***Directions:*** *Read the passage and answer the questions on the at the end of each section on your own paper.*

**John Marshall at Home**

In 1790 John Marshall and his wife, Mary Willis Ambler (he called her Polly), moved into their newly constructed house on lot 786 in the Shockoe Hill area (also called Court End) of Richmond, Virginia. He was 35 years old, a successful lawyer and representative of Henrico County to the Virginia legislature. She was 24, a mother of four children, one of whom had died shortly after birth, and a trustworthy adviser to John. The house was both a domicile and place of work.

The Marshall house was located a short distance from the courthouse and other public buildings, which attracted lawyers and public officials to the neighborhood. Spencer Roane, who became chief judge of the Virginia Court of Appeals, lived nearby. Roane’s house was separated from Marshall’s by a gully, an appropriate symbol of the political differences that marked their careers. Roane, a fervent Jeffersonian Republican, was a staunch public opponent of Marshall. Marshall’s Federalist principles were in strong opposition to the political party of Thomas Jefferson.

Many of Marshall’s political allies also lived in his neighborhood, and some were invited regularly to monthly dinners at his house. These "lawyers’ dinners" included about 30 prominent men seated around the table in the large dining room or great hall at the center of the first floor. No women were invited to these dinners, which lasted from mid-afternoon until late evening. Marshall’s slaves prepared the food and served the guests. According to city tax records, Marshall owned 10 adult slaves in 1791.

Guests at the Marshall house, particularly the ones invited to the lawyers’ dinners, usually discussed current public affairs and political issues. John Marshall’s cousin and rival, Thomas Jefferson, was often the object of sharp criticism, as were his Republican party followers. The talk was spiced occasionally, however, with spirited support for the other side by George Hay, a regular invitee to the lawyers’ dinners and an advocate of Jefferson’s political ideas. One ongoing constitutional issue was about the nature of Federalism and the division of power between the national government and the states. George Hay, Spencer Roane, and other Jeffersonians argued for states’ powers and rights in relationship to the central government. By contrast, John Marshall and his Federalist party associates argued the cause of nationalism and far-reaching supremacy of the federal government over the states.

The Jeffersonian Republicans and Federalists also argued about the nature of popular or free government. Marshall feared a tyranny of the majority and urged the rule of a higher constitutional law to limit the democratic power of the people’s representatives in Congress and the state legislatures. By contrast, Jefferson had a more optimistic view of majority rule and dismissed as elitist nonsense the Federalists’ fears of democratic despotism against unpopular individuals or minorities.

During the 1790s John Marshall became more and more involved in national politics. His pro-Federalist views were sharpened and deepened during this period when he spent much of his time at home. President John Adams in 1797 named him a special envoy to France, with Elbridge Gerry and Charles Cotesworth Pinckney, to negotiate a serious international dispute between the U.S. and France known as the "XYZ Affair." In 1799 he won election from his congressional district in Virginia to the U.S. House of Representatives. In 1800 President Adams appointed Marshall secretary of state. In 1801 President Adams appointed Marshall to be chief justice of the Supreme Court, and the Senate confirmed this nomination unanimously. Marshall wrote to the president, "I hope never to give you occasion to regret having made this appointment." In the years ahead, only Jefferson and his followers had any regrets, as they fumed about the chief justice’s nationalistic opinions in landmark Supreme Court cases.

Marshall served as chief justice from 1801 until his death in 1835. His duties for the Court, however, left ample opportunity for Marshall to be at home. He usually spent less than six months each year in Washington, D.C., or traveling around the country "on circuit" to hear cases. For more than half his time he was in Richmond, where he paid close attention to both his family and his legal work. A notable example of the connections at home between his public and private interests occurred in 1819, when Marshall returned to Richmond in mid-March after presenting the Supreme Court’s opinion only a few days earlier in *McCulloch v. Maryland*.

Almost immediately after Marshall’s return home, he heard attacks on the Court’s decision from the Jeffersonian Republicans of Richmond. These advocates of states’ rights and powers felt thwarted by the nationalistic decision in the *McCulloch* case. The U.S. Supreme Court overturned as unconstitutional a law of the state of Maryland, which had been enacted to tax the National Bank of the United States. This decision to uphold the doctrine of implied powers expanded the scope of federal power.

