Lesson 12

EXERCISING THE JUDICIAL POWER

Lesson Objectives

When you complete Lesson 12, you will be able to:

- Explain the scope of judicial powers as outlined in Article III and when a federal question is presented.
- Understand why federal courts decide cases involving treaties and ambassadors.
- Understand the scope of admiralty law.
- Explain the purpose of vesting the federal judiciary with the power to settle interstate disputes and disputes involving parties of different states, and understand the differences between parties involved under the Interstate Disputes Clause, the Citizen–State Diversity Clause, and the Diversity Clause.
- Describe the controversy over the Citizen–State Diversity Clause and state sovereign immunity, and understand the purpose of the Eleventh Amendment.
- Understand the purpose of the Land Grant Jurisdiction Clause.
- Understand what cases the federal judiciary may hear under the Federal Party Clause.
- Explain the difference between original jurisdiction and appellate jurisdiction, and understand the types of cases that the Supreme Court hears as part of its original jurisdiction.

Part 1:
What Types of Cases Can the Judiciary Hear?

Judicial Power
Article III, Section 2, Clause 1

Treaties
Article III, Section 2, Clause 1

Ambassadors
Article III, Section 2, Clause 1

Admiralty
Article III, Section 2, Clause 1

Interstate Disputes
Article III, Section 2, Clause 1

Citizen–State Diversity
Article III, Section 2, Clause 1

Suits Against a State
Amendment XI

Diversity Clause
Article III, Section 2, Clause 1

Land Grant Jurisdiction Clause
Article III, Section 2, Clause 1

Federal Party
Article III, Section 2, Clause 1

Judicial Power — Article III, Section 2, Clause 1

Essay by Arthur Hellman (pp. 241–244)

Article III, Section 2 of the Constitution delineates the scope of the judicial power over nine types of cases and controversies. The most important category encompasses "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." This category is often referred to as the "federal question" jurisdiction. The Framers intended the scope of this clause to be broad, but there was little discussion of the clause at the Constitutional Convention. During ratification, some criticized the clause, saying that there would be no limit to the judiciary's power. James Madison responded that the judicial power should be broad enough to correspond to the legislative power.

The key question for this clause is to determine when a case arises under federal law and therefore falls within the judicial power of the United States. The answer is largely found in two Supreme Court cases: *Osborn v. Bank of the United States* (1824) and *Cohens v. Virginia* (1821). In *Osborn,* Chief Justice John Marshall stated that a federal question is a question for which the answer depends in some way on federal law. Thus, a case "arises under the Constitution or laws of the United States" if a federal question is part of the plaintiff's claim. In *Cohens,* the state of Virginia argued that a case "arises under the Constitution or laws of the United States" only if the Constitution or federal law was the basis for the claim of the party who had initiated the lawsuit. The Court disagreed, ruling that cases are defined by the rights of *both parties* (therefore, it did not matter which party invoked federal law or the Constitution) and that a case could "arise under the Constitution or laws of the United States" whenever the decision depended on the Court's interpreting either federal law or the Constitution.

These definitions are broad, but they do not address the question of when cases can be removed from state courts to federal courts. Various Supreme Court decisions have established that cases may be removed from state courts when a defense under federal law has been invoked.

Congress can authorize federal courts to hear cases in which a federal question is (1) a logical antecedent of the plaintiff's claim; (2) the basis of a defense actually raised; or (3) the basis of the decision actually made. It is unclear whether Congress may authorize jurisdiction over cases in which a litigant is a member of a class that Congress seeks to protect (though a federal question is not present) or when Congress has taken an interest under an Article I grant of power.

Finally, federal jurisdiction extends to cases, not issues. When a federal court has jurisdiction over a case that arises under federal law, the jurisdiction extends to the whole case, meaning that the federal court can consider other issues whether state or federal.

Before You Read

Ask: What is jurisdiction? (Sample answer: Jurisdiction is the authority that a legal body has to make decisions in cases and controversies. Courts have jurisdiction over people and subjects. Jurisdiction may also refer to when a court may hear a case, either under original or appellate jurisdictions.)

Check Understanding

Ask: What makes a case a federal question? (Generally, a case is a federal question if it would require the courts to interpret either federal law or the Constitution.)

