

# Marbury v. Madison (1803)

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## Issue/Topic

### Judicial Review

### Background

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 that rule. If two laws conflict with each other, the courts must decide on the operation of each. — *Chief Justice John Marshall*

At the end of President John Adams' term, his Secretary of State failed to deliver documents commissioning William Marbury as Justice of the Peace in the District of Columbia. Once President Thomas Jefferson was sworn in, in order to keep members of the opposing political party from taking office, he told James Madison, his Secretary of State, to not deliver the documents to Marbury. Marbury then sued James Madison asking the Supreme Court to issue a writ requiring him to deliver the documents necessary to officially make Marbury Justice of the Peace. The *Marbury v. Madison* decision resulted in establishment of the concept of judicial review.

### Constitutional Questions

Chief Justice John Marshall delivered the opinion of the Court.

In the order in which the court has viewed this subject, the following questions have been considered and decided.

1. Has the applicant a right to the commission he demands?
2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?
3. If they do afford him a remedy, is it a mandamus issuing from this court?

### 1 Majority Decision (Summary)

2 The Court unanimously decided not to require Madison to deliver the commission to Marbury. Chief Justice  
3 Marshall understood the danger that this case posed to the power of the Supreme Court. Because Madison was  
4 President Jefferson's secretary of state and Jefferson was head of the Democratic Party while Chief Justice  
5 Marshall and Marbury were Federalists, President Jefferson was almost certain to direct Madison to refuse to  
6 deliver the commission to Marbury. If the Court required Madison to deliver the commission and Madison  
7 refused, the Court had no power to force him to comply, and, therefore the Court would look weak. If the Court  
8 did not act, it would look like the justices made their decision out of the fear that Madison would not obey their  
9 decision.

10 The justices struck a middle ground between these alternatives in their opinion, written by Chief Justice  
11 Marshall. The Court ruled that Marbury was entitled to his commission, but that according to the Constitution,  
12 the Court did not have the authority to require Madison to deliver the commission to Marbury in this case. They  
13 found that the Judiciary Act of 1789 conflicted with the Constitution because it gave the Supreme Court more  
14 authority than it was given under the Constitution. The dispute centered around the difference between the  
15 Supreme Court's original jurisdiction and its appellate jurisdiction. If the Court has original jurisdiction over a  
16 case, it means that the case can go directly to the Supreme Court and the justices are the first ones to decide the  
17 case. If the Court has appellate jurisdiction, however, the case must first be argued and decided by judges in the  
18 lower courts. Only then can it be appealed to the Supreme Court, where the justices decide whether the rulings  
19 of the lower courts were correct. Marbury brought his lawsuit under the Court's original jurisdiction, but the

20 justices ruled that it would be an improper exercise of the Court's original jurisdiction to issue the writ of  
21 mandamus in this case.

22 The Judiciary Act of 1789 authorized the Supreme Court to "issue writs of mandamus ... to persons holding office  
23 under the authority of the United States." A writ of mandamus is a command by a superior court to a public  
24 official or lower court to perform a special duty. The Court said this law attempted to give the Court the  
25 authority to issue a writ of mandamus, an exercise of its original jurisdiction, to Secretary of State  
26 Madison. However, Article III, section 2, clause 2 of the Constitution, as the Court read it, authorizes the  
27 Supreme Court to exercise original jurisdiction only in cases involving "ambassadors, other public ministers and  
28 consuls, and those [cases] in which a state shall be a party. In all other cases, the Supreme Court shall have  
29 appellate jurisdiction." The dispute between Marbury and Madison did not involve ambassadors, public  
30 ministers, consuls, or states. Therefore, according to the Constitution, the Supreme Court did not have the  
31 authority to exercise its original jurisdiction in this case. Thus the Judiciary Act of 1789 and the Constitution  
32 were in conflict with each other.

33 Declaring the Constitution "superior, paramount law," the Supreme Court ruled that when ordinary laws conflict  
34 with the Constitution, they must be struck down. Furthermore, it is the job of judges, including the justices of  
35 the Supreme Court, to interpret laws and determine when they conflict with the Constitution. According to the  
36 Court, the Constitution gives the judicial branch the power to strike down laws passed by Congress, the  
37 legislative branch. This is the principle of judicial review. Thus, it has been recognized since this decision that it  
38 is "emphatically the province and duty of the judicial department to say what the law is."

39 Through this decision, Chief Justice Marshall established the judicial branch as an equal partner with the  
40 executive and legislative branches within the developing system of government. By refusing to require Madison  
41 and Jefferson to deliver the commission to Marbury, he did not give Madison the opportunity to disobey the  
42 Court, making it look weak. And, by declaring the Court's power through the principle of judicial review, he  
43 made it clear that the justices did not make their decision out of fear. Instead, he announced that the  
44 Constitution is the supreme law of the land, and established the Supreme Court as the final authority for  
45 interpreting it.

#### **Vote Breakdown**

*Unanimous decision*

#### **Dissenting Opinion (Summary)**

46 *None*

#### **Questions**

1. If the Supreme Court of the United States had issued the *writ of mandamus*, how could it have forced Madison to comply with the order? What would have happened if he had ignored it? (In other words, does the Court have enforcement power?)
  
2. In the Court's opinion, is Marbury entitled to his appointment?

3. According to the decision, does the Supreme Court of the United States have the authority to issue a *writ of mandamus* to force Madison to deliver the commission? Explain. Is there any way to reverse the Court's decision?
  
4. In this case, Chief Justice John Marshall and the Court "gave up some power in order to get more." Explain. What power did they give up? What power did they gain? Why did the Court do this?
  
5. Why does the judicial branch, as opposed to the executive or legislative branch, have the power of judicial review?
  
6. Imagine that Jefferson, rather than Adams, had appointed the Chief Justice of the Supreme Court. Would the outcome of this case, and the future of the country, have been different? Why?

**Source**

[http://landmarkcases.org/en/landmark/cases/marbury\\_v\\_madison](http://landmarkcases.org/en/landmark/cases/marbury_v_madison)