

Lesson 11

COURTS AND JUDGES

Lesson Objectives

When you complete Lesson 11, you will be able to:

- Describe the independent judiciary as established by the Judicial Vesting Clause.
- Understand the meaning of judicial review and the justiciability doctrine as used by the Supreme Court and other courts.
- Understand the early decentralized judicial structure of the Supreme Court and the current hierarchical judicial structure.
- Understand the difference between Article III courts and non–Article III courts.
- Understand the difference between inferior courts and the Supreme Court.
- Explain the appointment process for federal judges and Supreme Court justices and how a federal judge may be impeached or removed from office.
- Explain the purpose of the Good Behavior Clause of Article III.
- Understand the requirements of the Judicial Compensation Clause.

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Part 1: Understanding the Judiciary

Judicial Vesting Clause – Article III, Section 1

Essay by Robert J. Pushaw, Jr. (pp. 231–234)

The third branch of the federal government is the judiciary. While the legislative branch writes laws and the executive branch enforces them, the judicial branch applies the laws to the parties in disputes before them. The Vesting Clause of Article III, Section I of the Constitution vests the judicial power in a Supreme Court and other, lower federal courts to be established by Congress.

The independent judiciary was a novel institution in America. In England, the judicial power was traditionally part of the executive power. The Framers saw adjudication to be a discrete function and separated it from the executive. Additionally, the judiciary, like Congress and the President, derives its powers from the people.

The central meaning of the judicial power has remained consistent over the years: neutrally deciding cases by interpreting a law and applying it to the facts of a given case and rendering a verdict. According to Robert J. Pushaw, Jr., the power of federal courts falls into three categories: judicial review, justiciability, and equitable authority.

Judicial review means that courts may review actions of the federal government to determine whether they violate the Constitution. Judicial review is permissible because the Supreme Court has the power to hear cases arising under the Constitution and the laws of the United States. The practice of judicial review is justified—and, importantly, controlled—by the idea of the Constitution as the fundamental law that limits government.

The early Supreme Court used a restricted notion of judicial review. It did not strike down a statute until *Marbury v. Madison* in 1803. In *Marbury*, Chief Justice John Marshall argued that Congress violated the Constitution in attempting to expand the Court's original jurisdiction (referring to those cases that the Supreme Court may hear before the lower courts have ruled on them). Though it would invalidate federal laws that violated the Constitution, the Court would not consider political questions (e.g., questions of policy).

The Court continued to exercise restraint until 1857, when it invalidated another federal law, the Missouri Compromise, in *Dred Scott v. Sandford*. *Dred Scott* was a disastrous attempt to transform judicial review into a vehicle by which judges could substitute their opinions for those of the political branches. By the late 19th century, the Supreme Court interpreted its powers broadly and began to invalidate laws that did not explicitly violate the Constitution in areas previously left to the political branches.

Federal courts may hear only cases that are justiciable (suitable for resolution in court). The purpose of justiciability is to ensure the appropriate exercise of the judicial power. The Supreme Court has developed several justiciability doctrines to reflect the requirements in Article III and to maintain certain self-imposed prudential limits. First, federal courts' judgments are final and cannot be revised or reexamined by the other branches. Second, federal judges will not render legal advice to political officials outside of the context of a particular case. Third, federal courts will not address political questions, meaning questions entrusted to the legislative or executive branches. Other justiciability doctrines that have developed include standing (who can sue); ripeness (whether a case is sufficiently developed factually and legally); and mootness (whether the dispute is ongoing). The Court has not deviated from rules forbidding non-final judgments or advisory opinions, but it has strengthened the other standards in some cases to avoid ruling on litigation challenging the administrative state or relaxed the standards in other cases to broaden access to the federal courts and vindicate certain constitutional rights.

The judiciary also holds certain inherent authority required for the exercise of judicial powers. For instance, courts have the power to manage discovery of facts, make rulings on evidence to be introduced, appoint experts, compel witnesses to testify, and sanction courtroom misconduct.

The judiciary's equitable authority is also one such inherent power. Equitable authority is complicated. The root of equitable authority lies in English courts of equity, which were separate from courts of law. Courts of equity would provide special forms of relief. Under their original design, if a person did not or could not receive a desirable or just judgment in the court of law, the person could refer his case to a court of equity. Equitable decisions concern injunctive relief (making a person do something; for example, requiring an employer to rehire an employee who has been fired).



