Marbury vs. Madison as a Turning Point in the Rise of the Supreme Court

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Paper

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First and foremost, I would like to thank Dr. Johnson and Dr. Buggeln for their help on the paper.

In my history classes, I've always tried to put a fun twist on historical events and people to help me remember them better. The Hartford Convention was just second-rate villains scheming underground and reappearing just to be defeated relatively easily. The Monroe Doctrine was that noble moment in a movie when a naïve twelve-year-old boy attempts to stop an all-powerful supervillain. When I first learned about *Marbury vs Madison* in my AP US History class, I laughed. In this story, the protagonist (John Marshall), cornered by his enemy (Thomas Jefferson) and on the verge of defeat, suddenly gains a new ability (judicial review) that had previously never been mentioned. This cliché would normally turn me away from a story, but in the case of *Marbury,* the powerful historical implications of a single decision firmly captured my interest. What was it that made this case so significant among the numerous other Supreme Court cases?

To begin my exploration of *Marbury*, I read the forty-four page court case. In the case, John Marshall, the chief justice, explained his reasoning in such a persuasive fashion that the bold assertion of judicial review seemed like an obvious conclusion. Although tedious, Marshall's potent language compelled me to learn more about his character. What brought about such eloquence? I gained an initial understanding of his motivations and background when I read secondary accounts of his upbringing and accomplishments; books like *John Marshall and the Heroic Age of the Supreme Court* recounted the events of Marshall's life and connected those events to his later decisions as chief justice. Then, I looked to primary sources of Marshall's arguments before, during, and after the *Marbury* case to further analyze his way of thinking. Finally, I expanded the scope of my research, looking to gain a broader understanding of the context surrounding *Marbury*. Important ideas here included the Judiciary Act of 1789, the Constitution's clauses on the judicial branch, the Supreme Court prior to Marshall, and the

beliefs of Thomas Jefferson. With an understanding of the moving parts and major conflict of the case, I felt ready to argue that *Marbury* was a significant turning point.

As I wrote my paper, I began to truly grasp the implications of judicial review. Without changing a word of the Constitution, Marshall completely changed the scope of the Supreme Court in a manner that has been timelessly successful. The United States has the liberty it does today because of landmark decisions such as *Brown v Board of Education* using the policy. The Civil Rights movement, women's rights advancements, and healthcare reform all relied on judicial review to affirm and protect rights, showcasing its pivotal role in progressive social changes and justice enforcement. The Supreme Court continues to use its power to serve as a critical check and balance to the other branches of government. This cliché sure has a happy ending.

In 1803, John Marshall faced a difficult decision. Thomas Jefferson, the President of the United States and his enemy, had sworn not to issue the commissions for justices of peace selected by the outgoing John Adams. When William Marbury, one of the justices, inevitably approached the Supreme Court to demand his commission, Marshall found himself caught between standing up to Jefferson and staying loyal to the Federalist party. His subsequent actions in *Marbury vs. Madison* transformed the purpose and power of the Supreme Court, making it an equal branch of government, establishing the influential policy of judicial review, and allowing the Court to utilize the Constitution in landmark legal decisions that shaped the course of the United States.

The Weakest Branch

In the years after the Revolutionary War, the newly formed United States scrambled to put together a functioning nation. Initially, the founders looked to the Articles of Confederation adopted by the Continental Congress during the War. However, the Articles proved to be ineffective; they created a weak central government that lacked the authority to enforce laws, levy taxes, or regulate trade among the states, leading to significant turmoil. Consequently, in 1787, the founding fathers convened to formulate new governance structures, culminating in the Constitution. In the document, however, as Robert McCloskey argues, “weightier difficulties that might have prevented ratification were either left severely alone by the Founding Fathers or treated in ambiguous clauses that passed the problems on to posterity.”[1] Hence, the Constitution, particularly Article III, had many interpretations in the late 18th century, leading to uncertainty regarding the role of the Court. It merely established that "The judicial Power of the United

[1] Robert G. McCloskey, *The American Supreme Court*, 18th ed. (Chicago: University of Chicago Press, 1991), 3.

States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."[2] Many issues, including the number of justices, the formation of the Federal court system, and most importantly, the specific powers of the court, remained unclear.

