

Case 1: Marbury v. Madison (1803)**Judicial Review****THE ISSUE** Who should decide whether a law is constitutional?**WHAT'S AT STAKE?**

Whether the U.S. Supreme Court can strike down laws that are not consistent with the Constitution.

FACTS AND BACKGROUND

In 1800, Thomas Jefferson won the presidential election. President John Adams lost. Before Jefferson was inaugurated, Adams nominated 42 of his supporters as justices of the peace for the District of Columbia.

The new justices of the peace could not take office until they received a signed and sealed document called a *commission*. John Marshall, the acting secretary of state, did not have time to deliver all of the commissions. Soon after Jefferson took office, he found that some of the commissions had not been delivered. He ordered James Madison, the new secretary of state, not to deliver them.

William Marbury was one of the people who did not receive his commission. Marbury asked the Supreme Court for a special order, called a *writ of mandamus*, to force Madison to deliver the commission. The Constitution lists the types of cases that the Supreme Court can hear. The list does not include cases where a person is seeking mandamus. But the Judiciary Act (1789) said that people could go directly to the Supreme Court to seek this kind of order. *Marbury v. Madison* began in the Supreme Court.

The Chief Justice of the Supreme Court was John Marshall, the same man who had failed to deliver Marbury's commission. Marshall was a political opponent of Jefferson. Marshall and the Court faced a difficult decision. If the Court ordered Madison to deliver Marbury's commission, Jefferson and Madison would likely ignore the order. The Court would look weak. If the Court denied Marbury's claim, it would look like it was backing down to the President.

THE DECISION

The vote on the Court was unanimous. Chief Justice Marshall wrote the Court's opinion. He said that Marbury had a legal right to receive his commission. Furthermore, Madison's refusal to deliver it violated that right. But then Marshall did something surprising.

Marshall wrote that the Judiciary Act conflicted with the U.S. Constitution. The Constitution listed the types of cases the Supreme Court could hear. The Judiciary Act added to that list. When two laws conflict, Marshall wrote, the courts must decide which law to follow. The Constitution is the supreme law of the land. As a result, the Court declared that the Judiciary Act was unconstitutional.

In his decision, Chief Justice Marshall gave up the Court's power to hear the types of cases listed in the Judiciary Act. Instead, Marshall claimed a far greater right for the Court—the power of judicial review. He wrote,

It is emphatically [definitely] the province [role] and duty of the judicial department to say what the law is... If two laws conflict with each other, the courts must decide on the operation of each.

IMPACT OF THE DECISION

Judicial review means that the judiciary is able to check the power of Congress and the President. Judicial review makes the Supreme Court one of the three great branches of government. This power is essential to the checks and balances of our system. It has been used often in the past 200 years.

QUESTIONS

1. Without the power of judicial review, who would decide whether laws were constitutional? What problems might arise if the same branch of government both passed laws and decided if they were constitutional?

2. Do you think that nine judges should be able to decide whether laws created by an elected body are unconstitutional? Explain your answer.

FIND OUT

What types of cases can the Supreme Court hear?