

First, viewed the facts of the case. He stated that Marbury had the right to receive his commission:

To withhold his commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested right.

Second, Marshall analyzed Marbury's legal remedies. He concluded that the Judiciary Act clearly entitled Marbury to the writ of mandamus he requested.

Marshall's third and final question, therefore, was whether the writ of mandamus could be issued by the Supreme Court. Although the Judiciary Act would allow the Court to issue the writ, Marshall was concerned about the Court's authority under Article III, Section 2, Paragraph 2 of the U.S. Constitution, which states:

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 other cases . . . the Supreme Court shall have appellate jurisdiction . . .

If the Court didn't have original jurisdiction—the responsibility for hearing the evidence and making an initial decision—then under the Constitution, Marbury couldn't go directly to it to get his requested writ of mandamus. He would have to go to a federal District Court, and only if he lost there could he then appeal to the Supreme Court under its *appellate* jurisdiction. As Marshall stated:

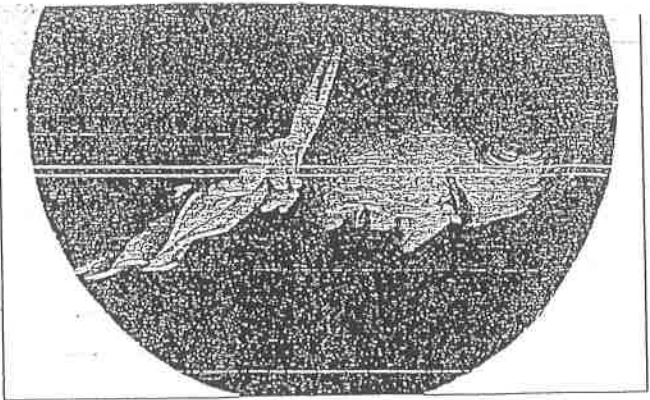
To enable this court, then, to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction . . .

Marshall now addressed the critical question: Would the court use the authority that the Judiciary Act granted it, but that the Constitution denied it, to issue Marbury's writ of mandamus?

Marshall said no, it would not. No act of Congress, including the Judiciary Act, could do something forbidden by the Constitution:

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

Therefore, because the Judiciary Act violated the Constitution, it was unenforceable. Marbury and the others could not get their writ of mandamus from the Court because their petition had been sent to the Court directly, not on



appeal. In declaring the Judiciary Act unconstitutional, Marshall set forth for the first time the doctrine of judicial review. Judicial review means that the federal courts, above all the Supreme Court, have the power to declare laws unenforceable if they violate the Constitution:

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 the rule. If two laws conflict with each other, the courts must decide on the operation of each.

Marshall's decision meant that the Court would not give his fellow Federalist Marbury the writ of mandamus. Nevertheless, it was a brilliant move. In refusing to confront Jefferson, Marshall had asserted a new and potent power for the judiciary, namely the doctrine of judicial review. Despite various issues, such as whether Marshall should have removed himself from the case because of his role as Adams' secretary of state, *Marbury v. Madison* permanently established the principle of judicial review. This power to overturn unconstitutional laws is the basis for the courts' power today to prevent such evils as civil rights violations.

—Stephen G. Christianson

Suggestions for Further Reading

- Daker, Leonard. *John Marshall: A Life in Law*. New York: Macmillan Co., 1974.
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- Beveridge, Albert J. *The Life of John Marshall*. Marietta, Ga.: Cherokee Publishing, 1990.
- Bickel, Alexander M. *The Least Dangerous Branch: the Supreme Court at the Bar of Politics*. New Haven: Yale University Press, 1986.
- Cusack, Michael. "America's Greatest Justice?" *Scholastic Update* (January 1990): 11.
- Ellis, Richard E. *The Jeffersonian Crisis: Courts and Politics in the Young Republic*. New York: Oxford University Press, 1971.
- Levy, Leonard Williams. *Judicial Review and the Supreme Court*. New York: Harper & Row, 1967.
- McHugh, Clare. "The Story of the Constitution: Conflict and Promise." *Scholastic Update* (September 1987): 8–11.
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delivered by the end of March 3. Thomas Jefferson's term began March 4, and he ordered his new secretary of state, James Madison, not to deliver the commissions. Jefferson decided to view the commissions as invalid unless delivered.

Marbury v. Madison: 1803

Plaintiffs: William Marbury, William Harper, Robert R. Hooe, and Dennis Ramsay

Defendant: Secretary of State James Madison

Plaintiff Claim: That Madison had illegally refused to deliver judicial commissions to their rightful recipients

Chief Defense Lawyer: U.S.

Attorney General Levi Lincoln

Chief Lawyer for Plaintiffs: Charles Lee

Justices: Samuel Chase, William Cushing, John Marshall, Alfred Moore,

William Paterson, and Bushrod Washington

Place: Washington, D.C.

