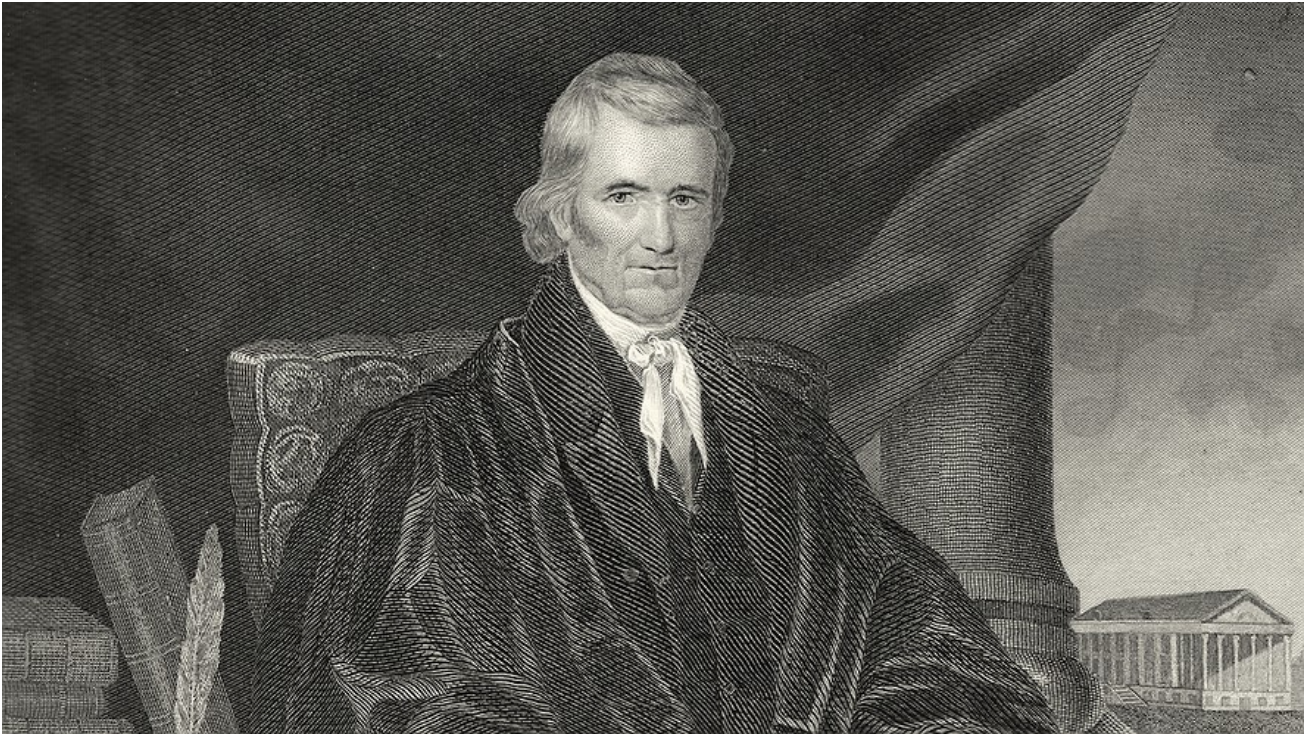


Primary Sources: Marbury v. Madison Supreme Court Decision

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A portrait of Chief Justice John Marshall, who delivered the Supreme Court's opinion in Marbury v. Madison. Alonzo, Chappel, Wikimedia Commons

Editor's Note: The decision in this Supreme Court case established the right of the courts to determine whether the actions of the other two branches of government are constitutional. This right, judicial review, was an important addition to the system of "checks and balances" that prevents any branch of the federal government from becoming too powerful. In this case, outgoing President John Adams had issued William Marbury a commission as justice of the peace. The new secretary of state, James Madison, refused to deliver it. Marbury then sued to obtain it. In 1803, Chief Justice John Marshall delivered the opinion of the court in Marbury v. Madison, excerpted here.

"Why We Should Not Issue A Mandamus"

At our last term, we asked the secretary of state to show why we should not issue a mandamus. A mandamus is an order to a government official to properly fulfill their official duties. This order would direct the secretary of state to deliver William Marbury his commission as a justice of the peace for the county of Washington, in the district of Columbia.

No cause has been shown, and we are now asked to issue that mandamus.

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

1st. Has the applicant a right to the commission he demands?

2nd. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

3rd. If they do afford him a remedy, is it a mandamus issuing from this court?

The first object of inquiry is whether the applicant has a right to the commission he demands.

"An Act In Violation Of A Legal Right"

It [is] decidedly the opinion of the court, that when a commission has been signed by the president, the appointment is made; and that the commission is complete, when the seal of the United States has been affixed to it by the secretary of state.

To refuse to deliver his commission, therefore, is an act in violation of a legal right.

This brings us to the second inquiry. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

At the very heart of civil liberty is the right of every individual to claim the protection of the laws, whenever he receives an injury. [The] government of the United States has been termed a government of laws, and not of men. It will cease to deserve this title, if the laws furnish no remedy for the violation of a legal right.

