

Making Sense of *Marbury*

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As opposed to treating *Marbury v. Madison* (5 U.S. (1 Cranch) 137 (1803)) as merely a doctrine which explicated the extent and limits of judicial power and judicial review, the Author returns to the historical and socio-political context of the landmark decision.

The case started as an appointment issue, that is, when President John Adams appointed William Marbury and two others as justices of the peace. Adams signed their commissions and transmitted them to the Secretary of State for his official seal. Nevertheless, the commissions were never delivered even when Pres. Thomas Jefferson assumed office and made his own appointments. The Author points out that the Supreme Court did not grant the writ of mandamus to compel the Secretary of State to issue the commissions even though the Court has done so in the past. Instead, it divested itself of involvement on account that the law authorizing the appointments was unconstitutional and expanded the original jurisdiction of the Supreme Court.

To fully understand the complete picture of the decision, the Author goes to the political context of the era which saw the outgoing Federalist President Adams filling up judiciary appointments with loyal federalists as the Republicans surged ahead in dominating Congress and the Presidency. The task laid before the Court under Chief Justice John Marshall was to balance the conflicting personalities of that time and opted for judicial discretion rather than intervention.

The Author concludes that the articulation of departmental theory and separation of powers was a result of the “peculiar and fortuitous convergence of developments in American political theory and law, politics, and personalities.”