

Marbury contra Madison

Marbury v. Madison , 5 US (1 Cranch) 137 (1803), é uma decisão histórica da Suprema Corte dos Estados Unidos que estabeleceu o princípio da revisão judicial , o que significa que os tribunais americanos têm o poder de invalidar leis e estatutos que considerem violar a Constituição dos Estados Unidos . Decidida em 1803, *Marbury* é considerada a decisão mais importante do direito constitucional americano.^[1] Ela estabeleceu que a Constituição dos EUA é a lei em si, e não apenas uma declaração de princípios e ideais políticos. Também ajudou a definir a fronteira entre os poderes executivo e judiciário, constitucionalmente separados, do governo federal .

O caso teve origem no início de 1801 e decorreu da rivalidade entre o presidente cessante John Adams e o presidente eleito Thomas Jefferson .^[2] Adams, membro do Partido Federalista , havia perdido a eleição presidencial dos EUA de 1800 para Jefferson, que liderava o Partido Democrata-Republicano . Em março de 1801, apenas dois dias antes do término de seu mandato como presidente, Adams nomeou várias dezenas de apoiadores do Partido Federalista para novos cargos de juiz de circuito e juiz de paz, numa tentativa de frustrar Jefferson e os Democratas-Republicanos.^[3] O Senado dos EUA, em fim de mandato , confirmou rapidamente as nomeações de Adams, mas o secretário de Estado cessante, John Marshall, não conseguiu entregar todas as nomeações dos novos juízes antes da saída de Adams e da posse de Jefferson.^[3] Jefferson acreditava que as nomeações não entregues eram nulas e instruiu seu secretário de Estado, James Madison , a não entregá-las.^[4] Uma das comissões não entregues pertencia a William Marbury , um empresário de Maryland que havia sido um forte apoiador de Adams e dos Federalistas. No final de 1801, depois de Madison ter se recusado repetidamente a entregar sua comissão, Marbury entrou com uma ação na Suprema Corte pedindo que o tribunal emitisse um mandado de segurança obrigando Madison a entregar sua comissão.^[5]

Marbury contra Madison



Suprema Corte dos Estados Unidos

Jurisdição original.

Argumentado em 11 de fevereiro de 1803.

Decidido em 24 de fevereiro de 1803.

Nome completo do caso	<i>William Marbury contra James Madison</i> , <i>Secretário de Estado dos Estados Unidos</i>
Citações	5 EUA 137 (https://supreme.justia.com/us/5/137/case.html) (<i>mais</i>) 1 Cranch 137; 2 L.Ed. 60; 1803 EUA LEXIS 352
Decisão	Opinião (http://cdn.loc.gov/service/ll/usrep/usrep005/usrep005137/usrep005137.pdf)

Histórico do caso

Anterior	Ação original apresentada na Suprema Corte dos EUA; ordem para apresentar justificativa para que o mandado de segurança não fosse expedido, dezembro de 1801.
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Resultado

A Seção 13 da Lei Judiciária de 1789 é inconstitucional na medida em que pretende ampliar a jurisdição originária da Suprema Corte além do permitido pela Constituição. O Congresso não pode aprovar leis contrárias à Constituição, e cabe ao Judiciário interpretar o que a Constituição permite.

Membro do tribunal

Juiz-chefe

João Marshall

Juizes Associados

William Cushing · William Paterson · Samuel Chase · Bushrod Washington ·

Em um parecer escrito por Marshall, que então havia sido nomeado Chefe de Justiça dos Estados Unidos , a Suprema Corte decidiu que a recusa de Madison em entregar a nomeação de Marbury era ilegal. A corte também decidiu que, normalmente, em tais situações, era apropriado que um tribunal ordenasse ao funcionário do governo em questão que entregasse a nomeação. ^[6] No caso de Marbury, porém, a corte não ordenou que Madison cumprisse a ordem. Examinando a lei que o Congresso havia aprovado para definir a jurisdição da Suprema Corte sobre tipos de casos como o de Marbury — a seção 13 da Lei Judiciária de 1789 — a corte constatou que a Lei havia expandido a definição da jurisdição da Suprema Corte além do que estava originalmente estabelecido na Constituição dos EUA. ^[7] A corte então anulou a seção 13 da lei, anunciando que os tribunais americanos têm o poder de invalidar leis que considerem violar a Constituição — um poder agora conhecido como *revisão judicial* . ^[8] Como a anulação da lei removeu qualquer jurisdição que a corte pudesse ter sobre o caso, a corte não pôde emitir o mandado que Marbury havia solicitado.

