

Marbury v. Madison (1803)

This case was the first time that the Supreme Court declared an act of Congress (a section of the Judiciary Act of 1789) to be unconstitutional. This is an exercise of the power of judicial review—the power of the federal courts to interpret laws in light of the Constitution.

Chief Justice John Marshall explained, “[T]he Constitution of the United States confirms and strengthens the principle... that a law repugnant to the Constitution is void.” Furthermore, the Supreme Court is the proper authority to decide if a law is in conflict with the Constitution. He called this responsibility “the very essence of judicial duty.” In the *Federalist Papers*, Alexander Hamilton discussed “the rights of the courts to pronounce legislative acts void, because contrary to the Constitution.”

He explained in *Federalist No. 78*, “No legislative act, therefore, contrary to the Constitution, can be valid...” Although the Founders, including Hamilton, considered the courts the weakest branch of government, their power to identify and invalidate unconstitutional laws is essential to the preservation of constitutional law. The case touched on constitutional principles including separation of powers, checks and balances, and limited government, and civic values including integrity, responsibility and justice.



Legal scholars consider Marbury v. Madison (1803) a central text for understanding the role of the Courts to interpret law in light of the Constitution, known as judicial review. It is the centerpiece of many constitutional law classes. As judicial review was seldom exercised prior to the 20th century, the case was cited exclusively for its discussion of the particular issues of the case for the first century after it was handed down. Beginning in the early 20th Century, however, the Court began striking down federal laws more frequently. Proponents of judicial review pointed to Chief Justice John Marshall's decision in Marbury as a source supporting the view that the Supreme Court has the final say on what the Constitution means. In this month's Landmark Supreme Court Cases and the Constitution, we spotlight the case of Marbury v. Madison.

Activity: The 1803 case of Marbury v. Madison was the first time the U.S. Supreme Court declared an act of Congress to be unconstitutional. (The case concerned a section of the Judiciary Act of 1789.) In his opinion, Chief Justice John Marshall relied almost exclusively on the specific language of the Constitution, saying that it was the "paramount law of the nation" and that it constrained the actions of all three branches of the national government. The whole point of a written Constitution, Marshall asserted, was to ensure that government stayed within its prescribed limits: "The powers of the Legislature are defined and limited; and [so] that those limits may not be mistaken or forgotten, the Constitution is written." In cases where a law conflicted with the Constitution, Marshall wrote, then "the very essence of judicial duty" was to follow the Constitution.

Marshall also asserted that the courts had the responsibility to understand and articulate what the Constitution means: "It is emphatically the province and duty of the judicial department to say what the law is." The decision concluded, "a law repugnant to the Constitution is void, and courts, as well as other departments, are bound by that instrument."

*The Supreme Court did not declare another act of Congress unconstitutional until it struck down the Missouri Compromise in *Dred Scott v. Sanford* (1857). The power of judicial review was used sparingly for the next several decades. Beginning in the early 20th Century, however, the Court began striking down federal laws more often than ever before. Proponents of judicial review pointed to Chief Justice John Marshall's decision in *Marbury* as a source supporting the view that the Supreme Court has the final say on what the Constitution means.*

Since then, as the powers of the national government have expanded and as more and more state laws became subject to federal review (as a result of the Fourteenth Amendment and the incorporation of the protections of the Bill of Rights against the states), the Supreme Court has had frequent opportunities to exercise its power of judicial review.

Questions:

- 1. What did John Marshall say was the chief purpose of written constitutions in *Marbury v. Madison* (1803)?*
- 2. What did he call the "very essence of judicial duty"?*
- 3. The First Congress was overwhelmingly made up of the delegates to the Constitutional Convention and state Ratifying Conventions. It was the First Congress, which passed the law at issue in *Marbury v. Madison*. George Washington, president of the Constitutional Convention, signed it into law. To what degree, if any, can the actions of the First Congress and President help citizens understand the meaning of the Constitution? How else can citizens understand it?*
- 4. Does the power of judicial review necessary lead to judicial supremacy? Why or Why not?*
- 5. Throughout American history, some have asserted that states (and not the Supreme Court) are the rightful judges of whether a law is constitutional. What would be some advantages and disadvantages of this arrangement?*