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INTRODUCTION TO THE SUPREME COURT

John J. Patrick

Preface to the Second Edition, *The Supreme Court of the United States, A Student Companion, Oxford University Press, New York, New York; 2001*

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Liberty, a desired end of constitutional government in the United States, is dependent upon law and justice. This truth is captured by two phrases carved on the marble exterior of the Supreme Court Building: over the east portico, "Justice the Guardian of Liberty," and over the west portico, "Equal Justice Under the Law."

According to the framers, the U.S. Constitution was designed to "secure the Blessings of Liberty." The framers knew, however, that this lofty ideal could not be attained without workable instruments of government crafted for this end. The Supreme Court was intended to be a major means of securing the people's liberty.

The Supreme Court has the special duty of guarding the individual's rights to liberty through judicial review, its power to void government actions that violate the supreme law of the Constitution.

James Madison, the major architect of the Constitution, presciently observed that "independent tribunals of justice [headed by the Supreme Court] will consider themselves in a peculiar manner of the guardians of those [constitutional] rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution."

During the 1830s, a perceptive French visitor to the United States, Alexis de Tocqueville, confirmed the enduring vision of the Constitution's framers about the critical importance of the Supreme Court to the vitality and destiny of their work. "Without [justices of the Supreme Court], the Constitution would be a dead letter," wrote Tocqueville in his classic 1835 commentary about the United States, *Democracy in America.* "Their power is enormous," Tocqueville wrote, "but it is the power of public opinion. [The justices] are all-powerful as long as the people respect the law; but they would be impotent against popular neglect or contempt of the law."

The Court has no power to guard the rights of the people through its rulings about the law unless particular people assume responsibility for bringing cases to the judiciary. Further, the Court's rulings, no matter how wise or just, may practically amount to nothing unless the people are vigilant about their enforcement.

The Supreme Court cannot serve the cause of the people's liberty without popular support. And to be effective, this support depends upon widespread public knowledge of the Court's work and a public commitment, based on reason, to the constitutional values for which it works.

Sandra Day O'Connor

Sandra Day O'Connor served as the 102nd Justice – and the first woman Justice – on the United States Supreme Court. Born in El Paso, Texas on March 26, 1930, she grew up on her family's "Lazy B" Ranch on the New Mexico/Arizona border. At just 16 years old, she left Arizona to enter college at Stanford in 1946, and entered Stanford Law School after her junior year of college. She was admitted to Stanford Law Review's board of editors and graduated (after only two years, instead of the usual three) in the top 10% of her class. Remarkably, none of the law firms with which she interviewed offered her work as an attorney – with one major firm offering her only a legal secretary's job.

She volunteered in the San Mateo County Attorney's Office and so impressed her supervisor that he hired her for a paid position as soon as the office had an opening. When her husband, attorney John Jay O'Connor III, was later deployed to Frankfurt for three years of military service, she became a civilian attorney for the Army Quartermaster's Market Center in Germany from 1954 to 1957.

Upon returning to the United States, the O'Connors settled in Phoenix, and Justice O'Connor opened a law office with a colleague in Maryvale, Arizona from 1958 to 1960. After taking a brief break to raise three sons (Scott, Brian and Jay), she became an Arizona Assistant Attorney General from 1965 to 1969. In 1969, she was appointed to fill a vacancy in the Arizona State Senate, a seat to which she won re-election in 1970 and 1972 and from which she was elected by her colleagues as the first woman majority leader in any state legislative body in 1972. In 1974, Justice O'Connor successfully campaigned for election to a newly created state trial court judgeship on the Maricopa County Superior Court, and in 1979, she was appointed to the Arizona Court of Appeals.

On nominating Justice O'Connor to succeed Justice Potter Stewart in July 1981, President Ronald Reagan stated: "She is truly a person for all seasons, possessing those unique qualities of temperament, fairness, intellectual capacity, and devotion to the public good which have characterized the 101 brethren who have preceded her." "I had not been admitted to practice before the Court" at the time of the appointment, she later recalled. "The first argument I ever witnessed in the Supreme Court was one that I considered as a member of the Court." She would serve with distinction for nearly a quarter-century, during which, as one former clerk observed, she would "change the face of the Court, the legal profession, and the justice system."

Since retiring in 2006, she has served as Chancellor of the College of William and Mary, on the Board of Trustees of the National Constitution Center, and as a member of the Iraq Study Group. In 2009, she established iCivics, an online civics education platform for middle and high school students. She has written numerous books, the most recent of which (Out of Order: Stories from the History of the Supreme Court) was published earlier this year. She has also received numerous honors: in 2006, for example, Arizona State University renamed its law school after her, and in 2009, President Barack Obama awarded her the Presidential Medal of Freedom, the nation's highest civilian honor.

Facilitator:

Meryl Justin Chertoff

The moderator for today's program, Meryl Justin Chertoff, is Director of the Aspen Institute's Justice and Society Program and an Adjunct Professor of Law at Georgetown Law School, where she teaches about state government, intergovernmental affairs and state courts.

From 2006 to 2009, Prof. Chertoff was Director of the Sandra Day O'Connor Project on the State of the Judiciary at Georgetown Law, studying and educating the public about federal and state courts. At Georgetown Law, she also developed educational programs for visiting judges and other government officials from overseas.

