

## THE JUDICIARY

The **Judicial Branch** is one third of the Federal government. The federal government is defined and delegated its enumerated powers by the states through the Constitution, in Article III. The Judiciary as a part of the federal government has no authority to expand the power of the federal government. The expansion of the federal government is authorized only through Article Five of the Constitution and requires the consent of  $\frac{3}{4}$  of the states.

### ◆ Law Used Unlawfully

“The law has been used to destroy its own objective: it has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others.”

Frederic Bastiat, “The Law”

Declaration of Independence Lists the assaults on liberty made by a tyrannical judiciary

“...one of the most powerful engines with which it might enlarge the boundaries of the royal prerogative and encroach on the liberties of the people...”

- Brutus 15

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*The Drafters Had Clear Expectations!*

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### ◆ Limited & Defined

The powers delegated by the proposed Constitution to the federal government are *few and defined*.

- Federalist 45

“...an affirmative grant of special powers would be absurd as well as useless, if a general authority was intended.

- Federalist 83

The judicial authority...is declared by the constitution to comprehend certain cases particularly specified.

The expression of those cases marks the precise limits beyond which the federal courts cannot extend their jurisdiction...

- Federalist 83

## ◊ Weakest of the Branches

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...

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*Constitution is the Standard Not Will or Opinion*

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## ◊ Constitution is the Standard

“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....

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. “ - Federalist 78

“As bills of attainder, ex post facto laws, the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing... - Federalist 78

“The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist, and shape into any form they please. “

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*Unchallenged = Absolute*

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## ◊ Strict Rules & Precedent

To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; - Federalist 78

“The great object of my fear is the federal judiciary. That body, like gravity, ever acting, with noiseless foot, and unalarming advance, gaining ground step by step, and holding what it gains, is engulfing insidiously the special governments into the jaws of that which feeds them...government will become as venal and oppressive as the government from which we Separated.”

## ◊ Separate from Legislative & Executive

“There can be no liberty if the power of judging be not separated from the legislative and executive powers.”

-James Madison

“...the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive.”

-Federalist 78

For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers.”

And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments;

- Federalist 78

## ◇ Guardians of Limited Govt

“But it is easy to see, that in their adjudications they may establish certain principles, which being received by the legislature, will enlarge the sphere of their power beyond all bounds.”

- Brutus 12

“...they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights...”

“...the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments...”

- Federalist 78

If a law should be made inconsistent with those powers vested by this instrument in Congress, the judges, as a consequence of their independence, and the particular powers of government being defined, will declare such law to be null and void; for the power of the Constitution predominates.

Any thing, therefore, that shall be enacted by Congress contrary thereto, will not have the force of law.

-James Wilson

## ◇ Prohibited from States' Internal Affairs

"The judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several States; thereby rendering law as tedious, intricate and expensive and justice as unattainable by a great part of the community, as in England; and enabling the rich to oppress and ruin the poor."  
-George Mason 1788

"How is this the case? Are not the State judiciaries left uncontrolled as to the affairs of that *State* only?"  
-James Iredell 1788

The great mass of suits in every State lie between Citizen & Citizen, and relate to matters not of federal cognizance.  
- Madison to Washington 18 Oct. 1787

### Article 3 section 2 clause 1

...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.

The foundation of this assertion is that the national judiciary will have no cognizance of them, and of course they will remain determinable as heretofore by the state courts only, and in the manner which the state constitutions and laws prescribe.

-Federalist 83

"If the decision of the judiciary be raised above the authority of the States... dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution..."

... consequently, that the ultimate right of the States, to judge whether the Constitution has been dangerously violated, must extend to violations by one delegated authority as well as by another--by the judiciary as well as by the executive, or the legislature.

-James Madison: Virginia Assembly Report 1800

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*Term is Good Behavior not Lifetime*

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## ◇ During A Term of Good Behavior

Article 3 section 1 clause 2

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

“President is appointed but for four years, whilst the judges may continue for life, if they shall so long behave themselves well.” – James Wilson

In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws. - Federalist 78

“...under the idea, of rendering the judges independent...**they have made the judges *independent*, in the fullest sense of the word.**

**There is no power above them, to controul any of their decisions.** There is no authority that can remove them, and they cannot be controuled by the laws of the legislature.

In short, **they are independent of the people, of the legislature, and of every power under heaven.** Men placed in this situation will generally soon feel themselves independent of heaven itself...” - Brutus #15

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. - Federalist 78

### Article 3 section 1 clause 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 necessity of Juries to guard against corrupt Judges... He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries -Elbridge Gerry 1787

### Article 3 section 2 clause 3

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.

## ◆ A Court Ready To Protect Government?

“...but what satisfaction can we expect from a lordly court of justice, always ready to protect the officers of government against the weak and helpless citizen, and who will perhaps sit at the distance of many hundred miles from the place where the outrage was committed?— What refuge shall we then have to shelter us from the iron hand of arbitrary power?— O! my fellow citizens, think of this while it is yet time...” - Democrat Federalist #8

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*“For no People will tamely surrender their Liberties, nor can any be easily subdued, when Knowledge is diffused and Virtue is preservd. On the Contrary, when People are universally ignorant, and debauchd in their Manners, they will sink under their own Weight without the Aid of foreign Invaders.”~ Samuel Adams*

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