Before You Read

Remind students about what they learned in Lessons 1 and 2 about the Constitution being the supreme law of the land and the idea that every branch has a duty to interpret and obey the Constitution. **To ensure understanding, ask: What do you remember about the other branches of government? How does the judicial branch fit?** (Answers will vary. Students should note that the legislative branch makes laws, the executive branch enforces laws, and the judicial branch applies the law to particular cases and controversies. It is not true that the judiciary is the sole interpreter of the Constitution.)



Active Reading

To ensure understanding, question students on what they have read. **Ask: What is a political question?** (a question of policy to be decided by the political branches, the legislature, or the executive) **What is judicial review?** (Courts may review actions of the federal government to determine whether they violate the Constitution.) **What does it mean for a claim to be ripe?** (It refers to whether the facts and issues of a case have been sufficiently developed. For instance, a case would not be ripe if it is not clear what law is at issue.) **What does it mean for a case to be moot?** (A case is moot if the controversy ends prior to the verdict.) **What is standing?** (Standing refers to who has the ability to sue. For instance, if person A harms person B, then person B would have standing to sue person A. However, person C, who was not involved with either party or the incident, would not be able to sue person A.) **What does it mean to remove a case?** (Removing a case means changing the location of a case from one court's jurisdiction to another court's jurisdiction.)



Work in Pairs

Pair up students and have them read the case of *Marbury v. Madison* (1803). Have students write a few paragraphs explaining the parties in the case, the facts of the case, the controversy, and the argument for judicial review. Have the students discuss their findings with the class.

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Check Understanding

Read aloud the passage on page 232 beginning with “For example, in *The Federalist*” and ending with “any shape they please.” Have the students summarize Alexander Hamilton’s defense of judicial review. (Hamilton defended judicial review of government actions as follows: Courts have a duty to resolve conflicts in accordance with the law; the Constitution is the supreme law; therefore, judges should follow the Constitution rather than a conflicting ordinary law.)



Discussion Question

How does the Founders’ understanding of judicial review compare with that of modern-day courts? (The Founders understood judicial review to mean that the Supreme Court would decide particular cases and would consider whether the laws in question were consistent with the text of the Constitution. The modern-day view departs from the Founders’ view. Under the modern view, judicial review means that judges decide whether the law comports with their own—not the Constitution’s—standards of reasonableness and rationality, shaped by the spirit and course of developing court decisions and constitutional interpretation.)



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 11, Part 1. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

- The Judicial Vesting Clause is found in Article _____ of the Constitution.
 - II
 - III**
 - IV
 - VI
- In which case did Chief Justice John Marshall defend judicial review?
 - Dred Scott v. Sandford*
 - Lochner v. New York*
 - Marbury v. Madison***
 - Powell v. McCormack*
- Which case invalidated the Missouri Compromise and attempted to transform judicial review into a vehicle by which judges could substitute their opinions for those of the political branches?
 - Dred Scott v. Sandford***
 - Lochner v. New York*
 - Marbury v. Madison*
 - Powell v. McCormack*

Fill in the Blank: Write the correct word or words in each blank.

1. The federal judiciary consists of a Supreme Court and other, lower courts to be established by _____. (**Congress**)
2. Federal courts have three main powers: judicial review, _____, and equitable authority. (**justiciability**)
3. Alexander Hamilton defended judicial review because courts are bound to resolve conflicts in accordance with _____, and the Constitution is the _____. (**the law, supreme law**)

Short Answer: Write out your answer to each question.

1. What is the judicial power? (**the power of courts to decide cases neutrally by interpreting a law and applying it to the facts of a given case and rendering a verdict**)
2. What two novel Federalist ideas did the separation of powers incorporate?
 - **“Judicial power” became a distinct part of government, whereas in England it had been treated as an aspect of executive authority.**
 - **Like Congress and the President, federal judges ultimately derived their power from the people, even though they were unelected and given tenure and salary guarantees.**
3. The powers of federal courts can be divided most usefully into which three components?
 - **Judicial review**
 - **Justiciability**
 - **Equitable authority**

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Part 2: The Structure of the Judiciary