A series of newspaper articles in the *Richmond Enquirer* strongly denounced Marshall, the Court, and the decision. A leader of the attacks on Marshall was Spencer Roane. Marshall suspected that Roane was the author of several critical articles in the *Richmond Enquirer*with the byline "Hampden." Marshall decided that he could not ignore the attacks against the Supreme Court and his constitutional principles. So he responded in writing to "Hampden" (Roane). Marshall’s articles in defense of his Supreme Court opinion in *McCulloch v. Maryland*were written at home and published in the *Alexandria Gazette* from June 30-July 15, 1819. These articles were signed "A Friend of the Constitution" to preserve the anonymity of the author. An excerpt from Marshall’s July 15 article shows his strong convictions about the value of the federal judicial department and its duty to uphold the Constitution and the rule of law.

The government of the Union was created by, and for, the people of the United States. It has a department in which is vested its whole legislative power, and a department in which is vested its whole judicial power. These departments are filled by citizens of the several states.

The propriety and power of making any law which is proposed must be discussed in the legislature before it is enacted. If any person to whom the law may apply, contests its validity, the case is brought before the court. The power of Congress to pass the law is drawn into question....

To whom more safely than to the judges are judicial questions to be referred? They are selected from the great body of the people for the purpose of deciding them. To secure impartiality, they are made perfectly independent. They have no personal interest in aggrandizing the legislative power. Their paramount interest is the public prosperity, in which is involved their own and that of their family.--No tribunal can be less liable to be swayed by unworthy motives from a conscientious performance of duty. It is not then the party sitting in his own cause. It is the application to individuals by one department of the acts of another department of the government. The people are the authors of all; the departments are their agents; and if the judge be personally disinterested, he is as exempt from any political interest that might influence his opinion, as imperfect human institutions can make him.

Marshall’s spirited defense of his Supreme Court decision in the *McCulloch* case demonstrates one way in which he brought his public life into his private home. Whether in Washington, D.C., or in Richmond, John Marshall could not disengage from the public duties and commitments to his vision of the U.S. Constitution.

*Questions for Reading 1*

*1. What were the "lawyers’ dinners" that Marshall conducted at his home? What was the political significance of these dinners?*

*2. Why did Marshall in 1819 write essays, signed with a pseudonym, for publication in newspapers of Virginia and elsewhere?*

*3. What civic virtues and commitments to constitutional principles did Marshall exhibit in his authorship of his newspaper articles?*

*4. Read John Marshall's article again. Who appoints Supreme Court judges? Do you feel that Supreme Court judges are impartial parties able to make unbiased decisions for the "people"? Why or why not?*

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*Reading 1 was compiled from Leonard Baker,* John Marshall: A Life in Law *(New York: Macmillan, 1974), 180-189; "Mister Chief Justice," a video program produced by the John Marshall Foundation of Richmond, Virginia, 1992; brochures of the John Marshall Foundation, Richmond, Virginia; and Gerald Gunther, ed.,*John Marshall’s Defense of *McCulloch v. Maryland (Stanford, Calif.: Stanford University Press, 1969), 211-212.*

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**A Black Robe--Symbol of Civic Virtue and Constitutional Principles**

John Marshall’s black robe, worn during his service as chief justice of the Supreme Court (1801-1835), is displayed today at the John Marshall House in Richmond, Virginia. It is a symbol of Marshall’s tenure on the Supreme Court.

President John Adams appointed Marshall to be chief justice in 1801 as one of his final actions before leaving office. Adams’ first choice for the job had been John Jay, who previously had served as the first chief justice. Jay, however, declined because in his view, widely shared at the time, the Supreme Court was too weak and unimportant; he said that he would not be head of "a system so defective." So John Marshall took the job and transformed it into the most powerful and prominent judicial position in the world.

Marshall brought unity and order to the Court by practically ending seriatim opinions (the writing of opinions by various justices). He influenced the Court’s majority to speak with one voice, through one opinion for the Court on each case before it. Of course, members of the Court occasionally wrote concurring or dissenting opinions, as they do today.

Often the Court’s voice was John Marshall’s. During his 34 years on the Court, the longest tenure of any chief justice, Marshall wrote 519 of the 1,100 opinions issued during that period, and he dissented only eight times. Chief Justice Marshall’s greatest opinions were masterworks of legal reasoning and graceful writing. They stand today as an authoritative commentary on the core principles of the U.S. Constitution.

