

QUICK COURSE OUTLINE

CONSTITUTIONAL LAW

FEDERAL JUDICIAL POWER

JUDICIAL REVIEW

Definition: The Supreme Court's authority to review the actions of the legislative and executive branches to determine their constitutionality. The doctrine requires courts to interpret and apply the Constitution to determine their validity. The power a federal court has to adjudicate cases brought before it. *Marbury v. Madison*, 5 U.S. 137 (1803).

1. Original Jurisdiction ARTICLE III § 2

Federal courts have authority to hear cases in 13 cases involving:

1. Ambassadors
2. Public ministers and consuls
3. Cases in which the state is a party

2. Appellate Jurisdiction ARTICLE III § 3

Federal courts may also hear other (non-original jurisdiction) cases that come to court by appeal.

3. Supreme Court Review

a. Originality: Review first of Congress. Cases may be petitioned for review by writ of certiorari. Supreme Court has discretion to hear or refuse.

b. State Court Review of Federal Issues

Federal courts may only review final judgments of federal issues made by the highest court in a state.

c. Exception: *Ch. Adjudicatory Independent State Courts*

State courts, federal court will not review state decisions, that is independent of that state's separate ruling on federal law that may otherwise be incorrect.

d. State Court Refusal to Hear Federal Claims

States are generally required to hear appropriately presented federal claims, but the state may refuse. Federal courts may review state court's refusal to hear such claims.

JUDICIAL LIMITS ON JUDICIAL REVIEW

1. **Abstention:** Federal courts will abstain from hearing a case involving an unsettled or unclear state statute on whose construction a federal constitutional issue depends, until a state court interprets it. *Rainbow Co. v. United States*, 352 U.S. 406 (1956).
2. **Equitable Recusal:** Federal courts may enjoy state court's power to prevent constitutional rights. *Ex parte Young*, 209 U.S. 123 (1902).
3. **Constitutional Question:** A case never involves the constitutionality of statute. Court will apply rules of statutory construction to avoid passing on constitutional questions.
4. **Alternative (nonconstitutional) ground exists to dispose of case.**
5. **Between several possible interpretations, one exists that permits a finding of constitutionality.**
6. **Courts will otherwise construe a statute narrowly.**
7. **Askel Challenge:** Challenger must show there is no circumstance under which the legislative act or administrative regulation could be valid.

CONSTITUTIONAL LIMITS ON JUDICIAL REVIEW ARTICLE III § 3

1. Cases and Controversies: *North v. The U.S.*, 136 U.S. 362 (1890).

a. Justiciability: A case is justiciable if there is standing to sue, the Constitution permits the issue to be judicially resolvable, and there is no cause for judicial restraint.

b. Standing: To have standing to bring a suit, a plaintiff must meet three criteria:

1. **Injury:** Plaintiff must show facts demonstrating injury in fact. Injury can be small or trifling, but must be real. *Sporn v. U.S.*, 409 U.S. 727 (1972).

2. **Causation:** Injury must be proximately and directly traceable to defendant's conduct. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

3. **Redressability:** Plaintiff must show facts that demonstrate the relief she is entitled to will substantially redress or address the injury. *Id.*, 504 U.S. 555 (1992).

c. Ripeness: Case must involve concrete disputes between genuine adversaries or will not be heard. A court will not give advisory opinions.

d. Mootness: If underlying controversy is not real or has been resolved, controversy prior to the adjudication, case is moot and will not be adjudicated. *Evans v. Gore*, 402 U.S. 410 (1970).

e. Cases involving continuing harm.

f. Cases that have ended but may recur.

g. Cases capable of repetition but evading review. *How v. How*, 432 U.S. 191 (1977).

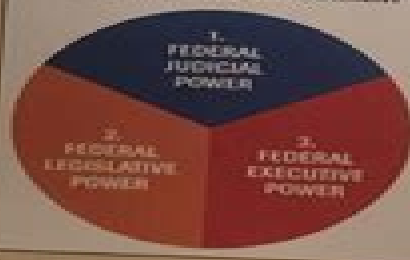
h. Political Question: Even if plaintiff has standing, courts may refuse to decide a "political" question.

i. Constitutionally committed or usual exists for deference to another branch of government.

j. There is a lack of judicially discoverable and manageable standards for resolving it.

k. First Amendment: State sovereigns immunity prevents citizens of a state from suing that state in federal court without that state's consent. *Mazda v. Hays*, 429 U.S. 516 (1977).

