



## **Video Content Series: *Marbury v. Madison* (1803)**

### **Resource Packet**

Grade: 7<sup>th</sup>- 12<sup>th</sup>

Platform: GoOpenVA Streaming Video Content/John Marshall House Website

Program Length (video and resource packet): 35 minutes

Subject(s): American legal history, Supreme Court cases, separation of federal powers,

VA SOLs: CE.1a, f, h; CE.6b; CE.9b; VUS.1a, e, f, g; VUS.5d; GOVT.1a, c, d; GOVT.7a, b; GOVT.10b

Objective(s): To introduce to or reinforce for students the significance and impact of Chief Justice John Marshall's ruling in the imperative Supreme Court case, *Marbury v. Madison* (1803), and in so doing, established the authorities and separation of powers of the federal branches of government.

Skills: Primary source reading and analysis, connecting past to present, critical thinking

Resources and Primary Sources: political cartoon; letter from Thomas Jefferson to former First Lady Abigail Adams

Video Transcript: attached.

## Lesson Plan

### I. Introduction

- A. John Marshall was the longest-serving and arguably the most influential Chief Justice of the United States Supreme Court. We often consider James Madison to be “the father of the Constitution”; in the same vein, we can think of John Marshall as the “the father of the Supreme Court”. While the Constitution created the Supreme Court in 1789, it did not identify what the court *could* and *could not* do. It was during his 34-year tenure as Chief Justice, that John Marshall defined what powers and authorities the Supreme Court possessed.
- B. In 1803, Marshall ruled on one of America’s most important court cases: *Marbury v. Madison*. Is it through this vital court case that John Marshall clarifies the Supreme Court’s greatest power: to interpret and enforce the Constitution and determine laws unconstitutional. In this, Marshall carved out the concept of judicial review.
- C. The minute details of the case matter less than the ruling of judicial review, but in order to understand how Marshall reached his decision, we must review the events of the case.

### II. Background on the Case

- A. At the beginning of March 1801, John Adams saw his one and only term as President of the United States come to a rapid conclusion and awaited the installment of his successor, political adversary, and intermittent personal friend, Thomas Jefferson, as America’s third President.
- B. Adams was a staunch Federalist who believed in the necessity of a strong national government compared to Thomas Jefferson’s states’ rights ideology. To the Presidency, Jefferson brought a new political party to counter the Federalists: the Democratic-Republicans. The election of 1800 was incredibly important to the United States political system because it not only was the first election in which a new party won power, but Adams and Jefferson--with the assistance of Supreme Court Chief Justice John Marshall--facilitated a *peaceful transfer of power*, which established a precedent for future presidential elections.
  1. Referred to as the Revolution of 1800
  2. The Federalist Party never recovered the Presidency after Adams’ failed attempt for re-election in 1800.
- C. In the days of the Early Republic, new presidents were sworn in in early Spring versus in January like we have done for many decades simply due to the logistics of poor weather, poor roads, and poor transportation.
  1. Easier to travel in the spring

### III. Marbury’s Commission

- A. On March 2, 1801--two days before Jefferson was to assume the presidency--John Adams sought to fill 34 federal judge and justices of peace positions (and subsequently the nation’s courts) with men from his own Federalist Party, as opposed to letting those 34 seats roll over into the Jefferson Administration to be filled with men loyal to the incoming President.
  1. In order for a President to appoint, or commission, men to serve as judges, the appointments must be approved by the Senate and the written commissions must be delivered to the appointed men by the Secretary of State.
- B. After receiving the Senate’s approval over the new 34 commissions, Adams sent his “Midnight Appointments” to the Secretary of State’s desk for delivery very late at night on the 3rd of March--hours before Jefferson was technically the new President. All but 4 of the new appointees received their commissions before the clock struck midnight.
  1. One undelivered commission was for William Marbury.

