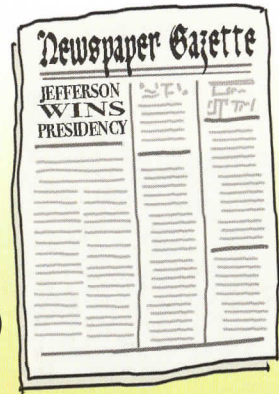


Marbury v. Madison



The Constitution established an independent federal judiciary but left the powers of the Supreme Court—and the lower federal courts—somewhat vague. Through their decisions, the courts ultimately defined and refined their role. Possibly the most important of all Supreme Court cases was *Marbury v. Madison*, which established the power of judicial review.

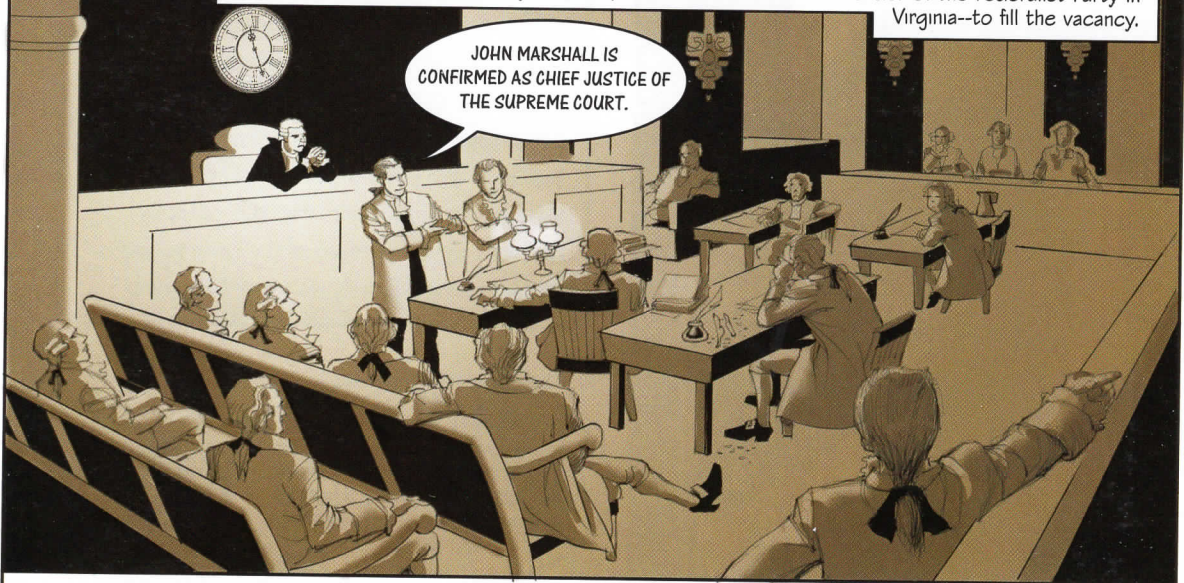
John Adams lost the opportunity to serve a second term as president when Thomas Jefferson won the election in 1800. But just before Adams left office, the position of chief justice of the Supreme Court opened up.



January 21, 1801.

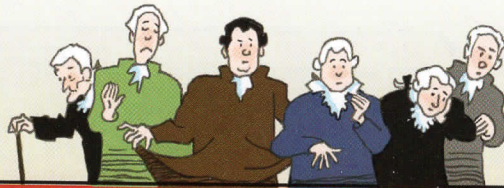
Adams nominated his secretary of state, John Marshall—a former leader of the Federalist Party in Virginia—to fill the vacancy.

JOHN MARSHALL IS CONFIRMED AS CHIEF JUSTICE OF THE SUPREME COURT.



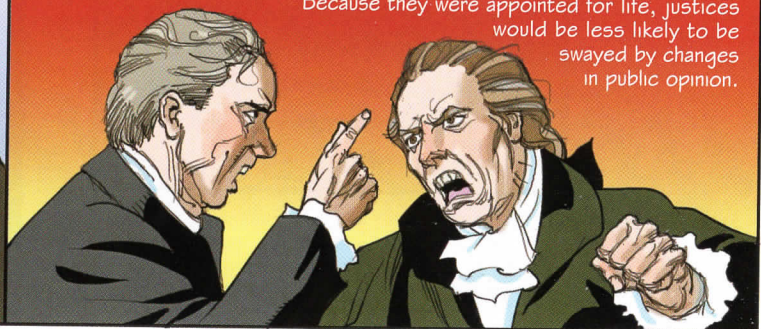
Fair-minded and intellectually agile, John Marshall was proud of his service with General Washington in the American Revolution.

