

Marbury v. Madison / Thomas Jefferson's Reaction

Directions:

1. Read the [Summary of the Decision](#) (page 5)
 2. Read the quotations by Thomas Jefferson.
 3. Answer the **Questions to Consider** (page 3).
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Quotations

1. “The question whether the judges are invested with exclusive authority to decide on the constitutionality of a law has been heretofore a subject of consideration with me in the exercise of official duties. Certainly there is not a word in the Constitution which has given that power to them more than to the Executive or Legislative branches.”

—*Thomas Jefferson to W. H. Torrance, 1815. ME 14:303*
2. “But the Chief Justice says, ‘There must be an ultimate arbiter somewhere.’ True, there must; but does that prove it is either party? The ultimate arbiter is the people of the Union, assembled by their deputies in convention, at the call of Congress or of two-thirds of the States. Let them decide to which they mean to give an authority claimed by two of their organs. And it has been the peculiar wisdom and felicity of our Constitution, to have provided this peaceable appeal, where that of other nations is at once to force.”

—*Thomas Jefferson to William Johnson, 1823. ME 15:451*
3. “But, you may ask, if the two departments [i.e., federal and state] should claim each the same subject of power, where is the common umpire to decide ultimately between them? In cases of little importance or urgency, the prudence of both parties will keep them aloof from the questionable ground; but if it can neither be avoided nor compromised, a convention of the States must be called to ascribe the doubtful power to that department which they may think best.”

—*Thomas Jefferson to John Cartwright, 1824. ME 16:47*
4. “The Constitution . . . meant that its coordinate 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 and Executive also in their spheres, would make the Judiciary a despotic branch.”

—*Thomas Jefferson to Abigail Adams, 1804. ME 11:51*

5. “To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps. Their maxim is *boni judicis est ampliare jurisdictionem* [good justice is broad jurisdiction], and their power the more dangerous as they are in office for life and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves.”

—*Thomas Jefferson to William C. Jarvis, 1820. ME 15:277*

6. “In denying the right [the Supreme Court usurps] of exclusively explaining the Constitution, I go further than [others] do, if I understand rightly [this] quotation from the Federalist of an opinion that ‘the judiciary is the last resort in relation to the other departments of the government, but not in relation to the rights of the parties to the compact under which the judiciary is derived.’ If this opinion be sound, then indeed is our Constitution a complete *felo de se* [act of suicide]. For intending to establish three departments, coordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others, and to that one, too, which is unelected by and independent of the nation. For experience has already shown that the impeachment it has provided is not even a scare-crow . . . The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.”

—*Thomas Jefferson to Spencer Roane, 1819. ME 15:212*

7. “This member of the Government was at first considered as the most harmless and helpless of all its organs. But it has proved that the power of declaring what the law is, ad libitum, by sapping and mining slyly and without alarm the foundations of the Constitution, can do what open force would not dare to attempt.”

—*Thomas Jefferson to Edward Livingston, 1825. ME 16:114*

8. “My construction of the Constitution is . . . that each department is truly independent of the others and has an equal right to decide for itself what is the meaning of the Constitution in

the cases submitted to its action; and especially where it is to act ultimately and without appeal.”

—*Thomas Jefferson to Spencer Roane, 1819. ME 15:214*

Questions to Consider

1. What is Thomas Jefferson's position on the concept of judicial review? Review the first quotation. What argument(s) does he present?
2. Does Jefferson agree or disagree with Chief Justice Marshall about the need for an “ultimate arbiter” to resolve disputes? Who does Jefferson think should be the ultimate arbiter?
3. According to Jefferson, how should disputes between the federal and state government be resolved?
4. In the seventh quotation, Jefferson says, “This member of the Government was at first considered as the most harmless and helpless of all organs.” Who is he referring to when he says “this member of government?”
5. What does Jefferson fear will happen if the Supreme Court of the United States is given the power of judicial review? Include excerpts from the quotations in your answer.

