Reforming Article III: Rethinking Judicial Supremacy in the Modern Age

By

Sanjana Diddige

Introduction

Throughout history, foundational legal frameworks have shaped governance and democracy worldwide. The Magna Carta placed limits on royal authority, while the Napoleonic Code clarified individual rights, influencing legal systems across Europe and Latin America.[1][2] Yet, no judicial body has rivaled the influence of the United States Supreme Court. As French political observer Alexis De Tocueville noted in 1835, no nation ever organized a judiciary as independent and powerful as the United States, calling it "a more imposing judicial power" than any previously constituted by people.[3] The Founding Fathers created the American judiciary system to define American governance, anchoring it in the rule of law and separation of powers. However, it is unclear if they could have foreseen that their creation would one day inspire judicial systems across the world, influencing constitutional courts in countries like India, South Africa, Japan, West Germany, and Italy.[4][5][6] From landmark rulings that expanded civil rights to controversial decisions that reshaped national policy, the Supreme Court has served as a cornerstone of American democracy—what Chief Justice Charles Evans Hughes once called "distinctly American in concept and function."[7]

In recent years, the judiciary's role in constitutional interpretation has sparked debate, with critics arguing that judicial power has expanded beyond what the Founding Fathers

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[1] "Magna Carta" (LII / Legal Information Institute), accessed March 20, 2025, https://www.law.cornell.edu/wex/magna_carta.
[2] Ronald Scalise, "Napoleonic Code," 64parishes.org (64 Parishes, April 11, 2022), https://64parishes.org/entry/napoleonic-code.
[3] "The Court and Constitutional Interpretation," Supremecourt.gov (SUPREME COURT OF THE UNITED STATES), accessed March 21, 2025, https://www.supremecourt.gov/about/constitutional.aspx.
[4] K.G Balakrishnan, "The Role of Foreign Precedents in a Country's Legal System," *National Law School of India Review* 22, no. 1 (2010): 1–16, https://doi.org/10.2307/44283711.
[5] Jeremy Sarkir, "The Effect of Constitutional Borrowings on the Drafting of South Africa's Bill of Rights and Interpretation of Human Rights Provisions," *Journal of Constitutional Law Online* (Penn Carey Law, University of Pennsylvania, 1998), https://scholarship.law.upenn.edu/jcl/vol1/iss2/2.
[6] Donald P Kommers, "Judicial Review: Its Influence Abroad," *The Annals of the American Academy of Political and Social Science* 428 (1976): 52–64, https://doi.org/10.2307/1041873.
[7] "The Court and Constitutional Interpretation," *SupremeCourt.gov*.

originally envisioned.[8] Yet, by its very design, the framers wrote Article III in just 377 words to establish the judicial branch, granting the courts flexibility to adapt to the evolving complexities of governance.[9][10] As the authors of *Keeping Faith with the Constitution* explain, the Framers deliberately used broad language to allow its principles to be applied to changing circumstances over time.[11] Nowhere does the Constitution explicitly declare the Court as the final interpreter of its meaning, nor does it affirm its most powerful function—judicial review, the authority to declare laws unconstitutional. That power was asserted by the Court itself in Marbury v. Madison (1803), a decision that fundamentally reshaped the balance of power among the branches of government.[12] The scope of judicial review continues to raise debate about judicial supremacy and separation of powers, as both the legislative and the executive branches have, at times, challenged or sought to limit the Court's authority. This essay argues that Article III should be reformed to clarify the constitutional basis of judicial review, reinforce democratic accountability, and limit the unchecked expansion of judicial supremacy.

The Evolution of Judicial Power

The judiciary's role in constitutional interpretation has been debated since the nation's founding. The Founders, deeply influenced by Montesquieu's *The Spirit of the Laws,*[13]

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[8]Edwin L. Meese III, "How Congress Can Rein in the Courts," Hoover.org (Hoover Institution, October 30, 1997), https://www.hoover.org/research/how-congress-can-rein-courts..

