Marbury v. Madison

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Marbury v. Madison

Supreme Court of the United States

Argued February 11, 1803
Decided February 24, 1803

Full case name	William Marbury v. James Madison, Secretary of State of the United States
Citations	5 U.S. 137 (more) 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

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 judiciary 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[a] took no part in the consideration or decision of the case.

Laws applied

U.S. Const. arts. I, III; Judiciary Act of 1789 § 13

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), was a U.S. Supreme Court case that established the principle of judicial review in the United States, meaning that American courts have the power to strike down laws, statutes, and some government actions that contravene the U.S. Constitution. Decided in 1803, Marbury remains the single most important decision in American constitutional law. The Court's landmark decision established that the U.S. Constitution is actual "law", not just a statement of political principles and ideals, and helped define the boundary between the constitutionally separate executive and judicial branches of the American form of government.

The case ultimately originated from the rivalry between outgoing U.S. President John Adams and incoming President Thomas Jefferson. Adams had lost the U.S. presidential election of 1800 to Jefferson, and in March 1801, just two days before his term as president ended, Adams appointed several dozen men who supported him and the Federalist Party to new circuit judge and justice of the peace positions in an attempt to frustrate Jefferson and his supporters in the Democratic-Republican Party. The U.S. Senate quickly confirmed Adams's appointments, but upon Jefferson's inauguration two days later, a few of the new judges' commissions still had not been delivered. Jefferson believed the commissions were void because they had not been delivered in time, and instructed his new Secretary of State, James Madison, not to deliver them. One of the men whose commissions had not been delivered in time was William Marbury, a Maryland businessman who had been a strong supporter of Adams and the Federalists. In late 1801, after Madison had repeatedly refused to deliver his commission, Marbury filed a lawsuit in the Supreme Court asking the Court to issue a writ of mandamus forcing Madison to deliver his commission.

The Court, in an opinion written by Chief Justice John Marshall, found firstly that Madison's refusal to deliver Marbury's commission was illegal, and secondly that in general it was proper for a court in such situations to order the government official in question to deliver the commission. However, in Marbury's case, the Court did not order Madison to comply. Marshall examined the law Congress had passed that gave the Supreme Court jurisdiction over types of cases like Marbury's, and found that it had expanded the definition of the Supreme Court's jurisdiction beyond what was originally set down in the U.S. Constitution. Marshall then struck down the law, announcing that American courts have the power to invalidate laws that it found to violate the Constitution. Because this meant the Court had no jurisdiction over the case, it could not issue the writ that Marbury had requested.

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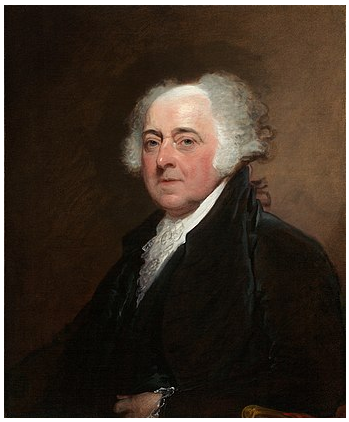
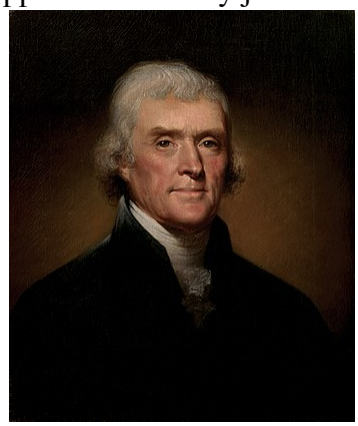
Background



President John Adams, who appointed Marbury just before his presidential term ended.



Thomas Jefferson, who succeeded Adams as President and believed Marbury's undelivered commission was void.

In the fiercely contested U.S. presidential election of 1800, the three major candidates were Thomas Jefferson, Aaron Burr, and John Adams, who was the incumbent U.S. president.[1] Adams was aligned with the politics and policies of Alexander Hamilton and his Federalist Party, while Jefferson and Burr were part of the opposing Democratic-Republican Party. American public opinion had gradually turned against the Federalists in the months prior to the election, mainly due to their use of the Alien and Sedition Acts as well as growing tensions with Great Britain, with whom the Federalists favored close ties.[2] Jefferson easily won the popular vote, but only narrowly defeated Adams in the Electoral College.[b]