Discussion Question

Briefly describe how the question of judicial power was handled at the Constitutional Convention. (Sample answer: The Framers did not spend much time debating the Judicial Power Clause until the time came to ratify it. At that point, many criticized the broad scope of the clause, though others defended it as necessary. James Madison said the power had to be as broad as that of the legislature, but other Framers feared that the judiciary would claim unlimited powers.)

Treaties — Article III, Section 2

Essay by Dennis W. Arrow (pp. 244–246)

Article III grants the federal judiciary jurisdiction over all treaties entered into by the United States. The Constitutional Convention approved this change unanimously. In *The Federalist*, Alexander Hamilton defended the federal judiciary's authority

over treaties, noting that the federal judiciary's power should extend to all cases of peace in the Union, whether those issues relate to interaction between the United States and foreign nations or states and other states.

The Supreme Court will hear cases involving treaties only when they are properly brought before it. The Court will not offer advisory opinions about entering into treaties (though it has crafted several prudential rules for interpreting them). Courts will rely on the executive branch's clarifications, interpretations, and understanding of the treaty. They are less likely to defer to the legislature's interpretations of treaties. Courts will follow the evident meaning of the text, will not infer an obligation that is not within the treaty, and will not determine whether a treaty obligation has been broken.

Finally, courts will recognize the legal validity of a treaty only if it has been executed into law. Some treaties are self-executing, meaning that Congress does not need to pass laws to enact them. Treaties that do require legislation to put them into action are non-self-executing. Because federal law and a properly executed treaty have the same status in law, courts will enforce the latter in time. Thus, if a federal law conflicts with a prior treaty obligation, courts will enforce the more recent federal law.

Under current federal law, federal district courts have original jurisdiction over civil actions arising under treaties, and cases in which the validity of a treaty is questioned may be appealed to the Supreme Court.

Before You Read

In 1793, during a critical time of war between Britain and France, President George Washington sent the Supreme Court 29 questions on matters of international law and treaties. The Court refused to answer his questions, protesting that the judiciary did not share in the executive power and that the Court would not issue advisory opinions.

Discussion Question

Why did the Framers give the federal judiciary the power to hear cases involving treaties? (Alexander Hamilton expressed the Founders' consensus that the federal judiciary's authority should extend to all cases of peace in the Union, whether those issues relate to interaction between the United States and foreign nations or states and other states. Chief Justice John Marshall explained that the purpose of the clause was to ensure that those who have real claims under a treaty should have their causes decided by the national tribunals. This would avoid the apprehension as well as the danger of state prejudices.)

Ambassadors — Article III, Section 2, Clause 1

Essay by David F. Forte (pp. 246–247)

The provision allowing the federal judiciary to hear cases involving ambassadors was not controversial at the Constitutional Convention, because cases involving an ambassador or other foreign ministers may be crucial to ensuring peace with other nations. Cases involving ambassadors are part of the Supreme Court's original jurisdiction.

Nevertheless, as David F. Forte explains, there are certain types of cases involving ambassadors and diplomats that the judiciary may not consider: for instance, divorce cases involving ambassadors or foreign diplomats. Additionally, foreign diplomats and ambassadors have diplomatic immunity. Even though the Constitution enables the federal judiciary to hear cases involving ambassadors and other foreign ministers, these individuals may still invoke diplomatic immunity to protect them from prosecution.

Check Understanding

Ask students to recall information they have learned in prior lessons about treaties and ambassadors. Ask: What other branches and individuals are responsible for dealing with treaties and ambassadors? (The President has the power to make international treaties with the consent of the Senate. In addition, the President has the duty of receiving ambassadors and other important ministers of foreign nations.)

Active Reading

According to David F. Forte, what are some restrictions on the federal judiciary's power to hear cases involving ambassadors? (Sample answer: The federal judiciary does not handle suits involving United States diplomats, retired foreign ambassadors, divorce, or consuls.)

Discussion Question

Why did the delegates give the federal judiciary power to hear cases involving ambassadors? (The federal government has the powers concerning international affairs and diplomacy. The states do not have power to engage in foreign affairs. Because cases involving ambassadors or other foreign ministers may be crucial to ensuring peace with other nations, the federal judiciary hears those cases.)