[9] "Six Big Ideas in the Constitution Activity 1, Handout 1 Answer Key: Outlining the Text" (National Archives and Records Administration), accessed March 6, 2025, https://www.archives.gov/files/legislative/resources/education/constitution/images/answer-key.pdf.

[10] "U.S. Constitution - Article III," *Congress.gov* (Library of Congress), accessed January 26, 2025, https://constitution.congress.gov/browse/article-3/.

[11] Goodwin Liu, Pamela S Karlan, and Christopher H Schroeder, *Keeping Faith with the Constitution* (Washington, D.C: American Constitution Society for Law and Policy, 2009), https://www.acslaw.org/book/keeping-faith-with-the-constitution/.

[12] "Marbury v. Madison, 5 U.S. 137 (1803)," *Justia Law* (Justia U.S. Supreme Court, 1803), https://supreme.justia.com/cases/federal/us/5/137/.

[13] Paul Merrill Sprulin, "The French Enlightenment in America: Essays on the Times of the Founding Fathers," *UGA Press* (University of Georgia Press, 1984), https://ugapress.manifoldapp.org/read/the-french-enlightenment-in-america-essays-on-the-times-of-the-founding-fathers/section/b7f67cce-58f4-420b-ae74-e95f927a39ad.

recognized a fundamental truth: "There is no liberty" if the judiciary is not independent.[14] Under the Articles of Confederation, there was no national judiciary, leaving the federal government unable to resolve disputes between states or enforce federal laws consistently—a flaw James Madison identified in his 1787 essay Vices of the Political System of the United States.[15] Article III was the Founders' solution—establishing a judiciary empowered to interpret and uphold the Constitution, free from political influence. To implement this vision, Congress passed the Judiciary Act of 1789, which laid the foundation for the federal court system.[16] However, it was not until *Marbury v. Madison* (1803) that Chief Justice John Marshall cemented the doctrine of judicial review—the power of the Court to interpret the Constitution and strike down laws that conflict with it— declaring, "it is emphatically the province and duty of the judicial department to say what law is."[17] With those words, the Court assumed the power of judicial review, making it the interpreter of the Constitution. As articulated in *Keeping Faith with the Constitution,* by introducing the idea of "constitution fidelity"—interpreting the Constitution in a manner that remains true to its core values while adapting to contemporary societal needs—the Founders entrusted the judiciary with the critical responsibility of interpreting the nation's highest law.[18]

Although *Marbury* formally established judicial review, its foundations were deeply influenced by the principles laid out in Federalist No. 78.[19] Alexander Hamilton, judicial review's strongest advocate, articulated the theoretical framework for an independent judiciary in

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[14] Montesquieu, "The Spirit of the Laws (1748)," *constitutioncenter.org* (National Constitution Center, 1748), https://constitutioncenter.org/the-constitution/historic-document-library/detail/montesquieuthe-spirit-of-the-laws-1748.
[15] "Vices of the Political System of the United States, April 1787," Archives.gov (National Archives and Records Administration), accessed March 25, 2025, https://founders.archives.gov/documents/Madison/01-09-02-0187.
[16] "Federal Judiciary Act (1789)," Archives.gov (National Archives and Records Administration, 1789), https://www.archives.gov/milestone-documents/federal-judiciary-act.
[17] "Judicial Review," LII / Legal Information Institute (Cornell Law School, June 10, 2019), https://www.law.cornell.edu/wex/judicial_review.
[18] Liu et al., *Keeping Faith with the Constitution*, 2.
[19] Melvin I. Urofsky, "JOURNAL of SUPREME COURT HISTORY," *Journal of Supreme Court History* 37, no. 3 (June 28, 2008): 337–38, https://doi.org/10.1111/j.1059-4329.2001.00015.x.

