



# DEMO CONSTITUTION MNEMONICS AND DEFINITIONS

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# INTRODUCTION

This Demo is intended to present a sample of the content presented in Constitution Mnemonics and Definitions. The full version consists of 402 pages and covers the entire text of the Constitution, including all 27 Amendments, along with the Supreme Court Decisions that control each Provision through 2004. Mnemonics for all major provisions are included at the end of the book.

The original Articles of the Constitution consist of Enumerated Powers delegated to the Federal Government, and Restrictions on both Federal and State Powers necessary to the new Federal Structure. The Amendments were added to clarify or further restrict Federal or State Powers, and to guarantee Fundamental Rights to the People. Thousands of hyperlinks are incorporated into the text to provide easy navigation to related Provisions so that a more complete understanding of the interrelationships is possible.

The [Mnemonics included](#) focus on the Constitutional Provisions that create or restrict Federal Power. Mnemonics are also provided for each of the first fifteen Amendments. The purpose of the mnemonic devices is to provide a quick check list of important issues to discuss if relevant when taking an exam. The Mnemonics are ordered to preserve the order of the actual text as much as possible.

The Definitions section contains the entire text of the **Constitution** including **all twenty-seven Amendments**, and the **Supreme Court interpretation** of the meaning and intent of each provision through the Fifteenth Amendment. The definitions should be used as a starting point for a full understanding of each concept. Further research of the fine points of each rule will be necessary.

**Citations** are included to provide the authority for each rule and to allow further research into the particular area of Constitutional Law. The Definitions and Rules are based on citations from **current and landmark Supreme Court Decisions**.

Also Included is the **Declaration of Independence**, the **Transmission Letter from the Constitutional Convention President**, George Washington, to the Congress of the Confederation recommending ratification of the Constitution, and the **Preamble to the Constitution**, which were each drafted to explain what the Framers of the Constitution intended to accomplish.

**Use of this book** in electronic form provides both a unique learning experience and a handy reference tool based on the hyperlink features employed. Letters in blue text are hyperlinks that will take the reader to the section of the book related to the word or phrase. Clicking on the Back Arrow in the navigation toolbar area returns the reader to the previous section. Please note that the functions and layout features will vary depending on the set up and capabilities of the specific reader program. To get an idea about how to use these features, use the mouse to left click on any words in [blue](#) text.

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Sincerely, Edward Torriel

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# Preamble to the Constitution

## Origin, Scope, and Purpose

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

The Preamble is evidence of the Origin, Scope, and Purpose of the Constitution. No source of power is delegated to the Federal Government by the Preamble. *Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905).

### **We The People of the United States**

A Constitution Ordained and Established by the People operates directly on the People; a Government so Constituted remains accountable to the People. State Consent to the delegation of Powers was implied by their authorization of the Constitutional Convention. "The constitution, when thus **adopted**, was of complete obligation, and bound the **State sovereignties**." *McCulloch v. Maryland* 4 Wheat. 316 1819.

### **In Order to form a More Perfect Union**

Competing Interests of the People, the States, and the General Government must be balanced: Secure the Liberties of the People, Maintain State Independence Necessary to represent the Local Customs and Manners of the People of each State, and Constitute a General Government with Powers in proportion to the legitimate Objects of National Interest.

### **Establish Justice**

A **Federal Supreme Tribunal** is Necessary to provide National Uniformity in the Enforcement, Interpretation, and Application of the **Constitution, Treaties, and Federal Laws**, and to protect the general Interests of the Union as a Whole. Each State cannot be permitted to apply its own interpretation of **Federal Law**, or establish a system of Justice that **discriminates** against the **Citizens of other States and Foreign Nations**.

### **Insure Domestic Tranquility**

Domestic Tranquility must exist in every State and Nationally. Local Unrest affects General Welfare. The Federal Government must have Power to respond to **Public Exigencies**, and to Compel Obedience to the **Laws of the Land**.

### **Provide for the Common Defense**

The best guarantee of **peace with Foreign Nations** is achieved by raising and maintaining a powerful **Army and Navy** through **combined resources** and **centralized control**.

