


Marbury v. Madison

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Marbury v. Madison, 5 U.S. (1 Cranch) 137

Marbury v. Madison	
	
Supreme Court of the United States	
Argued February 11, 1803 Decided February 24, 1803	
Full case name	<i>William Marbury v. James Madison, Secretary of State of the United States</i>
Citations	5 U.S. 137 (http://supreme.justia.com/us/5/137/case.html) (<i>more</i>) 1 Cranch 137; 2 L. Ed. 60; 1803 U.S. LEXIS 352
Prior history	Original action filed in U.S. Supreme Court; order to show cause why writ of mandamus should not issue, December 1801
Subsequent history	None
Holding	
Section 13 of the Judiciary Act of 1789 is unconstitutional to the extent it purports to enlarge the original jurisdiction of the Supreme Court beyond that permitted by the Constitution. Congress cannot pass laws that are contrary to the Constitution, and it is the role of the Federal courts to interpret what the Constitution permits.	
Court membership	
Chief Justice John Marshall	
Associate Justices William Cushing • William Paterson Samuel Chase • Bushrod Washington Alfred Moore	
Case opinions	
Majority	Marshall, joined by Paterson, Chase, Washington
	Cushing and Moore took no part in the consideration or decision of the case
Laws applied	
U.S. Const. arts. I, III; Judiciary Act of 1789 § 13	

(<http://supreme.justia.com/us/5/137/case.html>) (1803) is a landmark case in United States law. It formed the basis for the exercise of judicial review in the United States under Article III of the Constitution.

This case resulted from a petition to the Supreme Court by William Marbury, who had been appointed by President John Adams as Justice of the Peace in the District of Columbia but whose commission was not subsequently delivered. Marbury petitioned the Supreme Court to force Secretary of State James Madison to deliver the documents, but the court, with John Marshall as Chief Justice, denied Marbury's petition, holding that the part of the statute upon which he based his claim, the Judiciary Act of 1789, was unconstitutional.

Marbury v. Madison was the first time the Supreme Court declared something "unconstitutional", and established the concept of judicial review in the U.S. (the idea that courts may oversee and nullify the actions of another branch of government). The landmark decision helped define the "checks and balances" of the American form of government.

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Background of the case



William Marbury

In the presidential election of 1800, Thomas Jefferson defeated John Adams, becoming the third President of the United States. Although the election was decided on February 17, 1801, Jefferson did not take office until March 4, 1801. Until that time, outgoing president Adams and the Federalist-controlled 6th Congress were still in power. During this lame-duck session, Congress passed the Judiciary Act of 1801. This Act modified the Judiciary Act of 1789 in establishing ten new district courts, expanding the number of circuit courts from three to six, and adding additional judges to each circuit, giving the President the authority to appoint Federal Judges and Justices of the Peace. The act also reduced the number of Supreme Court Justices from six to five, effective upon the next vacancy in the Court.^{[1][2]}

On March 3, just before his term was to end, Adams, in an attempt to stymie the incoming Democratic-Republican Congress and administration, appointed 16 Federalist circuit judges and 42 Federalist Justices of the Peace to offices created by the Judiciary Act of 1801. These appointees, the infamous "Midnight Judges", were all located in the Washington and Alexandria area.^[citation needed] One of them was William Marbury, a native of Maryland and a prosperous financier. An ardent Federalist, Marbury was active in Maryland politics and a vigorous supporter of the Adams presidency.^[citation needed] He had been appointed to the position of Justice of the Peace in the District of Columbia. The term for a Justice of the Peace was five years, and they were "authorized to hold courts and cognizance of personal demands of the value of 20 dollars".^[3]

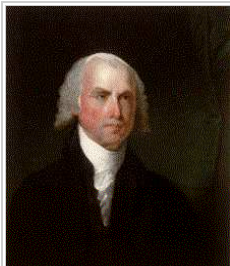
On the following day, the appointments were approved *en masse* by the Senate; however, to go into effect, the commissions had to be delivered to those appointed. This task fell to John Marshall, who, even though recently appointed Chief Justice of the United States, continued as the acting Secretary of State at President Adams's personal request.^[citation needed]

While a majority of the commissions were delivered, it proved impossible for all of them to be delivered before Adams's term as president expired. As these appointments were routine in nature, Marshall assumed the new Secretary of State James Madison would see they were delivered, since "they had been properly submitted and approved, and were, therefore, legally valid appointments."^[4] On March 4, 1801, Thomas Jefferson was sworn in as President. As soon as he was able, President Jefferson ordered Levi Lincoln, who was the new administration's Attorney General and acting Secretary of State until the arrival of James Madison, not to deliver the remaining appointments. Without the commissions, the appointees were unable to assume the offices and duties to which they had been appointed. In Jefferson's opinion, the undelivered commissions, not having been delivered on time, were void.^[5]

