CHIEF JUSTICE JOHN MARSHALL AND THE NINTH AMENDMENT pdf

1: Even John Marshall Rejected a Liberal Construction of the Constitution | Tenth Amendment Center

Ogden, Chief Justice John Marshall reaffirmed that the federal government had authority over interstate commerce by citing Article 1, Section 8, Clause 3 of the Constitution, which is commonly known as the _____.

Rob Natelson Published on: Jul 18, Categories: Eleven Years , Founding Fathers , John Marshall , Judiciary One of the most enduring myths in American constitutional history is that Chief Justice John Marshall was a judicial activist whose decisions are good precedent for the modern federal monster state. Marshall was the fourth chief justice of the U. He served from until In the popular literature, Marshall is usually presented as a judicial activist who adroitly used the law to further federal power and the views of his own Federalist Party. Among other things, he is accused of: He thereby, it is said, appropriated huge power the Founders did not want his court to have. Maryland , turning the Necessary and Proper Clause into a vast reservoir of federal power. But Marshall was innocent of all of them. First, a little background: Marshall was not merely important as Chief Justice. He was also a leading spokesman for the Constitution in the Virginia ratifying convention. So what are the facts about each of the charges above? There also were repeated references to judicial review during the debates over the Constitution, with almost everyone favoring it. As for the charge of a power grab: Why is Marshall so often painted as a screaming activist? There are two reasons: Many have had personal reasons for painting Marshall that way. His political enemies, such as Thomas Jefferson, certainly did. In more modern times, the big-government types who dominate the law schools certainly do: They want to enlist Marshall to justify their own constitutional agendas. Get the Book Today! In fact, my guess is that many of them have never read an entire Marshall decision. Instead, they have read the skewed, chopped-up versions appearing in law school books, edited for content by liberal professors.

CHIEF JUSTICE JOHN MARSHALL AND THE NINTH AMENDMENT pdf

2: The Choice of Justice John Marshall â€“ Consortiumnews

John Marshall was the fourth C hief Justice of the United States Supreme Court, reigning from Although John Marshall is not the second to assume the role of Chief Justice after John Jay.

He later served as President of the Continental Congress. He set the precedent that the Supreme Court would not give opinions on legislation, but would only rule on the constitutionality of the cases brought before it. Chief Justice John Marshall served: He is widely considered the most influential Supreme Court justice. Marshall helped to establish the Supreme Court as a powerful and independent third branch of the government. His ruling on the landmark case Marbury v. Madison laid the groundwork for the future of Constitutional law in the country. Justice Oliver Wendell Holmes, Jr. His opinions have been cited and used by judges over the years in important cases. Perhaps his most famous decision was Schenck v. United States in where he made a ruling regarding free speech against the government. He said that each case must be individually examined to see if it presented a "clear and present danger" to the United States. Chief Justice William Howard Taft served: Taft helped to reorganize the federal court system and successfully argued that the Supreme Court Building be constructed to physically separate the court from Congress. As Chief Justice he became known as a champion of human rights. He presided over some of the most important civil rights cases in history including Brown v. Board of Education, Hernandez v. Texas, and Bolling v. Justice Thurgood Marshall served: He argued several cases before the Supreme Court including the landmark case of Brown v. While serving on the court Marshall became known as a champion of individual rights. She was appointed by President Ronald Reagan and unanimously confirmed by the Senate in She was known as a very conservative judge during the first part of her term, but was later considered a moderate judge who approached each case with an open mind. Douglas who served over 36 years from April to November The President to appoint the most justices was George Washington who appointed eleven. The youngest justice was Joseph Story who was appointed at the young age of Six justices were born outside of the United States. Activities Take a ten question quiz about this page. Listen to a recorded reading of this page: Your browser does not support the audio element. To learn more about the United States government:

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3: A Federalist Stronghold: John Marshall's Supreme Court [www.enganchecubano.com]

John James Marshall (September 24, - July 6,) was an American politician who served as the fourth Chief Justice of the United States from to Marshall remains the longest-serving chief justice in Supreme Court history, and he is widely regarded as one of the most influential justices to ever sit on the Supreme Court.

