

The Role of the Federal Courts



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- What powers are vested in the federal courts?
- Why did Alexander Hamilton refer to the judiciary as the least able to harm our rights?
- What does the Constitution say about the supremacy of Supreme Court opinions?

In this third installment of the three-part series on the branches of government, we look at the role of the third and weakest branch. At least that's what our Founding Fathers thought. What is the role of the federal judiciary? What are the extent of their powers, how do they relate to the other two branches of government, and why is a proper understanding of the role of the judiciary critical if the United States is to remain a constitutional republic?

Like many of you I've watched courtroom dramas, read about federal court decisions, and drawn conclusions about about how these courts work. Then I read the Constitution and learned just how wrong that education I had received was. Let's start with the creation of the federal judiciary.

Judicial Power

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 Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

[U.S. Constitution, Article III, Section 1](#)

Just as the legislative branch was created in Article I, and the executive in Article II, the judicial branch is created in Article III. What is this judicial power that has been vested by this Article?

***JUDI'CIARY**, noun That branch of government which is concerned in the trial and determination of controversies between parties, and of criminal prosecutions; the system of courts of justice in a government.*

[JUDICIARY – Webster's 1828 Dictionary](#)

The role of the judiciary is two-fold: The prosecution of crimes and the determination of controversies. While the prosecution of federal crimes does happen in the federal judiciary, most of the cases we see coming out of these courts have to do with controversies, disputes, or disagreements. That means, as I believe more than one Supreme Court nominee has stated, the role of the courts is primarily that of an umpire.

Picture this: A base runner is charging toward home plate. The catcher is standing over the plate, waiting to receive the throw from the outfield. In less than a second, the ball enters the catcher's mitt, and he immediately sweeps down to tag the runner sliding into home plate with his arm outstretched to sweep across it. The base runner believes he is safe, while the catcher believes he tagged the runner out. We have a controversy. What we need is a disinterested third party, someone who knows the rules and can look at the evidence to decide this controversy. That is the role of the umpire. He knows the rules of the game, things like the ball must be in the mitt to legally tag someone out and that the

base runner must physically touch home plate. The umpire also has access to the evidence and the memory of what he observed in the split-second interaction. Based on this information, he must decide if the runner is safe or out. Then the umpire will announce his decision with a grand gesture and a loud call. And to nobody's surprise, the loser of the decision will immediately confront the umpire to appeal it, possibly even appealing to other judges to confirm their position. This is a very good analogy of how the federal judicial system should work.

A person is charged with a crime or files a lawsuit for a redress of some grievance. The plaintiff, in the case of a suit, believes he has been aggrieved and is looking for the courts to agree with him, while the accused, called the defendant, believes they have done nothing wrong. (In a criminal case, the prosecutor believes the laws of government have been aggrieved by the defendant.) Both sides come before a judge, someone who's supposed to be a neutral third party who is familiar with the law. Sometimes the judge will make the final decision, but in the case of a crime or some civil suits, the decision will actually be made by a jury and the judge is there to make sure the two parties follow the law in the courtroom. The parties to the case present evidence and the law to show they are correct. While a jury trial is a bit different, in a judicial trial the judge makes his or her decision on the controversy. Often, one party will not be happy with the decision, sometimes leading them to appeal at a higher court. Which explains the beginning of Section 1:

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.

[U.S. Constitution, Article III, Section 1](#)

The Constitution only creates a single court, a supreme court. Notice the "s" in supreme is not capitalized. That's because

it is an adjective; it modifies the noun 'court'. It wasn't until the formation of this court before it was given the name 'Supreme Court', a proper noun. Congress creates all of the inferior courts, giving them the names of District and Circuit Courts. There's another very important phrase in Section 1, and it's not that the judges get paid:

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour,

[U.S. Constitution, Article III, Section 1](#)

We've been taught for so many years that federal judges have lifetime appointments. This lie has been repeated enough that it's believed to be true, but federal judges only hold their offices during their good behavior. Who decides what good behavior is? Congress, through the impeachment process.

Jurisdiction

Section 2 of Article III deals with the question of jurisdiction, or the limits within, which the judicial power of the United States may be exercised.

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.

[U.S. Constitution, Article III, Section 2, Clause 1](#)

The federal courts can only legally deal with cases that come up under the Constitution, Laws, or Treaties made by the United States, or cases involving foreign actors such as ambassadors or public ministers, where the United States is a party, or controversies between states. Controversies “between a State and Citizens of another State” was changed with the Eleventh Amendment.

The Judicial power of the United States shall not be construed to extend to 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.

U.S. Constitution, Amendment XI

The federal courts are further broken down between the original and appellate jurisdictions.

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.

U.S. Constitution, Article III, Section 2, Clause 2

Cases involving ambassadors, public ministers, or where a state is a party to the case, go directly to the Supreme Court, since they have original jurisdiction. All other cases must go to an inferior court first, but then can be appealed up to the Supreme Court. That is, unless Congress creates an exception or regulation to that jurisdiction.

Lastly, the Constitution deals with the type and location of trials.

The 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.

