

# Judicial Review

As you read, think about the answers to these questions:

- How did the powers of the Supreme Court evolve?
- Why was the case of *Marbury v. Madison* so important?
- What events during and after the Civil War expanded the Supreme Court's power?

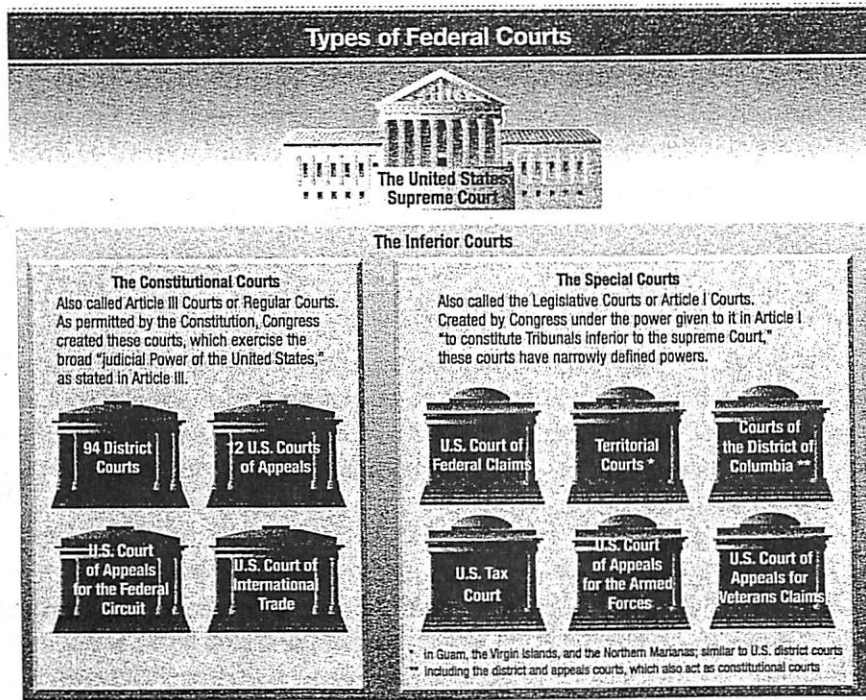
The primary responsibility of the Supreme Court is to judge whether the laws and actions of Congress and the President are administered fairly. This function is known as judicial review, but that term appears nowhere in the Constitution. This important power was developed through interpretation, landmark decisions, and a constitutional amendment.

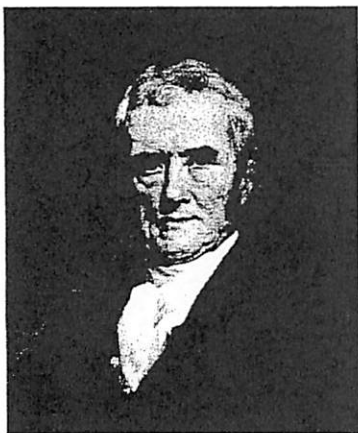
landmark *event or development that marks a turning point*

## Powers Defined Through Interpretation

Article III of the Constitution calls for the establishment of a Supreme Court and other lower federal courts. But like many aspects of the

Article III of the Constitution established the Supreme Court and gave Congress the power to create the lower federal courts.





John Marshall served as the fourth Chief Justice of the Supreme Court. Many landmark cases were decided during his term on the High Court.

*commission* legal document that authorizes a person to perform certain official duties

*writ of mandamus* document that orders a public official to perform certain duties

*precedent* legal decision that serves as a guide for similar cases in the future

Constitution, the meaning of Article III—and its implementation—was left open to interpretation by Congress.

The first Congress passed the Judiciary Act of 1789, establishing the Supreme Court, 3 circuit courts, and 15 district courts. Congress also appointed a Chief Justice and five associate justices to serve on the Supreme Court. Yet the Court's powers were still largely undefined. Through the Court's interpretation of the Constitution in particular cases, its powers were gradually defined. The first three Chief Justices had little impact on the direction of the Court. But the actions of the fourth are still felt today.

## ***Landmark Case Defines Judicial Review***

On February 17, 1801, President John Adams, a member of the Federalist Party, lost his bid for reelection to Thomas Jefferson, a Democratic-Republican. Even before the presidential election was decided by the House of Representatives, it was clear that the Federalists also lost control of Congress. For the few months before the new President and Congress took office, Adams and his party still had control. Adams used that time to take actions that would bolster the Federalist position in government.

***Adams Packs the Courts.*** President Adams persuaded Congress to pass the Judiciary Act of 1801, which gave him the power to appoint new federal judges. Adams appointed 39 new judges who shared his political beliefs and who would likely oppose Jefferson's policies. But at the end of his term, Adams's secretary of state had failed to deliver three of the commissions for the new posts. One of the commissions was for William Marbury.