Admiralty — Article III, Section 2, Clause 1

Essay by David F. Forte (pp. 247–249)

Joseph Story defined admiralty and maritime jurisprudence to extend to all acts of torts on the high seas, as well as within the ebb and flow of the seas, and all maritime contracts. At the Constitutional Convention, the debate over admiralty focused on whether to lodge admiralty questions in a separate court or in the federal judiciary. Even the Anti-Federalists agreed that admiralty issues should be subject to the national government's power.

Under the Judiciary Act of 1789 and current federal law, district courts have exclusive jurisdiction over admiralty issues, meaning that state courts cannot hear such cases. Congress extended admiralty jurisdiction to include all navigable lakes and waters, other cases of injury of persons or properties caused by navigable vessels, and insurance contract disputes.

Although the federal judiciary has exclusive jurisdiction over maritime and admiralty, there is a category of cases over which states have concurrent (or shared) jurisdiction as part of state common law jurisprudence. In *The Moses Taylor* (1866), the Court distinguished between *in rem* suits (concerning property) and *in personam* suits (concerning persons). Federal courts have exclusive jurisdiction over the former and share jurisdiction, in certain cases, with the states over the latter. The extent of the states' jurisdiction is disputed, and the courts and Congress continue to define appropriate limits.

Before You Read

Read students Blackstone's quote on page 247 (first paragraph under Admiralty). Blackstone writes that maritime courts have jurisdiction "to determine all maritime injuries, arising upon the seas, or in parts out of the reach of the common law." Explain that admiralty law deals with maritime questions and offenses. This is not a body of law that concerns the Navy or the military. Rather, it is a body of law that governs relationships between private entities that operate vessels on the oceans, including issues of marine navigation, sailors, marine commerce, and the transportation of passengers and goods by sea. Some commercial activities occurring wholly on land also are maritime in character and, therefore, are covered under admiralty law.

Interstate Disputes — Article III, Section 2, Clause 1

Essay by Paul Rosenzweig (pp. 250–252)

Under the Articles of Confederation, disputes between states over economic and territorial issues were common. The procedure for settling suits under Article IX of the Articles of Confederation was cumbersome, though at times successful. The Framers of the Constitution devised a clearer method for resolving interstate conflicts. Establishing a federal judiciary to resolve interstate disputes would ensure, as Joseph Story described, "that contentions between the states should be peaceably terminated by a common judicatory; and because in a free country, justice ought not to depend on the will of either litigant."

The Constitution does not compel or limit the Supreme Court concerning the kinds of interstate disputes it will hear. Most commonly, the questions at issue concern contractual disagreements, water rights disputes, and boundary disputes.

Active Reading

In his article, Paul Rosenzweig references Article IX of the Articles of Confederation. Ask students to find the Articles of Confederation online or in a reference book and to read Article IX and examine the original means of addressing interstate disputes. Ask: Why were interstate disputes common in early America? (In early America, disputes between states were common especially because of disagreements involving economic issues and territorial boundaries.) How were these disputes settled under the Articles of Confederation? (The Articles of Confederation presented a convoluted process for solving such disputes. This process, despite some success, often proved to be an impediment to dispute resolution.) Do you think this would be an effective way to settle disputes? (Sample answer: In several instances, states were able to use this method to solve disputes successfully. But, this process was extremely cumbersome and complex; therefore, it is unlikely that states would be able and willing to use this process to resolve disputes.)

Active Reading

Why did the Framers not want one state court to hear and decide a dispute between two or more states? (The Framers were concerned that state courts would not be impartial in a case concerning their state and that this would lead to further conflicts. As Hamilton noted in *The Federalist* No. 80, the federal judiciary would be impartial in disputes between states.)

Citizen–State Diversity — Article III, Section 2, Clause 1

Essay by Ernest A. Young (pp. 252–253)

The Citizen–State Diversity Clause enables the federal judiciary to hear disputes between a state and citizens of another state. The Anti-Federalists opposed the clause, arguing that it would remove the states' sovereign immunity. Some Framers agreed and welcomed the possibility as a check on state governments. James Madison, Alexander Hamilton, and other Federalists argued that Article III left states' preexisting sovereign immunity intact.

In *Chisholm v. Georgia* (1793), the Supreme Court rejected the Federalists' analysis, confirmed the Anti-Federalists' fears, and held that sovereign immunity did not protect a state from suit. In response to this case, the Eleventh Amendment was proposed and adopted in 1795.