U.S. Constitution, Article III, Section 2, Clause 3

With the sole exception of impeachment, federal criminal trials must be jury trials. Such trials are to be held in the state where the crime or crimes were committed, and if the crime did not occur in a state, Congress has the power to pass laws to determine where such a trial is to be held.

Treason

Lastly, Article III deals with the question of treason.

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.

U.S. Constitution, Article III, Clauses 1-2

The word treason is thrown around a lot lately. However, I remind people that, within the United States, treason has a very specific definition, levying war or giving aid and comfort to the enemies of the United States. The word enemy is bandied about quite readily, yet it, too, has a specific definition, not from the Constitution but from the language of the time.

EN'EMY: *A foe; an adversary. A private enemy is one who hates*

another and wishes him injury, or attempts to do him injury to gratify his own malice or ill will. A public enemy or foe, is one who belongs to a nation or party, at war with another.

Enemy – Webster’s 1828 Dictionary

Since the United States is a public entity, then its enemies are public as well. That means enemies of the United States are those who belong to a nation or party at war with it.

Congress gets to decide the punishment for treason, but no punishment shall work corruption of blood, meaning the loss of ability to inherit land, or extend beyond the life of the convicted. In general, this language is to prevent the punishment for treason from extending to the family of the convicted.

That’s it. Those are all of the powers delegated to the third branch of government, but there is one point that has passed into lore that we need to deal with before we conclude.

Supremacy of the Supreme Court

The supreme Court is the last court of appeal, but that does not make their opinions the supreme law of the land.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Article VI, Clause 2

The supremacy clause lists three things that are the supreme law of the land. 1) The Constitution, 2) The laws of the United States made following the Constitution, and 3) Treaties made under the authority of the United States, which is established by the Constitution. Notice what you don’t see:

The opinion of a court. People may call them “rulings”, but they are nothing but opinions. They may even call them “case law”, but they are not law because, if you remember when we covered the role of Congress, all legislative (lawmaking) power is vested in them, not the courts.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

[U.S. Constitution, Article I, Section 1](#)

Judicial Power

With all of the impact the courts routinely have on our lives, why did I refer to them as the weakest branch of government in the introduction? Because they are.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

[Alexander Hamilton – Federalist Paper #78](#)

If, as Alexander Hamilton says, the courts have neither force nor will, only judgment, then why to do many call their

decisions “rulings”? I’m sure there are several theories behind that, but to me the answer is the elevation of stare decisis over the law.

[Latin, Let the decision stand.] The policy of courts to abide by or adhere to principles established by decisions in earlier cases.

[Stare Decisis – The Free Legal Dictionary](#)

While often used interchangeably, stare decisis is different than precedent, which is defined as:

A court decision that is cited as an example or analogy to resolve similar questions of law in later cases.

The Anglo-American common-law tradition is built on the doctrine of Stare Decisis (“stand by decided matters”), which directs a court to look to past decisions for guidance on how to decide a case before it. This means that the legal rules applied to a prior case with facts similar to those of the case now before a court should be applied to resolve the legal dispute.

[Precedent – The Free Legal Dictionary](#)

Precedent is the simple matter of looking at past cases for guidance to help decide a case, whereas stare decisis is the idea that previous decisions should be abided by. The problem with stare decisis is it assumes previous decisions are both legal and correct. By following stare decisis, it has become very difficult, often turbulent, for a court to decide a case based on the actual law rather than the opinions of their predecessors.

The elevation of stare decisis has also lead to a form of gnosticism within our legal system.

gnosis: *esoteric knowledge of spiritual truth held by the ancient Gnostics to be essential to salvation*

[gnosis – Merriam-Webster's Online Dictionary](#)

The idea of the Gnostics was that they had special knowledge of spiritual truth. The gnostic ideas in our legal system today are that the judges have special knowledge of the law, and that attorneys are there to walk your case through the vagaries of that special knowledge. That is why so many people believe they need an attorney to file a lawsuit or to defend themselves in a criminal case. The complications of the actual law make those actions difficult enough, but mix in the gnostic knowledge of "case law" and the legal field has created a barrier to entry for all but the most dedicated, thereby keeping everyday Americans ignorant of both the law and their rights.

Conclusion

How are we to approach this weakest branch of government? We start by reminding people that, with the exception of jury trials, the decision of a court is an opinion, nothing more. We must relearn what Alexander Hamilton taught us, that the courts control neither the purse nor the sword and "must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments." Understanding this may help as we wade through the morass of political double-speak that inundates us every day.

The role of the courts is that of an umpire, making decision based on the law using the facts presented to them. Today, we have elevated their decisions beyond law into rulings, as if they were kings and queens on high. It would be one thing if their decisions were based in the law rather than the rantings of their predecessors. Read a Supreme Court opinion and you will rarely find the Constitution quoted. Even when it's referenced, it's most often the quotation of the opinion of a previous court. We used to have courts of justice. Then we had courts of law. Today, we have courts of opinions. [Read "[How to Dethrone the Imperial Judiciary](#)"]

How can the United States be a republic, if we are ruled not by the law, but by the opinions of nine high-priests in black robes?

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