***Madison Denies Marbury's Commission.*** When Jefferson became President in March 1801, he discovered the undelivered commissions and instructed his secretary of state, James Madison, to refuse the appointments. William Marbury, angry and frustrated, took his case to the Supreme Court in an attempt to gain his post. He asked the Court for a writ of mandamus, forcing Madison to make him a judge.

***Marshall's Ruling.*** Chief Justice John Marshall sympathized with Marbury but ruled that the Judiciary Act of 1789, by which Congress gave the Supreme Court the power to issue a writ of mandamus, was unconstitutional. In Marshall's opinion, Congress could not give the Court this power; only the Constitution could, and that document said nothing about it.

William Marbury never became a federal judge. But the Court's ruling in *Marbury v. Madison* established a very important precedent, which has served as a guide for later cases. Marshall interpreted the Constitution to mean that the Court had the power of judicial review and could overturn laws that it determined to be unconstitutional. Marshall pointed out that the Constitution is the "supreme law of the

land" and that the Supreme Court has the final say over what is, and is not, in accordance with the Constitution.

## ***Court's Power Expanded After the Civil War***

The influence of the Supreme Court was further expanded after the American Civil War. Two important occurrences contributed to the Court's increased authority.

***Ex Parte Milligan.*** In 1866 the Supreme Court made a ruling in the case *Ex parte Milligan*, which means "on behalf of Milligan." Milligan was a northerner who supported the Confederate cause and was accused of encouraging rebellion in Indiana. President Abraham Lincoln issued a military order for his arrest. Milligan's lawyers, however, argued that Lincoln had violated a constitutional protection against unjust arrest and imprisonment.

The Constitution says that during wartime, the federal government can impose military rule and suspend courts' ability to issue writs of habeas corpus. Lincoln had done just that in 1861, when the Civil War erupted. But the Supreme Court ruled that neither the President nor Congress has the right to suspend habeas corpus throughout the United States, unless the whole country is the scene of actual fighting. Milligan's conviction was overturned because there was no fighting in Indiana when he was arrested.

The Court also drew limits on the government's ability to impose military rule. This case further demonstrated that the Supreme Court had the power to judge whether the acts of the executive and legislative branches were constitutional.

***The Fourteenth Amendment.*** In 1868 the states ratified the 14th Amendment, which requires states to obey federal laws. This amendment increased the jurisdiction, or authority, of the Supreme Court. The 14th Amendment had little impact until the 1920's, however, when the Court began to use it to rule on the constitutionality of state laws as well as federal laws.

writ of habeas corpus  
court order requiring the government to release a prisoner unless good cause for imprisonment can be shown

jurisdiction area of authority

### DECLARATION OF INDEPENDENCE

We the Representatives of the United States of America, in Congress assembled, do hereby declare that these United States are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown; and that all political connections between them and that Kingdom are hereby totally dissolved.

That the Declaration of Independence is a solemn and important act, and that it is the duty of every citizen to support and defend it. We therefore do hereby declare that we are united in our support of the Declaration of Independence, and that we are determined to maintain the independence and sovereignty of these United States.

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SECTION

# 1 Review

## 1. Defining Constitutional Terms

Write a brief definition for each of the following terms.

- a. landmark \_\_\_\_\_
- b. commission \_\_\_\_\_
- c. writ of mandamus \_\_\_\_\_
- d. precedent \_\_\_\_\_
- e. writ of habeas corpus \_\_\_\_\_
- f. jurisdiction \_\_\_\_\_

## 2. Reviewing Social Studies Skills: Sequencing Events

The five items below defined and expanded the Supreme Court's power of judicial review. Place them in the order in which they occurred by writing the numbers 1 through 5 in the space provided.

- Ex parte Milligan* \_\_\_\_\_
- 14th Amendment \_\_\_\_\_
- Judiciary Act of 1789 \_\_\_\_\_
- Marbury v. Madison* \_\_\_\_\_
- Judiciary Act of 1801 \_\_\_\_\_

## 3. Reviewing the Main Ideas

Using complete sentences, write a brief answer for each of the following questions.

- a. What does the Constitution say about the Supreme Court's power of judicial review? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. What arguments did John Marshall use to support his opinion in the case of *Marbury v. Madison*?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- c. How did the 14th Amendment increase the power of the Supreme Court? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 4. Critical Thinking Skills: Understanding the Constitution

On a separate sheet of paper, write a brief paragraph to answer the following question.

If the Supreme Court did not have the power of judicial review, how would the balance of power among the three branches of government be affected?