

Lesson: Article III – The Judicial Branch

1. Introducing the lesson:

Explain to students that Article I of the Constitution described the function and powers of the legislative branch. Article II described the function and powers of the executive branch. Ask students: “What do you think Article III describes?” (*Elicit student responses*).

Explain to students that Article III describes the functions and powers of the judicial branch of the federal government. Ask students, “Why do you think a judicial branch was needed?” (*Elicit student responses*).

Explain to the class that the Framers of the Constitution included a national court system. This could have been left to the state courts, which already existed. But the Framers of the Constitution worried that federal laws might be enforced differently from state to state. There was some evidence of this under the Articles of Confederation. Not all states were willing to recognize decisions from other states. The Framers recognized, in part by their experiences under the Articles of Confederation, that some system of national courts was needed. The federal or national judiciary is the third branch of government. This branch serves some vital functions in the system of checks and balances and separation of powers.

The Framers had fewer problems agreeing on how to organize the judicial branch than they had with the other two branches. Most of the Framers were lawyers so they tended to agree about how courts should be organized and what responsibilities and powers courts should be given. They described how the Federal Courts were to be organized in Section 1 of Article III.

2. Article III, Section 1

Have students look at Article III in the handout. *Select a student to read.*

- “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.”

Explain to the class that this sentence means the Framers created a Supreme Court as the head of the federal judiciary. The Framers also gave Congress the power to create lower federal courts. The Framers agreed that judges of these courts should be independent of politics. Ask students, “Why do you think they felt this way?” (*Elicit student responses*).

Explain that one reason that the Framers wanted an independent judiciary was that they were afraid that judges might be influenced by political pressure. They felt the best way to handle this issue was for Supreme Court judges and other federal judges to be nominated by the President and approved by the Senate.

Have a volunteer read the second sentence of Section 1, Article III out loud? (*Select a student*).

- “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.”

Ask students, “What do you think this section means?” (*Elicit student responses*)

The phrase, “shall hold their offices during good behavior” meant that they were appointed for life. The lifetime appointment and the inability to decrease the pay of judges helps to assure their independence.

Judges could not be removed from their position unless they were impeached and convicted of “treason, bribery, or other high crimes and misdemeanors.”

3. Article III, Section 2: Jurisdiction of the Federal Courts

Have students take a moment and read through Article III, Section 2 on page two of the handout. *(Give students a moment to read both sides of the chart.)*

Share with students that according to the Constitution, the judicial branch has the power to decide conflicts between state governments and conflicts that involve the national government.

- The Supreme Court has the authority to handle two types of cases.
- The first type is cases in which the Supreme Court has **original jurisdiction**. This means cases go directly to the Supreme Court. An example of this type of case would be a dispute between two state governments.
- In the other type of cases the Supreme Court has **appellate jurisdiction**. Appellate jurisdiction means that the cases have first been heard in a lower court and through the appeals process get to the Supreme Court.

5. The Judiciary Act of 1789

Explain to students that Article III contained only a very general guideline of setting up the courts. It became the task of the first Congress to organize the system of federal courts. They did this through the Judiciary Act of 1789.

- This act set up a federal district court in each state, which was responsible for the first hearing or trial of many cases involving the Constitution, federal laws, and disputes between citizens of different states.
- The law also set up a system of circuit courts in which serious crimes could be tried. These courts were also designed to hear appeals from the district courts.
- The law also created the position of Chief Justice to head the Supreme Court. It also stated that the Supreme Court would consist of five associate judges. Over time this number has been increased to nine.

Have students look at the handout that divides the courts. *(You may wish to review the organization of the federal judiciary using the poster.)*

6. Judicial Review

As students what the term “judicial review” means. *(Elicit student response).*

Explain that judicial review is one of the most important powers of the judicial branch. It is the power of the court to decide whether laws and actions of the government are allowed under the Constitution. The Framers wanted to be sure that states obeyed the laws of the federal government so they created Article VI or the Supremacy Clause. This made the Constitution the supreme law of the land. This gave the Supreme Court the power of judicial review over state laws.

