a permissible "public use" under the Fifth Amendment. Justice O'Connor's dissent—joined by Justice Thomas, Justice Scalia and Chief Justice Rehnquist—complained that the majority decision collapsed any distinction between public and private use, charging that any property could be taken for private use now with little justification. She concluded: "The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."

**Key Take-Home Points:**

- The Court indicated it would generally defer to the decisions of local and state governments as to "economic development" plans and determinations of public versus private use.

**THEME #5: BATTLES OVER PRESIDENTIAL POWER**

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**Korematsu v. United States (1944)**

This landmark **civil liberties** and **presidential power** case involved a suit contesting the order of President Franklin Delano Roosevelt creating internment camps for Japanese Americans.

President Roosevelt issued Executive Order 9066 on February 19, 1942, authorizing the War Department to create military areas from which any or all Americans might be excluded. As a result, the Western U.S. command ordered "all persons of Japanese ancestry, including aliens and non-aliens" to relocate to internment camps. Fred Korematsu was a 23-year-old Japanese American man who refused to leave the exclusion zone and instead challenge the order in Court for violating the [Fifth Amendment](#)'s Due Process Clause.

In a 6-3 decision, the Supreme Court upheld the order. The Court for the first time evaluated the claim that the government act constituted racial animus under the standard of strict scrutiny—the highest level of scrutiny the Court

gives—but the majority, with Justice Hugo Black writing, concluded that “Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire. . . because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and, finally, because Congress. . . determined that they should have the power to do just this.”

Three justices dissented. Justice Murphy stated the opinion falls “into the ugly abyss of racism” and was a “**legalization of racism**” which bore unfortunate resemblance to “the abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy.” Justice Owen Roberts thought the case was a clear violation of constitutional rights, as was the “case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States.”

Finally, Justice Jackson believed military orders should normally get deference from courts, but worried once the Court authorizes such power under emergency conditions, “the Court for all time has validated the principle of **racial discrimination in criminal procedure** and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes.”

**Key Take-Home Points:**

- In the recent case concerning President Trump’s “**Muslim Ban**,” [Trump v. Hawaii](#), Chief Justice Roberts concluded that Korematsu was no longer good precedent. He stated that, “Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—‘has no place in law under the Constitution.’” Finally, he made it clear that the “forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority.”
- In 1980, Congress created a special commission on the Wartime Internment. The Commission’s 1982 report found that each part of the decision—facts and analysis—had been discredited and thus, the decision had been “overruled in the court of history.” Later, in 1988, Congress issued reparations to the victims of the Japanese internment.
- Fred Korematsu did not give up his legal effort. Incredibly, almost four decades later in 1983, he sued in federal district court to overturn his conviction. Judge Marilyn Patel overturned the conviction but pointed out because the error was prosecutorial misconduct, the precedent still stood.

**Famous Quote:**

“Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States.” (Justice Murphy’s Dissent)

**Youngstown Sheet & Tube v. Sawyer (1952)**

Known as the “Steel Seizure” case, this landmark Supreme Court decision is fundamental to **modern analysis of presidential power**.

The **Korean War** was an **undeclared war**, meaning that Congress never invoked its [Article I, Section 8, powers to declare war](#). Rather, it was a conflict that began with the unilateral actions of President Harry S. Truman to defend

American allied troops in South Korea. President Truman was concerned with the output of the nation's steel mills, as he believed that a strike would cause severe problems for the war effort and the country's economy. At the time, the United Steelworkers of America were seeking a new contract that would increase wages for its members.

On April 4, 1952, the union announced that the strike was on, and the steel companies began to shut down their mills. President Truman decided that he needed to force the still mills to stay open, stating that, "steel is an indispensable component of substantially all of such weapons and material." **Truman issued an order** to his Secretary of Labor to seize the steel mills.

Ultimately, the Supreme Court struck down Truman's order, concluding that it was unconstitutional. Justice Hugo Black wrote the majority opinion. For the majority Truman's actions violated separation of powers by unconstitutionally claiming congressional powers, as Congress had given the President no power to seize property nor did [Article II](#). Furthermore, Congress had previously refused to grant the President such power in the **1947 Taft-Hartley Act**.

However, Justice Robert Jackson's concurrence proved to be more significant over time. Jackson developed a three-tier ("tripartite") test for presidential power. Presidential power was at its highest level when Congress authorized the action and [Article II](#) granted the power to do so; presidential power was in the "zone of twilight" when the President acted solely on his or her Article II powers and Congress has not acting; and the President's power is at its "lowest ebb" when Congress has given its disapproval to the claimed powers. Thus, because Congress had not authorized such seizures and Article II gave no authority, Truman's actions were unconstitutional.

**Key Take-Home Points:**

- The Supreme Court up until 1952 had produced few major opinions on the contours of presidential power. The Prize Cases during the Civil War was likely the most important to this point, narrowly upholding Abraham Lincoln's blockade of the southern ports at the beginning of the war.
- Jackson's test became the constitutional standard for assessing claims of presidential power going forward.

**Famous Quote:**

"[W]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb." (Justice Jackson's concurrence)

**U.S. v. Nixon (1974)**

In this landmark decision, the Supreme Court limited the scope of what is known as "**executive privilege**" (the right of the President and other members of the executive branch to maintain the confidence of certain communications) in a case arising out of the "**Watergate**" scandal. The Supreme Court's decision in the case eventually led to President Richard Nixon's resignation the same year.

