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The Supreme Court of the United States under John Marshall and the competence of federal authorities (*McCulloch v. Maryland*)

Introductory remarks

Federalism appears to be one of the models of structural and political organizations. Despite having its ancient European roots, it has flourished thanks to the American experience. There were established some basic values that were the essence of the new state structures and the construction of new political institutions. The federal structure of the American governmental system shaped by the Constitution of 1787 has survived until these days[1]. It is significant that in parallel with the change in socio-economic conditions, the governmental institutions have undergone huge transformations. The American political system was projected by the people who were well-oriented in contemporary political and philosophical thought. The newly independent American states were successively inventing modern federalism. Americans wanted to create new state structures functioning in a republican manner. The political system should have been based on the broad, active participation

[1] Due to the fact that the Framers did not leave any obligatory method of interpretation, the text might be reexamined in the most efficient way. Americans do not only choose the constitutional changes by the means of amendments in a formal way. They prefer the development of the Constitution through the new ways of interpretation and some informal – substantive changes. The informal changes of the American Constitution cause that the American constitutional act is still in touch with the changeable political reality. See here the discussion concerning the interpretation of the Constitution between the proponents of constitutional interpretation labeled as the *living constitution* (who are of the opinion that the Constitution should be treated as a legal act with the dynamic meaning depending on the time of interpretation) and their opponents who advance *originalism* in the American academic discourse (they support the thesis that the changes of the Constitution should take place through the amendment process) in E. Sokalska, *Interpretations of the 'Living Constitution' in the American legal and political discourse. Selected problems*, „Zbornik Pravnog Fakulteta u Zagrebu" 2019, Vol. 69, pp. 433–453, DOI: 10.3935/zpfz.69.3.05.

of citizens. Although the approaches to the process of the creation of new political structures were diverse, the ideas of the Funding Fathers were verified empirically.

The Founding Fathers chose the political system and government which were based on a written constitution. The American Constitution structured and formed the federal American polity and government. Federalism was the most influential political movement arising out of the discontent with the *Articles of Confederation*, and the project of American Constitution after the practices of confederation was, in fact, the starting point for discussions and publications concerning federalism issues. It should be taken into consideration that later two theories have been developed to explain the nature of the governance system in the United States – dual federalism and cooperative federalism[2]. It is significant that in the subject related literature there is no agreement regarding the exact contours of the particular phases in the development of the American federal state.

The concept of dual federalism referred to the idea that federal and state governments were equal partners with separate and distinct authority. Two different interpretations of the Congress's competence (the first one emphasized wide powers of the Congress, while the second highlighted national and state bodies possess sovereign powers) influenced the compromise theory of dual federalism. It was assumed that the states and federal government were situated on the same level[3]. It was also argued that two different kinds of authorities had different scopes of competence, and the purpose of the Constitution was to support these disparate and independent from each other governments. Such a doctrine served in order to minimize federal-state relationships, and to avoid potential conflicts.

According to the Constitution, state and federal governments were not situated in complete separation. In particular, the competence was not divided precisely. It created a wide range of parallel legislation with an elastic "clause of implied powers". In practice, the activities of federal and state governments were much tighter together than was exhibited in the Constitution and the doctrine of the Supreme Court. The Supreme Court of the United States has emerged as one of the major players in the context of defining and redefining American federalism even though the Framers who created the Constitution probably did not forecast that the judiciary power would emerge as a powerful institution[4]. One of the major tasks of the Supreme Court was

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[2] About the development of American federalism see, e.g. eadem, *Kestenbaum Commission and its successors – statutory purposes and activities*, „Studia Prawnoustrojowe" 2020, Vol. 47, pp. 225–235, DOI: 10.31648/sp.5284.

[3] M. Grodzins, *The federal system*, [in:] A. Wildavsky (ed.), *American federalism in perspective*, Boston 1967, p. 256.

[4] L.N. Gerston, *American federalism. A concise introduction*, New York 2007, p. 62.

to decide if a particular activity belonged to the national government or to the states. The Court devised certain tests it could apply to assist in deciding which level of government the power to regulate a given authority belonged to.

The purpose of the article is to present the activities of the Supreme Court of the U.S. in the context of the development of the first phase of American dual federalism (1789–1865), specifically taking into account the Supreme Court under John Marshall's judicature. Particular emphasis is placed upon the powers of the federal and state planes of government, and the limitations upon these powers. American legal, historical, and political subject-related literature is impressive (e.g. the works of Gordon S. Wood, Jean E. Smith, Robert R. Clinton, Thomas C. Shevory, or Samuel R. Olken). However, it should be taken into consideration that the representatives of scholarship, present sometimes different assessments of the events. Unfortunately, since the modest scope of this article does not allow for an exhaustive treatment of the subject, the present work is contributory. The judgments and opinions of the Supreme Court of the U.S. are not exhaustively reviewed, and only certain cases are selected for closer consideration, particularly, the ruling of *McCulloch v. Maryland* (1819)[5] has been taken into more detailed examination. The main questions the present study strives to answer are: Were the state and federal governments equal partners with separate and distinct authorities? How did the Supreme Court define the limits of the government authority and responsibility of the two tiers of government? How can we assess the involvement of the Supreme Court of under John Marshall in defining American dual federalism?

