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# People Want More Freedom

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in America

Thus, with broad strokes of the judicial brush, John Marshall and the Court he led established the supremacy of the national government over the state governments and the legal privilege of free enterprise against governmental regulation. During his 34 years, the Marshall Court rendered 1,106 decisions; Marshall wrote the Court's opinion in 519 or nearly half of these; he dissented in only nine cases, less than 1 percent. This is a measure of the intellectual leadership which Marshall provided for his Court—even after Justices were appointed to it who were presumably his political opponents.

But the most famous of Marshall's cases was *Marbury v. Madison*,<sup>4</sup> which established that the Supreme Court may declare unconstitutional, and hence void, a law passed by the United States Congress. The decision also revealed John Marshall's political sense at work in combination with his legal deviousness.

Shortly before leaving office, President John Adams appointed 42 new Justices of the Peace for the District of Columbia. But these so-called "midnight commissions" had been granted so late that there was not time to deliver them to the appointees. Newly inaugurated President Thomas Jefferson ordered James Madison, his Secretary of State, to withhold the commissions. One of the Justices of the Peace to be commissioned, William Marbury, asked the Supreme Court to issue a court order or "writ of mandamus" to compel Madison to deliver the commissions. Marshall faced a quandary. If the Court ordered Madison to deliver the commissions, the administration could disregard the order, leaving the Court helpless to enforce it. If the Court said that Madison was within his rights in refusing to deliver the commissions, the Judiciary would be admitting a subsidiary position to the executive. What he did was to declare that Marbury and his fellow appointees were entitled to their commissions but that the Supreme Court did not have the power to issue the order which would compel Madison to deliver them. To do this, he declared unconstitutional Section 13 of the Judiciary Act of 1789. This section had empowered the Supreme Court to issue such "writs of mandamus," and it had done so for years, but Marshall declared that the Court could not properly do it without violating its Constitutional nature as Court of Appeals. That is, instead of considering cases of this sort in the first instance, the Court could only handle them after they had been adjudged by lower courts. Thus Marshall gave Jefferson the immediate political result Jefferson desired—no appointments for Marbury and his friends. And the immediate practical result of the decision was to reduce slightly the authority of the Supreme Court. But, in the process, he established for all time the principle that the Court may declare acts of Congress unconstitutional.

John Marshall is usually pictured as a major hero of American history because of what he did to strengthen the national government. Marshall wanted that strength to serve the wealthy. Once established, however, it could also be used—and was—to serve the people of the nation rather than the established interests of a region. Marshall is listed as an American democratic hero because of this permanent accomplishment, rather than for his immediate purposes.

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<sup>4</sup>1 Cranch 137 (1803).