Check Understanding

Ask: What is the difference between interstate disputes and Citizen–State Diversity? (Interstate disputes involve disputes between two states. Citizen–State diversity involves disputes between a state and a citizen of another state.)

Active Reading

Why did the Anti-Federalists oppose the Citizen–State Diversity Clause? (The Citizen–State Diversity Clause allows federal courts to hear cases brought against a state by citizens of other state. Anti-Federalists objected that this would deprive states of their sovereign immunity.)

Suits Against a State — Amendment XI

Essay by Ernest A. Young (pp. 375–377)

The Eleventh Amendment was ratified in 1795 in response to the Supreme Court case of *Chisholm v. Georgia* (1793). In *Chisholm*, the Court held that federal courts could hear suits brought by individuals against state governments for monetary damages, notwithstanding states' claims of sovereign immunity. The states, concerned that they might be held responsible for their Revolutionary War debts, quickly ratified the amendment to protect their sovereign immunity.

Dating back to English common law, the idea of sovereign immunity gives states immunity from private lawsuits. During the Founding period, the Anti-Federalists were concerned that Article III of the Constitution, which allowed federal courts to hear cases brought against the states by citizens of other states, would deprive states

of their sovereign immunity. Though several key Framers denied that the clause removed sovereign immunity under the Constitution, the Supreme Court nonetheless determined that it did do so.

Even after ratification of the Eleventh Amendment, serious questions relating to state sovereign immunity remain. For example, did the states' immunity apply in suits based in federal law? Was state sovereign immunity part of the Constitution, or could Congress remove it?

The courts answered the former question in 1890, ruling that the Eleventh Amendment bars private lawsuits against the states, even those brought under federal law. Essentially, states had sovereign immunity in a variety of suits, and the Eleventh Amendment was simply a "patch" for the hole that *Chisholm* created. The Supreme Court has extended that immunity in ways that are not supported in the text of the Eleventh Amendment.

Regarding the second question, most common law doctrines are subject to legislative override. Debates during the Constitutional Convention and ratification focused on whether Article III did or did not override state sovereign immunity. In 1996, the Supreme Court held that Congress could not override the sovereign immunity of states, clarifying that the states' immunity is enshrined in the Constitution, not just in common law. A few years later, the Court held that Congress could not override state sovereign immunity for suits in state courts. This ruling is not based on the text of the Eleventh Amendment, which speaks exclusively of suits in federal courts. Instead, the Court argued that state sovereign immunity is enshrined within the structure of the Constitution itself.

Despite these rulings, Congress may abrogate state sovereign immunity when acting pursuant to its enforcement powers under the Thirteenth, Fourteenth, and Fifteenth Amendments. Additionally, Congress can require states to waive their own immunity before granting them federal money; the United States can sue the states (allowing federal agencies to file suit against the states); and individual state officers can be sued in their private capacity for money damages. All of these loopholes have chipped away at the original intent of the Eleventh Amendment.

Active Reading

What is sovereign immunity? (Sovereign immunity gives states immunity from private lawsuits.) Why did states ratify the Eleventh Amendment? (In *Chisholm v. Georgia* (1793), the Supreme Court held that sovereign immunity did not protect a state from suits by individuals seeking monetary damages. The states, concerned that they might be held responsible for their Revolutionary War debts, quickly ratified the amendment to protect their sovereign immunity.)

Make a Real-Life Connection

To ensure understanding, ask: Under what circumstances might an individual sue a state or the United States? Ask students to create and share a realistic scenario in which this occurs. Then compare their responses to real cases in which the United States has been a defendant or plaintiff. (Answers will vary.)

Diversity Clause — Article III, Section 2, Clause 1

Essay by Terence Pell (pp. 253–255)

While the Citizen–State Diversity Clause concerns disputes between a state and citizens of another state, the Diversity Clause gives the federal judiciary jurisdiction over disputes between citizens of different states. Though little discussed at the Constitutional Convention, the purpose of this clause is to protect litigants from the bias of state tribunals.