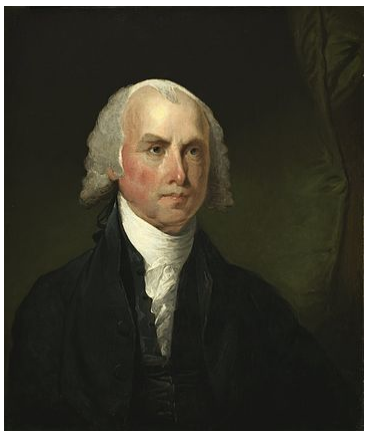
As the results of the election became clear in early 1801, Adams and the Federalists became determined to exercise their influence in the weeks remaining before Jefferson took office,[4] and did all they could to fill federal offices with "anti-Jeffersonians" who were loyal to the Federalists.[5] On March 2, 1801, just two days before his presidential term was to end, Adams nominated nearly 60 Federalist supporters to circuit judge and justice of the peace positions the Federalist-controlled Congress had newly created. These appointees—whom Jefferson's supporters derisively referred to as "the Midnight Judges"[6]—included William Marbury, a prosperous businessman from Maryland. An ardent Federalist, Marbury was active in Maryland politics and had been a vigorous supporter of the Adams presidency.[7]

The following day, March 3, Adams's nominations were approved en masse by the U.S. Senate. The appointees' commissions were immediately written out, then signed by Adams and sealed by his Secretary of State, John Marshall, who had been named the new Chief Justice of the United States in January but continued also serving as Secretary of State until Jefferson took office.[4][8] Marshall then dispatched his younger brother James Markham Marshall to deliver the commissions to the appointees.[4] With only one day left before Jefferson's inauguration, James Marshall was able to deliver most of the commissions, but a few—including Marbury's—were not delivered.[4]

The day after, March 4, 1801, Thomas Jefferson was sworn in and became the 3rd President of the United States. As soon as he was able, Jefferson instructed his new Secretary of State, James Madison, to withhold the undelivered appointments.[4] In Jefferson's opinion, the commissions were void because they had not been delivered in time.[9] Without the commissions, the appointees were unable to assume the offices and duties to which they had been appointed. Madison repeatedly refused to deliver Marbury's commission to him. Finally, in December 1801, Marbury filed suit against Madison in the U.S. Supreme Court, asking the Court to issue a writ of mandamus forcing Madison to deliver Marbury's commission.[4] This lawsuit resulted in the case of Marbury v. Madison.

Decision

William Marbury, whose commission Madison refused to deliver.



James Madison, Jefferson's Secretary of State, who withheld Marbury's commission.

On February 24, 1803, the Court rendered a unanimous (4–0)[a] decision against Marbury. The Court's opinion was written by the Chief Justice, John Marshall. Marshall structured the Court's opinion around a series of three questions that Marshall answered in turn:

- First, did Marbury have a right to his commission?
- Second, if Marbury had a right to his commission, was there a legal remedy for him to obtain it?
- Third, if there was such a remedy, what was it, and could the Supreme Court legally issue it?[10]

Marbury's commission and legal remedy

The Court quickly answered the first two questions affirmatively.

First, Marshall wrote that Marbury had a right to his commission because all appropriate procedures were followed – the commission had been properly signed and sealed.[11] Madison contended that the commissions were void if not delivered; the Court disagreed, and said that the delivery of the commission was merely a custom, not an essential element of the commission itself.[11]

> The [President's] signature is a warrant for affixing the great seal to the commission, and the great seal is only to be affixed to an instrument which is complete. [...] The transmission of the commission is a practice directed by convenience, but not by law. It cannot therefore be necessary to constitute the appointment, which must precede it and which is the mere act of the President.
>
> — from Marbury v. Madison, 5 U.S. at 158, 160.

Because Marbury's commission was valid, Marshall wrote, Madison's withholding of it was "violative of a vested legal right" on Marbury's part.[12]

Turning to the second question, the Court said that the laws clearly afforded Marbury a remedy. Following the traditional Roman legal maxim ubi jus, ibi remedium ("where there is a legal right, there is also a legal remedy"),[13] Marshall wrote: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury."[14] The specific issue, however, was whether the courts—part of the judicial branch of the government—could give Marbury a remedy against Madison—who as Secretary of State was part of the executive branch of the government.[12] The Court held that so long as the remedy involved a mandatory duty to a specific person, and not a political matter left to discretion, the courts could provide the legal remedy.[12] In a now well-known line of the opinion, Marshall wrote: "The government of the United States has been emphatically termed a government of laws, and not of men."[15]

