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## Marbury v. Madison (1803)

### Vocabulary

**lame duck** Referring to officeholders who have not been re-elected and so serve the remainder of their term in office with little backing or authority.

**commission** Official document authorizing certain duties and powers.

**petition** In law, a formal, written request to a court asking for a specific action.

**writ of mandamus** A court order requiring a government official to carry out his or her official duty.

**dilemma** Difficult choice between two relatively equal options.

**original jurisdiction** The authority of a court to be the first to hear and decide a case.

**appellate jurisdiction** The right of a court to hear a case "on appeal" after the original court has acted.

### Reviewing the Case

With the election of 1800, for the first time political parties played an active role in American government. The Federalists supported President John Adams while the Republicans supported Vice President Thomas Jefferson. Each party had its own agenda, based on different governing philosophies and different viewpoints about the Constitution.

In the election, the Federalists lost the presidency and control of both houses of Congress. The only branch of government in which they could exercise any power was the judiciary. Understanding this, the Federalists worked out a strategy to strengthen their hold on the federal courts.

Presidential inaugurations were then in March, giving the "lame duck" Federalists several months. Before the inauguration and the start of the new Republican-dominated Congress, the Federalist Congress passed the Judiciary Act of 1801, which created 62 new judgeships. John Adams, the outgoing President, quickly filled the new jobs with avid Federalists, and the Senate approved his ap-

pointments. Late into the night of March 3, 1801, Adams was still signing the **commissions** of these last-minute nominations. They were sealed with the Seal of the United States by the outgoing Secretary of State and were then to be delivered to the new officials by a State Department clerk. Because of the last-minute rush, not all the commissions could be delivered before Jefferson took office as President on March 4, 1801.

When he learned about the commissions of the "midnight judges," as they were called, Jefferson angrily ordered the commissions withheld. One of the late commissions was for William Marbury, who had been named as a justice of the peace in the District of Columbia. Marbury refused to be denied his job. He convinced three others to accompany him to the State Department, but he was still refused his commission. Marbury then turned to the United States Supreme Court and **petitioned** it for a **writ of mandamus**, which would order the new Secretary of State, James Madison, to deliver the commission or show just cause for not doing so.

Marbury's petition resulted in one of the most significant decisions in the history of the Supreme Court. The issue before the Court: Should the Court issue a writ of mandamus ordering the Secretary of State to deliver commissions to Marbury and the others who had been denied?

The Supreme Court, by unanimous vote, turned down Marbury's request for the court order. Although the justices agreed that Marbury was legally entitled to the commission, the Court would not order the Secretary of State to give it to him. Why not?

Writing for the Court, Chief Justice John Marshall explained the position:

Mr. Marbury, then, since his commission was signed by the President, and sealed by the Secretary of State, was appointed. . . . To withhold his commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

The question was not Marbury's right to have the job, but the Court's own constitutional authority. The case had created a **dilemma** for the Court.

On the one hand, if the Court ruled in favor of Marbury and issued the writ, the new administration under Jefferson most likely would ignore it. That would make the Supreme Court look weak, emphasizing the fact that the Court had no way to enforce its decisions. For that, it had to rely on the executive branch—the people to whom the order applied.

On the other hand, deciding *not* to issue the writ also would make the Court look weak. It would appear as if the Court were avoiding its duty by giving in to the executive branch.

How could the Court disentangle itself from such a treacherous decision? Marshall turned to the Constitution itself to point out that it did not give the Court **original jurisdiction** in a case like this:

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**." . . . To enable the Court, then, to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction.

Since Marbury's case had not come from a lower court, the Supreme Court could not act, Marshall said. In addition, its power to issue such writs to public officers came from an Act of Congress, not the Constitution. In structuring the federal courts, Congress had passed the Judiciary Act of 1789, which gave the Supreme Court expanded original powers beyond the Constitution. In following this line of reasoning, Marshall then was faced

with the question of what to do about an act of Congress that violated the Constitution.

His explanation established an important principle:

. . . 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 . . . 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 people, to limit a power in its nature ilimitable. . . .

It is emphatically the province and duty of the judicial department to say what the law is. . . . So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case . . . the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty. . . .

Thus the particular phraseology [wording] 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. . . .

The long-term significance of this case was Marshall's use of the Constitution to give the Supreme Court the power of judicial review, even though that was not the original issue. While the justices agreed that Marbury was entitled to his court order, the act of Congress that would allow them to issue it went beyond the Constitution. It was the first time the Court openly declared an act of Congress unconstitutional and claimed the right to be the final authority on the meaning of the U.S. Constitution. Judicial review was not used again by the Court in regard to Congress for another 54 years, but in the twentieth century it became a powerful tool for influencing public policy.

## *Marbury v. Madison (1803)*

### *Elements of the Case*

**Directions:** Fill in the appropriate information for each of the following elements of this case.

1. State the issue before the Supreme Court in this case.

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2. What facts of the case were presented to the Court?

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3. What was the decision of the Court? What was the rationale behind it?

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4. What was the effect of the decision?

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*Evaluation of the Case*

**Directions:** Use your own judgment to evaluate the justices' decision and state your opinion of that decision.

1. Do you think the framers of the Constitution intended the Supreme Court to have the power of judicial review as part of the system of "checks and balances"? Explain.

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2. What would be the effect on the United States if this decision had not validated the idea that the Supreme Court has the power to judge whether acts of Congress are unconstitutional?

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3. According to Justice Marshall, what actions were necessary to make the commissions legal? Was it the delivery of the commissions or was it the process of Senate approval, the President's signature, and the official seal by the Secretary of State? Why was this an important point?

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