The article consists of two parts. The chosen judicature of the Supreme Court of the U.S. under John Marshall is presented in the first part of the article. Its second part is devoted to the case *McCulloch v. Maryland*, and its impact on the interpretation of the competence of federal authorities. In this particular study, the historic-descriptive method of theoretical analysis, and the formal-dogmatic method, precisely – the analysis of legal texts (according to the Polish typology), or doctrinal legal method and quantitative-empirical legal method (according to English-language literature), were applied to address the research questions and to reach some conclusions.

Judicature of the Supreme Court of the United States under John Marshall

It is significant that it was a difficult task to create a sophisticated federal government and to preserve the sovereignty of the states for a newly created union. The American Constitution was not the effect of a homogenous and

[5] 17 U.S. 316 (1819).

coherent doctrine of federalism. Different interpretations of the Congress's competence influenced the theory of dual federalism which was a kind of compromise. It was assumed that the states and the federal government should be situated at the same level, therefore two different kinds of authorities exercised different scopes of competence. Although in the text of the Constitution state and federal governments were not situated in a complete separation, the competence was not divided precisely. From 1787 to 1803, the Supreme Court of the U.S. was not perceived as a powerful institution[6]. Until 1803, its decisions concerned the narrow scale of matters. The power of "judicial review" emerged with the ruling in *Marbury v. Madison*[7], and the role of the Supreme Court as a final interpreter of constitutional questions was established[8]. It was under John Marshall that the performance of "judicial review" by the Supreme Court influenced the comprehension of the judiciary as a coequal branch of government[9].

John Marshall was the 4th Chief Justice of the Supreme Court of the United States from 1801 to 1835. He was the leader of the Federalist Party in Virginia. He served in the United States House of Representatives (1799–1800) and as Secretary of State under President John Adams (1800–1801)[10]. John Marshall was the longest-serving Chief Justice in the history of the United States Supreme Court, playing a significant part in the development of the American legal system. Marshall reinforced the position of the American judiciary as an independent and influential branch of government, and he advanced the principle that federal courts were obligated to exercise "judicial review" by disregarding the laws which violated the Constitution[11]. The institution of "judicial review" was formed in the United States by the means of evolution[12].

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[6] About the organization of the Supreme Court of the United States before the tenure of John Marshall see, e.g. G.S. Wood, *Empire of liberty: a history of the early republic 1789–1815*, Oxford–New York 2010, pp. 433–468; R.L. Clinton, *The Supreme Court before John Marshall*, „The Journal of Supreme Court History" 2002, Vol. 27, No. 3, pp. 222–239; G. Górski, *Rola Sądu Najwyższego USA a kształtowanie się amerykańskiego ustroju konstytucyjnego w latach 1790–1801*, „Czasopismo Prawno-Historyczne" 2002, Vol. 2, pp. 185–196; idem, *Sąd Najwyższy Stanów Zjednoczonych w latach 1790–1801*, „Roczniki Nauk Prawnych" 1999, Vol. 9, No. 1–2, pp. 43–54.

[7] *Marbury v. Madison*, 5 U.S. 137 (1803).

[8] Cf. L.N. Gerston, op. cit., pp. 54–55.

[9] E. Sokalska, *Legal and political dimensions of American federalism: development and interpretations*, Olsztyn 2018, p. 174.

[10] About John Marshall's life see J.E. Smith, *John Marshall: definer of a nation*, New York 1996, pp. 21–87.

[11] Cf. G.S. Wood, op. cit., pp. 433–468; H.A. Johnson, T.C. Shevory, *The Marshall Court*, [in:] P. Finkelman (ed.), *The Supreme Court: controversies, cases, and characters from John Jay to John Roberts*, Santa Barbara–Denver–Oxford 2013, pp. 151–192; W.H. Rehnquist, *The Supreme Court. Revisited and updated*, New York 2001, pp. 36–37. It should be taken into consideration that the American subject related is very impressive, specifically literature concerning the history of American constitutional law.

[12] See more in B. Friedman, *Mediated Popular Constitution*, „Michigan Law Review" 2003, Vol. 101, No. 8, pp. 2596–2636; A. Bryk, *Konstytucjonalizm od starożytnego Izraela do liberalnego*

The time of 1800 was crucial for the creation of the federal system of the United States. It was not only the end of the century but also the time of the transition into the independent state. The first constitutional republic was based on the modern model of a federal state. It is significant that America was the place where two famous personalities with different visions of the further evolution of the political system of a federal state were at stake. Two opposite concepts were emphasized by Alexander Hamilton and Thomas Jefferson who, paradoxically, were previously partners of George Washington. Hamilton, a friend of Marshall, was a supporter of broadening the federacy of American states and strengthening the competency of federal authorities. On the contrary, Jefferson opposed creating the union deeper. In 1801, when John Marshall took office, the circumstances were special. The United States of America was a place of political conflict concerning the vision of a federal state and the role of states in the emerging new political system.

