

1 The Supreme Court and Judicial Review

As you read, think about answers to these questions:

- ★ How were the powers of the Supreme Court defined?
- ★ Why was the case of *Marbury v. Madison* so important?
- ★ What post-Civil War events expanded the power of the Supreme Court?

The Constitution called for the creation of a federal government with three branches or parts: a legislative, executive, and judiciary. Article 1 created Congress, the legislative, or law-making, body. Article 2 established the office of the President, who executes or carries out the laws. Article 3 created a federal court system consisting of one Supreme Court and other lower courts. The responsibility of the Supreme Court is to judge whether the laws and actions of Congress and the President are constitutional. This responsibility is known as judicial review. The term *judicial review*, however, does not appear anywhere in the Constitution. How did the judiciary gain this important power?

★ The Supreme Court's Powers Were Defined Through Interpretation

As with most aspects of the U.S. Constitution, the meaning of Article 3 was left open to interpretation. In 1789, shortly after the Constitution was ratified, the U.S. Congress passed the Judiciary Act of 1789, which established the federal court system. Congress created a Supreme Court, three circuit courts, and 13 district courts. There was one district court for each of the 13 states.

The Constitution did not specify the number of justices that could be appointed to the Supreme Court. Through the Judiciary Act, though, Congress provided for a Chief Justice and five Associate Justices. The Constitution and Congress left undefined, however, the scope of the Court's power. These powers would gradually be defined through the Court's interpretation of the Constitution in particular cases.

The first three Chief Justices had very little impact on the direction of the Supreme Court. But the fourth, John Marshall, influenced the actions of the Supreme Court in ways still felt in the United States today. Early on in Marshall's term as Chief Justice, a seemingly insignificant case came before the Supreme Court. The case, *Marbury v. Madison*, however, became one of the most important Supreme Court decisions in U.S. history.

★ *Marbury v. Madison* Helped Define The Court's Powers

In November 1800, President John Adams, a Federalist, lost his bid for re-election to Thomas Jefferson, a Republican. The Federalists also lost control of Congress in the election. For the few months before the new President and Congress took office, however, Adams and his Federalist Party still had control.

President Adams packs the courts. During these months, Adams persuaded Congress to pass a new law, the Judiciary Act of 1801. This act gave Adams the power to appoint several new federal judges. The Federalists hoped to fill the nation's courts with people who would be opposed to the policies of the in-coming Republican administration.

Adams was generally successful in this effort, appointing some 39 new judges. Adams' Secretary of State, though, failed to deliver the *commissions* appointing three new justices of the peace before Adams' term of office ended. One of the commissions was to go to William Marbury.

Madison denies Marbury's commission. When Thomas Jefferson assumed the presidency in March 1801, he learned of Adams' attempt to pack the court with Federalist judges. He also discovered the failure to deliver the remaining commissions. To prevent these Federalists from becoming judges, Jefferson instructed his Secretary of State, James Madison, to refuse the appointments. One of those refused the commission was William Marbury. In 1803, angry and frustrated, William Marbury went to the Supreme Court in an attempt to gain his post. He wanted the Court to issue a *writ of mandamus* forcing Madison to appoint Marbury as a judge. Marbury, of course, was attempting to play on the sympathies of the Court. The new Chief Justice, John Marshall, had been the Secretary of State who failed to deliver Marbury's commission!

The Ruling. Marbury's strategy appeared to work. In the first part of his ruling, Marshall stated that Marbury, indeed, had a right to his commission. But, more important, he explained that the Judiciary Act of 1789, by which Congress gave the Supreme Court the power to issue a writ granting Marbury his commission, was unconstitutional. In Marshall's opinion, Congress could not give the Court such a power. Only the Constitution could, and the document said nothing about the Supreme Court having the power to issue a writ of *mandamus*. Thus, the Supreme Court could not force Jefferson and Madison to appoint Marbury because it did not have the power to do so.

While Marbury never became a justice of the peace, the Court's ruling in *Marbury v. Madison* established a very important *precedent*. A precedent is a legal decision that serves as an example in later court cases. Chief Justice Marshall's ruling interpreted the Constitution to mean that the Supreme Court had the power of judicial review. That is, the Court had the right to review acts of Congress and the President. If the Court found that a law was unconstitutional, it could overrule the law. Marshall argued that the Constitution is the "supreme law of the land" and that the Supreme Court has the final say over the meaning of the Constitution. During his 34 years as Chief Justice, Marshall used the power of judicial review to greatly expand the influence of the Supreme Court on the national government.

★ The Supreme Court's Power Expanded After The Civil War

The influence of the Supreme Court on American government expanded further after the American Civil War.

commission a legal document that authorizes a person to perform official duties

writ of mandamus a document that mandates, or requires, a public official to perform certain duties

precedent a legal decision that serves as an example in later court cases

Ex Parte Milligan. In 1866, the Supreme Court made an important ruling in the case *Ex parte Milligan*. This case involved the question of *habeus corpus*. The phrase *Ex parte Milligan* means "on behalf of Milligan." Milligan was a northerner who supported the Confederate cause during the Civil War. He was arrested for actively fomenting, or encouraging, rebellion in Indiana. Milligan's arrest was based on a military order given by President Abraham Lincoln.