### **Promote the General Welfare**

The Central Government must have sufficient Power to promote National Interests whenever a Uniform Policy is Necessary to improve the condition of the Union: **Foreign Affairs, International and Interstate Commerce, Naturalization, Bankruptcies, Monetary System, Post Offices, Science and Useful Arts, Interstate Travel**.

### **Secure the Blessings of Liberty to ourselves and our Posterity**

The Liberty of the People is secured by the guarantee of a **Republican Form of Government** accountable to the People, with **Separation of Powers** between the **Legislative, Executive, and Judicial** branches of Government.

# Article I LEGISLATIVE BRANCH

## §1: Delegation of Power

### Congress of the United States

*All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*

The Congress of the United States is Constituted by the [House of Representatives](#) and the [Senate](#) who together hold all the Legislative Power of the United States.

Both Houses of Congress must Act to exercise Legislative Power. The [House of Representatives](#) Represents the Interests of the Majority. The [Senate](#) Represents the Interests of each State Equally.

### Bicameralism

Under the [Bicameral System](#), each House acts as a check against the other to ensure due Deliberation of Legislative Acts. The Acts of one House of Congress do not become the [Law of the Land](#) without [Consent of the other House](#), and [Presentment to the President](#).

### Presentment to the President

1. **Presidential Approval:** A Bill becomes a Law on the Date the [President](#) signs it. A Signature is all that is Constitutionally required to show Presidential Approval. Courts may Fix an omitted effective Date or Time by referring to any source of Information capable of furnishing a satisfactory answer. *Gardner v. Collector*, 6 Wall. (73 U.S.) 499, 504 (1868).
2. **Presidential Approval by Inaction:** The [President](#) is required to return a Bill within 10 Days after Presentment. An unreturned Bill becomes Law without further Action, unless Congress has prevented its return by Adjournment without making a Legislative Officer of the originating House available to receive return of Bills. *Wright v. U.S.*, 302 U.S. 583 (1938).
3. **Presidential Veto and Override:** The [President](#) must return each Bill to the House that originated it within 10 days after Presentment. A Bill returned unsigned must be Enacted by Congressional Override. Congress may pass a returned Bill without Presidential Approval by Consent of 2/3 of a Quorum in Each House. *Missouri Pacific Ry. Co. v. Kansas*, 248 U.S. 276 (1919).

### Unilateral Powers of Each House

**House of Representatives:** Power to [Punish and Expel its Members](#); and:

- **Revenue Raising Power:** Taxation by Representation: [Revenue Raising Bills](#) must originate in the [House of Representatives](#).
- **Impeachment Power:** [Articles of Impeachment](#) must be Drawn by the [House of Representatives](#).

**Senate:** Power to [Punish and Expel its Members](#); and:

- **Treaty Power:** [Treaties](#) Negotiated by the [President](#) do not become the [Law of the Land](#) without the [Advice and Consent](#) of the [Senate](#).
- **Appointment of Officers:** The [President](#) has no Power to [Appoint Nominees](#) to Executive or Judicial Offices without the [Advice and Consent](#) of the [Senate](#) when in Session.
- **Trial of Impeachments:** [Articles of Impeachment](#) must [Tried by the Senate](#).

# §8: Enumerated Powers of Congress

## Cl. 18: Necessary and Proper Clause

[The Congress shall have Power] *To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.* [Rational Basis Standard]

When the End is Legitimate and within the Scope of any Constitutional Power, all Means which are Plainly Adapted to that End, are Constitutional so long as the Means Selected are not prohibited, and are consistent with the Letter and Spirit of the Constitution. *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 420 (1819).

### Power to give Effect to Congress

**Carrying into Execution the Foregoing Powers:** Congress has Power to do anything Incidental to its Valid Exercise of an Enumerated Power, unless prohibited by the Constitution.

### Power to give Effect to the Federal Government

**Carrying into Execution all Other Powers vested in the Government, or any Department or Officer:** Congress has the Right and the Duty to Enact Legislation to carry into Execution all the Powers vested in the National Government including Powers committed to the Executive and Judicial Departments.

Congress exercises its Duty by Authorizing the Exercise of Powers to the other Branches that are Necessary and Proper, but not Enumerated.

The Authorization Power is the source of the Inherent Powers of the President when they are at a Maximum; and a source of Congressional Power over the Activities of both the Supreme Court and Inferior Federal Courts.