The time of Marshall's chairmanship was filled up with confrontations with subsequent Congress majorities and Presidents. The ruling of *Stuart v. Laird* (1803)[13], in a matter of fact, was a success of Republicans, but it should be also taken into consideration that Marshall, by his reference to the Constitution in the opinion, pointed out some clear boundaries of the freedom of Republicans in the realization of their programs.

The Supreme Court under Chief Justice John Marshall made some important decisions concerning federal structures. In fact, they affected the balance of power between the federal and state governments during the early stage of the republic. It had been repeatedly confirmed the supremacy of federal law over state law, and an expansive reading of the enumerated powers had been supported. Significantly, some of the decisions of the Supreme Court were unpopular, however, it is emphasized in the subject-related literature that Marshall was the leading Federalist of that time pursuing the Federalist approaches to build a stronger government, and the one who built up the third branch of the federal government, and consolidated the rule of law and the federal power in the name of the Constitution[14].

It should be taken into consideration that the case *Marbury v. Madison* was accompanied by a heated political discussion that undoubtedly influenced the issue[15]. The future interpretation of the Constitution would have depended on the decisions of the Supreme Court. Marshall was not interested in the

konstytucjonalizmu amerykańskiego, Kraków 2013, pp. 487–489, 440–447; D. Lis-Staranowicz, *Legitymizacja sądowej kontroli prawa w Stanach Zjednoczonych Ameryki*, Olsztyn 2012, pp. 25–37. Professor Lis-Staranowicz is of the opinion that since 1787, judicial review was the emanation of the idea of normative and superior character of the written Constitution (p. 311).

[13] 5 U.S. 1 Cranch 299 (1803).

[14] E. Sokalska, *Legal and political dimensions*..., p. 174.

[15] Cf. D. Lis-Staranowicz, op. cit., p. 42.

reconstruction of the Union in the sense approved by federalists, and probably the ruling of *Marbury v. Madison* strengthened such reasoning.

The reasoning initiated the way for exercising the "judicial review"[16]. Marshall emphasized that the governmental system of the United States was based on the written constitution that serves as the highest law. The U.S. Congress cannot enact laws, which are not in conformity with the Constitution, otherwise, every legal act would have changed the Constitution, and the idea of a written constitution would have been complete nonsense. Every act that does not follow the Constitution should be revoked, and consequently, if the act of law infringes on the norms of the Constitution, it should not be applied[17]. Marshall also assumed that the competence of every court is the interpretation of legal provisions. The provisions of law might be sometimes in conflict with each other, but the duty of the court is to settle this conflict and to indicate a binding provision in a concrete case. If there is a conflict between the Constitution and any legal act, the Constitution is the higher law, and its provisions should be taken into consideration. In Marshall's opinion, the governmental system of the United States is based on the division of powers, and every power is placed in the Constitution. Congress is not allowed to change the cognizance of the Supreme Court through legal acts, and any act of Congress that interferes with the constitutional scope of the Supreme Court's authority should be judged by this court. The contradiction between the constitutional act and the act of Congress leads to the infringement on the division of powers in a republican government[18].

The ruling concerning the case *Marbury v. Madison* was controversial and seems to be controversial even today[19]. Professor Grzegorz Górski presents

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[16] See, e.g. M.A. Graber, *Establishing judicial review: Marbury and the Judicial Act of 1789*, „Tulsa Law Review" 2003, Vol. 38, p. 609–650.

[17] E. Sokalska, *Legal and political dimensions…*, p. 183.

[18] It is significant that some scholars consider the verdict of *Marbury v. Madison* in the context of the establishment of judicial autonomy, cf. W.E. Nelson, *Marbury v. Madison and the establishment of judicial autonomy*, „The Journal of Supreme Court History" 2002, Vol. 27, No. 3, pp. 240-256.

