

## ***Marbury v. Madison (1803) and Judicial Review***

*(John Marshall: Writings, Charles F. Hobson selected the contents and wrote the notes for this volume, Library of America, 2010, pages 249-252.)*

...The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, & like other acts, is alterable when the legislature shall please to alter it.

Certainly all those who have framed constitutions, contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society...

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound, and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules, governs the case. This is of the essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature—the constitution, and not such ordinary act, must govern the case to which they both apply.

...The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

...it is apparent, that the framers of the constitution, contemplated that instrument, as a rule for the government of courts...

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!