Prof. Chertoff served in the Office of Legislative Affairs at the Federal Emergency Management Agency (FEMA), participating in the agency's transition into the Department of Homeland Security in 2003. She has also been a legislative relations professional, Director of New Jersey's Washington, D.C. office under two governors, and legislative counsel to the Chair of the New Jersey State Assembly Appropriations Committee.

Prof. Chertoff is a magna cum laude graduate of Harvard-Radcliffe College and earned her J.D. degree from Harvard Law School. While in law school, she was Articles Editor of the Harvard Civil Rights-Civil Liberties Law Review. She practiced law for a number of years in New York City and New Jersey, and served as law clerk to the Honorable Myron H. Thompson, Judge of the United States District Court for the Middle District of Alabama.

In addition to her work at the Aspen Institute and Georgetown Law School, Prof. Chertoff is a member of the O'Connor Judicial Selection Initiative Advisory Committee at the Institute for the Advancement of the American Legal System at the University of Denver; a member of the Washington Area Advisory Committee of Common Sense Media; a member of the board of iCivics, Inc.; and a Trustee of the Meridian International Center in Washington, D.C.

She has written and lectured extensively to lawyers and the public about judicial selection issues, federalism, and intergovernmental affairs.

ESSENTIAL QUESTIONS

1. The United States is considered a federal system of government, how do the federal and state courts interact to create our justice system?
1. How are the roles of the state courts and the federal courts different?
2. Justice Louis Brandeis in the case of New State Ice Company v. Liebmann described how a *"state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."*
3. What did Justice Brandeis mean by the idea of the states being a laboratory of democracy?
4. How can individuals impact the political and legal system?
5. What are the rights and responsibilities of a citizen?
6. What does judicial independence and why is it important?
7. How does the Constitution protect the independence of the federal judiciary?
8. How and why does the Constitution divide the power of the federal government between the three branches? What Constitutional protections guarantee American values such as liberty and equality?
9. What important cases have helped protect First Amendment rights?
10. What is one case that students could learn, that would help them become informed responsible citizens?

VOCABULARY TO ACCOMPANY:

A Conversation About the Constitution with Former Supreme Court Justice Sandra Day O'Connor

Source: Used with permission
Dr. John J. Patrick, Understanding Democracy: A Hip Pocket Guide
Oxford University Press, in association with JusticeLearning.org, 2006;
A Project of the Annenberg Foundation Trust at Sunnylands

Citizen:
A citizen is a full and equal member of a political community, such as a country or nation-state. Such membership is a necessary condition for the establishment and maintenance of democracy. The citizens are "the people" to whom the democratic government is accountable.

In a democracy, all citizens, both natural and naturalized, are equal before the law. In America's constitutional democracy, all citizens have the same fundamental rights, duties, and responsibilities.

All citizens have a common civic identity based on their freely given consent to basic principles and values of their country's constitutional democracy. In a country such as America, with religious, racial, or ethnic diversity, a common civic identity among all citizens is the tie that binds them together under their constitutional and democratic government.

Citizenship:
Citizenship is a legal relationship between citizens and their government and country. Citizens owe their government loyalty, support, and service. The government owes the citizens the protection of constitutionally guaranteed rights to life, liberty, property, and equal justice under the law.

The rights of citizenship are set forth in the constitution of a democratic government, which may distinguish between the rights of citizens and noncitizens within the country. For example, in the United States, only citizens have the right to vote, serve on juries, and be elected to certain offices of the government, and only a natural born citizen can become president. All other constitutional rights are guaranteed to citizens and noncitizens alike.

Citizenship in a democracy entails serious responsibilities. For example, good citizens in America's democracy exhibit civic engagement, which means they are ready, willing, and able to use their constitutionally protected political rights to advance the common good. Citizens are expected to be loyal and patriotic, to assume responsibility for the defense of our country against internal and external threats or attacks. Citizenship also entails certain duties, such a paying taxes, serving on juries when summoned, joining the countries armed forces if drafted, and obeying the laws.

Constitution:

A constitution is the basic law and general plan of government for the people within a country. The purposes, powers, and limitations of government are prescribed in the constitution. It thus sets forth the way a people is governed or ruled.

A constitution is the supreme law of the country. Laws later enacted by the government must conform to the provisions of the constitution. All institutions, groups, and individuals within the community are expected to obey the supreme law of the constitution.

A constitution is a framework for organizing and conducting the government of a country, but it is not a blueprint for the day-to-day operations of the government.

A defining attribute of America's constitution is its granting and limiting of powers to the government in order to guarantee national safety and unity as well as individual rights to life, liberty, property, and equal protection of the laws. It sets forth generally what the constitutional government is and is not permitted to do. There cannot be an authentic democracy unless the powers of the government are limited constitutionally to protect the people against tyranny of any kind.

Democracy, Representative and Constitutional:

Democracy in America's federal and state governments is representative, meaning that the people rule indirectly through their elected public officials. Democracy today is also constitutional, meaning that government by the people's representatives is both limited and empowered to protect equally and justly the rights of everyone in the country.