	Alfred Moore
	Parecer sobre o caso
Maioria	<u>Marshall</u> , acompanhado por Paterson, Chase e Washington. Cushing e Moore não participaram da análise ou da decisão do caso.
	Leis aplicadas
	<u>Constituição dos EUA</u> , arts. I e III ; <u>Lei Judiciária de 1789</u> , § 13

Fundo

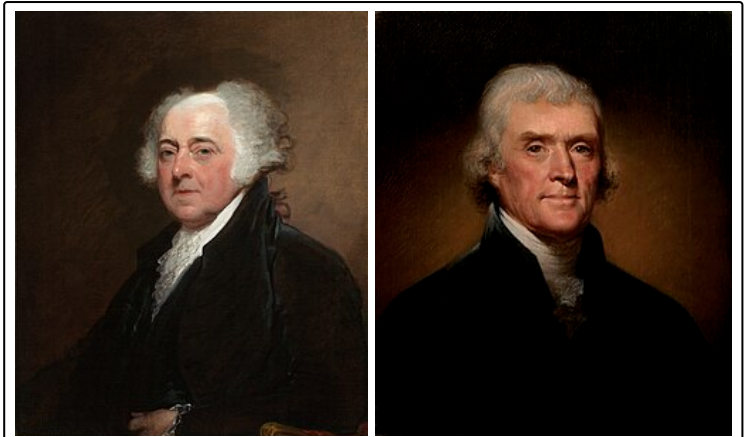
Na acirrada eleição presidencial dos EUA de 1800, os três principais candidatos foram Thomas Jefferson, Aaron Burr e o presidente em exercício, John Adams. ^[9] Adams defendia a política pró-negócios e pró-governo nacional do Partido Federalista e de seu líder, Alexander Hamilton . Jefferson e Burr eram líderes do Partido Democrata-Republicano, de oposição, que favorecia a agricultura rural e a descentralização. A opinião pública americana havia se voltado gradualmente contra os Federalistas nos meses que antecederam a eleição. Essa mudança se deveu principalmente ao uso, pelos Federalistas, das controversas Leis de Estrangeiros e Sedição , mas também às crescentes tensões com a Grã-Bretanha , com quem os Federalistas desejavam estreitar laços. ^[10] Jefferson venceu facilmente a eleição no voto popular, mas derrotou Adams por uma margem estreita no Colégio Eleitoral . ^[11]

Após os resultados da eleição ficarem claros, Adams e os Federalistas ficaram determinados a exercer a influência que ainda lhes restava antes da posse de Jefferson, e fizeram tudo o que puderam para preencher cargos federais com "anti-Jeffersonianos" leais aos Federalistas. ^[12] Em 2 de março de 1801, apenas dois dias antes do término de seu mandato presidencial, ^[a] Adams nomeou quase 60 apoiadores Federalistas para os novos cargos de juiz de circuito e juiz de paz que o Congresso, controlado pelos Federalistas, havia criado recentemente. Esses indicados de última hora — que os apoiadores de Jefferson chamavam depreciativamente de "Juízes da Meia-Noite" — incluíam William Marbury, um próspero empresário de Maryland . ^[13] Um Federalista fervoroso, Marbury era ativo na política de Maryland e havia sido um vigoroso apoiador da presidência de Adams. ^[14]

No dia seguinte, 3 de março, o Senado aprovou *em massa* as nomeações de Adams . As comissões dos nomeados foram imediatamente redigidas em pergaminho , assinadas por Adams e seladas pelo Secretário de Estado John Marshall, que havia sido nomeado o novo juiz-chefe da Suprema Corte em janeiro, mas concordou em continuar servindo como Secretário de Estado pelas semanas restantes da presidência de Adams. ^[15] Marshall então enviou seu irmão mais novo, James

