



# [Case of Marbury v. Madison]

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## Abstract

This paper first introduces the case and the result of the judgment, and then analyzes the cause of the judgment and the process of the judgment, and finally expounds the constitutional judiciary seen in the case, as well as its necessity.

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# 1 Basic information

## 1.1 Case introduction

The plaintiff in this case is Marbury, and the defendant is Madison, which occurred in the early days of the founding of the United States and during the second and third term of the presidency. The second term president John Adams lost in seeking re-election, and Thomas Jefferson was elected as the third term president. In December 1800, old President Adams used the last moments of his term to appoint Secretary of State Marshall as chief Justice of the Supreme Court. On March 2, 1801, the last day the Federalist Party took control of Congress, the day before the second President of the United States left office, he ordered 42 justices of the peace. However, at the time of the new presidential handover, all parties were busy with the handover of the job, and 17 of their appointments were not delivered in time. The next day, successor President Jefferson, a Democratic Republican, asked his fellow Secretary of State, Madison, to discard all of the 17 appointment warrants. Marbury, who did not receive his certificate of appointment, believed that his rights had been violated. In December 1801, together with four other people who also failed to receive, sued the Marshall to the Supreme Court to issue an executive order against the Secretary of State, and served the appointment, admitting the validity of the appointment.

## 1.2 Judgment of the Judge

The court finally ruled that the court fully upheld Marbury's claim for rights relief, but it was not within the jurisdiction of the court to issue a mandate to the Secretary of State, so it rejected Marbury's request.

# 2 The judgment process

## 2.1 The progress of the case

On February 24, 1803, the Supreme Justice ruled Marbury v. Madison by a vote of 5 to 0. Chief Justice Marshall presided over the announcement of the court judgment, in which Marshall first raised three questions: First, is the complainant Marbury entitled to a power of attorney? Secondly, if the complainant has this right and this right has been violated, should the Government provide him with legal remedies? Third, if the government should provide legal remedies to the complainant, should the Supreme Court issue an enforcement order requiring Secretary Madison to issue a warrant of attorney to Marbury?

For the first question, Marshall stated: "Considers that an appointment is made as soon as the power of attorney is signed by the President; The Mandate shall be completed as soon as the Secretary of State affixes the State Seal of the United

States". "Since Mr. Marbury's Letter of Appointment has been signed by the President and affixed with the State Seal by the Secretary of State, he has already been appointed; Since the law creating the post grants the official the right to serve for five years without interference by the executive branch, the appointment is irrevocable and confers on the official legal rights protected by national law". Marshall concluded that "the refusal to issue his power of attorney was, in the opinion of the Court, not an act authorized by law, but a violation of the legal rights conferred". So Marbury is a legal issue, not a political one. To the second question, Marshall's answer was also yes. He argued: "Everyone has the right to the protection of the law when he is violated, and one of the first responsibilities of the government is to provide this protection." The government of the United States was proclaimed to be a government governed by the rule of law, not by man. If its laws do not provide remedies for the violation of the legal rights conferred, it certainly does not deserve this noble title. "

At this point, it is natural to think that Marshall would immediately issue an execution order against Madison. Surprisingly, Marshall didn't, and his answer to the third question was no. In his view, while federal courts had the power to issue enforcement orders against administrative officials, in this case the court had no power to order Madison to issue a warrant of attorney, meaning that Marbury was finding a wrong way. In his view, the power of the Supreme Court to issue enforcement orders depended on the scope of its jurisdiction. According to article 3, paragraph 2, of the Constitution, the Supreme Court has the power of first instance only in cases involving foreign envoys such as ambassadors, ministers, consuls, or state governments to which they are parties. Marbury was neither a foreign envoy nor a representative of the state government, so the Supreme Court had no first instance jurisdiction over his case. At the same time, the granting of enforcement orders to administrative officials is not included in the inherent competence of the Supreme Court under the Constitution.

