

SUPREME COURT HISTORICAL SOCIETY

Marbury v. Madison: The Empowerment of the Judiciary

Full Script

Introduction —

In 1800, Thomas Jefferson was elected the third president of the United States.

His inauguration in March 1801 marked the first time in the short history of the new nation that a political party handed power to its rival. Federalists had held the presidency under John Adams, but Jefferson was a Democratic-Republican.

The election also changed Congress, as Democratic-Republicans won more seats than Federalists.

The judicial branch, however, was not subject to elections.

So while Adams allowed for the peaceful transfer of executive power, he sought to extend Federalist control of the judiciary.

Before leaving office, Adams pushed Congress to pass the Judiciary Act of 1801, which created new circuit courts.

This gave Adams the opportunity to pick members of his own party to preside over these courts as lifetime appointees.

This would keep Federalist majority control over the third branch of government. Adams' brazen court-packing angered Jefferson.

His opposition led to a constitutional crisis about the interplay of power among the executive, legislative, and judicial branches.

The crisis was resolved by a case brought before the Supreme Court.

Here is the story of Marbury versus Madison, the most important legal decision in American history.

Chapter 1: The Judiciary, the Weakest Branch —

In December 1800, an ailing Oliver Ellsworth, third Chief Justice of the Supreme Court, resigned.

Outgoing President John Adams asked Secretary of State John Marshall to send news of the vacant position to John Jay, who had served as the first chief justice.

Adams wanted Jay to return and replace Ellsworth.

Jay declined.

[John Jay: The Supreme Court is the last resort for delivering justice to the nation. It must have the confidence and respect of the public—not their neglect and indifference. But under the present system I doubt the Court will ever possess any meaningful authority, stature, or power.]

Jay was right in that the judicial branch was Constitutionally designed to be weaker than the executive and legislative branches.

At the time, State courts decided most legal disputes and The Supreme Court had never struck down a federal law.

Not even meriting its own building, it borrowed a cramped “committee room” in the Capitol to hold court sessions.

Secretary of State Marshall was not surprised Jay declined to return.

But what Marshall could not know was that in January 1801 his own name would be up for Senate confirmation as the fourth Chief Justice of the Supreme Court.

Chapter 2: Introducing John Marshall —

By age 45, Marshall had built an impressive resume.

After serving as an aide to George Washington during the Revolutionary War, he established himself as a successful lawyer in Richmond, Virginia.

He played an important role in Virginia’s constitutional convention.

Elected to the U.S. House of Representatives, Marshall became an alliance-builder in Congress.

Witty and likable, he was admired for his sharp legal mind.

President Adams appointed him Secretary of State to handle difficult diplomatic missions to Europe.

But even Adams could not have known when he chose Marshall to be chief justice how brilliant he was.

Marshall would draw on all his talents to bring his Supreme Court the power and prestige it deserved.

Chapter 3: Adams Appoints the “Midnight Judges” —

Just weeks before Adams transferred the presidency to Jefferson, the Federalists in Congress passed the Judiciary Act of 1801.

This act created six new circuit courts to handle appeals and serve as intermediaries between local trial courts and the Supreme Court.

Adams was thankful to have sixteen new judicial seats to fill with judges.

His appointees, mostly Federalists, would prevent the incoming Democratic-Republican administration from taking control of the judiciary in addition to the presidency and congress.

[John Adams: "I shall secure the future of the judiciary by blocking Mr. Jefferson from making lifetime appointments of judges."]

In his last days in office, Adams submitted his sixteen nominations to the Senate, which voted to confirm them.

He then stayed up late on the evening before his departure.

At his desk in the President's House, Adams formally signed the legal documents appointing the "midnight judges."

Chapter 4: The Democratic-Republicans Fight Back —

Jefferson, now president, feared such a judicial stronghold would block his own administration's agenda of decentralizing power.

[Thomas Jefferson: "Mr. Adams' midnight appointments are 'an outrage on decency.' He is packing the judiciary with men "whose views are to defeat mine." Since the Constitution says it is the role of Congress to organize the judiciary, I will petition lawmakers to cut back its power!"]

