Article Three of the United States Constitution

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Article Three of the United States Constitution establishes the judicial branch of the federal government. The judicial branch comprises the Supreme Court of the United States and lower courts as created by Congress.

Contents

Section 1: Federal courts[edit]

Section 1 vests the judicial power of the United States in federal courts, requires a supreme court, allows inferior courts, requires good behavior tenure for judges, and prohibits decreasing the salaries of judges.

> 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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Number of courts[edit]

Article III authorizes and sanctions the establishment of (only) one Supreme Court, but does not set the number of justices that must be appointed to it; though Article I, Section 3, Clause 6 refers to a *Chief Justice* (who shall preside over the impeachment trial of a President). The number of justices has been fixed by statute. At present there are nine justices, one chief justice and eight associate justices, on the Supreme Court.

Proposals to divide the Supreme Court into the separate panels have been made, but all have failed. Since all such proposals have failed, the Supreme Court has never ruled on the

constitutionality of such a division. However, Chief Justice Charles Evans Hughes wrote, "the Constitution does not appear to authorize two or more Supreme Courts functioning in effect as separate courts."

The Supreme Court is the only federal court that is explicitly mandated by the Constitution. During the Constitutional Convention, a proposal was made for the Supreme Court to be the only federal court, having both original jurisdiction and appellate jurisdiction. This proposal was rejected in favor of the provision that exists today. Under this provision, the Congress may create inferior courts under both Article III, Section 1, and Article I, Section 8. The Article III courts, which are also known as "constitutional courts", were first created by the Judiciary Act of 1789. Article I courts, which are also known as "legislative courts", consist of regulatory agencies, such as the United States Tax Court. Article III courts are the only ones with judicial power, and so decisions of regulatory agencies remain subject to review by Article III courts. However, cases not requiring "judicial determination" may come before Article I courts. In the case of *Murray's Lessee v. Hoboken Land & Improvement Co.* 59 U.S. 272 (1855), the Supreme Court ruled that cases involving "a suit at the common law, or in equity, or admiralty" inherently involve judicial determination and must come before Article III courts. Other cases, such as bankruptcy cases, have been held not to involve judicial determination, and may therefore go before Article I courts. Similarly, several courts in the District of Columbia, which is under the exclusive jurisdiction of the Congress, are Article I courts rather than Article III courts. This article was expressly extended to the United States District Court for the District of Puerto Rico by the U.S. Congress through Federal Law 89-571, 80 Stat. 764, signed by President Lyndon B. Johnson in 1966. This transformed the article IV United States territorial court in Puerto Rico, created in the year 1900, to an Article III federal judicial district court.

The Judiciary Reorganization Bill of 1937, frequently called the court-packing plan,[1] was a legislative initiative to add more justices to the Supreme Court proposed by U.S. President Franklin Roosevelt shortly after his victory in the 1936 presidential election. Although the bill aimed generally to overhaul and modernize all of the federal court system, its central and most controversial provision would have granted the President power to appoint an additional Justice to the U.S. Supreme Court for every sitting member over the age of 70½, up to a maximum of six.

The Constitution is silent when it comes to judges of courts which have been abolished. The Judiciary Act of 1801 increased the number of courts to permit the Federalist President John Adams to appoint a number of Federalist judges before Thomas Jefferson took office. When Jefferson became President, the Congress abolished several of these courts and made no provision for the judges of those courts. The power to abolish a court was next used in 1913, when the Congress abolished the Commerce Court. In that case, however, Congress transferred the judges of the Commerce Court to the Circuit Courts.

Tenure[edit]

The Constitution provides that judges "shall hold their Offices during good Behavior." The term "good behavior" is interpreted to mean that judges may serve for the remainder of their lives, although they may resign or retire voluntarily. A judge may also be removed by impeachment

and conviction by congressional vote (hence the term **good** behavior); this has occurred fourteen times. Three other judges, Mark W. Delahay,[2] George W. English,[3] and Samuel B. Kent,[4] chose to resign rather than go through the impeachment process.