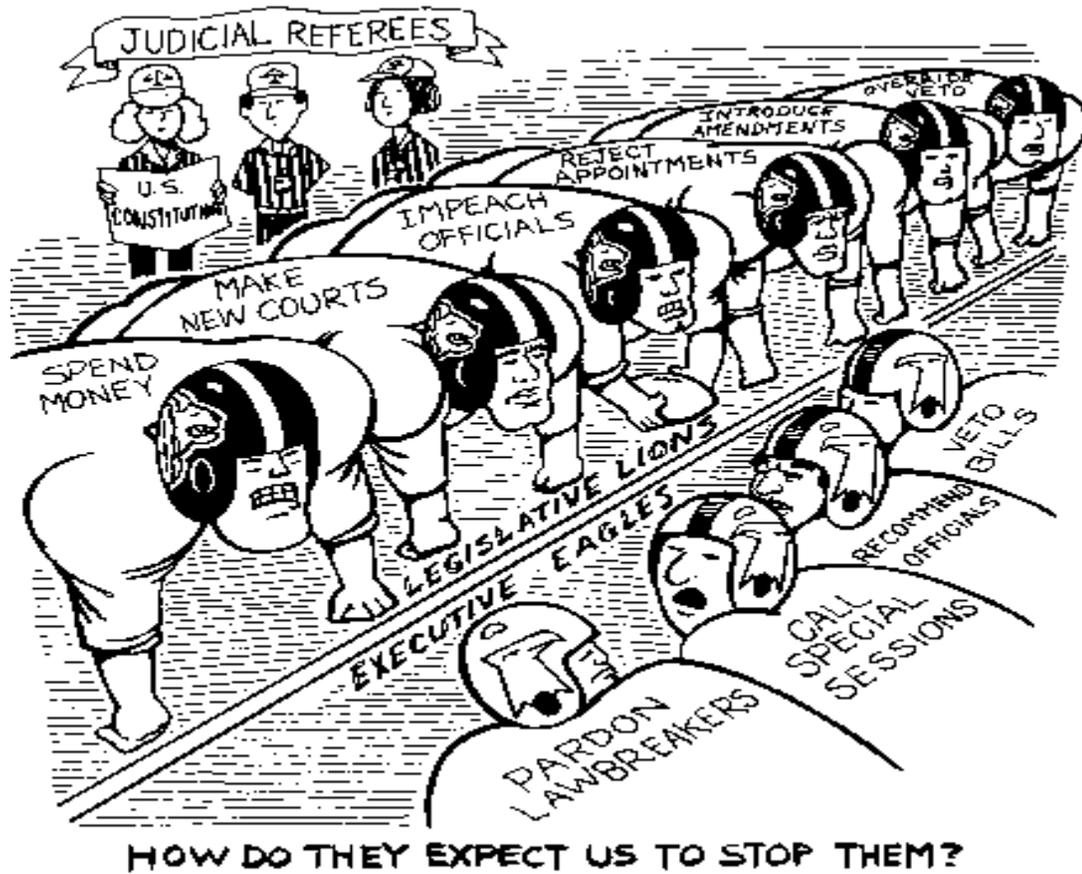
### IV. The Jefferson Revolution



- A. On the morning of the 4th of March when Thomas Jefferson was sworn in as the third President of the United States, he appointed his own Secretary of State, father of the Constitution, himself, James Madison.
    - 1. In the election of 1800, the Federalist Party does not only lose the Presidency, but they lose both houses of Congress, too. As such, when Jefferson becomes President, his party--the Democratic-Republicans--also hold majorities in the Senate and the House of Representatives.
    - 2. Jefferson's party has the triumvirate of political power.
  - B. Upon reaching his new desk as Secretary of State, Madison finds the four undelivered federal judges and justices of peace commissions given by John Adams. Madison and Jefferson do not want to confirm those last four commissions--of which Marbury is one. Naturally, the new Administration wants to appoint their own judges to those benches.
- V. Marshall Arrives on the Court: *Marbury v. Madison* (1803)
- A. In the same breath that James Madison becomes the new Secretary of State, John Marshall becomes the Chief Justice of the Supreme Court.
  - B. With Madison's refusal to deliver William Marbury's commission, Marbury sought an injunction against Madison and appealed to the Supreme Court to force Madison to deliver his commission. Marbury argued that by denying his commission, Madison was ignoring his Constitutional obligation to do so.
  - C. Madison countered that because Marbury's commission had not been delivered on time, that under the new Administration, it was void. Marshall ruled that all necessary and appropriate steps had been taken in the process of appointing Marbury--i.e. Congressional approval--thus, confirming the appointment.
- VI. Significance of the Case
- A. Marshall determines that while he does have the power to force Madison to deliver and therefore approve Marbury's appointment, that Marbury never had the authority to directly appeal to Marshall on the Supreme Court to ask for it. In appealing directly to the Supreme Court, apparently Marbury skipped several steps of appeal and it is this technicality which inspires Marshall to establish judicial review.
  - B. In reviewing the Constitution, and specifically, the Judiciary Act of 1789, Chief Justice John Marshall rules that Marbury's act of appealing directly to the Supreme Court to force Madison to approve his appointment was unconstitutional, for Marbury avoided the proper channels of making an appeal.
  - C. Therefore, Marshall decides that while yes, he does have the power to make Madison deliver Marbury's commission, that he will not do so because Marbury made the unconstitutional error in making his appeal.
  - D. At the end of the day, Marbury's commission, President Adams' Midnight Appointment, and even President Jefferson's dismay at the Federalist commissions doesn't matter. What matters is that Marshall read the Constitution, developed an interpretation or opinion about it, and enforced his decision. This creates the concept of judicial review.