September 24, in Germantown, Virginia Died: July 6, aged 79 in Philadelphia, Pennsylvania Best known for: He grew up in a small log cabin and was the oldest child from a large family that included 14 brothers and sisters. His father, Thomas Marshall, had become wealthy by the time John was a teenager and the family moved to a larger estate. Because there were no schools near where the Marshalls lived, John received most of his education from his father. He did attend an academy for one year and was tutored by the local priest as a teenager. He joined the Culpeper Minute Men as a Lieutenant. John soon joined the Continental Army where he fought in several battles including the Battle of Brandywine and the Battle of Germantown. He also served under Washington during the difficult winter at Valley Forge. He passed the bar and became a lawyer in opening his own law practice in Fauquier County, Virginia. Entering Politics John soon became interested in politics. In , John was elected to the Virginia House of Delegates. He then attended the Virginia state convention that ratified the Constitution. John strongly supported replacing the Articles of the Confederation with the new Constitution and led the fight to get the new Constitution ratified. In , Marshall was elected to the U. Marshall would serve in the position for the next 34 years. He would transform the Supreme Court in many ways turning it into a strong and equal third branch of the U. One of the first changes Marshall made was to have the Supreme Court give a single unified opinion. Before Marshall, each judge gave their own separate opinion on cases. John changed this to where the court would only give a single opinion. This cleared up any questions as to the final ruling of the court. Two of the most important were Marbury v. Madison and McCulloch v. Madison Perhaps the most important ruling in the history of the Supreme Court was Marbury v. In this ruling, Marshall set up the process of judicial review. This allowed the Supreme Court to declare laws made by Congress as unconstitutional. This gave the Supreme Court a powerful "check" to the power of Congress and made it an equal third branch of the government. In this case Marshall ruled that the Constitution gave the federal government some implied powers. Meaning that not all the powers of the federal government were directly stated in the Constitution. He also ruled that the states could not stop the federal government from exercising its Constitutional power. Death and Legacy Marshall served on the Supreme Court up until his death in He is widely considered the most important and influential Supreme Court justice in U. His rulings changed the way the Supreme Court worked and established it as an equal third branch of the government. They had ten children together. He was the longest-serving Chief Justice in the history of the U. He was classmates with future president James Monroe. He wrote a biography of his hero George Washington. Your browser does not support the audio element. To learn more about the United States government:

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4: Worcester V Georgia - Kids | www.enganchecubano.com

Chief Justice John Marshall was born on September 24, , in rural Fauquier County, near Germantown on the Virginia frontier. He was the first of 15 children born to Thomas Marshall and Mary.

Although John Marshall is not the second to assume the role of Chief Justice after John Jay, he is the first to assume the longest run in office. His role as Chief Justice helped strengthen the powers of the Supreme Court Judicial system and had a major influence on the development of the American legal system. This enforcement gave judicial systems the right to strike down laws that violate the Constitution. Under the rule of John Marshall, the Supreme Court made several important decisions that balanced the powers between the Federal and State governments. John Marshall is mostly known for his role in a series of landmark Supreme Court cases. He was reviewed as the lead Federalist of his time, implementing rules to protect the rights of individuals and corporations, upholding the values of the Constitution. Madison, where Marshall enforced the judicial reviews once created by John Jay. Some opposed his ruling of this case, but Marshall was determined to make implementation of judicial review clear. It was ruled that no power of Government, not even the President, or court system as well as any voting party, had the right to implement their own views of the Constitution. This ruling ensured that the documents written in the Constitution overruled with a clear and firm standing, giving room for nothing else to be considered. The case of McCulloch v. Maryland is another landmark case with which Marshall is associated. Under this case John Marshall ruled that states did not have the right to pass laws that violated the Constitution. He was a firm believer that the laws that made up the Constitution preceded every other law that would come to pass. His point of view expressed thatall laws made should be a reflection of what was set as the basis of American governance which all stems from the Constitution. This ruling pointed out that although State and Federal laws were separate, no State law has the right to overrule anything that has already been implemented as a Federal law. The last of the landmark Supreme Court cases under Marshall regulated interstate commerce as a Federal law. Although some of the decisions made by John Marshall were not popular among other Government officials, these ruling helped carve out the basic functions of the Federal Government today. It also gave State laws a foundation upon which all laws should be based. The practices and rulings under John Marshall were practical and helped streamline the branches of the Federal Government.

CHIEF JUSTICE JOHN MARSHALL AND THE NINTH AMENDMENT pdf

5: US Government for Kids: Famous Supreme Court Justices

John Marshall's most important accomplishment as chief justice of the Supreme Court was_____. A. the establishment of judicial review B. adding the Thirteenth Amendment to the Constitution C. drafting the Declaration of Independence D. leading the Continental Army.

