

Chapter 3: The Judiciary

Introduction

- Child Pornography Prevention Act of 1996.
- *Ashcroft v. Free Speech Coalition*.
- Article III of the Constitution.
- Judicial review.

Establishment of the Federal Judiciary (1 of 3)

Article III

- Cause of least controversy.
- Judicial independence: judiciary, not a political body.
- The compensation clause.
- Practice of retaining or reelecting judges.

Establishment of the Federal Judiciary (2 of 3)

Article III

- Appointment of the judges.
- Structure of American legal system.
- Article III, Section 2.
- Types of jurisdiction.

Establishment of the Federal Judiciary (3 of 3)

Judiciary Act of 1789

- Two purposes.
- Section 13: Court's authority.
- Section 25.
- Three landmark constitutional cases.

Judicial Review (1 of 2)

- Powerful tool.
- *Hylton v. United States.*
- *Marbury v. Madison.*
- *Martin v. Hunter's Lessee.*

Judicial Review (2 of 2)

- *Marbury, Martin, and Cohens.*
- Critics of Marshall's opinion.
- Countermajoritarian difficulty.
- Importance of judicial review.

Constraints on Judicial Power (1 of 9)

Jurisdiction

- Power to declare the law.
- Article III, Section 2.
- Issue of appellate jurisdiction.
- Case of *McCardle*.

Constraints on Judicial Power (2 of 9)

Justiciability

- Federal courts' judicial power.
- Chief Justice Earl Warren's opinion.
- Nonjusticiable characteristics of litigation.

Constraints on Judicial Power (3 of 9)

Justiciability: Advisory Opinions

- Judges of the highest court.
- Litigation is abstract.
- America's role in British–French war.
- Court's 1793 letter to Washington.

Constraints on Judicial Power (4 of 9)

Justiciability: Collusive Suits

- Cases that the court will not decide.
- *Muskrat v. United States.*
- *But see Pollock v. Farmer's Loan and Carter v. Carter Coal Co.*
- Justices resolved the disputes.

Constraints on Judicial Power (5 of 9)

Justiciability: Mootness

- Will not decide no controversy cases.
- *DeFunis v. Odegaard*.
- *But see Roe v. Wade*.
- Two legal justifications.

Constraints on Judicial Power (6 of 9)

Justiciability: Ripeness

- Flip side of mootness.
- *International Longshoreman's Union v. Boyd*.

Constraints on Judicial Power (7 of 9)

Justiciability: Political Questions

- Cases better resolved by branches of government.
- *Baker v. Carr*.
 - Brennan's statement contains two major prongs.
- *Nixon v. United States*.

Constraints on Judicial Power (8 of 9)

Standing to Sue

- Constraint on federal judicial power.
- Article III: standing requirements.
- Purpose of the three elements.
- Prudential considerations to govern standing.

Constraints on Judicial Power (9 of 9)

Standing to Sue

- *Frothingham v. Mellon.*
- *Flast v. Cohen.*
- The nexus demanded of federal taxpayers has two aspects.
- *Hein v. Freedom from Religion Foundation.*

Constraints on Judicial Power and the Separation-of-Powers System

- Court's own interpretation of Article III.
- *Ashwander v. Tennessee Valley Authority*.
- Separation of Powers checks.