

## ARTICLE III

### *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.

★ With this section the framers established the judicial branch, but as a start summoned up just one part, the Supreme Court, leaving it to Congress to decide whether there should be lower federal courts, and if so how many. This reflects a division at the Constitutional Convention. While the delegates largely agreed that the new nation needed a Supreme Court, especially to decide cases arising from disagreements between states, many felt that existing state courts were sufficient to enforce national laws. Congress would settle the matter in 1789, when it passed the first Judiciary Act, establishing a lower federal court system.

To help guarantee an independent judiciary, the framers also made it difficult to remove judges arbitrarily by declaring that they should hold office "during good behavior." (This was a standard established for the British judiciary in 1701. Before that, English judges served at the discretion of the Crown, a discretion frequently exercised.) To prevent judges from being penalized financially for their rulings, the framers also specified that their salaries cannot be reduced while they are on the court.

**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.

★ By limiting the judicial power to “cases” and “controversies,” the framers took a step to ensure that the Supreme Court should hear disputes only between real parties and not be enlisted by the president or Congress to serve as an advisor on legal questions that had not yet come before it.

By giving federal judges jurisdiction over all cases “in law and equity,” the framers were providing them with powers that in England were divided between two systems—law courts and equity courts. Law courts, which relied upon the common law, tended to offer limited remedies, like financial compensation for an injury. But a person suing in equity court could seek a wider range of actions by the court, including injunctions intended to prohibit certain behavior before it occurred. The power to issue injunctions and pursue other broad remedies would be especially important in the Civil Rights era of the 1950s through the '70s, when courts were authorized to redraw school district lines or to order school busing to accomplish school integration.

Notably, the framers were silent on the question of whether the Supreme Court could exercise judicial

review—the power to declare federal or state laws or actions by the other branches of the federal government unconstitutional. That power has its sources chiefly in the Supreme Court's 1803 ruling in *Marbury v. Madison*, in which Chief Justice John Marshall famously wrote that it is "emphatically the province and duty of the judicial department to say what the law is."

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.

★ Treason is the only crime that the Constitution defines at length. It does that as a means to prevent future governments from redefining it too broadly, for instance to charge political offenders as traitors.

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.

- ★ "No attainder of treason shall work corruption of blood." To modern ears this is the most archaic-sounding of any provision in the Constitution. But it sets out an important principle of a just society: That the penalties for treason, as determined by Congress, should only be applied to those convicted of that crime, not to their families.

## ARTICLE IV

### *Section 1*

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

- ★ As another means to unify the nation, this section requires every state to recognize as legitimate the laws and court judgments of all other states. But it also allows Congress to make laws determining the "effect" that a state law must have in other states. It was that language that opened the way for Congress in 1996 to pass the Defense of Marriage Act (DOMA), which allowed states that forbid marriage by same-sex couples to refuse to recognize such marriages performed in other states (in other words, to say they had "no effect").