Jurisdiction

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

After concluding that Marbury had a right to his commission and that a legal remedy existed to provide it to him, the Court then turned to whether or not it was proper for the Supreme Court to issue the writ Marbury requested. Marshall first concluded that a writ of mandamus—a type of court order that commands a government official to perform an act they are legally required to perform—was the proper remedy for Marbury's situation.[16] This brought Marshall to the most important issue of the opinion: the propriety of the Supreme Court's jurisdiction over the matter, which would determine whether or not the Court had the power to issue the writ Marbury requested. Marbury argued that the Judiciary Act of 1789 gave the Supreme Court original jurisdiction over his case.[17]

> The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

> — Judiciary Act of 1789, Section 13 (excerpt)

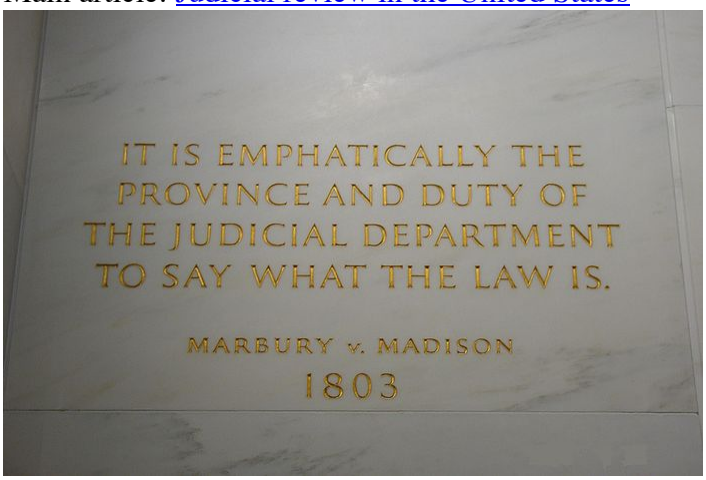
Marshall's discussion of this issue first explains the difference between original jurisdiction, in which a court has the power to be the first to hear and decide a case, and appellate jurisdiction, in which a party to a decision appeals to a higher court which has the power to review the previous decision and then either affirm or overturn it.[18] The Court agreed with Marbury, and interpreted the relevant section of the Judiciary Act to authorize mandamus on original jurisdiction.[19] However, Marshall noted that this authorization clashed with Article III of the U.S. Constitution, which establishes the judicial branch of the U.S. government.

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, 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.

This section of Article III of the Constitution establishes that the Supreme Court has original jurisdiction in cases where a U.S. State is a party to the lawsuit, or where the lawsuit involves foreign dignitaries. Neither of these categories covered Marbury's justice of the peace commission, and so, according to the Constitution, the Court could only have heard Marbury's case while exercising appellate jurisdiction.[18][19] However, Marshall had interpreted the Judicial Act to have given the Court original jurisdiction over the matter: this meant that the Judicial Act apparently took the initial scope of the Supreme Court's original jurisdiction—which was limited to cases either directly involving States or involving foreign dignitaries—and expanded it to include issuing writs of mandamus. Marshall ruled that Congress cannot increase the Supreme Court's original jurisdiction as it was set down in the Constitution, and therefore that the relevant portion of Section 13 of the Judiciary Act violated Article III of the Constitution.[19]

Introducing judicial review

Main article: Judicial review in the United States



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.

After ruling that it conflicted with the Constitution, Marshall struck down the relevant portion of the Judiciary Act in the U.S. Supreme Court's first ever declaration of the power of judicial review.[18][20] Marshall ruled that American federal courts have the power to refuse to give any effect to congressional legislation that is inconsistent with the Supreme Court's interpretation of the U.S. Constitution.[21]

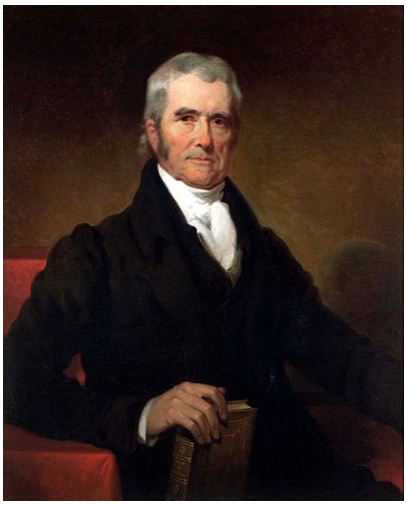
The U.S. Constitution does not explicitly give the American judiciary the power of judicial review.[22] Nevertheless, Marshall's opinion gives a number of reasons in support of the judiciary's possession of this power. Marshall stated that deciding the constitutionality of the laws it applies is an inherent part of the

