

Marbury v Madison (1803)



Background Information:

With the election of 1800, for the first-time political parties played an active role in American government. The Federalists supported President John Adams while the Republicans supported Vice President Thomas Jefferson. Each party had its own agenda, based on different governing philosophies and different viewpoints about the Constitution.

In the election, the Federalists lost the presidency and control of both houses of Congress. The only branch of government in which they could exercise any power was the judiciary. Understanding this, the Federalists worked out a strategy to strengthen their hold on the federal courts. Presidential inaugurations were then in March, giving the “lame duck” Federalists several months. [lame duck refers to office holders who have not been re-elected and so serve the remainder of their term in office with little backing or authority].

The series of events and the case

Before the inauguration and the start of the new Republican-dominated Congress, the Federalist Congress passed the Judiciary Act of 1801, which created 62 new judgeships. John Adams (the outgoing President) quickly filled the new jobs with avid Federalists, and the Senate approved his appointments. Late into the night of March 3, 1801, Adams was still signing the commissions of these last-minute nominations. They were sealed with the Seal of the United States by the outgoing Secretary of State and were then delivered to the new officials by a State Department clerk. Because of the last-minute rush, not all the commissions could be delivered before Jefferson took office as President on March 4, 1801.

When he learned about the commissions of the “midnight judges,” as they were called, Jefferson angrily ordered the commissions withheld. One of the late commissions was for William Marbury, who had been named as a justice of the peace in the District of Columbia. Marbury refused to be denied his job. He convinced three others to accompany him to the State Department, but he was still refused his commission. Marbury then turned to the United States Supreme Court and petitioned it for a writ of mandamus, which would order the new Secretary of State, James Madison, to deliver the commission or show just cause for not doing so. [writ of mandamus is a court order requiring a government official to carry out his or her official duty].

Marbury's petition resulted in one of the most significant decisions in the history of the Supreme Court.

The issue before the Court: Should the Court issue a writ of mandamus ordering the Secretary of State to deliver commissions to Marbury and the others who had been denied?

The Supreme Court, by a unanimous vote, turned down Marbury's request for the court order. Although justices agreed that Marbury was legally entitled to the commission, the Court would not order the Secretary of State to give it to him. Why not?

Writing for the Court, **Chief Justice John Marshall** explained the position:

"Mr. Marbury, then, since his commission was signed by the President, and sealed by the Secretary of State, was appointed....To withhold his commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right".

The question was not Marbury's right to have the job, but the Court's own constitutional authority. The case had created a dilemma for the court.

On the one hand, if the Court ruled in favor of Marbury and issued the writ, the new administration under Jefferson most likely would ignore it. That would make the Supreme Court look weak, emphasizing the fact that the Court had no way to enforce its decisions. For that, it had to rely on the executive branch – the people to whom the order applied.

On the other hand, deciding not to issue the writ also would make the Court look weak. It would appear as if the Court were avoiding its duty by giving in to the executive branch.

How could the Court disentangle itself from such a treacherous decision? Marshall turned to the Constitution itself to point out that it did not give the Court original jurisdiction in a case like this:

"The Constitution vests the whole judicial power of the United States in one Supreme Court, and such inferior courts as Congress shall from time to time, ordain and establish....In the distribution of this power its is declared that 'the Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction.'....To enable the Court, then, to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction."

[Appellate Jurisdiction is the right of a court to hear a case "on appeal" after the original court has acted].

Since Marbury's case had not come from a lower court, the Supreme Court could not act, Marshall said. In addition, its power to issue such writs to public officers came from an Act of Congress, not the Constitution. In structuring the federal courts, Congress had passed the Judiciary Act of 1789, which gave the Supreme Court expanded original powers beyond the Constitution. In following this line of reasoning, Marshall was then faced with the question of what to do about an act of Congress that violated the Constitution.

His explanation established an important principle:

“...there is no middle ground. The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part....be true, then a legislative act contrary to the Constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of people, to limit a power in its nature illimitable....”

“It is emphatically the province and duty of the judicial department to say what the law is....So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case....the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty....”

“Thus the particular phraseology [wording] of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant [revolting] to the Constitution is void....”

The long-term significance of this case was Marshall’s use of the Constitution to give the Supreme Court the power of judicial review, even though that was not the original issue. While the justices agreed that Marbury was entitled to his court order, the act of Congress that would allow them to issue it went beyond the Constitution. It was the first time the Court openly declared an act of Congress unconstitutional and claimed the right to be the final authority on the meaning of the U.S. Constitution. Judicial review was not used again by the Court in regard to Congress for another 54 years, but in the twentieth century it became a powerful tool for influencing public policy.

Elements of the Case

1. Issue: Should the Court issue a writ of mandamus ordering the Secretary of State to deliver the commission to Marbury and others?
2. Marbury contended he was entitled to his commission because (a) the Senate had approved the commission, (b) President Adams had signed it, and (c) the Secretary of State had placed the seal of the United States on it. Madison, the new Secretary of State, contended that he was entitled to withhold the commission because it had not been delivered.
3. By unanimous vote the Court rejected Marbury’s petition. They agreed that he was entitled to his commission and that a court could order it but argued that the Supreme Court did not have the right to issue such an order. Their power to do so came from an act of Congress that was unconstitutional.
4. The Supreme Court, for the first time, declared an act of Congress void on the grounds that it violated the Constitution. The decision established the U.S. Supreme Court as the final authority on the meaning and interpretation of the Constitution.

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