



LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

MARBURY V. MADISON (1803)

MONDAY, NOVEMBER 24, 2008

OVERVIEW

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Many citizens take it for granted today that one power of the Supreme Court is to review the constitutionality of laws. This power, known as “judicial review,” was not firmly established until fifteen years into the Court’s existence, and was articulated by Chief Justice John Marshall in the landmark case we spotlight this month: *Marbury v. Madison* (1803). In essence, *Marbury* is the landmark case that made almost all other landmark cases possible.

RESOURCES

- <http://constitutionbee.org/user/StudentGuide.aspx?id=688>
- <http://constitutionbee.org/user/StudentGuide.aspx?id=773>
- <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=5&invol=137>
- <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/judicialrev.htm>

ACTIVITY

Marbury v. Madison (1803) is a landmark case because it 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.

In his opinion, Chief Justice John Marshall established the Supreme Court as an equal partner in government with the executive and legislative branches. Marshall emphasized that the Constitution was the supreme law of the land. More importantly, the Supreme Court became the final authority on what the Constitution means: “It is emphatically the province and duty of the judicial department to say what the law is.”

Marshall continued, “[T]he Constitution of the United States confirms and strengthens the principle... that a law repugnant to the Constitution is void.” The Supreme Court, further, was the proper authority to decide if a law is in conflict with the Constitution. He called this responsibility “the very essence of judicial duty.”

The Supreme Court did not declare another act of Congress unconstitutional for more than fifty years, and the power of judicial review was used sparingly until the beginning of the twentieth century. Since then, 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 been given frequent opportunities to exercise its power of constitutional review.

COMPREHENSION AND CRITICAL THINKING QUESTIONS

1. Why is *Marbury v. Madison* (1803) a landmark case?
2. Section 2 of Article III of the Constitution begins, “The judicial power shall extend to all cases, in law and equity, arising under this Constitution...” Why do you believe John Marshall referred to this section of the Constitution in his opinion?
3. Supreme Court Chief Justice William Rehnquist called *Marbury* “the fountainhead of all of our present-day constitutional law” in a 2001 speech. What did he mean?
4. Thomas Jefferson wrote in 1820, “To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed...our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and...privilege...” What was Jefferson’s concern? Do you believe judicial review gives the Supreme Court too much power?



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ANSWERS

1. It was the first time the Supreme Court declared an act of Congress unconstitutional. In so doing, the doctrine of judicial review was established.
2. Article 2 of Section III of the Constitution spells out the power and jurisdiction of the Supreme Court. The words cited by Chief Justice Marshall address the question of whether the Supreme Court can interpret the Constitution. If judicial power extends to cases arising under the Constitution, then, reasons Marshall, the Court must have the power to interpret the Constitution so that it can apply it.
3. Chief Justice Rehnquist was referring to the precedent set by *Marbury v. Madison* and the responsibility assumed by the Supreme Court. Although many of the Founders expected that the federal courts would be the ultimate judges of the constitutionality of laws, they did not make this expectation explicit in the Constitution. John Marshall assumed that the courts had this implied power, and he made it explicit in his opinion in *Marbury*. All subsequent judicial reviews were based upon Marshall's precedent.
4. Some students will disagree with Jefferson, pointing out that the Constitution clearly limits the powers of each branch of government. Justices are appointed for life, minimizing the danger of influence by "party and privilege." They may say the nomination and confirmation process for Supreme Court Justices, which involve the executive and legislative branches, also balance the power of judicial review. Other students may agree with Jefferson, and ask if the people can truly govern themselves if unelected judges can overturn laws enacted by the people or their representatives. Others may object to what is commonly referred to as judicial activism: courts making public policy as a result of their rulings, rather than allowing the legislatures to decide these issues.