6. Based on what you have read, how did Jefferson feel about the Supreme Court's decision in the case of *Marbury v. Madison*? How would he have decided the case? Provide quote excerpts to support your argument.

For Extension (complete if assigned by your teacher)

7. Chief Justice John Marshall and President Thomas Jefferson had different views on the power of the federal government and the power of judicial review. Create a dialogue of a conversation between the two officials.

8. Do you agree with Marshall or Jefferson? Should the Supreme Court of the United States have the power of judicial review? Why or why not?

***Marbury v. Madison* / Summary of Decision**

The Court unanimously decided not to require Madison to deliver the commission to Marbury. Chief Justice Marshall understood the danger that this case posed to the power of the Supreme Court. Because Madison was President Jefferson's secretary of state and Jefferson was head of the Democratic-Republican Party while Chief Justice Marshall and Marbury were Federalists, President Jefferson was almost certain to direct Madison to refuse to deliver the commission to Marbury. If the Court required Madison to deliver the commission and Madison refused, the Court had no power to force him to comply. Therefore, the Court would look weak. If the Court did not act, it would look like the justices made their decision out of the fear that Madison would not obey their decision.

The justices struck a middle ground between these alternatives in their opinion, written by Chief Justice Marshall. The Court ruled that Marbury was entitled to his commission, but that according to the Constitution, the Court did not have the authority to require Madison to deliver the commission to Marbury. They found that the Judiciary Act of 1789 conflicted with the Constitution because it gave the Supreme Court more authority than it was given under the Constitution. The dispute centered around the difference between the Supreme Court's original jurisdiction and its appellate jurisdiction. If the Court has original jurisdiction over a case, it means that the case can go directly to the Supreme Court and the justices are the first ones to decide the case. If the Court has appellate jurisdiction, however, the case must first be argued and decided by judges in the lower courts. Only then can it be appealed to the Supreme Court, where the justices review the rulings of the lower courts. Marbury brought his lawsuit under the Court's original jurisdiction, but the justices ruled that it would be an improper exercise of the Court's original jurisdiction to issue the writ of *mandamus* in this case.

The Judiciary Act of 1789 authorized the Supreme Court to "issue writs of *mandamus* ... to persons holding office under the authority of the United States." A writ of *mandamus* is a command by a superior court to a public official or lower court to perform a special duty. The Court said this law attempted to give the Court the authority to issue a writ of *mandamus*, an exercise of its original jurisdiction, to Secretary of State Madison. However, Article III, section 2, clause 2 of the Constitution, as the Court read it, authorizes the Supreme Court to exercise original jurisdiction only in cases involving "ambassadors, other public ministers and consuls, and those [cases] in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction." The dispute between Marbury and Madison did not involve ambassadors, public ministers, consuls, or states. Therefore, according to the Constitution, the Supreme Court did not have the authority to exercise its original jurisdiction in this case. Thus, the Judiciary Act of 1789 and the Constitution were in conflict with each other.

Declaring the Constitution “superior, paramount law,” the Supreme Court ruled that when ordinary laws conflict with the Constitution, they must be struck down. Furthermore, it is the job of judges, including the justices of the Supreme Court, to interpret laws and determine when they conflict with the Constitution. According to the Court, the Constitution gives the judicial branch the power to strike down laws passed by Congress (the legislative branch). This is the principle of judicial review. Thus, it has been recognized since this decision that it is “emphatically the province and duty of the judicial department to say what the law is.”

Through this decision, Chief Justice Marshall established the judicial branch as an equal partner with the executive and legislative branches within the developing system of government. By refusing to require Madison to deliver the commission to Marbury, he did not give Madison the opportunity to disobey the Court, making it look weak. And, by declaring the Court's power through the principle of judicial review, he made it clear that the justices did not make their decision out of fear. Instead, he announced that the Constitution is the supreme law of the land and established the Supreme Court as the final authority for interpreting it.