

Marbury v. Madison / Excerpts from the Unanimous Opinion—Answer Key

The following are excerpts from Chief Justice John Marshall's unanimous opinion:

In the order in which the court has viewed this subject, the following questions have been considered and decided.

1. Has the applicant a right to the commission he demands?
2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?
3. If they do afford him a remedy, is it a mandamus issuing from this court?

In order to determine whether he is entitled to this commission, it becomes necessary to inquire whether he has been appointed to the office.

Mr. Marbury ... since his commission was signed by the president, and sealed by the secretary of state, was appointed.

To withhold the commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

This brings us to the second inquiry; which is, 2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy? The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.

It is then the opinion of the Court, 1. That by signing the commission of Mr. Marbury, the president of the United States appointed him a justice of peace ... and that the seal of the United States, affixed thereto by the secretary of state, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and that the appointment conferred on him a legal right to the office for the space of five years. 2. That, having this legal title to the office, he has a consequent right to the commission; a refusal to deliver which is a plain violation of that right, for which the laws of his country afford him a remedy.

It remains to be inquired whether, 3. He is entitled to the remedy for which he applies. This depends on, 1. The nature of the writ applied for. 2. The power of this court. 1. The nature of the writ.

This writ, if awarded, would be directed to an officer of government, and its mandate to him would be ... “to do a particular thing therein specified, which appertains to his office and duty, and which the court has previously determined or at least supposes to be consonant to right and justice.”

These circumstances certainly concur in this case.

This, then, is a plain case of a mandamus, either to deliver the commission, or a copy of it from the record; and it only remains to be inquired, Whether it can issue from this court.

The act to establish the judicial courts of the United States authorizes the supreme court "to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." The secretary of state, being a person, holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional.

The constitution vests the whole judicial power of the United States in one supreme court, and such inferior courts as congress shall, from time to time, ordain and establish.

In the distribution of this power it is declared that "the supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction."

If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunals in which it should be vested ... If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance.

To enable this court then to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction.

It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause.

The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution.

The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

Questions to Consider

1. If the Supreme Court of the United States had issued the writ of *mandamus*, how could it have forced Madison to comply with the order? What might have happened if he had ignored it? (In other words, does the Court have enforcement power?)
The Court does not have enforcement power. The Court could have ordered police to deliver the mandamus but would have no power to discipline the police for failure to do so.
2. In the Court's opinion, is Marbury entitled to his appointment?
In the Court's opinion, Marbury is entitled to his appointment.
3. According to the decision, does the Supreme Court of the United States have the authority to issue a writ of *mandamus* to force Madison to deliver the commission? Explain. Is there any way to reverse the Court's decision?
According to the decision, the Supreme Court of the United States does not have the authority in this case to issue a writ of mandamus to force Madison to deliver the commission. The Court ruled that the law that granted the Court authority to hear cases involving such writs as part of its original jurisdiction (i.e., where the Supreme Court was the initial court or trial court) was unconstitutional because it contradicted the Constitution. The only way to reverse the Court's decision would be to amend the Constitution so that the law was constitutional; this would be difficult to do.
4. In this case, Chief Justice John Marshall and the Court "gave up some power in order to get more." Explain. What power did they give up? What power did they gain? Why did the Court do this?
Chief Justice John Marshall and the Court gave up power to hear cases involving writs of mandamus in its original (non-appellate) jurisdiction but gained the power of judicial review. The power of judicial review means that they have the authority to determine whether actions of other branches of government are constitutional. The latter gives them much more authority, so they were willing to sacrifice the former.
5. Why does the judicial branch, as opposed to the executive or legislative branch, have the power of judicial review?
The judicial branch, as opposed to the executive or legislative branch, has the power of judicial review because, "[I]t is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity

expound and interpret that rule." The powers of the legislative and executive branch are deliberately limited so as to avoid a potential abuse of power.