*Marbury v. Madison, 1 Cranch (5 U.S.) 137; 2 L. Ed. 60 (1803)*

**Facts-** In compliance with the Judiciary Act of 1801, President John Adams signed a commission for William Marbury as a justice of the peace for the county of Washington, D.C. The seal of the United States was affixed to the commission, but it never reached Marbury. James Madison the incoming secretary of state under Jefferson (a Democratic Republican rather than a Federalist) refused to deliver the commission. Marbury went directly to the U.S. Supreme Court for a writ of mandamus requiring Secretary of State Madison to deliver to Marbury his commission. The Judiciary Act of 1789 in Section 13 had provided that the Supreme Court could issue writs of mandamus.

**Questions-** (a) Has the applicant a right to the commission he demands? (b) If that right has been violated, do the laws of the United States afford him a remedy? (c) Is this remedy a mandamus issuing from the Supreme Court? (d) The question that Marshall does not state, but for which this case is famous, is can the Supreme Court void an act of national legislation that it considers to be unconstitutional?

**Decisions-** (a) Yes; (b) Yes; (c) No; (d) Yes.

**Reasons-** *Cj Marshall* (5-0) By signing Marbury’s commission, President Adams appointed him a justice of the peace. The seal of the United States affixed thereto by the secretary of state was conclusive testimony of the legitimacy of the signature, and the completion of the appointment, under its terms, conferred by Marbury a legal right to the office for the space of five years. Thus, Marbury had a right to the commission he demanded.

Where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is violated. Marbury has a legal right, and this right was obviously violated by Madison’s refusal to deliver to him the commission. Thus, a remedy under United States law was due Marbury.

The Supreme Court of the United States had no power to issue a writ of mandamus to the secretary of state since this would be an exercise of original jurisdiction not warranted by the Constitution. Congress had no power to enlarge the Supreme Court’s original jurisdiction beyond the limited circumstances involving diplomatic personnel and disputes among the states described in Article III of the Constitution.

The people designed the Constitution as a written instrument designed to control government. The Constitution is “either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts [like the provision of the Judiciary Act in question].” Marshall argued that the Constitution was in the former category of fundamental law and that “it is emphatically the province and duty of the judicial department to say what the law is.” When faced with a conflict between an unconstitutional law (as further examples, Marshall cited cases where a state lays a prohibited export tax, adopts a bill of attainder or ex post facto law, or flouts constitutional guidelines regarding convictions for treason) and the Constitution, the judges, who take an oath to uphold the Constitution, must enforce the more fundamental law. Otherwise, provisions of the Constitution could be flouted with impunity. Judges take an oath to uphold the Constitution: “Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?” Marshall also noted that the supremacy clause in Article VI of the Constitution makes “the Constitution itself” the supreme law of the land.

**Note-** This is the first time the Court declared an act of Congress unconstitutional, and thus established the doctrine of judicial review. It was not until a half century later in *Dred Scott v. Sandford*, 19 Howard 393 (1857) that the Court was to do it again.