Representatives elected by the people try to serve the interest of their constituents within the framework of a constitutionally limited government. The constitution ensures both majority rule and minority rights.

Elections:

A primary defining characteristic of democracy is the regular occurrence of free, fair, competitive elections in which practically all the people of a country can vote to select their representatives in government. Elections are not authentically democratic if there is only one candidate for each office or if only one political party is permitted to present candidates. Nor can a genuine electoral democracy stop or discourage significant numbers of persons from becoming citizens or from voting by using such onerous methods a physical intimidation, difficult procedures, and unfair tests of knowledge.

Equality:

Equality in a constitutional democracy means equal justice under the law. No one is above or beyond the reach of law, and no one is entitled to unfair advantages or subjected to unequal penalties based on the law. Three main examples of equality in America's constitutional democracy are: 1) constitutionally guaranteed protections for the equality of treatment according to the law (Amendments 5 and 14 of the U.S. Constitution), 2) equality in

fundamental constitutional rights (Articles 9 and 10 of the Constitution and Amendments 1-10), and 3) equality of citizenship (Article 4, Section 2 and Amendment 14, Section 1).

Federalism:

Modern federalism is the division of governmental power between a national or federal government and provincial or state governments within the country. Powers granted exclusively to the federal government are supreme. Federalism differs from the unitary form of government, which has only one center of authority that prevails throughout the territory of the country. In a unitary system, subdivisions within the country are entirely subordinate to the central or national government and exist to administer or carry out its command.

The concept of modern federalism was invented by the framers of the United States Constitution. It was their way to bring together 13 separate and sovereign American states into one federal union, the United States of America. It was also one constitutional means, among others, to limit the powers of government to prevent tyranny against the people.

In a modern-era federal republic, there are two levels of government: one national and general in scope and the other local. Each level of government, supreme in its own sphere, can separately exercise powers directly upon the people under its authority.

In the American federal system, the national or federal government has certain powers that the Constitution grants to it alone. For example, only the federal government may coin money or declare war. Conversely, the Constitution reserves to the state government all of the other powers that the federal government is not granted. According to the U.S. Constitution's 10th Amendment, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the Sates respectively or to the people." Only the state governments may establish public schools and conduct elections within the state. Some powers, such as levying taxes and borrowing money, are shared by both federal and state governments, and some powers, such as granting titles of nobility, are denied to both the federal and state governments.
The core idea of American federalism is that two levels of government, national and state, exercise certain powers, directly and separately, on the people at the same time.

The balance of power within the American federal system has changed to favor the national government. Through constitutional amendments, Supreme Court decisions, federal statues, and executive actions, the powers of the federal government have expanded relative those of the states.

Judicial Independence:

The judicial component of government is independent in order to insulate its members from punitive or coercive actions by the legislative and executive departments of the government. If the judiciary is independent, then it can make fair decisions that uphold the rule of law, an essential element of any genuine constitutional democracy. The U.S. Constitution, for example, protects judicial independence in two ways.

First, Article 3 says that federal judges may hold their positions "during good behavior." In effect, they have lifetime appointments as long as they satisfy the ethical and legal standards of their judicial office. Second, Article 3 says that the legislative and executive branches may not combine to punish judges by decreasing payments for their services.

Alexander Hamilton, a framer of the U.S. Constitution, offered justification for an independent judiciary in the 78th paper of *The Federalist*. He wrote, "The complete independence of the courts of justice is peculiarly essential in a limited Constitution." Hamilton claimed that only an independent judicial branch of the government would be able to impartially check an excessive exercise of power by the other branches of government.

Judicial Review:

Judicial review is the power of an independent judiciary, or courts of law, to determine whether the acts of other components of the government are in accordance with the constitution. Any action that conflicts with the constitution is declared unconstitutional and therefore nullified. Thus, the judicial department of government may check or limit the legislative and executive departments by preventing them from exceeding the limits set by the constitution.

The concept of judicial review was created during the founding of the United States and included in the constitutional governments of some of the 13 original American states, such as Massachusetts, New Hampshire, and New York. Judicial review is not mentioned in the U.S. Constitution, but most constitutional experts claim that it is implied in Articles 3 and 6 of the document.

In 1788, in the 78th paper of *The Federalist*, Alexander Hamilton argued for judicial review by an independent judiciary as a necessary means to void all governmental actions contrary to the Constitution.

John Marshall, chief justice of the United States, applied the ideas of judicial review put forth in *The Federalist* in the 1803 case *Marbury v. Madison*. In this case, the U.S. Supreme Court declared one part of a federal law to be unconstitutional. In so doing, it set a precedent for the Court's use of judicial review, which became an essential part of constitutional democracy in the United States.

Justice:

Justice is one of the main goals of democratic constitutions, along with the achievement of order, security, liberty, and the common good. The Preamble of the Constitution of the United States, for example, says that one purpose of the document is to "establish justice." And, in the 51st paper of The Federalist, James Madison proclaims, "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."

A government establishes justice when it equally guarantees the rights of each person within its authority. As each person is equal in her or his membership in the human species, each one possesses the same immutable rights, which the government is bound to protect equally.