To address the ambiguity of the Constitution, Congress passed the Judiciary Act of 1789. In conjunction with Article III, the Act established a system of federal trial courts, defined their jurisdiction, and ordained rules for bringing suits. Additionally, it established the number of Supreme Court justices at six. Most notably, this legislation gave the Supreme Court the power to issue "writs of mandamus, in cases warranted by the principles and usages of law, to … persons holding office."[3] A mandamus is an order from a court to a government official ordering them to properly fulfill their official duties or correct an abuse of discretion. Later, this clause would become contentious in *Marbury*.

As a result of early interpretations of the Constitution, the Supreme Court under Chief Justices John Jay and Oliver Ellsworth from 1789 to 1800 accomplished relatively little. In fact, Jay declared when he gave up the chief justiceship that the Court lacked "energy, weight and dignity" to contribute to the nation.[4] While the reasons behind this lethargy were manyfold, including the practice of delivering opinions *seriatim*,[5] the central issue was the Court's refusal to tackle issues deemed "non-judicial" in combination with its conservative definition of issues that were "judicial."[6] For example, when asked for advice by Washington regarding international

[2] U.S. Const. art. III § 2.
[3] Olliver Ellsworth and William Patterson, "An Act to Establish The Judicial Courts of the United States", 1789.
[4] McCloskey, *The American*, 31.
[5] "Seriatim" means making decisions in sequence, so one Justice's opinion affects the others
[6] McCloskey, *The American*, 31.

law with the Neutrality Proclamation of 1793,[7] the Court refused to comment since "'advisory opinions' were inconsistent with the judicial function."[8] Thus, the Court held the view that it should wield limited power, rendering it largely ineffective in its actions.

Still, many early court cases utilized what would later be recognized as judicial review, although they did not fully establish it as judicial doctrine. The idea of increased judicial power emerged during the Revolutionary Era and grew in the Early Republic, where cases of judges interpreting Constitutions were abundant at the district and state levels.[9] For instance, in *Stidger v. Rogers* (1801), the Kentucky Supreme Court struck down a state law that allowed the court, rather than juries only, to ascertain the value of property, declaring it "evidently unconstitutional."[10] In contrast, in *Bowman v. Middleton* (1792), the South Carolina Supreme Court ruled that a legislative act transferring land without trial or compensation violated the *Magna Carta*[11] and was unconstitutional.[12] While *Stidger* cited a direct violation of constitutional law, *Bowman* demonstrates a case where judges used their own understanding of common rights to interpret the state Constitution and the contravening statute. Hence, instances of expansive judicial review existed before *Marbury*, meaning Marshall's decision didn't create a new precedent but rather extended an existing one.

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[7] The Neutrality Proclamation of 1793 declared that the United States would remain neutral in the conflict between France and Great Britain, setting a precedent for American foreign policy by avoiding entanglement in European wars.
[8] McCloskey, *The American*, 32.
[9] Treanor, William Michael. "Judicial Review before 'Marbury.'" Stanford Law Review 58, no. 2 (2005): 455–562.
[10] Stidger v. Rogers, 2 Ky. Decisions 52 (1801).
[11] The Magna Carta was the first written European Constitution. It included many fundamental ideas including the principles of due process, individual liberties, and the notion that the monarch is subject to the law, laying the groundwork for modern constitutionalism and influencing legal systems worldwide.
[12] *Bowman* v. *Middleton*, 1 Bay (S.C.) 252 (1792)

A Child of the Revolution

John Marshall based his thinking on a rich background of Constitutional ideals. Growing up on the frontier in Fauquier County, Virginia, Marshall's education was exceptional relative to his surroundings. His primary education was overseen by his father, Thomas, who placed a high importance on his son's learning.[13] As such, Marshall's upbringing enabled him to develop a broad knowledge base and become an effective reasoner, evident in his later writings. Furthermore, Marshall demonstrated his patriotic sentiments through his participation in the Revolutionary War, where, as he later recalled, he served alongside "brave men from different States who were risking life and everything valuable in a common cause" and he "was confirmed in the habit of considering America as [his] country."[14] He fought on the front lines in several key battles, enduring the harsh winter at Valley Forge and the braving battle of Brandywine. These experiences fostered a deep devotion to America and its government.