The newly sworn-in Democratic-Republican 7th Congress immediately set about voiding the Judiciary Act of 1801 with their own Judiciary Act of 1802 which reversed the act of 1801 so that the judicial branch once again operated under the dictates of the original Judiciary Act of 1789. In addition, it replaced the Court's two annual sessions with one session to begin on the first Monday in February, and "canceled the Supreme Court term scheduled for June of that year [1802] ... seeking to delay a ruling on the constitutionality of the repeal act until months after the new judicial system was in operation."^{[6][7]}

Status of the judicial power before *Marbury*

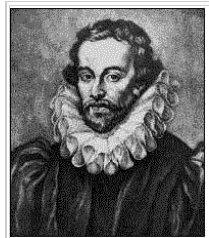
The power of judicial review was created in *Marbury* though the general idea has ancient roots. The idea that courts could nullify statutes originated in England with Chief Justice Edward Coke's 1610 opinion in *Dr. Bonham's Case*, 8 Co. Rep. 107a. That decision arose under a statute of Parliament enabling the London College of Physicians to levy fines against anyone who violated their rules. The College accused a doctor of practicing without a license and fined him accordingly. Coke found that their statutory powers violated "common right or reason" because "no person should be a judge in his own case."^[8]



Secretary of State James Madison was ordered by Jefferson to withhold the commissions.

The U.S. Supreme Court has stated that *Bonham's Case* did not set a precedent in the United States to make common law supreme over statutory law:

[N]otwithstanding what was attributed to Lord COKE in *Bonham's Case*, 8 Reporter, 115, 118a, the omnipotence of parliament over the common law was absolute, even against common right and reason. The actual and practical security for English liberty against legislative tyranny was the power of a free public opinion represented by the commons.^[9]



Sir Edward Coke

The idea that courts could declare statutes void was defeated in England with the Glorious Revolution of 1688, when King James II was removed and the elected Parliament declared itself supreme. However, it continued to be known in the American colonies and in the bars of young states, where Coke's books were very influential. The doctrine was specifically enshrined in some state constitutions, and by 1803 it had been employed in both State and Federal courts in actions dealing with state statutes, but only insofar as the statutes conflicted with the language of state constitutions.^{[10][11]}

Some legal scholars argue that the legal basis and concept of judicial review predate the case, and that *Marbury* merely formalized it. For example, Saikrishna Prakash and John Yoo point out, with respect to the ratification of the Constitution, that "no scholar to date has identified even one participant in the ratification fight who argued that the Constitution did not authorize judicial review of Federal statutes. This silence in the face of the numerous comments on the other side is revealing."^[12]

However, it is important to note that nothing in the text of the Constitution explicitly authorized the power of judicial review, despite persistent fears voiced by Anti-federalists over the power of the new Federal court system.

The concept was also laid out by Alexander Hamilton in Federalist No. 78:

“ If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It, therefore, belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.^[13] ”

Relevant law

“ In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned [within the judicial power of the United States], the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. ”

— U.S. Constitution, Article III, Section 2, Clause 2

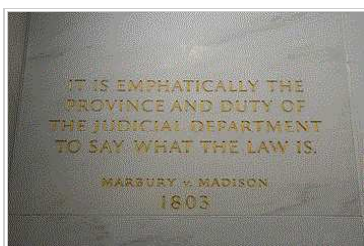
“ The Supreme Court shall also have appellate Jurisdiction from the circuit courts and courts of the several states, in the cases herein after provided for; and shall have power to issue writs of prohibition to the district courts [...] and writs of mandamus [...] to any courts appointed, or persons holding office, under the authority of the United States. ”

— Judiciary Act of 1789, § 13

The issue

There are three ways a case can be heard in the Supreme Court: (1) filing directly in the Supreme Court; (2) filing in a lower federal court, such as a district court, and appealing all the way up to the Supreme Court; (3) filing in a state court, appealing all the way up through the state's highest courts, and then appealing to the Supreme Court on an issue of federal law. The first is an exercise of the Court's original jurisdiction; the second and third are exercises of the Supreme Court's appellate jurisdiction.

Because *Marbury* filed his petition for the writ of mandamus directly in the Supreme Court, the Court needed to be able to exercise original jurisdiction over the case in order to have the power to hear it.



Inscription on the wall of the Supreme Court Building from *Marbury v. Madison*, in which Chief Justice John Marshall outlined the concept of judicial review.

Marbury's argument is that in the Judiciary Act of 1789, Congress granted the Supreme Court original jurisdiction over petitions for writs of mandamus. This raises several issues that the Supreme Court had to address:

- Does Article III of the Constitution create a "floor" for original jurisdiction, which Congress can add to, or does it create an exhaustive list that Congress can't modify at all?
- If Article III's original jurisdiction is an exhaustive list, but Congress tries to modify it anyway, who wins that conflict, Congress or the Constitution?
- And, more importantly, who is supposed to decide who wins?

In its answer to this last question, the Supreme Court formalizes the notion of judicial review. In short, the constitutional issue on which *Marbury v. Madison* was decided was whether Congress could expand the original jurisdiction of the Supreme Court.