Liberty:

A person who has liberty is free to make choices about what to do or what to say. A primary purpose of government in the United States and other constitutional democracies is to protect and promote the liberty of individuals. The Preamble of the United States Constitution proclaims that a principal reason for establishing the federal government is to "secure the Blessings of Liberty to ourselves and our Posterity."
Ordered liberty is the desirable condition in which public order and personal liberty are maintained.

Participation:

Participation by citizens in their civil society and government is a necessary, if not sufficient, condition of democracy. Civic participation refers to the voluntary activities of citizens in forming and sustaining independent nongovernmental organizations that contribute to the well-being of the community. Political participation pertains to the activities of individuals and groups aimed at influencing the public policy decisions of their government. Through their political participation, citizens prompt their representatives in government to be accountable to the people. Unless there is some significant level of free and independent participation by citizens in the work of their civil society and government, there cannot be an authentic democracy.

Rights:

The constitution of a democracy, such as the United States, guarantees the rights of the people. A right is a person's justifiable claim, protected by law, to act or be treated in a certain way. For example, the constitutions of democracies throughout the world guarantee the political rights of individuals, such as the rights of free speech, press, assembly, association, and petition. These rights must be guaranteed in order for there to be free, fair, competitive, and periodic elections by the people of their representatives in government, which is a minimal condition for the existence of a democracy. If a democracy is to be maintained from one election to the next, then the political rights of parties and persons outside the government must be constitutionally protected in order for there to be authentic criticism and opposition of those in charge of the government. Thus, the losers in one election can use their political rights to gain public support and win the next election.

Rule of Law:

In a government based on the rule of law, power is limited according to established principles and procedures of a constitution. The rule of law is an essential characteristic of every constitutional democracy that guarantees equal rights of individuals to liberty and justice. Citizens of the United States of America expect the rule of law to prevail in their federal and state governments, civil society, and market economy. The rule of law exists when the constitution functions as the supreme law of the land, when the statutes enacted and enforced by the government invariably conform to the constitution.

The rule of law, however, is not merely rule by law; rather, it demands equal justice for each person under the authority of a constitutional government. So, the rule of law exists in a democracy or any other kind of political system only when the following standards are met:

- Laws are enforced equally and impartially
- No one is above the law, and everyone under the authority of the constitution is obligated equally to obey the law
- Laws are made and enforced according to established procedures, not the ruler's arbitrary will.

- There is a common understanding among the people about the requirement of the law and the consequences of violating the law
- Laws are not enacted or enforced retroactively
- Laws are reasonable and enforceable.

Separation of Powers:

Separation of powers among three independent branches of government is a main characteristic of the United States Constitution. The legislative branch has the power, according to Article 1 of the Constitution, to make certain kinds of laws. In Article 2, the Constitution says that the executive branch, headed by the President, has the power to enforce or carry out laws. The judicial branch, headed by the Supreme Court, is established in Article 3 of the Constitution to interpret and apply the laws in court cases that come before it.

The Constitution provides to each branch of the government means to share in the power of the other branches. The mechanisms by which the three separate branches are able to restrain the others are called checks and balances.

Separation and sharing of powers among the three branches, through checks and balances, is the basic constitutional means for achieving limited government and thereby protecting the people from government abuses. Each branch of a constitutional government has some influence over the actions of the others, but no branch can exercise its powers without cooperation from the others. The constitutional of the presidential democracy prevents any one branch from encroaching upon the domains of the other branches.

Under the system of separated powers with checks and balances, no branch of the government can accumulate too much power. However, each branch, and the government generally, is supposed to have enough power to do what the people expect of it. Thus, the constitutional government is both limited and empowered; neither too strong for survival of the people's liberty nor too limited to be effective in maintaining order, stability, and security for the people.

READINGS ON THE JUDICIAL SYSTEM

The Constitution of the United States

Source:
http://www.archives.gov/exhibits/charters/print_friendly.html?page=constitution_transcript_content.html&title=The%20Constitution%20of%20the%20United%20States%3A%20A%20Transcription

Article III. The Judiciary

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.

Section. 2.

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.

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.

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.

Article V. The Amendment Process

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Federalist Number 78

Alexander Hamilton
Source: http://thomas.loc.gov/home/histdox/fed_78.html

The Judiciary Department
From McLEAN'S Edition, New York.

Author: Alexander Hamilton

To the People of the State of New York:

WE PROCEED now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous

to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power [1] ; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." [2] And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an EQUAL authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the

law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove any thing, would prove that there ought to be no judges distinct from that body.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies, [3] in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only, that the independence of the judges may be an essential safeguard against the effects of occasional ill humors in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws. It not only serves to moderate the immediate mischiefs of those which may have been passed, but it operates as a check upon the legislative body in passing them; who, perceiving that obstacles to the success of iniquitous intention are to be expected from the scruples of the courts, are in a manner compelled, by the very motives of the injustice they meditate, to qualify their attempts. This is a circumstance calculated to have more influence upon the character of our governments, than but few may be aware of. The benefits of the integrity and moderation of the judiciary have already been felt in more States than one; and though they may have displeased those whose sinister expectations they may have disappointed, they must have commanded the esteem and applause of all the virtuous and disinterested. Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such

a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require. It has been frequently remarked, with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity. In the present circumstances of this country, and in those in which it is likely to be for a long time to come, the disadvantages on this score would be greater than they may at first sight appear; but it must be confessed, that they are far inferior to those which present themselves under the other aspects of the subject.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established GOOD BEHAVIOR as the tenure of their judicial offices, in point of duration; and that so far from being blamable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

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1. The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the judiciary is next to nothing." "Spirit of Laws." vol. i., page 186.

