

Attachment V: *Marbury v. Madison*

In the waning months of President John Adam's term, when Chief Justice Oliver Ellsworth resigned, Adams first sought to reappoint former Chief Justice John Jay to the Court. Jay declined the appointment. Following Jay's refusal, Adams nominated John Marshall. He became the fourth Chief Justice of the United States on February 4, 1801.

In the last few weeks of Adams' administration, before President Thomas Jefferson took office, Congress authorized the appointment of 42 justices of the peace in the District of Columbia and Alexandria, Virginia. President Adams made appointments to these positions, and the Senate confirmed them on March 3, the day before Jefferson took office. The formal letters announcing the appointments were to be delivered by the Secretary of State's Office. However, not all of the commissions were delivered by the deadline that night.

William Marbury was one of those justices of the peace appointed by Adams who failed to receive his appointment letter (commission) on time. He brought suit against Secretary of State James Madison for failing to deliver his commission. Marbury went right to the Supreme Court and filed an *original action* seeking a *writ of mandamus* to compel Madison to deliver the commission. Marbury asserted that the Supreme Court was the proper jurisdiction to start this action under Section 13 of the Judiciary Act of 1789. This is the section of the Act that the Supreme Court later declared unconstitutional because it conflicted with Article III of the United States Constitution.

President Jefferson believed that a court could not order him to have the commissions delivered and Secretary of State Madison refused to appear before the Supreme Court. The Court then ordered Jefferson to show cause as to why the President should not comply with the writ of mandamus.

In *Marbury*, the Supreme Court at the beginning of its 1803 term asserted its power to review the constitutionality of Executive and Legislative actions. At the same time, the Court limited its power in this case. The Court decided that it would be unconstitutional for it to issue a writ of mandamus as an original action—as provided for in the Judiciary Act—because doing so would violate Section III of the Constitution.

Legal Questions

- Issue #1: Whether Marbury Had a Right to the Commission
- Issue #2: Whether Existing Laws Established a Remedy for the Deprivation of the Right
- Issue #3: Whether the Court Should Issue a Writ of Mandamus Requiring Delivery of the Commission

Opinion of the Supreme Court

On February 24, 1803, Chief Justice Marshall delivered the opinion of the Supreme Court in *Marbury v. Madison*. Justice Marshall began the opinion by outlining the case in terms of three issues. First, whether Marbury had a right to the commission; second, whether the laws of the country allowed a remedy for his situation; and third, whether a mandamus could be issued in an original action before the Supreme Court.

Issue #1: Whether Marbury Had a Right to the Commission

Yes. Marshall found that Marbury had a right to the commission once it was signed by the President and sealed by the Secretary of State. The Court might have held that the commission was not in force until it was delivered. However, the justices stated that the commission went into effect as soon as the President signed it.

Issue #2: Whether Existing Laws Established a Remedy

Yes. The opinion found that a legal remedy was required for a legal wrong. Since the government of the United States is one "of laws and not of men", the courts must grant a remedy for violation of legal rights. The Supreme Court decided that if an Executive branch duty is established by the Constitution or federal law, the Judiciary could enforce it.

Issue #3: Whether the Court Should Issue a Writ of Mandamus Requiring Delivery of the Commission

No. Marshall found a conflict between the Judiciary Act of 1789, established by Congress, and the United States Constitution. He found that Section 13 of the Act allows writs of mandamus, such as the action involved in this case. However, he found Section 13 of the Judiciary Act to be unconstitutional because it was in direct opposition to Article III of the Constitution.

The opinion admitted that Congress has the power to alter the jurisdiction of the Court. However, the original jurisdiction for a writ of mandamus, such as the one in this case, was not permitted by the Constitution. In the opinion, Marshall established that a law in conflict with the Constitution is not valid. It also held that the Supreme Court had the power to invalidate such a law.

The decision in *Marbury v. Madison* greatly expanded the power of the Supreme Court by establishing its right to overturn acts of Congress, a power not explicitly granted by the Constitution. The Court exercised the system of checks and balances by assuming the authority to declare acts of Congress, and by implication, acts of the President, unconstitutional. After *Marbury v. Madison*, the Court became the final authority on what the Constitution means. The Supreme Court became, in fact as well as in theory, an equal partner in government. It has played that role ever since.

Source: Excerpted from "Two Centuries Later: The Enduring Legacy of *Marbury v. Madison* (1803)." Administrative Office of the United States Courts.