
LAW RULES

The Importance of the American Legal System

PURPOSE

To provide factual, non-partisan information about the judicial branch of government—the branch least understood by most citizens—and the role played by lawyers and judges.

2/3 of Americans cannot name any U.S. Supreme Court Justices.
FindLaw.com 2010 Poll

Only 55% of Americans can correctly identify the three branches of government
ABA 2005 Civics Knowledge Poll

44% could not name any branches of government
National Center for State Court 2009 Poll

WHAT LAW RULES ISN'T

An attempt to indoctrinate the audience to a particular political or partisan point of view

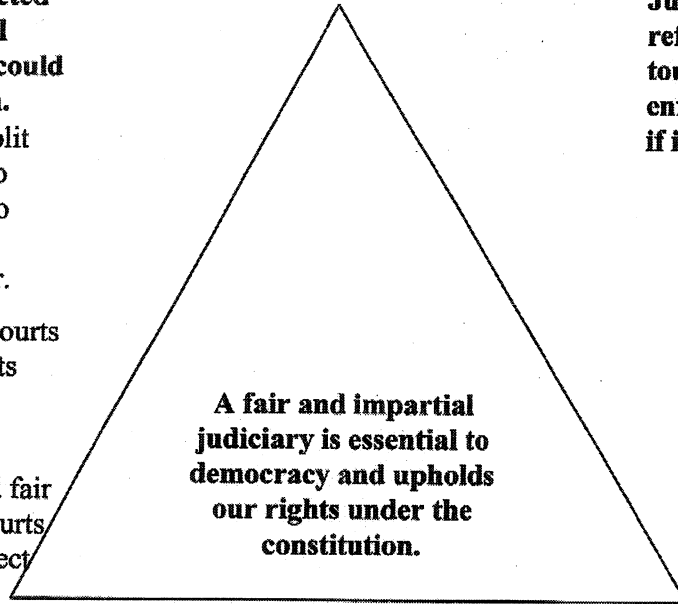
A forum to debate controversial or “hot button” issues

An attempt to “whitewash” the very real problems facing the judicial system, such as incompetent lawyers/judges, access to justice, lack of resources, etc.

MESSAGE PLATFORM ON A FAIR AND IMPARTIAL JUDICIARY

Our founders protected courts from political influence so judges could protect our freedom.

- The founders split government into different parts to protect us from abuses of power.
- In our system, courts consider the facts and the law, not politics.
- We must defend fair and impartial courts so they can protect our rights.



A fair and impartial judiciary is essential to democracy and upholds our rights under the constitution.

Judges are like referees. They make tough decisions and enforce the rules, even if it is unpopular.

- Just like with refs, we do not want judges who can be bought, bullied or fired when someone is unhappy with a decision – it would make the whole justice system break down.
- When people disagree with a decision, it can be appealed.

Judges are accountable.

- Checks and balances apply to all parts of government, including courts.
- Decisions can be appealed.
- Judges are subject to ethics rules and codes of conduct.

POINTS TO EMPHASIZE

- 1 When the Founding Fathers established the federal court system, they went to great lengths to create a branch of government that was accountable to the law, and not to political interests or hot-burning public passions.

As detailed in the Federalist Papers and in James Madison's notes of the 1787 constitutional convention, the founders took at least three steps to put a protective bubble around the courts:

- They gave federal judges lifetime tenure, so that they would not have to look over their shoulders whenever addressing controversial cases.
- They prohibited Congress from reducing judges' salaries, to prevent economic coercion of judges.
- The convention rejected any legislative veto of federal court decisions. Court decisions were final, although Congress retained the power to enact new laws in the face of unfavorable rulings.

"The founders realized there has to be someplace where being right is more important than being popular or powerful, and where fairness trumps strength. And in our country, that place is supposed to be the courtroom." —Sandra Day O'Connor

Source: *Justice at Stake*, www.justiceatstake.org

- 2 A fair and impartial judiciary is essential to democracy and upholds our rights under the constitution.

See attached "Message Platform on a Fair and Impartial Judiciary." Source: ABA Least Understood Branch project

"This independence of the judges is...requisite to guard the Constitution and the rights of individuals."

—Alexander Hamilton, Federalist Paper, No. 78

"The independence of the judges, once destroyed, the constitution is gone; it is a dead letter; it is a vapor which the breath of faction in a moment may dissipate."

—Alexander Hamilton

"Essential to public confidence in the judiciary is the assurance that justice is not for sale and that legal disputes will be resolved by fair and impartial judicial officers."