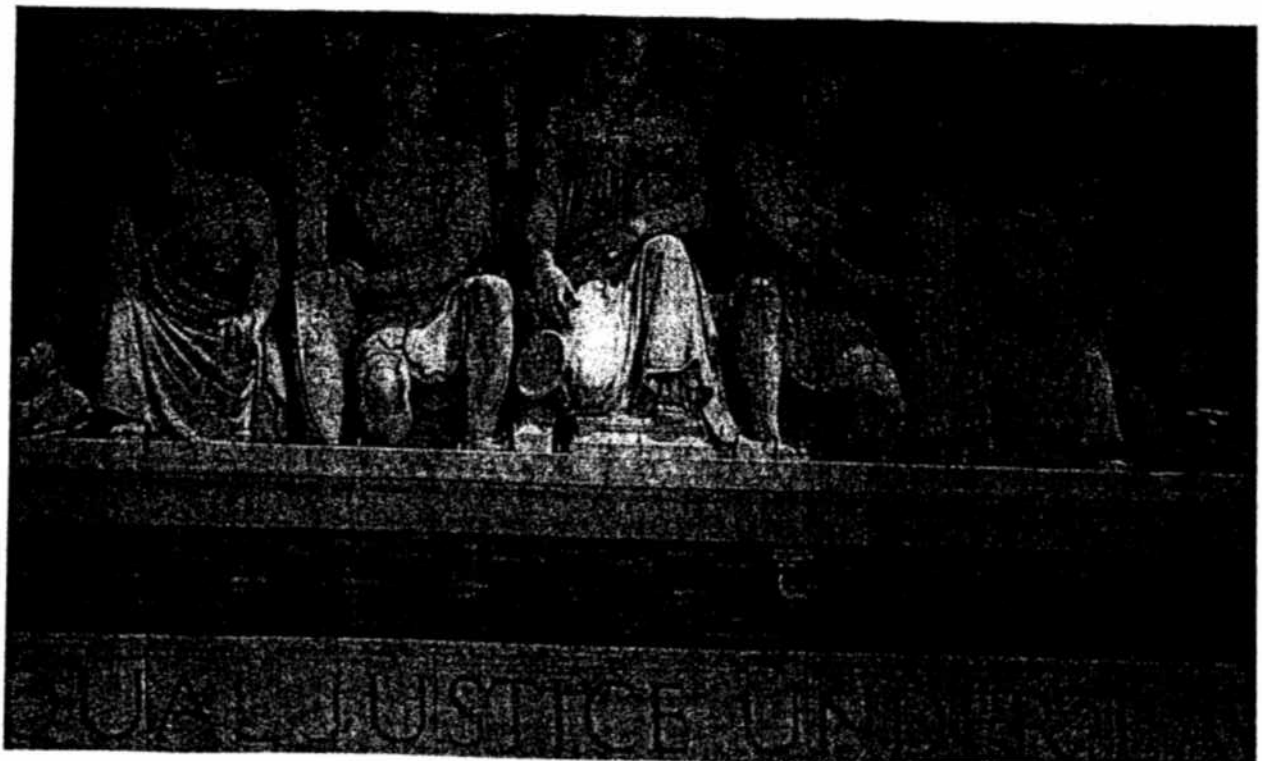
In 1861, as war broke out between the Union and Confederate armies, Lincoln suspended the writ of *habeus corpus*. *Habeus corpus* is a constitutional protection against unjust arrest and imprisonment. The Constitution, however, says that during wartime, the federal government can suspend *habeus corpus* and impose military rule. But it does not say whether this applies only in areas where actual fighting is going on. In *Ex parte Milligan*, the Supreme Court ruled that neither the President nor Congress has the right to suspend *habeus corpus* throughout the United States, unless the whole country is the scene of actual fighting. Milligan's conviction was overturned because he was not living in an area where fighting was going on. The Supreme Court declared that in most cases the federal government cannot establish military rule in the United States. This ruling further demonstrated that the Supreme Court assumed the responsibility and the power to judge whether acts of the President and Congress were unconstitutional.

The Fourteenth Amendment. A few years later, in 1868, the Fourteenth Amendment was ratified (see Chapter 3, Section 2). By requiring states to obey the laws of the nation, the Fourteenth Amendment indirectly increased the *jurisdiction*, or authority of the Supreme Court. Since 1868, the Supreme Court has had the power to decide the constitutionality of all laws and actions of the federal government and the states.

The motto "Equal Justice Under Law" appears above the entrance of the Supreme Court Building. The Fifth Amendment of the Constitution says that all accused persons must receive equal treatment under the law.

writ of *habeus corpus*
court order requiring the
government to release a
prisoner unless good cause
for imprisonment can be
shown

jurisdiction authority



Section 1 Review

1. Defining Constitutional Terms

Write a brief definition for each of the following terms.

- a. commissions _____

- b. writ of *mandamus* _____

- c. precedent _____

- d. writ of *habeas corpus* _____

- e. jurisdiction _____

2. Reviewing Social Studies Skills: Identifying the Dates of Significant Events

Draw a line from the event in the left hand column to the date when it occurred in the right hand column.

<i>Ex parte Milligan</i>	1861
Fourteenth Amendment ratified	1803
Jefferson elected	1868
<i>Marbury v. Madison</i>	1866
Civil War begins	1800

3. Reviewing the Main Ideas

Write a brief answer — one or two sentences — for each of the following questions.

- a. How does the Constitution describe the powers of the Supreme Court?

- b. What was the significance of the *Marbury v. Madison* case? _____

- c. What events took place after the Civil War that increased the power of the Supreme Court?

4. Critical Thinking Skills: Understanding the Constitution

On a separate sheet of paper, answer the following question in a brief paragraph.

If the Supreme Court did not have the power of judicial review, how would the balance of power among the three branches of government have been affected?