

Judicial Review: How John Marshall Changed the Judiciary

When John Marshall was appointed the fourth Chief Justice of the United States in January 1801, he knew he had a difficult challenge. His predecessor, John Jay, had refused the office, noting that the Supreme Court lacked both “energy” and “dignity.” Marshall resolved to change that. It would not be long before he got his chance.

In the winter of 1801, the United States was preparing to witness its first transfer of government power from one political party to another. For twelve years, the Federalist Party had dominated the political landscape. On March 4, however, President-elect Thomas Jefferson of the Republican Party was preparing to take control of the government. In anticipation of Jefferson’s inauguration, the Federalists placed as many of their supporters in influential positions as possible. To this end, they pushed through a law allowing the president to appoint as many judges as he believed “expedient” for terms of five years. President John Adams wasted no time in appointing forty-two men not to the petty, but important posts of justice of the peace. Adams’ appointment of these men on the eve of his exodus from office became known as the Midnight Justiceships. The Federalist Senate quickly confirmed and commissioned Adams’ appointments; but in his last days in office, the outgoing president failed to deliver official papers confirming all of his appointments.

Dismissing Adams’ efforts to pack the courts with loyal Federalists as a political ploy, Jefferson took office and immediately directed his Secretary of State, James Madison, not to deliver any more of Adams’ last-minute appointments. Jefferson later decided to authorize the delivery of twenty-five of the commissions, but denied seventeen others. One of those denied was William Marbury. He and three others decided to bring suit against the Secretary of State to claim their appointments. At the Supreme Court’s December 1801 term, Marbury’s lawyer asked the court to issue a “writ of Mandamus” (literally meaning “we command”) against Madison, forcing him to hand over the commissions.

Led by Supreme Court Chief Justice Marshall, the Court had to make a very difficult decision. If the Court issued the writ, but the Jefferson administration ignored it, Marshall postulated this might further weaken the Court’s power.

Marshall also knew if the Court denied the writ, it might look as if fear motivated the Court's actions. Both, he reasoned, would undermine the basic doctrine of the supremacy of the law over politics. It should also be mentioned that Marshall was a Federalist and a cousin of Thomas Jefferson, whom he did not regard highly.

When the case came up for a decision in February 1803, Marshall decided to use it as a platform to address many of the issues raised about the role of the judiciary. He carefully crafted an opinion that would demonstrate the authority of the Court against the Congress and the Executive — and yet would avoid a showdown between the branches, which might, in the event of Madison's failure to comply, have hurt the Court's place in the government.

Writing for the majority, Marshall said Madison and Jefferson were wrong for withholding the appointments. He further agreed with Marbury's lawyer that the appropriate remedy was a writ of Mandamus and that the Judiciary Act of 1789 granted the Court the power to issue writs of mandamus. Marshall, however, claimed the Judiciary Act exceeded the authority established for the Court under Article III of the Constitution and was, therefore, unconstitutional. Marshall's logic was twofold. First, he claimed the case did not fall under the original jurisdiction of the Court; thus, it could not be initiated in the Supreme Court. Marshall pointed out that Marbury and his compatriots should first have taken their complaint to the Circuit Court for the District of Columbia, where, if necessary, it could have been appealed to the Supreme Court. By walking this fine line, Marshall established the Supreme Court as the final arbiter in cases of law; moreover, the Supreme Court had the power to review laws passed by Congress and the president. Today, this is known as judicial review. Some historians have argued that this bold move proved Marshall was an "activist" judge.

By framing his decision in this way, Marshall avoided a showdown with the Jefferson administration but was still able to issue a ruling that preserved the Supreme Court's power. While the case limited the Court's power in one sense, it greatly enhanced it in another by ultimately establishing the Supreme Court's power to declare acts of Congress unconstitutional.

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Discussion Questions:

1. What criticism did John Marshall's predecessor John Jay offer of the Supreme Court? How did Marshall resolve to change that?
2. What motivated John Adams to appoint the "Midnight Justices"?
3. Why did Jefferson refuse to deliver Adams' appointments?
4. What legal principle did John Marshall establish with his decision in the Marbury case?