Marbury v. Madison (1803)

THE ISSUE: Judicial Review

ORIGINS OF THE CASE: In 1801, just before he left office, President John Adams appointed dozens of Federalists as judges. Most of these “midnight justices” took their posts before Thomas Jefferson, Adams’s Democratic-Republican successor, took office. Jefferson ordered his secretary of state, James Madison, to block the remaining appointees from taking their posts. One of these appointees, William Marbury, asked the Supreme Court to issue an order forcing Madison to recognize the appointments.

THE RULING: The Court ruled that the law under which Marbury had asked the Supreme Court to act was unconstitutional.

The Legal Arguments

Chief Justice John Marshall wrote the Court’s opinion, stating that Marbury had every right to receive his appointment. Further, Marshall noted, the Judiciary Act of 1789 gave Marbury the right to file his claim directly with the Supreme Court. But Marshall questioned whether the Court had the power to act. The answer, he argued, rested on the kinds of cases that could be argued directly in the Supreme Court without first being heard by a lower court. Article 3 of the Constitution clearly identified those cases that the Court could hear directly. A case like Marbury’s was not one of them. The Judiciary Act, therefore, was at odds with the Constitution. Which one should be upheld? Marshall’s response was clear:

... [T]he particular phraseology of the Constitution of the United States confirms and strengthens the principle . . . that a law repugnant to the Constitution is void; and that courts . . . are bound by that instrument.

Since Section 13 of the Judiciary Act violated the Constitution, Marshall concluded, it could not be enforced. The Court,
therefore, could not issue the order. With this decision, Marshall appeared to limit the powers of the Supreme Court. In fact, the decision increased the Court’s power because it established the principle of judicial review. This holds that the courts—most notably the Supreme Court—have the power to decide if laws are unconstitutional.

Why Did It Matter Then?
The principle of judicial review had been set down in earlier state and lower federal court decisions. However, Marshall did not refer to those cases in *Marbury*. Rather, he based his argument on logic. For a written constitution to have any value, Marshall stated, it is logical that any “legislative act [that is] contrary to the Constitution is not law.” Only then could the Constitution be—as Article VI calls it—“the supreme law of the land.” Who, then, decides that a law is invalid? Marshall declared that this power rests only with the courts:

> 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 [the Constitution and a law] conflict with each other, the courts must decide on the operation of each.

Not only did the courts have this power, Marshall said, it was “the very essence of judicial duty” for them to exercise it.

Why Does It Matter Now?
Over the years, judicial review has become a cornerstone of American government. The principle plays a vital role in the system of checks and balances that limits the powers of each branch of the federal government. For example, since 1803 the Court has struck down more than 125 acts of Congress as unconstitutional.

The Court has cited *Marbury* more than 250 times to justify its decisions. In *Clinton v. Jones* (1997), for example, the Court found that presidents are not protected by the Constitution from lawsuits involving actions in their private lives. The Court supported this finding by pointing to its power “to say what the law is.” More recently, in *United States v. Morrison* (2000), the Court ruled that Congress went beyond its constitutional bounds by basing a federal law banning violence against women on the Fourteenth Amendment and the Commerce Clause of the Constitution. The opinion pointed out that “ever since *Marbury* this Court has remained the ultimate [explainer] of the constitutional text.”