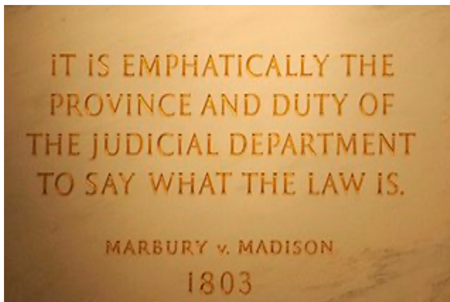
# Marbury v. Madison
# 5 U.S. 137 (1803),
## Condensed Case



Swatjester, *First Floor at the Statue of John Marshall, Quotation from Marbury v. Madison, United States Supreme Court Building*, Wikicommons, December 19,2007.

## The Big Picture

The courts have a duty to review the constitutionality of the acts of Congress and the President.

## Ruling

Although Marbury had a right to his commission as justice of the peace, the statute under which Marbury argued the Court could grant him relief was unconstitutional.

## Constitutional Text

Article III, Section 1: *The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.*

Art. VI, Clause 2 (the Supremacy Clause): *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the*

## OPINION OF THE COURT

[Two days before his term as president ended, John Adams nominated William Marbury to be a justice of the peace for the District of Columbia. The Senate approved the nomination, President Adams then signed the commission (the official paper appointing Marbury to the job), and the Secretary of State affixed the seal of the United States to the document. The Adams Administration, however, was unable to deliver the commission before leaving office. The next Secretary of State, James Madison, refused to deliver the commission.]

Has [Mr. Marbury] a right to the commission he demands?

In order to determine whether he is entitled to this commission, it becomes necessary to enquire whether he has been appointed to the office. For if he has been appointed, the law [places] him in office for five years, and he is entitled to the possession of those evidences of office, which, being completed, became his property.

[The constitution declares that] “the president shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, and all other officers of the United States, whose appointments are not otherwise provided for.”

[The constitution also declares the President] “shall commission all the officers of the United States.”

The last act to be done by the President is the signature of the commission.

[When a commission] has been signed by the President, the appointment is made; and the commission is complete when the seal of the United States has been affixed to it by the secretary of state.

*Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding*.

## Dissenting Opinion

There was no dissenting opinion filed in this case.

Mr. Marbury, since his commission was signed by the President, and sealed by the secretary of state, was appointed; and as the law creating the office gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable.

To withhold the commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

The secretary of state, being a person holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional, and therefore absolutely incapable of conferring the authority, and assigning the duties which its words purport to confer and assign.

[The Court must decide] whether an act repugnant to the constitution can become the law of the land.

It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it.

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

[Those who construct 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.

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 the operation of each.

So if a law be in opposition to the constitution[,] the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

Those who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed as pleasure.

[A] law repugnant to the constitution is void, and *courts*, as well as other departments, are bound by that instrument.