Salaries[edit]

The compensation of judges may not be decreased, but may be increased, during their continuance in office.

Section 2: Judicial power, jurisdiction, and trial by jury[edit]

Section 2 delineates federal judicial power, and brings that power into execution by conferring original jurisdiction and also appellate jurisdiction upon the Supreme Court. Additionally, this section requires trial by jury in all criminal cases, except impeachment cases.

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.
>
> Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Clause 1: Cases and controversies[edit]

Main article: Case or Controversy Clause

Clause 1 of Section 2 authorizes the federal courts to hear actual cases and controversies only. Their judicial power does not extend to cases which are hypothetical, or which are proscribed due to standing, mootness, or ripeness issues. Generally, a case or controversy requires the presence of adverse parties who have some interest genuinely at stake in the case. In *Muskrat v.*

United States, 219 U.S. 346 (1911), the Supreme Court denied jurisdiction to cases brought under a statute permitting certain Native Americans to bring suit against the United States to determine the constitutionality of a law allocating tribal lands. Counsel for both sides were to be paid from the federal Treasury. The Supreme Court held that, though the United States was a defendant, the case in question was not an actual controversy; rather, the statute was merely devised to test the constitutionality of a certain type of legislation. Thus the Court's ruling would be nothing more than an advisory opinion; therefore, the court dismissed the suit for failing to present a "case or controversy."

Eleventh Amendment and state sovereign immunity[edit]

Main articles: Eleventh Amendment to the United States Constitution and Sovereign immunity in the United States

In *Chisholm v. Georgia*, 2 U.S. 419 (1793), the Supreme Court ruled that Article III, Section 2 abrogated the States' sovereign immunity and authorized federal courts to hear disputes between private citizens and States. This decision was overturned by the Eleventh Amendment, which was passed by the Congress on March 4, 1794 1 Stat. 402 and ratified by the states on February 7, 1795. It prohibits the federal courts from hearing *any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State*.[5]

Clause 2: Original and appellate jurisdiction[edit]

See also: Jurisdiction stripping

Clause 2 of Section 2 provides that the Supreme Court has original jurisdiction in cases affecting ambassadors, ministers and consuls, and also in those controversies which are subject to federal judicial power because at least one state is a party; the Court has held that the latter requirement is met if the United States has a controversy with a state.[6][7] In other cases, the Supreme Court has only appellate jurisdiction, which may be regulated by the Congress. The Congress may not, however, amend the Court's original jurisdiction, as was found in *Marbury v. Madison*, 5 U.S. (Cranch 1) 137 (1803) (the same decision which established the principle of judicial review). *Marbury* held that Congress can neither expand nor restrict the original jurisdiction of the Supreme Court. However, the appellate jurisdiction of the Court is different. The Court's appellate jurisdiction is given "with such exceptions, and under such regulations as the Congress shall make."

Often a court will assert a modest degree of power over a case for purposes of determining whether it has jurisdiction, and so the word "power" is not necessarily synonymous with the word "jurisdiction".[8][9]

Judicial review[edit]

Main articles: Judicial review and Judicial review in the United States

The power of the federal judiciary to review the constitutionality of a statute or treaty, or to review an administrative regulation for consistency with either a statute, a treaty, or the Constitution itself, is an implied power derived in part from Clause 2 of Section 2.[10]

Though the Constitution does not expressly provide that the federal judiciary has the power of judicial review, many of the Constitution's Framers viewed such a power as an appropriate power for the federal judiciary to possess. In *Federalist No. 78*, Alexander Hamilton wrote,

> 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.[11]

Others, however, disagreed, claiming that each branch could determine for itself the constitutionality of its actions.