Marshall’s first great decision came in *Marbury v. Madison* (1803), in which he ruled that Section 13 of the Judiciary Act of 1789 was void because it violated Article 3 of the Constitution. In this opinion, Marshall made a compelling argument for judicial review, the Court’s power to decide whether an act of Congress violates the Constitution. If it does, Marshall wrote, then the legislative act contrary to the Constitution is unconstitutional, or illegal, and cannot be enforced. Marshall wrote, "It is emphatically the province and duty of the judicial department to say what the law is.... So if a law be in opposition to the Constitution...the Constitution and not such ordinary Act, must govern the case to which they both apply."

In a series of significant decisions, Marshall also established, beyond legal challenge, the Court’s power of judicial review over acts of state government. In *Fletcher v. Peck* (1810), *Dartmouth College v. Woodward* (1819), *McCulloch v. Maryland* (1819), and *Cohens v. Virginia* (1821), Marshall wrote for the Court that acts of state government in violation of federal statutes or the federal Constitution were unconstitutional or void.

The Marshall Court’s decisions also defended the sanctity of contracts and private property rights against would-be violators in the cases of *Fletcher v. Peck* and *Dartmouth College v. Woodward*. In *Gibbons v. Ogden* (1824), Marshall broadly interpreted Congress’ power to regulate commerce (Article 1, Section 8 of the Constitution) and prohibited states from passing laws to interfere with the flow of goods and transportation across state lines.

Chief Justice Marshall’s greatest opinions protected private property rights as a foundation of individual liberty. They also rejected claims of state sovereignty in favor of a federal Constitution based on the sovereignty of the people of the United States acting through a strong central government. Finally, Marshall clearly and convincingly argued for the Constitution as a permanent supreme law that the Supreme Court was established to interpret and defend. "Ours is a Constitution," Marshall wrote in 1819 (*McCulloch v. Maryland*), "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."

According to Marshall, only through broad construction of the federal government’s powers could the Constitution of 1787 be adapted to meet changing times. And only through strict limits on excessive use of the government’s powers could the Constitution endure as a guardian of individual rights. The special duty of the Supreme Court was to make the difficult judgments, based on the Constitution, about when to impose limits or to permit broad exercise of the federal government’s powers.

In 1833, near the end of John Marshall’s career, his associate on the Supreme Court, Justice Joseph Story, wrote a "Dedication to John Marshall" that included these words of high praise: "Your expositions of constitutional law...constitute a monument of fame far beyond the ordinary memorials of political or military glory. They are destined to enlighten, instruct and convince future generations; and can scarcely perish but with the memory of the Constitution itself." And so it has been, from Marshall’s time until our own, that his judgments and commentaries on the Constitution have instructed and inspired Americans.

*Questions for Reading 2*

*5. What civic virtues did John Marshall exhibit during his 34 years as chief justice of the Supreme Court?*

*6. What are the main constitutional principles that Marshall upheld as chief justice? What examples or cases can be cited to show his commitment to certain constitutional principles?*

*7. How did Marshall transform the role and image of the Supreme Court during his tenure as chief justice?*

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*Reading 2 was compiled and adapted from John J. Patrick,* The Young Oxford Companion to the Supreme Court of the United States *(New York: Oxford University Press, 1994), 194-195.*

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**Important Marshall courtcases**

*Marbury* v.*Madison (1803)*

At the end of his term, President John Adams appointed William Marbury as justice of the peace for the District of Columbia. The Secretary of State, John Marshall (the same person who later became Chief Justice) failed to deliver the commission to Marbury and left that task to the new Secretary of State, James Madison. Upon his inauguration, Adams’ political enemy, Thomas Jefferson told Madison not to deliver the commissions because he did not want supporters of Adams working in his new government. Marbury filed suit and asked the Supreme Court to issue a writ of mandamus, or a court order which would require Madison to deliver the commission to Marbury.

