FIRST WEEK’S ASSIGNMENT

For our first three classes, please read in the casebook as follows:

First Class: Pages 1-11.

This assignment contains the “foundational” opinion in Marbury v. Madison. Marbury is a circuitous and extremely complicated case known for having established the Court’s authority to exercise “judicial review” of legislative and executive acts. The case can be read for its doctrine and its holding, but that will not be our main interest. Rather, we will be spending our time trying to appreciate how the opinion transforms a politically fraught problem (inter-branch conflict) into a seemingly technical matter of legal interpretation. So please pay attention to the way in which C.J. Marshall frames the issues, the kinds of arguments he makes, whether they are convincing, what the arguments reveal and what they hide. In part, this will be an introductory session aimed at laying out how to read these constitutional law opinions.

Second Class. (Same as above)

Third Class. Pages 99-112.

This assignment contains another iconic case—McCulloch v. Maryland. This case is important in ways similar to Marbury v. Madison: The Court is once again confronting an issue of first impression—how to interpret constitutional grants of legislative power. I will use the opinion to show the various techniques deployed by C.J. Marshall to give meaning to the Constitution. Many of these interpretive approaches (textualism, structural argument, etc.) remain current today. C.J. Marshall’s approach in McCulloch v. Maryland is interesting because it is less wooden, more eclectic and every bit as free-wheeling as the approaches in use today.