[19] About the critical assessment see D. Alfange, *Marbury v. Madison and original understanding of judicial review: in defense of traditional wisdom*, „Supreme Court Review" 1993, Vol. 9, pp. 331–335; W.W. Van Alstyne, *A critical guide to Marbury v. Madison*, „Duke Law Journal' 1969, Vol. 1, pp. 1 47. American literature referring to the case of *Marbury v. Madison* is impressive, e.g. S. R. Olken, *The ironies of Marbury v. Madison and John Marshall's judicial statesmanship*, „The John Marshall Law Review" 2004, Vol. 37, pp. 391–439; idem, *Chief justice John Marshall and the course of American history*, „The John Marshall Law Review" 2000, Vol. 33, pp. 743–779; R.L. Clinton, *Marbury v. Madison and judicial review*, Lawrence 1989, passim; idem, *The strange history of Marbury v. Madison in the Supreme Court of the United States*, „Saint Luis University Public Law Review" 1989, Vol. 8, passim; S. Sherry, *The background of Marbury v. Madison*, [in:] M. Tushnet (ed.), *Arguing Marbury v. Madison*, Stanford 2005, p. 47 and next; J.E. Smith, op. cit., pp. 309–326; G. Padula, *Madison v. Marshall: popular sovereignty, natural law, and the United States Constitution*, Lanham 2002, passim; M.S. Paulsen, *The irrepressible myth of 'Marbury'*, „Michigan Law Review" 2003, Vol. 101, No. 8, pp. 2706–2743; I. Rhodes,

the opinion that the political elite of the time was not aware of the constitutional, legal, and political consequences of the verdict. In the context of the political confrontation of the time, it was a visible rivalry between two parties rather than the foundation shaping American federalism and constitutionalism[20]. However, another way of looking at this is that *Marbury v. Madison* set up the grounds for the development of the institution of "judicial review", which influenced the division of federal and state competence and obligations in the sphere of economy and law-making decisions plenty of times throughout the history of the American federal state[21].

It should be considered that relationships between the union and the states were pondered to some extent in *Flecher v. Peck* (1810)[22], *Fairfax Devise v. Hunter's Lessee* (1813)[23], *Martin v. Hunter's Lessee* (1816)[24], *Cohens v. Virginia* (1821)[25], *Brown v. Maryland* (1827)[26]. Undeniably, the principle of supervision over state court decisions inconsistent with federal law presented in the rulings became one of the cornerstones not only of the position of the presiding Chief Justice but also cemented the position of the union towards the states[27]. The development of the mentioned assumptions can be also found in other decisions of the Court.

McCulloch v. Maryland (1819)

The newly created American federal state had to face the problem of how to determine precisely the scope of the competence of the union. The question was how far the power of federation extends in those areas where the constitution gave the opportunity for wide interpretation. The "Necessary and proper clause" was the issue at stake[28]. The adjudication of this matter was decisive

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Marbury v. Madison revisited, „University of Cincinnati Law Review" 1964, Vol. 2, p. 29 and next. The case *Marbury v. Madison* and the problem of the idea of primacy of the constitution in the American legal system is also present in Polish subject related literature, in addition to the works already mentioned, e.g. W. Szyszkowski, *Sąd Najwyższy Stanów Zjednoczonych*, Warszawa 1969, p. 115; P. Tuleja, *Stosowanie Konstytucji RP w* świetle *zasady jej nadrzędności (wybrane problemy)*, Kraków 2003, pp. 18–23; P. Mikuli, *Zdekoncentrowana kontrola konstytucyjności prawa. Stany Zjednoczone i państwa europejskie*, Kraków 2007, pp. 17–18.

[20] Cf. G. Górski, *Sąd Najwyższy Stanów Zjednoczonych do 1930 roku*, Lublin 2006, p. 85.

[21] W. Burnham, *Introduction to the law and legal system of the United States*, 3-rd ed., St. Paul 2002, p. 10.

[22] 10 U.S. 6 Cranch 87 (1810).

[23] 11 U.S. 7 Cranch 603 (1813).

[24] 14 U.S. 1 Wheat. 304 (1816).

[25] 19 U.S. 7 Wheat. 264 (1821).

[26] 25 U.S. 12 Wheat. 419 (1827).

[27] See G. Górski, *Sąd Najwyższy Stanów Zjednoczonych*…, pp. 110–115.

[28] The term of *Necessary and Proper Clause* was coined in 1926. It is a provision in Art. 1 of the Constitution located at sect. 8, cl. 18. About the clause see more in L. Bonfield, *American law*

for the further development of the powers of the federal authorities[29]. In this context, the case of *McCulloch v. Maryland* seems to be of great importance[30]. It was the chance to define the division of power between the national and state governments. For the first time, there has been articulated very clearly the concept of implied powers in the ruling of the case. In the future, the reasoning would have served as a basis for the gradual development of the federal authorities' competencies, firstly – in the sphere of enacting laws by the Congress, secondly – in the consistent development of the president's powers. The understanding of the "Necessary and Proper Clause" was crucial for the settlement of the mentioned case.

McCulloch v. Maryland concerned the Bank of the United States. Despite strong opposition from Thomas Jefferson and his colleagues, the above-mentioned Bank was chartered by Congress in 1791. It expired in 1811, and it was not renewed. In 1812, some serious problems in the national banking system took place. The Congress established a new Bank of the United States. At the same time, Maryland was opposed to any national bank and an imposed levy of $10,000 on any bank not incorporated in the state[31]. James William McCulloch – a bank clerk – refused to pay the tax because he stated that a state could not have taxed an instrument of the national government.