Like Adams, Marshall believed that a strong federal judiciary provided an effective balance to the power of the legislature and the presidency.



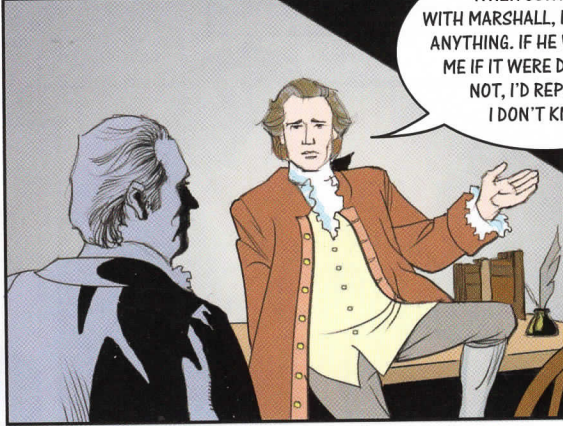
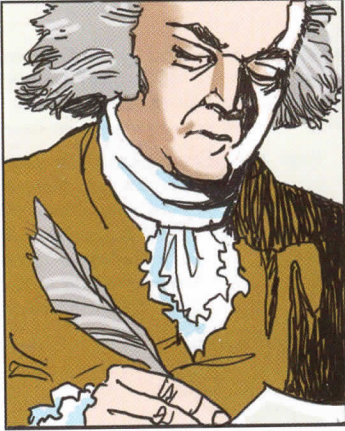
Because they were appointed for life, justices would be less likely to be swayed by changes in public opinion.

He would guide the Supreme Court for 34 years, judging 1,100 cases and writing 519 decisions. Many consider him the greatest chief justice in American history.



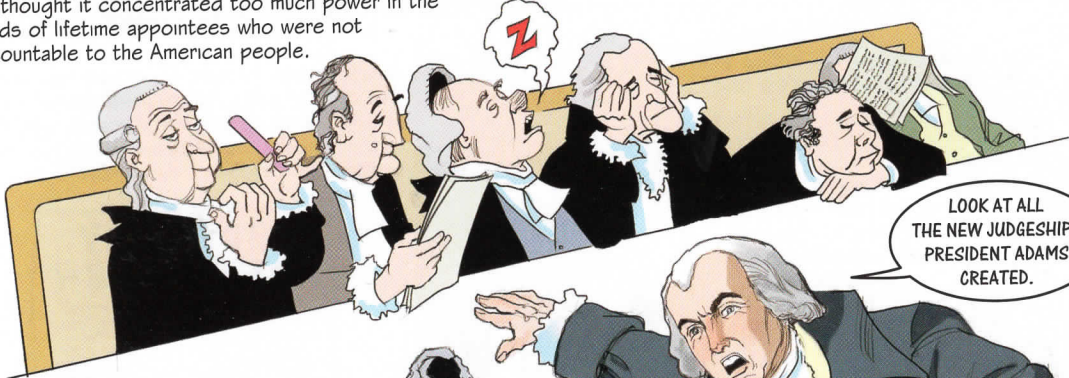
In his final weeks in office, Adams also appointed 42 new district judges. Naturally, they were all Federalists. The Republican press sneered that a desperate Adams had used the last moments of his presidency to appoint these so-called *midnight judges*.

The incoming president, Thomas Jefferson, resented all of Adams's Federalist appointments. He particularly disliked Marshall, his distant cousin, because of the way Marshall could "twist" any argument to his advantage.



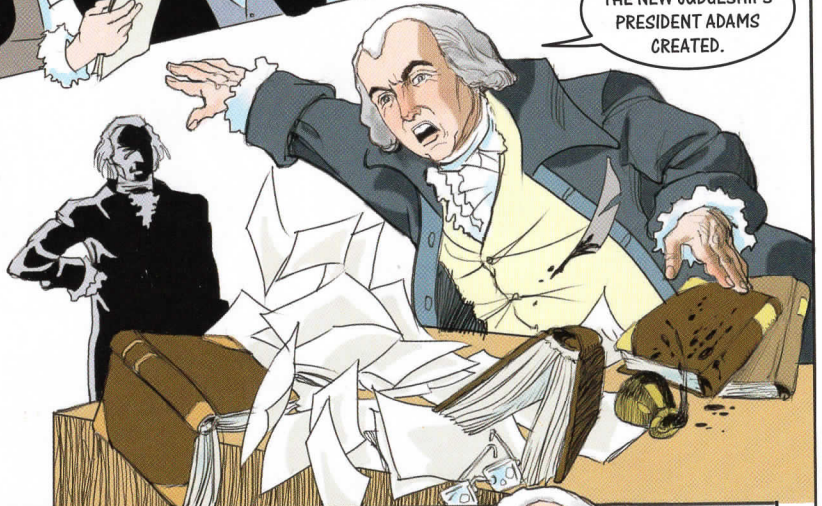
WHEN CONVERSING WITH MARSHALL, I NEVER ADMIT ANYTHING. IF HE WERE TO ASK ME IF IT WERE DAYLIGHT OR NOT, I'D REPLY, "SIR, I DON'T KNOW."