American judiciary's role.[19] Marshall reasoned that the Constitution places limits on the American government's powers, and that those limits would be meaningless unless they were subject to judicial review and enforcement.[23] In what has become the most frequently quoted line of the opinion, Marshall wrote: "It is emphatically the province and duty of the judicial department to say what the law is."[24]

Marshall reasoned that the Constitution's provisions limiting Congress's power—such as the export tax clause, or the prohibitions on bills of attainder and ex post facto laws—meant that in some cases judges would be forced to choose between enforcing the Constitution or following Congress.[25] Marshall held "virtually as a matter of iron logic" that in the event of conflict between the Constitution and statutory laws passed by Congress, the constitutional law must be supreme.[18] He further reasoned that the written nature of the Constitution inherently established judicial review.[26] In a line borrowed from Alexander Hamilton's essay Federalist No. 78, Marshall wrote: "The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written."[27] In another argument borrowed from Federalist No. 78, Marshall stated that "a law repugnant to the Constitution is void", and that the judiciary had no choice but to follow the Constitution.[28]

Marshall also argued that the authorization in Article III of the Constitution that the Court can decide cases arising "under this Constitution" implied that the Court had the power to strike down laws conflicting with the Constitution.[23] This, Marshall wrote, meant that the Founders were willing to have the American judiciary use and interpret the Constitution when judging cases.[25] Lastly, Marshall argued that judicial review is implied in Article VI of the Constitution, since it declares the supreme law of the United States to be not the Constitution and the laws of the United States in general, but rather the Constitution and laws made "in Pursuance thereof".[29]

Analysis



Chief Justice John Marshall, as painted by Henry Inman in 1832, after having presided over the American judiciary for over 30 years.

The American legal scholar Laurence Tribe described Chief Justice John Marshall's maneuver of Marbury's simple petition for a writ of mandamus into a question that went to heart of American constitutional law itself as an "awe-inspiring story".[30] Marshall had been looking for a case that was suitable to introducing judicial review, and was eager to use the situation in Marbury to establish his claim.[31] He could have avoided the constitutional questions in the case through different legal rulings: for example, if Marshall had ruled that Marbury did not have a right to his commission until it was delivered, or if he had ruled that refusals to honor political appointments could only be remedied through the political process and not the judicial process, the Court would not have reached the case's constitutional issues.[31]

Aside from its inherent legal complexities, the case created a difficult political dilemma for Marshall and the rest of the Supreme Court.[32] If the Court ruled in favor of Marbury and issued a writ of mandamus ordering Madison to deliver the commission, Jefferson and Madison would likely have simply ignored the order, which would have made the Court look impotent and emphasized the "shakiness" of the judiciary.[32] On the other hand, a plain and simple ruling against Marbury would have given Jefferson and the Republican-Democrats a clear political victory.[32] In his "brilliant" decision, Marshall not only avoided both problems, but with "a touch of genius" also used the case to establish the principle of judicial review in American law.[32]

> [Marbury v. Madison] is a masterwork of indirection, a brilliant example of Marshall's capacity to sidestep danger while seeming to court it. [...] The danger of a head-on clash with the Jeffersonians was averted by the denial of jurisdiction: but, at the same time, the declaration that the commission was illegally withheld scotched any impression that the Court condoned the administration's behavior. These negative maneuvers were artful achievements in their own right. But the touch of genius is evident when Marshall, not content with having rescued a bad situation, seizes the occasion to set forth the doctrine of judicial review. It is easy for us to see in retrospect that the occasion was golden, [...] but only a judge of Marshall's discernment could have recognized it.
>
> — McCloskey & Levinson (2010), pp. 25–27.