Markham Marshall, para entregar as comissões aos nomeados. ^[5] Com apenas um dia restante antes da posse de Jefferson, James Marshall conseguiu entregar a maioria das comissões, mas algumas — incluindo a de Marbury — não foram entregues. ^[16]

No dia seguinte, 4 de março de 1801, Jefferson tomou posse e tornou-se o terceiro presidente dos Estados Unidos. Jefferson instruiu seu novo secretário de Estado, James Madison, a reter as comissões não entregues. ^[16] Na opinião de Jefferson, as comissões eram nulas porque não haviam sido entregues antes de Adams deixar o cargo. ^[4] Sem suas comissões, os nomeados não puderam assumir seus novos cargos e deveres. Nos meses seguintes, Madison recusou-se firmemente a entregar a comissão de Marbury. Finalmente, em dezembro de 1801, Marbury entrou com uma ação judicial contra Madison na Suprema Corte, pedindo que o tribunal obrigasse Madison a entregar sua comissão. ^[16] Essa ação judicial resultou no caso *Marbury v. Madison*.



O presidente John Adams, que nomeou Marbury pouco antes do término de seu mandato presidencial.

Thomas Jefferson, que sucedeu Adams, acreditava que a comissão não entregue de Marbury era nula.



William Marbury, cuja encomenda Madison se recusou a cumprir.

James Madison, Secretário de Estado de Jefferson, que reteve a nomeação de Marbury.

Decisão

On February 24, 1803,^[b] the Supreme Court issued a unanimous 4–0^[c] decision against Marbury. The court's opinion was written by Chief Justice John Marshall, who structured the court's opinion around a series of three questions it answered in turn:

- First, did Marbury have a right to his commission?
- Second, if Marbury had a right to his commission, then was there a legal remedy for him to obtain it?
- Third, if there was such a remedy, then could the Supreme Court legally issue it?^[17]

Marbury's right to his commission

The court began by holding that Marbury had a legal right to his commission. Marshall reasoned that all appropriate procedures were followed: the commission had been properly signed and sealed.^[18] Madison had argued that the commissions were void if not delivered. The court disagreed, saying that the delivery of the commission was merely a custom, not an essential element of the commission itself.^[6]

The [President's] signature is a warrant for affixing the great seal to the commission, and the great seal is only to be affixed to an instrument which is complete. ... The transmission of the commission is a practice directed by convenience, but not by law. It cannot therefore be necessary to constitute the appointment, which must precede it and which is the mere act of the President.

—*Marbury*, 5 U.S. at 158, 160.

The court said that because Marbury's commission was valid, Madison's withholding it was "violative of a vested legal right" on Marbury's part.^[19]

Marbury's legal remedy

Turning to the second question, the court said that the law provided Marbury a remedy for Madison's unlawful withholding of his commission. Marshall wrote that "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." This rule derives from the ancient Roman legal maxim *ubi jus, ibi remedium* ("where there is a legal right, there is a legal remedy"), which was well established in the English common law.^[20] In what the American legal scholar Akhil Reed Amar called "one of the most important and inspiring passages" of the opinion,^[21] Marshall wrote:

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury.

—*Marbury*, 5 U.S. at 163.

The court then confirmed that a writ of mandamus—a type of court order that commands a government official to perform an act his official duties legally require him to perform—was the proper remedy for Marbury's situation.^[22] But this raised the issue of whether the court, which was part of the judicial branch of the government, had the power to command Madison, who as secretary of state was part of the executive branch of the government.^[17] The court held that so long as the remedy involved a mandatory duty to a specific person and not a political matter left to discretion, the courts could provide the legal remedy.^[23] Borrowing a phrase John Adams had drafted in 1779 for the Massachusetts State Constitution, Marshall wrote: "The government of the United States has been emphatically termed a government of laws, and not of men."^[24]

The Supreme Court's jurisdiction

This brought the court to the third question: did the Supreme Court have proper jurisdiction over the case that would allow it to legally issue the writ of mandamus that Marbury wanted?^[26] The answer depended entirely on how the court interpreted the Judiciary Act of 1789. Congress had passed the Judiciary Act to establish the American federal court system. Section 13 of the Judiciary Act sets out the Supreme Court's original and appellate jurisdictions.