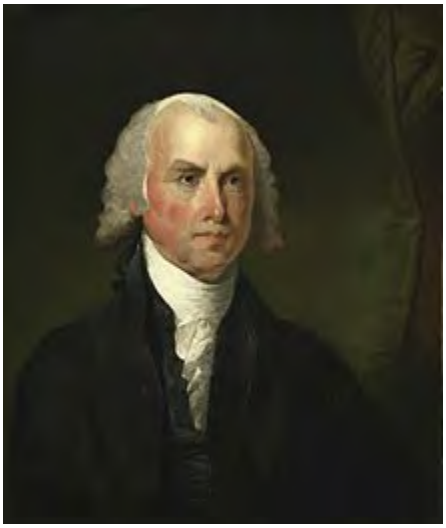
A continuation of the text of *Federalist No. 78* by Hamilton [below] counterbalances the tone of "judicial supremacists" who demand that both Congress and the Executive are compelled by the Constitution to enforce all court decisions, including those that, in their eyes, or those of the People, violate fundamental American principles.

> Nor does this conclusion by any means suppose **a superiority of the judicial to the legislative power**. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.[11] [emphasis added]

Hamilton continues. . .

> It can be of no weight to say that the courts, on the pretense of a repugnancy, may **substitute their own pleasure to the constitutional intentions of the legislature**. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the **substitution of their pleasure to that of the legislative body**. The observation, if it prove any thing, would prove that there ought to be no judges distinct from that body.[11] [emphasis added]

Marbury v. Madison involved a highly partisan set of circumstances. Though Congressional elections were held in November 1800, the newly elected officers did not take power until March. The Federalist Party had lost the elections. In the words of President Thomas Jefferson, the Federalists "retired into the judiciary as a stronghold". In the four months following the elections, the outgoing Congress created several new judgeships, which were filled by President John Adams. In the last-minute rush, however, Federalist Secretary of State John Marshall had neglected to deliver 17 of the commissions to their respective appointees. When James Madison took office as Secretary of State, several commissions remained undelivered. Bringing their claims under the Judiciary Act of 1789, the appointees, including William Marbury, petitioned the Supreme Court for the issue of a writ of mandamus, which in English law had been used to force public officials to fulfill their ministerial duties. Here, Madison would be required to deliver the commissions.



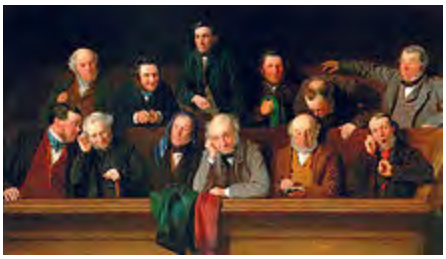
Secretary of State James Madison, who won *Marbury v. Madison*, but lost Judicial review.

Marbury posed a difficult problem for the court, which was then led by Chief Justice John Marshall, the same person who had neglected to deliver the commissions when he was the Secretary of State. If Marshall's court commanded James Madison to deliver the commissions, Madison might ignore the order, thereby indicating the weakness of the court. Similarly, if the court denied William Marbury's request, the court would be seen as weak. Marshall held that appointee Marbury was indeed entitled to his commission. However, Justice Marshall contended that the Judiciary Act of 1789 was unconstitutional, since it purported to grant original jurisdiction to the Supreme Court in cases not involving the States or ambassadors. The ruling thereby established that the federal courts could exercise judicial review over the actions of Congress or the executive branch.

However, Alexander Hamilton, in *Federalist No. 78*, expressed the view that the Courts hold only the power of words, and not the power of compulsion upon those other two branches of government, upon which the Supreme Court is itself dependent. Then in 1820, Thomas Jefferson expressed his deep reservations about the doctrine of judicial review:

> You seem ... to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps.... Their power [is] the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves.[12]

Clause 3: Federal trials[edit]

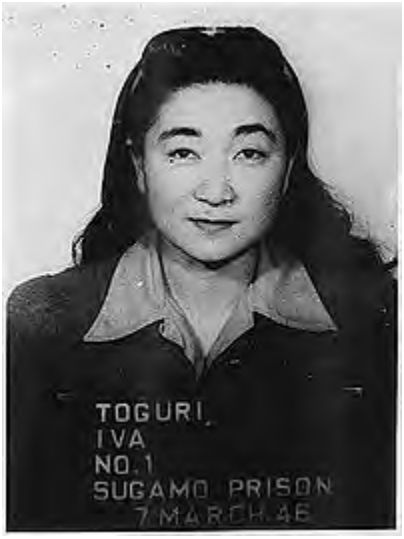


A nineteenth century painting of a jury.

