Supreme Court 2019-20
Politics, Principle, and Preference

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Opinion Survey

In your opinion

1. What is the most important decision ever made by the Supreme Court?
2. Who is the most important Supreme Court Chief Justice in U.S. history?
3. What is the meaning of “due process of law”? 
What is the factually correct answer?

1. What does the Constitution specify for the number of Supreme Court justices?
2. Which party controlled the court in 1800?
3. What is the name of the judicial power to strike down a law as unconstitutional?
4. What was the hometown of the lead plaintiff in the case the Supreme Court decided striking down a state law barring same sex marriage?
5. Name a Supreme Court Justice who came from Cincinnati.
Constitutional Foundations

3 branches of government in a **Federal** System of separated institutions sharing powers

I. Legislative power in a bicameral Congress

II. Executive power in a President

III. Judicial power in one Supreme Court with the number of *justices* and any lower courts TBA

IV. States required to give full faith and credit to others

V. Constitution the supreme Law of the Land
First Statutes + Amendments

1st American Republic 1790-1865

1789 Judiciary Act
  lower federal courts separate from state courts
  One Chief Justice and five associate justices

Bill of Rights (1791)
  1st Amendment: Congress shall make no law . . .
  abridging the freedom of speech . . .
  10th Amendment: The powers not delegated to the
  U.S. by the Constitution, nor prohibited by it to the
  States are reserved to the States respectively or to the
  people.
Marbury v Madison (1803)

Federalist Pres. Adams appointed Marbury as magistrate.

Federalist Secretary of State Marshall leaving office failed to deliver his commission. Incoming Sec. of State Madison, a Democratic-Republican, refused to deliver commission.

Plaintiff asked Supreme Court to exercise original jurisdiction granted by statute.
Chief Justice Marshall ruled

1. Marbury had a legal right to the commission

2. the Supreme Court has the power of Judicial Review to invalidate unconstitutional Congressional acts.

3. Congress exceeded its Constitutionally limited power to grant original jurisdiction instead of appellate jurisdiction, so the court can not order delivery of the commission.
Questionable Legal Analysis

1. If the court had no jurisdiction to decide the case, improper to assert the validity of Marbury’s claim. *Dicta* with no authority as precedent.

2. Marshall’s Conflict of interest mandates recusal so neutrals can decide

3. Ambiguous constitutional language subject to a contrary interpretation
Marshall’s Politics and Preferences

Political Interests
1. Partisan support for Federalist judges
2. Creation of supreme Constitutional power for the Judiciary and Chief Justice

Dem-Repub in Congress: Judge Samuel Chase impeached 1804 for partisanship and sedition, Senate failed to convict by 2/3 majority

Personal Preference –
Rivalry with cousin Thomas Jefferson
McCulloch v. Maryland 1819 (7-0)

Maryland Supreme court ruled against appellant McCulloch, cashier of the U.S. bank in Baltimore for refusing to pay a state tax.

Congress has the implied authority under the “necessary and proper clause” to establish a U.S. bank even though doing so is not expressly listed with other enumerated powers such as to create an army, set up a post office, and coin money.

The power of judicial review applies not only to Congressional statutes but also to state law. Maryland may not tax a federal agency as “The power to tax is the power to destroy.”
Competing Legal Principles/Values

T. Jefferson’s deferential Judicial restraint

v.

J. Marshal’s Judicial activism

originalism/textualism, literal plain meaning

v.

flexible, organic evolution, updating spirit, intent
Dred Scott v. Sandford  1857 (7-2)

Chief Justice Taney, Maryland slaveowner and Democrat, ruled that whether enslaved or free, black Americans had no rights or privileges of citizenship granted by a U.S. statute that was unconstitutional.

First time a U.S. law struck down by the court.

Democratic President Buchanan lobbied for the result and was given advance notice of it.
End of the 1st American Republic

1. National Economic Union well established by Marshall’s opinions maximizing federal power to regulate interstate commerce.

2. Civil War Amendments limit State’s rights
   
   13th Abolished slavery
   
   14th States bound to respect due process and guarantee equal protection
   
   15th Freed slaves and people of color can vote
Corporate Growth and wealth disparity met with progressive economic regulations struck down by the court as Constitutional violations. 

*Lochner v. New York* 1905 (5-4)

State law prevented bakeries from requiring more than 60 hours a week of work.

Supreme court finds a violation of the individual’s Constitutionally protected “liberty of contract.” A right not expressly mentioned may be so fundamental that it can be read into the 14th Amendment which guarantees liberty and “due process” of law – both procedural and substantive.
Standards of Judicial Review

1. **Rational Basis**: deference to policies unless arbitrary, capricious and unreasonable, plaintiff’s burden, government generally wins

2. **Strict Scrutiny**: heightened protection for fundamental rights expressly mentioned (speech) or unwritten (privacy) government’s burden, plaintiff usually wins
End of the 2d American Republic 1937

FDR proposed adding 6 younger Justices to assist the elderly and faced backlash +

The “Switch in Time that Saved 9,” 5-4 decisions with Chief Justice Hugues upholding Constitutionality of New Deal economic regulations by either

1. distinguishing precedent as not controlling, or
2. **overruling** precedent without respect for *stare decisis* (let the decision stand)
Handouts Online

Reference Books and Websites
https://www.scotusblog.com

https://www.oyez.org

https://www.supremecourt.gov

Selected Cases docketed for 2019-2020