### Delegation of Congressional Powers

When Necessary for the Efficient Execution of its Powers, Congress may Delegate Authority vested in the Legislative Branch to other Departments, so long as the delegation does not encroach on the Separation of Powers. The Legislative Powers of Congress require Presentment to the President and are Non-Delegable: The Recipient must be guided by some Intelligible Principle to limit their Discretion. When the Recipient has Independent Authority over the Subject Matter, such as the President, as Commander-In-Chief of the Military, a Delegation of Authority reinforces Discretionary Authority that already exists, and guidance would be an encroachment into that Power. *Loving v. U.S.*, 517 U.S. 748 (1996).

### Incidental Powers that have been Exercised

- 1. Federal Crimes:** Congress has Power to Create, Define, and Punish Crimes and Offenses Necessary to give effect to the Objects of the Federal Government. *U.S. v. Fox*, 95 U.S. 670, 672 (1978);
- 2. Chartering Banks:** An Appropriate Means for Executing the Powers to Lay and Collect Taxes; to Borrow Money; to Regulate Commerce; to Declare and Conduct a War; and to Raise and Support Armies. *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 407 (1819);
- 3. Inferior Federal Tribunals and Federal Rules of Procedure:** The Constitution left the Details of the Judicial Power to Congress. The distribution and appropriate exercise of the Judicial Power must be made by Laws passed by Congress. *Rhode Island v. Massachusetts*, 12 Pet. (37 U.S.) 657, 721 (1838);
- 4. Article I Courts:** Congress has Power to create Legislative Courts and "clothe them with functions deemed essential or helpful" in carrying Legitimate Objects of Federal Power into Execution. *Ex parte Bakelite Corp.*, 279 U.S. 438, 449 (1929).

# §10: Restrictions on State Power

## Cl. 1: National Interest Conflicts

*No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.*

### Treaty, Alliance, or Confederation

**Conflicting Federal Powers:** Treaty Power and Commerce Power. Foreign Affairs is within the Exclusive Powers of the Federal Government.

Any Confederation formed by States in an attempt to form a Sovereign Nation separate from the Union is invalid. *Williams v. Bruffy*, 96 U.S. 176, 183 (1878).

**Related Prohibition on States:** Consent of Congress is required for any State to enter into an Agreement or Compact with another State or Foreign Power. Article I §10 Clause 3

### Letters of Marque and Reprisal

**Conflicting Federal Powers:** Treaties, Declarations of War, Letters of Marque and Reprisal, Rules concerning Captures. Foreign Affairs requires National Uniformity and is within the Exclusive Powers of the Federal Government.

The Power to Grant of Letters of Marque and Reprisal was expressly delegated to the General Government.

### Bills of Credit and Legal Tender

**Conflicting Federal Powers:** Commerce Power, Coining and Regulating Money.

**Bills of Credit:** States have no Power to issue Paper Money as a Legal Tender. State Bank Notes are not Bills of Credit, even when the Bank is State Owned, State Regulated, or State Funded. *Briscoe v. Bank of Kentucky*, 11 Pet. (36 U.S.) 257 (1837).

**Legal Tender: Gold and Silver:** The Federal Government has Power to establish a National Legal Tender which must be accepted in all States as Payment of Debts. States have no Power to force Creditors to accept State Bank Notes or any Thing other than Gold or Silver as Payment of Debts. A Creditor may Voluntarily Accept any other mode of payment. *Gwin v. Breedlove*, 2 How. (43 U.S.) 29, 38 (1844).

### Bills of Attainder, Ex Post Facto Laws, Titles of Nobility

**National Prohibitions:** States are prohibited from passing Bills of Attainder and Ex Post Facto Laws, and from granting Titles of Nobility the same as the General Government.

### Obligations of Contracts

State Constitutions, Legislative Statutes, Municipal Ordinances, and Administrative Regulations are prohibited if they Impair Existing Contract Obligations. *New Orleans Water-Works Co. v. Rivers*, 115 U.S. 674 (1885). Depending on the Purpose of the Law, and the Amount and Type of Impairment, Strict Scrutiny or Minimal Scrutiny may be applied.