After the War, as a successful Richmond lawyer in the early 1780s, Marshall began his involvement in Federalist political circles. He entered the political realm in the Virginia Constitutional ratification convention as the Richmond delegate, where he fought vigorously for ratification.[15] Yet, Marshall was slow to commit fully to politics. In the years before his appointment as Chief Justice, President Washington offered him the positions of District Attorney, Attorney-General, and Minister to France across his presidency, all of which Marshall rejected to continue his prospering legal practice.[16] Only later in 1797 would President Adams be

[13] Leonard Baker, *John Marshall: A Life in Law* (New York: Macmillan, 1974), 14.; Besides his informal education from his father, Marshall received limited formal schooling at Campbell Academy in Virginia, but he significantly enhanced his legal knowledge by studying under the prominent attorney George Wythe at the College of William & Mary (Source: Baker, *John Marshall: A Life in Law*, 17)
[14] James Bradley Thayer and Wallace Mendelsohn, *John Marshall*, 1901 ed. (New York: Da Capo Pr., 1974), 23.
[15] Thayer and Mendelsohn, *John Marshall*, 31.
[16] Thayer and Mendelsohn, *John Marshall*, 30.

able to persuade Marshall to be an envoy to France along with Charles Pinckney and Elbridge Gerry.[17] Marshall was subsequently elected into Congress, chosen as Secretary of State, and finally commissioned as Chief Justice.

A Dilemma and an Opportunity

In 1803, the US Supreme Court faced the pivotal case of *Marbury vs. Madison*, originating from events at the end of John Adams' presidency. After losing the 1800 election to Thomas Jefferson, Adams appointed forty-two Federalist justices of the peace to govern the district, a move seen as an attempt to retain Federalist influence. However, when Jefferson took office, the commissions, neglected by Marshall during his tenure as Secretary of State, were withheld from distribution by his successor, James Madison, under Jefferson's instruction.[18] This decision displeased appointees such as William Marbury, who filed a lawsuit against Madison to obtain his commission via a writ of mandamus in 1801.

A staunch Republican, Jefferson believed in power vested in the people rather than the central government. Naturally, he was disgusted by Adams' appointments, not only because it was an underhanded political maneuver, but also because it expanded the power of the central government. Accusing some Federalists of being "ardent for the introduction of monarchy", Jefferson declared the appointments an "outrage on decency" and swore that they "should not have its effect."[19] Charles Lee, representing Marbury before the Supreme Court in 1803, argued that the law obligated Madison and Jefferson to issue the commission since all required

[17] Thayer and Mendelsohn, *John Marshall*, 32.
[18] It is still a mystery to historians today why Marshall did not deliver these commissions. Some speculate that Marshall had planned to establish judicial review all along, although it is generally agreed upon that this is not true (Source: Thayer and Mendelsohn, *John Marshall*, 32).
[19] Jefferson, Thomas. Letter to Henry Knox, March 27, 1801. Letter. From Library of Congress, *The Thomas Jefferson Papers at the Library of Congress, 1651-1827.*

procedures had been completed.[20] In his petition, Marbury explained, "the said nominations were duly taken into consideration by the Senate, who… were pleased to give their advice and consent that you petitioners should be severally appointed to offices aforesaid. "[21]

When it was time for the decision, *Marbury vs. Madison* gave Marshall a significant political dilemma. As a Federalist, he wanted to ensure the delivery of the commissions to support Federalist political power. However, if the Court issued a writ of mandamus, Jefferson and Madison could simply ignore it, exposing the helplessness of the Court. The case mainly reflected a clash between the judicial and executive branches, as Jefferson sought to weaken the Federalist-dominated Court and solidify Democratic-Republican control.[22] In the released opinion, Marshall considered the case by addressing three questions. These were: "1st. Has the applicant a right to the commission he demands? 2d. If he has a right, and that right has been violated, do the laws of his country afford him a remedy? 3d. If they do afford him a remedy, is it a mandamus issuing from this court?"[23]

In addressing the first two questions, Marshall reached clear conclusions. For the first, he affirmed Marbury's right to his commission, stating, "if [Marbury] has been appointed…he is entitled to the possession of those evidences of office."[24] He supported Marbury's rightful appointment by referencing the president's role in appointing government officers and concluded that, with President Adams having signed the commission and the official seal of the United States affixed,[25] the appointment was legitimate, making its withholding illegal. Regarding the

