

Marbury v. Madison (1803)

Chief Justice John Marshall

Historical Background

William Marbury was appointed Justice of the Peace in the District of Columbia in the last hours of President John Adams's term. However, the appointment was not delivered to him before the new president, Thomas Jefferson, took office. President Jefferson argued this made the appointment void. Marbury did not accept this argument and sued President Jefferson's Secretary of State, James Madison, to deliver his commission to him. The controversy of the case was further compounded by partisan animosity: William Marbury was a Federalist and Jefferson and Madison were both Democratic-Republicans.

Historical Significance

Chief Justice Marshall delivered the unanimous decision of the court in a uniquely skillful way, so as to maximize the legitimacy and power of the Supreme Court while giving no party in the dispute exactly what it wanted. Marshall held that Marbury had suffered harm – that it was improper for President Jefferson's administration to withhold his commission – and was entitled to his commission. To determine whether the Supreme Court could provide the remedy for his harm, however, Marshall set about using a power implied in the Constitution to resolve the conflict: that of *judicial review*. Marshall argued that the legislation granting Marbury the right to have his lawsuit heard in the Supreme Court was unconstitutional, because the Constitution specifically listed the types of cases to be heard in the Supreme Court. Since the law was unconstitutional, it would have to be struck down; otherwise the Supreme Court would be favoring a particular law over the supreme law, the Constitution. Marshall famously argued that, "It is emphatically the province and duty of the Judicial Department [the judicial branch] to say what the law is." This statement, justifying the duty of the Supreme Court to engage in *judicial review* and strike down unconstitutional laws, remains in force today and has made *Marbury v. Madison* a landmark Supreme Court decision.

Key Concepts and Learning Objectives

Concepts: judicial review; separation of powers; constitutional and unconstitutional; implied powers; judicial branch; appointment power; legal remedy

Learning objectives: On completion of this unit, students will be able to:

- define and describe "judicial review";
- define and describe "implied powers";

- describe the role of the judicial branch in the federal government;
- describe how the “separation of powers” and “checks and balances” in the Constitution operated in the Early Republic.

Questions to Explore

Marshall argued that every person whose rights are violated has a legal remedy for their harm. Yet, Marbury did not get his commission as a result of this case and never became Justice of the Peace. Is Marshall arguing for a legal ideal that is impossible in practice or was there some other way that Marbury could have tried to get his commission delivered to him that Marshall would have accepted? Should every wrong have a legal remedy?

Following up after the last question, should the Supreme Court primarily consider the results of its actions for the individuals that are before them in court, or should they care primarily about the results their decision for the country as a whole? Or should they interpret the law as they think best without considering the results of their decision at all? Whichever answer you choose, explain your answer with reference to a specific Supreme Court case.

Does the fact that unelected judges can have the “last word” on legislation that has already been passed by the people’s representatives make the American government undemocratic? If yes, why is the government generally accepted by the people? If not, how can the judges be said to be performing a democratic function? (You may wish to consider here the claims that Jefferson makes in his First Inaugural Address about what makes democracy legitimate.)

Do you think the Federal Government possesses implied powers not specifically mentioned in the Constitution? Does the fact that “judicial review” is not specifically and explicitly mentioned in Article III of the Constitution change your answer or support your answer? Explain why or why not.