Supreme Court

Article III, Section 1

Inferior Courts

Article III, Section 1, and Article 1, Section 8, Clause 9

A Note on Non–Article III Courts

Supreme Court – Article III, Section 1

Essay by Bradley C. S. Watson (pp. 234–236)

During the drafting of the Constitution, delegates disagreed on the question of a national judiciary. Some delegates argued that state courts should enforce federal laws. Others argued for a national judicial power to enforce federal laws. In Article III, Section 1, the Constitution establishes a Supreme Court but empowers Congress to establish the number of justices, to create the lower court structure, and to alter the Court's appellate jurisdiction (referring to those cases that the Court may review after another, lower court has ruled on them). The Supreme Court would be a legal, not political, body. It would not make or veto laws; it would apply them to the parties in cases before the Court.

In accordance with Article III, Section 1, and Article 1, Section 8, Clause 9, Congress passed the Judiciary Act of 1789, which created the federal court system, consisting of a Supreme Court, circuit courts, and district courts, to exercise the judicial power of government. The act also limited the Supreme Court's appellate jurisdiction. The First Chief Justice, John Jay, clarified that Congress could not assign the judiciary non-judicial tasks, such as advising the President on treaties. Chief Justice John Marshall reiterated that the judiciary was not a political body and that Congress cannot grant to the Court any power not authorized in the Constitution.

Originally, the Supreme Court had six justices, but Congress increased and decreased the number throughout the 19th century. In early America, these justices spent most of their time presiding at the circuit court level and gathered only a few times during the year to handle appellate cases and the few cases of original jurisdiction. With the reorganization of the judiciary and expansion of the nation, the number of Supreme Court justices and circuit courts expanded. Since 1869, Congress has set the number of Supreme Court justices at nine.



Write About It

On page 235, Bradley C. S. Watson mentions Franklin Delano Roosevelt's attempt to increase the number of Supreme Court justices. Have students read about the court-packing scheme, why Roosevelt wanted it, and what the result was. Have students then write one to two paragraphs about their findings. (Roosevelt's plan was to add justices to the Court and to include a mandatory retirement age for judges. This was in response to several rulings against Roosevelt's New Deal programs. The plan was very unpopular, even with members of Roosevelt's own political party.)



Make a Real-Life Connection

Have students research where the Supreme Court is located, the number of circuit courts in the United States, the number of district courts in their state, and what geographic areas these lower federal courts cover. Have students identify the federal circuit in which their state is located.



Discussion Question

Who has the power to set the number of Supreme Court justices? Has the number of justices changed over time? (The Constitution gives Congress the power to establish the number of justices on the Supreme Court. This number started at six, but Congress has changed the number of justices over the years. Currently, there are nine Supreme Court justices.)

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Inferior Courts – Article I, Section 8, Clause 9, and Article III, Section 1

Essay by David Engdahl (pp. 123–126)

Article III of the Constitution vests the judicial power in the Supreme Court and inferior courts. Articles I and III give Congress power to create and organize the “inferior” courts and the “supreme” Court. Congress may organize these courts, distribute subject-matter jurisdiction, designate courts for trials or for appeals, and legislate rules of evidence.

For the Founders, the words “supreme” and “inferior” did not refer to a hierarchical judicial structure, but to the breadth of geographic location or subject-matter jurisdiction. At the Convention, James Madison advocated establishing inferior tribunals, dispersed throughout the country, with final jurisdiction in many cases. The delegates agreed with Madison and adopted several clauses to achieve that end: The Inferior Courts Clauses (Article I, Section 8, Clause 9, and Article III, Clause 1) give Congress the power to create and organize the courts; the Appellate Jurisdiction Clause (Article III, Section 2, Clause 2) enables Congress to limit the cases that

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the Supreme Court may review from lower courts and thereby allow these inferior courts to have final jurisdiction in many cases. Congress may not add jurisdictions that the Constitution does not already grant to federal courts and may not exclude jurisdictions from inferior courts.

The Judiciary Act of 1789 established a federal court system that was unlike today's federal court system. This early system was largely decentralized. Single-judge district courts would review cases of admiralty, civil forfeiture, and federal-question issues. Three-judge circuit courts were the principal federal tribunals. They would try diversity cases, most federal crimes, and cases removed from state courts; they could also review district court decisions. Supreme Court justices spent most of their time presiding at the circuit level. The Supreme Court met only twice each year to hear appellate cases and try cases within its original jurisdiction, and it seldom reviewed the activity of lower courts.