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[20] *Marbury v. Madison*, 146.
[21] William Marbury, Robert Townsend Hooe, and Dennis Ramsay, Petition to the Senate, 1803.
[22] R. Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court* (Baton Rouge: Louisiana State University Press, 2001), 146.
[23] *Marbury v. Madison*, 154.
[24] *Marbury v. Madison*, 154.
[25] *Marbury v. Madison*, 145.

second question, Marshall recognized Marbury's entitlement to a remedy for his rights being infringed, emphasizing that it fell within the judiciary's purview to identify the appropriate remedy. He supported his stance by citing the government's responsibility to safeguard individuals against rights violations.[26] Thus, Marshall framed Madison's duty as legal, not merely political.

The third question of whether Marbury was entitled to a writ of mandamus required more deliberation. Initially, Marshall argued that in theory, a mandamus would be the appropriate solution to mandate the delivery of the commissions. Acknowledging that the Court should not "intrude into the cabinet" or "intermeddle with the prerogatives of the executive"[27], Marshall used his previous reasoning that this was a case involving the rights of an individual, meaning that Madison's office did not exempt him from punishment. Here, however, Marshall chose to go in a different direction**.** He determined that Section 13 of the Judiciary Act of 1789, which granted the Supreme Court the power to issue writs of mandamus in cases like Marbury's, exceeded the bounds set by the Constitution for the Court's original jurisdiction. He argued that the Constitution did not authorize the Supreme Court to issue such orders directly to executive officials as part of its original jurisdiction. Thus, by declaring this provision unconstitutional, Marshall established the principle of judicial review, affirming the Supreme Court's authority to invalidate laws that conflict with the Constitution.

Many scholars have noticed that Marshall's argument in this instance is shaky. For example, he directly altered the words of Article III, which states, "the supreme Court shall have original jurisdiction," to argue that issuing a mandamus must be "an exercise of appellate

[26] *Marbury v. Madison*, 159-170.
[27] *Marbury v. Madison*, 160.

jurisdiction."[28] Furthermore, the first Congress in 1789 believed the Supreme Court's original jurisdiction, as granted by the Constitution, was not exclusive and could be expanded, suggesting that Congress had the authority to include the issuing of writs of mandamus directly under its original jurisdiction.[29] Therefore, Marshall seemed to go out of his way, making arguments "on very dubious grounds,"[30] to establish judicial review.

Yet, the decision in *Marbury v. Madison* ingeniously allowed Marshall to navigate a delicate political dilemma. By ruling that the Supreme Court did not have the authority to issue a writ of mandamus due to the unconstitutionality of Section 13, Marshall avoided a direct confrontation with Jefferson's administration, which might have simply ignored the Court's order, thereby weakening the judiciary's authority. Simultaneously, Marshall affirmed the legal principle that Marbury was entitled to his commission, allowing him to align with Federalist views. This judicious balance upheld the Court's integrity and independence while establishing judicial review, a power that significantly enhanced the judiciary's role in American government without directly challenging the executive branch or alienating Federalist supporters.[31]

After *Marbury*

The establishment of judicial review in *Marbury vs Madison* led to a continued debate between Republican and Federalist viewpoints. Jefferson, the most prominent critic, echoed

[28] Winfield H. Rose, "Marbury v. Madison: How John Marshall Changed History by Misquoting the Constitution," PS: Political Science and Politics 36, no. 2 (2003): 209.
[29] Rose, Winfield H. "Further Thoughts on 'Marbury v. Madison.'" *PS: Political Science and Politics* 37, no. 3 (2004): 393
[30] Rose, "Further Thoughts on 'Marbury v. Madison,'" 393.
[31] Kramer, Larry. "Understanding Marbury v. Madison." *Proceedings of the American Philosophical Society* 148, no. 1 (2004): 14–26..

many of the complaints of other Republicans. He denounced the “twistifications in the case of Marbury,”[32] bemoaning, “The Constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please.”[33] Marshall's decision expanded Supreme Court and national government power, but Jefferson maintained that "the people are the only proper judges of violations of constitutional authority.”[34] Despite his vehement objections, Jefferson ultimately had to concede to the enduring principle of judicial review.