The decision

On February 24, 1803, the Court rendered a unanimous (4-0) decision,^[14] that Marbury had the right to his commission but the court did not have the power to force Madison to deliver the commission. Chief Justice Marshall wrote the opinion of the court. Marshall presented the case as raising three distinct questions:

- Did Marbury have a right to the commission?
- Do the laws of the country give Marbury a legal remedy?
- Is asking the Supreme Court for a writ of mandamus the correct legal remedy?

Marshall quickly answered the first two questions affirmatively. He found that the failure to deliver the commission was "violative of a vested legal right."

In deciding whether Marbury had a remedy, Marshall stated: "The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." One of the key legal principles on which *Marbury* relies is the notion that for every violation of a vested legal right, there must be a legal remedy. Marshall next described two distinct types of Executive actions: political actions, where the official can exercise discretion, and purely ministerial functions, where the official is legally required to do something. Marshall found that delivering the appointment to Marbury was a purely ministerial function required by law, and therefore the law provided him a remedy.

A federal court has a "special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review."^[15] If a court does not have the power to hear a case, it will not issue dicta. Consequently, with exceptions not applicable here, a federal court must decide whether it has jurisdiction before discussing the merits of the case.^[16] Chief Justice Marshall, however, did not address jurisdictional issues until addressing the first two questions presented above. Because of the canon of constitutional avoidance (i.e., where a statute can fairly be interpreted so as to avoid a constitutional issue, it should be so interpreted), courts generally deal with the constitutional issues only if necessary. In this case, the jurisdictional issue was a constitutional one.^[17]

In analyzing the third question, Marshall divided the question further, asking if a writ of mandamus was the correct means by which to restore Marbury to his right, and if so, whether the writ Marbury sought could issue from the Supreme Court. Concluding quickly that since a writ of mandamus, by definition, was the correct judicial means to order an official of the United States (in this case, the Secretary of State) to do something required of him (in this case, deliver a commission), Marshall devotes the remainder of his inquiry at the second part of the question: "Whether it [the writ] can issue from this court."

Marshall first examined the Judiciary Act of 1789 and determined that the Act purported to give the Supreme Court original jurisdiction over writs of mandamus. Marshall then looked to Article III of the Constitution, which defines the Supreme Court's original and appellate jurisdictions (see Relevant Law above). Marbury had argued that the Constitution was only intended to set a floor for original jurisdiction that Congress could add to. Marshall disagreed and held that Congress does not have the power to modify the Supreme Court's original jurisdiction. Consequently, Marshall found that the Constitution and the Judiciary Act conflict.

This conflict raised the important question of what happens when an Act of Congress conflicts with the Constitution. Marshall answered that Acts of Congress that conflict with the Constitution are not law and the Courts are bound instead to follow the Constitution, affirming the principle of judicial review. In support of this position Marshall looked to the nature of the written Constitution—there would be no point of having a written Constitution if the courts could just ignore it. "To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?"^[18] Marshall also argued that the very nature of the judicial function requires courts to make this determination. Since it is a court's duty to decide cases, courts have to be able to decide what law applies to each case. Therefore, if two laws conflict with each other, a court must decide which law applies.^[19] Finally, Marshall pointed to the judge's oath requiring them to uphold the Constitution, and to the Supremacy Clause of the Constitution, which lists the "Constitution" before the "laws of the United States." Part of the core of this reasoning is found in the following statements from the decision:

“ It is emphatically the province and duty of the Judicial Department [the judicial branch] 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 [e.g., a statute or treaty] be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that 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. If, then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the Constitution is to be considered in cases as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law [e.g., the statute or treaty].

This doctrine would subvert the very foundation of all written constitutions.^[20] ”

"In denying his request, the Court held that it lacked jurisdiction because Section 13 of the Judiciary Act passed by Congress in 1789, which authorized the Court to issue such a writ, was unconstitutional and thus invalid."^[21] Marbury never became a Justice of the Peace in the District of Columbia.^[22]

Criticism

At the time Jefferson disagreed with Marshall's reasoning in this case, saying that if this view of judicial power became accepted, it would be "placing us under the despotism of an oligarchy."^[23] Jefferson expanded on this in a letter he wrote some 20 years later to Justice William Johnson, whom he had appointed to the court in 1804.^[24]

Some legal scholars have questioned the legal reasoning of Marshall's opinion. They argue that Marshall selectively quoted the Judiciary Act of 1789, interpreting it to grant the Supreme Court the power to hear writs of mandamus on original jurisdiction.^[25] These scholars argue that there is little connection between the notion of original jurisdiction and the Supreme Court, and note that the Act seems to affirm the Court's power to exercise only appellate jurisdiction.^[26] Furthermore, it has been argued that the Supreme Court should



An engraving of Justice Marshall made by Charles-Balthazar-Julien Fevret de Saint-Mémin in 1808.

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