An 1808 engraving of Chief Justice John Marshall, the author of the court's decision in *Marbury v. Madison*, by French portrait painter Charles Balthazar Julien Févret de Saint-Mémin

And be it further enacted, That the Supreme Court shall have exclusive jurisdiction over all cases of a civil nature where a state is a party ... [and] suits or proceedings against ambassadors, or other public ministers ... The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; and shall have power to issue ... writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.



A painting of the U.S. Capitol as it appeared around the time of the *Marbury* decision (c. 1800). In addition to being the home of the U.S. Congress, the Capitol also housed the U.S. Supreme Court from 1801 until the Supreme Court Building's completion in 1935.^[25]

—Judiciary Act of 1789, section 13

Marbury had argued that the wording of section 13 had given the Supreme Court the authority to issue writs of mandamus when hearing cases under exclusive (original) jurisdiction, not only under appellate jurisdiction.^[26] As Marshall explains in the opinion, *original jurisdiction* gives a court the power to be the first to hear and decide a case; *appellate jurisdiction* gives a court the power to hear an appeal from a lower court's decision and to "revise and correct" the previous decision.^[8] The portion of section 13 that speaks of the court's power to issue writs of mandamus appears after its sentence on appellate jurisdiction, not with the earlier sentences on original jurisdiction, but a semicolon separates it from the clause on appellate jurisdiction. Section 13 does not make clear whether the mandamus clause was intended to be read as part of the appellate clause or on its own—in the opinion, Marshall quoted only the end of the section^[27]—and the wording of the law can plausibly be read either way.^[28]

In the end, the court agreed with Marbury and interpreted section 13 of the Judiciary Act to have authorized the court to exercise original jurisdiction over cases involving disputes over writs of mandamus.^[29] This interpretation, however, meant that the Judiciary Act conflicted with article III of the Constitution. Article III defines the Supreme Court's jurisdiction as follows:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have *original Jurisdiction*. In all the other Cases before mentioned, the supreme Court shall have *appellate Jurisdiction*, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

—U.S. Constitution, article III, section 2 (emphasis added).

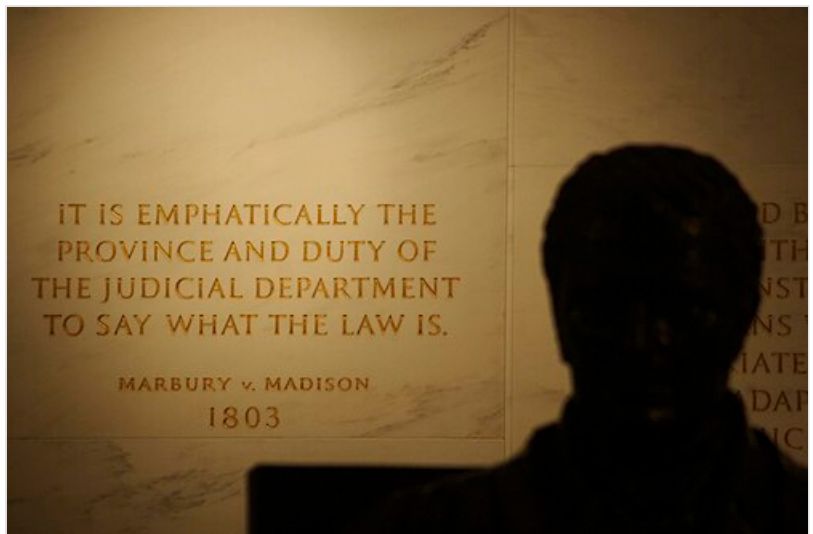
Article III says that the Supreme Court has original jurisdiction only in cases where a U.S. state is a party to a lawsuit or where a lawsuit involves foreign dignitaries. Neither of these categories covered Marbury's lawsuit, which was a dispute over a writ of mandamus for his justice of the

peace commission. According to the Constitution, therefore, the court did not have original jurisdiction over a case like *Marbury's*.^[30]