Though Marshall did not issue an immediate public defense of his decision at the time, he continually defended judicial review and the extension of federal power in the years ahead. In 1819, writing under the pseudonym “A Friend of the Constitution”, Marshall described the judicial branch to be “necessary to the very existence of the government” because “Great constitutional questions are unavoidably brought before this department, and its decisions must sometimes depend on a course of intricate and abstruse reasoning.”[35] Marshall's defense crucially addressed Early Republic debates over federal and states' rights, while asserting the judiciary's balancing role. This not only established the Court's authority but also its future as a key mediator in federal power discussions.

The whole power of the Supreme Court still rests on Marbury, and it is now essentially taken as judicial doctrine. For example, in 1954, *Brown v. Board of Education* addressed state

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[32] Jefferson, Thomas. Letter to James Madison, May 25, 1810. Founders Online, National Archives. Original source: *The Papers of Thomas Jefferson, Retirement Series*, vol. 2, 16 November 1809 to 11 August 1810, edited by J. Jefferson Looney, 416–417.
[33] Jefferson, Thomas. "Thomas Jefferson to Spencer Roane, 6 September 1819." Founders Online, National Archives. Original source: *The Papers of Thomas Jefferson, Retirement Series*, vol. 15, 1 September 1819 to 31 May 1820, edited by J. Jefferson Looney, pp. 16–19.
[34] John Marshall, Letter to Joseph Story (1819).
[35] John Marshall, “A Friend of the Constitution No. 1” (1819), 1.

laws on segregated schooling, famously declaring "separate educational facilities are inherently unequal."[36] Specifically, *Brown* reviewed state-mandated segregation policies under the lens of the Equal Protection Clause of the Fourteenth Amendment, challenging the constitutionality of racial segregation in public schools. *Marbury* provided the legal precedent for the Court in *Brown* to assertively interpret the Constitution, allowing it to make a transformative decision by mandating the desegregation of public schools.

Today, the US Supreme Court hears scores of cases each year, many of which review the Constitutionality of laws and shape the country. The cases that arguably matter the most and get the most publicity are the ones involving judicial review, and Americans now turn to the Court for verdicts on crucial issues such as gun rights and abortion. *Marbury v. Madison* started as a contortive political dance, but it proceeded to change the course of American history. In the words of Professor J.A.C. Grant, “Nothing remains of *Marbury v. Madison,* except its influence. Everything else has been whittled away. But its influence continues to grin at us from the Cimmerian darkness like the disembodied smile of the Cheshire cat.”[37]

[36] Brown v. Board of Education, 347 U.S. 483 (May 17, 1954).
[37] Rose, "Further Thoughts on 'Marbury v. Madison,'" 395.

Bibliography

Primary Sources

Bowman v. Middleton, 1 Bay (S.C.) 252 (1792).

This is a case heard by the South Carolina Supreme Court before *Marbury*. It was one of the early instances of judicial review. I used this source as an example to demonstrate the existence of judicial review prior to *Marbury*.

Brown v. Board of Education, 347 U.S. 483 (May 17, 1954).

This source is the *Brown v Board of Education* original court case, which declared separate public schools for black and white students unconstitutional. I used this case to demonstrate notable uses of judicial review in history.

Ellsworth, Olliver, and Patterson, William. 1789. *An Act to Establish the Judicial Courts of the United States*.

This source is the Judiciary Act of 1789, which established the court system in the United States and contained a clause allowing the Supreme Court to issue writs of mandamus. Since the writ of mandamus clause was what Marshall determined to be unconstitutional, I needed to reference this act as background information.

Hamilton, Alexander. “The Federalist No. 78, [28 May 1788].” Founders Online, National Archives.

This source is a part of the “Federalist Papers” written by Alexander Hamilton, John Jay, and James Madison. Federalist 78&81 contain excerpts of Hamilton arguing for the expansion of judicial power. I learned from this source that ideas of judicial review were circulating to an extent during the drafting of the Constitution.

Harper v. Virginia Board of Elections, 383 U.S. 663 (Mar. 24, 1966).

This source is the *Harper v Virginia Board of Elections* original court case, which invalidated the use of poll taxes in state elections. I encountered this case when searching for influential cases utilizing judicial review, and I thought it made a good example.