Remembering recent confirmation hearings Posted Mon, October 15th, Yet a number of hearings have left their mark on the Supreme Court nomination process. Add the confirmation of Justice Brett Kavanaugh to that list. Each of these confirmations has produced one or more memorable moments or characterizations that have become part of the legacy of nominations and the justices themselves. For decades every nominee has wrestled with where to draw the line on their willingness to discuss cases decided in the past by the Supreme Court. The general pattern is that nominees will not discuss cases of recent vintage or that are still controversial. Most nominees have had no problem extolling the virtues of Marbury v. Madison , the decision written by Chief Justice John Marshall that forever elevated the role of the Supreme Court. Nominated by President Ronald Reagan in , he was selected to fill the seat of Justice William Rehnquist, who was simultaneously nominated to be chief justice to replace the retiring Warren Burger. Alone among nominees of the last several decades, Scalia famously said he could not answer questions even about Marbury v. In one of the most memorable moments of his testimony, Bork was asked to describe the meaning of the Ninth Amendment to the Constitution, which suggests that the American people have other rights beyond those that are enumerated in the Bill of Rights. But Bork suggested that it was impossible to know what the Ninth Amendment really meant. He then used an analogy that lasted well beyond the defeat of his nomination by the Senate. Nominated by President George H. Bush to succeed Justice Thurgood Marshall, Thomas faced the Senate Judiciary Committee a second time after his initial hearing concluded. The return engagement was prompted by accusations of sexual harassment leveled against Thomas by Anita Hill, who was questioned at length by senators after she gave an opening statement. Thomas adamantly denied the allegations and then launched a blistering attack against the committee for allowing the charges against him to be aired in public and on national television. And from my standpoint, as a black American, it is a high-tech lynching for uppity blacks who in any way deign to think for themselves, to do for themselves, to have different ideas, and it is a message that unless you kowtow to an old order, this is what will happen to you. Nominated by President Bill Clinton to succeed Justice Byron White, Ginsburg told the committee, as did others before her, that she would have to be careful not to discuss issues or cases that might come before her on the Supreme Court. Wade , the abortion ruling, gender discrimination and other issues. Since , however, senators have recast that hearing to make it seem that Ginsburg represented the height of recalcitrance. Bush to succeed Rehnquist as chief justice. In his hearing, Roberts famously compared a justice to a baseball umpire.

CHIEF JUSTICE JOHN MARSHALL AND THE NINTH AMENDMENT pdf

6: Barron v. Baltimore - Wikipedia

In Government by Judiciary, Raoul Berger shows that even Chief Justice John Marshall never supported the liberal interpretation of the judiciary that those who believe in living constitutionalism attribute to him.

Coat of Arms of John Marshall. John Marshall was born on September 24, in a log cabin in Germantown , [2] a rural community on the Virginia frontier, close to present-day near Midland , Fauquier County. In the mids, the Marshalls moved west to the present-day site of Markham, Virginia. Despite her ancestry, Mary was shunned by the Randolph family because her mother had eloped with a Scottish minister. From a young age, Marshall was noted for his good humor and black eyes, which were "strong and penetrating, beaming with intelligence and good nature". He was my only intelligent companion; and was both a watchful parent and an affectionate friend. After he was furloughed in , Marshall began attending the College of William and Mary. With the backing of his influential father-in-law, Marshall was elected to the Council of State , becoming the youngest individual up to that point to serve on the council. In , he purchased the law practice of his cousin, Edmund Randolph , after the latter was elected Governor of Virginia. Marshall gained a reputation as a talented attorney practicing in the state capital of Richmond , and he took on a wide array of cases. He represented the heirs of Lord Fairfax in Hite v. Fairfax , an important case involving a large tract of land in the Northern Neck of Virginia. Marshall was elected to the Virginia Ratifying Convention , where he worked with James Madison to convince other delegates to ratify the new constitution. Though the nomination was confirmed by the Senate, Marshall declined the position, instead choosing to focus on his own law practice. Like most other Federalists, Marshall favored neutrality in foreign affairs, high tariffs , a strong executive, and a standing military. Hylton , a case involving the validity of a Virginia law that provided for the confiscation of debts owed to British subjects. Hylton "elicited great admiration at the time of its delivery, and enlarged the circle of his reputation" despite his defeat in the case. After Adams took office, France refused to meet with American envoys and began attacking American ships. In April , Congress passed a resolution demanding that the administration reveal the contents of the correspondence. Marshall published a letter to a local newspaper stating his belief that the laws would likely "create, unnecessarily, discontents and jealousies at a time when our very existence as a nation may depend on our union. He quickly emerged as a leader of the moderate faction of Federalists in Congress. Marshall was confirmed by the Senate on May 13 and took office on June 6, Adams fired Secretary of State Timothy Pickering, a Hamilton supporter, after Pickering tried to undermine peace negotiations with France. The position of Secretary of State also held a wide array of domestic responsibilities, including the deliverance of commissions of federal appointments and supervision of the construction of Washington, D. The Midnight Judges Act made sweeping changes to the federal judiciary, including a reduction in the number of Justices from six to five upon the next vacancy in the court so as to deny Jefferson an appointment until two vacancies occurred. Adams nominated former Chief Justice John Jay to once again lead the Supreme Court, but Jay rejected the appointment, partly due to his frustration at the relative lack of power possessed by the judicial branch of the federal government. According to New Jersey Senator Jonathan Dayton , the Senate finally relented "lest another not so qualified, and more disgusting to the Bench, should be substituted, and because it appeared that this gentleman [Marshall] was not privy to his own nomination". Most legal disputes were resolved in state, rather than federal courts. The Court had issued just 63 decisions in its first decades, few of which had made a significant impact, and it had never struck down a federal or state law. The Marshall Court would issue more than decisions, about half of which were written by Marshall himself. Previously, each Justice would author a separate opinion known as a seriatim opinion as was done in the Virginia Supreme Court of his day and is still done today in the United Kingdom and Australia. Under Marshall, however, the Supreme Court adopted the practice of handing down a single majority opinion of the Court, allowing it to present a clear rule. Six months of the year the justices were doing circuit duty in the various states. When the Court was in session in Washington, the justices boarded together in the same rooming house, avoided outside socializing, and discussed each case intently among themselves. Decisions were quickly made, usually in a matter of days. The justices did not have clerks,