 Chief Justice Marshall wrote the opinion in the case.  He said that while Marbury was entitled to the commission, the Supreme Court did not have the power to force Madison to deliver the commission.  He reasoned that the Judiciary Act of 1789, the act written by Congress which authorized the Supreme Court t to issue such writs conflicted with Constitution so the law was unconstitutional.  He said that when ordinary laws conflict with the constitution, they must be struck down or made “null and void.”  This is called judicial review.  In effect, he wrote that the Constitution is the supreme law of the land and the courts --- especially the Supreme Court --- are the ultimate “deciders” of what is constitutional.

 Through this decision, Marshall established the judicial branch as an equal partner with the executive and legislative branches of the government.

*McCulloch* v.*Maryland (1819)*

In the early years of our country, there was disagreement about whether the national government had the power to create a national bank.  The first president, who believed in a strong national government created a national bank.  The third president, who believed states should have more power, closed the bank.  The fourth president opened a new national bank in 1816.

 Many state banks did not like the competition and the conservative practices of the national bank.  As a way to restrict the national bank's operations or force the banks to close, the state of Maryland imposed a huge tax on the national bank. After the Bank refused to pay the tax, the case went to court. Maryland argued that the federal government did not have the authority to establish a bank, because that power was not specifically delegated to them in the Constitution.

 The Supreme Court reached a unanimous decision that upheld the authority of Congress to establish a national bank. In the opinion, Chief Justice John Marshall conceded that the Constitution does not explicitly grant Congress the right to establish a national bank, but noted that the "necessary and proper" clause of the Constitution gives Congress the authority to do that which is required to exercise its enumerated powers. Thus, the Court affirmed the existence of implied powers.

 On the issue of the authority of Maryland to tax the national bank, the Court also ruled in the Bank's favor. The Court found that "the power to tax involves the power to destroy . . . If the states may tax one instrument [of the Federal Government] they may tax any and every other instrument . . . the mail . . . the mint . . . patent rights . . . judicial process? This was not intended by the American people…" Furthermore, he said, "The Constitution and the laws made in pursuance thereof are supreme; they control the Constitution and laws of the respective states and cannot be controlled by them."

*Cohens* v.*Virginia (1821)*

The Cohen brothers sold Washington D.C. lottery tickets in Virginia, which was a violation of Virginia state law. They argued that it was legal because the (national) U.S. Congress had enacted a statute that allowed the lottery to be established. When the brothers were convicted and fined in a Virginia court, they appealed the decision. In determining the outcome, the Supreme Court of Virginia said that in disputes that involved the national and state government, the state had the final say. The Cohens appealed to the Supreme Court.

The (national) Supreme Court upheld the conviction, saying that the lottery was a local matter and that the Virginia court was correct in allowing the Cohens to be fined.

However, the most important part of this decision is what Marshall and the Supreme Court had to way about which court has the final say in disputes between states and the national government.  The Supreme Court said it had the right to review state criminal proceedings.  In fact, the Court said that it was required to hear cases that involved constitutional questions, including those cases when a state or a state law is at the center of the case.

*Gibbons* v. *Ogden (1824)*

Aaron Ogden held a license to operate a steamboat on the well-traveled route between New York and New Jersey. The State of New York gave him the license as a part of a monopoly granted to Robert Livingston and Robert Fulton. The route was so successful financially that competitors wanted to be able to operate there, too.  When competitors could not get a license from New York, they got licenses from the U.S. Congress.

Thomas Gibbons held such a license from Congress. At issue in this case is whether New York's monopoly over steamboat passage in the waters between New York and New Jersey conflicted with Congress' constitutional power to regulate interstate commerce.

Ogden argued that the New York monopoly was not in conflict with Congress' regulation of commerce because the boats only carried passengers between the states and were not really engaged in commerce. The Supreme Court disagreed.  Justice Marshall, who wrote the decision, ruled that the Constitution gives Congress power to regulate commerce among several states.  He said that commerce was not just about exchanging products.  In his opinion, commerce could include the movement of people, navigation, as well as the exchange of products, ideas, and communication.  Since the (national) Congress could regulate all of these types of interstate commerce, the New York monopoly was illegal.

*In one sentence for EACH of the four preceding cases, summarize the rulings by John Marshall. Number these summaries 8, 9, 10, 11.*

*12. Explain the importance of John Marshall to American history in a* ***paragraph****. Remember to use norms of writing and use* ***specific evidence*** *to support your answer.*