Jefferson, Thomas. "Thomas Jefferson to Spencer Roane, 6 September 1819." Founders Online, National Archives. Original source: *The Papers of Thomas Jefferson, Retirement Series*, vol. 15, 1 September 1819 to 31 May 1820, edited by J. Jefferson Looney, pp. 16–19. Princeton: Princeton University Press, 2018. https://founders.archives.gov/documents/Jefferson/03-15-02-0014.

This source is a letter from Thomas Jefferson to Spencer Roane (a staunch critic of Marshall), in which Jefferson, referencing *Marbury*, criticizes the judiciary for acting beyond its powers and taking sole control of interpreting the Constitution. I use this source to show criticisms *Marbury* in the years after its release.

Jefferson, Thomas. Letter to Henry Knox, March 27, 1801. Letter. From Library of Congress, *The Thomas Jefferson Papers at the Library of Congress, 1651-1827.* http://hdl.loc.gov/loc.mss/mtj.mtjbib009904

This source is a letter from Thomas Jefferson to Henry Knox prior to the *Marbury* decision, in which Jefferson gives his point of view on Adams' appointment of midnight justices and swears not to acknowledge the appointees. I use this source to demonstrate Jefferson's opposition to Marbury's appointment and to explain his reasoning behind his refusal to deliver the commissions.

Jefferson, Thomas. Letter to James Madison, May 25, 1810. Founders Online, National Archives. Original source: *The Papers of Thomas Jefferson, Retirement Series*, vol. 2, 16 November 1809 to 11 August 1810, edited by J. Jefferson Looney, 416–417. Princeton: Princeton University Press, 2005. https://founders.archives.gov/documents/Jefferson/03-02-02-0362.
This source is a letter from Thomas Jefferson to James Madison in 1810, where he briefly mentions the "twistifications in the case of Marbury". I thought this was a nice quote to illustrate Jefferson's point of view on Marshall's reasoning in the case.

Kaminski, John P., Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber, and Margaret A. Hogan, eds. *The Documentary History of the Ratification of the Constitution Digital Edition*. Charlottesville: University of Virginia Press, 2009. Original Source: Ratification by the States, Volume X: Virginia, No. 3.

This is a document containing Marshall's arguments during the 1788 Virginia Ratification Convention for the Constitution. Here, Marshall speaks extensively on the benefits of the Constitution, rebutting several claims made earlier in the convention and showcasing his strong reasoning skills. I thought this source was a good way to get to know Marshall's way of thinking and why he was such a staunch Federalist.

Marbury v. Madison, 5 U.S. 137 (Feb. 1803).

This source is the original court case of *Marbury vs Madison*. It contains a description of the dispute over William Marbury's commission as Justice of the Peace and the subsequent denial of its delivery by Madison. Then, the document contains Marshall's decision, including his reasoning on why Marbury deserved his commission, why a writ of mandamus was appropriate, why the Judiciary Act of 1789 was unconstitutional, and why judicial review should be part of the jurisdiction of the Supreme Court. I reference the court case extensively to explain how Marshall arrived at his ultimate decision and what specifically the decision was.

Marshall, John. "A Friend of the Constitution No. 1." In *The Papers of John Marshall Digital Edition*, edited by Charles Hobson. Vol. 8, Correspondence, Papers, and Selected Judicial Opinions, March 1814–December 1819. Charlottesville: University of Virginia Press, Rotunda, 2014.

This source is Marshall's defense of judicial review and federal power in response to criticisms of his decisions. I used this source for more information on Marshall's Federalist way of thinking.

Stidger v. Rogers, 2 Ky. Decisions 52 (1801).

This is an early case heard by the Kentucky Supreme Court before *Marbury* that used judicial review. I used this source as an example to demonstrate the existence of judicial review prior to *Marbury*.

U.S. Const. art. III section 2.

This is the section of the Constitution regarding the jurisdiction of the Supreme Court. I reference this to show that there is no information directly granting the Court the power to interpret the Constitution, but also that the ambiguity in the language allows for judicial review's existence.

Secondary Sources

Alstyne, William W. van, and John Marshall. "A Critical Guide to Marbury v. Madison." *Duke Law Journal* 1969, no. 1 (1969): 1–47. https://doi.org/10.2307/1371456.