# Article II EXECUTIVE BRANCH

## §1: Executive Department

### Cl. 1: Delegation of Power and Term

[1] *The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years and, together with the Vice President, chosen for the same Term, be elected, as follows*

#### Scope of Inherent Executive Powers

The President is the **Chief Magistrate of the United States**, charged with the Duty to **Execute the Laws**, and the "sole organ of the Federal Government in the **field of international relations**", *U.S. v. Pink*, 315 U.S. 203 (1942). The Executive Authority to Act is Justified by the Functions and Duties Inherent in the Office rather than the the specific Powers Delegated to the Executive Branch.

When the President and **Congress** Act together there is no question of Executive Authority so long as the Act is within the Combined Constitutional Powers. **Congress** may Consent to Executive Authority **Expressly** or by Acquiescence. When **Congress** has considered and declined to authorize Executive Authority, the Inherent Executive Powers cannot be used as the source of Executive Authority. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

- **Maximum:** When the President acts pursuant to an **express** or implied authorization of **Congress**, his authority is **at its maximum**, for it includes all that he possess in his own right plus all that **Congress can Delegate**;
- **Independent Power Alone:** When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a **zone of twilight** in which he and **Congress** may have concurrent authority, or in which its distribution is uncertain;
- **Minimum: Separation of Powers Issue Raised:** When the President takes measures incompatible with the **expressed** or implied will of **Congress**, his power is at its **lowest ebb**, for then he can rely only upon his own constitutional powers minus any constitutional powers of **Congress** over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the **Congress** from acting upon the subject. *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 635-638 (1952).

#### Broad Inherent Power over Foreign Affairs

"The broad statement that the federal government can exercise no powers except those specifically enumerated in the constitution, and such implied powers--as are **necessary and proper** to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that **field** the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the states such portions as were thought desirable to vest in the federal government, leaving those not included in the enumeration **still in the states**. . . .

"That this doctrine applies only to powers which the states had, is self evident. And since the states severally never possessed **international powers**, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source. . . .

"Not only . . . is the federal power over **external affairs** in origin and essential character different from that over internal affairs, but participation in the exercise of power is significantly limited. In this vast external realm with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a **representative of the nation**." *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

# 1<sup>st</sup> Amendment RELIGION, EXPRESSION

**Proposed 1789 / Ratified 1791 / Declared Ratified 1792**

*Congress shall make no law respecting an [establishment of religion](#), or prohibiting the [free exercise](#) thereof; or abridging the [freedom of speech](#), or of the [press](#); or the right of the people peaceably [to assemble](#), and to petition the Government for a redress of grievances.*

## State Sovereignty

The [1<sup>st</sup> Amendment Protections](#) are [Fundamental Rights](#) applicable to the States through [Selective Incorporation](#) into the [14<sup>th</sup> Amendment Due Process Clause](#):

"It is beyond debate that freedom to engage in [association](#) for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the [Due Process Clause](#) of the [Fourteenth Amendment](#), which embraces [freedom of speech](#). . . . Of course, it is immaterial whether the beliefs sought to be advanced by [association](#) pertain to political, economic, [religious](#) or cultural matters, and [state action](#) which may have the effect of curtailing the [freedom to associate](#) is subject to the [closest scrutiny](#)." NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460-61 (1958).

The English Common Laws adopted by the States were Enlarged by the Constitutional Rights of [Speech](#), [Press](#), and [Religion](#). Bridges v. California, 314 U.S. 252, 263-68 (1941).

**Federal Preemption:** [Conflicting](#) State Constitutions and Statutes relating to Free [Speech](#), [Press](#), and [Religion](#) are [Preempted under the Supremacy Clause](#).



# 14<sup>th</sup> Amendment: CIVIL WAR AMENDMENT

## §1: EQUAL PROTECTION CLAUSE

### Rational Basis Standards of Review

#### Burden of Proof

Laws Enacted through the Legislative Process are Presumed Constitutional. The Challenger who claims a **Classification** is Arbitrary and Irrational has the Heavy Burden to Rebut the **Presumption of Validity**. Classifications rarely fail Minimum Scrutiny.

#### Conceivable Justification Standard of Review: Lindsley Standard

**Minimum Scrutiny:** A State Classification that treats Persons differently is void only if it is totally Arbitrary, utterly Irrational, and lacks any Conceivable set of Facts that would Justify the Classification:

1. "The **equal protection clause** of the **Fourteenth Amendment** does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.
2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the **law was enacted** must be assumed.
4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911).