## Marbury v. Madison Political Cartoon and Primary Source Analysis

### A. Political Cartoon



Source: [landmarkcases.org](http://landmarkcases.org)

- 1) This political cartoon is composed of three groups. Which groups are included?
- 2) What do the phrases on the players' backs represent?
- 3) Why don't the Judicial Referees (Supreme Court/Judicial Branch) have any powers?

- 4) What do sport referees do?
  
- 5) From which playbook are the Judicial Referees evaluating the game between the Legislative Lions and Executive Eagles?
  
- 6) While the Supreme Court may not appear to have powers like the other players do, the Supreme Court in fact--as a result of *Marbury v. Madison*--has one main and incredibly important power. Given the job of referees, from which playbook the Judicial Referees are scoring the game, and who the other two teams of players are, what do you think is the Judicial Branch's main power and authority?



B. Primary Source

**Letter from President Thomas Jefferson to Abigail Smith Adams (Former First Lady; wife to President John Adams), September 11, 1804**

Monticello. Sep. 11. (18)04.

...You seem to think it devolved on the judges to decide on the validity of the sedition law. but nothing in the constitution has given them a right to decide for the executive, more than to the Executive to decide for them. both magistracies are equally independant in the sphere of action assigned to them. the judges, believing the law constitutional, had a right to pass a sentence of fine and imprisonment; because that power was placed in their hands by the constitution. but the Executive, believing the law to be unconstitutional, was bound to remit the execution of it; because that power has been confided to him by the constitution. that instrument meant that it's co-ordinate branches should be checks on each other. but the opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, but for the legislature & executive also in their spheres, would make the judiciary a despotic branch.

Nor does the opinion of the unconstitutionality & consequent nullity of that law remove all restraint from the overwhelming torrent of slander which is confounding all vice and virtue, all truth & falsehood in the US. The power to do that is fully possessed by the several state-legislatures. it was reserved to them, & was denied to the general government, by the constitution according to our construction of it. while we deny that Congress have a right to controul the freedom of the press, we have ever asserted the right of the states, and their exclusive right, to do so. they have accordingly, all of them, made provisions for punishing slander, which those who have time and inclination resort to for the vindication of their characters. in general the state laws appear to have made the presses responsible for slander as far as is consistent with their usual freedom. in those states where they do not admit even the truth of allegations to protect the printer, they have gone too far.

Th: Jefferson

Source: National Archives, <https://founders.archives.gov/documents/Jefferson/99-01-02-0348>



**Short Answer**

Jefferson writes that giving the Supreme Court (federal government) the authority to deem both national and state laws unconstitutional will make the Court “despotic”. What does despotic mean and why does Jefferson fear a despotic federal government? Who does Jefferson believe should control state laws?

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## Video Transcript

Hi, and welcome to the John Marshall House, home to the longest-serving and arguably most influential Supreme Court Chief Justice John Marshall. My name is Meika, and I am the Education Manager here and today we are going to talk about Marshall's most important Supreme Court case, *Marbury v. Madison* of 1803. Back in 1789 when the U.S. Constitution created the Supreme Court, it did not likewise identify what the Court could and could not do. It was Marshall, during his 34 years on the Court (1801-1835), and through court cases like *Marbury v. Madison*, that he established the Court's powers and authorities.