Clause 3 of Section 2 provides that Federal crimes, except impeachment cases, must be tried before a jury, unless the defendant waives his right. Also, the trial must be held in the state where the crime was committed. If the crime was not committed in any particular state, then the trial is held in such a place as set forth by the Congress. The United States Senate has the sole power to try impeachment cases.[13]

Two of the Constitutional Amendments that comprise the Bill of Rights contain related provisions. The Sixth Amendment enumerates the rights of individuals when facing criminal prosecution and the Seventh Amendment establishes an individual's right to a jury trial in certain civil cases. It also inhibits courts from overturning a jury's findings of fact. The Supreme Court has extended the protections of these amendments to individuals facing trial in state courts through the Due Process Clause of the Fourteenth Amendment.

Section 3: Treason[edit]



Iva Toguri, known as *Tokyo Rose*, and Tomoya Kawakita were two Japanese Americans who were tried for treason after World War II.

Section 3 defines treason and its punishment.

> Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.
>
> The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

The Constitution defines treason as specific acts, namely "levying War against [the people of the United States], or in adhering to their Enemies, giving them Aid and Comfort." A contrast is therefore maintained with the English law, whereby a variety of crimes, including conspiring to kill the King, or "violating" the Queen, were punishable as treason. In *Ex Parte Bollman*, 8 U.S. 75 (1807), the Supreme Court ruled that "there must be an actual assembling of men, for the treasonable purpose, to constitute a levying of war."[14]

Under English law effective during the ratification of the U.S. Constitution, there were essentially five species of treason.[*citation needed*] Of the five, the Constitution adopted only two: levying war and adhering to enemies. Omitted were species of treason involving encompassing (or imagining) the death of the king, certain types of counterfeiting, and finally fornication with women in the royal family of the sort which could call into question the parentage of successors. James Wilson wrote the original draft of this section, and he was involved as a defense attorney for some accused of treason against the Patriot cause.

Section 3 also requires the testimony of two different witnesses on the same overt act, or a confession by the accused in open court, to convict for treason. This rule was derived from an older English statute, the Treason Act 1695.[15]

In *Cramer v. United States*, 325 U.S. 1 (1945), the Supreme Court ruled that "[e]very act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses."[16] In *Haupt v. United States*, 330 U.S. 631 (1947), however, the Supreme Court found that two witnesses are not required to prove intent, nor are two witnesses required to prove that an overt act is treasonable. The two witnesses, according to the decision, are required to prove only that the overt act occurred (eyewitnesses and federal agents investigating the crime, for example).

Punishment for treason may not "work Corruption of Blood, or Forfeiture except during the Life of the Person" so convicted. The descendants of someone convicted for treason could not, as they were under English law, be considered "tainted" by the treason of their ancestor. Furthermore, Congress may confiscate the property of traitors, but that property must be inheritable at the death of the person convicted.

In Federalist No. 43 James Madison wrote regarding the Treason Clause:

> As treason may be committed against the United States, the authority of the United States ought to be enabled to punish it. But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.

Based on the above quotation, it was noted by the lawyer William J. Olson in an Amicus curiae in the case Hedges v. Obama that the Treason Clause was one of the enumerated powers of the federal government.[17] He also stated that by defining treason in the U.S. Constitution and placing it in Article III "the founders intended the power to be checked by the judiciary, ruling out trials by military commissions. As James Madison noted, the Treason Clause also was designed to limit the power of the federal government to punish its citizens for "adhering to [the] enemies [of the United States by], giving them aid and comfort."'"[17]

See also[edit]

- United States constitutional criminal procedure

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7. ^ *Cohens v. Virginia*, 19 U.S. 264 (1821): "[T]he original jurisdiction of the Supreme court, in cases where a state is a party, refers to those cases in which, according to the grant of power made in the preceding clause, jurisdiction might be exercised, in consequence of the character of the party."
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