STRUCTURE OF THE GOVERNMENT



FEDERAL LEGISLATIVE POWER

THE SPENDING POWER ARTICLE I § 9

Congress has the power to spend for the common defense and general welfare. This includes spending money in order to influence its other powers or for proper public purposes. Congress by conditioning receipt of funds on compliance with federal regulations is able to indirectly regulate what it cannot regulate directly.

TREATY POWER ARTICLE II § 2

Power to execute with the President's power to make treaties pursuant to the advice and consent of the Senate. Treaties must be ratified, because the law of the land.

1. Treaties take precedent over conflicting state and federal law but are not equal in authority to the Constitution.

2. Treaties pertaining to matters of international concern are binding in the states even if they regulate an area normally under state control. *Johnson v. M'Intosh*, 212 U.S. 476 (1907).

THE TAXING POWER ARTICLE I § 9

Congress can regulate or limit activities by imposing taxes on them, effectively punishing them where the tax is substantial. As long as the tax produces revenue, it may be enacted for any motive, even purely regulatory ones that have no genuine money-making purpose at all.

THE IMMIGRATION POWER ARTICLE I § 9

Congress has exclusive control over immigration.

1. May admit, reject, exclude, or deport noncitizens of the United States.

2. May not treat naturalized citizens differently from native-born citizens.

WAR AND MILITARY AFFAIRS POWER ARTICLE I § 9

1. **Domestic War Power:** Congress has broad power to enact economic or other regulations during wartime or after war to restore the economy.

2. **Draft:** Congress can call men for war and use state militias to fight foreign enemies.

3. **Military Justice/Courts Martial:** Congress may establish a system of military courts and justice. Courts are legislatively created and located in the legislative branch; therefore, the Bill of Rights is inapplicable. Jurisdiction extends to all offenses committed by service personnel while in service.

3. SEPARATION OF POWER

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DUE PROCESS

TWO TYPES

1. Substantive Due
2. Procedural Due

1. SUBSTANTIVE DUE

1. States cannot act to affect in *Gloucester House Case*.
2. State legislatures affecting subject to review similar to regulation must be narrow, compelling state interest, substantive due process in governmental regulation or matters is subject to the 14th Amendment.
3. Applies only to fundamental rights which are not expressly in Constitution.

2. PROCEDURAL DUE

No taking of life, liberty, or property without adequate procedures. What is adequate? To determine, examine several factors that affect each other:

1. What private interest is at stake? The greater the interest, the more careful the applied process.
2. What risk of error is involved? The higher the risk, the more careful the applied process.
3. What interest of government is involved? The greater the interest, the greater the likelihood of that will achieve government administrative goals, less procedural due process.
 - a. Life - criminal procedure cases.
 - b. Liberty - liberties over rights, right to privacy and unlawful income.
 - c. Property - usually any

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Library of Congress. Copyright Office



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to misuse as all vast powers are A study of the legal propositions on this subject especially from a comparative perspective is valuable for any body politic that aspires to practice democracy while also allowing constitutionally controlled aberrations to protect that democracy **National Union Catalog** ,1973 Includes entries for maps and atlases **Condensed Reports of Cases in the Supreme Court of the United States** Richard Peters,1841 Condensed Reports of Cases in the Supreme Court of the United States United States. Supreme Court,1830 Human Rights Albert A. Zinnos,2007 Human rights refers to the concept of human beings as having universal rights or status regardless of legal jurisdiction and likewise other localising factors such as ethnicity and nationality For many the concept of human rights is based in religious principles However because a formal concept of human rights has not been universally accepted the term has some degree of variance between its use in different local jurisdictions difference in both meaningful substance as well as in protocols for and styles of application Ultimately the most general meaning of the term is one which can only apply universally and hence the term human rights is often itself an appeal to such transcended principles without basing such on existing legal concepts The term humanism refers to the developing doctrine of such universally applicable values and it is on the basic concept that human beings have innate rights that more specific local legal concepts are often based Within particular societies human rights refers to standards of behaviour as accepted within their respective legal systems regarding 1 the well being of individuals 2 the freedom and autonomy of individuals and 3 the representation of the human interest in government These rights commonly include the right to life the right to an adequate standard of living the prohibition of genocide freedom from torture and other mistreatment freedom of expression freedom of movement the right to self determination the right to education and the right to participation in cultural and political life These norms are based on the legal and political traditions of United Nations member states and are incorporated into international human rights instruments This new book brings together the latest book literature centred on this crucial topic **The Publishers' Circular and Booksellers' Record of British and Foreign Literature** ,1891 **Publishers' circular and booksellers' record** ,1896

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