

MARBURY V. MADISON is perhaps the most important opinion in Supreme Court history. It secured the Court's power of judicial review—its ability to uphold or deny the constitutionality of congressional or executive actions—and established the judiciary as an independent, co-equal branch of the federal government.

Political Turmoil

Marbury v. Madison was decided amidst political turmoil that directly threatened the judiciary. President John Adams and his Federalist party had been defeated by Thomas Jefferson and his Republicans in the



John Adams As second President of the United States, Adams appointed a number of “midnight judges” in the final days of his administration following his defeat by Thomas Jefferson in the 1800 elections. Political rivals, Adams and Jefferson died on the same day, July 4, 1826.

1800 elections. Between this defeat and Jefferson's March 4, 1801 inauguration, Adams and the Federalist-dominated Congress passed the controversial Judiciary Act of 1801 and additional legislation concerning the District of Columbia's judicial system. A key provision of the Judiciary Act created 16 new federal circuit judgeships, while the District of Columbia legislation authorized the President to appoint such number of justices of the peace as he deemed necessary for the District.

The Jeffersonian Republicans were infuriated when Adams, before he left office, nominated all 16 federal circuit court judges (labeled the “Midnight Judges”) authorized by the new judiciary act. These nominees were promptly confirmed by the lame-duck, Federalist-controlled Senate. William Marbury was part of another wave of “midnight appointments”—one of 42 justices of the peace nominated and confirmed for service in the District of Columbia in the final days of Adams' term. Marbury's commission (the document authorizing him to take his office) was among a handful that were sealed but not delivered before Adams' term expired.

When Jefferson took office, he refused to acknowledge Adams' commissions for the District of Columbia justices of the peace. Then, in December 1801, James Madison, Jefferson's secretary of state, was directed



James Madison Later the fourth President of the United States, Madison served as Jefferson's secretary of state and was responsible for delivering judicial commissions. William Marbury asked the Supreme Court to compel Madison to deliver his commission, signed by President Adams.

by the Supreme Court to show cause why a writ of *mandamus* should not issue from the Court ordering Madison to deliver the commission to William Marbury. The “show cause” order signaled that the Supreme Court was preparing to intervene in the controversy surrounding Adams' various “midnight appointments.” Many commenta-

tors have identified this order as the event that propelled the Republicans to revoke the 1801 Judiciary Act and eliminate the 16 federal judgeships it had created.

The Republican Congress then passed the Judiciary Act of 1802, which among other provisions established one annual Supreme Court term beginning on the first Monday in February. The practical effect of this provision was that both Supreme Court terms scheduled for 1802, one in June and one in December, were cancelled, putting the Supreme Court out of action for the year and delaying arguments on Marbury's case. As arguments on the Marbury case approached in 1803, the House of Representatives began impeachment proceedings against a federal judge in New Hampshire, demonstrating its willingness to pursue impeachment of federal judges.

Thomas Jefferson Adams' successor as President, Thomas Jefferson refused to acknowledge several of Adams' “midnight” judicial appointments. Jefferson and John Marshall were cousins but were in separate political camps.

The Supreme Court thus faced an administration that had declared Adams' appointment of the District of Columbia justices of the peace invalid, and that would likely refuse to recognize a Court order to deliver Marbury's commission. It also faced a Congress demonstrably hostile to a Federalist-dominated judiciary. The Supreme Court was in an apparent bind. If it ruled in Marbury's favor, it could demonstrate its weakness by issuing an order that the executive branch would ignore. If it denied Marbury's claim, it would risk the appearance of submission to Congress's threatened power.



William Marbury One of the “midnight judges” appointed in the last days of the Adams administration, William Marbury was among a handful of appointees whose commissions were signed and sealed but not delivered before Adams left office.

Power Surrendered, Power Gained

Chief Justice John Marshall authored the *Marbury v. Madison* opinion. As the opinion first affirms Marbury’s legal right to the office and then asserts that refusal to deliver his commission clearly violated that right, Marshall seems to be leading the Court toward a direct confrontation with the Jefferson administration. It is only in the final pages of the opinion, where Marshall declares that Congress violated the Constitution in granting the Supreme Court power to issue the writ sought by Marbury, that this confrontation is avoided. The genius of the opinion is that it manages to recognize the legitimacy of Marbury’s claim, chastise Jefferson’s administration for refusing to deliver it, and claim the right to define constitutional limits on Congress’s power, while denying the Supreme Court’s power to give Marbury the remedy he seeks.

Looking at the decision through the lens of the volatile political climate of the time, Marshall managed to confound his opponents by limiting the Court’s power in the Marbury matter while asserting a much more important and far-reaching power—judicial review. *Marbury v. Madison* struck down the section of the 1789 Judiciary Act that had given the Supreme Court power to issue writs of *mandamus*, court orders compelling performance of specific actions (delivery of Marbury’s commission, for example). The Court held that this legislative grant of power violated the Constitution’s limited grant of original jurisdiction to the Court in Article III, Section 2. As a result, the Supreme Court lacked jurisdiction to provide Marbury the remedy he sought for what the Court acknowledged as his violated right to his judicial commission.

Although *Marbury v. Madison* limited the Court’s power in one narrow respect, it claimed for the Court the much broader power of judicial review. The Constitution, Marshall declared, was the product of the people’s exercise of their original right to establish the principles for their government. This exercise represented a “very great exertion,” one that could not and should not be frequently repeated, and established fundamental principles of supreme authority. The judiciary’s duty is to say what the law is; thus courts are to decide which is the governing law if two laws conflict. And because the Constitution is superior to any ordinary legislative act, “the Constitution, and not such ordinary act, must govern the case to which they both apply.”

Marshall was careful to acknowledge the legislature’s and executive’s rights to interpret the Constitution within their own spheres of power.



John Marshall The “Great Chief Justice,” John Marshall wrote the opinion in *Marbury v. Madison*. As John Adams’ secretary of state, Marshall had also been responsible for sealing and delivering William Marbury’s judicial commission.

His assertion that “it is emphatically the province . . . of the judicial department to say what the law is” is one of the most frequently quoted lines from the *Marbury* opinion. But Marshall also notes that “the province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion.” With respect to Congress, the *Marbury* opinion has less to say, but subsequent decisions by the Marshall Court demonstrated its willingness to give broad deference to Congress’s ability to interpret and apply the Constitution within its sphere of power.

For the remainder of Chief Justice Marshall’s tenure of more than thirty years, the Court struck down no other acts of Congress. The power of judicial review did not, however, lay dormant. In a series of decisions, the Court asserted its power to review the decisions of state supreme courts and the actions of state legislatures when they touched upon issues involving the Constitution or federal law. The supremacy of the federal government over the states, in other words, became the Marshall Court’s focus.

Marbury’s Legacy

The power of judicial review established by *Marbury* has enabled the Court to effect revolutionary change in our understanding of constitutional provisions. This power has, not unexpectedly, drawn both criticism and praise over the Court’s history. But it has never been a power completely beyond the control of the other branches of government. From the President’s power to nominate and the Senate’s power to confirm Supreme Court justices to the occasional “great exertions” of constitutional amendment, the Court remains firmly embedded within our Constitution’s system of checks and balances.

At the same time, judicial review has ensured that the Supreme Court’s justices, once confirmed, have sufficient power to exert their independence from the political branches and enforce constitutional limits on their powers. The Court’s supremacy in constitutional interpretation rests in part on popular respect and esteem for the Court’s opinions. That such supremacy is widely acknowledged today is indicative of the care with which the Court has generally wielded its power of judicial review, a tradition begun by the “Great Chief Justice,” John Marshall.