of McCulloch *versus* the State of Maryland, by which it is established that the states cannot tax the Bank of the United States.

We are yet unacquainted with the grounds of this alarming decision, but of this are resolved—that nothing but the tongue of an angel can convince us of its compatibility with the Constitution of the United States, in which a power to grant acts of incorporation is not delegated [to the federal government], and all powers not delegated are retained.

Far be it from us to be thought as speaking disrespectfully of the Supreme Court, or to subject ourselves to the suspicion of a "contempt" of it. We do not impute corruption to the judges, nor intimate that they have been influenced by improper feelings. They are great and learned men; but still, only men. And, feeling as we do—as if the very stones would cry out if we did not speak on this subject—we will exercise our right to do it, and declare that, if the Supreme Court is not mistaken in its construction of the Constitution of the United States, or that [if] another definition cannot be given to it by some act of the states, their sovereignty is at the mercy of their creature—Congress. It is not on account of the Bank of the United States that we speak thus . . . it is but a drop in the bucket compared with the principles established by the decision, which appear to us to be these:

1. That Congress has an unlimited right to grant acts of incorporation!
2. That a company incorporated by Congress is exempted from the common operation of the laws of the state in which it may be located!! . . .

We repeat it: it is not on account of the Bank of the United States that we are thus moved. Our sentiments are on record that we did not wish the destruction of that institution but, fearing the enormous power of the corporation, we were zealous that an authority to arrest its deleterious influence might be vested in responsible hands, for it has not got any soul. Yet this solitary institution may *not* subvert the liberties of our country, and command every one to bow down to it as Baal. It is the principle of it that alarms us, as operating against the unresigned rights of the states.

3. Marshall Asserts the Supremacy of the Constitution (1803)

No principle is more important to the system of constitutional democracy than the notion that the Constitution represents a higher level of law than that routinely enacted by legislatures. And no American jurist has been more instrumental in asserting that principle than the great Federalist justice John Marshall. Marshall also helped mightily to resolve the question—unclear in the early days of the republic—of where final authority to interpret the Constitution lay. In the following excerpt from his famous decision in the case of Marbury *v.* Madison, *how does he trace the linkages between the Constitution and the concept of limited government?*

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily,

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[3]William Cranch, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States, 1801–1815* (Newark, N.Y.: The Lawyers' Co-operative Publishing Company, 1804), vol. 1, p. 137.

not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject. . . .

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvements on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. . . .

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument. . . .

C. The Louisiana Purchase

1. Napoleon Decides to Dispose of Louisiana (1803)

Much of early American history was shaped by the endless rivalry between Britain and France, and the Louisiana Purchase was no exception. Having failed in his bid to establish a French empire in the Western Hemisphere, Napoleon Bonaparte resolved to use France's American holdings as a means to fund his ongoing battle with the British. In these statements, recorded by one of Napoleon's closest advisers, the strong-willed emperor detailed his reasons for selling Louisiana—a region France had only recently reacquired from Spain. How did Napoleon feel about the probability that the acquisition of such a vast tract of territory would greatly strengthen the young United States?

I know the full value of Louisiana, and I have been desirous of repairing the fault of the French negotiator who abandoned it in 1763. A few lines of a treaty have restored it to me, and I have scarcely recovered it when I must expect to lose it. But if it escapes from me, it shall one day cost dearer to those who oblige me to strip myself of it than to those to whom I wish to deliver it. The English have successively taken from France, Canada, Cape Breton, Newfoundland, Nova Scotia, and the richest portions of Asia. They are engaged in exciting troubles in St. Domingo [Haiti]. They shall not have the Mississippi which they covet. Louisiana is nothing in comparison with their conquests in all parts of the globe, and yet the jealousy they feel at the restoration of this colony to the sovereignty of France, acquaints me with their wish to take possession of it, and it is thus that they will begin the war. They have

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