"Certain Important Political Powers"

The Constitution of the United States grants the president certain important political powers. He must use his own discretion, or judgment, in the exercise of these powers, and is accountable only to his country and to his own conscience in his political character. He is authorized to appoint certain officers to aid him in the performance of these duties. These officers act under his authority and in conformity with his orders.

In such cases, their acts are his acts, and no power exists to control executive discretion. The subjects of his discretion have to do with the nation, not individual rights, and the decision of the executive is final.

However, this changes when the legislature imposes other duties on that officer and he is directed to perform certain acts upon which the rights of individuals depend. In that case, he cannot at his discretion violate the rights of others.

Therefore, where heads of departments are political agents of the executive, and the executive has legal discretion, courts can offer no remedy. This is not true if a specific duty is assigned to the officer by law, and individual rights depend upon the performance of that duty. Then, the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

"Refusal To Deliver It Is A Plain Violation"

It is the opinion of the court [that Marbury has a] right to the commission, and a refusal to deliver it is a plain violation of that right. The laws of his country afford him a remedy.

This is a plain case for a mandamus, to deliver the commission or a copy of it, and it only remains to be inquired whether it can issue from this court.

The law to establish the judicial courts of the United States authorizes the Supreme Court to issue writs of mandamus to persons holding office under the authority of the United States. The secretary of state fits this description precisely. If this court is not authorized to issue a 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. Such inferior courts as Congress shall, from time to time, establish.

The Constitution makes clear over which matters the Supreme Court has jurisdiction, or the authority to hear and decide a case. The Constitution declares 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."

The Constitution does not give the legislature the power to apportion the judicial power between the Supreme and inferior courts. If it had, there would have been no need to list the instances in which this court has original jurisdiction. Congress cannot give this court original jurisdiction where the Constitution has declared it shall be appellate.

"An Exercise Of Appellate Jurisdiction"

Therefore, this court can only issue a mandamus if it is an exercise of appellate jurisdiction.

Appellate jurisdiction revises and corrects proceedings in an action already underway, and does not create that action.

Therefore, the law which gives the Supreme Court the power to issue writs of mandamus is unconstitutional.

The powers of the legislature are defined and limited in the Constitution so that those limits may not be mistaken or forgotten.

A constitution forms the fundamental and paramount law of a nation, so an act of the legislature which violates 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 explain and interpret that rule. If two laws conflict with each other the courts must decide on the operation of each.

If a law is in opposition to the Constitution, if both the law and the Constitution apply to a particular case, the court must determine which of these conflicting rules governs the case. This is the very heart of judicial duty.

Quiz

- 1 Read the section "Refusal To Deliver It Is A Plain Violation." Which of the following options BEST supports the idea that "the law which gives the Supreme Court the power to issue writs of mandamus is unconstitutional"?
 - (A) This is a plain case for a mandamus, to deliver the commission or a copy of it, and it only remains to be inquired whether it can issue from this court.
 - (B) The Constitution vests the whole judicial power of the United States in one Supreme Court.
 - (C) The Constitution does not give the legislature the power to apportion the judicial power between the Supreme and inferior courts.
 - (D) If it had, there would have been no need to list the instances in which this court has original jurisdiction.

- 2 Read the paragraphs below from the section "An Exercise Of Appellate Jurisdiction."

The powers of the legislature are defined and limited in the Constitution so that those limits may not be mistaken or forgotten...

A Constitution forms the fundamental and paramount law of a nation, so an act of the legislature which violates the Constitution is void...

Which of the following can be inferred from these excerpts?

- (A) Congress cannot make laws that overrule what the Constitution has already stated.
- (B) The Supreme Court does not have very much power, according to the Constitution.
- (C) The Constitution grants the Supreme Court the right to overturn any law that Congress passes.
- (D) Decisions made by the legislative and judicial branches of the government have power over the Constitution.

- 3 Which central idea is MOST supported by the section "Certain Important Political Powers"?
- (A) It is the duty of the court to make decisions in cases where laws conflict with the Constitution.
 - (B) The Supreme Court must decide if it has the right to issue a mandamus for Marbury's commission.
 - (C) The Constitution decides the laws and powers of the parts of the U.S. government.
 - (D) Madison's refusal to deliver the commission was a violation of Marbury's rights as an individual.
- 4 Which answer choice provides an accurate and objective summary of the document?
- (A) The court decided that Madison had violated Marbury's legal rights, and that Marbury had a right to seek a solution from the law. However, the court also ruled that the law Congress had made giving them the jurisdiction to issue writs of mandamus in such cases was unconstitutional, and that Congress had no power to change the jurisdiction of the courts.
 - (B) The court decided that Madison had made a foolish and illegal decision in not delivering the commission to Marbury. It stated that the acts of officers of the president are the same as the acts of the president, and that the decision of the executive branch of the government is final, so they have no jurisdiction to rule.
 - (C) The court decided that Madison had not followed the law when he did not deliver the commission to Marbury. They reviewed the rights Madison had as secretary of state, as well as the rights of Marbury as an individual. They concluded that Marbury had no legal remedy to solve his problem.
 - (D) The court decided that since Madison was an officer acting on behalf of the president, his legal rights were above Marbury's. They then reviewed laws made by Congress that would allow them to get around the problem in order to give Marbury his commission, but they were unable to find a way to do so.