Federalist No. 78.[20] He outlined three key reasons why judicial review was essential to the preservation of constitutional governance. First, the judiciary was more than a referee—it was the guardian of rights, entrusted with the "interpretation of the laws."[21] Second, courts must strike down laws "contrary to the Constitution."[22] Third, the Court must be the final interpreter of the Constitution, not just an enforcer.[23] Hamilton's first Federalist idea that courts could protect individual rights, even against states, was tested in *Chisholm v. Georgia* (1793)—when a private citizen sued a state and won.[24] However, backlash over this perceived threat to state sovereignty led to the passage of the Eleventh Amendment restricting such lawsuits, showing judicial power is still evolving. In *Fletcher v. Peck* (1810), the Court struck down a state law for the first time as unconstitutional, voiding Georgia's repeal of the Yazoo Land Act, reinforcing Hamilton's belief that even state legislatures were bound by the Constitution.[25] Hamilton's principle of the Court as the final interpreter of the Constitution was reaffirmed in *Martin v. Hunter's Lessee* (1816), which upheld federal supremacy and prevented states from undermining constitutional authority.[26] Hamilton emphasized that, unlike the executive branch, which wielded the "sword," and Congress, which controlled the "purse," the judiciary had "neither FORCE nor WILL, but merely judgment," yet its word was final.[27] Through these foundational ideas and cases, the judiciary's role evolved—not through an explicit constitutional clause, but through key Court

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[20] Alexander Hamilton, "The Federalist No. 78, [28 May 1788]," Archives.gov (National Archives and Records Administration, May 28, 1788), https://founders.archives.gov/documents/Hamilton/01-04-02-0241.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] "Chisholm v. Georgia, 2 U.S. 419 (1793)," *Justia Law* (Justia U.S. Supreme Court, 1793), https://supreme.justia.com/cases/federal/us/2/419/.
[25] "Fletcher v. Peck, 10 U.S. 87 (1810)," Justia Law (Justia U.S. Supreme Court, 1810), https://supreme.justia.com/cases/federal/us/10/87/.
[26] "Martin v. Hunter's Lessee, 14 U.S. 304 (1816)," Justia Law (Justia U.S. Supreme Court, 1816), https://supreme.justia.com/cases/federal/us/14/304/.
[27] Hamilton, "The Federalist No. 78."

decisions that redefined it from a constitutional interpreter to the active guardian of the nation's fundamental principles.

The doctrine of judicial supremacy takes judicial review a step further. It is the idea that the Supreme Court's interpretation of the Constitution is final and binding on all branches of government and the states. This doctrine was not written into the Constitution but emerged from precedent as the Court expressed this power most forcefully in *Cooper v. Aaron* (1958).[28] It declared that "the federal judiciary is supreme in the exposition of the law of the Constitution," insisting that its decisions were "the supreme law of the land."[29] Defenders of judicial supremacy argue that a strong judiciary is essential to protect minority rights and serve as a counterbalance to governmental overreach.[30] While this function is important, unchecked judicial supremacy may transform interpreters of law into makers of policy, blurring the boundaries of the separation of powers.

Rethinking Article III's Role in Constitutional Interpretation

The genius of the Constitution lies not just in the clarity of its provisions but also in the questions it leaves open to interpretation. The framers intentionally left certain aspects of the Constitution ambiguous to allow for flexibility and future adaptations. As journalist Eric Black explains in his analysis of James Madison's evolving constitutional thinking, "the multiple ambiguities embedded in the constitution made it an inherently 'living' document," designed not to provide final answers on issues such as the scope of executive or judicial power but to create a political arena for ongoing deliberation.[31] This intentional openness enables the Constitution to

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[28] Erwin Chemerinsky, "In Defense of Judicial Supremacy," *William & Mary Law Review* 58, no. 5 (2017): 1476, https://scholarship.law.wm.edu/wmlr/vol58/iss5/3/.
[29] "Cooper v. Aaron, 358 U.S. 1,18 (1958)," Justia Law (Justia U.S. Supreme Court, 1958), https://supreme.justia.com/cases/federal/us/358/1/.
[30] Chemerinsky, "In Defense of Judicial Supremacy," 1463–64.
[31] Eric Black, "James Madison's Rethink: The Constitution's Multiple Ambiguities Would Allow It to Evolve," *Minnpost.com* (MinnPost, September 20, 2016),

remain relevant across centuries, while also inviting questions about how far judicial power should extend in defining a nation's legal and political landscape.