so they listened closely to the oral arguments, and decided among themselves what the decision should be. His influence on learned men of the law came from the charismatic force of his personality and his ability to seize upon the key elements of a case and make highly persuasive arguments. In that caseâ€" Ogden v. Saunders in â€"Marshall set forth his general principles of constitutional interpretation: After the Court came to a decision, he would usually write it up himself. Often he asked Justice Joseph Story , a renowned legal scholar, to do the chores of locating the precedents, saying, "There, Story; that is the law of this case; now go and find the authorities. Presidency of Thomas Jefferson Marbury v. After coming to power, the Jefferson administration refused to deliver about half of these outstanding commissions, effectively preventing those individuals from receiving their appointments even though the Senate had confirmed their nominations. Though the position of justice of the peace was a relatively powerless and low-paying office, one individual whose commission was not delivered, William Marbury , decided to mount a legal challenge against the Jefferson administration. Seeking to have his judicial commission delivered, Marbury filed suit against the sitting Secretary of State, James Madison. The Supreme Court agreed to hear the case of Marbury v. Madison in its term. Madison, though the defendant, James Madison, refused to appear. Because that portion of the Judiciary Act of was unconstitutional, the Court held that it did not have original jurisdiction over the case even while simultaneously holding that Madison had violated the law. As Marshall put it, "it is emphatically the province and duty of the judicial department to say what the law is. Many Democratic-Republicans saw the impeachment as a way to intimidate federal judges, many of whom were members of the Federalist Party. Burr conspiracy Vice President Aaron Burr was not renominated by his party in the presidential election and his term as vice president ended in After leaving office, Burr traveled to the western United States, where he may have entertained plans to establish an independent republic from Mexican or American territories. Marshall required Jefferson to turn over his correspondence with General James Wilkinson ; Jefferson decided to release the documents, but argued that he was not compelled to do so under the doctrine of executive privilege. Peck[edit] Further information: Yazoo land scandal In , the state of Georgia had sold much of its western lands to a speculative land company, which then resold much of that land to other speculators, termed "New Yazooists. Jefferson tried to arrange a compromise by having the federal government purchase the land from Georgia and compensate the New Yazooists, but Congressman John Randolph defeated the compensation bill. The issue remained unresolved, and a case involving the land finally reached the Supreme Court through the case of Fletcher v. Peck was the first case in which the Supreme Court ruled a state law unconstitutional, though in the Court had voided a state law as conflicting with the combination of the Constitution together with a treaty. Maryland[edit] The text of the McCulloch v. In that case, the state of Maryland challenged the constitutionality of the national bank and asserted that it had the right to tax the national bank. Southerners, including Virginia judge Spencer Roane , attacked the decision as an overreach of federal power. Bank of the United States , the Court ordered a state official to return seized funds to the national bank. The Osborn established that the Eleventh Amendment does not grant state officials sovereign immunity when they resist a federal court order. Virginia[edit] Congress established a lottery in the District of Columbia in , and in two individuals were convicted in Virginia for violating a state law that prohibited selling out-of-state lottery tickets. Virginia established that the Supreme Court could hear appeals from state courts in criminal lawsuits. Ogden[edit] In , Robert R. Livingston and Robert Fulton secured a monopoly from the state of New York for the navigation of steamboats in state waters. Gibbons continued to operate steamboats in New York after receiving a federal license to operate steamboats in the waters of any state. In response, Ogden won a judgment in state court that ordered Gibbons to cease operations in the state. Gibbons appealed to the Supreme Court, which heard the case of Gibbons v. After Georgia passed a law that voided Cherokee laws and denied several rights to the Native Americans, former Attorney General William Wirt sought an injunction to prevent Georgia from exercising sovereignty over the Cherokee. The Supreme Court heard the resulting case of Cherokee Nation v. Georgia, a group of white missionaries living with the Cherokee were arrested by the state of Georgia. They did so on the basis of an state law that prohibited white men from living on Native American land without a state license. Among those arrested was Samuel Worcester , who, after being convicted of violating the state law, challenged the constitutionality of the law in

