zation was an attempt by Congress to expand the Court's original jurisdiction beyond the constitutional prescription and was therefore void.[695]

"The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States," Marshall began his discussion of this final phase of the case, "but, happily, not of an intricacy proportioned to its interest."[696] First, Marshall recognized certain fundamental principles. The people had come together to establish a government. They provided for its organization and assigned to its various departments their powers and established certain limits not to be transgressed by those departments. The limits were expressed in a written constitution, which would serve no purpose "if these limits may, at any time, be passed by those intended to be restrained." Because the Constitution is "a superior paramount law, unchangeable by ordinary means, . . . a legislative act contrary to the constitution is not law."[697] "If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect?" The answer, thought the Chief Justice, was obvious. "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."[698]

"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 very essence of judicial duty."[699]

"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

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[695] Marbury v. Madison, 5 U.S. (1 Cr.) 137, 173–180 (1803). For a classic treatment of *Marbury*, *see* Van Alstyne, *A Critical Guide to Marbury v. Madison*, 1969 DUKE L. J. 1.

[696] 5 U.S. at 176. One critic has written that by this question Marshall "had already begged the question-in-chief, which was not whether an act repugnant to the Constitution could stand, but who should be empowered to decide that the act is repugnant." A. Bickel, supra at 3. Marshall, however, soon reached this question, though more by way of assertion than argument. 5 U.S. (1 Cr.) at 177–78.

[697] 5 U.S. at 176–77.

[698] 5 U.S. at 177.

[699] 5 U.S. at 178.