

# Marbury v. Madison

5 U.S. 137 (1803)

Chief Justice MARSHALL delivered the opinion of the Court.

..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?...

1st. Has the applicant a right to the commission he demands?...

In order to determine whether he is entitled to this commission, it becomes necessary to inquire whether he has been appointed to the office. For if he has been appointed, the law continues him in office for five years, and he is entitled to the possession of those evidences of office, which, being completed, became his property...

[T]he clauses of the Constitution and laws of the United States which affect this part of the case... seem to contemplate three distinct operations:

1. The nomination. This is the sole act of the President, and is completely voluntary.
2. The appointment. This is also the act of the President, and is also a voluntary act, though it can only be performed by and with the advice and consent of the Senate.
3. The commission. To grant a commission to a person appointed might perhaps be deemed a duty enjoined by the Constitution. "He shall," says that instrument, "commission all the officers of the United States."...

The last act to be done by the President is the signature of the commission. He has then acted on the advice and consent of the Senate to his own nomination. The time for deliberation has then passed. He has decided. His judgment, on the advice and consent of the Senate concurring with his nomination, has been made, and the officer is appointed...

Some point of time must be taken when the power of the Executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act required from the person possessing the power has been performed. This last act is the signature of the commission...

The commission being signed, the subsequent duty of the Secretary of State is prescribed by law, and not to be guided by the will of the President. He is to affix the seal of the United States to the commission, and is to record it.

This is not a proceeding which may be varied if the judgment of the Executive shall suggest one more eligible, but is a precise course accurately marked out by law, and is to be strictly pursued. It is the duty of the Secretary of State to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this respect, as has been very properly stated at the bar, under the authority of law, and not by the instructions of the President. It is a ministerial act which the law enjoins on a particular officer for a particular purpose.

If it should be supposed that the solemnity of affixing the seal is necessary not only to the validity of the commission, but even to the completion of an appointment, still, when the seal is affixed, the appointment is made, and the commission is valid. No other solemnity is required by law; no other act is to be performed on the part of government. All that the Executive can do to invest the person with his office is done...

Mr. Marbury, then, since his commission was signed by the President and sealed by the Secretary of State, was appointed, and as the law creating the office gave the officer a right to hold for five years independent of the Executive, the appointment was not revocable, but vested in the officer legal rights which are protected by the laws of his country.

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. One of the first duties of government is to afford that protection. In Great Britain, the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court...

The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right.

If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case.

It behooves us, then, to inquire whether there be in its composition any ingredient which shall exempt from legal investigation or exclude the injured party from legal redress...

By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and, being entrusted to the Executive, the decision of the Executive is conclusive. The application of this remark will be perceived by adverting to the act of Congress for establishing the Department of Foreign Affairs. This officer, as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the Courts.

But when the Legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law, is amenable to the laws for his conduct, and cannot at his discretion, sport away the vested rights of others.

The conclusion from this reasoning is that, where the heads of departments are the political or confidential agents of the Executive, merely to execute the will of the President, or rather to act in cases in which the Executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy...

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 for the County of Washington in the District of Columbia, 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, and

2. The power of this court.

1. The nature of the writ..

[T]o render the mandamus a proper remedy, the officer to whom it is to be directed must be one to whom, on legal principles, such writ may be directed, and the person applying for it must be without any other specific and legal remedy.

1. With respect to the officer to whom it would be directed. The intimate political relation, subsisting between the President of the United States and the heads of departments, necessarily renders any legal investigation of the acts of one of those high officers peculiarly irksome, as well as delicate, and excites some hesitation with respect to the propriety of entering into such investigation. Impressions are often received without much reflection or examination, and it is not wonderful that, in such a case as this, the assertion by an individual of his legal claims in a court of justice, to which claims it is the duty of that court to attend, should, at first view, be considered by some as an attempt to intrude into the cabinet and to intermeddle with the prerogatives of the Executive.

It is scarcely necessary for the Court to disclaim all pretensions to such a jurisdiction. An extravagance so absurd and excessive could not have been entertained for a moment. The province of the Court is solely to decide on the rights of individuals, not to inquire how the Executive or Executive officers perform duties in which they have a discretion. Questions, in their nature political or which are, by the Constitution and laws, submitted to the Executive, can never be made in this court.