2. Idem, page 181.

3. Vide "Protest of the Minority of the Convention of Pennsylvania," Martin's Speech, etc.

Federalist Number 79

Alexander Hamilton

Source: http://thomas.loc.gov/home/histdox/fed_79.html

The Judiciary Department Continued
From McLEAN'S Edition, New York.

Author: Alexander Hamilton

To the People of the State of New York:

NEXT to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. The remark made in relation to the President is equally applicable here. In the general course of human nature, A POWER OVER A MAN's SUBSISTENCE AMOUNTS TO A POWER OVER HIS WILL. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. The enlightened friends to good government in every State, have seen cause to lament the want of precise and explicit precautions in the State constitutions on this head. Some of these indeed have declared that PERMANENT [1] salaries should be established for the judges; but the experiment has in some instances shown that such expressions are not sufficiently definite to preclude legislative evasions. Something still more positive and unequivocal has been evinced to be requisite. The plan of the convention accordingly has provided that the judges of the United States "shall at STATED TIMES receive for their services a compensation which shall not be DIMINISHED during their continuance in office."

This, all circumstances considered, is the most eligible provision that could have been devised. It will readily be understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of compensation in the Constitution inadmissible. What might be extravagant to-day, might in half a century become penurious and inadequate. It was therefore necessary to leave it to the discretion of the legislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse. A man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation. The clause which has been quoted combines both advantages. The salaries of judicial officers may from time to time be altered, as occasion shall require, yet so as never to lessen the allowance with which any particular judge comes into office, in respect to him. It will be observed that a difference has been made by the convention between the compensation of the President and of the judges, That of the former can neither be increased nor diminished; that of the latter can only not be diminished. This probably arose from the difference in the duration of the respective offices. As the President is to be elected for no more than four years, it can rarely happen that an adequate salary, fixed at the commencement of that period, will not continue to be such to its end. But with regard to the judges, who, if they behave properly, will be secured in their places for life, it may well happen, especially in the early stages of the government, that a stipend, which would be very sufficient at their first appointment, would become too small in the progress of their service.

This provision for the support of the judges bears every mark of prudence and efficacy; and it may be safely affirmed that, together with the permanent tenure of their offices, it affords a better prospect of their independence than is discoverable in the constitutions of any of the States in regard to their own judges.

The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives, and tried by the Senate; and, if convicted, may be dismissed from office, and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges.

The want of a provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts. An attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification.

The constitution of New York, to avoid investigations that must forever be vague and dangerous, has taken a particular age as the criterion of inability. No man can be a judge beyond sixty. I believe there are few at present who do not disapprove of this provision. There is no station, in relation to which it is less proper than to that of a judge. The deliberating and comparing faculties generally preserve their strength much beyond that period in men who survive it; and when, in addition to this circumstance, we consider how few there are who outlive the season of intellectual vigor, and how improbable it is that any considerable portion of the bench, whether more or less numerous, should be in such a situation at the same time, we shall be ready to conclude that limitations of this sort have little to recommend them. In a republic, where fortunes are not affluent, and pensions not expedient, the dismission of men from stations in which they have served their country long and usefully, on which they depend for subsistence, and from which it will be too late to resort to any other occupation for a livelihood, ought to have some better apology to humanity than is to be found in the imaginary danger of a superannuated bench.

PUBLIUS.

Federalist Number 80

Alexander Hamilton

Source: http://thomas.loc.gov/home/histdox/fed_80.html

The Powers of the Judiciary
From McLEAN'S Edition, New York.

Author: Alexander Hamilton

To the People of the State of New York:

To JUDGE with accuracy of the proper extent of the federal judicature, it will be necessary to consider, in the first place, what are its proper objects.

It seems scarcely to admit of controversy, that the judiciary authority of the Union ought to extend to these several descriptions of cases: 1st, to all those which arise out of the laws of the United States, passed in pursuance of their just and constitutional powers of legislation; 2d, to all those which concern the execution of the provisions expressly contained in the articles of Union; 3d, to all those in which the United States are a party; 4th, to all those which involve the PEACE of the CONFEDERACY, whether they relate to the intercourse between the United States and foreign nations, or to that between the States themselves; 5th, to all those which originate on the high seas, and are of admiralty or maritime jurisdiction; and, lastly, to all those in which the State tribunals cannot be supposed to be impartial and unbiased.