federal court. The arrest of the missionaries became a key issue in the presidential election , and one of the presidential candidates, William Wirt, served as the attorney for the missionaries. The situation was finally resolved when the Jackson administration privately convinced Governor Wilson Lumpkin to pardon the missionaries. The Charming Betsy principle holds that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. Woodward , the Court held that the protections of the Contract Clause apply to private corporations. Saunders , the only constitutional case in which Marshall wrote a dissenting opinion, the Court upheld a state law that allowed individuals to file bankruptcy. In his dissenting opinion, Marshall argued that the state bankruptcy law violated the Contract Clause. Baltimore , the Court held that the Bill of Rights was intended to apply only to the federal government, and not to the states. Authorship of Washington biography[edit] After his appointment to the Supreme Court, Marshall began working on a biography of George Washington. He did so at the request of his close friend, Associate Justice Bushrod Washington, who had inherited the papers of his uncle. The first two volumes, published in , were poorly-received and seen by many as an attack on the Democratic-Republican Party. In he wrote, "I have at length completed an abridgment of the Life of Washington for the use of schools. I have endeavored to compress it as much as possible. After striking out every thing which in my judgment could be properly excluded the volume will contain at least pages. The following year, Marshall was a delegate to the state constitutional convention of â€”30 , where he was again joined by fellow American statesman and loyal Virginians, James Madison and James Monroe , although all were quite old by that time Madison was 78, Monroe 71, and Marshall That December, his wife Polly died in Richmond. John Marshall Son of Thomas and Mary Marshall was born the 24th of September Intermarried with Mary Willis Ambler the 3rd of January Departed this life the 6th day of July [] Marshall was among the last remaining Founding Fathers a group poetically called the " Last of the Romans " , [] and was also the last surviving Cabinet member from the John Adams administration. He had reservations about large-scale emancipation, in part because he feared that a large number of free blacks might rise up in revolution. Marshall instead favored sending free blacks to Africa , and he founded the Virginia chapter of the American Colonization Society to further that goal. They had 10 children; six of whom survived to adulthood.

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7: Barron v. Mayor & City Council of Baltimore | US Law | LII / Legal Information Institute

Marshall was the fourth chief justice of the U.S. Supreme Court (third, if you don't count John Rutledge, a recess appointment who was never confirmed). He served from until In the popular literature, Marshall is usually presented as a judicial activist who adroitly used the law to further federal power and the views of his own.

Garland until next year, a look at some earlier elections and court nominations might be instructive. Four years later, the election of was a rematch between the two candidates. When Burr arrogantly declined to step aside, the matter was decided by the House of Representatives during February Following 36 votes the House finally decided for Jefferson, who was inaugurated on March 4, , with Burr as the Vice President. Simultaneouslyâ€”and although he had already been defeated for reelectionâ€”Adams appointed his Secretary of State, John Marshall, to be the Chief Justice of the Supreme Court. Marshall went on to dominate the Supreme Court for 34 years under six presidents. He was largely responsible for establishing the doctrines of judicial review, federal supremacy over state laws, and federal regulation of interstate commerce. With the ratification of the 12th Amendment to the Constitution in , voting for president and vice president in the Electoral College was separated and the situation in which the two offices could be held by members of opposition political parties was largely eliminated. The Amendment also covers the situation wherein no candidate receives an electoral majority and provides the manner by which the matter is to be determined by a vote in the Congress. The 12th Amendment was tested during the election of in which none of the three candidates achieved a majority vote in the Electoral College. Jackson quit the Democratic-Republican Party and established the modern Democratic Party, which provided the platform for his election as president in Absent a majority vote, the matter will have to be decided by the th Congress after being seated on the 3rd of January. The House, voting by states, will choose the president from the top three candidates. Senators, voting as individuals, will select the vice president from the top two candidates. Should the Republicans retain their current majority in the House of Representatives, the establishment Republican candidate could be chosen, even if he or she received the least number of popular or electoral votes. The present Republican majority in the Senate is only 54 of , and with 34 of the Senate seats being contested in November, the Democrats might more easily obtain a majority in the Senate. Under this scenario, the Nation could once again be faced with the possibility of a vice president being from a different party than the president. More amazingly, if the House failed to obtain a majority vote of 26 states for president by January 20th, the new vice president selected by the Senate would be inaugurated to serve as president until the House could make its choice. Who can possibly predict at this time how the current political craziness will work itself out? Perhaps the time has come to shutter the anachronistic Electoral College and to allow the American voters to popularly elect their own presidential leadership during shorter, more inexpensive, and less divisive campaigns. William John Cox is a retired public interest lawyer. His new book, Transforming America: He can be reached through his website, http:

CHIEF JUSTICE JOHN MARSHALL AND THE NINTH AMENDMENT pdf

8: John Marshall - Wikipedia

John Marshall was born in a log cabin and was the eldest of 15 children of Thomas Marshall, a sheriff, justice of the peace, and land surveyor who came to own some , acres (80, ha) of land in Virginia and Kentucky and who was a leading figure in Prince William county (from Fauquier county), Va., and Mary Keith Marshall, a.

Download Issue The following is adapted from a speech delivered in Washington, D. Center for Constitutional Studies and Citizenship. As critical as I believe those controversies were, they pale in significance before the controversies that will arise over the next several decades. Indeed, if there is an overarching theme to what they wish to achieve, it is the diminishment of the democratic and representative processes of American government. It is the replacement of a system of republican government, in which the constitution is largely focused upon the architecture of government in order to minimize the likelihood of abuse of power, with a system of judicial government, in which substantive policy outcomes are increasingly determined by federal judges. Rather than merely defining broad rules of the game for the legislative and executive branches of government, the new constitution would compel specific outcomes. This radical transformation of American political life will occur, if it succeeds, not through high-profile court decisions resolving grand disputes of war and peace, abortion, capital punishment, or the place of religion in public life, but more likely as the product of decisions resolving forgettable and mundane disputesâ€”the kind mentioned on the back pages of our daily newspapers, if at all. Let me provide a brief summary of six of the more popular theories of the advocates of the 21st century constitution. In particular, it is my hope here to inform ordinary citizens so that they will be better aware of the stakes. For while judges and lawyers may be its custodians, the Constitution is a document that is the heritage and responsibility of every American citizen. Privileges or Immunities Clause Since shortly after the Civil War, the privileges or immunities clause of the 14th Amendment has been understood as protecting a relatively limited array of rights that are a function of American federal citizenship, such as the right to be heard in courts of justice and the right to diplomatic protection. This decision has served as a bulwark of American federalism. Although a considerable amount of federal judicial authority has since been achieved over the states through interpretations of the due process clause of the 14th Amendment, many proponents of a 21st century constitution seek additional federal oversight of state and local laws. Their strategy in this regard is to refashion the privileges or immunities clause as a new and essentially unlimited bill of rights within the 14th Amendment. The practical consequences of this would be to authorize federal judges to impose an ever broader and more stultifying uniformity upon the nation. Whatever modicum of federalism remains extant at the outset of this century, considerably less would remain tomorrow. For example, the government cannot inflict cruel and unusual punishment, and therefore the individual has a constitutional right not to be subject to such punishment; the government cannot engage in unreasonable searches and seizures, and therefore the individual has a constitutional right not to be subject to such searches and seizures, and so forth. This explains their interest in employing the privileges or immunities clause, which seems to them open-ended and susceptible to definition by judges at their own discretion. However pleasing this might sound to some people, there should be no mistake: State Action A barrier posed by both the due process and the privileges or immunities clauses, and viewed as anachronistic by 21st century constitutionalists, is the requirement of state action as a precondition for the enforcement of rights. In the Civil Rights Cases , another post-Civil War precedent, the Supreme Court asserted that these provisions of the 14th Amendment prohibited only the abridgment of individual rights by the state. Consider, for example, Hillsdale College. Despite being the embodiment of a thoroughly private institution, government officials have sought to justify the imposition of federal rules and regulations upon Hillsdale by characterizing the college as the equivalent of a state entity on the grounds that it received public grants-in-aid. When in response to this rationale, and in order to retain its independence, Hillsdale rejected further grants, the government then sought to justify its rules and regulations on the grounds that Hillsdale was the indirect beneficiary of grants-in-aid going to individual students, such as GI Bill benefits. Once again in response to this rationale, Hillsdale asserted its independence by barring its students from receiving public grants, even those earned as in the case of GI benefits, and