This source is an article that analyzes *Marbury vs Madison*, and it addresses key questions such as whether a Secretary of State was answerable in court for the conduct of his office and whether the Court could countermand a presidential decision respecting subordinate appointments. I read this source to get a better understanding of the complexities behind the case and why Marshall makes the claims that he does.

Baker, Leonard. *John Marshall: A Life in Law*. New York: Macmillan, 1974.

This is a book on the full life of John Marshall, including his upbringing, service in the Revolutionary War, practice as a lawyer, and accomplishments as a judge. I mostly used this book to learn the chronology of Marshall's life before he became Chief Justice and what allowed him to be an effective leader.

Beard, Charles A. *The Supreme Court and the Constitution*. Classics in History Series. Englewood Cliffs, N.J.: Prentice-Hall, 1962.

This is a book on the history of the Constitution and the Supreme Court. It has a significant amount of information on the ideas of judicial control and judicial power, so I used it to learn about their emergence and existence prior to Marshall.

Cooper, Ryan. "The Case Against Judicial Review." *The American Prospect*, July 11, 2022. https://prospect.org/justice/the-case-against-judicial-review/.

This is a modern-day opinion piece on why judicial review should not exist. I use this to briefly mention that the policy has its issues.

Hoffer, Peter Charles, Williamjames Hoffer, and N. E. H Hull. *The Supreme Court: An Essential History*. Lawrence, Kan.: University Press of Kansas, 2007.

This is a book on the history of the Supreme Court, from its creation to the modern day. I used this book to learn about the pre-Marshall Court under John Jay and Oliver Ellsworth and why it was ineffective.

Kramer, Larry. "Understanding Marbury v. Madison." Proceedings of the American Philosophical Society 148, no. 1 (2004): 14–26. http://www.jstor.org/stable/1558241.

This source analyzes Marshall's reasoning throughout the case, including where he borrowed from previous ideas and his goal of responding to the political climate of the time. I learned a lot about the political nature of the case from this source, and used that information to explain why Marshall chose to go in the direction he did.

McCloskey, Robert G. *The American Supreme Court*. 18th ed. Chicago: University of Chicago Press, 1991.

This book is a general history of the Supreme Court with good information on its early development and how Marshall shaped the Court with the expansion of judicial power. I used this source mostly to describe the court before Marshall.

Newmyer, R. Kent. *John Marshall and the Heroic Age of the Supreme Court*. Baton Rouge: Louisiana State University Press, 2001.

This is a book specifically about John Marshall's influence on the Supreme Court. It has a chapter on law and politics in the 1790s, which I used to gain a better understanding of the political situation in the time period overall.

Roche, John P., ed. *John Marshall: Major Opinions and Other Writings*. The American Heritage Series. Indianapolis, IN: Bobbs-Merrill Company, 1967.

This is a collection of major speeches and writings by Marshall throughout his life, in the form of a book with minimal narration. This book was helpful because it saved me a lot of time looking for primary sources from Marshall and highlighted his most influential arguments.

Rose, Winfield H. "Further Thoughts on 'Marbury v. Madison.'" PS: Political Science and Politics 37, no. 3 (2004): 391–95. http://www.jstor.org/stable/4488850.

This source challenges Marshall's reasoning in *Marbury*, pointing out many weaknesses in his argument. I learned about why Marshall's argument was perhaps a stretch, but more importantly, why it had to be that way.

Thayer, James Bradley, and Wallace Mendelsohn. *John Marshall*. 1901 ed. New York: Da Capo Pr., 1974.

This is a book about the life of John Marshall, with a helpful amount of information on his upbringing. Hence, I used this book to learn about Marshall's upbringing.

Treanor, William Michael. "Judicial Review before 'Marbury.'" Stanford Law Review 58, no. 2 (2005): 455–562. http://www.jstor.org/stable/40040272.

This source is a comprehensive overview of all instances of judicial review prior to *Marbury* at the district, state, and federal level. I used this source to find court cases and examples of early judicial review.

White, G. Edward. "The Constitutional Journey of 'Marbury v. Madison.'" *Virginia Law Review* 89, no. 6 (2003): 1463–1573. https://doi.org/10.2307/3202396.

This is an academic article on the full journey of *Marbury vs Madison*, with a section titled "Reactions to Marbury". I used this section to describe the scope of reactions to Marbury in the immediate aftermath of the decision.