Because the court had interpreted the Judiciary Act to have given it original jurisdiction over lawsuits for writs of mandamus, this meant the Judiciary Act had taken the Constitution's initial scope for the Supreme Court's original jurisdiction, which did not cover cases involving writs of mandamus, and expanded it to include them. The court ruled that Congress cannot increase the Supreme Court's original jurisdiction as it was set down in the Constitution, and it therefore held that the relevant portion of section 13 of the Judiciary Act violated article III of the Constitution.^[31]

Judicial review and striking down the law

After ruling that section 13 of the Judiciary Act conflicted with the Constitution, the court struck down that section in its first ever declaration of the power of judicial review.^[32] The court ruled that American federal courts have the power to refuse to give any consideration to congressional legislation that is inconsistent with their interpretation of the Constitution—a move colloquially known as "striking down" laws.^[33]



Inscription on the wall of the [Supreme Court Building](#) from *Marbury v. Madison*, in which [Chief Justice John Marshall](#) (statue, foreground) outlined the concept of [judicial review](#).

The U.S. Constitution does not explicitly give the federal judiciary the power of judicial review.^[34]

Nevertheless, the court's opinion gives many reasons in support of the judiciary's possession of the power. First, Marshall reasoned that the written nature of the Constitution inherently established judicial review.^[35] Borrowing from Alexander Hamilton's essay *Federalist No. 78*, Marshall wrote:

The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. ... Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

—*Marbury*, 5 U.S. at 176–77.^[36]

Second, the court declared that deciding the constitutionality of the laws it applies is an inherent part of the American judiciary's role.^[37] In what has become the most famous and most frequently quoted line of the opinion, Marshall wrote:

It is emphatically the province and duty of the judicial department to say what the law is.

—*Marbury*, 5 U.S. at 177.^[38]

Marshall reasoned that the Constitution places limits on the American government's powers, and that those limits would be meaningless unless they were subject to judicial review and enforcement.^[39] He reasoned that the provisions of the Constitution that limit Congress's power—such as the prohibitions on *ex post facto* laws and bills of attainder—meant that in some cases judges would be forced to choose between enforcing the Constitution or following Congress.^[40] Marshall held "virtually as a matter of iron logic" that in the event of conflict between the Constitution and statutory laws passed by Congress, constitutional law must be supreme.^[8]

Third, the court said that denying the supremacy of the Constitution over Congress's acts would mean that "courts must close their eyes on the constitution, and see only the law."^[41] This, Marshall wrote, would make Congress omnipotent, because none of the laws it passed would ever be invalid.^[42]

This doctrine ... would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits.

—*Marbury*, 5 U.S. at 178.^[43]

Marshall then gave several other reasons in favor of judicial review. He reasoned that the authorization in Article III of the Constitution that the court can decide cases arising "under this Constitution" implied that the court had the power to strike down laws conflicting with the Constitution.^[37] This, Marshall wrote, meant that the Founders were willing to have the American judiciary use and interpret the Constitution when judging cases. He also said that federal judges' oaths of office—in which they swear to discharge their duties impartially and "agreeably to the Constitution and laws of the United States"—requires them to support the Constitution.^[44] Lastly, Marshall reasoned that judicial review is implied in the Supremacy Clause of article VI of the U.S. Constitution, because it declares that the supreme law of the United States is the Constitution and laws made "in Pursuance thereof".^[45]

Having given his list of reasons, Marshall concluded the court's opinion by reaffirming the court's ruling on the invalidity of section 13 of the Judiciary Act and, therefore, the court's inability to issue Marbury's writ of mandamus.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument. The rule must be discharged.

