



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402
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FUNDAMENTAL ROLE OF FEDERAL COURTS IS TO SAY WHAT THE LAW IS

“It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So if a law be in opposition to the constitution . . . the constitution, and not such ordinary act, must govern the case to which they both apply.” With these words in the famous *Marbury v. Madison* case, Chief Justice John Marshall explained early in our history the essence of the fundamental role of the federal courts in American government. In short, that role is to “expound and interpret” the law, including the Constitution, to resolve specific disputes.

Chief Justice Marshall was not saying that the other two branches of the federal government, the legislative and executive branches, have no role in interpreting the Constitution. Obviously, they do and must have a role. Both branches must follow the Constitution. They cannot do so without an effort to interpret it. In drafting laws, Congress must respect what the Constitution says, and that entails a degree of interpretation. In executing the laws, the President must stay within the bounds of the Constitution. That also entails interpreting the meaning of the Constitution.

Inevitably, however, conflicts will arise when the legislative and executive branches differ in their interpretations. For example, Congress may pass a law it thinks is constitutional, but the President may disagree and refuse to enforce it. Or the President may think the executive branch has the power to take certain actions, but Congress may disagree. The nation could not function without a mechanism to resolve such deadlocks between branches over the legitimacy of their actions.

So, whose interpretation of the Constitution prevails? Congress, being an elected body, will always be dependent on public opinion. If Congress passes a law that is popular with the people, it is unlikely to then turn around and agree the law it just passed is unconstitutional and cannot be enforced. It is also proper for the executive branch to be responsive to the desires of the majority. Both of these branches are designed to be influenced by public opinion, but public opinion can change frequently.

This leaves the judicial branch. The judicial branch is not an elected body and thus is insulated from the direct pressure of popular opinion. Federal judges have life tenure, so they can focus on the Constitution and not the momentary desires of the majority of the public. Judges owe their allegiance strictly to the Constitution and laws, rather than any particular segment of the population. And because they have life tenure, they do not turn over in office as frequently as the members of the other branches. Thus, they can take a longer-term view of matters and look beyond the fracas of the moment. This, by design, helps ensure stability in the law and uniformity and consistency in constitutional interpretation.

Moreover, interpreting statutes and regulations is what judges do routinely in deciding legal disputes and instructing juries on the law to apply during civil and criminal trials. Interpreting the Constitution fits closely with these duties and within these skill sets.

Through the federal courts' expounding and interpreting the law, suffocating conflicts between the branches of the federal government are avoided. The federal government and our society also have a definitive source of constitutional interpretation to follow. The wisdom of Chief Justice Marshall still serves us well.

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