Luther Martin, one of the most eminent lawyers and a delegate to the Constitutional Convention, represented Maryland together with different distinguished lawyers. He thought that the Constitution did not delegate expressively the power of the possibility of creating a bank to the national government. Martin argued that the "Necessary and Proper Clause" gives Congress only the power to choose the means and the laws absolutely essential to the execution of its explicitly granted powers. As he claimed, because the bank was not necessary to the exercise of its delegated powers, Congress, having no authority, should not have established it.

Daniel Webster represented the national government. He admitted that the power to create a bank was not one of the expressed powers of the national government. Even though, the power to pass laws necessary and proper to carry out expressed powers of Congress is delegated to the Congress. As Webster suggested, the Constitution left no room for any doubts about which level of government was the final authority. When national and state laws conflict – the national law should be obeyed.

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and the American legal system in a nutshell, New York 2006, p. 38; A.R. Amar, *America's Constitution. A biography*, New York 2005, pp. 110–114.

[29] G. Górski, *Sąd Najwyższy Stanów Zjednoczonych*…, p. 116.

[30] Cf. J.S. Zimmerman, *Contemporary American federalism. The growth of national power*, Westport 1992, p. 41.

[31] For more about the background of the Maryland's decision see W.L. Reynolds, *Maryland and the Constitution of the United States: an introductory essay*, „Maryland Law Review" 2007, Vol. 66, p. 939.

John Marshall rejected every statement of Maryland, and he struck down the Maryland legislation in his opinion. He claimed that Congress had the power to charter a federal bank, even though this power was not enlisted among the enumerated powers. The ability to charter was implied from the other powers given to Congress by the U.S. Constitution. The second premise was that „the power to tax involves the power to destroy"[32], therefore, Maryland could not have taxed the federal bank. In *McCulloch v. Maryland*, Marshall settled the thesis that states could not tax federal institutions, and he upheld congressional authority to create the Bank of the United States, even though the power to do so was not expressed clearly in the Constitution. The Supreme Court invoked the "Necessary and Proper Clause" of the Constitution, which allowed the federal government to pass laws not expressly provided in the Constitution among the list of expressed powers. Marshall presented the opinion that the "Necessary and Proper Clause" does not require that all federal laws should be necessarily written in the Constitution. The Chief Justice determined that Maryland taxed the Bank, and by doing so – it violated the Constitution. The Supreme Court voided the tax because it was unconstitutional. It was argued that Congress has implied powers, which must be related to the text of the Constitution but do not necessarily have to be enumerated in the text. Marshall presumed that any state could use its taxing powers to tax any national instrument.

The case established two eminent factors in American constitutional law. Firstly, to create a functional government, the Constitution grants to the Congress implied powers for implementing the Constitutional explicit powers. Secondly, state actions may not impede valid constitutional exercise of power by the federal government. It is remarkable that having established the presence of "implied national powers", John Marshall then outlined the concept of "national supremacy". In the opinion of the Court he noticed that „among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the *Articles of Confederation*, excludes incidental or implied powers and which requires that everything granted shall be expressly and minutely described"[33].

It is significant that the Chief Justice used the ensuing situation to underline his vision of the federal authorities. In fact, Marshall cited some controversial fragments of the previous so-called *Hamilton's Bank opinion*. He argued that if the development of the federal bank should have helped the federal government in fulfilling its tasks, the government should have had the entitlement to appoint such an institution. Therefore, the purpose of the undertaking was as well legitimacy, and in this sense, the "Necessary and Prop-

[32] *McCulloch v. Maryland*, J. Marshall, Chief Justice. Opinion of the Court, https://www.law.cornell.edu/supremecourt/text/17/316 (accessed: 10.01.2024).

[33] Ibidem.

er Clause" was adequate authorization for Congress. At the same time, Marshall negated the understanding of the necessary powers where they were seen only as written in the Constitution. He argued that the written provisions were such because there was the need to indicate the other entitlements if they were justified by the needs of the society and the Union[34].

It is difficult to overrate the long-range significance of *McCulloch v. Maryland* in providing support for the strength of federal authorities and a unified economy. The case is perceived as a seminal moment during the formation of a balance between states' powers, federal power and federalism[35]. To some respect, the implications of the decision provided a unified interpretation of the origins of the nature of the Constitution and the American federal state. It was also a broad definition of the "Necessary and Proper Clause", which led the foundations for the "living constitution"[36]. It unveiled an almost indefinite increase in the powers of government. Marshall emphasized that if the opinion of the state court in *McCulloch v. Maryland* had been held, it would have meant the destruction of the Constitution. It would have also meant the agreement on subordination to the states of the whole institutions appointed by the Union. In the view of Marshall, the federal government has supremacy over its sphere of activities, and this supremacy excludes the right of the states to control or to impose any taxes on the government or its departments[37].