In 1973, Nixon's Attorney General established a special counsel, Archibald Cox, to investigate the break-in at the Watergate Office Building to steal documents from the Democratic National Committee. On October 20, 1973, Nixon ordered that Cox be fired, causing both Richardson and Deputy Attorney General William Ruckelshaus to resign in what became known as the "Saturday Night Massacre." Anger over the firing forced Nixon to appoint another special counsel, Leon Jaworski. Jaworski obtained a subpoena to get recordings from the President of conversations concerning the break-in. Nixon claimed he had an absolute executive privilege to protect communications between "high Government officials and those who advise and assist them in carrying out their duties."

In a unanimous opinion, the Supreme Court ruled that the President was not above the law; and that the President cannot use executive privilege as an excuse to withhold evidence that is “demonstrably relevant in a criminal trial.” Jaworski, the Court concluded, had proven a “sufficient likelihood that each of the tapes contains conversations relevant to the offenses charged in the indictment.” Executive privilege was legitimate, but Nixon’s claim of **“absolute” privilege was rejected**. Thus, the Supreme Court ordered Nixon to turn over the tapes to the District Court. Nixon resigned on August 6, 1974.

**Key Take-Home Points:**

- No President is above the law—the **“rule of law”** applies evenly to all, including the chief executive.
- “Executive Privilege” has limitations—there is no “absolute privilege”—and this last year, the Supreme Court rejected President Trump’s similarly broad claims of privilege to communications related to his taxes.

**THEME #6: THE CONSTITUTION IN SCHOOL**

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**Tinker v. Des Moines Independent Community School District (1969)**

This landmark **First Amendment** case involved a group of high school students who wore black armbands to school in protest of the Vietnam War. The students were disciplined by the school for wearing the armbands, and the students filed a lawsuit arguing that their armbands were a form of symbolic protest that should be protected under the **First Amendment**.

In a 7-2 decision, the Supreme Court held that the armbands **represented expression** that was protected under the First Amendment. The Court further concluded that the students retained their First Amendment rights while at school as long as their speech (or expressive acts) did not “materially or substantially interfere” with the school’s operation. In Tinker, there was no actual interference—the school only feared potential disruption. This wasn’t enough to survive a First Amendment challenge.

**Key Take-Home Points:**

- This is the landmark case covering **free speech in public schools**.
- While Tinker is an important defense of free speech rights for students, it also emphasizes the limits of free speech rights in the school context—namely, schools may limit student speech when it “materially or substantially interfere[s]” with a school’s operations and its central mission, teaching students.

**Famous Quote:**

“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

**New Jersey v. T.L.O. (1985)**

In this landmark case concerning constitutional rights within public schools, the Supreme Court decided that the warrant requirement did not apply to searches of students for drug paraphernalia. Instead, “reasonable suspicion” that the student has violated the law or student rules was sufficient to conduct a search of the student’s personal objects (here, a purse).

In 1984, a fourteen-year-old student was caught with a friend smoking cigarettes in the bathroom by an Assistant Vice Principal. When she denied she was smoking or that she smoked, the Vice Principal searched her purse and found in

plain view wrapping papers for marijuana. As a result, the student was fined \$1,000 and expelled from school. Her parents sued on her behalf for a violation of her [\*\*Fourth Amendment\*\*](#) rights against unreasonable searches and seizures.

The Supreme Court, by a 6-3 decision, upheld the search by the Vice Principal, concluding that the Fourth Amendment applied differently within public school doors, where discipline and order had to be weighed against the privacy interests of individual students. He had reasonable suspicion to believe a school rule was violated and, thus, to search the purse.

**Key Take-Home Points:**

- While Tinker suggested that the Constitution would apply inside school doors, New Jersey v. T.L.O. reflects the shift beginning with this case towards treating the school environment separately for constitutional purposes.
- In a 2009 case, the Supreme Court ruled that a “strip search” of a female student suspected of selling drugs was unconstitutional under the “reasonable suspicion” standard.

**[Hazelwood School District v. Kuhlmeier \(1988\)](#)**

This was a landmark Supreme Court decision which held that public school student newspapers were subject to a lower level of [\*\*First Amendment\*\*](#) protection than independent student expression or newspapers established by the school official for student expression. In 1983 in Hazelwood, Missouri, two articles of the student newspaper were censored by the principal for discussing divorce and teenage pregnancy.

In a 5-3 decision, the Supreme Court ruled that the principal could exercise what is known as “**prior restraint**” (meaning that printed material, be it a book or newspaper article, is censored before it is printed and according to another Supreme Court landmark case, this was one of the core evils the First Amendment was meant to address)—deciding before the fact that some articles or expression could not be printed or shared, so long as the **censorship** is “reasonably related to legitimate pedagogical concerns.” The Court decided that while Tinker dealt with the educators’ ability to silence students’ personal expression that happens to occur on the school premises, Hazelwood concerned the authority of educators over school-sponsored publications or newspapers and other expressive activities that students, parents, and members of the public might reasonably understand to be collective forums of the school for expression.

**Key Take-Home Points:**

- This case, after Tinker, sets out limits on student speech, and, like New Jersey v. T.L.O., suggests that constitutional rights are more limited in the school setting.
- In [\*\*the 2007 case of Morse v. Frederick\*\*](#), the Court again upheld restrictions on student speech, this time in the “Bong Hits for Jesus” case, deciding the principal’s punishment of a student for holding a sign with that message was appropriate even if it was meant to be a joke.

**Famous Quote:**

“A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.”

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