Marbury v. Madison

The story of *Marbury* v. *Madison* is often told but deserves another telling because it illustrates so many features of the role of the Supreme Court: how apparently small cases can have large results, how the power of the Court depends not simply on its constitutional authority but on its acting in ways that avoid a clear confrontation with other branches of government, and how the climate of opinion affects how the Court goes about its task.

When President John Adams lost his 1800 bid for reelection to Thomas Jefferson, he—and all members of his party, the Federalists—feared that Jefferson and the Republicans would weaken the federal government and turn its powers to what the Federalists believed were wrong ends (states' rights, an alliance with the French, hostility to business). Feverishly, as his hours in office came to an end, Adams worked to pack the judiciary with fifty-nine loyal Federalists by giving them so-called midnight appointments before Jefferson took office.

John Marshall, as Adams's secretary of state, had the task of certifying and delivering these new judicial commissions. In the press of business he delivered all but seventeen; these he left on his desk for the incoming secretary of state, James Madison, to send out. Jefferson and Madison, however, were furious at Adams's behavior and refused to deliver the seventeen. William Marbury and three other Federalists who had been promised these commissions hired a lawyer and brought suit against Madison to force him to produce the documents. The suit requested the Supreme Court to issue a writ of mandamus (from the Latin, "we command") ordering Madison to do his duty. The right to issue such writs had been given to the Supreme Court by the Judiciary Act of 1789.

Marshall, the man who had failed to deliver the commissions to Marbury and his friends in the first place, had become the chief justice and was now in a position to decide the case. These days a justice who had been involved in an issue before it came to the Court would probably disqualify himself or herself, but Marshall had no intention of letting others decide this question. He faced, however, not simply a partisan dispute over jobs but what was nearly a constitutional crisis. If he ordered the commissions delivered, Madison might still refuse, and the Court had no way—if Madison was determined to resist—to compel him. The Court had no police force, whereas Madison had the support of the president of the United States. And if the order were given, whether or not Madison complied, the Jeffersonian Republicans in Congress would probably try to impeach Marshall. On the other hand, if Marshall allowed Madison to do as he wished, the power of the Supreme Court would be seriously reduced.

Marshall's solution was ingenious. Speaking for a unanimous Court, he announced that Madison was wrong to withhold the commissions, that

courts could issue writs to compel public officials to do their prescribed duty—*but* that the Supreme Court had no power to issue such writs in this case because the law (the Judiciary Act of 1789) giving it that power was unconstitutional. The law said that the Supreme Court could issue such writs as part of its "original jurisdiction"—that is, persons seeking such writs could go *directly* to the Supreme Court with their request (rather than to a lower federal court and then, if dissatisfied, appeal to the Supreme Court). Article III of the Constitution, Marshall pointed out, spelled out precisely the Supreme Court's original jurisdiction; it did not mention issuing writs of this sort and plainly indicated that on all matters not mentioned in the Constitution, the Court would have only appellate jurisdiction. Congress may not change what the Constitution says; hence the part of the Judiciary Act attempting to do this was null and void.

The result was that a showdown with the Jeffersonians was avoided—Madison was not ordered to deliver the commissions—but the power of the Supreme Court was unmistakably clarified and enlarged. As Marshall wrote, "It is emphatically the province and duty of the judicial department to say what the law is." Furthermore, "a law repugnant to the Constitution is void."