

# 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.

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## McCulloch v. Maryland (1819)

### Vocabulary

**real property** Land or buildings, real estate.

**implied powers** Powers of the national government that are not specified in the Constitution but are based on the "necessary and proper" clause (elastic clause), which gives Congress authority to carry out its specified functions.

**delegated powers** Powers specifically granted to the national government in the Constitution.

**sovereignty** A state or nation's authority to govern itself.

### Reviewing the Case

The early 1800s were years in which the United States faced unfamiliar situations concerning federalism and the division of authority between the national government and the various state governments. Such questions were often taken to court for definition and interpretation. Some of the decisions made then have had a lasting impact on how the country is governed. One of these early landmark cases is *McCulloch v. Maryland*, which arose in 1819.

In April 1816, Congress chartered the Second National Bank of the United States. This bank was the successor to the first Bank of the United States, started through the efforts of Alexander Hamilton. The original charter had expired in 1811 and was not immediately renewed because of questions about the constitutionality of a national bank. Many people objected to both the idea and the existence of a national bank. They thought it harmed state economies and local businesses and gave the national government too much power. The Second National Bank was in Philadelphia, with branch offices in other states. One branch was in Baltimore, Maryland.

On February 11, 1818, the Maryland state assembly passed an act aimed specifically at the Second National Bank. It imposed a

"stamp tax" on the paper that banks used in printing bank notes. All banks not chartered by the state had to pay either a tax to obtain the special stamped paper or an annual state tax of \$15,000. Each violation would result in a fine of \$500 for the bank and a \$100 fine for each individual responsible.

James McCulloch, cashier of the Baltimore branch, refused to pay the tax, despite repeated notices from the state. The state of Maryland brought suit against him in the County Court of Baltimore and later appealed to the State Court of Appeals, where McCulloch lost.

On behalf of himself and the U.S. government, McCulloch then brought the case to the Supreme Court in an attempt to reverse the decision. As it came to the Supreme Court, the issue became: Does any state have the constitutional right to tax an agency of the United States government?

Some of the most famous lawyers of the time argued the case. The attorneys for the state of Maryland argued that a state did have the right to tax because it was not forbidden by Article I, Section 10, of the Constitution, which lists the powers denied to the states. The only restrictions on the state's power to tax, they said, were those specifically mentioned. Those limits concern mainly imports and exports. The state also questioned the right of the Congress to create a national bank and to place branches in the various states without legislative approval.

The lawyers for the United States government argued that the states were forbidden to tax anything of the national government beyond **real property** that the national government owned in the states. They stated that the power of the state to tax the Second National Bank or any other agency of the national government would create the power to destroy the national government.

The Supreme Court decided on behalf of McCulloch, defining two issues of constitutional law:

First, the Court found that creating a national bank was within the **implied powers** of Congress, based on Article I, Section 8, of the Constitution. The final clause of Article I gives Congress the power to pass the legislation needed, or "necessary and proper," to carry out the other functions for which it is responsible. These are its **delegated powers**. In this instance, the creation of a national bank was necessary in order for Congress to create and coin a national currency, collect taxes, and borrow money in an emergency, among other things. These are delegated powers, specifically granted to Congress alone.

If, however, the act establishing a national bank was constitutional, did the state legislature of Maryland have the right to tax the bank? Citing Article VI of the Constitution, the Court declared that this action violated the principle of the supremacy of the national government over the states. The Court believed that granting individual states the right to tax the national government would in effect place the states in a position of **sovereignty** over the national government.

It would also place the individual states in a position superior to people of the Union collectively. This interpretation would return the country to the turmoil suffered under the Articles of Confederation.

Writing for the Court, Chief Justice John Marshall stated:

It being the opinion of the court that the act incorporating the bank is constitutional, and that the power of establishing a branch in the state of Maryland might be properly exercised by the bank itself, we proceed to inquire: Whether the state of Maryland may, without violation of the Constitution, tax that branch? . . . That the power of taxing it by the states may be exercised so as to destroy it, is too obvious to be denied. . . . We are unanimously of the opinion that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

The significance of *McCulloch v. Maryland* goes to the very root of the purpose of a federal government, one divided by the Constitution between a central government and state governments. The purpose of such government was "to provide a more perfect union." Limits of power were imposed at both national and state levels, but enough power remained at the national level to carry out what Congress found "necessary and proper" to provide good government for the people of the country as a whole. This decision confirmed the legitimate right of Congress to utilize the implied powers clause in passing laws to carry out its delegated powers. It further declared and validated the supremacy of the people collectively represented by Congress over the powers of individual states.