The first point depends upon this obvious consideration, that there ought always to be a constitutional method of giving efficacy to constitutional provisions. What, for instance, would avail restrictions on the authority of the State legislatures, without some constitutional mode of enforcing the observance of them? The States, by the plan of the convention, are prohibited from doing a variety of things, some of which are incompatible with the interests of the Union, and others with the principles of good government. The imposition of duties on imported articles, and the emission of paper money, are specimens of each kind. No man of sense will believe, that such prohibitions would be scrupulously regarded, without some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the State laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union. There is no third course that I can imagine. The latter appears to have been thought by the convention preferable to the former, and, I presume, will be most agreeable to the States.

As to the second point, it is impossible, by any argument or comment, to make it clearer than it is in itself. If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative, may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.

Still less need be said in regard to the third point. Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum.

The fourth point rests on this plain proposition, that the peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of the public faith, than to the security of the public tranquillity. A distinction may perhaps be imagined between cases arising upon treaties and the laws of nations and those which may stand merely on the footing of the municipal law. The former kind may be supposed proper for the federal jurisdiction, the latter for that of the States. But it is at least problematical, whether an unjust sentence against a foreigner, where the subject of controversy was wholly relative to the lex loci, would not, if unredressed, be an aggression upon his sovereign, as well as one which violated the stipulations of a treaty or the general law of nations. And a still greater objection to the distinction would result from the immense difficulty, if not impossibility, of a practical discrimination between the cases of one complexion and those of the other. So great a proportion of the cases in which foreigners are parties, involve national questions, that it is by far most safe and most expedient to refer all those in which they are concerned to the national tribunals.

The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has been just examined. History gives us a horrid picture of the dissensions and private wars which distracted and desolated Germany prior to the institution of the Imperial Chamber by Maximilian, towards the close of the fifteenth century; and informs us, at the same time, of the vast influence of that institution in appeasing the disorders and establishing the tranquillity of the empire. This was a court invested with authority to decide finally all differences among the members of the Germanic body.

A method of terminating territorial disputes between the States, under the authority of the federal head, was not unattended to, even in the imperfect system by which they have been hitherto held together. But there are many other sources, besides interfering claims of boundary, from which bickerings and animosities may spring up among the members of the Union. To some of these we have been witnesses in the course of our past experience. It will readily be conjectured that I allude to the fraudulent laws which have been passed in too many of the States. And though the proposed Constitution establishes particular guards against the repetition of those instances which have heretofore made their appearance, yet it is warrantable to apprehend that the spirit which produced them will assume new shapes, that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony between the States, are proper objects of federal superintendence and control.

It may be esteemed the basis of the Union, that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." And if it be a just principle that every government OUGHT TO POSSESS THE MEANS OF EXECUTING ITS OWN PROVISIONS BY ITS OWN AUTHORITY, it will

follow, that in order to the inviolable maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded.

The fifth point will demand little animadversion. The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizances of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace. The most important part of them are, by the present Confederation, submitted to federal jurisdiction.

The reasonableness of the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial, speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. And it ought to have the same operation in regard to some cases between citizens of the same State. Claims to land under grants of different States, founded upon adverse pretensions of boundary, are of this description. The courts of neither of the granting States could be expected to be unbiased. The laws may have even prejudged the question, and tied the courts down to decisions in favor of the grants of the State to which they belonged. And even where this had not been done, it would be natural that the judges, as men, should feel a strong predilection to the claims of their own government.

Having thus laid down and discussed the principles which ought to regulate the constitution of the federal judiciary, we will proceed to test, by these principles, the particular powers of which, according to the plan of the convention, it is to be composed. It is to comprehend "all cases in law and equity arising under the 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 and grants of different States; and between a State or the citizens thereof and foreign states, citizens, and subjects." This constitutes the entire mass of the judicial authority of the Union. Let us now review it in detail. It is, then, to extend:

First. To all cases in law and equity, ARISING UNDER THE CONSTITUTION and THE LAWS OF THE UNITED STATES. This corresponds with the two first classes of causes, which have been enumerated, as proper for the jurisdiction of the United States. It has been asked, what is meant by "cases arising under the Constitution," in contradiction from those "arising under the laws of the United States"? The difference has been already explained. All the restrictions upon the authority of the State legislatures furnish examples of it. They are not, for instance, to emit paper money; but the interdiction results from the Constitution, and will have no connection with

any law of the United States. Should paper money, notwithstanding, be emited, the controversies concerning it would be cases arising under the Constitution and not the laws of the United States, in the ordinary signification of the terms. This may serve as a sample of the whole.

It has also been asked, what need of the word "equity What equitable causes can grow out of the Constitution and laws of the United States? There is hardly a subject of litigation between individuals, which may not involve those ingredients of FRAUD, ACCIDENT, TRUST, or HARDSHIP, which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the States. It is the peculiar province, for instance, of a court of equity to relieve against what are called hard bargains: these are contracts in which, though there may have been no direct fraud or deceit, sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties, which a court of equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction. Agreements to convey lands claimed under the grants of different States, may afford another example of the necessity of an equitable jurisdiction in the federal courts. This reasoning may not be so palpable in those States where the formal and technical distinction between LAW and EQUITY is not maintained, as in this State, where it is exemplified by every day's practice.

The judiciary authority of the Union is to extend:

Second. To treaties made, or which shall be made, under the authority of the United States, and to all cases affecting ambassadors, other public ministers, and consuls. These belong to the fourth class of the enumerated cases, as they have an evident connection with the preservation of the national peace.