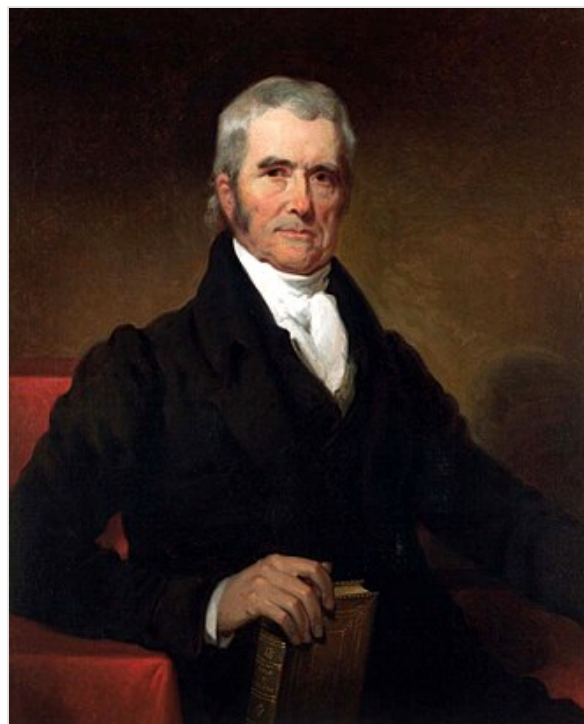
—*Marbury*, 5 U.S. at 180.

Analysis

Political dilemma

Besides its legal issues, the case of *Marbury v. Madison* also created a difficult political dilemma for John Marshall and the Supreme Court.^[46] If the court had ruled in Marbury's favor and issued a writ of mandamus ordering Madison to deliver Marbury's commission, then Jefferson and Madison would probably have simply ignored the writ. This would have made the court look impotent and emphasized the shakiness of the early American judiciary.^[46] On the other hand, a simple ruling against Marbury would have given Jefferson and the Democratic-Republicans a clear political victory over the Federalists.^[46]

Marshall solved both problems. First, he had the court rule that Madison's withholding of Marbury's commission was illegal, which pleased the Federalists. Then, however, he also ruled that the court could not grant Marbury his requested writ of mandamus, which gave Jefferson and the Democratic-Republicans the result they desired. Lastly, in what the American legal scholar Laurence Tribe calls "an oft-told tale ... [that] remains awe-inspiring", Marshall had the court rule in a way that maneuvered Marbury's simple petition for a writ of mandamus into a case that presented a question that went to the heart of American constitutional law itself.^[47] The American political historian Robert G. McCloskey described:



John Marshall as painted in 1832 by Henry Inman, after having presided over the American federal judiciary for more than 30 years.

[*Marbury v. Madison*] is a masterwork of indirection, a brilliant example of Marshall's capacity to sidestep danger while seeming to court it. ... The danger of a head-on clash with the Jeffersonians was averted by the denial of jurisdiction: but, at the same time, the declaration that the commission was illegally withheld scotched any impression that the Court condoned the administration's behavior. These negative maneuvers were artful achievements in their own right. But the touch of genius is evident when Marshall, not content with having rescued a bad situation, seizes the occasion to set forth the doctrine of judicial review. It is easy for us to see in retrospect that the occasion was golden, ... but only a judge of Marshall's discernment could have recognized it.^[48]

Marshall had been looking for a case suitable for introducing judicial review and was eager to use the situation in *Marbury* to establish his claim.^[49] He introduced judicial review—a move Jefferson decried—but used it to strike down a provision of a law that he read to have expanded the

Supreme Court's powers, and thereby produced Jefferson's hoped-for result of Marbury losing his case.^[50] Marshall "seized the occasion to uphold the institution of judicial review, but he did so in the course of reaching a judgment that his political opponents could neither defy nor protest."^[51] Although Jefferson criticized the court's decision, he accepted it, and Marshall's opinion in *Marbury* "articulate[d] a role for the federal courts that survives to this day."^[52] The American legal scholar Erwin Chemerinsky concludes: "The brilliance of Marshall's opinion cannot be overstated."^[50]

Legal criticism

The Supreme Court's historic decision in *Marbury v. Madison* continues to be the subject of critical analysis and inquiry.^[53] In a 1955 *Harvard Law Review* article, U.S. Supreme Court Justice Felix Frankfurter emphasized that one can criticize Marshall's opinion in *Marbury* without demeaning it: "The courage of *Marbury v. Madison* is not minimized by suggesting that its reasoning is not impeccable and its conclusion, however wise, not inevitable."^[11]