Decided later by the Supreme Court – *Gibbons v. Ogden Co.* (1824)[38] – played an important part in the creation of the American federal economy but also it can be considered in the context of federal and state relationship. The economic issues were important in the young republic, and some of the decisions of that time granted some impetus to the economic explosion of the United States. The submission of the economic relations among the states to common federal rules was one of the factors, which were crucial in the successful plans of the federalists. In the decision of *Gibbons v. Ogden Co.*, Marshall proposed such entitlements of the federal government, which allowed federal authorities in the future to create some powerful regulatory instruments[39]. The problem that appeared in *Gibbons v. Ogden Co.* was used by Marshall to form prece-

[34] For more details concerning the case see K.L. Hall, W.M. Wiecek, P. Finkelman, *American legal history: cases and materials*, Oxford 1996, pp. 126–130, E. Sokalska, *Legal and political dimensions*..., pp. 189–193.

[35] For more about the influence of *McCulloch v. Maryland* on the American political and legal system see J.M. McAward, *McCulloch and the Thirteenth Amendment*, „Columbia Law Review" 1912, Vol. 112, pp. 1769–1770.

[36] Cf. R.E. Ellis, *Aggressive nationalism: McCulloch v. Maryland and the Foundation of Federal Authority in the young republic*, New York 2007, pp. 1–3.

[37] For more information concerning the argued case see G.P. Fletcher, S. Sheppard, *American law in a global context. The basics*, New York 2005, pp. 150–170.

[38] 22 U.S. 1 (1824).

[39] For more about the case see T.H. Cox, *Contesting commerce: Gibbons v. Ogden, Steam, Power, and Social Change*, „Journal of Supreme Court History" 2009, Vol. 34, No. 1, s. 56–74.

dence that Congress was granted a huge power. Marshall referred to the Commerce clause[40], and assumed that Congress could act referring to the necessity of commerce regulations. It should be taken into consideration that during the time of dynamic economic expansion, it created some basis for the flexible reaction of the Federation to the new demands and needs. It is also worth emphasizing that in Marshall's reception, the concept of implied powers referred to the federal authorities, which was understood as a government consisting of three parts. In particular, the scope of those powers resulted from the legislative competency of Congress[41]. Of course, such understanding would change in the future. In the 20th century, some American presidents would create, considering Marshall's concept, the ground for the wider understood competencies of the American executive. That new meaning would the part of a constitutional doctrine.

Concluding remarks

Between 1787 and 1803, the Supreme Court of the United States maintained a low profile, restricting its decisions to narrow matters largely relating to the encroachment of state legislative acts on the American Constitution. It should be taken into consideration that throughout the history of the Supreme Court of the U.S., some opinions of the Court reflected the ideological attitudes of the justices rather than an aspiration for reform[42]. John Marshall, a friend of Alexander Hamilton, was a supporter of broadening the federacy of American states and the strengthening of the competency of federal authorities. Under the leadership of Chief Justice John Marshall, the Supreme Court established its role as the interpreter of constitutional questions (*Marbury v. Madison*). The Court continued to reinforce its position as a national arbiter in 1918 in *McCulloch v. Maryland* where it was discussed the question of the national government preeminence. With these and other decisions mentioned above, the Supreme Court embraced the "implied powers doctrine", assuming that many of the national powers of government were implied by the language of Art. I and VI of the Constitution.

Dual federalism created in the first phase has resulted in considerable variations among the states in the organization of their courts, as well as in their substantial procedural law. The concept of "dual federalism" was con-

[40] The Commerce clause describes an enumerated power listed in the United States Constitution, art. 1, sect. 8, cl. 3. For more about federal regulation of commercial activity and exercise of Commerce clause authority see, e.g. L.G. Sager, *The sources and limits of legal authority*, [in:] A.B. Morrison (ed.), *Fundamentals of American law*, Oxford 2004, p. 30.

[41] Cf. G. Górski, *Sąd Najwyższy Stanów Zjednoczonych*…, s. 118.

[42] E. Sokalska, *American progressivism: Supreme Court of the United States and the legitimization of eugenic practices*, „Studia Prawnoustrojowe" 2023, Vol. 62, p. 499.

nected with the idea that the state and the federal government were equal partners with separate and distinct authority. It should be taken into account that little collaboration existed between the federal and state governments. The major task of the Supreme Court was to decide if a particular activity belonged to the national government or the states. Despite the "doctrine of implied powers", the national power was limited in the authority to the powers enumerated in the text of the U.S. Constitution[43].