The minute details of the Supreme Court case, *Marbury v. Madison*, matter less than the actual ruling that Marshall made in 1803. At the end of this court case, he established the concept of **judicial review**, which essentially established that **the Supreme Court has the power to interpret and enforce the Constitution and determine laws unconstitutional**, an authority that previously laid with Congress. The concept of judicial review is such an important one that has come to create our modern judicial system and we see it play out over the course of the decades since 1803 and across court cases to our present day. But how did we get to this concept that the Court has the power to interpret and enforce the Constitution and determine laws unconstitutional?

Back in 1800, President (John) Adams saw an end to his first and only term as President of the United States (1796-1800), we see a **transfer of power in the election of 1800**. Thomas Jefferson comes to the presidency with a states' rights ideology versus President Adams' federalist ideology which offered and supported a strong national government. This transfer of power is incredibly important because it was peaceful, and this in itself comes to impact our elections since then. At this time, U.S. Presidents were inaugurated in March and not in January as we see them now, mainly because with poor travel, poor roads, and poor weather, it was too difficult for people to get to Washington, D.C. in January, and so presidents were sworn in in March when it was easier to get around. As such, President Adams would have been President until March 4<sup>th</sup>, 1801 when Jefferson became President on that midnight.

At the end of Adams' term, there are 34 federal judge and justice of the peace positions to fill across courts in the country and Adams wants to fill all of these posts with federalist judges who will be loyal to federalist ideology of supporting a strong national government. Adams uses the very last minutes, and in fact seconds, of his administration to fill these court positions just before Jefferson becomes President on midnight on March 4<sup>th</sup>,



1801. Naturally, Jefferson would want to put his own men in these judge positions, but it is Adams who is trying to connive and get in federalist judges before the clock strikes midnight.

As the court case, *Marbury v. Madison* will determine years later, President Adams is following all the correct steps to get these men appointed to their federal judge positions. First, he gets the Senate to confirm all of these appointments and then he begins the process of having the Secretary of State deliver these **commissions, or letters of employment**, to all of these men. However, Adams has to have the Secretary of State deliver all of these letters before midnight on March 4<sup>th</sup>, 1801, and **all but four are delivered successfully**. Those remaining four letters of commission roll over onto the new administration which is of course President Jefferson, and with him, a new Secretary of State, James Madison.

Madison and Jefferson do not want to confirm these final four appointments, and yet, these four men of course want to see their commissions go through. One of these belonged to **William Marbury** who is quite upset that James Madison does not want to approve his appointment. Madison argues that as the appointment was not delivered before midnight, that it is void and will not go through. But Marbury takes an appeal directly to John Marshall on the Supreme Court and **asks Marshall to, essentially, force Madison to approve this commission**.

This is when we see the important establishment of judicial review; it's during the early stages of the court case. Marshall hears Marbury's appeal and says, "Yes, I have the power to do as you ask, sir; I can force Madison to approve your commission, but in fact, in my reading of the Constitution, and more specifically the Judiciary Act of 1789, I have determined that **you do not have the authority to ask me directly to appeal to Madison**." In fact, it seemed, and it was, that Marbury skipped the order of appeal, and skipped steps by going directly to the Supreme Court to appeal his commission. He should have gone through smaller courts first before going to Marshall. And it is **this technicality**, this act in itself, **which establishes judicial review**. So, it doesn't matter so much about Marbury's commission or President Adams' appointments, it matters that Marbury skipped all of these steps.

Therefore, Marshall determines, "Yes, I have the power to do as you ask; **I have the power to tell Madison to make you a judge, but I am not going to** because I determined that your asking me was unconstitutional, that you skipped all these steps and so I am determining and I am interpreting the Constitution as I see it and I do not want to send that letter to Madison as you have requested."

So, ultimately, Chief John Marshall did not tell Madison to approve Marbury's commission, and at the end of the day this doesn't matter. It was Marshall's solitary act of saying, "Yes, I can, but I won't" which created judicial review and gave him the power—rather he *gave himself* the power—to determine a law unconstitutional. So, judicial review, again, began in 1803 and became foundational to our judicial system here in the US and we see it play a part since that time.

I hope this video of *Marbury v. Madison* has been helpful in breaking down the details of the case, but also identifying the most important part, which is of course, the idea of judicial review. If you liked this video, please let us know; if you want more videos, please let us know, and please have your teacher or your parent look for the attached resource packet attached to this video which includes a lesson plan and primary source activities and political cartoons to help you solidify judicial review. If you want to come visit us at the John Marshall House, we are open for public touring Friday through Sunday in closed groups, and by appointment during the week. Thank you.