Jefferson was also suspicious of a strong federal judiciary. He thought it concentrated too much power in the hands of lifetime appointees who were not accountable to the American people.



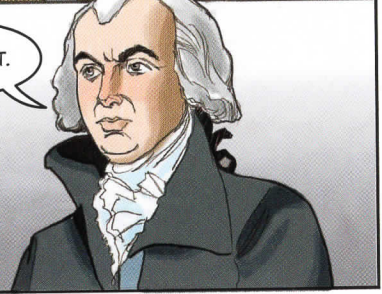
LOOK AT ALL THE NEW JUDGESHIPS PRESIDENT ADAMS CREATED.

Adams signed and sealed the commissions for the new judges, but since most were not delivered, the new secretary of state, James Madison, found many of the commissions still on the desk when he arrived at his office.



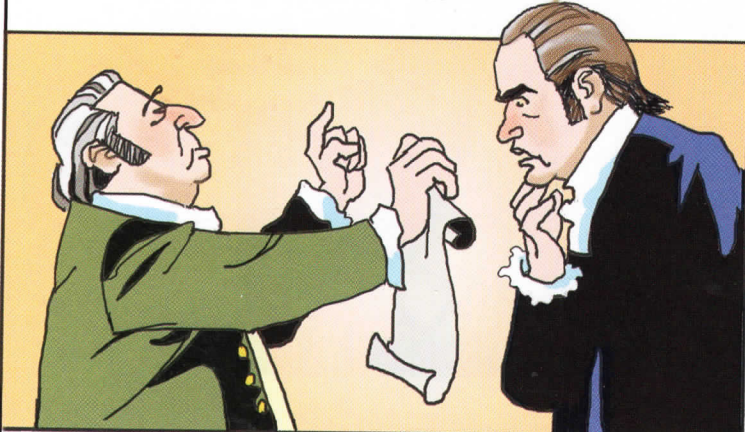
DON'T DELIVER THOSE COMMISSIONS! THEY ARE FEDERAL JUDGESHIPS FOR FEDERALIST JUDGES.

I WON'T.

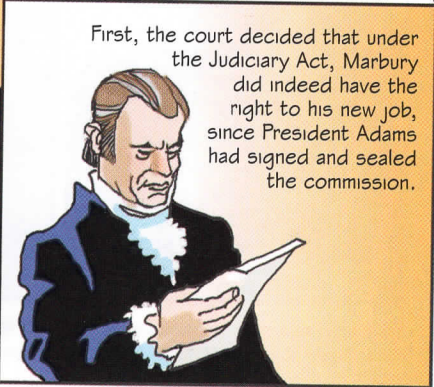


One of the "midnight judges" who did not get his commission was William Marbury, appointed as justice of the peace for the District of Columbia. He petitioned the Supreme Court to force the Jefferson administration to give him his new job.

The Judiciary Act of 1789 said that as an officeholder, Marbury had the right to appeal to the Supreme Court. After all, despite the commission not being delivered, the president had appointed him.



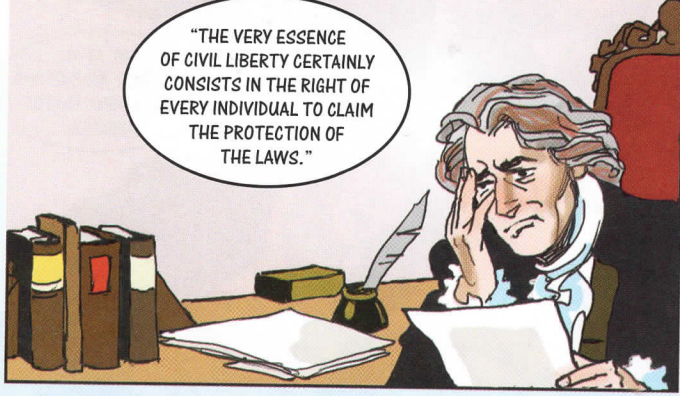
The case was decided by the Supreme Court in February 1803. Chief Justice Marshall wrote a three-part decision.