## Gibbons v. Ogden (1824)

### Vocabulary

**license** Official document authorizing the holder to perform certain actions. An "exclusive license" grants authority to only one person or organization.

**monopoly** Situation in which a single individual or business controls an entire market, with little or no competition.

**sue** To take formal, legal action against someone in a court of law.

**forfeit** To be forced to give up something as a penalty or fine for breaking a law or rule.

**jurisdiction** Legal right of a court to act in a particular case.

**interstate commerce** Trade between people or businesses in different states; trade or business that crosses state lines.

### Reviewing the Case

Aaron Ogden and Thomas Gibbons were competing steamship operators whose ships traveled the bays and rivers between New Jersey and New York City. Under a law passed in the New York legislature, Ogden had an "exclusive license," which in effect gave him the exclusive right to operate any vessel in those waters, if the vessel "be moved by means of fire or steam." The original owners of this **monopoly** were Robert Livingston and steamship designer Robert Fulton. An act passed in 1808 extended their exclusive right for a period not to exceed 30 years (that is, to 1838). They had transferred the license to John Livingston, who, in turn, had transferred it to Aaron Ogden.

Thomas Gibbons, a New Jersey resident, was operating his two ships, the *Stoudinger* and the *Bellona*, in the same waters. Ogden **sued** him in the trial court of New York and won. For Gibbons, this was a serious loss. The New York laws that gave Aaron Ogden exclusive navigation rights also provided that anyone violating the law would **forfeit** his ship. Gibbons therefore appealed the decision to the highest court in New York that had the **jurisdiction** to hear it. The appeal, like the original trial, ended in Ogden's favor. Gib-

bons was forbidden to operate his ships.

Gibbons was convinced that his right to navigate the waters between New York and New Jersey was clear and that his right had been taken from him unlawfully by the courts of New York. Before starting his business, Gibbons had obtained a license issued by the national government under the authority of a 1793 act of Congress. The license gave Gibbons the right to operate his ships in any coastal waters of the United States.

After losing in the state courts, Gibbons took his case to the United States Supreme Court. As Gibbons' attorney wrote in his statement to the Court, the process of the state courts had to be exhausted before the Supreme Court could act in the matter.

The battle between Gibbons and Ogden was not an isolated incident. Other states had passed similar laws, which had hampered the free exchange of goods from one state to another and caused resentment between neighbors in adjoining states.

The case clearly pointed up the conflict existing between laws passed by the legislature of the state of New York and the laws passed by the Congress of the United States. The issue before the Court: Do the laws passed by the New York legislature violate the Constitution of the United States by their attempt to regulate **interstate commerce** or are they permissible?

A further complication in the case was the strong feeling among southern states that to overturn the decision of the New York court in this case would destroy all state powers concerning commerce. This, the southern states concluded, would ultimately lead to a congressional right to eliminate the slave trade and eventually abolish slavery. There was a very real threat, then, that the South would feel obliged to resist such potential congressional power and withdraw from the Union.

Could the Court risk such a disastrous outcome or could it find some middle ground—one that would prevent state legislatures from passing laws that interfered with the

free exchange of goods and services between the states but would also keep the South in the Union?

The answer was found in the Court's definition of *commerce*. Was commerce to be defined simply as the exchange of goods and services or did commerce also include the transportation of those goods and services to be exchanged? Chief Justice John Marshall stated:

The mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter.

The Court then broadened the definition of the word *commerce* to include transportation, thereby allowing the regulation of transportation as it is involved in the exchange of goods and services. By broadening the definition of commerce, the Court declared the regulation of transportation to be clearly within the "commerce power" of Congress, as stated in Article 1, Section 8, Clause 3.

Does the power of Congress to regulate commerce extend into the territory of the various states? Yes, it does. As Justice Marshall wrote:

The power of Congress, then, comprehends navigation within the limits of every state in the Union; so far as that navigation may be, in manner, connected with [in the

words of the Constitution] "commerce with foreign nations, or among the several states, or with the Indian tribes." It may, of consequence, pass the jurisdictional line of New York, and act upon the very waters to which the prohibition now under consideration applies.

The Constitution, the Court further pointed out, clearly states that national laws made in accordance with the Constitution are "the supreme law of the land," superior to conflicting state laws.

This decision placed the regulation of commerce across state boundaries clearly within the authority of the Congress. State laws that conflicted with this authority would not be permissible. That is, if an act of Congress gave Gibbons the right to sail on New York waters, a New York state law could not forbid him to do so. By settling the case in this way, the Court could keep the individual states from interfering in the conduct of trade by those living in other states. At the same time, the Court did not threaten the South by destroying all state powers concerning commerce. For the moment at least, the Court avoided a crisis over congressional interference in the slave trade.