In the case of Article III, this ambiguity has raised a few concerns about the extent of judicial authority. First, judicial review—arguably the Court's most consequential function—was never explicitly granted. Second, the omission has contributed to the expansion of judicial power to judicial supremacy. Third, the lack of textual clarity undermines the possibility of shared constitutional interpretation among the branches, allowing judicial reasoning to open discussion. Ongoing disputes—such as President Trump's refusal to comply with court orders—highlight the "unprecedented degree of resistance" to unfavorable court rulings, testing the boundaries of judicial authority and the challenges created by constitutional ambiguity.[32] Clarifying Article III is essential—not to diminish the judiciary, but to reinforce the legitimacy of its role and to uphold democratic accountability.

In today's deeply divided political environment, debates around issues like abortion rights, voting access, and gun laws lead people across the political spectrum to question the Court's authority. Without clear constitutional grounding, critics like Thomas Jefferson and modern scholars like Christopher Jon Sprigman have questioned the legitimacy of the Court's final authority, asking, in essence: who gave the Court the final say on what the Constitution means?[3334] Since judicial review has evolved through tradition rather than explicit constitutional mandate, Congress, through Article III's "Exceptions Clause," has the authority to limit the

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https://www.minnpost.com/eric-black-ink/2016/09/james-madisons-rethink-constitutions-multiple-ambiguities-would-allow-it-evol/.

[32] Sam Levine, "Trump's Defiance of Court Orders Is 'Testing the Fences' of the Rule of Law," The Guardian (The Guardian, March 23, 2025), https://www.theguardian.com/us-news/2025/mar/23/judges-trump-court-rulings.

[33] "Thomas Jefferson to William Charles Jarvis, 28 September 1820," Founders Online (National Archives and Records Administration), accessed February 22, 2025, https://founders.archives.gov/documents/Jefferson/03-16-02-0234.

[34] Christopher Jon Sprigman, "Congress's Article III Power and the Process of Constitutional Change," *New York University Law Review* 95, no. 6 (December 2020): 1780-81, https://www.nyulawreview.org/wp-content/uploads/2020/12/NYULawReview-Volume-95-Issue-6-Sprigman.pdf.

appellate jurisdiction, as reflected in a 2024 CRS report.[35] Anchoring judicial review in the constitutional text would transform it from a centuries-old assumption into a durable, democratically endorsed principle.

Proposed Reforms to Article III

The ambiguity of Article III has facilitated the evolution of judicial review into judicial supremacy. Legal scholars such as Eric Segall and Christopher Sprigman argue that judicial supremacy rests on shaky constitutional footing, granting the Court a level of unchecked authority that the framers did not intend.[36] While James Madison envisioned a judiciary with interpretive authority, he also believed all three branches should share the responsibility "to resist encroachments of the others."[37] Similarly, Thomas Jefferson warned against "despotic" judges wielding unchecked power.[38] To preserve the balance Framers envisioned and to address the concerns raised by generations of leaders, a prudent step forward may involve refining the scope of judicial authority. While Congress holds authority under the Exceptions Clause in Article III to regulate the Supreme Court's appellate jurisdiction, past attempts to prevent the federal courts from ruling on controversial issues, such as school prayer or abortion, have either failed or lacked long-term success.[3940] A carefully balanced use of this clause, combined with a constitutional amendment allowing Congress to override select Court decisions by supermajority,

