

The significance and weakness of Marbury v. Madison

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The tradition of judicial review of the Constitution in the United States dates back to Marbury v. Madison. This case has set a precedent for the review of unconstitutional law and is of great significance to the constitutional history of the United States and even the world.

1.1 Background

In early 1801, competition between the two political parties, led by Adams and Jefferson, was fierce. Jefferson won the presidential election in late 1800 and became the third president of the United States. Before the presidential transition, Adams used his power to make major changes to the judiciary. Among them, he nominated a number of "midnight judges" to newly restructured judicial positions. However, for some reason, several judges' commissions, including Marbury's, were not delivered on time. Upon taking office, Jefferson ordered a halt to the issuance of pending judges' commissions. Marbury argued that this was a violation of his legal rights and took his case to the Supreme Court.

1.2 Proposition

The plaintiff, Marbury, argued that his commission had been signed by the President and sealed by the Secretary of State, meaning that he had been duly appointed and that the appointment was irrevocable. His right to serve as a judge was violated by the suspension of his commission. He appealed to the Supreme Court to grant an injunction against Secretary of State Madison, forcing Madison to issue commissions to Marbury and other judges who had not received them.

Defendant Madison was Jefferson's secretary of state when he became president. Under Jefferson's instructions, Madison refused to appear in court, and would not give a reason for not serving the commission on Marbury and others.

1.3 Dilemma and verdict

Justice Marshall was in a dilemma when he accepted the case.

If Marshall issued an injunction against Madison, as Marbury suggested, he would most likely be impeached by Congress. Moreover, Secretary of State Madison had the backing of President Jefferson. Even if an injunction was issued, he would most likely refuse to carry it out. Such a situation would weaken the judicial authority of the Supreme Court.

On the other hand, if Marshall ignored Marbury's Reasonable appeal, he would have voluntarily acknowledged that the Supreme Court could not challenge the lawlessness of senior executive branch officials. It would be even more embarrassing for the Supreme Court. Also, both Marshall and Marbury belonged to the Federalist party, and the sentence was a shame to his party member.

After two months of careful consideration, Justice Marshall decided to reject Marbury's claim.

2 Progress of the case

Marshall's decision on behalf of the Supreme Court carried out one of the most basic principles of the Constitution: the courts have the power to review the constitutionality of congressional legislation. If they find that a law made by Congress contradicts the Constitution, the courts have the power to invalidate it.

To reach his verdict, Marshall asked and answered three questions.

First, is plaintiff Marbury entitled to a warrant of appointment? The answer is yes. Marshall noted that the commission was completed when it was signed by the president and stamped by the Secretary of State. The appointment is protected by law upon completion. Madison's refusal to issue a warrant was without legal basis and violated the legal rights of Marbury.

Second, if the plaintiff's right to obtain a warrant is indeed violated, should the government provide him with legal relief? Marshall also said yes to the second question. He argued that everyone has a right to the protection of the law when they are harmed, and that a first task of government is to provide the protection. People stress that the United States government is a government of laws, not of men. If the law does not provide relief for violations of legal rights, it is not entitled to this laudatory title.

Based on the first two questions, people would naturally expect Marshall to immediately issue an injunction against Madison. But then things took an unexpected turn. The third question Marshall asked was, if the government should provide legal relief to Marbury, should the Supreme Court issue an executive order requiring Secretary of State Madison to issue a warrant to Marbury? Not as people might expect, Marshall gave a negative answer to that question. Marshall argued that the Supreme Court had no power to compel Madison to issue a warrant in the case. According to the Constitution, the Supreme Court has first instance jurisdiction only in cases involving ambassadors, ministers, consuls and other foreign envoys, or state governments. At that time, the Supreme Court can have the power to issue an injunction. In other words, Marbury's claim was reasonable and correct, but he went to the wrong place.

The legal basis for Marbury's appeal was Section 13 of the Judiciary Act of 1789. The law gives the court the power to issue an injunction against any executive officer. This is clearly a violation of the Constitution of the United States. Marshall firmly pointed out that the Constitution constitutes the fundamental law and supreme law of the state. Laws that violate the Constitution are null and void. Then Marshall then declared Section 13 of the Judiciary Act of 1789 to be struck down as unconstitutional. It is these words that established the system that the Supreme Court of the United States has the power to interpret the Constitution and decide whether the acts of the government and the legislative acts of Congress are unconstitutional, which has had a profound impact on the later American political system.

3.1 Gains and losses

Marshall, a skilled politician, successfully defused a possible political impasse and gave the Supreme Court the authority of judicial review. This opened the way for him to take charge of the Supreme Court for more than 30 years and provided an important institutional basis for the separation of powers system in the United States. Since then, the American political system has truly possessed the characteristics of separation of powers and mutual checks and balances.

But Marshall's judgment was not perfect. He handed apparent victories to his political enemies, President Jefferson and Secretary of State Madison. The ally Marbury's legitimate claims were not resolved, and he did not succeed in becoming the midnight judge. What's more, the Federalists were hurt by the failure of the emergency appointments they had made before leaving office.

On the whole, he seized an opportunity in the midst of a dilemma, and showed his political genius by not being content to get out of an unfavorable situation, but by seizing the opportunity

to directly establish the principle of judicial review. Even his political opponents could not deny or protest his decision, which was unanimously upheld by all four Supreme Court justices.

3.2 Different sound

It is important to note that there are also objections to Marshall's theory.

Somebody, like Justice Gibson, believe that if the judiciary declares unconstitutional legislation invalid, then the judiciary has a special right to amend the legislation and correct the mistakes of the legislature. But nothing in the Constitution justifies this special position of the judiciary.

Second, if it is up to the judiciary to review and interpret what is law, what are the limits of this right of review?

Then Gibson argued that if the judiciary had the power to interpret the Constitution, the legislature should have the same power to interpret it. If it is possible for the legislature to misinterpret the Constitution, it is inevitable that the judiciary will make mistakes.

Finally, Gibson disputed Marshall's statement that "because judges swear allegiance to the Constitution when they take office, judges pledge allegiance only to the Constitution". In addition to judges, other government officials are also required to take an oath to the Constitution when they take office. It is limited to that part which is relevant to his duties. Therefore, if a judge's duty does not include examination of the legislative power, neither does his allegiance to the Constitution.

Gibson refutes Marshall's theory of judicial review from four aspects, and these questions have not been satisfactorily answered. Even so, until now most countries in the world have supported Marshall's theory of constitutional review and applied it to their own judicial systems. *Marbury v. Madison* also became the primary constitutional case in the world because it established the important theory of judicial review, which had a profound impact on later generations.

4 Reference

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