

0. THE DECISION - Story Preface

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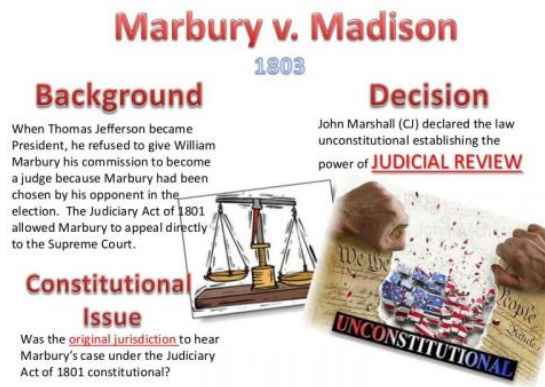
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This graphic summarizes the key background facts of *Marbury v Madison*, a famous legal case leading to a major change in U.S. law. The decision was rendered by the U.S. Supreme Court during the early years of the American Republic. As a direct result, America's high court has the power to judicially review laws and, if the Justices find those laws are in conflict with the Constitution, they can strike them down as unconstitutional.

John Marshall had not been John Adams' first choice to serve as Chief Justice in 1801. The President first offered the position to John Jay, who had previously served as America's first Chief Justice.

Jay turned down the offer. His reasons, it is said, included his belief that the Supreme Court (pictured here at its first location in old Philadelphia) was a weak institution. After John Marshall, no one would ever call the Supreme Court "weak" again.

Marbury v Madison languished in the Court until 1803. The Chief Justice would write the opinion. He boiled-down the issues before the Court to three:

- Did Marbury have a right to the judicial commission he was demanding?
- If he had the right, and if that right had been violated, was there a legal remedy?
- If a remedy existed, was it a *Writ of Mandamus* from the Supreme Court?

If Marshall found that Marbury had a right to the commission, and that right had wrongfully been withheld, the Supreme Court would be telling the Executive Branch it had violated Marbury's rights. In fact, that is exactly what Marshall concluded:

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

The court easily answered question 2:

That, having this legal title to the office, he has a consequent right to the commission; a refusal to deliver which is a plain violation of that right, for which the laws of his country afford him a remedy.

So far, so good for Marbury.

However ... in Marshall's analysis, the whole case turned on whether the **Supreme Court** was the *proper* court to order a remedy. Here, Marshall found that Congress had exceeded its authority when it gave the Supreme Court original jurisdiction to process a *Writ of Mandamus* for cases like this.

Only *the Constitution* - in Article III - could confer authority on the Supreme Court, *not Congress*. The Judiciary Act of 1789, in that context, was therefore unconstitutional and Marshall, with one stroke of his pen, struck it down. His words:

The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution...

The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written...

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...

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.

Although he may have liked the end result - because Marbury would not get his judgeship - President Jefferson was *furious* about Marshall's creation of "judicial review."

See Alignments to State and Common Core standards for this story online at:

<http://www.awesomestories.com/asset/AcademicAlignment/THE-DECISION-Marbury-vs-Madison>

See Learning Tasks for this story online at:

<http://www.awesomestories.com/asset/AcademicActivities/THE-DECISION-Marbury-vs-Madison>

Media Stream



John Jay

Image online, courtesy Library of Congress.

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Marbury v Madison - Story Behind the Famous Case

E.G. Marshall narrates this dramatization (and recreation) of the story behind *Marbury v Madison*. Produced by the 1977 Judicial Conference of the United States (with WQED Pittsburgh). Online, courtesy FedFlix at Archive.org.

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<http://www.awesomestories.com/asset/view/Marbury-v-Madison-Story-Behind-the-Famous-Case>