Third. To cases of admiralty and maritime jurisdiction. These form, altogether, the fifth of the enumerated classes of causes proper for the cognizance of the national courts.

Fourth. To controversies to which the United States shall be a party. These constitute the third of those classes.

Fifth. To controversies between two or more States; between a State and citizens of another State; between citizens of different States. These belong to the fourth of those classes, and partake, in some measure, of the nature of the last.

Sixth. To cases between the citizens of the same State, CLAIMING LANDS UNDER GRANTS OF DIFFERENT STATES. These fall within the last class, and ARE THE ONLY INSTANCES IN WHICH THE PROPOSED CONSTITUTION DIRECTLY CONTEMPLATES THE COGNIZANCE OF DISPUTES BETWEEN THE CITIZENS OF THE SAME STATE.

Seventh. To cases between a State and the citizens thereof, and foreign States, citizens, or subjects. These have been already explained to belong to the fourth of the enumerated classes, and have been shown to be, in a peculiar manner, the proper subjects of the national judicature.

From this review of the particular powers of the federal judiciary, as marked out in the Constitution, it appears that they are all conformable to the principles which ought to have governed the structure of that department, and which were necessary to the perfection of the system. If some partial inconveniences should appear to be connected with the incorporation of any of them into the plan, it ought to be recollected that the national legislature will have ample authority to make such EXCEPTIONS, and to prescribe such regulations as will be calculated to obviate or remove these inconveniences. The possibility of particular mischiefs can never be viewed, by a well informed mind, as a solid objection to a general principle, which is calculated to avoid general mischiefs and to obtain general advantages.

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KANSAS STATE CONSTITUTION

Source: http://www.kslib.info/government-information/kansas-information/kansas-constitution/article-three-judicial.html

Article Three: Judicial

1: Judicial power; seals; rules. The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state.

2: Supreme court. The supreme court shall consist of not less than seven justices who shall be selected as provided by this article. All cases shall be heard with not fewer than four justices sitting and the concurrence of a majority of the justices sitting and of not fewer than four justices shall be necessary for a decision. The term of office of the justices shall be six years except as hereinafter provided. The justice who is senior in continuous term of service shall be chief justice, and in case two or more have continuously served during the same period the senior in age of these shall be chief justice. A justice may decline or resign from the office of chief justice without resigning from the court. Upon such declination or resignation, the justice who is next senior in continuous term of service shall become chief justice. During incapacity of a chief justice, the duties, powers and emoluments of the office shall devolve upon the justice who is next senior in continuous service.

3: Jurisdiction and terms. The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of government and such other terms at such places as may be provided by law, and its jurisdiction shall be co-extensive with the state.

4: Reporter; clerk. There shall be appointed, by the justices of the supreme court, a reporter and clerk of said court, who shall hold their offices two years, and whose duties shall be prescribed by law.

5: Selection of justices of the supreme court.

(a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.

(b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him, the chief justice of the supreme court shall make the appointment from such nominees.

(c) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall _____
(Here insert name of justice.)

_____
(Here insert the title of the court.)

be retained in office?"

If a majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term he shall, unless by law he is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the "supreme court nominating commission." Said commission shall be organized as hereinafter provided.

(e) The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.

(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for

nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.

6: District courts.

(a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by such nonpartisan method of selection.

(b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.

(c) The legislature shall provide for clerks of the district courts.

(d) Provision may be made by law for judges pro tem of the district court.

(e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.

(f) The supreme court may assign a district judge to serve temporarily on the supreme court.

7: Qualifications of justices and judges. Justices of the supreme court and judges of the district courts shall be at least thirty years of age and shall be duly authorized by the supreme court of Kansas to practice law in the courts of this state and shall possess such other qualifications as may be prescribed by law.

8: Prohibition of political activity by justices and certain judges. No justice of the supreme court who is appointed or retained under the procedure of section 5 of this article, nor any judge of the district court holding office under a nonpartisan method authorized in subsection (a) of section 6 of this article, shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.

12: Extension of terms until successor qualified. All judicial officers shall hold their offices until their successors shall have qualified.

13: Compensation of justices and judges; certain limitation. The justices of the supreme court and judges of the district courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Such justices or judges shall receive no fees or perquisites nor hold any other office of profit or trust under the authority of the state, or the United States except as may be provided by law, or practice law during their continuance in office.

15: Removal of justices and judges. Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution. In addition to removal by impeachment and conviction, justices may be retired after appropriate hearing, upon certification to the governor, by the supreme court nominating commission that such justice is so incapacitated as to be unable to perform adequately his duties. Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.

16: Savings clause. Nothing contained in this amendment to the constitution shall: (a) Shorten the term of office or abolish the office of any justice of the supreme court, any judge of the district court, or any other judge of any other court who is holding office at the time this amendment becomes effective, or who is holding office at the time of adoption, rejection, or resubmission of a nonpartisan method of selection of district judges as provided in subsection (a) of section 6 hereof, and all such justices and judges shall hold their respective offices for the terms for which elected or appointed unless sooner removed in the manner provided by law; (b) repeal any statute of this state relating to the supreme court, the supreme court nominating commission, district courts, or any other court, or relating to the justices or judges of such courts, and such statutes shall remain in force and effect until amended or repealed by the legislature.