This basic framework remained in place for many years, but some opposed the idea of a decentralized judiciary. James Wilson argued that the judiciary should resemble a pyramid, with one supreme tribunal superintending the others. Gradually, the original decentralized judiciary gave way to a more centralized system. The reorganization reduced Supreme Court justices' circuit-riding duties and allowed them to focus on appellate work, which would enable the Court to settle questions of law when circuit courts disagreed. Although the centralized court system provided for uniform resolution of legal questions, it eclipsed the original conception of the judiciary as oath-bound, independent adjudication of a particular litigant's case.

To be sure, a hierarchical system is neither constitutionally ordained nor prohibited. A centralized judiciary seemed safe and desirable initially. But when combined with the 19th century idea that judges could revise laws through their decisions, the result was a system outside of the Framers' design. Congress may attempt to decentralize the judicial structure by, for example, limiting the Supreme Court's appellate jurisdiction (though not by preventing such cases from accessing federal courts).



Check Understanding

Recall what you learned about the Necessary and Proper Clause. **How does the Necessary and Proper Clause allow Congress to determine the structure of the federal judiciary?** (The Constitution does not specifically say either how many courts should exist or how many justices should serve on the Supreme Court. It specifies the kinds of cases that federal courts may hear but, for instance, gives Congress discretion over the Supreme Court's appellate jurisdiction. Without the Necessary and Proper Clause, statutes organizing the judiciary and other branches would have violated the principle of enumerated powers and the principle of separation of powers.)



Discussion Question

Read Alexis de Tocqueville's remarks on pages 124–125. **Ask:** According to Tocqueville, how does the decentralized court system safeguard the Constitution? (Tocqueville describes the process by which a decentralized system of judges safeguards the Constitution against bad laws. It does not require one Supreme Court to strike down a law as unconstitutional; it requires instead a series of independent judgments regarding particular cases.)



Active Reading

Read aloud this sentence from page 123: "Madison repeated his earlier argument that 'unless inferior tribunals were dispersed throughout the Republic with final jurisdiction in many cases, there would be docket overload and oppressive expense.'" **Ask:** Why did Madison think this would happen? (Without the inferior courts, the U.S. Supreme Court would have to hear every case falling into the jurisdiction set out by the Constitution. With many inferior courts, parties would not need to travel so far in order to have a judge hear their case.)



Work in Pairs

Pair up the students and have them write a summary of the federal court system established by the Judiciary Act of 1789. (Sample answer: Single-judge district courts heard admiralty matters, tried forfeiture proceedings, and had jurisdiction over minor federal crimes. Three-judge circuit courts tried diversity cases and most federal crimes and heard cases removed from state courts. They could also review most of the single-judge district decisions. Supreme Court justices spent most of their time presiding over the several circuit courts.) **Ask:** How was this court structure decentralized? (It divided authority among several courts.) How was authority divided? (by subject) Did the Constitution mandate a decentralized court system? (The Constitution does not require either a decentralized or a hierarchical system. Either structure is constitutionally permissible.)

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A Note on Non–Article III Courts

Essay by Loren Smith and Gary Lawson (pp. 239–241)

According to Loren Smith and Gary Lawson, three categories of adjudication occur under the Constitution. The first category consists of life-tenured judges exercising the federal judicial power under Article III. The second category consists of Article I judges and courts. The third category of adjudicators (and the most numerous) consists of career employees of the executive branch. The scope of authority, appointment process, and length of service vary in this last category.

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Article III establishes Supreme Court justiceships, and federal statutes create other Article III judgeships. Concerning the second category of adjudication, there are four types of Article I courts: courts for territorial governance, regulation of the armed forces, the payment of money owed by the federal government, and taxation. Judges in federal territories are created under Congress's Article IV powers, and judges in the District of Columbia are created under Congress's Article I powers. These courts determine many kinds of cases, including criminal cases, but are not necessarily subject to Article III requirements. Military courts-martial receive their authority from Articles I and II and exercise essential criminal jurisdiction. The United States Court of Appeals for the Armed Forces is a civilian court tasked with reviewing court-martial criminal sentences.