The Democratic-Republican majority complied.

In March 1802 the Judiciary Act that had instituted the new court system was repealed, thereby abolishing the seats of Adams' midnight judges.

Chief Justice Marshall believed that judges should only be removed by impeachment for wrongdoing, not by politically motivated legislation.

But wanting his court to avoid conflict, he complied with the Repeal Act.

This meant the justices themselves had to once again take on the extra work of hearing cases in far-flung circuit courts, arduous work they had begrudgingly performed from 1790 to 1801.

Chapter 5: William Marbury, D.C. Justice of the Peace? –

As well as the sixteen federal judges, The Judiciary Act of 1801 gave Adams last minute authorization to appoint 42 justices of the peace in the District of Columbia, which had just been made the nation's capital.

Justices of the peace served five year terms and drew no salary.

Their job was to resolve minor disputes by leveling small fines.

The president's nomination of prominent Washington businessman and leading Federalist William Marbury for one of the positions was rushed to the Senate, where it was hastily confirmed.

John Marshall, still acting Secretary of State, affixed the great seal of the United States to the appointment document—the commission—one day before Adams left office.

But in the chaos of a changing administration Marshall and his harried staff failed to deliver the document to Marbury.

They also neglected to deliver commissions to sixteen other justice of the peace appointees.

Would their undelivered commissions, which gave them the legal right to take office, be honored by the incoming administration?

Chapter 6: Charles Lee Represents Marbury —

Jefferson sought to push back on all of Adams' appointments, so he used inaction on delivering the commissions to block Marbury and the others from their justice of the peace positions.

Angry, Marbury hired Charles Lee, who had served as Attorney General under Adams, as his lawyer.

Lee requested that the Supreme Court compel delivery of the commission to Marbury and three other men owed justice of the peace jobs who had joined Marbury's lawsuit.

He asked the Court to issue a "writ of mandamus", which is a command from a higher court ordering an inferior government official to fulfill his duties.

Chief Justice Marshall issued the writ to James Madison, Jefferson's new Secretary of State, as it was Madison's department's job to deliver the commissions.

But as Jefferson's closest advisor, Madison simply ignored it.

His refusal to comply with the mandamus led to Marbury's lawsuit being tried in the Supreme Court.

That it went there directly as original jurisdiction without first being tried in a lower federal court and then being appealed would become important in how the case was decided.

Chapter 7: Constitutional Crisis —

Meanwhile, a viciously partisan debate over the writ of mandamus flared in Congress.

Federalist senators argued that the Supreme Court had the power to decide that members of the Executive Branch acted unconstitutionally by disobeying the writ.

The Democratic-Republican senators disagreed.

In their view it was strictly the power of Congress, whose legislators are directly elected by the American people, to place checks on the Executive Branch.

Unelected judges, they protested, had no right to force the executive branch to obey an order of the Court.

Along those same lines, Congress debated the constitutionality of the Repeal Act, which had taken away the new judgeships.

Chief Justice Marshall faced a dilemma.

[John Marshall: “If I back down and let Mr. Madison ignore my order, I risk having this Court exposed as powerless because we have no way of enforcing our decisions. But if I force him to comply, President Jefferson might ask Congress to impeach us.”]

Was there a way for Marshall to resolve this predicament and assert the independence of the Supreme Court from partisan politics?

And how could he proclaim the Court’s authority without the other two branches feeling that their power was threatened and provoking a showdown?

Chapter 8: The Justices Hear the Case —

As part of its power play over the judiciary, Congress had shut down the Supreme Court by preventing the justices from holding session for 14 months.

This was a tactic to delay hearing Marbury’s case and a second case, *Stuart v. Laird*, which questioned the legality of the Repeal Act.

Finally, in February 1803, Attorney Charles Lee stood before four of the justices –two were absent due to illness–in the packed committee room serving as their court to argue Marbury’s case.

A skilled lawyer, Lee was an ardent Federalist and an old friend of Marshall's.

[Charles Lee: "Mr. Madison is Secretary of State and thus a public servant. He is not "above the law". He must comply with this Court's writ of mandamus and reissue the commissions to my clients. They have established the right to the job to which they have been duly appointed."]