Criticisms of Marshall's opinion in *Marbury* usually fall into two general categories.^[53] First, some criticize the way Marshall "strove" to reach the conclusion that the U.S. Supreme Court has constitutional authority over the other branches of the U.S. government. Today, American courts generally follow the principle of "constitutional avoidance": if a certain interpretation of a law raises constitutional problems, they prefer to use alternative interpretations that avoid these problems, as long as the alternative interpretations are plausible.^[54] In *Marbury*, Marshall could have avoided the constitutional questions through different legal rulings. If the court had ruled that Marbury did not have a right to his commission until it was delivered, or if he had ruled that refusals to honor political appointments could only be remedied through the political process and not the judicial process, then it would have disposed of the case immediately and the court would not have reached the case's constitutional issues.^[55] Marshall did not do so, and many legal scholars have criticized him for it.^[54] Some scholars have responded that the "constitutional avoidance" principle did not exist in 1803 and that it is "only a general guide for Court action", not an "ironclad rule".^[56] Alternatively, it has also been argued that the claim that Marshall "strove" to create a controversy largely vanishes when the case is viewed from the legal perspective of the late 18th century when American colonies' and states' supreme courts were largely modeled on England's Court of King's Bench, which inherently possessed *mandamus* powers.^[57]

Second, Marshall's arguments for the court's authority are sometimes said to be merely a "series of assertions", rather than substantive reasons logically laid out to support his position.^[58] Scholars generally agree that Marshall's series of assertions regarding the U.S. Constitution and the actions of the other branches of government do not "inexorably lead to the conclusion that Marshall draws from them."^[58] Marshall's assertion of the American judiciary's authority to review executive branch actions was the most controversial issue when *Marbury* was first decided, and several subsequent U.S. presidents have tried to dispute it, to varying degrees.^[58]

Additionally, it is questionable whether Marshall should have participated in the adjudication of the *Marbury* case, because he had played a role in the underlying dispute.^[17] Marshall was still the acting secretary of state when Adams nominated Marbury and the other "Midnight Judges". He had signed Marbury and the other appointees' commissions and had been responsible for their delivery.^[17] This potential conflict of interest raises strong grounds for Marshall to have recused himself from the case.^[17] In hindsight, the fact that Marshall did not recuse himself from *Marbury* is likely indicative of his eagerness to hear the case and use it to establish judicial review.^[55]

Legacy

Marbury v. Madison is regarded as the single most important decision in American constitutional law.^[1] It established U.S. federal judges' authority to review the constitutionality of Congress's legislative acts,^[9] and to this day the Supreme Court's power to review the constitutionality of American laws at both the federal and state level "is generally rested upon the epic decision of *Marbury v. Madison*."^[59]

Although the court's opinion in *Marbury* established the power of judicial review in American federal law, it did not invent or create it. Some 18th-century British jurists had argued that English courts had the power to circumscribe Parliament.^[60] The idea became widely accepted in Colonial America—especially in Marshall, Jefferson, and Madison's native Virginia—under the theory that in America only the people were sovereign, not the government, and so the courts should only implement legitimate laws.^[61] American courts' "independent power and duty to interpret the law" was well established by the time of the Constitutional Convention in 1787,^[62] and Hamilton had defended the concept in *Federalist No. 78*. In addition, the 1796 Supreme Court case *Hylton v. United States* considered whether a tax on carriages was constitutional, though the court ruled that the statute in question was in fact constitutional and did not actually exercise the power.^[63] Nevertheless, Marshall's opinion in *Marbury* was the Supreme Court's first mention of, and exercise of, that power. It made the practice more routine, rather than exceptional, and prepared the way for the Court's opinion in the 1819 case *McCulloch v. Maryland*, in which Marshall implied that the Supreme Court was the supreme interpreter of the U.S. Constitution.^[64]

Marbury also established that the power of judicial review covers actions by the executive branch—the President and his cabinet members. However, American courts' power of judicial review over executive branch actions only extends to matters in which the executive has a legal duty to act or refrain from acting, and does not extend to matters that are entirely within the President's discretion, such as whether to veto a bill or whom to appoint to an office. This power has been the basis of later important Supreme Court decisions. In its 1974 decision *United States v. Nixon*, for example, the Supreme Court held that President Richard Nixon had to comply with a subpoena to provide tapes of his conversations for use in a criminal trial related to the Watergate scandal, which ultimately led to Nixon's resignation.^[65]

