

The Background of *Marbury v. Madison* (1803)

1789:

Congress passes the Judiciary Act of 1789. One provision is Section 13, which gives the United States Supreme Court the power to issue writs of mandamus (a court order to a public official to do something his job requires him to do).

1800, November:

The Jeffersonian Republican Party defeats the Federalist Party in national elections.

1801, February/early March:

The outgoing Federalist Congress creates many federal judgeships for outgoing President John Adams to fill with Federalist appointees. (Article III judges will hold their judgeships for terms of “good behavior” and not easily removed by the incoming Republicans, thus allowing the Federalists to continue to have influence in the national government despite their losses in the previous November’s elections.)

Adams makes the appointments, which are approved by the Senate, in the final days of his presidency and signs the official commissions that will allow his appointees to assume their offices. John Marshall, his secretary of State, has the job of delivering the commissions. Due to the time crunch, he fails to deliver all of the commissions. William Marbury, whom Adams has appointed as a justice of the peace, is one of the appointees who doesn’t receive his commission.

Adams also nominates Marshall to be Chief Justice of the Supreme Court.

1801, March

New president Thomas Jefferson, a Republican, orders his secretary of state not to deliver the undelivered commissions (including Marbury’s), thus preventing these appointees from assuming their offices.

1801, December

Marbury sues James Madison, Jefferson’s secretary of State, in an original action in the Supreme Court to force him to deliver Marbury’s commission. (Specifically, Marbury is asking the Supreme Court to issue a writ of mandamus to Madison.) Marbury’s basis for filing this suit and asking for a mandamus is Section 13 of the Judiciary Act of 1789.

1803

The Supreme Court issues its ruling in *Marbury v. Madison*. Chief Justice John Marshall is ruling on a case that he himself was involved in (as secretary of state), which is a no-no. If he denies the writ of mandamus, the court will be a laughing stock for being so powerless. If he grants the writ of mandamus, Madison may ignore it and the Republican Congress may impeach the justices of the Supreme Court for interfering with the political branches. How, then, can he maintain the Court’s authority while not opening it up to an attack by the Republicans?

The Logic of the *Marbury* Decision

John Marshall, writing the Opinion of the Court in *Marbury v. Madison* (1803), broke the case down into three issues/questions and answers.

Q1: Does William Marbury have a right to his commission?

A1. Yes. The commission was signed—it simply wasn't delivered. (Marshall knows this because he was Adams's secretary of state. He personally knows it was signed, and he was the one who failed to deliver it. That makes him a party to this case—he shouldn't even be getting to decide it!)

Q2: Does William Marbury have a legal remedy (i.e., a legal way to get what he has a right to)?

A2. yes. If someone has no legal remedy, then he effectively has no right to begin with. Since Marbury has a right to his commission, he must have a legal way of getting it.

Q3: Is William Marbury's legal remedy a writ of mandamus issued by the Supreme Court in a case of original jurisdiction?

A3. No. He'll have to find a remedy elsewhere, from some other court.

Why?

Article III of the Constitution gives the Supreme Court original jurisdiction in situations A, B, and C ("cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party"),

Section 13 of the Judiciary Act of 1789 (according to Marshall's reading) gives the Supreme Court original jurisdiction in situation M (the power to issue writs of mandamus).

Therefore, Congress unconstitutionally enlarged the Constitution's grant of original jurisdiction to the Supreme Court.

Since it's the job of the judicial branch to say what the law and the Constitution mean, and since the Supreme Court is bound by the Constitution, the Supreme Court has the right and duty to say that section 13 of the Judiciary Act of 1789 conflicts with Article III by trying to give the Supreme Court something—namely, situation M—that Article III didn't give it.

Therefore, Section 13 is unconstitutional, and thus the Supreme Court has no authority to issue a writ of mandamus on original jurisdiction. Marbury must find his legal remedy elsewhere.

Long story short: Marshall throws William Marbury under the bus to gain a much greater victory for the Supreme Court—the right to strike down laws of Congress as unconstitutional, i.e., judicial review of federal law.