Congress has conferred the power to try diversity cases by statute, but it has not conferred the full power. For instance, only suits of a certain amount of money may go to federal court, and parties must be "completely" diverse, meaning that no party on one side of the dispute may be a citizen of the same state as any party on the other side. A complex body of law determines which state's law federal courts should apply to resolve the dispute.

Active Reading

Ask: How does the Diversity Clause protect litigants? (The Diversity Clause allows the judiciary to try cases between citizens of different states. This protects litigants from state court bias, particularly against the out-of-state party.)

Work in Pairs

Put students into small groups of two to three. Ask them to reread the material on the Citizen–State Diversity Clause and the Diversity Clause. Ask: How are these two clauses similar? How are they different? (Both clauses deal with parties from different states. In the Citizen–State Diversity Clause, one of the parties is a state. The Diversity Clause concerns private parties from two different states.)

Land Grant Jurisdiction Clause — Article III, Section 2, Clause 1

Essay by John C. Eastman (pp. 255–256)

The Land Grant Jurisdiction Clause gives the federal judiciary jurisdiction over conflicts between citizens of the same state claiming lands under different states' grants. The Framers were concerned about disputes over the Western lands. Many states had overlapping claims on lands, and the possibility of land disputes would prove dangerous to the new Union. State tribunals might not be able to judge such conflicts impartially, while a federal tribunal would be impartial.

Much of the conflict was defused when states ceded their land throughout the 1780s and Congress passed the Northwest Ordinance. Further agreements and compromises between the states have rendered the clause obsolete, although a few minor conflicts have arisen. More serious land disputes involve the states themselves. In cases where land disputes occur between citizens of different states, federal courts hear these cases under the Citizen–State Diversity Clause.

Research It

Point out John C. Eastman's explanation of conflicting land grants on page 255. Ask students to choose one state listed (such as Massachusetts, Connecticut, North Carolina, South Carolina, Georgia, or New York) and find some information on related land claims and disputes. Ask students to share their findings and use them to show on a map the many border conflicts in early America that made the Land Grant Jurisdiction Clause important.

Active Reading

According to John C. Eastman, the Land Grant Jurisdiction Clause stands for what two important propositions? (First, federal courts should decide cases in which the state courts would have an apparent bias. Second, geographic imbalance between members of the Union would threaten the Union.)

Discussion Question

Why did the Framers include the Land Grant Jurisdiction Clause in the Constitution? (Conflicts over land were common in the early United States, particularly as the nation expanded westward. Land-grant and boundary-line disputes were common and could threaten the peace and tranquility of the new Union. Under the Land Grant Jurisdiction Clause, federal courts could resolve these disputes without bias toward a particular party.)

Federal Party — Article III, Section 2, Clause 1

Essay by Paul Rosenzweig (pp. 249–250)

In cases where the United States is a party, it would be improper and unjust to allow one state to decide a case that concerns the whole people. Although a late addition to the Constitution, the Federal Party Clause is a vital part of the federal judiciary's jurisdiction.

The most interesting legal questions about this clause concern what constitutes the entity of the "United States" and when the United States has consented to be a party. The "United States" as a distinct entity can be distinguished from federal officers acting in their official duty and from federal entities and instrumentalities. The text of the clause clearly allows the United States to be a plaintiff (the party that initiates the lawsuit). The difficulty emerges when the United States is the defendant (the party whom the plaintiff sues).

The Federal Party Clause does not specify when suits are permitted. Absent a waiver, sovereign immunity shields the federal government from lawsuits. Congress can waive—and has waived—sovereign immunity from suits in a variety of cases.

Active Reading

Note Paul Rosenzweig's use of the term "sovereign immunity." Ask students to consider the meanings of both words and then try to define the phrase. (A sovereign is a ruler; immunity means being unhurt or unaffected.) Ask: What is sovereign immunity? (Sovereign immunity gives states immunity from private lawsuits.)

Discussion Questions

Can the United States be treated as a legal entity and participate in lawsuits? If so, who has jurisdiction? (Sample answer: The United States itself is a legal entity and may sometimes be a party in a legal case. It may take the role of defendant or plaintiff. In these instances, federal courts will have jurisdiction.)

Check Understanding

Have students complete the following assessment to check their understanding of Lesson 12, Part 1. Review any material for questions they have missed.

Matching

Match the clause on the left with the appropriate example situation.