Lee's closing statement framed things in a larger way: because justices of the peace were minor judicial officials, he said, the case was more about upholding the independence of the judicial branch.

To argue the opposing side, the Jefferson administration would have normally used its attorney general, Levi Lincoln.

But in a challenge of the Supreme Court's authority, Jefferson refused to send a lawyer to represent the government.

Over the next two weeks the justices met privately to deliberate the case.

How would the Court rule?

Chapter 9: Marshall Issues The Decision —

The Justices decided the case unanimously.

On February 24, Marshall read the Court's opinion. It took him almost four hours to read its 10,000 words.

[John Marshall: "The Senate approved Mr. Marbury's appointment, the President signed the commission, and the Secretary of State sealed it. Mr. Madison thus acted "in plain violation" of Mr. Marbury's right to his commission. Subsequently, Mr. Madison has not shown cause as to why he should disobey this Court's order to reissue the missing commission."]

Then to everyone's surprise, Marshall went on to introduce a new concept not in Lee's arguments.

He focused on the Judiciary Act of 1789, enacted by Congress to establish the structure of the federal court system and define its powers.

The chief justice reasoned that his own court had violated Section 13 - the part pertaining to writs of mandamus issued by government officials to courts.

He held that it limited the Supreme Court to hearing complaints about this type of writ only on appeal.

So instead of going directly to the Supreme Court, Marbury's case ought to have been tried first in a lower federal court.

Had he lost there, Marbury could have appealed to the Supreme Court, where the justices would have then had legal grounds to issue the mandamus as an exercise of their appellate jurisdiction.

Because this protocol was not followed, the writ of mandamus which Madison ignored was deemed invalid.

Marbury and the other plaintiffs lost their case.

They would not get the jobs promised to them by Adams.

Chapter 10: Who Interprets the Constitution? —

Chief Justice Marshall tactically gave up a small battle over enforcing the mandamus to assert a much greater power.

He declared section 13 of the Judiciary Act was not consistent with the Constitution, and was therefore invalid.

[John Marshall: “The words in the Constitution are a higher form of law, more fundamental and paramount than any act passed by Congress. The Constitution is the “supreme law of the land,” which means that any law which is inconsistent with it “is void.”]

Who, then, has the authority to interpret the words of the Constitution? Unelected judges or members of Congress chosen by the people?

[John Marshall: It is “emphatically the province and duty of the judicial department to say what the law is.” Judges “who apply the rule to particular cases, must of necessity explain and interpret that rule.”]

Giving the judicial branch this interpretational responsibility meant the Supreme Court had the power to decide whether an act of Congress or an order by the Executive branch was in violation of the Constitution.

Chapter 11: Judicial Review —

The power Marshall was asserting is called judicial review.

It was not a new concept: state courts were already allowed to find laws unconstitutional, and delegates to the Constitutional Convention had spoken explicitly about giving federal courts the same authority.

But judicial review was not spelled out in the Constitution.

Marshall used the constitutional crisis surrounding the Marbury case to establish the Supreme Court's authority to strike down Executive or Congressional acts it judged to be unconstitutional.

Marshall's masterful decision in *Marbury v. Madison* managed to expand the high court's power while diplomatically averting a showdown with Congress.

Only a week later the Court again rose above factional party politics when Justice William Patterson issued a short ruling in *Stuart v. Laird*.

The Federalist-dominated Supreme Court voted unanimously not to strike down the Repeal Act.

That was the act Democratic-Republicans had passed to abolish the circuit court seats former President Adams had worked to fill with the Federalist midnight judges.

Chapter 12: Aftermath —

Although President Jefferson complained about the “twistifications” in Marshall’s logic, the Democratic-Republicans accepted the Marbury v. Madison decision.

This was because Marshall had chosen to assert judicial review with a case that recognized the power of Congress and limited the Court's power.

The Supreme Court has since relied on the Marbury precedent to ensure that government acts comply with the Constitution in a variety of pivotal cases affecting the political, economic and social fabric of the nation.