KANSAS STATE CONSTITUTION

Source: http://www.kslib.info/government-information/kansas-information/kansas-constitution/article-fourteen-constitutional-amendment-and-revision.html

Article Fourteen: Constitutional Amendment and Revision

1: Proposals by legislature; approval by electors. Propositions for the amendment of this constitution may be made by concurrent resolution originating in either house of the legislature, and if two-thirds of all the members elected (or appointed) and qualified of each house shall approve such resolution, the secretary of state shall cause such resolution to be published in the manner provided by law. At the next election for representatives or a special election called by concurrent resolution of the legislature for the purpose of submitting constitutional propositions, such proposition to amend the constitution shall be submitted, both by title and by the amendment as a whole, to the electors for their approval or rejection. The title by which a proposition is submitted shall be specified in the concurrent resolution making the proposition and shall be a brief nontechnical statement expressing the intent or purpose of the proposition and the effect of a vote for and a vote against the proposition. If a majority of the electors voting on any such amendment shall vote for the amendment, the same shall become a part of the constitution. When more than one amendment shall be submitted at the same election, such amendments shall be so submitted as to enable the electors to vote on each amendment separately. One amendment of the constitution may revise any entire article, except the article on general provisions, and in revising any article, the article may be renumbered and all or parts of other articles may be amended, or amended and transferred to the article being revised. Not more than five amendments shall be submitted at the same election.

2: Constitutional conventions; approval by electors. The legislature, by the affirmative vote of two-thirds of all the members elected to each house, may submit the question "Shall there be a convention to amend or revise the constitution of the state of Kansas?" or the question "Shall there be a convention limited to revision of article(s) _____ of the constitution of the state of Kansas?", to the electors at the next election for representatives, and the concurrent resolution providing for such question shall specify in such blank appropriate words and figures to identify the article or articles to be considered by the convention. If a majority of all electors voting on the question shall vote in the affirmative, delegates to such convention shall be elected at the next election for representatives thereafter, unless the legislature shall have provided by law for the election of such delegates at a special election. The electors of each representative district as organized at the time of such election of delegates shall elect as many delegates to the convention as there are representatives from such district. Such delegates shall have the same qualifications as provided by the constitution for members of the legislature and members of the legislature and candidates for membership in the legislature shall be eligible for election as delegates to the convention. The delegates so elected shall convene at the state capital on the first Tuesday in May next following such election or at an earlier date if provided by law.

The convention shall have power to choose its own officers, appoint and remove its employees and fix their compensation, determine its rules, judge the qualifications of its members, and carry on the business of the convention in an orderly manner. Each delegate shall receive such compensation as provided by law. A vacancy in the office of any delegate shall be filled as provided by law.

The convention shall have power to amend or revise all or that part of the constitution indicated by the question voted upon to call the convention, subject to ratification by the electors. No proposed constitution, or amendment or revision of an existing constitution, shall be submitted by the convention to the electors unless it has been available to the delegates in final form at least three days on which the convention is in session, prior to final passage, and receives the assent of a majority of all the delegates. The yeas and nays upon final passage of any proposal, and upon any question upon request of one-tenth of the delegates present, shall be entered in the journal of the convention.

Proposals of the convention shall be submitted to the electors at the first general or special statewide election occurring not less than two months after final action thereon by the convention, and shall take effect in accordance with the provisions thereof in such form and with such notice as is directed by the convention upon receiving the approval of a majority of the qualified electors voting thereon.

TO LEARN MORE . . .

Numerous Internet sites provide a wealth of helpful and interesting information on the Constitution; the U.S. Supreme Court; the Court's cases, decisions, docket, composition and history; and America's republican democratic form of government. Some useful resources include the following:

iCivics, Inc.
http://www.icivics.org

Public Broadcasting System: "Constitution USA with Peter Sagal"
http://www.pbs.org/tpt/constitution-usa-peter-sagal/home

UMKC Law School: "Exploring Constitutional Law" by Doug Linder
http://law2.umkc.edu/faculty/projects/ftrials/conlaw/home.html

Public Broadcasting System: "The Supreme Court"
http://www.pbs.org/wnet/supremecourt/index.html

Annenberg Foundation: "The Constitution: That Delicate Balance"
http://www.learner.org/resources/series72.html

Annenberg Foundation: "Democracy in America"
http://www.learner.org/resources/series173.html#jump1

Supreme Court of the United States: Official Website
http://www.supremecourt.gov

The Supreme Court Historical Society: Official Website
http://www.supremecourthistory.org

The Oyez Project at IIT Chicago-Kent College of Law
http://www.oyez.org

Supreme Court of the United States Blog (SCOTUSBlog) (sponsored by Bloomberg Law)
http://www.scotusblog.com

First Amendment Center at Vanderbilt University and the Newseum: Official Website
http://www.firstamendmentcenter.org

National Constitution Center: Official Website
http://constitutioncenter.org

American Bar Association: "Preview of United States Supreme Court Cases" home page
http://www.supremecourtpreview.org