

The Saga of Marbury v. Madison

By Joel W. Collins, Jr.

On February 24, 1803, a packed courtroom listened intently for nearly four hours to the reading of the opinion of the United States Supreme Court in the case of Marbury v. Madison. That case still retains its status as one of the most important decisions ever rendered. It arose from the clash of the Founding Fathers and the political in-fighting that accompanied the first change of administrations from one American political party to another. Both George Washington and John Adams were members of the Federalist Party. The presidential election of 1800 was a contest among the Federalist incumbent Adams and his running mate Charles Cotesworth Pinckney on the one side and the Republican (now known as the Democratic party) candidate Thomas Jefferson and his running mate Aaron Burr on the other side. Jefferson and Burr tied in the number of electoral votes, so in the end the contest was between the two top contestants, Jefferson and his erstwhile running mate Burr, behind whom the disaffected Federalists lined up. This bitterly fought election was finally decided in the House of Representatives on the 36th ballot where Jefferson won, thanks, in part, to South Carolina's failure to cast any ballot at all (as did Delaware), thus throwing the election to Jefferson. Burr became vice president.

Only five days before Jefferson's inauguration, the staunch Federalist-controlled Congress passed the Judiciary Act of February 27, 1801 which, among other things, called for the appointment of 42 justices of the peace, a position which, at that time, held considerable authority. One of the appointees was William Marbury, a businessman from Georgetown, Maryland and, of course, a Federalist. On March 3, 1801, his last day in office, President Adams signed Marbury's commission and made it available for delivery. In the rush and confusion of the last day in office, it was not delivered. The next day, President Jefferson, soon after taking the oath of office, ordered that some of these commissions should not be delivered including the one for Marbury.

Marbury decided to sue for his commission and purposefully create a political showdown. He was represented by Charles Lee, the former Attorney General under both Washington and Adams. Lee brought suit in the United States Supreme Court seeking a *writ of mandamus* which, if issued, would order the Secretary of State, James Madison, to deliver his commission. A *writ of mandamus* is an order of a court which requires a government officer to perform a ministerial duty.

Interestingly and ironically, Chief Justice John Marshall had served as President Adams' Secretary of State, and it may well have been his fault that Marbury's commission was not delivered. Having just taken office as Chief Justice, Marshall stood the chance of being called as a witness in his own court. It was speculated the outcome of this case could lead to impeachment proceedings against Marshall and perhaps other members of the Supreme Court as well. The political intrigue and tension at the time are hard to overstate.

The case presented four basic questions which Marshall, in his opinion for the unanimous Court, elected to address in unusual order. First, did Marbury have a legal right to the office of justice of the peace? The court found he did. They reasoned when President Adams affixed his signature to the commission on his last day in office it became a valid appointment. The second question was, assuming Marbury had the legal right to the office, did he have a remedy? The court answered that question also in the affirmative concluding the physical delivery of the valid commission was a mere administrative act which did not affect the validity of the appointment. The third question was, is a *writ of mandamus* the proper remedy for Marbury to seek? Again, Chief Justice Marshall and the court answered in the affirmative.

The fourth and most important question included the twist and provided the drama. The last question was, did the Supreme Court have jurisdiction to issue a *writ of mandamus* for Marbury? Obviously, this question could have been addressed first by the court because jurisdiction is a threshold issue. Everyone knew if Chief Justice Marshall rebuked President Jefferson by finding he had wrongly denied Marbury his commission, it would set the stage for an enormous showdown between the two. Marshall and Jefferson were second cousins. They were lifelong friends and rivals from Virginia. Marshall had criticized Jefferson for being ambitious and unforgiving. Jefferson was outspoken in his distrust for the federal judiciary referring to it as a body “like gravity, ever acting with noiseless foot and unalarming advance, gaining ground step by step.”

Chief Justice Marshall brilliantly dodged the bullet. In answering the final question in the negative, he denied his court a small judicial prerogative and stunningly asserted a far greater one. He reasoned that even though the Judiciary Act of 1789 previously passed by Congress, had conferred upon the Supreme Court the original jurisdiction to hear cases where a *writ of mandamus* was sought, this statute was repugnant to the Constitution. Article III of the Constitution sets forth those cases where the Supreme Court has original jurisdiction, namely cases affecting “Ambassadors, other public Ministers and Consuls and those in which a State shall be a party....” It continues to state in all other cases the Supreme Court has only appellate jurisdiction. Therefore, Marshall and the Court found the provision of the Judiciary Act of 1789 enlarging the Supreme Court’s original jurisdiction by allowing it to hear petitions for *writs of mandamus* to be repugnant to the Constitution and therefore null and void.

Marshall’s opinion continued to explain the Constitution specifically provides it can be amended, but it cannot be amended by an act of Congress. He reasoned it was obviously the role of the Supreme Court to interpret the law, to interpret the Constitution and serve as the final arbiter of whether a statute passed by Congress was or was not constitutional. This enormous power of judicial review, which has remained as a fundamental aspect of our scheme of government, is a power never expressly conferred upon the Supreme Court by the Constitution. Although President Jefferson won on the narrow issue of Mr. Marbury’s commission, the Supreme Court was the ultimate winner. Chief Justice Marshall’s masterful opinion established the Supreme Court’s authority over the other two branches of government without ordering anything to be done by anyone.

Over 200 years later, it is familiar learning that this seminal case proclaimed several important principles of our system of government. Those principles are the power of the courts to pass on the constitutionality of legislation, the independence of the judiciary from the legislative branch, the separation of powers, and ultimately the rule of law.

John Marshall continued to serve as the Chief Justice for 34 years. During this entire time, the Marshall court did not declare any other act of Congress to be unconstitutional. John Marshall died in office on July 6, 1835. It is said on the day of his funeral, the Liberty Bell in Philadelphia was tolled until it cracked.