

CONSTITUTION 101

Module 6: Separation of Powers and Federalism

6.4 Info Brief

ARTICLE III — THE JUDICIARY

INTRODUCTION TO THE CONSTITUTION’S TEXT

Let’s begin—as we always do when interpreting the Constitution—with the Constitution’s text.

The Constitution sets up three branches of government. [Article I](#) establishes the national government’s legislative branch—Congress—which makes the laws. [Article II](#) establishes the national government’s executive branch—which is responsible for enforcing the laws.

[Article III](#) of the Constitution establishes the national government’s judicial branch: the federal judiciary, headed by a single Supreme Court. The judicial branch is responsible for *interpreting the laws*.

Interestingly, the text of Article III is very short and doesn’t lay out many details about the Supreme Court and how it works—or even what the federal judiciary as a whole should look like.

But before we explore Article III’s text, let’s begin with a key definition of an important concept: judicial review.

Judicial Review: The Supreme Court has the power to review the constitutionality of acts of the national and state governments.

Although there is no explicit provision of the Constitution laying out the power of judicial review, it remains a core power of the federal courts. In early American history, key figures like Alexander Hamilton (in *Federalist* No. 78) and Chief Justice John Marshall (in *Marbury v. Madison*) explained how this power was rooted in the principle of popular sovereignty and consistent with the Constitution’s text, history, and structure.

ARTICLE III, SECTION 1

Let’s turn to Article III’s text and begin with [Article III, 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. 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.”

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Article III begins with (what scholars refer to as) a vesting clause—vesting the “judicial power of the United States” in *one* Supreme Court and whatever inferior courts Congress decides to establish.

In other words, *Congress* controls many of the details of the national court system.

This means that Congress has considerable authority to shape the following:

- The size of the Supreme Court. The Supreme Court began at six justices. Over time, there’s been a low of five justices and a high of 10 (during the Lincoln presidency). Congress has altered the size of the Supreme Court *six* times. The last time was in 1869. That’s how we got to the current number: *nine* justices.
- The jurisdiction of the federal courts—in other words, what cases federal judges can (or *must*) hear.
- The details of the federal court system as a whole—in other words, how many federal judges, how many courts of appeals, how many district courts, etc.

Article III, Section 1, also tells us that federal judges—including Supreme Court justices—hold their offices for life (“during good behaviour”).

This creates an independent judiciary—federal judges can’t be fired, fined, or otherwise controlled once confirmed to the federal courts.

The big constitutional principle here is *judicial independence*: the idea that the federal courts must be independent from the control of the other branches of government.

This is done by giving judges and justices life tenure and guaranteeing their salaries. The independence of the judiciary is a key element of the American constitutional system.

Judges can only be removed through the impeachment and removal process.

As to the Supreme Court, only one justice has ever been impeached—Justice Samuel Chase by a Jeffersonian Congress during the Jefferson Administration. (But Chase wasn’t removed.)

The founders’ vision of judicial independence grew out of the colonists’ own experience under the British system. Judges were *not* independent within the British system. Instead, colonial judges were seen as officers of the Crown, who carried out the orders of the King and could be removed at his whim.

Not so under the new Constitution.

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ARTICLE III, SECTION 2

What about [Article III, Section 2](#)?

“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.

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.”

This dense language defines the jurisdiction of the federal courts, the sorts of cases that the federal courts may hear.

Federal courts are courts of limited jurisdiction. This means that there are only certain sorts of cases that can find their way into the federal courts. All others remain with the states.

Generally speaking, the federal courts only can hear cases if those cases involve people from two different states or if the case involves the Constitution or a national law (or regulation).

Article III, Section 2, also defines the original jurisdiction of the Supreme Court:

These cases don't have to go through all of the other courts before getting to the Supreme Court. This is rare. These cases usually involve conflicts between the states. For instance, two different states say that they control part of a river.

Article III, Section 2, also grants the right to a jury trial in criminal cases.

Interestingly, Article III says very little about what a Supreme Court justice actually does or how the Supreme Court should actually work on a day-to-day basis.

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As a result, the details of the job have been created over time by both acts of Congress (starting with the Judiciary Act of 1789) and Supreme Court practice.

For the modern Court, perhaps the most important move by Congress was its passage of the Judiciary Act of 1925. Chief Justice (and former President) William Howard Taft was the driving force behind (what we refer to today as) the “Judges Bill.” In many ways, Taft’s “Judges Bill” created the Supreme Court that we have today.

In short, it gave the Court broad control over the cases it hears. Before 1925, the Court had very limited control over the cases that came before it and it had to hear a ton of cases each term.

Now, not so much.

Today, the Supreme Court often takes fewer than 100 cases in a single term—even settling in with a little over 60 in recent years.