**THE JUDICIAL BRANCH**

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Discussion Question: Is the fact that Supreme Court Justices serve for life, a good thing or a bad thing? Why?

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THE FOUNDATION OF POWER

The Constitution Article II Section I: “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.”

* It stated that the U.S. has judicial power in contrast to the Articles of Confederation which did not state this
* There should be 1 Supreme Court and undetermined number of inferior or lower courts
* But it doesn’t explain that much regarding the Supreme Court, the lower courts, etc.
* But it does take up the beginning problem of judicial power and attempts to define what judicial power is, thereby establishing the scope of the Supreme Court which is does in Article II, Section II

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ARTICLE III, SECTION II

“The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treatises 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…”

* It clearly explains what Judicial power is and what cases are affected by it
* There is a strict limitation on what the judicial power is; there are only a few things that the federal court system is able to manage and the general rule of thumb is that anything that makes sense for a higher judicial branch to do (Ex. If you have a controversy between a state and citizens of another state; it doesn’t make sense for the states to figure out a solution on their own, they need to go to a higher judicial branch)

“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”

* It establishes the geographic boundaries of the courts

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FOUNDATIONS OF POWER (Summarization)

Constitutional Powers:

* Vague about the powers of the Judicial Branch
* Developed in Article III but void of detail (even if it established a basic framework for the Judicial branch)

The Power of Judicial Review (a power commonly associated to the Supreme Court)

* A Supreme Court Power to declare actions of the other branches as either constitutional or unconstitutional
	+ This power is not in the Constitution but developed over time
		- Did the Framers intend the Supreme Court to have this power?
		- A Debate between the framers themselves (The framers are different; they have different thoughts)
			* Jefferson and Madison thought each branch could police themselves
			* Hamilton on the other hand, wanted to have Judicial Review so much that he makes a whole federalist paper about it, Federalist 78
			* Hamilton argued that the courts were the only way to restrain the other branches. (Hamilton later wins; but how does this come about?)

[Slide 5] Picture: Marbury vs. Madison

JOHN MARBURY VS. JAMES MADISON

* The first real claim to the Judicial Power; one of the first cases that defined the Supreme Court
* What happened?
	+ John Adams was defeated (he was the 2nd president but was mainly defeated because of dissatisfaction of his Quasi-War with France and the Alien and Sedition Act), but before he left office he appointed a bunch of judges at the last minute (because he was defeated by his archrival Thomas Jefferson, and so he is trying to solidify power and appoint a bunch of judges so that Jefferson doesn’t get that privilege)
	+ John Marbury was one of these appointed judges (who were collectively called Midnight Appointees, because Adams appointed them on midnight the day he was to leave the White House at 9:00 am) but the physical appointment paper was never given to him.
	+ When Thomas Jefferson took office, James Madison (Secretary of State) finds the missing appointment paper but Jefferson orders him not to give the appointment to Marbury
	+ But Marbury is aware that he should be judge, so he sued Madison saying that Madison had to give him the appointment
	+ The case goes to the Supreme Court

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JOHN MARBURY VS. JAMES MADISON

* In the Supreme Court, the major problem of this case comes out
* PROBLEM: Trying to understand the role of the Court in dealing with federal politics because the Supreme Court is quickly put in a hard place
	+ If the court favoured Marbury, Madison would just refuse to obey. (This is problematic because the Supreme Court doesn’t have a way to force anyone to do anything)
		- The court would appear weak
	+ If the court favoured Madison, then officials could defy the law without penalties.
* What did Chief Justice John Marshall do?
	+ Court said that Marbury was right but couldn’t force Madison to do anything because that was unconstitutional.
	+ Marbury writes: “It is emphatically the province and duty of the judicial department to say what the law is”
	+ Only the Judicial Branch can say what is and is not Constitutional (John Marshall: This is all that we can do)

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JOHN MARBURY VS. JAMES MADISON

Judicial Review and Democracy

* An unelected, irremovable group gets to decide on what democratic governments can and cannot do
* IS THIS A POWER THAT WE SHOULD BE GRANTING THEM?