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[35] "The Exceptions Clause and Congressional Control over Supreme Court Jurisdiction," Everycrsreport.com (Congressional Research Service, October 30, 2024), https://www.everycrsreport.com/reports/R48250.html.
[36] Eric J Segall and Christopher Jon Sprigman, "Reducing the Power of the Supreme Court: Neither Liberal nor Conservative but Necessary (and Possible)," N.Y.U. Journal of Legislation & Public Policy, September 31, 2020, https://nyujlpp.org/quorum/segall-sprigman-reducing-power-supreme-court/.
[37] "Founders Online: The Federalist No. 51, [6 February 1788]," Archives.gov (National Archives and Records Administration, February 6, 1788), https://founders.archives.gov/documents/Hamilton/01-04-02-0199.
[38] Jefferson, "To William Charles Jarvis," September 28, 1820.
[39] Thomas R, "Congress and the Supreme Court : Court Jurisdiction and School Prayer," Heritage.org (The Heritage Foundation, June 25, 1980), https://www.heritage.org/report/congress-and-the-supreme-court-court-jurisdiction-and-school-prayer.
[40] Max Baucus and Kenneth R Kay, "The Court Stripping Bills: Their Impact on the Constitution, the Courts, and Congress," *Villanova Law Review* 27, no. 5 (1982), https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2375&context=vlr.

would reinforce the democratic principle of shared constitutional interpretation by the Framers. It would ensure accountability within a system of checks and balances among the branches of government.

The endurance of the U.S. Constitution is not merely a testament to its Framers' foresight but to its adaptability through time. The doctrine of separation of powers, designed to prevent tyranny, ensures that no single branch dominates governance. Yet, as history demonstrates, even the most carefully constructed system requires refinement. Just as the Bill of Rights was introduced in 1791 to guarantee fundamental liberties,[41] later amendments corrected structural flaws, such as the 22nd Amendment, which imposed presidential term limits to curb executive overreach.[42] If the Constitution's strength lies in its ability to evolve, then judicial power, too, must be reconsidered. The Constitution, after all, was never meant to be static—it was meant to be corrected for the sake of the republic it serves. But what are Americans demanding today?

According to a 2024 Gallup poll, only 35% of Americans express confidence in the U.S. judicial system and courts—a sharp decline from 59% in 2020.[43] The survey reveals a 24 percentage point drop over four years, one of the most rapid declines in the judiciary worldwide. This erosion of trust spans across political affiliations and highlights a growing public skepticism toward the judiciary, reflecting concerns about the impartiality and effectiveness of legal institutions. While these statistics do not necessarily prove judicial misconduct, they expose a deepening crisis of public trust in an institution once considered above partisan sway. If Hamilton called the courts the "least dangerous branch," then today's reality suggests a troubling

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[41] "Bill of Rights of the United States of America (1791)" (Bill of Rights Institute), accessed March 19, 2025, https://billofrightsinstitute.org/e-lessons/bill-of-rights-of-the-united-states-of-america-1791.
[42] Mila Versteeg et al., "THE LAW and POLITICS of PRESIDENTIAL TERM LIMIT EVASION," *Columbia Law Review* 120, no. 1 (2020): 173–248, https://doi.org/10.2307/26868346.
[43] Benedict Vigers and Lydia Saad, "Americans Pass Judgment on Their Courts," Gallup.com (Gallup, December 17, 2024), https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx.

shift—one the Constitution must grapple with.[44] While Americans are not necessarily seeking a fundamental shift in the balance of power among the branches, the judiciary's declining trust signals an urgent need for structural reform—not as an option, but as a necessity to restore its legitimacy.

Numerous proposals have emerged on how to refine the judiciary's role in constitutional interpretation. Deeply concerned that judicial power could transform the Constitution into a "mere thing of wax in the hands of judiciary," Thomas Jefferson once considered proposing a constitutional amendment that would grant Congress co-equal authority in constitutional interpretation.[4546] Although the amendment never gained traction, Jefferson's warnings continue to resonate today, particularly his critique that the United States had "erred… by copying England" in granting lifetime appointments.[47] Echoing these long-standing concerns, President Biden in 2021 established the Presidential Commission on the Supreme Court to evaluate potential court-reform options. Based on input from legal experts, the commission explored a range of ideas—from 18-year term limits for justices and increased financial transparency, to a binding code of ethics and modest court expansion.[48] While these efforts led to proposals of a constitutional amendment, they faced significant legislative hurdles as many experts questioned