instead bolstered its own private scholarship resources. We have witnessed a steadily more aggressive effort by governmental regulators to treat private institutions as the equivalent of the state, and thereby to extend public oversight. However, it would be more convenient simply to nullify the state action requirement altogether. The state-action doctrine contributes nothing but obfuscation to constitutional analysis. It works as a bogeyman because it appeals to a vague libertarian sense that Americans have about the proper relation between them and their government. We would be well rid of the doctrine. Political Questions In areas that were once viewed as inappropriate for judicial involvement, federal courts have begun to assert themselves in an unprecedented and aggressive manner. The limited role of the judiciary, for example, with regard to matters of national defense and foreign policy is not explicitly set forth in the Constitution, but such matters have from time immemorial been understood to be non-justiciable and within the exclusive responsibility of the elected branches of government. As far back as Marbury v. Most notably, the Court ruled in Boumediene v. Bush that foreign nationals captured in combat and held outside the United States by the military as prisoners of warâ€”a war authorized by the Congress under Article I, Section 8, and waged by the President as Commander-in-Chief under Article II, Section 2â€”possess the constitutional right to challenge their detentions in federal court. Thus, in yet one more realm of public policyâ€”one on which the sovereignty and liberty of a free people are most dependent, national defenseâ€”judges have now begun to embark upon a sharply expanded role. Ninth Amendment Another looming constitutional battleground concerns the meaning of the Ninth Amendment to the Constitution: By this understanding, it was written to dispel any implication that by the specification of particular rights in the Bill of Rights, the people had implicitly relinquished to the new federal government rights not specified. Like the Tenth Amendmentâ€”which serves as a reminder that powers neither given to the federal government nor prohibited to the states in the Constitution are reserved to the states or to the peopleâ€”the Ninth Amendment was adopted to emphasize that our national government is one of limited powers. Its principal purpose was to prevent an extension of federal power, not to provide an open-ended grant of judicial authority that would have the opposite effect. Transnationalists believe that international and domestic law are merging into a hybrid body of transnational law, while so-called nationalists persist in preserving a division between domestic and foreign law that respects the sovereignty of the United States. Transnationalists believe that domestic courts have a critical role to play in incorporating international law into domestic law, while so-called nationalists claim that only the political branches are authorized to domesticate international legal norms.

9: Supreme Court Criticisms - constitution | www.enganchecubano.com

Barron v. Baltimore, 32 U.S. (7 Pet.) (), is a landmark United States Supreme Court case in , which helped define the concept of federalism in US constitutional law.

The first of his great cases in more than 30 years of service was Marbury v. His defense of federalism was articulated in McCulloch v. Maryland , which upheld the authority of Congress to create the Bank of the United States and declared unconstitutional the right of a state to tax an instrument of the federal government. In his ruling on McCulloch, Marshall at once explained the authority of the court to interpret the constitution, the nature of federal-state relations inherent in a federal system of government, and the democratic nature of both the U. During his tenure as chief justice, Marshall participated in more than 1, decisions, writing more than of them himself. Youth John Marshall was born in a log cabin and was the eldest of 15 children of Thomas Marshall, a sheriff, justice of the peace , and land surveyor who came to own some , acres 80, ha of land in Virginia and Kentucky and who was a leading figure in Prince William county from Fauquier county , Va. His schooling was primarily provided by his parents, supplemented only by the instruction afforded by a visiting clergyman who lived with the family for about a year and by a few months of slightly more formal training at an academy in Westmoreland county. Early career When political debate with England was followed by armed clashes in , Marshall, as lieutenant, joined his father in a Virginia regiment of minutemen and participated in the first fighting in that colony. He eventually rose to the rank of captain, and when the term of service of his Virginia troops expired in , Marshall returned to Virginia and thereafter saw little active service prior to his discharge in Library of Congress, Washington, D. Licensed to practice law in August , Marshall returned to Fauquier county and was elected to the Virginia House of Delegates in and Attending the sessions of the legislature in the state capital at Richmond , he established a law practice there and made the city his home after his marriage to Mary Ambler in January Although by he had not achieved a public position that would have sent him as a delegate to the Constitutional Convention in Philadelphia, he was an active, if junior, proponent of the new Constitution of the United States in the closely contested fight for ratification. That year Marshall was elected to the legislature that would take the first step toward ratification by issuing a call for a convention in Virginia to consider ratifying; he was also elected a delegate to the convention. His principal effort on the floor of the convention was, perhaps prophetically, a defense of the judiciary article. Shortly after the new constitution came into force, President Washington offered Marshall appointment as U. As party lines emerged and became defined in the s, Marshall was recognized as one of the leaders of the Federalist Party in Virginia. In Washington tendered him an appointment as attorney general. This, too, was declined, but Marshall returned to the state legislature as a Federalist leader. In Marshall accepted an appointment by Pres. Pinckney , that unsuccessfully sought to improve relations with the government of France. After the mission, reports were published that disclosed that certain intermediaries, some shadowy figures known as X, Y, and Z see XYZ Affair , had approached the commissioners and informed them that they would not be received by the French government unless they first paid large bribes; the reports further revealed that these advances had been rebuffed in a memorandum prepared by Marshall. Frenchmen plunder female "America," while five figures lower right representing other European countries look on. His service in the House of Representatives was brief, however. His chief accomplishment there was the effective defense of the president against a Republican attack for having honoured a British request under the extradition treaty for the surrender of a seaman charged with murder on a British warship on the high seas. In May President Adams requested the resignation of his secretary of war and offered the post to Marshall, and again Marshall declined. Adams then dismissed his secretary of state and offered Marshall the vacant position. After some initial hesitation, Marshall accepted. In the autumn of , Chief Justice Oliver Ellsworth resigned because of ill health. Adams, defeated in the November election, tendered reappointment to John Jay , the first chief justice, but Jay declined. Adams then turned to Marshall, and in January Adams sent to the Senate the nomination of John Marshall to be chief justice. The last Federalist-controlled Senate confirmed the nomination on Jan. Initially, there was no consensus as to whether the Constitution had created a federation or