#### Substantial Relationship Standard of Review: Royster Guano Standard

#### Minimum Scrutiny: Actual Legislative Purpose:

"[T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

If the Legislative Goal is Permissible, and the Legislature "could rationally have decided" that the Goal would be promoted, the Classification is valid even if in fact the Goal is not promoted. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 466 (1981).

**Under-Representation in the Political Process** A **Class of Persons** not deemed **Suspect** or **Quasi-Suspect**, may be protected by **Judicial Review** under the Royster Guano Standard, instead of the Lindsley Standard. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985).

**Mental Ability:** A **Lower Court** "erred in holding mental retardation a **quasi-suspect classification** calling for a more exacting standard of **judicial review** than is normally accorded **economic** and **social legislation**". *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 442 (1985).

#### Over-Inclusive and Under-Inclusive Classifications

The **Legislature** may deal with Evils in one enactment, or approach the problem Piecemeal, to learn from experience, and to ameliorate the harmful results of two Evils differently. *Williamson v. Lear Optical Co.*, 348 U.S. 483, 489 (1955).

# §5 ENFORCEMENT POWER

## Civil Rights Legislation

*The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

### State Action Doctrine

The **State Action Doctrine** is a limitation on the Enforcement Powers granted to Congress under the 14<sup>th</sup> Amendment, as well as under the 13<sup>th</sup> and 15<sup>th</sup> Amendments.

The Enforcement Power grants to **Congress** discretion to adopt Remedial Measures **Necessary** to protect the 14<sup>th</sup> **Amendment Guarantees** against denial by the States, and to enact Measures designed to eliminate **Unlawful Discrimination** under **Color of Law**.

**Congress** may provide for Personal Liability against **State Actors** who violate Protected Rights:

1. **State Officials and Agents**: Ex parte Virginia, 100 U.S. 339 (1880); and
2. **Persons Associated with them**: U.S. v. Price, 383 U.S. 787 (1966).

**Congress** may Impose:

1. **Criminal Liability**: Screws v. U.S., 325 U.S. 91 (1945); and
2. **Civil Liability**: 42 U.S.C. §1983 and §1985(3): Monroe v. Pape, 365 U.S. 167 (1961).

### Private Discrimination

**Congress** may not go beyond its Enforcement Powers: **§1 of the 14<sup>th</sup> Amendment** prohibits **State Action**, but does not reach **Private Conduct**. Civil Rights Cases, 109 U.S. 3 (1883).

"It does not invest **Congress** with power to legislate upon subjects which are within the domain of **State legislation**; but to provide modes of relief against **State legislation**, or **State action**, of the kind referred to. It does not authorize **Congress** to create a code of municipal law for the regulation of private rights; but to provide modes of **redress** against the operation of **State laws**, and the **action of State officers executive or judicial**, when these are subversive of the **fundamental rights** specified in the amendment." Civil Rights Cases, 109 U.S. 11 (1883).

### Rights of National Citizenship

**Congress** has a general Police Power to protect Rights that derive particularly from **National Citizenship**. U.S. v. Cruikshank, 92 U.S. 542, 552-53, 556 (1876).

Under the general Police Power, **Congress** may protect **Citizens** from **Private** or **State** Interference:

1. **Right to Petition Congress for a Redress of Grievances**;
2. **Right to Vote in Federal Elections**: General and Primary: Ex parte Yarbrough, 110 U.S. 651 (1884);
3. **Right to Federal Protection** while in the custody of **Federal Officers**: Logan v. U.S., 144 U.S. 263 (1892);
4. Right to inform **Federal Officials** of violations of **Federal Law**: In re Quarles, 158 U.S. 532 (1895);
5. **Right of Interstate Travel**: U.S. v. Guest, 383 U.S. 745 (1966).