Clearly, section 13 of the 1789 Judicial Ordinance conflicts with the Constitution because it gives the Supreme Court the power to issue execution orders to government officials. Accordingly, Marshall jumped to the question of the legality of congressional laws. In his view, the real question was whether the Supreme Court should follow judicial regulations or the Federal Constitution. Marshall categorically pointed out that "the Constitution constitutes the fundamental law and supreme law of the country" and that "laws that violate the Constitution are null and void."

Accordingly, Marshall officially declared: Section 13 of the Judicial Regulations of 1789 was repealed as unconstitutional.

## 2.2 Judge's consideration

Marbury v. Madison put Federalist Justice Marshall in a dilemma. He could, of course, formally issue an execution order ordering Madison to issue a warrant of attorney in accordance with legal process. But Madison is backed by President Jefferson, who may well ignore the Supreme Court's execution order. If the Supreme Court, which has neither money nor a sword, forcibly dictates to Secretary of State

Madison and is ignored, it will only make the world laugh and further weaken the judicial authority of the Supreme Court. However, if Marshall rejects Marbury's reasonable lawsuit, it is tantamount to voluntarily admitting defeat and admitting that the Supreme Court lacks authority to challenge the lawless actions of senior officials in the executive branch, which not only shames the Federalist comrades in the same camp, but also disgraces the Supreme Court.

So instead of focusing entirely on the judgement, Marshall jumped to the legality of congressional law. So, in the end, this judgment became a tacit agreement between the court and the government. Marshall fulfilled the pride of the Democratic Republican government and did not issue an injunction to the government; But the Democratic and Republican governments, while getting the judgment that gave them more prestige, needed to accept a tacit premise contained in the judgment, which was to recognize the court's right to review the government, which was what Marshall really wanted to defend, not a short term . If the Democrats and Republicans were to accept this political compromise made by the Federalists to accept that the Supreme Court could not issue an injunction against Madison in this case, they would have to trade legally for its review. It was on the basis of this last point that later generations found that the court had the power of judicial review.

This is the first time in the history of the U.S. Supreme Court that a federal law has been declared unconstitutional, establishing a system in which the U.S. Supreme Court has the power to interpret the Constitution and rule on whether government actions and congressional legislative acts are unconstitutional, which has had a significant and far-reaching impact on the U.S. political system.

## 3 Constitutional judicature

### 3.1 An Overview of the constitutional judiciary

Judicialization of the Constitution mainly means that the Constitution can enter the judicial process like other laws and regulations, and directly serve as the legal basis for adjudicating cases. The application of the Constitution in the judiciary includes two situations: First, the constitutional norms are used as the direct normative basis for judging disputes over rights and obligations between the parties, that is, the constitutional norms are applied to make judgments in specific cases. The second is to take the Constitution as the basis for judging the direct normative basis for judging disputes over rights and obligations between the parties, and the judicial applicability of the Constitution in this sense is actually the power of ordinary organs to review unconstitutionality. The prerequisite for the direct applicability of the Constitution is that the basic rights of the Constitution, which should be concretized by law, are not concretized, and when the basic rights of citizens are infringed, the basic rights of citizens need to be remedied directly in accordance with the provisions of the Constitution. The existence of civil rights in our Constitution that has not been concretized is necessary to think about the judicialization of the Constitution.

### 3.2The necessity of constitutional judicialization: it is conducive to protecting the basic rights of citizens

Although China's current legal system for the protection of citizens' rights is relatively complete, there are still some constitutional rights that are not specifically guaranteed in departmental laws. For example, in the Qi Yuling case, Chen Xiaoqi violated the victim's right to name and education by fraudulently using her name to go to school and work, which may seem like a simple civil case, but it poses a difficult problem for the court, because citizens' right to education is not specifically stipulated in civil law, which means that the court's trial must be based on the constitution.

Constitutional judicialization can enrich the ways to protect citizens' constitutional rights, and can also make constitutional rights real rights with remedies, and awaken the people's constitutional awareness while promoting the pace of human rights protection.

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