shall's achievement that, in doubtful circumstances and an awkward position, he carried the day for the device, which, though questioned, has expanded and become solidified at the core of constitutional jurisprudence.

Marbury v. Madison.—Chief Justice Marshall's argument for judicial review of congressional acts in *Marbury v. Madison* [690] had been largely anticipated by Hamilton.[691] Hamilton had written, for example: "The interpretation of the laws is the proper and peculiar province of the courts. A constitution, is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents." [692]

At the time of the change of administration from Adams to Jefferson, several commissions of appointment to office had been signed but not delivered and were withheld on Jefferson's express instruction. Marbury sought to compel the delivery of his commission by seeking a writ of mandamus in the Supreme Court in the exercise of its original jurisdiction against Secretary of State Madison. Jurisdiction was based on § 13 of the Judiciary Act of 1789,[693] which Marbury, and ultimately the Supreme Court, interpreted to authorize the Court to issue writs of mandamus in suits in its original jurisdiction.[694] Though deciding all the other issues in Marbury's favor, the Chief Justice wound up concluding that the § 13 authori-

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690 5 U.S. (1 Cr.) 137 (1803).

691 THE FEDERALIST, Nos. 78 and 81 (J. Cooke ed. 1961), 521–530, 541–552.

692 Id., No. at 78, 525.

693 1 Stat. 73, 80.

694 The section first denominated the original jurisdiction of the Court and then described the Court's appellate jurisdiction. Following and indeed attached to the sentence on appellate jurisdiction, being separated by a semicolon, is the language saying "and shall have power to issue . . . writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." The Chief Justice could easily have interpreted the authority to have been granted only in cases under appellate jurisdiction or as authority conferred in cases under both original and appellate jurisdiction when the cases are otherwise appropriate for one jurisdiction or the other. Textually, the section does not compel a reading that Congress was conferring on the Court an original jurisdiction to issue writs of mandamus *per se*.