# Fundamental Rights

## Constitutionally Protected Rights, Classes, Interests, and Activities

### Values Essential to Justice and Liberty

#### Selective Incorporation of Express Fundamental Rights

The [Supreme Court](#) has determined Fundamental Guarantees to be:

- 1<sup>st</sup> Amendment: [Establishment Clause](#) | [Free Exercise of Religion](#) | [Freedom of Speech](#) | [Freedom of the Press](#) | [Freedom to Peaceably Assemble and to Petition the Government](#) | [Freedom of Association](#).
- 4<sup>th</sup> Amendment: [Freedom from Unreasonable Search and Seizure](#) | [Warrant Requirement](#).
- 5<sup>th</sup> Amendment: [Double Jeopardy Clause](#) | [Self-Incrimination Clause](#) | [Takings Clause](#).
- 6<sup>th</sup> Amendment: [Right to a Speedy Trial](#) | [Right to a Public Trial](#) | [Right to an Impartial Jury](#) | [Right to be Informed of Criminal Charges](#) | [Confrontation Clause](#) | [Compulsory Process Clause](#) | [Right to Counsel](#).
- 8<sup>th</sup> Amendment: [Excessive Bail](#) | [Excessive Fines](#) | [Cruel and Unusual Punishments Clause](#).

#### Suspect Classifications: Equal Protection Clause

- Suspect Classes: [Race and Legal Alienage](#).
- Quasi-Suspect Classes: Intermediate Scrutiny: [Gender and Illegitimacy](#).

#### Fundamental Interests Implicit in Liberty: Substantive Due Process Rights

Personal Privacy Rights Protect the Right of Personal Choice in Intimate Decisions:

[Family Relationships and Family Related Activities](#) | [Marriage and Procreation](#) | [Childbirth and Abortion](#) | [Death](#).

Less established Substantive Due Process Rights:

- [Right to Adequate Mental Health Treatment when in State Custody](#).
- [Freedom to Possess Obscene Material in the Home for Private Use](#).

#### Fundamental Activities

[State Privileges and Immunities](#): States may not Discriminate against Outsiders or [New Arrivals](#) in a way that Unduly Burdens [Activities Fundamental](#) to Development of a Single Union:

[Interstate and Intrastate Travel](#) | [Trade and Commerce](#) | [Gainful Employment](#) | [Property Ownership, Transfer, Quiet Enjoyment](#) | [Taxation and Licensing](#) | [Access to State Courts](#).

[National Privileges and Immunities](#): Rights of National Citizenship:

[Interstate Trade](#) | [Interstate Travel](#) | [Access to the Political Process](#) | [Access Federal Public Lands](#) | [Acquire and Retain Property](#) | [Petition the Government](#) | Inform United States authorities of violation of its Laws | Safe Treatment by the Government when in its Custody.

Plus the Right of Access the [Seat of Government](#), and the Seaports, Subtreasuries, Land Offices, and [Courts of Justice in the several States](#); the Right to demand protection of the Federal Government on the [High Seas](#) or abroad; the [Right of Assembly](#); the Privilege of [Habeas Corpus](#); the Right to use the [Navigable Waters of the United States](#); and Rights secured by [Treaty](#). Slaughter-House Cases, 83 U.S. (16 Wall.) 79 (1873).

# Judicial Decision Making: Prudential Considerations

## Rules of Judicial Restraint

### Maxims of Judicial Review

#### Doctrine of Strict Necessity

Federal Appellate Courts decide [Constitutional Issues](#) only if Strict Necessity compels them to do so.

**Narrow Construction:** [Constitutional Questions](#) should not be decided in Broader Terms than are required by the precise State of Facts to which the Ruling is to be applied.

Reaching a [Constitutional Question](#) is not Compelled by Strict Necessity when:

1. The [Record](#) presents some other Ground to decide the [Case](#);
2. A Party fails to Raise a [Constitutional Question](#);
3. A Party has raised sufficient Statutory Grounds;
4. The Construction of a Statute is fairly possible to decide the Issue Presented. *Rescue Army v. Municipal Court*, 331 U.S. 549, 568-575 (1947).

#### Doctrine of Clear Mistake

State and Federal Legislation is not to be voided unless it is [Unconstitutional](#) beyond all Reasonable Doubt.

A Statute may be voided as [Unconstitutional](#) only "when those who have the right to make laws have not merely made a mistake, but have made a very clear one,--so clear that it is not open to [rational question](#)."

