"Who shall I nominate now?" President John Adams turned thoughtfully to his secretary of state. Adams was trying to find a new chief justice of the United States. The man he counted on to take the post had declined the honor.

The president's question stymied Secretary John Marshall, a lanky, somewhat awkward ex-Congressman from Virginia. He had been on the job only six months. Though a popular lawyer—a legal genius, some said—he had no idea who should fill the nation's highest judicial post. Maybe the president should consider someone already on the Supreme Court. What about Associate Justice Patterson?

"I shall not nominate him," said the President decidedly. He paused a moment, then looked at Marshall. "I believe I must nominate you."

Abrupt as it may seem, Adams' choice was sound. He needed a chief justice who shared his firm Federalist views and would fight for a strong central government. Marshall was such a jurist. And Adams had to act quickly; he was about to lose his job.
A few months before, in the fall of 1800, voters had rejected the Federalist vision of rule by “the rich, the good and the wise.” Thomas Jefferson’s Democratic Republican Party, which favored rule by “the people,” won control of Congress and the presidency. On March 4, 1801, Adams would hand his young nation over to a group that Federalists feared would destroy it. When John Marshall became chief justice in early February, Adams knew he had at least slowed the Democratic Republicans down.

Marshall was not Adams’ only last-minute jurist. At 9 p.m. on March 3, three hours before the Democratic Republicans took office, Adams appointed 42 new justices of the peace and rushed their papers to the Senate. Under Federalist control until midnight, it had stayed in session just to confirm these appointments. John Marshall, in his role as secretary of state, signed the documents. But before the commissions were delivered, the clock ran out.

Thomas Jefferson, the new president, did not want more Federalist officials. In any case, he doubted that Adams’ last acts were legally binding. He told his secretary of state, James Madison, to withhold 17 of the undelivered commissions. With no official papers, the 17 Federalists would not get their appointments.

There the matter would have ended, except that four of the men awaiting appointments seemed to want theirs badly. In 1789, Congress had passed a law, the Judiciary Act, giving the Supreme Court power to issue writs of mandamus. These legal orders, which get their name from Latin meaning “we command,” allow courts to tell government officials to take particular actions. The four job-seekers, one of them named William Marbury, asked the Supreme Court for a writ of mandamus ordering Secretary of State Madison to deliver the 17 commissions left over from Adams’ term.

Marbury’s request put Chief Justice Marshall in a difficult spot. If the Supreme Court ordered Madison to deliver Marbury’s papers, the secretary would surely refuse to obey. Jefferson and the Democratic Republican Congress would back him. With no way to enforce its order, Marshall’s court could do little about Madison’s disobedience. The court’s power, and with it Federalist influence in the coming years, would be endangered.

Of course, Marshall could turn Marbury down. But refusing the writ would cast doubt on the legality of Adams’ last-minute actions. People would accuse the court of ignoring the law or of evading it to appease the Democratic Republicans. Whatever the court did, it was bound to lose prestige.

But John Marshall found a way out. His solution is still a high point in American legal reasoning. First, he said, Marbury’s appointment was perfectly legal, and he should get his papers. If Madison wouldn’t deliver them, Marbury had every right to demand a writ of mandamus.

But—and here’s the twist—the Supreme Court could not give Marbury his writ because it had no constitutional authority to do so. Indeed, Congress had no constitutional authority to grant the Supreme Court power to issue such writs. In short, Marshall ruled that the court must give up the power of issuing writs of mandamus because part of the Judiciary Act of 1789 was unconstitutional.

Jefferson despised the ruling because it affirmed Marbury’s claims and Adams’ actions. But there was nothing the president could do. Since he had not received an order, he could not embarrass the court by refusing to obey. By giving up the small power of issuing writs of mandamus, the court established a great power: judicial review. Judicial review allows courts to examine laws and executive acts and, if they violate the Constitution, overrule them.

Marshall’s decision gave the court a power not explicitly granted it in the Constitution. In doing this, Marshall followed the lead of Federalist framers like Alexander Hamilton who expected the courts to protect private rights from Congress. Marshall’s ruling set a precedent that state and federal judges have followed ever since. Judicial review is now key to our government’s system of checks and balances.
The court did not declare another act of Congress unconstitutional until the *Dred Scott* case, 54 years later. Oddly enough, one man controlled the court for much of the intervening half century. That man was John Marshall. And *Marbury v. Madison* was but the first of dozens of his controversial and important opinions.

**For Discussion**

1. Who was John Marshall?

2. Who was William Marbury? What did he want? What was *Marbury v. Madison* about?

3. Was Marshall’s *Marbury v. Madison* decision fair? How would you have decided the case? Why?

4. As Adams’ secretary of state, Marshall took part in the events that led to *Marbury v. Madison*. Should he have excused himself from the case? If a judge played a similar role in a case today, would his or her decision be suspect? Explain.

5. What is judicial review? If the courts lacked this power, what might happen when Congress or the president violated the Constitution?

6. Who do you think should have the final say about what the Constitution means: the courts, the president, or Congress? Explain.

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**Activity**

**Jurisdiction**

Article III of the U.S. Constitution lays out the powers of the U.S. Supreme Court. Its Section 2 lists the different kinds of cases the federal courts are allowed to resolve. The second paragraph of Section 2 explains which cases must be started (must “originate”) in the Supreme Court itself and which reach the Supreme Court only on appeal from lower courts.

As a group, review the Constitution’s Article III, Section 2, on the opposite page. For each of the four cases described below, discuss and decide the following questions:

1. Can the case be tried in federal courts? Why or why not?

2. If it can be tried in federal court, does the Supreme Court have original or appellate jurisdiction over the case? Why?

Base your decisions on the Constitution’s Article III, Section 2, on the opposite page.

**Cases**

A. The owner of a fast-food stand in Denver signed a one-year contract with an Idaho-based supplier of frozen french fries. Six months later, claiming the food arrived late and was sometimes spoiled, she refused to accept or pay for further shipments. Her supplier says she owes him $512,000 and takes her to court for breaking the contract.

B. A man owed his ex-wife $1,800 in child-support payments. When he won $1,000 in his state’s lottery, the government withheld the money to pay his debt. He feels this is not fair and sues to get the money back.

C. A foreign dictator used his country’s public money to buy Florida real estate. When he fell from power, the new government claimed he acted illegally. It now wants the state of Florida to give it title to the property and sues Florida to accomplish this goal.

D. Members of a church in Texas are charged with breaking immigration laws by harboring illegal aliens. They claim the aliens are political refugees whom the federal government will not acknowledge because it supports tyrannical regimes in their homelands.
U.S. Constitution
Article III, Section 2

This section of the U.S. Constitution spells out which matters are for federal courts to decide (the jurisdiction of the federal courts). It also lays out when the Supreme Court has original jurisdiction (when it acts as a trial court) and when it has appellate jurisdiction (when it reviews the decisions of lower courts). The text of this section has not been changed, but its clauses have been separated and numbered for clarity.

[Jurisdiction of the Federal Courts]
The judicial power shall extend

[1] to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;

[2] to all cases affecting ambassadors, other public ministers and consuls;

[3] to all cases of admiralty and maritime jurisdiction;

[4] to controversies to which the United States shall be a party;

[5] to controversies

[A] between two or more states;

[B] between a state and citizens of another state;

[C] between citizens of different states;

[D] between citizens of the same state claiming lands under grants of different states

... [E] between a state, or the citizens thereof, and foreign states, citizens or subjects.

[Original or Appellate Jurisdiction]
In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

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