But, the Constitution did not clearly say whether the Supreme Court had the power of judicial review over the legislative and executive branches of the federal government. The

Framers had disagreed regarding this issue. Ask students, “Why do you think this was the case?” (*Elicit student responses*).

Explained that the Supreme Court explained the power of judicial review in 1803 in the case *Marbury v. Madison*. It was in the case of *Marbury v. Madison* that the Supreme Court declared an act of Congress unconstitutional.

7. **Marbury v. Madison**

Refer students to the handout page that explains the facts of *Marbury v. Madison*. Have students follow along on the handout as you review the facts of the case with them:

- In the Election of 1800, John Adams (a Federalist) lost his presidential re-election bid to Thomas Jefferson (a Republican).
- Jefferson was to be inaugurated on March 3, 1801
- Adams was not happy over his defeat.
- Before leaving office, Adams worked with his political supporters in Congress to keep control of the federal courts and as many other offices as possible.
- At the ‘eleventh hour’ Adams appointed and the Senate confirmed all 16 federal circuit court judges provided for in the Judiciary Act of 1801. Their objective was to fill all judicial positions with Federalist friends and maintain control over the judiciary.
- On his last night in office, Adams was busy signing off on judicial appointments.
- William Marbury was one of the 42 justices of the peace. He was appointed to the District of Columbia.
- However, Marbury’s appointment was among a few that were signed and sealed, but not delivered before Adams’ term came to an end and Jefferson became President.
- When Jefferson took office he did not recognize Adams’ appointment of Marbury because it was never delivered.
- Marbury waited two years and still did not receive his appointment.
- So, Marbury appealed to the Supreme Court for a court order demanding his appointment be delivered to him.
- The basis for Marbury’s appeal was that the Judiciary Act of 1789 gave the Supreme Court the power to order Secretary of State Madison to give Marbury the promised appointment.
- The case went to the Supreme Court in February 1803.
- John Marshall was the chief justice.

The Decision

- Chief Justice Marshall declared that Marbury had a right to his appointment as a justice of the peace.
- But Marshall began to study the Federal Judiciary Act of 1789 and reported that there was nothing the Supreme Court could do about enforcing Marbury’s appointment.
- Marshall found that the Judiciary Act of 1789 was in conflict with the Constitution. He found that the Judiciary Act gave the Supreme Court powers not granted by the Constitution. Marshall declared that the section of the Judiciary Act of 1789 that gave the Supreme Court the right to issue orders such as in Marbury’s case was unconstitutional.
- With this action, Marbury no longer had a basis for an appeal.
- Marshall concluded there was no way for Marbury to get his appointment from Madison.
- This case established the power of judicial review. It is the Supreme Court’s duty to determine whether laws passed by Congress are in conflict with the Constitution.

- Because the Supremacy Clause of the Constitution clearly states that the Constitution is the supreme law of the land, the Court has the power and duty to declare any legislation which conflicts with the Constitution unconstitutional.

Ask students to think about this case. Ask them the following:

- Are there any questions you have?
- How does the power of judicial review serve as a check on the other two branches of government? (*Elicit student responses*) (The courts can declare an action of the executive branch unconstitutional. The courts also have the power to declare a law passed by Congress unconstitutional.)

8. Judicial Review and Interpreting the Constitution

Explain the following to students:

- The power of judicial review requires the members of the Supreme Court to interpret the Constitution, a difficult job.
- Some parts of the Constitution are clear and easy to understand such as the requirement that the President be at least 35 years of age.
- Many other parts are more difficult to interpret such as the phrases: “general welfare”, “unreasonable searches and seizures” and “necessary and proper.”
- Justices themselves have often disagreed over the meaning of sections of the Constitution.

Refer students to the quotations in their handout. Ask for a volunteer to read the first quotation by Chief Justice Charles Evan Hughes? (*Select a student to read the quote*).

“We are under a Constitution, but the Constitution is what judges say it is.”