Criticism

Given its preeminent position in American constitutional law, Chief Justice John Marshall's opinion in Marbury v. Madison continues to be the subject of critical analysis and historical inquiry.[31] In a 1955 Harvard Law Review article, U.S. Supreme Court Justice Felix Frankfurter emphasized that one can criticize Marshall's opinion in Marbury without demeaning it: "The courage of Marbury v. Madison is not minimized by suggesting that its reasoning is not impeccable and its conclusion, however wise, not inevitable."[33]

Criticisms of Marshall's opinion in Marbury usually fall into two general categories.[31] First, some criticize the way Marshall strove to reach the conclusion that the U.S. Supreme Court has constitutional authority over the other branches of the U.S. government. For example, American courts now generally follow the principle of "constitutional avoidance": if a certain interpretation of a law raises constitutional problems, they prefer to use alternative interpretations that avoid these problems. In Marbury, Marshall interpreted section 13 of the Judiciary Act in such a way that it created a constitutional conflict—since this allowed him to introduce judicial review—even though there is a plausible alternative interpretation of the Judiciary Act that does not raise this conflict, and many scholars have criticized Marshall for doing so.[34] However, other scholars have noted that the "constitutional avoidance" principle is a modern rule that did not exist in the early 19th century, and in any case is "only a general guide for Court action and not an ironclad precept."[31]

Second, Marshall's arguments for the Court's authority are sometimes said to be mere "assertions of authority", rather than substantive reasons logically laid out to support his position.[31] It is generally agreed that Marshall's series of assertions regarding the U.S. Constitution and the actions of the other branches of government do not "inexorably lead to the conclusion that Marshall draws from them".[35] Marshall's assertion of the American judiciary's authority to review executive branch actions was the most controversial issue when Marbury was first decided, and several subsequent U.S. presidents have tried to dispute it, to varying degrees.[36] However, the power of judicial review is now widely accepted and firmly established in American law.[35]

Additionally, it is questionable whether Marshall should have participated in the Marbury case because of his participating role in the dispute.[10] Marshall was still the acting Secretary of State when the nominations were made, and he himself had signed Marbury and the other mens' commissions and had been responsible for their delivery.[10] This potential conflict of interest raises strong grounds for Marshall to have recused himself from the case.[10] In hindsight, the fact that Marshall did not recuse himself from Marbury is likely indicative of his eagerness to hear the case and use it to establish judicial review.[31]

Impact

Marbury v. Madison remains the single most important decision in American constitutional law.[1] Chief Justice John Marshall's opinion formally established the power of the American judiciary to review the constitutionality of laws, a power known as "judicial review".[17]

Marshall's decision did not invent judicial review: 18th century British jurists had debated whether courts could circumscribe Parliament, and the principle became widely accepted in Colonial America due to the idea that in America only the people were sovereign, rather than the government, and therefore that the courts should only implement legitimate laws.[37] By the time of the Constitutional Convention in 1787, American courts' "independent power and duty to interpret the law" was well established.[38] However, Marshall's opinion in Marbury was the power's first exercise by the Supreme Court. It made the practice more routine, rather than exceptional, and prepared the way for the Court's opinion in the 1819 case McCulloch v. Maryland, in which Marshall implied that the Supreme Court was the supreme interpreter of the U.S. Constitution.[39]

Marbury also established that the power of judicial review covers actions by the executive branch – the U.S. President and his cabinet members. However, American courts' power of judicial review over executive branch actions only extends to matters in which the executive has a legal duty to act or refrain from acting, and does not extend to matters that are entirely within the U.S. president's discretion, such as whether to veto a bill or whom to appoint to an office.[17] This power has been the basis of many subsequent important Supreme Court decisions in American history, such as the 1974 case United States v. Nixon, in which the Court held that President Richard Nixon was required to comply with a subpoena to provide tapes of his conversations for use in a criminal trial, and which ultimately led to Nixon's resignation.[17]

Although it is a potent check on the other branches of the U.S. government, the power of judicial review was rarely exercised in early American history. After the Marbury decision in 1803, the U.S. Supreme Court did not strike down another federal law until 1857, when the Court struck down the Missouri Compromise in the now-infamous case of Dred Scott v. Sandford, a ruling that contributed to the outbreak of the American Civil War.[29]

See also

- Australian Communist Party v Commonwealth
- Judicial review in the United States
- Hylton v. United States
- Calder v. Bull
- Stuart v. Laird (1803)
- United States v. More (1805)

Notes

1. ^ a b Due to illnesses, Justices William Cushing and Alfred Moore did not sit for oral argument or participate in the Court's decision.
2. ^ The crucial votes giving Jefferson his close victory came from the Southern states—including his home state of Virginia—and their "slavery bonus" from the Three-Fifths Compromise of the U.S. Constitution, which allowed Southern states to include three-fifths of their slave population as part of their total citizen population when determining apportionment in the Electoral College and U.S. House of Representatives.[3]

References

Citations