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[44] Hamilton, "The Federalist No. 78."
[45] "Article 1, Section 8, Clause 18: Thomas Jefferson to Spencer Roane," The Founders' Constitution (The University of Chicago Press, September 6, 1819), https://press-pubs.uchicago.edu/founders/documents/a1_8_18s16.html.
[46] Wayne T. De Cesar and Susan Page, "Jefferson Buys Louisiana Territory, and the Nation Moves Westward," Prologue Magazine, vol. 35, no. 1, Spring 2003 (National Archives and Records Administration, 2003), https://www.archives.gov/publications/prologue/2003/spring/louisiana-purchase.html.
[47] "Thomas Jefferson to William T. Barry, 2 July 1822," Archives.gov (National Archives and Records Administration, July 2, 1822), https://founders.archives.gov/documents/Jefferson/03-18-02-0449.
[48] Caroline Sullivan, "To Reform or Not to Reform: Biden's Supreme Court Commission Weighs In," Democracydocket.com (Democracy Docket, May 16, 2022), https://www.democracydocket.com/analysis/to-reform-or-not-to-reform-bidens-supreme-court-commission-weighs-in/.

the commission's effectiveness in producing tangible results.[4950] Given the expanding influence of the judiciary and growing concerns about its unchecked power, several bills have emerged in Congress aimed at restoring institutional balance and public trust.[51] While these reforms face political challenges, they represent a growing consensus that the judiciary must evolve—not to diminish the significance, but to strengthen public trust and preserve its role as a fair, impartial guardian of justice.

Conclusion

This essay barely scratches the surface of the constitutional questions surrounding the role of the judiciary in modern America. Judicial supremacy, though historically justified by precedent, now presents serious concerns about balance, accountability, and the democratic process. Although Article III grants the courts considerable authority, the Founding Fathers never intended for the judiciary to be immune from oversight. Hamilton saw the judiciary as a shield, while Jefferson feared it as a double-edged sword—nearly 240 years later, both were right. The Court's expanding influence has sparked a national debate over its structure, ethical standards, and role in constitutional interpretation. Yet, despite the urgency, real reform remains elusive. The Founding Fathers laid the foundation following the 1787 debates, but now, Congress must summon the political courage to implement reforms that preserve judicial independence without compromising democratic principles.

The power to recalibrate this balance rests not only with lawmakers but with the 341 million people who elect them and are fortunate enough to live under a system where the

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[49] Melissa Quinn, "Biden Is Backing Major Supreme Court Reforms. Here's What They Would Do.," Cbsnews.com (CBS News, July 29, 2024), https://www.cbsnews.com/news/biden-supreme-court-reform/.
[50] Rachel Reed, "Biden's Proposed Court Reforms May Be 'Too Little and Too Late,' Says Doerfler - Harvard Law School," Harvard Law Today (Harvard Law School, August 1, 2024), https://hls.harvard.edu/today/bidens-proposed-court-reforms-may-be-too-little-and-too-late-says-doerfler/.
[51] "Legislative Search Results," Congress.gov, 2025, https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22subject%22%3A%22Law%22%7D.

Constitution safeguards justice. The Constitution is refined through amendments, not by itself. Yet, no major structural amendment has been passed since 1992.[52] This reflects a reluctance among those entrusted with shaping it to pursue the necessary reforms in addressing the judiciary's evolving role. While many proposals are in discussion, the path to reform remains slow and uncertain. Far more concerning are the risks of overlooking the Court's real challenges: waning public trust, increasing political polarization, and an imbalance that could strain the very system of checks and balances the Framers envisioned. In a government of the people, by the people, and for the people, the Constitution must continue to serve all with clarity, accountability, and purpose. Reforming Article III is not just a constitutional change—it is a responsibility of every generation, one that calls on every American to demand a judiciary that remains fair, accountable, and true to the principles it was built to uphold.

[52] "The 27th Amendment of the U.S. Constitution," National Constitution Center (National Constitution Center, 2022), https://constitutioncenter.org/the-constitution/amendments/amendment-xxvii.

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