The performance of "judicial review" by the Supreme Court under John Marshall caused the reception of the judiciary as a coequal branch of government. At the beginning of the 19th century, the Court defined the limits of the government authority and responsibilities of the two tiers of government. The Court legitimized national power, it influenced the manner of its use, and it affected the capabilities of the state governments[44]. The Court under Marshall in the early years of the republic set two standards, namely "judicial review" and a strong national government. Therefore, it is generally accepted that the Supreme Court played a definitive part in determining the boundaries of American federalism. During the first phase of dual federalism, there were some occasional tensions concerning the nature of the Union, and the "doctrine of nullification" and the "doctrine of state sovereignty" were argued[45]. In the first half of the 19th century, the struggle over states' rights versus national supremacy continued.

References

Alfange D., *Marbury v. Madison and original understanding of judicial review: in defense of traditional wisdom*, „Supreme Court Review" 1993, Vol. 9.

Amar A.R., *America's Constitution. A biography*, Random House Trade Paperbacks, New York 2005

Bonfield L., *American law and the American legal system in a nutshell*, Thomson Gale, New York 2006.

Bryk A., *Konstytucjonalizm od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, Wyd. UJ, Kraków 2013.

Burnham W., *Introduction to the law and legal system of the United States*, 3rd ed., West Group Publishing, St. Paul 2002.

Clinton R.L., *Marbury v. Madison and judicial review*, University of Kansas Press, Lawrence 1989.

Clinton R.L., *The strange history of Marbury v. Madison in the Supreme Court of the United States*, „Saint Luis University Public Law Review" 1989, Vol. 8.

Clinton R.L., *The Supreme Court before John Marshall*, „The Journal of Supreme Court History" 2002, Vol. 27, No. 3.

[43] In this context, the case of *Gibbons v. Ogden* is significant.

[44] R.K. Newmyer, *The Supreme Court under Marshall and Taney*, 2nd ed., New York 2005, p. 19.

[45] See more in E. Sokalska, *Legal and political dimensions*…, pp. 200–207.

Cox T.H., *Contesting commerce: Gibbons v. Ogden, Steam, Power, and Social Change*, „Journal of Supreme Court History", 2009, Vol. 34, No. 1.
Ellis R.E., *Aggressive nationalism: McCulloch v. Maryland and the Foundation of Federal Authority in the young republic*, Oxford University Press, New York 2007.
Fletcher G.P., Sheppard S., *American law in a global context. The basics*, Oxford University Press, New York 2005.
Friedman B., *Mediated Popular Constitution*, „Michigan Law Review" 2003, Vol. 101, No. 8.
Gerston L.N., *American federalism. A concise introduction*, M.E. Sharpe, Armonk, New York 2007.
Górski G., *Rola Sądu Najwyższego USA a kształtowanie się amerykańskiego ustroju konstytucyjnego w latach 1790–1801*, „Czasopismo Prawno-Historyczne" 2002, Vol. 2.
Górski G., *Sąd Najwyższy Stanów Zjednoczonych do 1930 roku*, Wyd. KUL, Lublin 2006.
Górski G., *Sąd Najwyższy Stanów Zjednoczonych w latach 1790–1801*, „Roczniki Nauk Prawnych" 1999, Vol. 9, No. 1–2.
Graber M.A., *Establishing judicial review: Marbury and the Judicial Act of 1789*, „Tulsa Law Review" 2003, Vol. 38.
Grodzins M., *The federal system*, [in:] A. Wildavsky (ed.), *American federalism in perspective*, Little Brown, Boston 1967.
Hall K.L., Wiecek W.M., Finkelman P., *American legal history: cases and materials*, Oxford University Press, Oxford 1996.
Johnson H.A., Shevory T.C., *The Marshall Court*, [in:] P. Finkelman (ed.), *The Supreme Court: controversies, cases, and characters from John Jay to John Roberts*, ABC-CLIO, Santa Barbara–Denver–Oxford 2013.
Lis-Staranowicz D., *Legitymizacja sądowej kontroli prawa w Stanach Zjednoczonych Ameryki*, Wyd. UWM, Olsztyn 2012.
McAward J.M., *McCulloch and the Thirteenth Amendment*, „Columbia Law Review" 1912, Vol. 112.
McCulloch v. Maryland, J. Marshall, Chief Justice. Opinion of the Court, https://www.law.cornell.edu/supremecourt/text/17/316.
Mikuli P. *Zdekoncentrowana kontrola konstytucyjności prawa. Stany Zjednoczone i państwa europejskie*, Wyd. UJ, Kraków 2007.
Nelson W.E., *Marbury v. Madison and the establishment of judicial autonomy*, „The Journal of Supreme Court History" 2002, Vol. 27, No. 3.
Newmyer R.K., *The Supreme Court under Marshall and Taney*, 2nd ed., Willey-Blackwell, New York 2005.
Olken S.R., *Chief justice John Marshall and the course of American history*, „The John Marshall Law Review" 2000, Vol. 33.
Olken S.R., *The ironies of Marbury v. Madison and John Marshall's judicial statesmanship*, „The John Marshall Law Review" 2004, Vol. 37.
Padula G., *Madison v. Marshall: popular sovereignty, natural law, and the United States Constitution*, Lexington Books, Lanham 2002.
Paulsen M.S., *The irrepressible myth of 'Marbury'*, „Michigan Law Review" 2003, Vol. 101, No. 8.
Rehnquist W.H., *The Supreme Court. Revisited and updated*, Knopf, New York 2001.
Reynolds W.L., *Maryland and the Constitution of the United States: an introductory essay*, „Maryland Law Review" 2007, Vol. 66.
Rhodes I., *Marbury v. Madison revisited*, „University of Cincinnati Law Review" 1964, Vol. 2.

