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# Marbury v. Madison (1803)

Outgoing President John Adams had issued William Marbury a commission as justice of the peace, but the new Secretary of State, James Madison, refused to deliver it. Marbury then sued to obtain it. With his decision in *Marbury v. Madison*, Chief Justice John Marshall established the principle of judicial review, an important addition to the system of "checks and balances" created to prevent any one branch of the Federal Government from becoming too powerful. The document shown here bears the marks of the Capitol fire of 1898.

"A Law repugnant to the Constitution is void." With these words written by Chief Justice Marshall, the Supreme Court for the first time declared unconstitutional a law passed by Congress and signed by the President. Nothing in the Constitution gave the Court this specific power. Marshall, however, believed that the Supreme Court should have a role equal to those of the other two branches of government.

When James Madison, Alexander Hamilton, and John Jay wrote a defense of the Constitution in *The Federalist*, they explained their judgment that a strong national government must have built-in restraints: "You must first enable government to control the governed; and in the next place oblige it to control itself." The writers of the Constitution had given the executive and legislative branches powers that would limit each other as well as the judiciary branch. The Constitution gave Congress the power to impeach and remove officials, including judges or the President himself. The President was given the veto power to restrain Congress and the authority to appoint members of the Supreme Court with the advice and consent of the Senate. In this intricate system, the role of the Supreme Court had not been defined. It therefore fell to a strong Chief Justice like Marshall to complete the triangular structure of checks and balances by establishing the principle of judicial review. Although no other law was declared unconstitutional until the Dred Scott decision of 1857, the role of the Supreme Court to invalidate Federal and state laws that are contrary to the Constitution has never been seriously challenged.

"The Constitution of the United States," said Woodrow Wilson, "was not made to fit us like a strait jacket. In its elasticity lies its chief greatness." The often-praised wisdom of the authors of the Constitution consisted largely of their restraint. They resisted the temptation to write too many specifics into the basic document. They contented themselves with establishing a framework of government that included safeguards against the abuse of power. When the Marshall decision *Marbury v. Madison* completed the system of checks and balances, the United States had a government in which laws could be enacted, interpreted and executed to meet challenging circumstances.

(The order bears the marks of the Capitol fire of 1898. )

(Information excerpted from *Milestone Documents in the National Archives* [Washington, DC: National Archives and Records Administration, 1995] pp. 23-24.)

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**OVERHEAD MASTER #5**

## Jefferson's Correspondences

http://www.landmarkcases.org/marbury/jefferson.html

"The question whether the judges are invested with exclusive authority to decide on the constitutionality of a law has been heretofore a subject of consideration with me in the exercise of official duties. Certainly there is not a word in the Constitution which has given that power to them more than to the Executive or Legislative branches."

—Thomas Jefferson to W. H. Torrance, 1815. ME 14:303

"The Constitution . . . meant that its coordinate branches should be checks on each other. But the opinion which gives to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action but for the Legislature and Executive also in their spheres, would make the Judiciary a despotic branch."

—Thomas Jefferson to Abigail Adams, 1804. ME 11:51

"This member of the Government was at first considered as the most harmless and helpless of all its organs. But it has proved that the power of declaring what the law is, ad libitum, by sapping and mining slyly and without alarm the foundations of the Constitution, can do what open force would not dare to attempt."

—Thomas Jefferson to Edward Livingston, 1825. ME 16:114

**HANDOUT #1**

# The Constitution of the United States

***Article III.***

**Section 1.**
The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

**Section 2.**
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public ministers and Consuls;- to all Cases of admiralty and maritime Jurisdiction;- to Controversies to which the United States shall be a Party;- to Controversies between two or more States;- between a State and Citizens of another State;-between Citizens of different States;- between Citizens of the same State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

**HANDOUT #2**

# The Judiciary Act of 1789

September 24, 1789.

1 Stat. 73.

CHAP. XX. – *An Act to establish the Judicial Courts of the United States.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the supreme court of the United States shall consist of a chief justice and five associate justices, any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

SEC. 13. *And be it further enacted*, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul, or vice consul, shall be a party. And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

APPROVED , September 24, 1789.

## Chief Justice John Marshall delivered the opinion of the Supreme Court.

http://www.landmarkcases.org/marbury/majority.html

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

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

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In order to determine whether he is entitled to this commission, it becomes necessary to inquire whether he has been appointed to the office. . . .

Mr. Marbury . . . since his commission was signed by the president, and sealed by the secretary of state, was appointed. . . .

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

This brings us to the second inquiry; which is, 2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy? The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. . . .

It is then the opinion of the Court, 1. That by signing the commission of Mr. Marbury, the president of the United States appointed him a justice of peace . . . and that the seal of the United States, affixed thereto by the secretary of state, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and that the appointment conferred on him a legal right to the office for the space of five years. 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.

It remains to be inquired whether, 3. He is entitled to the remedy for which he applies. This depends on, 1. The nature of the writ applied for. 2. The power of this court. 1. The nature of the writ. . . .

This writ, if awarded, would be directed to an officer of government, and its mandate to him would be . . . "to do a particular thing therein specified, which appertains to his office and duty, and which the court has previously determined or at least supposes to be consonant to right and justice . . . "

These circumstances certainly concur in this case. . . .

This, then, is a plain case of a mandamus, either to deliver the commission, or a copy of it from the record; and it only remains to be inquired, Whether it can issue from this court.

The act to establish the judicial courts of the United States authorizes the supreme court "to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." The secretary of state, being a person, holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional. . . .

The constitution vests the whole judicial power of the United States in one supreme court, and such inferior courts as congress shall, from time to time, ordain and establish. . . .

In the distribution of this power it is declared that "the supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction. . . . "

If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunals in which it should be vested.. . . If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance. . . .

To enable this court then to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction. . . .

It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. . . .

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 that rule. If two laws conflict with each other the courts must decide on the operation of each. . . .

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. . . .