

Marbury VS. Madison (1803)

The role of the United States Supreme Court, as designed by the U.S. Constitution, is to interpret and further define the laws of our country. In cases where disputes remain unresolved, the U.S. Supreme Court can choose to hear a case, and decide its outcome based on applicable law. This however, can be more difficult than it seems.

Judicial review is the power of a court to review a statute, or an official action or inaction, for constitutionality. (1) The case of *Marbury v. Madison*, (1803) was the landmark Supreme Court decision, which ultimately gave the Supreme Court the power of judicial review.

The *Marbury v. Madison* case began with the changing of Presidential administrations in 1801. The United States at the time was obviously a new nation, and to that point, had been predominantly under the control of the Federalist Party. This particular election, would in effect, be the first change of political power, both to the executive and legislative branches of government.

The incumbent president, John Adams, a Federalist, had been defeated by the incoming president, Thomas Jefferson, a Republican, who was scheduled to take office on March 04, 1801. (2). The outgoing Federalist controlled congress met for the last time in December 1800 and made a last minute attempt to retain some of its power, by passing a Judiciary Act which President Adams signed in February 1801. This new act created a number of new courts to be controlled by judges appointed by the Federalist Party. (3)

One of these “Midnight Judges”, as they came to be called, was William Marbury, who had been appointed Justice of the Peace in the District of Columbia. William Marbury was appointed by outgoing President Adams, and approved by the still federalist controlled senate, prior to the change of administrations. Marbury’s official appointment was signed by President Adams and his Secretary of State, John Marshall, but in order for the appointment to become official, the Secretary of State, Marshall, had to deliver the commission to Marbury...and Marshall failed to do so. (3)

Perhaps the most ironic part of this story is that John Marshall, the outgoing Secretary of State, was appointed as the Chief Justice of the Supreme Court by outgoing President Adams, as part of the Federalist attempt to maintain some power through the rule of the Judiciary Branch. Marshall continued to act as Secretary of State until he was sworn in as Chief Justice on March 03rd. On March 04th, Chief Justice Marshall swore in President Jefferson. (2)

Upon taking office, President Jefferson voided 17 of 42 federal judge appointments approved by President Adams, some argue as a cost cutting measure, or perhaps as a show of power change, but cited the fact that the 25 voided appointments were not properly delivered, and therefore, he did not have the obligation to honor them. President Jefferson further appointed James Madison as the new Secretary of State, and ordered him not to deliver any of the 25 voided commissions. Subsequently, William Marbury filed suit in the U.S. Supreme Court against James Madison, in an attempt to force Madison to deliver his commission. (3)

John Marshall, the very person who failed to deliver the official commission to Marbury, now found himself as Chief Justice of the Supreme Court, and the person responsible for ruling on this case.

To this point in history, the U.S. Supreme had yet to be tested, and the power of the Judiciary branch of government was recognized as weak. Marshall's decision would have far greater implications than awarding Marbury his commission.

The case of *Marbury vs. Madison* gave the Supreme Court its power of Judicial Review, or the power to review a statute, or official action for constitutionality. Marshall actually found a rule governing the Supreme Court itself to be unconstitutional.

One of the first decisions that any ruling judge must make, is which particular law applies to the case at hand. As our nation is comprised of many laws, often times, more than one law may apply, and at times, these laws can conflict with each other. In any event, it is clearly stated in the U.S. Constitution, that the Constitution is the prevailing law of the land, and as such will prevail in the event that it conflicts with any other.

Marshall found that the Judiciary Act, which gave the Supreme Court the power to issue writs of mandamus, (the equivalent of a modern court order), conflicted with, and exceeded the powers authorized to the Supreme Court under article III of the U.S. Constitution. Marshall further found that the Judiciary Act, altered the powers given the court under Article III, and as such, was found to be unconstitutional. Therefore, the Supreme Court could not lawfully compel Madison to deliver Marbury's commission. (4)

In rendering his decision, Marshall first ruled that Marbury had a right to his commission as a federal judge, and that Secretary of State Madison should have had it delivered. He went on to say that since the Judiciary Act of 1789 was in conflict with the Constitution, in that it attempted to give the Supreme Court original jurisdiction over an area not specified as such in Article III of the Constitution, and therefore, the Supreme Court could not compel Madison to deliver the commission. Ultimately, the Supreme Court could not offer Marbury a remedy, even though his rights were violated when Madison refused to deliver his commission. Marshall's decision allowed the Court to chastise the Jefferson administration and brand President Jefferson a violator of civil rights without issuing an order that the President could have ignored. (4)

The case of *Marbury vs. Madison* remains one of our nation's most historic Supreme Court decisions, and has been cited many times in history when the topic of constitutionality has come at issue. The power of judicial review gives the Judiciary branch of government its equal share in the balance of power.

I've often been impressed with the foresight of our founding fathers. The idea of an electoral college, the balance of power stated in the constitution, the case law decisions made in early history, and the impact that each would have two hundred plus years later. In more recent years, the *Marbury vs. Madison* case can be compared to the 2000 Presidential election, in which the vote count in the state of Florida would determine the winner. Twice during the several weeks in which it took to decide the election, the Florida State Supreme Court, offered a remedy to the problem of counting votes. Their decisions were appealed to the U.S. Supreme Court, and on both of those

occasions, the U.S. Supreme Court ruled that Florida had overstepped its bounds, by ordering a remedy.

On each occasion, the case was returned to Florida for proper ruling. The U.S. Supreme Court ruled that it was not the Florida Supreme Court's place to offer a resolution to the issue at hand; its place was to interpret the existing law. In the end, the power of Judicial Review settled the conflicts, and allowed a winner to be declared.

I'd like to hear what Charles Beard would have to say about *Marbury vs. Madison*. As Beard was strong in his views that the Constitution was designed to benefit those with means and power, how would he account for the ruling made by Judge Marshall? Marshall was put in his position by his own Federalist party, for the purpose of maintaining some of the party's political power. I would imagine that the Federalist Party *expected* Marshall to rule for Marbury, and order his commission to be delivered. Had Marshall done so, would President Jefferson have abided by that decision, or would he have ignored it, and ignited a power struggle between two branches of government.

Marshall's ruling in the *Marbury* case is regarded more as a political act rather than a legal ruling (3), and may have initially appeared to have conflicted with his own Federalist party. In the long run however, his ruling set the precedent for the U.S. Supreme Court to determine "what the law is", and would allow the Judicial Branch to strike down legislation and invalidate executive decisions. (3) This in turn strengthened the power of the Supreme Court, and would ultimately allow the Federalist Party to retain some of its power in the government at that time.

- (1) Cornell University Law School – Legal Information Institute
http://www.law.cornell.edu/supct/html/historics/USSC_CR_0384_0436_ZS.html, Legal Information Institute, Cornell Law School, Myron Taylor Hall, Ithaca, NY 14853 (4/27/2000)
- (2) Wikimemdia Foundation, http://en.wikipedia.org/wiki/Marbury_v._Madison (11 January 2007)
- (3) Irons, Peter (1999). *A People's History of the Supreme Court*. Penguin Books, pp 104-107. ISBN 0-14-029201-2.
- (4) Exploring Constitutional Conflicts
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/judicialrev.htm>