a nation, and although judicial decisions could not alone dispel differences of opinion, they could create a body of coherent , authoritative , and disinterested doctrine around which opinion could mass and become effective. To the task of creating such a core of agreement Marshall brought qualities that were admirably adapted for its accomplishment. His own mind had apparently a clear and well-organized concept of the effective government that he believed was needed and was provided by the Constitution. He wrote with a lucidity, a persuasiveness, and a vigour that gave to his judicial opinions a quality of reasoned inevitability that more than offset an occasional lack in precision of analysis. His tenure gave opportunity for the development of a unified body of constitutional doctrine. Marshall distinguished himself from his colleagues by wearing a plain black robe, in stark contrast to the scarlet and ermine robes worn by the other justices. This method may be effective where a court is dealing with an organized and existing body of law, but with a new court and a largely unexplored body of law, it created an impression of tentativeness, if not of contradiction, which lent authority neither to the court nor to the law it expounded. Thereafter, for some years, it became the general rule that there was only a single opinion from the Supreme Court. This change of practice alone would have contributed to making the court a more effective institution. The foundation of the case and the significance of its ruling must be understood within the historical and strategic context of the time. Ironically, Marshall, as secretary of state, was responsible for delivering these appointments. Offended by what he perceived to be a Federalist court-packing plan, President Jefferson ordered his secretary of state, James Madison , to halt delivery of the remaining commissions. Marbury unsuccessfully petitioned the Department of State for his commission, and subsequently he instituted suit in the Supreme Court against Madison. Although the matter was not beyond question, the court found that Congress had, under the authority of Section 13 of the Judiciary Act of , authorized that such suits be started in the Supreme Court rather than in a lower court. The court faced a dilemma of historic proportions. It thereby confirmed for itself its most controversial powerâ€”the function of judicial review , of finding and expounding the law of the Constitution. Each justice, however, also conducted a circuit courtâ€”Marshall in Richmond, Va. In he completed the five-volume The Life of George Washington. He also served as chair of a commission charged with finding a land and water route to link eastern and western Virginia, and in he was part of the Virginia state constitutional convention. Once the power of judicial review had been established, Marshall and the court followed with decisions that assured that it would be exercised and that the whole body of federal law would be determined, in a unified judicial system with the Supreme Court at its head. Maryland well illustrated that judicial review could have an affirmative aspect as well as a negative; it may accord an authoritative legitimacy to contested government action no less significant than its restraint of prohibited or unauthorized action. The ruling, which nearly precipitated a constitutional crisis, upheld the authority of the federal government and denied to the states the right to impose a tax on the federal government. Outside the court, Marshall spent much of his time caring for an invalid wife. He also enjoyed companionship, drinking, and debating with friends in Richmond. In general, for the first 30 years of his service as chief justice, his life was largely one of contentment. In late , at age 76, Marshall underwent the rigours of surgery for the removal of kidney stones and appeared to make a rapid and complete recovery. But the death of his wife on Christmas of that year was a blow from which his spirits did not so readily recover. In his health declined rapidly, and on July 6 he died in Philadelphia. He was buried alongside his wife in Shockoe Cemetery in Richmond.

CHIEF JUSTICE JOHN MARSHALL AND THE NINTH AMENDMENT pdf

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