1. Judicial Power Clause: "All Cases, in Law and Equity, arising under this Constitution [or] the Laws of the United States"	**A man sues his city, claiming that the municipal ban on handguns violates his Second Amendment rights. (1)**
2. Treaties Clause: Treaties made under the authority of the Constitution or federal Law	**An American citizen sues following the Treaty of Paris because he will be unable to collect money owed to him by British subjects. (2)**
3. Ambassadors Clause: "Cases affecting Ambassadors, other public ministers and Consuls"	**An ambassador from another country is arrested in New York. (3)**
4. Admiralty Clause: "To ... all Cases of admiralty and maritime jurisdiction"	**Two private boats collide on the high seas, and three sailors are injured. (4)**
5. Federal Party Clause: "Controversies to which the United States shall be a Party"	**The United States is sued for decreasing the value of a residential property near a recently constructed interstate highway. (5)**
6. Interstate Disputes Clause: "Controversies between two or more states"	**Virginia sues West Virginia regarding water rights. (6)**
7. Citizen–State Diversity Clause: "Controversies ... between a State and Citizens of another State ... and between a State ... and foreign States, Citizens or Subjects"	**A citizen of Oregon sues the state of Missouri. (8)**
8. Diversity Clause: "Controversies...between Citizens of different states"	**A citizen of Arizona sues a citizen of New York. (7)**
9. Land Grant Jurisdiction Clause: "Controversies ... between Citizens of the same State claiming Lands under Grants of Different States"	**A suit arises between two citizens of Wyoming, both claiming lands on the border between Wyoming and Colorado. It is unclear in which state the lands fall. (9)**

Multiple Choice: Circle the correct response.

1. The Eleventh Amendment says that citizens of one state
   a. can sue in federal court.
   b. can sue the United States.
   c. cannot sue another state in federal court.
   d. cannot sue other citizens.

2. Cases involving ambassadors are tried in
   a. U.S. District Court.
   b. the Senate.
   c. the Supreme Court.
   d. the House of Representatives.

3. When first created, federal statutes are _____ properly executed treaties.
   a. equal to
   b. preempted by
   c. less important than
   d. more important than

4. Maritime and admiralty issues deal with
   a. treason.
   b. ambassadors.
   c. the military.
   d. the sea.

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

1. The Eleventh Amendment overruled the Supreme Court's decision in _____. **(*Chisholm v. Georgia*, 1793)**

2. From the beginning, the Framers intended the scope of the jurisdiction of federal judicial power to be _____. **(broad)**

3. A necessary element of Congress's power to authorize jurisdiction over cases is that there must be a _____ question present somewhere in the case. **(federal)**

4. Without a waiver, sovereign immunity shields the federal government and its agencies from ____. **(suit)**

5. The Eleventh Amendment was ratified in ____. **(1795)**

6. The Diversity Clause protects litigants from facing bias in other _____. **(states)**

Short Answer: Write out your answer to each question.

1. In 1845, breaking from English precedent, Congress extended admiralty jurisdiction to include what? **(navigable lakes and rivers)**

2. Today, what do legal questions surrounding the Federal Party Clause involve? **(determining what precisely constitutes the entity of the "United States" and when the United States has consented to be a party to a lawsuit)**

3. The movement to adopt a Constitution grew out of what? **(substantial dissatisfaction with the ineffectiveness of the national government under the Articles of Confederation)**

4. Why did the Framers include the Land Grand Jurisdiction Clause, the Interstate Dispute Clause and the Diversity Clause? **(to promote "peace and harmony" among the states by providing an impartial federal tribunal in matters where "a state tribunal might not stand indifferent in a controversy where claims of its own sovereign were in conflict with those of another sovereign")**

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

1. Throughout the Constitutional Convention, the Framers consistently expressed the desire that a national judiciary should have jurisdiction over legal issues arising from the nation's international rights and obligations. **(True)**

2. The Supreme Court has never crafted prudential rules in its interpretation of treaties. **(False)**

3. During constitutional debates, even the Anti-Federalists agreed that admiralty questions should be lodged in the federal judiciary. **(True)**

4. The Constitution neither compels nor limits the Supreme Court in deciding what kinds of disputes between states it will hear. **(True)**

Part 2:
When Can the Judiciary Hear These Cases?