Sovereign immunity justified the creation of the third type of Article I court. Sovereign immunity prevents citizens from suing the government. Therefore, people had no remedy against the federal government for breach of contract, taking property, or governmental torts. In the early years of the Republic, people would sometimes implore Congress for a private bill of relief. In 1855, Congress created the Court of Claims to hear claims against the United States that would have been settled with a private bill. In cases of takings claims, contract claims, tax-refund actions, and tort actions, the government must waive sovereign immunity. The waivers of sovereign immunity usually require these cases to go before non-Article III courts such as the Court of Federal Claims, the Tax Court, and the Court of Veterans Appeals. These courts are subject to Article III appellate review.

All Article I judges are appointed by the President and confirmed by the Senate. They are officers under the United States, and their salaries and tenure are determined by congressional statute.

It is unclear what the limits are on Congress's power to entrust adjudication to non-Article III courts. Although Congress has allowed Article III courts to review the decisions of non-Article III courts, it is unclear to what extent non-Article III courts must be subject to appellate review in Article III courts.

**Research It**

Point out Loren Smith and Gary Lawson's mention of several types of non-Article III courts on page 240 (first paragraph of the right-hand column). Ask students to choose one kind of court listed—such as the Court of Federal Claims, Court of Appeals for the Armed Forces, or Tax Court—and research that court's scope of authority, origin, and membership. Have students summarize their findings in one or two paragraphs and share them with the class.



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 11, Part 2. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

- The largest category of judges contains career employees of the
 - House of Representatives.
 - executive branch.**
 - Supreme Court.
 - legislative majority.
- What is the current number of Supreme Court Justices?
 - 5
 - 6
 - 9**
 - 12
- Courts-martial are a part of the judicial branch that deals with trials
 - against the government.
 - in the military.**
 - related to taxes.
 - in overseas territories.
- In the Judiciary Act of 1801, the Federalist Congress reduced the number of justices sitting on the Supreme Court to five, hoping to prevent which incoming President from appointing a justice when the sixth sitting justice retired?
 - Abraham Lincoln
 - Franklin D. Roosevelt
 - Theodore Roosevelt
 - Thomas Jefferson**

Fill in the Blank: Write the correct word or words in each blank.

- The first non-Article III court was the _____. (**Court of Claims**)
- In the Judiciary Act of 1789, Congress set the number of Supreme Court Justices at _____. (**six**)
- Who was the first Chief Justice? (**John Jay**)
- The delegates to the Constitutional Convention concluded that the judiciary was to be a _____ rather than a political body. (**legal**)
- The Court of Federal Claims, the Tax Court, and the Court of Veterans Appeals are examples of _____ courts. (**Non-Article III**)

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True / False: Indicate whether each statement is true or false.

1. Over the past century, the scope of inherent judicial powers has decreased due to the decrease in the amount and complexity of litigation. **(False. The scope of inherent judicial powers has grown dramatically to cope with the vast increase in the amount and complexity of litigation.)**
2. The Judiciary Act of 1789 confined the Supreme Court to questions of law rather than fact. **(True)**
3. As the nation expanded, so did the number of circuits and the number of Supreme Court justices to sit on them. **(True)**
4. The Constitution does not require a hierarchical judicial system. **(True)**

Matching

1. Match the term on the left with the "power" on the right.
Legislative.....**making laws**
Executive.....**administering the laws**
Judicial**applying laws to particular cases**

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Part 3:

Membership, Payment, and Expulsion

Appointing Judges and Justices: Appointments Clause

Article II, Section 2, Clause 2

Good Behavior Clause

Article III, Section 1

Judicial Compensation Clause

Article III, Section 1

Impeaching and Removing Judges

Article I, Section 3, Clause 6

Appointing Judges and Justices: Appointments Clause

Article II, Section 2, Clause 2

Essay by John McGinnis (pp. 209–212)

The Appointments Clause of Article II governs how Supreme Court justices are appointed. The clause ensures that the President is accountable for the appointment and that the appointment is not the result of secret deals. An appointment consists of three distinct, sequential acts: First, the President nominates a candidate; second, the Senate confirms the nominee; finally, the President appoints the official. Although the President has plenary power to nominate, the Senate has plenary authority to reject nominees; nominees may be rejected for having unsound principles or blemished character.