Sager L.G., *The sources and limits of legal authority*, [in:] A.B. Morrison (ed.), *Fundamentals of American law*, Oxford University Press, Oxford 2004.
Sherry S., *The background of Marbury v. Madison*, [in:] M. Tushnet (ed.), *Arguing Marbury v. Madison*, Stanford University Press, Stanford 2005.
Smith J.E., *John Marshall: definer of a nation*, Henry Holt & Company, New York 1996.
Sokalska E., *American progressivism: Supreme Court of the United States and the legitimization of eugenic practices*, „Studia Prawnoustrojowe" 2023, Vol. 62.
Sokalska E., *Interpretations of the 'Living Constitution' in the American legal and political discourse. selected problems*, „Zbornik Pravnog Fakulteta u Zagrebu" 2019, Vol. 69, DOI: 10.3935/zpfz.69.3.05.
Sokalska E., *Kestenbaum Commission and its successors – statutory purposes and activities*, „Studia Prawnoustrojowe" 2020, Vol. 47, DOI: 10.31648/sp.5284.
Sokalska E., *Legal and political dimensions of American federalism: development and interpretations*, Wyd. UWM, Olsztyn 2018.
Szyszkowski W., *Sąd Najwyższy Stanów Zjednoczonych*, PWN, Warszawa 1969.
Tuleja P., *Stosowanie Konstytucji RP w świetle zasady jej nadrzędności (wybrane problemy)*, Zakamycze, Kraków 2003.
Van Alstyne W.W., *A critical guide to Marbury v. Madison*, „Duke Law Journal" 1969, Vol. 1.
Wood G.S., *Empire of liberty: a history of the early republic 1789–1815*, Oxford University Press, Oxford–New York 2010.
Zimmerman J.S., *Contemporary American federalism. The growth of national power*, Praeger Publishers, Westport 1992.

Summary

The Supreme Court of the United States under John Marshall and the competence of federal authorities (*McCulloch v. Maryland*)

Keywords: constitutional law, the Supreme Court of the United States, judicature, federal competence, state competence.

The purpose of the article is to present the activities of the Supreme Court of the U.S. in the context of the development of the first phase of American dual federalism (1789–1865), specifically considering the Supreme Court under John Marshall's judicature. Particular emphasis is placed upon the powers of the federal and state planes of government, and the limitations upon these powers. Under the leadership of Chief Justice John Marshall, the Supreme Court established its role as the interpreter of constitutional questions (*Marbury v. Madison*). The Court continued to reinforce its position as a national arbiter in *McCulloch v. Maryland*, where it was discussed the question of the national government's preeminence. The Supreme Court embraced the "implied

powers doctrine", assuming that many of the national powers of government were implied by the language of Articles I and VI of the Constitution. The Court under Marshall in the early years of the republic set two standards, namely "judicial review" and a strong national government.

Streszczenie

Sąd Najwyższy Stanów Zjednoczonych pod rządami Johna Marshalla i kompetencje władz federalnych (*McCulloch v. Maryland)*

Słowa kluczowe: prawo konstytucyjne, Sąd Najwyższy Stanów Zjednoczonych, orzecznictwo, kompetencje federalne, kompetencje stanowe.

Celem artykułu jest przedstawienie działalności Sądu Najwyższego Stanów Zjednoczonych w dobie pierwszej fazy amerykańskiego federalizmu dualnego (1789–1865), ze szczególnym uwzględnieniem okresu pod przewodnictwem Johna Marshalla. Szczególny nacisk położono na uprawnienia władz federalnych i władz stanowych oraz ich ograniczenia. Sąd Najwyższy pod przewodnictwem Prezesa Johna Marshalla jasno określił swoją rolę jako interpretatora kwestii konstytucyjnych (*Marbury v. Madison*). Następnie umacniał on swoją rolę głównego arbitra dzięki sprawie *McCulloch v. Maryland*, w której poruszono kwestię wyższości władz federalnych nad władzami stanowymi. Sąd Najwyższy przyjął *implied powers doctrine*, zakładając, że wiele uprawnień władz federalnych wynika z elastycznego języka art. I i VI Konstytucji. Sąd pod przewodnictwem Johna Marshalla we wczesnych latach republiki ustanowił dwa standardy, mianowicie *judicial review* i silny rząd krajowy.