Dates of Trial: February 10-11, 1803

Verdict: Plaintiffs could not force Madison to deliver the commissions, because the Judiciary Act of 1789 was unconstitutional.

SIGNIFICANCE

Marbury v. Madison may be the most important case in American history, because it established the principle of judicial review.

In the late 18th century and early 19th century, the two parties dominating the American political scene were the Federalists and the Democratic-Republicans. In the presidential election of 1800, the Electoral College had a tie vote, and it fell to the House of Representatives to decide the outcome. After a bitter battle and 36 ballots, the House voted February 17, 1801 for Democratic-Republican candidate Thomas Jefferson.

The outgoing president, Federalist John Adams, had as his secretary of state the distinguished lawyer John Marshall. In January 1801, Adams secured Marshall's nomination as chief justice of the United States. Marshall was sworn in February 4 but continued to serve as Adams' secretary of state until March 3, when Adams' term ended. Meanwhile, Adams and the Federalists in Congress had been moving to pack the federal judiciary with as many new Federalist judges as possible before the Jefferson administration took power.

As part of the Federalists' efforts to preserve their control over the judiciary, on February 27, 1801, Congress gave Adams the power to appoint justices of the peace for the District of Columbia. On March 2, one day before the end of his term, Adams appointed 42 justices of the peace, and Congress approved the appointments the next day. As secretary of state, Marshall signed and sealed the necessary judicial commissions, but the commissions were not

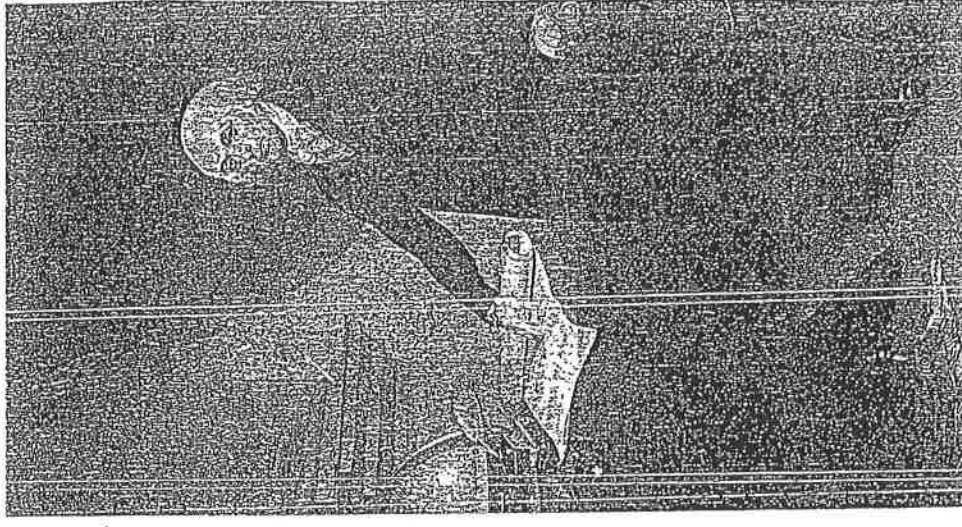
Marbury Goes to Court

Having demonstrated his power, Jefferson ultimately allowed most of the Adams appointees to take their offices. One of the appointees that Jefferson did not allow to take office, William Marbury, filed a petition with the Supreme Court December 16, 1801 requesting that the Supreme Court order Madison to deliver Marbury's commission. Marbury was joined by three other disappointed appointees, William Harper, Robert R. Hooe, and Dennis Ramsay. Of course, by now Marshall had been the chief justice for over nine months. Under the Judiciary Act of 1789, the Supreme Court had the power to issue the order Marbury requested, called a "writ of mandamus."

On December 18, 1801, Marshall ordered a hearing on Marbury's petition, to take place at the Court's next session, the February Term of 1803. The hearing began February 10, 1803. Charles Lee, a Federalist and former attorney general, represented Marbury and the others. Jefferson's attorney general, Levi Lincoln, was present in court as a witness, but not as Madison's lawyer.

Lee argued that Madison, as secretary of state, was not only an official of the executive branch, bound to obey the president, but a public servant obligated to perform his duty and deliver Marbury's lawful commission. Therefore, the Court must exercise its authority under the Judiciary Act to issue a writ of mandamus against Madison. Attorney General Lincoln said practically nothing, except that the issue of the commissions was purely political and thus not subject to the judiciary.

Secretary of State
Madison, defend
Marbury v. Madison
which establishes
principle of judicial
review. (Courtless
of Congress)



Marshall Proclaims the Doctrine of Judicial Review

On February 24, 1803, Chief Justice Marshall issued the Court's opinion. He proceeded in three steps.