#### Construction in favor of Validity

When a challenged Statute can be Construed in a way that will make it Constitutionally valid, it should be so Construed. *Rust v. Sullivan*, 500 U.S. 173, 190-191 (1991).

#### Exception:

Courts will not change the Meaning of a Statute when the Text is Clear, or Interpret a Statute that will survive Constitutional Attack in a way that destroys its Legislative Purpose. *Rust v. Sullivan*, 500 U.S. 173, 191 (1991).

"We cannot press statutory construction 'to the point of disingenuous evasion' even to avoid a [constitutional question](#)." *U.S. v. Locke*, 471 U.S. 84, 96 (1985) quoting *Moore Ice Cream Co. v. Rose*, 289 U.S. 373, 379 (1933).

**Separability:** When only part of a Statute Unconstitutional, Courts will separate the valid from the invalid and save as much as possible. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987).

It is for the Courts in the last resort to determine whether Provisions are Separable. *Carter v. Carter Coal Co.*, 298 U.S. 238, 312-316 (1936).

## Deference to Legislative Judgment

Courts are not free to substitute their own Judgments for the People and their Elected Representatives.

The Court will not look to the Motives of Legislators in determining the validity of a Statute. *Fletcher v. Peck*, 6 Cr. (10 U.S.) 87 (1810).

The Constitutionality of Legislation is not concerned with its Motives, Policy, or Wisdom, or its concurrence with Natural Justice, fundamental Principles of Government, or the Spirit of the Constitution.

**Exceptions:** [Purposeful Discrimination](#) is a requisite to finding some [Equal Protection Violations](#). *Washington v. Davis*, 426 U.S. 229 (1976).

A [Secular or Religious Purpose](#) is one of the parts of the Tripartite Test under the [Establishment Clause](#).

### Presumption of Constitutional Validity

Validly Enacted Laws are Presumed Constitutional, and the Challenger has the Burden to Rebut the Presumption.

Ordinarily, the Courts will not look beyond the [Record](#) for the Proof necessary to rebut the Presumption.

For ordinary [Economic Regulation](#) and [General Police Powers, State and Federal Action](#) is afforded Broad Discretion to determine the Appropriate Means that are [Necessary](#) to address a Perceived Evil. *U.S. v. Robel*, 389 U.S. 258 (1967).

"It is but a decent respect to the wisdom, integrity, and patriotism of the legislative body, by which any law is passed to presume in favor of its validity, until its violation of the Constitution is proved beyond a reasonable doubt." *Ogden v. Saunders*, 12 Wheat. (25 U.S.) 213, 270 (1827).

**Conceivable Justification Doctrine:** [Rational Basis Scrutiny](#): If a [Constitutional Question](#) depends on specific Circumstances, courts will presume the existence of a state of facts which would justify the legislation that is challenged. *Munn v. Illinois*, 94 U.S. 113, 132 (1877).

**Exceptions:** Presumption of Unconstitutionality: The State has the Burden of Justification by showing a Compelling State interest:

1. Fundamental Rights: [Rights, Interests, and Activities Essential to Liberty and Justice](#);
2. Suspect Classifications: [Race and Legal Alienage](#);
3. Quasi-Suspect Classifications: Intermediate Scrutiny: [Gender and Illegitimacy](#).

# Judicial Review of Federal Acts

## Marbury v. Madison

- The **Supreme Court** has **Final Authority** to declare the **Acts of Congress** and of the **Executive Branch** of the Federal Government Unconstitutional. *Marbury v. Madison*, 1 Cr. (5 U.S.) 176 (1803).
- The **Supreme Court** has **Final Authority** over the Decisions of the Highest State Courts on **Federal Questions** and the **Constitutionality of State Laws**. *Martin v. Hunter's Lessee*, 1 Wheat. (14 U.S.) 304 (1816).

### Rationale

"It is emphatically the province and duty of the **judicial department** to say what the law is." *Marbury v. Madison*.

Inherent in the nature of **Judicial Power** is the Power to interpret the Law and to make **Final Judgments** that are Legally Enforceable and Binding against Parties properly brought before them.

The Federal and State Governmental Power to **enact** and **enforce Law**, and to **adjudicate** the Rights created or restricted by Law is limited by the **Supreme Law of the Land** which is the Constitution. "If two **laws conflict** with each other, the courts must decide on the operation of each." *Marbury v. Madison*.