But, if this be not such a question; if so far from being an intrusion into the secrets of the cabinet, it respects a paper which, according to law, is upon record, and to a copy of which the law gives a right... what is there in the exalted station of the officer which shall bar a citizen from asserting in a court of justice his legal rights, or shall forbid a court to listen to the claim or to issue a mandamus directing the performance of a duty not depending on Executive discretion, but on particular acts of Congress and the general principles of law?...

It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety or impropriety of issuing a mandamus is to be determined. Where the head of a department acts in a case in which Executive discretion is to be exercised, in which he is the mere organ of Executive will, it is again repeated, that any application to a court to control, in any respect, his conduct, would be rejected without hesitation.

But where he is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which the President cannot lawfully forbid, and therefore is never presumed to have forbidden -- as for example, to record a commission, or a patent for land, which has received all the legal solemnities; or to give a copy of such record -- in such cases, it is not perceived on what ground the Courts of the country are further excused from the duty of giving judgment that right to be done to an injured individual than if the same services were to be performed by a person not the head of a department...

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, and therefore absolutely incapable of conferring the authority and assigning the duties which its words purport to confer and assign.

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. This power is expressly extended to all cases arising under the laws of the United States; and consequently, in some form, may be exercised over the present case, because the right claimed is given by a law of the United States.

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. The subsequent part of the section is mere surplusage -- is entirely without meaning -- if such is to be the construction. 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.

Affirmative words are often, in their operation, negative of other objects than those affirmed, and, in this case, a negative or exclusive sense must be given to them or they have no operation at all.

It cannot be presumed that any clause in the Constitution is intended to be without effect, and therefore such construction is inadmissible unless the words require it...

When an instrument organizing fundamentally a judicial system divides it into one Supreme and so many inferior courts as the Legislature may ordain and establish, then enumerates its powers, and proceeds so far to distribute them as to define the jurisdiction of the Supreme Court by declaring the cases in which it shall take original jurisdiction, and that in others it shall take appellate jurisdiction, the plain import of the words seems to be that, in one class of cases, its jurisdiction is original, and not appellate; in the other, it is appellate, and not original. If any other construction would render the clause inoperative, that is an additional reason for rejecting such other construction, and for adhering to the obvious meaning.

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 case. Although, therefore, a mandamus may be directed to courts, yet to issue such a writ to an officer for the delivery of a paper is, in effect, the same as to sustain an original action for that paper, and therefore seems not to belong to appellate, but to original jurisdiction. Neither is it necessary in such a case as this to enable the Court to exercise its appellate jurisdiction.

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, and it becomes necessary to inquire whether a jurisdiction so conferred can be exercised.

The question whether an act repugnant to the Constitution can become the law of the land is a question deeply interesting to the United States, but, happily, not of an intricacy

proportioned to its interest. It seems only necessary to recognise certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government and assigns to different departments their respective powers. It may either stop here or establish certain limits not to be transcended by those departments.

The Government of the United States is of the latter description. The powers of the Legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the Legislature may alter the Constitution by an ordinary act.

Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable.

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.

This theory is essentially attached to a written Constitution, and is consequently to be considered by this Court as one of the fundamental principles of our society. It is not, therefore, to be lost sight of in the further consideration of this subject.

If an act of the Legislature repugnant to the Constitution is void, does it, notwithstanding its invalidity, bind the Courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in

fact what was established in theory, and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

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...

Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law.

This doctrine would subvert the very foundation of all written Constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that, if the Legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the Legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions -- a written Constitution, would of itself be sufficient, in America where written Constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the Constitution of the United States furnish additional arguments in favour of its rejection.

The judicial power of the United States is extended to all cases arising under the Constitution.

Could it be the intention of those who gave this power to say that, in using it, the Constitution should not be looked into? That a case arising under the Constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases then, the Constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?...

[T]he framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the Legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner to their conduct in their official character. How immoral to impose it on them if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the Legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words:

"I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the Constitution of the United States if that Constitution forms no rule for his government? if it is closed upon him and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe or to take this oath becomes equally a crime.

It is also not entirely unworthy of observation that, in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned, and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.

The rule must be discharged.