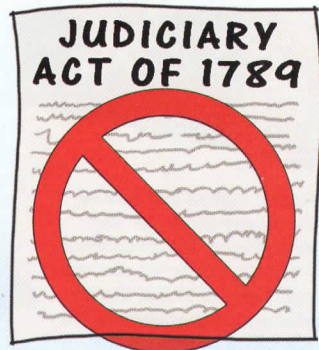
First, the court decided that under the Judiciary Act, Marbury did indeed have the right to his new job, since President Adams had signed and sealed the commission.

Then Marshall lectured President Jefferson about his duty to carry out the law:

"THE VERY ESSENCE OF CIVIL LIBERTY CERTAINLY CONSISTS IN THE RIGHT OF EVERY INDIVIDUAL TO CLAIM THE PROTECTION OF THE LAWS."



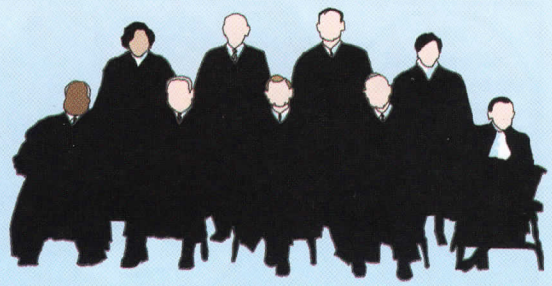
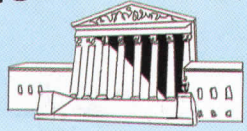
However, the Supreme Court said the Judiciary Act of 1789 was itself unconstitutional because it violated the separation of powers defined in the Constitution. Marbury had no right to petition the Supreme Court directly.

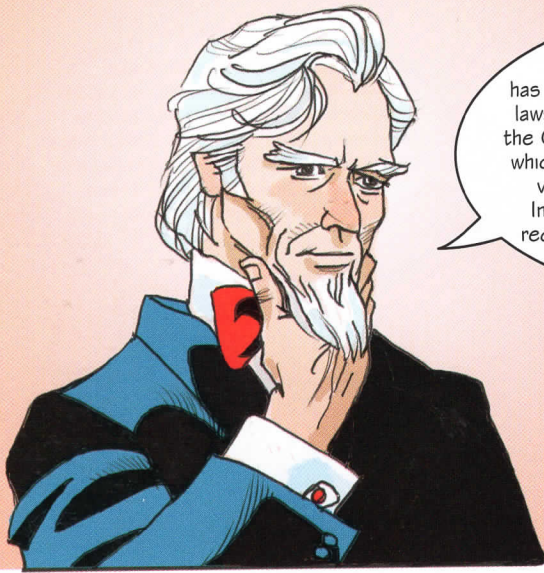


This was the first time the Supreme Court had called a congressional law unconstitutional. *Marbury v. Madison* set an important precedent for *judicial review*. This is the idea that the Supreme Court has the power to determine whether a congressional act or presidential policy has a basis in the Constitution and to overturn it if it does not. Thus the court acts as a check on both the legislative and executive branches of government.



UNCONSTITUTIONAL!



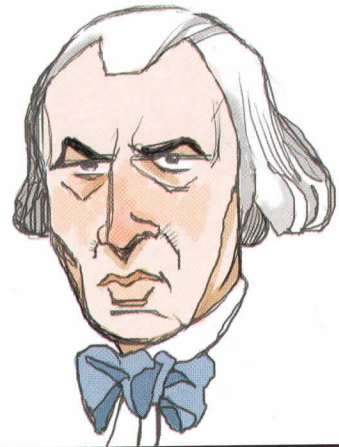


Since 1803, the Supreme Court has often used judicial review to overturn laws. For instance, in 1997 it overturned the Communications Decency Act of 1996, which attempted to protect children from viewing or reading obscenity on the Internet. The court ruled that the law reduced free speech rights guaranteed by the First Amendment.

Marbury v. Madison established the principle of judicial review as a clearly defined power of the Supreme Court to review the constitutionality of all laws, including federal laws. The Supreme Court is the final authority on all such matters.



v.



EXCERPT FROM *MARBURY V. MADISON*

"It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

"So, if a law be in opposition to the Constitution . . . the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law; the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."