Judicial Review

Terms

Judicial Review primary rules/secondary rules
Judiciary Act of 1789 Article III
Writ of Mandamus Original Jurisdiction/Appellate Jurisdiction
Supremacy Clause Rule of Law


Questions for Reading Assigned Cases:

In Marbury v. Madison, C.J. Marshall misquotes the Constitution. How does he do so? How does it change the case? Does Marshall make a compelling argument for the special status of judges in interpreting the Constitution? Why is it necessarily the job of judges to “say what the law is”?

In J. Gibson's dissent in Eakin v. Raub, he attacks judicial primacy in constitutional interpretation, favoring elections as a form of accountability. Is this a reasonable argument? Is such electoral accountability likely to be effective?

The key question in Boerne v. Flores is whether Congress can impose its own interpretation of a constitutional doctrine after the Supreme Court has ruled on the matter. What arguments does the Court have on its side that it is supreme in this area? What are the arguments for Congress? Is there a role for both?

Additional Cases:

Dr. Bonham’s Case. (England, 1610). In a case involving whether Parliament had given the Royal College of Physicians the power to convict and imprison an individual for practicing medicine without a licence, (Chief Justice) Sir Edward Coke wrote, “when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void.”

Bayard v. Singleton (North Carolina, 1787) - Bayard sought to reclaim her Loyalist (Tory) family's confiscated property after the Revolutionary War. A panel of local judges (NC did not yet have a Supreme Court) found that the NC law allowing confiscation violated the right to property. Bayard is the first reported case in which an American court struck down a legislative act as unconstitutional.