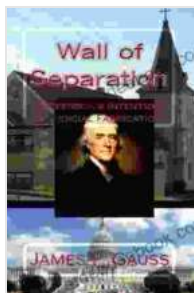


# Jefferson's Intention or Judicial Fabrication: A Deep Dive into the Origins of the Marbury v. Madison Case



## Wall of Separation: Jefferson's Intention or Judicial Fabrication? by James F. Gauss

★★★★☆ 4.5 out of 5

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The case of Marbury v. Madison is one of the most important cases in American history. It established the principle of judicial review, which is the power of the courts to declare laws unconstitutional. However, the origins of the case are shrouded in controversy. Some historians believe that President Thomas Jefferson intentionally appointed William Marbury as a Justice of the Peace in order to create a case that would allow the Supreme Court to assert its power of judicial review. Others believe that the case was a judicial fabrication, created by Chief Justice John Marshall in order to expand the power of the Supreme Court.

## Jefferson's Intention

There is some evidence to support the claim that Jefferson intentionally appointed Marbury as a Justice of the Peace in order to create a case that would allow the Supreme Court to assert its power of judicial review. For example, Jefferson had previously expressed his belief in the power of judicial review. In a letter to Edward Livingston in 1803, he wrote: "The constitution ... is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."

In addition, Jefferson's appointees to the Supreme Court, Justices William Cushing and Samuel Chase, had both expressed their support for the power of judicial review. Cushing had argued in the case of *Ware v. Hylton* (1796) that the Supreme Court had the power to declare laws unconstitutional. Chase had made a similar argument in the case of *Calder v. Bull* (1798).

However, there is also evidence to suggest that Jefferson did not intend to create a case that would allow the Supreme Court to assert its power of judicial review. For example, Jefferson appointed Marbury to a relatively minor position as a Justice of the Peace for the District of Columbia. This position did not give Marbury any jurisdiction over major constitutional issues.

In addition, Jefferson's Secretary of State, James Madison, was opposed to the power of judicial review. Madison had argued in *The Federalist Papers* that the Supreme Court should not have the power to declare laws unconstitutional. He believed that the power of judicial review would give the Supreme Court too much power.

## **Judicial Fabrication**

Some historians believe that the case of *Marbury v. Madison* was a judicial fabrication, created by Chief Justice John Marshall in order to expand the power of the Supreme Court. Marshall had long been an advocate for the power of judicial review. He had argued in the case of *Hylton v. United States* (1796) that the Supreme Court had the power to declare laws unconstitutional.

In the case of *Marbury v. Madison*, Marshall went even further. He argued that the Supreme Court had the power to declare laws unconstitutional even if the laws were passed by Congress. This was a radical expansion of the power of judicial review.

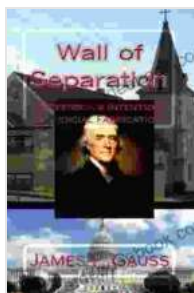
There is some evidence to support the claim that *Marbury v. Madison* was a judicial fabrication. For example, the case was brought by William Marbury, a political ally of John Marshall. In addition, the case was decided by a 4-0 vote, with all four of the justices who voted in favor of Marbury being appointed by President John Adams, a political ally of John Marshall.

However, there is also evidence to suggest that *Marbury v. Madison* was not a judicial fabrication. For example, the case was based on a real dispute between Marbury and Madison. In addition, the Supreme Court's decision in the case was based on sound legal reasoning.

The origins of the *Marbury v. Madison* case are shrouded in controversy. Some historians believe that President Thomas Jefferson intentionally appointed William Marbury as a Justice of the Peace in order to create a case that would allow the Supreme Court to assert its power of judicial review. Others believe that the case was a judicial fabrication, created by

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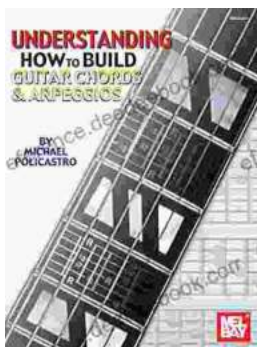
The evidence is inconclusive, and it is likely that the debate over the origins of the Marbury v. Madison case will continue for many years to come.



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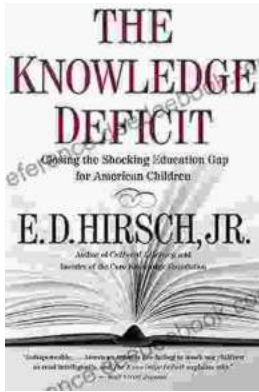
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