- Chief Justice Charles Evans Hughes,

What do you think this quote means? (*Elicit student responses*). Judges, as a function of the judicial branch, interpret the Constitution.

How about the second quote? (*Select a student to read the quote*).

“As a member of this court, I am not justified in writing my opinions into the Constitution no matter how deeply I may cherish them.”

- Justice Felix Frankfurter

What do you think Justice Frankfurter meant? Do you think this is difficult for judges to do?

Finally, select another volunteer to read the next quotation by Justice Oliver Wendell Holmes. (*Select a student*).

“The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.”

- Justice Oliver Wendell Holmes

Ask students, “Do you think Justice Holmes’ view differs from Justice Frankfurter’s? How so?”
(*Elicit student responses*)

Read the last quote together. “The Constitution is intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.” Chief Justice John Marshall made this statement. Ask students the following questions: “Do you think it contradicts what Frankfurter said? How would you explain Chief Justice Marshall’s statement to Justice Holmes’ statement?”

9. The Supreme Court and Recurring Issues

Explain to students that the Supreme Court continues to re-examine recurring issues in light of changing times and social attitudes. Examples of these issues include the following:

- School prayer: Does it violate the 1st Amendment’s establishment clause, which prohibits the government from establishing a state religion?
- The Death Penalty: Does it violate the 8th Amendment’s ban on cruel and unusual punishment?
- Affirmative Action: Does it violate a person’s 14th Amendment right to equal protection of the laws?
- Most recently, a federal court examined the scope of presidential power in terms of the War on Terror. A federal judge in Michigan ruled this summer that the executive branch’s domestic spying program was unconstitutional. The judge found the program violated both the Fourth Amendment and a 1978 law that requires warrants from a secret court for intelligence wiretaps involving people in the United States. In the decision, the judge stated, “It was never the intent of the framers to give the president such unfettered control, particularly when his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights” and that “[t]he three separate branches of government were developed as a check and balance for one another.” In rejecting the administration’s argument that the president has inherent powers to violate laws of Congress and the First and Fourth Amendments of the Constitution, the judge explained “[t]here are no hereditary kings in America and no powers not created by the Constitution.”
- How might this court get to the Supreme Court? (*Elicit student responses*).
Through the appellate process, the Supreme Court might hear this case. The federal district judge’s decision will need to be appealed by one of the parties to the 6th Circuit Court of Appeals. Then, one of the parties would need to appeal that decision. Of course, the Supreme Court could decide not to hear the case. In that situation, the decision of the lower court would be final.

Sources:

We the People, the Citizen and the Constitution

Prentice Hall Constitution Study Guide

Marbury v. Madison: Commemorating the 200th Anniversary, American Bar Association

Marbury v. Madison, 1 Cranch 137 (1803).

Article III

Judicial Branch



The Supreme Court Building, Washington D.C.

Powers of the Judicial Branch

(Article III, Section 2)

- Administer justice
- Interpret the Constitution
- Determine the law in particular cases
 - Interpret statutes and regulations
 - Resolve disputes through trials and other means

The Supreme Court has the power of **judicial review**, the authority to declare laws made by Congress or states unconstitutional. Chief Justice John Marshall first used the right of judicial review in 1803 in the case *Marbury versus Madison*.

Article III - Judicial Branch

Meaning	Section 1 The Federal Courts
<p>The right to decide legal cases is given to a Supreme Court and other lesser courts as authorized by Congress. Federal judges can hold office for life if they are not impeached and found guilty of certain crimes.</p>	<p>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.</p>
	Section 2 Jurisdiction of the Federal Courts
<p>The federal courts try all cases involving the Constitution, federal laws, and treaties. Lawsuits involving the federal government, two states, or citizens of different states are tried in federal courts.</p>	<p>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.</p>
<p>Cases involving ambassadors or officials of foreign nations or those involving states are tried in the Supreme Court. Other cases begin in lower courts but may be appealed to the Supreme Court.</p>	<p>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.</p>
<p>All crimes, except in cases of impeachment, shall be tried by jury.</p>	<p>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.</p>

	Section 3 Treason
It is considered an act of treason to wage war against the United States or to give aid to its enemies.	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.
Congress may decide the punishment for traitors, but it may not punish the families of convicted traitors by taking away their civil rights or property.	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.

