

*Marbury v. Madison* and the  
Origins of Judicial Review

The Supreme Court of the United States is a very prestigious and powerful branch of American government today. Perhaps the most notable demonstration of the Court's power was its decision concerning the presidential election of 2000, a decision that resulted in George W. Bush becoming president.<sup>1</sup> The Court has not always held this position, however. When the government system was developed in the late eighteenth century, the powers of the judicial branch were fairly undefined. In 1803, Chief Justice John Marshall, with his decision in *Marbury v. Madison*, began to define the duties of the Court by claiming for the Supreme Court the power of judicial review. Judicial review has been upheld ever since, and many people take the practice for granted. There is controversy around Marshall's decision, however, with some claiming that judicial review was not the intent of the nation's founders. Two questions must be asked: Did Marshall overstep his bounds when he declared judicial review for the Court? If so, why has his decision been upheld for two hundred years? An examination of the actual case, *Marbury v. Madison*, and of Marshall's reasons for his decision is the first step to answering these questions.

This case was complicated by personal and political opposition. It was brought to Court by William Marbury, whose commission as justice of the peace by John Adams was withheld by Thomas Jefferson when he became president. Jefferson's act was prompted by Adams's attempt to fill the national judiciary with Federalist judges on the eve before Jefferson took office. Due to a mistake by John Marshall himself (at the time the secretary of state under Adams), however, the commissions were not delivered. Jefferson, who did not appreciate the last-minute attempt to fill the offices with

Federalists, refused to deliver the commissions after he took office. Marbury and a few other men sued James Madison, secretary of state under Jefferson. Marshall, now the chief justice, was eager to try the case and attack Jefferson, his political enemy.<sup>2</sup>

By the time the case went to trial in 1803, two of the five years of the term for justice of the peace had expired. It was no longer a case over undelivered commissions; it was a case testing the power of the courts against the executive. . . . If Marshall issued a writ of mandamus requiring Madison to hand over the commissions, Jefferson could have him impeached.<sup>3</sup> If Marshall ruled in favor of Jefferson, he would make the judicial branch look even more powerless than it already did. Marshall was in a no-win situation, and he was aware of this predicament when he set out to make his decision.<sup>4</sup>

He finally made his decision on February 24, 1803, and it was based on two concerns: the ethics of withholding Marbury's commission, and the right of the Supreme Court to issue a writ of mandamus to the president.<sup>5</sup> Marshall broke the issue into three questions. The first question addressed whether Marbury had a right to the commission. Marshall said that he did have the right to it because it had been signed by the president at the time and sealed with the seal of the United States. Second, Marshall asked, if Marbury had a right to the commission, did the laws of the land protect his right to the appointment? Marshall reasoned that withholding his commission would be in violation of his personal rights, so the laws must protect those rights. Third, Marshall asked if the laws protected Marbury in the form of a writ of mandamus from the Supreme Court. Marshall reasoned that the Court could not issue a writ of mandamus even though the Judiciary Act of 1789 said that it could. According to this law, the Supreme Court could issue writs of mandamus to people under the authority of the United States, which Marbury clearly

was; however, if the Court could not issue a writ of mandamus, then this law was unconstitutional. He went on to say that the Supreme Court only had appellate jurisdiction (except in a few specific cases) and this case had been brought before the Court for original jurisdiction. Therefore he declared that the law stating that the Supreme Court could issue writs of mandamus was unconstitutional. In other words, Congress did not have the legal power to give the Court that right. He went on to say that the Constitution is the supreme law of the land, and since it was the judicial branch's duty to say what the law is, the Court had the power to declare acts unconstitutional. Thus Marshall denied mandamus for Marbury and ruled in favor of Madison. At the same time, however, he took a big step toward strengthening the judicial branch by establishing judicial review for the Supreme Court.<sup>6</sup>

[In the next paragraphs, Darr analyzes the strengths and weaknesses of Marshall's decision. She then discusses the effects of *Marbury v. Madison* and its status today.]

Notes

1. *Bush v. Gore*, 531 U.S. 98 (2000), <http://supct.law.cornell.edu/supct/html/00-949.ZPC.html> (accessed February 8, 2004).
2. John A. Garraty, *Quarrels That Have Shaped the Constitution* (New York: Harper and Row, 1987), 7–14.
3. *Ibid.*, 19.
4. William C. Louthan, *The United States Supreme Court: Lawmaking in the Third Branch of Government* (Englewood Cliffs, NJ: Prentice-Hall, 1991), 51.
5. Thomas J. Higgins, *Judicial Review Unmasked* (West Hanover, MA: Christopher Publishing House, 1981), 40–41.
6. *Marbury v. Madison*, 5 U.S. 137 (1803).
7. Louthan, *Supreme Court*, 51.
8. *Ibid.*
9. *Ibid.*, 50–51.
10. Higgins, *Judicial Review*, 40–41.
11. *Ibid.*, 32.
12. *Ibid.*, 34.

Bibliography

*Bush v. Gore*, 531 U.S. 1998 (2000). <http://supct.law.cornell.edu/supct/html/00-949.ZPC.html> (accessed February 8, 2004).

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