Judges in inferior federal courts are also appointed by the President and confirmed by the Senate. These judges have the same tenure and compensation guarantees as Supreme Court justices. It is possible to consider lower federal judges inferior officers, which would allow Congress to vest their appointment in the President, courts of law, or heads of department. Nevertheless, Congress has not dispensed with presidential appointment and senatorial confirmation requirements for life-tenured inferior court judges.



Research It

Have students research the appointments process for judicial nominees. **Has the Senate rejected a judicial nominee? If so, what were the circumstances and the Senate's reasoning for so doing?**

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Good Behavior Clause – Article III, Section 1

Essay by Jonathan Turley (pp. 236–237)

The Good Behavior Clause of Article III of the Constitution affirms that judges hold their office for life, a fundamental element of the separation of powers and the idea of an independent judiciary. Colonial judges served at the whim of the Crown, and the colonists objected to this practice in the Declaration of Independence.

In the Constitution, the Good Behavior Clause states that judges on the Supreme Court and inferior federal courts “shall hold their Offices during good Behaviour.” Jonathan Turley notes that a proposed version of this clause included a distinct standard for removal, but the Constitutional Convention rejected the removal language. Both the language of the clause and the records of the Convention support the interpretation of the clause as affirming life tenure for judges rather than creating a distinct standard for removal.

The meaning of the clause is often discussed in the context of impeachment trials. The Good Behavior Clause reminds the other branches that the judiciary is independent: Judges are not to be removed for light or transient causes or because of the whim of some faction. Yet several judges have been successfully impeached and removed from the bench. Therefore, the clause also reminds judges that life tenure is not a license for corrupt or abusive behavior.



Active Reading

What does the Good Behavior Clause communicate to judges and the other branches of government about a judge’s roles? (While not a distinct standard for removal, the Good Behavior Clause informs judges that they have life tenure, but life tenure is not a license for corrupt or abusive behavior. It also reminds other branches of government that the judiciary is independent, and its members are not to be removed arbitrarily.)

Judicial Compensation Clause – Article III, Section 1

Essay by Jonathan Turley (pp. 238–239)

Together with the Good Behavior Clause, the Judicial Compensation Clause protects the independence of the judiciary. The Judicial Compensation Clause clearly states that compensation may not be diminished during judges’ service. It is linked to the Good Behavior Clause because the guarantee of life tenure requires that judges not be made dependent upon another branch for their compensation.

Unlike the Sinecure Clause of Article I, the Judicial Compensation Clause does not prohibit increases in compensation. During the Constitutional Convention, Madison proposed preventing both decreases and increases in judicial compensation to

safeguard judges' independence. Delegates rejected Madison's proposal because judges would hold their positions for life, allowing inflation to reduce salaries functionally. Therefore, the final language of the clause prevents decreases in salary but allows increases.

Most of the controversy over the Judicial Compensation Clause focuses on indirect diminishment of compensation: for instance, the effects of Medicare and Social Security taxes. Some taxes are permissible; others are not. Cost-of-living adjustments (COLAs) to keep pace with inflation are ultimately determined at the discretion of Congress.



Before You Read

Ask: How might changes in salary be used to make the judiciary dependent upon other branches? How might this lead to corruption in government? (Sample answer: A legislature or executive could threaten judges with pay cuts or reward them with pay raises to influence their decisions and actions.)



Check Understanding

Recall what the Constitution says about compensation for other branches. Why did the Framers specify how officials were to be paid? (The separation of powers requires that each branch exercise its specific duties without being dependent on other branches. Salaries are one way to make a person or branch dependent on another person or branch. *The Federalist* gives examples of state legislatures that functionally control the state's executive because they can increase or decrease the executive's pay.)

Impeaching and Removing Judges — Article I, Section 2, Clause 5; Article I, Section 3, Clause 6; and Article II, Section 4

Essays by Stephen B. Presser (pp. 60–62), Michael J. Gerhardt (pp. 67–69), and Stephen B. Presser (pp. 225–229)

Article II sets the standards for impeachment and lists the officers who may be impeached: the President, the Vice President, and all other civil officers, which includes judicial officers.

Article II sets a high bar for impeachment, ensuring that it will be used only in the most severe cases. At the Constitutional Convention, the Founders voted down efforts to allow impeachment for “neglect of duty” or “maladministration,” fearing that such language would allow the legislative branch to impeach any executive or judicial official who acted contrary to their whims. Instead, the Founders limited impeachment to cases of treason, bribery, or “high Crimes and Misdemeanors.” “High

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Crimes and Misdemeanors” was a legal term used in English impeachment proceedings that extended to both criminal and noncriminal derelictions of duty.

