

CONSTITUTIONAL LAW

United States constitutional law defines the scope and application of the terms of the Constitution. It covers areas of law such as the relationship between the federal government and state governments, the rights of individuals, and other fundamental aspects of the application of government authority in the United States. It is a field of law that is broad and complex. Some constitutional scholars maintain that the authors of the Constitution intended that it be vague and subject to interpretation so that it could be adapted to the needs of a changing society. Others maintain that the provisions of the Constitution should be strictly construed and their provisions applied in a very literal manner.

The power of judicial review

Early in its history, in *Marbury v. Madison*, 5 U.S. 137 (1803) and *Fletcher v. Peck*, 10 U.S. 87 (1816), the Supreme Court of the United States declared that the judicial power granted to it by Article III of the United States Constitution included the power of judicial review, to consider challenges to the constitutionality of a State or Federal law. According to this jurisprudence, when the Court measures a law against the Constitution and finds the law wanting, the Court is empowered and indeed obligated to strike down that law. In this role, for example, the Court has struck down state laws for failing to conform to the Contract Clause.



Scope and effect

The Supreme Court's interpretations of constitutional law are binding on the legislative and executive branches of the federal government, on the lower courts in the federal system, and on all state courts. This system of binding interpretations or precedents evolved from the common

law system (called "stare decisis"), where courts are bound by their own prior decisions and by the decisions of higher courts. While neither English common law courts nor continental civil law courts generally had the power to declare legislation unconstitutional (only the power to change law), the United States Supreme Court has long been understood to have the power to declare federal or state legislation unconstitutional.

Prudential limits—the principles of justiciability

Before deciding a constitutional question, the Supreme Court may consider whether the court can avoid the constitutional question by basing its decision on a non-constitutional issue at dispute. For example, if a federal statute is on shaky constitutional footing but has been applied to the challenging party in a manner that does not implicate the basis for the constitutional claim, the Supreme Court will not decide whether the statute might be unconstitutional if it were applied differently. Or, when reviewing a decision of a state's highest court, the Court may avoid the constitutional question if the state court's decision is based on an independent and adequate state-law grounds.

Federal courts consider other doctrines before allowing a lawsuit to go forward:

- **Actual dispute** - the lawsuit concerns a "case or controversy" under the meaning of Article III, Section 2 of the U.S. Constitution
- **Standing** - the party bringing the suit must have (1) a particularized and concrete injury, (2) a causal connection between the complained-of conduct and that injury, and (3) a likelihood that a favorable court decision will redress the injury
- **Ripeness** - a party will lack standing where her case raises abstract, hypothetical or conjectural questions
- **Mootness** - a party is seeking redress over a case that no longer has a basis for dispute, though there are limited exceptions
- **Political question** - the issues raised in the suit are unreviewable because the Constitution delegates it to another branch of government.

Consistent with these doctrines, the Court considers itself prohibited from issuing advisory opinions where there is no actual case or controversy before them (See *Muskie v. United States*, 219 U.S. 346 (1911)). These doctrines, because they apply to all federal cases, whether of constitutional dimension or not, are discussed separately in the article on federal jurisdiction.

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