Original Jurisdiction
Article III, Section 2, Clause 2

Appellate Jurisdiction Clause
Article III, Section 2, Clause 2

Original Jurisdiction — Article III, Section 2, Clause 2

Essay by Paul Verkuil (pp. 256–258)

The Supreme Court has two types of jurisdiction: original and appellate. Original jurisdiction refers to instances when the Supreme Court can hear a case first, and appellate jurisdiction refers to those when the Court hears a case on appeal after another, lower court has reviewed it. The Supreme Court holds original jurisdiction over few, but important, types of cases. As *Marbury v. Madison* (1803) clarified, Congress cannot add to the Supreme Court's original jurisdiction. In *Marbury*, Chief Justice John Marshall reinforced the significance of original jurisdiction (1) by limiting its scope to the categories of cases specified in the Constitution's text and (2) thereby shifting its focus from executive matters to suits between states.

While Congress may not add to the Court's original jurisdiction, it has given lower federal courts concurrent jurisdiction over cases in which parochial bias would be less present, such as cases dealing with ambassadors and suits between the United States and a state. Under current federal law, the Supreme Court has exclusive original jurisdiction over suits between two or more states and concurrent jurisdiction, with lower federal courts, over all other disputes listed in the Original Jurisdiction Clause.

Few cases have come before the Supreme Court under the Original Jurisdiction Clause: less than 200 state-to-state disputes and two cases involving ambassadors. Between 1790 and 1900, the only suits the Court heard on its original-jurisdiction docket were boundary disputes. By the 20th century, disputes over water rights and Commerce Clause claims were more prominent. The Court has also heard suits filed by states against the United States as part of its original jurisdiction.

Simply because a conflict falls within the original jurisdiction of the Supreme Court does not mean that the Court will hear it. The Court has declined to hear cases between states that were too trivial (concerning state universities playing football) or too broad (concerning interstate water pollution). Once a court has accepted a case under its original jurisdiction, the Supreme Court appoints a Special Master to hold hearings, collect testimony, and find facts. Parties file briefs and present arguments. Then the Special Master issues a final report. If parties take exception to the report, the Court will hear the case much as it would hear cases on appeal.

Check Understanding

To ensure understanding, ask: What is the meaning of original jurisdiction?
(Original jurisdiction is the power of a court to hear a case for the first time.)

Work in Groups

The Constitution describes two types of jurisdiction for the Supreme Court: original and appellate. Divide students into groups and have them make a chart of the types of cases that fall under the Supreme Court's original jurisdiction and appellate jurisdiction. Then have students think of examples of cases that would fall under the original jurisdiction. Make sure they identify which clause would be applicable (Students may for example cite cases dealing with foreign ambassadors, cases involving "other public ministers and Consuls," or cases between the states and the United States.

Appellate Jurisdiction Clause — Article III, Section 2, Clause 2

Essay by Andrew S. Gold (pp. 258–261)

The Appellate Jurisdiction Clause of Article III establishes that the Supreme Court will have appellate jurisdiction, "both as to Law and Fact," over the cases previously mentioned in Article III, but that Congress may make exceptions to those cases.

The most contentious phrase of Article III, Section 2 concerned the Court's ability to review cases on the basis of "law and fact." Anti-Federalists were concerned that the Court would overturn jury findings and decisions of lower courts. Alexander Hamilton argued that granting the Supreme Court appellate jurisdiction would not eliminate the right to trial by jury and that Congress could prevent the Court from reexamining jury cases as to fact. Joseph Story argued that the Court's ability to review as to law and fact refers to the Court's admiralty and maritime jurisdiction. The Seventh and Fifth Amendments assuaged the Anti-Federalists' concerns.

The Appellate Jurisdiction Clause grants Congress the power to limit the class of cases that could reach the Supreme Court as long as those cases may be heard in either original or appellate form in another court under Congress's power. There has been some dispute about the extent of Congress's power to limit the Supreme Court's appellate jurisdiction. Some justices have argued that only Congress can determine the Court's appellate jurisdiction. Other justices have argued that the Court's appellate jurisdiction comes from the Constitution; Congress can make exceptions to the Court's appellate jurisdiction, but it does not create it. Nonetheless, in *DeRousseau v. United States* (1810), the Court relied on standard rules of statutory interpretation to conclude that Congress, by listing certain classes of appeals that may reach the Court, tacitly intended to "except" all others from Supreme Court review.

