

Attachment U: Judicial Review

When it comes to conflicts, someone has to make the final decision. Interestingly, the writers of the Constitution did not determine which of the three branches of government would be the final decision-maker on Constitutional issues. Today, it is firmly established that the Supreme Court of the United States has the power to determine the constitutionality and legality of the acts of the other two branches of government – a concept that is a fundamental characteristic of American government. But this was not always the case.

In *Marbury v. Madison*, decided in 1803, the Supreme Court, for the first time, struck down an act of Congress as unconstitutional. This decision created the doctrine of judicial review and established the Supreme Court of the United States as chief interpreter of the Constitution.

Historians say that the genius of Chief Justice John Marshall's decision is that it established the power of the judicial branch to review the acts of the legislative and executive branches and declare them unconstitutional without creating a constitutional crisis at the time. The Supreme Court's first decision declaring an act of Congress unconstitutional was acceptable because it did two things. In it, the Court recognized that Congress gives the Judiciary certain powers and, at the same time, the Court restricted some of its own authority.

By applying judicial review for the first time with a case that recognized the power of Congress and limited the power of the Court, Chief Justice Marshall successfully established the Supreme Court—not Congress—as the ultimate Constitutional authority without triggering what could have been resistance from the legislative and executive branches.

This skillful handling of a difficult situation established the Judiciary as an independent, equal branch of government. The concept of judicial review is so fundamental to the success and maintenance of American democracy that international delegations of judges and court staff, to this day, study the American Judiciary to learn how they might apply this model in their own countries.

Since *Marbury v. Madison*, the Supreme Court has relied heavily on the precedent set by this case to ensure that government acts comply with the United States Constitution. The decision set the stage for pivotal decisions in every century since the Court handed it down. *Marbury v. Madison* has had an impact on critical decisions regarding issues of race (*Brown v. Board of Education, 1954*); and a presidential election (*Bush v. Gore, 2000*); and many other issues that have an impact on the daily life of every American.

Judicial Review in *Brown v. Board of Education*

Brown v. Board of Education is an important example of the Court using its power to declare the acts of a state government unconstitutional. In this historic case, the Supreme Court declared that racial segregation in public schools was a violation of the Constitution. Specifically, the Court held that the public schools involved in this case violated the Fourteenth Amendment rights of minority children to be treated equally under the law.

Judicial Review in *Bush v. Gore*

The Supreme Court of the United States ruled that the manual re-counts of ballots in Florida should be abandoned because the re-counts were unconstitutional and could not be completed by the December 12, 2000, deadline mandated by federal law. Without the precedent set in *Marbury v. Madison*, the Court would not have had the power to resolve such disputes.

Source: Excerpted from “Two Centuries Later: The Enduring Legacy of *Marbury v. Madison* (1803).” Administrative Office of the United States Courts.