

Figure 13.4 The U.S. judiciary features a dual court system comprising a federal court system and the courts in each of the fifty states. On both the federal and state sides, the U.S. Supreme Court is at the top and is the final court of appeal.

IMPORTANT: PEOPLE OFTEN FOCUS SOLELY ON THE FEDERAL JUDICIARY IN INTRO CLASSES

BUT, THE STATE COURTS ARE (EASILY) ARGUABLY MORE IMPACTFUL IN PEOPLE’S LIVES

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.”

ARTICLE III: SECTION 2 (PART 1)

“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. ”

ARTICLE III: SECTION 2 (PART 2)

“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. ”

ARTICLE III: SECTION 3

"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.

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."

WHAT'S **MISSING**?

- 1) JUDICIAL REVIEW
- 2) A LOT OF SPECIFICS

SO WHERE DOES JUDICIAL REVIEW COME FROM?

Short answer: Marbury v. Madison (1803)

Long answer: A pretty crazy, complicated story that really highlights how touch-and-go early government was

As the Federalist Congress is leaving office in 1800-1801, they pass reforms to insulate their power, including the Judiciary Act of 1801, creating lower courts

John Marshall, the chief justice, writes and signs appointment commissions for peace officers and other officials till late the night before President Jefferson (a Democratic Republican) is inaugurated

THE BACKSTORY OF MARBURY V. MADISON (1803)

Marshall doesn't deliver all the commissions in time

Once Jefferson is sworn in, he orders them to be withdrawn, and Congress repeals the Judiciary Act

So, Federalists lose big — some commissions don't get delivered, and those who were appointed lose jobs due to reorganization

So, in **Stuart v. Laird** (1803), Stuart sues for his job — arguing his removal is unconstitutional (b/c of life tenure)

They lose on grounds Congress can reorganize Judiciary

BUT WHAT ABOUT MARBURY V. MADISON (1803)

Just before the Stuart v. Laird decision

Marbury is supposed to have a commission as a Justice of Peace, but it was never delivered because Jefferson ordered it not to be delivered.

Marbury requests a court order (writ of mandamus - referring back to the lower court) to hand over the commission.

Marshall writes the majority opinion — Marbury is entitled to his commission (so Jefferson is wrong)

BUT, Supreme Court does not have original jurisdiction here, so they can't order Madison to deliver it, and Marbury loses

SO WHERE'S JUDICIAL REVIEW?

The decision by Marshall was partially a political one to avoid a showdown with Jefferson

Yet, it sets foundation for **judicial review**. How?

The provision of the Judiciary Act of 1789 that enabled Marbury to bring his claim directly to the Supreme Court was unconstitutional, as it extended jurisdiction beyond that in the Constitution.

So, Jefferson is pleased and views himself as a winner, but Marshall gives the court more, lasting power

Impact is not immediate, but clear: "It is emphatically the province and duty of the judicial department to say what the law is."

SO, JUDICIAL REVIEW
(DECLARING LEGISLATIVE/EXECUTIVE
ACTS UNCONSTITUTIONAL)
IS NOW A THING.

TABLE 9-1

The Supreme Court's Willingness
to Declare State and Federal
Laws Unconstitutional

Years	Federal	State and Local
1790–1799	0	0
1800–1809	1	1
1810–1819	0	7
1820–1829	0	8
1830–1839	0	3
1840–1849	0	10
1850–1859	1	7
1860–1869	4	24
1870–1879	7	36
1880–1889	4	46
1890–1899	5	36
1900–1909	9	40

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1910–1919	6	119
1920–1929	15	139
1930–1939	13	92
1940–1949	2	61
1950–1959	4	66
1960–1969	18	151
1970–1979	19	195
1980–1989	16	164
1990–1999	24	62
2000–2009	15	36
2010–2014	13	16
Total	176	1,311

Source: Lawrence Baum, *The Supreme Court*, 11th ed.
(Washington, DC: CQ Press, 2013), Table 5-2, 163.

Note: Table shows the number of federal and state and
local laws declared unconstitutional by the Supreme
Court. The Court has always been more willing to
exercise judicial review over the states than to apply the
doctrine in striking down federal laws.

HOW DOES THE COURT'S POWER OF JUDICIAL
REVIEW EVOLVE THROUGHOUT HISTORY?

Nation vs. State

Founding to Civil War

Regulating the National Economy

Civil War to 1930s

Civil Rights and Civil Liberties

1940s to now

A Fourth Era? Return to States' Rights (Begin in 1990s?)

Supreme Court Job Approval, by Political Party

% Approve

■ Democrats ■ Independents ■ Republicans



GALLUP

YET, WHY THE FUSS?

“It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power ”

—HAMILTON, FEDERALIST #78

WHAT DOES IT MATTER ANYWAY? THE LEAST DANGEROUS BRANCH?

If justices serve for life, what checks them?

opinions lack **implementation** power (e.g. Brown v. Board)

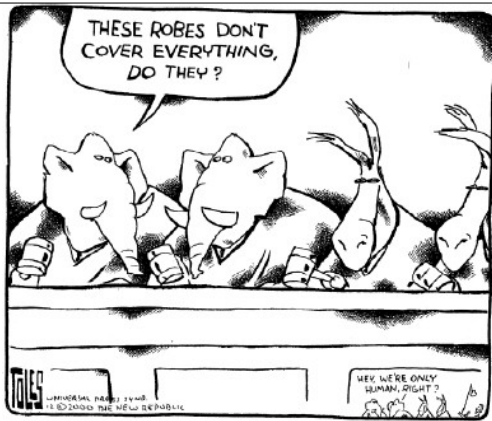
have to **wait** for cases to come to them

appointed by politicians

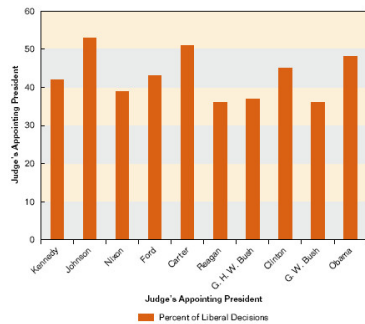
actions by Congress/President can **modify** courts

Thus, court can wield significant **influence**, but it often restrains itself because it cares about its **legitimacy**

But what if it doesn't? What if they are partisans in black robes?



JUST POLITICIANS IN BLACK ROBES?



Ideological Leanings of Supreme Court Justices

