they both apply."[700] To declare otherwise, Chief Justice Marshall said, would be to permit the legislature to "pass[ ] at pleasure" the limits imposed on its powers by the Constitution.[701]

The Chief Justice then turned from the philosophical justification for judicial review as arising from the very concept of a written constitution, to specific clauses of the Constitution. The judicial power, he observed, was extended to "all cases arising under the constitution."[702] It was "too extravagant to be maintained that the Framers had intended that a case arising under the constitution should be decided without examining the instrument under which it arises."[703] Suppose, he said, that Congress laid a duty on an article exported from a state or passed a bill of attainder or an *ex post facto* law or provided that treason should be proved by the testimony of one witness. Would the courts enforce such a law in the face of an express constitutional provision? They would not, he continued, because their oath required by the Constitution obligated them to support the Constitution and to enforce such laws would violate the oath.[704] Finally, the Chief Justice noted that the Supremacy Clause (Art. VI, cl. 2) gave the Constitution precedence over laws and treaties, providing that only laws "which shall be made in *pursuance* of the constitution" shall be the supreme law of the land.[705]

The decision in *Marbury v. Madison* has never been disturbed, although it has been criticized and has had opponents throughout our history. It not only carried the day in the federal courts, but from its announcement judicial review by state courts of local legislation under local constitutions made rapid progress and was securely established in all states by 1850.[706]

Judicial Review and National Supremacy.—Even many persons who have criticized the concept of judicial review of congressional acts by the federal courts have thought that review of state acts under federal constitutional standards is soundly based in the Su-

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[700] 5 U.S. at 177–78.

[701] 5 U.S. at 178.

[702] 5 U.S. at 178. The reference is, of course, to the first part of clause 1, § 2, Art. III: "The judicial power shall extend to all Cases . . . arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . . ." *Compare* A. Bickel, supra at 5–6, *with* R. Berger, supra at 189–222.

[703] 5 U.S. at 179.

[704] 5 U.S. at 179–80. The oath provision is contained in Art. VI, cl. 3. *Compare* A. Bickel, supra at 7–8, *with* R. Berger, supra at 237–244.

[705] 5 U.S. at 180. *Compare* A. Bickel, *supra* at 8–12, *with* R. Berger, *supra* at 223–284.

[706] E. Corwin, The Doctrine of Judicial Review 75–78 (1914); Nelson, *Changing Conceptions of Judicial Review: The Evolution of Constitution Theory in the State, 1790–1860*, 120 U. Pa. L. Rev. 1166 (1972).