The issue of Congress's power to limit the Supreme Court's appellate review came to a head in *Ex parte McCardle* (1869). After the Supreme Court heard the oral argument for the case, Congress repealed the provisions of the statute that had authorized Supreme Court review. Because Congress could limit the Court's appellate review, the Court concluded that it had no jurisdiction to decide the case. In *United States v. Klein* (1871), the Court determined that Congress cannot use its power over the Court's appellate jurisdiction to override a constitutional provision. The Court has recognized other limits to Congress's power; for instance, Congress may not use its power under the Appellate Jurisdiction Clause to reopen a case that has been decided.

Recent scholarly debate on this clause focuses on legislation that would remove existing Supreme Court jurisdiction and the extent of Congress's power to limit the Court's appellate jurisdiction. Some argue that Congress's power is unlimited. Others argue that Congress's power is limited by other parts of the Constitution, such as the Bill of Rights protections. Some debates turn on the meaning of the terms "regulation" and "exceptions." Others focus on distinctions between categories of jurisdictions that Congress can and cannot exempt.

The Supreme Court has not weighed in on this debate. It continues to follow the lead of John Marshall, who argued that "Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the Supreme Court. These exceptions certainly go as far as the legislature may think proper for the interest and liberty of the people."

Before You Read

Ask: What is an appeal? (An appeal is a request for a new hearing made by the losing party.) What is appellate jurisdiction? (Appellate jurisdiction refers to the power of a court to hear appeals from trial courts or other lower tribunals.)

Active Reading

In general terms, what are the differences between original and appellate jurisdiction? (The Supreme Court has two types of jurisdiction: original and appellate. Original jurisdiction refers to when the Supreme Court can hear a case first, and appellate jurisdiction refers to when the Court hears the case on appeal after another lower, court has reviewed it.)

Discussion Question

What were some concerns about the scope of the Supreme Court's power under the Appellate Jurisdiction Clause? How did the Framers amend the Constitution to dispel these fears? (Anti-Federalists were concerned that the Supreme Court would overturn jury findings and decisions of lower courts.

The Federalists countered that granting the Supreme Court appellate jurisdiction would not eliminate the right to trial by jury and that Congress could prevent the Court from reexamining jury cases as to fact. The Seventh Amendment and the Double Jeopardy Clause of the Fifth Amendment assuaged the Anti-Federalists' concerns.)

Check Understanding

Have students complete the following assessment to check their understanding of Lesson 12, Part 2. Review any material for questions they have missed.

Multiple Choice: Circle the correct response.

1. Between 1790 and 1900, the only suits between states that the Supreme Court heard on its original docket concerned
   a. civil rights issues.
   b. property issues.
   c. maritime disputes.
   d. boundary disputes.

2. The power of the Supreme Court to hear cases being appealed from a lower court is called
   a. original jurisdiction.
   b. appellate jurisdiction.
   c. judicial review.
   d. judicial power.

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

1. The Court explicitly declared in *Marbury v. Madison* (1803) that Congress _____ add to the Supreme Court's original jurisdiction. **(cannot)**

2. The Supreme Court appoints a _____ to hold hearings, find facts, and collect testimony for cases the Court hears under its original jurisdiction. **(Special Master)**

3. Congress may not pass legislation to _____ a case already decided and finalized. **(reopen)**

Short Answer: Write out your answer to each question.

1. Why were the Anti-Federalists opposed to the Appellate Jurisdiction Clause? **(They believed it meant the end of civil juries and would allow a second trial of those who were criminally charged at the appellate level.)**

2. What appeased the Anti-Federalists who were concerned about the possibility of a second trial of those who were criminally charged? **(The Double Jeopardy Clause of the Fifth Amendment)**

3. From the beginning, the most important kinds of suits between states involved disputes over what? **(Boundaries)**

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

1. The Double Jeopardy Clause of the Fifth Amendment was a result of Anti-Federalist concerns about the Appellate Jurisdiction Clause. **(True)**

2. There have been fewer than 200 state-versus-state original cases in the history of the Republic. **(True)**

3. Congress determines what cases the Supreme Court may hear under ists Appellate Jurisdiction. **(True)**