The decision opened the door for the national government to pursue the expansion and growth of the national economy. By preventing state interference in the building of national roads, canals, and telegraph and railroad lines, the decision greatly enhanced the ability of the Congress to encourage and promote westward expansion and settlement.

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## *Dartmouth College v. Woodward (1824)*

### *Vocabulary*

**charter** A written document issued by a government or other authority, giving the holder the right to establish an organization such as a company or colony.

**trustees** Group of people named or elected to manage an organization, such as a college.

**contract** A legally binding agreement between two or more individuals or organizations.

**dissent** To disagree with the majority opinion of the majority of justices on the Court.

### *Reviewing the Case*

In 1754, Eleazar Wheelock, an educator and popular preacher in colonial New England, established a school to teach Christianity and educate both white settlers and the local Native Americans. After inspiring success, Wheelock decided to expand. He solicited donations from people in England and was given a grant of land on the Connecticut River in western New Hampshire. He and other settlers, with about 30 students, founded a town and began Dartmouth College.

In 1769, Dartmouth College received a **charter** from King George III of England. The charter gave twelve **trustees** full power to govern the college, administer the funds, hire professors, direct the course of study, and fill vacancies in their ranks. The charter provided that the college corporation should always continue under twelve trustees.

In June 1816, the New Hampshire legislature passed an act to abandon the old charter, reorganize Dartmouth College, and make it a state-run university. It planned to add more trustees who would be appointed by the state governor. The legislature passed two additional acts later in the year to put the act into effect.

Most of the college trustees rebelled against this action. With the support of some

professors and most of the students, they continued to operate privately. They then sued William Woodward, secretary-treasurer of the trustees who had joined the new school, to regain control of their corporate papers, the school seal, and other documents. The suit questioned whether the state law was constitutional.

New Hampshire's state supreme court ruled against Dartmouth College. It said that the school had changed, becoming public, and so belonged under state control. The question then went to the Supreme Court of the United States. The issue before the Court: Did the acts of the state legislature, placing Dartmouth College under state control, violate the U.S. Constitution?

Constitutionality was an issue because one goal of the framers of the U.S. Constitution was to protect private property from the state governments. For this reason, Article I, Section 10, includes what is known as the "**contract clause**." It specifically limits the actions of state governments: "No state shall . . . pass any . . . law impairing the obligation of contracts."

The Dartmouth College case was first argued before the Court in 1818 but was not decided until the following term. Daniel Webster, a well-known lawyer and orator who was a Dartmouth alumni, represented the college. Arguing for the school's rights, Webster said: "It is a small college and yet there are those who love it."

With one **dissenting** vote, the Court ruled that the legislature acted unlawfully when it took control of the college, violating Article I of the Constitution. Chief Justice John Marshall, who favored the college's point of view, wrote the opinion of the Court:

It can require no argument to prove that the circumstances of this case constitute a contract. An application is made to the crown [the English king] for a charter to incorporate a religious and literary institu-

tion. In the application, it is stated that large contributions have been made for the object, which will be conferred on the corporation soon as it shall be created. The charter is granted, and on its faith the property is conveyed. Surely in this transaction every ingredient of a complete contract is to be found. . . .

According to this decision, a corporate charter was considered to be a contract and so could not be broken by acts of a legislature. The Court noted that the American Revolution had simply shifted the duties and powers of government from the king to the people of New Hampshire. Property rights and contract rights had not been affected. Marshall added:

The obligations, then, which were created by the charter to Dartmouth College, were the same in the new [state government] that they had been in the old government.

Marshall found that the New Hampshire law destroyed the charter by taking the funds and control of the college from the trustees and giving them to the state government. He wrote:

The charter of 1769 exists no longer. It is reorganized; and reorganized in such a manner as to convert a literary institution, molded according to the will of its found-

ers, and placed under the control of private literary men, into a machine entirely subservient to the will of government. This may be for the advantage of this college in particular . . . but it is not according to the will of the donors, and is subversive of that contract on the faith of which their property was given.

The Court reversed the state court's decision, ordered the documents returned to the trustees, and instructed the state to pay the trustees \$20,000 in damages, along with legal fees and court costs.

The Dartmouth College case decision was considered a positive step for the national economy and for all private corporations. It guaranteed the protection of all types of contracts from government actions.

Also in this decision, Chief Justice Marshall gave a definition of a corporation that became a classic in law:

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These [properties] are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality and . . . individuality.