execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared."[4] From this he concluded that a state tax upon notes issued by a branch of the Bank of the United States was void.

In *Gibbons v. Ogden*, the Court held that certain New York statutes that granted an exclusive right to use steam navigation on the waters of the state were null and void insofar as they applied to vessels licensed by the United States to engage in coastal trade. Chief Justice Marshall wrote: "In argument, however, it has been contended, that if a law passed by a state, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the constitution, they affect the subject, and each other, like equal opposing powers. But the framers of our constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of an act, inconsistent with the constitution, is produced by the declaration, that the constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the state legislatures as do not transcend their powers, but though enacted in the execution of acknowledged state powers, interfere with, or are contrary to, the laws of congress, made in pursuance of the constitution, or some treaty made under the authority of the United States. In every such case, the act of congress, or the treaty, is supreme; and the law of the state, though enacted in the exercise of powers not controverted, must yield to it."[5]

The General Issue: Preemption

Since the turn of the 20th century, federal legislation has penetrated deeper and deeper into areas once occupied by the regulatory power of the states. One result is that state laws on subjects about which Congress has legislated have been more and more frequently attacked as being incompatible with the acts of Congress

[4] 17 U.S. (4 Wheat.) at 436.

[5] 22 U.S. (9 Wheat.) at 210–11. A modern application of Gibbons v. Ogden is Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977), in which the Court, relying on the present version of the licensing statute used by Chief Justice Marshall, struck down state laws curtailing the operations of federally licensed vessels. In the course of the *Douglas* opinion, the Court observed that, "[a]lthough it is true that the Court's view in *Gibbons* of the intent of the Second Congress in passing the Enrollment and Licensing Act is considered incorrect by commentators, its provisions have been repeatedly re-enacted in substantially the same form. We can safely assume that Congress was aware of the holding, as well as the criticism, of a case so renowned as *Gibbons*. We have no doubt that Congress has ratified the statutory interpretation of *Gibbons* and its progeny." Id. at 278–79.