Since the Constitution is "a **superior paramount law**" that is unchangeable by ordinary Legislative means, "a **legislative act** contrary to the constitution is not law." "If, then, the courts are to **regard the constitution**, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the **case** to which they both apply." *Marbury v. Madison*, 1 Cr. (5 U.S.) 176 (1803).

"So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular **case**, so that the court must either decide that **case** conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these **conflicting rules** governs the **case**. This is of the very essence of judicial duty." *Marbury v. Madison*, 1 Cr. (5 U.S.) 176 (1803).

To declare otherwise would be to permit a Legislative Body to pass at pleasure the limits imposed on its Powers by the Constitution. *Marbury v. Madison*, 1 Cr. (5 U.S.) 176-180. (1803).

### Separation of Powers

**Congress** was expressly delegated the Power to make **Exceptions and Rules to the Appellate Jurisdiction** of the **Supreme Court**. It was granted no Power to restrict or expand the **Original Jurisdiction** of the **Supreme Court**.

The **Original Jurisdiction** of the **Supreme Court** is limited to **Cases** where a **State is a Party**, and **Cases affecting Ambassadors, Consuls, and other Foreign Affairs Officers**. The **Supreme Court** may only Act when it has established its Jurisdiction.

### Result of the Marbury Decision

While the **Supreme Court** has Power to Review the **Acts of Congress** and of the **Executive Branch**, it can only exercise that Power after Jurisdiction is established: The Judiciary Act of 1789 attempted to Enlarge the **Original Jurisdiction of the Supreme Court** by giving it Power to grant Writs of Mandamus against **Federal Officers**. **Acts of Congress that Conflict with the Constitution** are Void. Therefore, the **Supreme Court** had no **Original Jurisdiction** over Madison to order him to perform his Ministerial Duty and deliver **Marbury's Commission**, which he was **Legally Entitled** to receive, and **Congress** had no Power to grant that **Jurisdiction** to the **Court**. **The Decision was based on Review of the Judiciary Act, not necessarily on Scope of the Constitution.**

# Mnemonics Section

## Article II §§2,3

### Executive Powers and Duties

#### **COP TAG SCARF CI**

**C**ommander-In-Chief of the **A**rmey and **N**avy; and **M**ilitia when Called into Actual Service of the U.S.

**O**fficers - Require Written Opinions of the Principal Officer in each **E**xecutive **D**epartment relating to their duties

**P**ardons and **R**eprieves - Power to Grant Pardons and Reprieves for Offenses against the United States

**T**reaties - Advice and Consent of the Senate is required to Make Treaties and to **A**ppoint **O**fficers

**A**ppointments - Nominate Ambassadors, Foreign Ministers, Consuls, Supreme Court Judges; other Officers

**G**rant **C**ommissions to **O**fficers to **F**ill **V**acancies that may happen during Recess of the **S**enate

**S**tate of the **U**nion **A**ddress - Give **C**ongress Information from time to time; Recommend Necessary Measures

**C**onvene either **H**ouse or **b**oth on Extraordinary Occasions and in Case of Disagreement between them

**A**djournal - them to such time as he shall think Proper

**R**eceive Ambassadors and other **P**ublic **M**inisters

**F**aithfully **E**xecute the **L**aws of the **U**nited **S**tates

**C**ommission all **O**fficers of the **U**nited **S**tates

**I**mpeachment and **T**rial - Removal from Office for Treason, Bribery, High Crimes and Misdemeanors

# 14<sup>th</sup> Amendment

## Civil War Amendment: States Prohibited from Deprivation of Rights

### CPDEAE

**C**itizens - Persons Born or Naturalized in the U.S. are Citizens of the U.S. and the State where they Reside

**P**rivileges and Immunities of Citizens of the United States shall not be Abridged by State Laws

**D**ue Process - No State shall Deprive any Person of Life, Liberty, or Property without Due Process of Law

**E**qual Protection - No State shall Deny any Person within its Jurisdiction Equal Protection of the Laws

**A**pportionment of Representation - And Apportionment Penalty for Denial of the Right to Vote

**E**nforcement - Congress shall have Power to Enforce this Article by Appropriate Legislation



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