Numerous federal judges have been impeached since the Founding. During Jefferson’s Administration, the legislature sought to remove Justice Samuel Chase for political reasons, but the Senate was unable to reach the two-thirds majority required for removal from office. This case set an important precedent: Judges are not to be removed for political reasons. Other impeachment proceedings against judges have come as a result of actual crime and corruption, not because of the judges’ political opinions.

Federal judges and Supreme Court justices are removed according to the procedure in Article I. The House of Representatives is in charge of impeachment, or the bringing of charges against a public official. The Senate has the sole power to try all impeachments, including the impeachments of federal judges. Senators must be under oath during the impeachment trial, and conviction requires a supermajority vote of two-thirds of the Senate.

Article I limits the punishment for impeachment to “removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States” but leaves the impeached official open to further trials and punishments according to the law. The Senate has interpreted the provision to mean that “removal” and “disqualification” are separate punishments requiring separate votes.



Active Reading

To ensure understanding, ask: **What are the grounds for impeachment?** (Sample answer: There are just a few grounds for impeachment, but they are all very serious offenses. They include conviction of treason, bribery, or other high crimes and misdemeanors.) **What does “high Crimes and Misdemeanors” mean?** (The term comes from English law and refers to both criminal and noncriminal derelictions of duty.)



Discussion Question

In what ways does impeachment support the separation of powers? (Answers will vary. Students should understand that impeachment was intended to be used only in cases of dereliction of duty and crime, not for political reasons. Impeachment allows the legislature to remove corrupt or incompetent members of the other two branches. The threat of impeachment checks the executive and judicial branches and helps to ensure that they perform their duties properly. At the same time, the strict standards for impeachment prevent the legislature from using impeachment simply as a tool to control the executive and the judiciary.)



Check Understanding

Have students complete the following assessment to check their understanding of Lesson 11, Part 3. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

- Justices of the Supreme Court are appointed by
 - the President.**
 - the Senate.
 - the Attorney General.
 - judges on the appellate courts.
- Justices are appointed for a term of
 - two years.
 - four years.
 - six years.
 - life (on good behavior).**
- The _____ protects judges' salaries and the independence of the judiciary.
 - Judicial Power Clause
 - Appointments Clause
 - Compensation Clause**
 - Good Behavior Clause
- COLAs most directly affect the _____ of the judiciary.
 - caseloads
 - salaries**
 - term limits
 - appointments

Fill in the Blank: Write the correct word or words in each blank.

- The Good Behavior Clause is a constitutional contract that can be rescinded only through an act of _____. (**impeachment**)
- The Judicial Compensation Clause states clearly and unambiguously that the compensation of federal judges cannot be _____ during their service. (**diminished**)
- Punishments from impeachment may include "removal from Office, and _____ to hold and enjoy any Office of honor, Trust or Profit under the United States." (**disqualification**)
- The acquittal of Justice Samuel Chase set the standard that Supreme Court justices should not be impeached on the ground of their _____. (**political preferences**)

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5. The responsibility to carry out impeachment proceedings with loyalty to the text of the Constitution remains in the hands of the _____ and the _____.
(House of Representatives, Senate)

Short Answer: Write out your answer to each question.

1. How are Supreme Court justices appointed? **(Supreme Court justices are appointed according to the Appointments Clause of Article II, which states that an appointment consists of three sequential acts: The President nominates a candidate, the Senate confirms the nominee, and the President appoints the nominee.)**
2. What are the standards for impeachment of federal judges?
(treason, bribery, or other high crimes and misdemeanors)
3. Why did the Framers choose to give federal judges tenure and salary guarantees? **(to ensure their impartiality and prestige)**

True / False: Indicate whether each statement is true or false.

1. Colonial judges were given protection under a good-behavior program in effect since the early 1700s. **(False. Colonial judges were given no such guarantee and served at the whim of the Crown.)**
2. There are very few specific reasons why the Senate may constitutionally refuse to confirm a nominee. **(False. The Senate may constitutionally refuse to confirm a nominee for any reason.)**