The power of judicial review is a potent check on the other branches of the U.S. government, but federal courts rarely exercised it in early American history. Chemerinsky claims that the Supreme Court did not strike down another federal law until 1857, when it struck down the Missouri Compromise in its now-infamous decision *Dred Scott v. Sandford*, a ruling that contributed to the



The *subpoena duces tecum* (order to bring items as evidence) issued to President Richard Nixon that was the center of the dispute in the 1974 judicial review case *United States v. Nixon*.

outbreak of the American Civil War.^[66] However, American scholar Keith Whittington argues that the Supreme Court was significantly involved in evaluating the constitutionality of federal statutes throughout the first half of the 19th century.^[67]

Notes

- a. The U.S. Constitution originally had new presidents take office in early March, which left a four-month gap between presidential inaugurations and the elections from the previous November. This changed in 1933 with the adoption of the Twentieth Amendment, which moved presidential inaugurations up to January 20 and thereby reduced the period between elections and inaugurations to about two and a half months.
- b. There was a year-long delay in hearing and deciding the case. In retaliation for Adams's appointment of the "Midnight Judges", Jefferson and the new Democratic-Republican-controlled Congress passed a bill that canceled the Supreme Court's 1802 term. This prevented all the court's pending cases, including *Marbury v. Madison*, from being decided until 1803.
- c. Due to illnesses, Justices William Cushing and Alfred Moore did not participate in the Court's decision.

References

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5. Chemerinsky (2019), § 2.2.1, p. 40.
6. Chemerinsky (2019), § 2.2.1, pp. 41–42.
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11. Frankfurter (1955), p. 219
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13. Brest et al. (2018), p. 115.
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37. Chemerinsky (2019), § 2.2.1, p. 45.

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39. Tribe (2000), p. 210; Chemerinsky (2019), § 2.2.1, p. 45.
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External links

- Text of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) is available from: Cornell (https://www.law.cornell.edu/supct/html/historics/USSC_CR_0005_0137_ZS.html) Findlaw (<http://laws.findlaw.com/us/5/137.html>) Justia (<http://supreme.justia.com/us/5/137/case.html>) Library of Congress (<http://cdn.loc.gov/service/ll/usrep/usrep005/usrep005137/usrep005137.pdf>) OpenJurist (<https://openjurist.org/5/us/137>)
- Primary Documents in American History: *Marbury v. Madison* (<https://www.loc.gov/rr/program/bib/ourdocs/marbury.html>) from the Library of Congress
- "John Marshall, *Marbury v. Madison*, and Judicial Review – How the Court Became Supreme" (<https://web.archive.org/web/20130414222336/http://edsitement.neh.gov/lesson-plan/john-marshall-marbury-v-madison-and-judicial-reviewmdashhow-court-became-supreme>) Lesson plan for grades 9–12 from National Endowment for the Humanities
- The 200th Anniversary of *Marbury v. Madison*: The Reasons We Should Still Care About the Decision, and The Lingering Questions It Left Behind (http://writ.news.findlaw.com/commentary/20030224_grossman.html)
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- Case Brief for *Marbury v. Madison* at Lawnix.com (<https://web.archive.org/web/20090125024217/http://www.lawnix.com/cases/marbury-madison.html>)
- The short film *Marbury v. Madison* (1977) (<https://archive.org/details/gov.ntis.AVA02153VNB1>) is available for free viewing and download at the Internet Archive.
- "Supreme Court Landmark Case *Marbury v. Madison*" (<http://landmarkcases.c-span.org/Case/1/Marbury-V-Madison>) from C-SPAN's *Landmark Cases: Historic Supreme Court Decisions*
-  *Marbury v. Madison* (https://librivox.org/search?title=Marbury+v.+Madison&author=&reader=&keywords=&genre_id=0&status=all&project_type=either&recorded_language=&sort_order=catalog_date&search_page=1&search_form=advanced) public domain audiobook at LibriVox

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