This is the Way it Happened

(The story behind Marbury v. Madison)

- In the Election of 1800 John Adams (a Federalist) lost his presidential re-election bid to Thomas Jefferson (a Republican).
- Jefferson was to be inaugurated on March 3, 1801
- Adams was not happy over his defeat.
- Before leaving office, Adams worked with his political supporters in Congress to keep control of the federal courts and as many other offices as possible.
- At the 'eleventh hour' Adams appointed and the Senate confirmed all 16 federal circuit court judges provided for in the Judiciary Act of 1801. Their objective was to fill all judicial positions with Federalist friends and maintain control over the judiciary.
- On his last night in office, Adams was busy signing off on judicial appointments.
- William Marbury was one of the 42 justices of the peace appointed to the District of Columbia.
- However, Marbury's appointment was among a few that were signed and sealed but not delivered before Adams' term came to an end.
- Jefferson took office; he did not recognize Adams' appointment of Marbury because it was never delivered.
- Marbury waited two years and still did not receive his appointment.
- So, Marbury appealed to the Supreme Court for a court order demanding his appointment be delivered to him.
- The basis for Marbury's appeal was that the Judiciary Act of 1789 gave the Supreme Court the power to order Secretary of State Madison to give Marbury the promised appointment.
- The case went to the Supreme Court in February, 1803.
- John Marshall was the chief justice.
- Chief Justice Marshall declared that Marbury had a right to his appointment as a justice of the peace.
- But Marshall began to study the Federal Judiciary Act of 1789 and reported that there was nothing the Supreme Court could do about enforcing Marbury's appointment.
- Marshall found that the Judiciary Act of 1789 was in conflict with the Constitution. He found that the Judiciary Act gave the Supreme Court powers not granted by the Constitution. Marshall declared that the section of the Judiciary Act of 1789 that gave the Supreme Court the right to issue orders such as Marbury's case was unconstitutional.
- With this action, Marbury no longer had a basis for an appeal.
- Marshall concluded there was no way for Marbury to get his appointment from Madison.
- As a result of this action, the Supreme Court has had the final say on laws of Congress. Its power to overrule acts of Congress because they are unconstitutional became known as judicial review.

Source: Marbury v. Madison: Commemorating the 200th Anniversary, American Bar Association

Interpreting Quotations

“ We are under a Constitution, but the Constitution is what judges say it is.”

- Chief Justice Charles Evans Hughes,

“As a member of this court, I am not justified in writing my opinions into the Constitution no matter how deeply I may cherish them.”

- Justice Felix Frankfurter

“The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.”

- Justice Oliver Wendell Holmes

“The Constitution is intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.”

- Chief Justice John Marshall

The Federal Judiciary

<p>Supreme Court</p> <p><i>only one court with 9 judges, called justices</i></p>	<ul style="list-style-type: none">• The highest court in the United States• Decides if laws passed by Congress are in conflict with the Constitution• Decides if laws passed by states are in conflict with the Constitution or federal law.• Decides if actions of executive branch officials and others conflict with law or the Constitution• If a law is declared unconstitutional, the law is not valid and cannot be used; if an action is declared illegal, it must cease.• Hears appeals from lower courts.• Can overturn decisions made by lower courts based on law or the Constitution
<p>Courts of Appeals</p> <p><i>13 courts</i></p>	<ul style="list-style-type: none">• Hear cases on appeal (no new trials, no juries)• Can overturn lower courts' decisions based on law or the Constitution• Decisions are final unless the case is appealed to the Supreme Court
<p>District Courts</p> <p><i>91 trial courts</i></p>	<ul style="list-style-type: none">• Trial courts, evidence presented, juries often hear cases.• Hear civil and criminal cases if it involves:<ul style="list-style-type: none">▶ different states▶ people from different states▶ the federal government▶ federal laws▶ other countries