—Committee for Economic Development, in a U.S. Supreme Court brief signed by Wal-Mart, Pepsico, Intel and Lockheed Martin

Source: *Justice at Stake*, www.justiceatstake.org

- 3 We are a country governed by the rule of law, not the rule of men.

- 4 Law and the judicial system has been an instrument of change for the betterment of society.

- Civil Rights
- Consumer Safety
- Discrimination

- 5 Lawyers and judges recognize that there are challenges facing the judicial system and actively seek to address them.

- Court of the Judiciary
- Access to Justice initiatives: In 2010, 6,009 Tennessee attorneys provided almost a half-million hours of documented pro bono service. In Memphis, the Access to Justice Committee sponsors a free Legal Clinic on the second Saturday of each month from 10 a.m. to noon at the Benjamin L. Hooks Central Library. In addition, there is an "advice and counsel" clinic held in Room 134 of the Shelby County Courthouse every Thursday afternoon where litigants in General Sessions Court can get assistance. The Community Legal Center has an attorney at the courthouse in the morning to help litigants representing themselves in divorce cases.

LAW RULES

PRESENTATION OUTLINE

- I. **".. a government of laws and not of men."** John Adams coined this phrase in "Letters of Novanglus," published in Boston Gazette, 1774.
 - A. What does this mean in our society?
 - B. How can we implement and fulfill this ideal?
- II. Constitution - Separation of Powers
 - A. Co-equal branches of government/checks and balances - Executive, Legislative and Judicial
 - B. Independent judiciary
 1. "Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off..." Plato - 350 BC.
 2. The symbol justice is Lady Justice with a blindfold, scales and the sword. (The blindfold has been used since the 15th century and the sword referenced apportionment of goods among mortals.)
 3. "The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all reservations of particular rights or privileges would amount to nothing." (The Federalist No. 78, Alexander Hamilton, 1788)
- III. Role of Judicial Branch - - Who decides? - *Marbury v. Madison*
 - A. Judicial Authority in context of Cases and Controversies (Not General Pronouncements) - "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..." Article III, Section 2, United States Constitution.
 - B. Judicial Review - *Marbury v. Madison* - (1803) - Factual summary
 1. The election of 1800 in which Thomas Jefferson (Democratic-Republican) defeated John Adams (Federalist) was extremely controversial. Before Jefferson and the new Congress took office, Congress passed two pieces of legislation designed to significantly expand the federal court system.

2. Adams appointed federalists, including William Marbury, to all of the newly created positions. Secretary of State, John Marshall, stamped the appointments and then assumed the role of Chief Justice of the Supreme Court.

3. Jefferson refused to honor the appointments, asserting they were invalid because the commissions were not delivered before Adams' term as president ended. Jefferson ordered his Secretary of State, James Madison not to deliver the appointments. Marbury, an appointed justice of the peace, filed a Writ of Mandamus directly in the United States Supreme Court requesting that Madison "show cause" why Marbury should not receive his commission.

4. The dilemma for Supreme Court Justice Marshall was that if he ruled in favor of Marbury completely, Jefferson and his Secretary of State, James Madison, would refuse to comply and with no power to enforce its rulings, the court would be weakened. On the other hand if the court denied Marbury's writ, then the courts would appear subordinate the executive and legislative branches of government which would weaken the judicial branch and undermine the rule of law. Finally, if Marshall opposed Jefferson and Congress outright, Congress might try to impeach Marshall which would weaken his political party and weaken the courts, making them subservient to Congress.

C. Marshall's ruling gave partial victories to both parties but increased the influence of the Supreme Court. The Court held that Marbury was entitled to the commission but that the court lacked jurisdiction to issue a Writ of Mandamus.

The unanimous decision answered three questions:

(1) Did Marbury have a right to the writ of mandamus? (Court held - Marbury had been properly appointed and had a right to the writ.)

(2) Under U.S. law, if he has a right, does the law afford him a remedy? (Since Marbury had the legal right to his commission, the law must give him a remedy even if it is against the President of the U.S. John Marshall wrote - "The government of the United States has been emphatically termed a **government of laws, and not of men**. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right.")

(3) If so, could the Supreme Court issue the writ (is this the correct remedy?) (The Court held that the remedy was not available to Marbury in this instance because he based his petition on an unconstitutional law, Judiciary Act of 1789, which tried to expand the original jurisdiction of the Supreme Court.)

D. "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 the Constitution; 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 the very essence of judicial duty" *Marbury v. Madison*, 5 U.S. 137 (1803)

E. It is incumbent upon the Court to review acts of Congress to determine whether they are constitutional. In other words, the Court held that it is the courts who decide what the law is. If two laws conflict with one another, the Court will decide how they should be reconciled.

F. The Court noted that the Constitution is the supreme law of the land. The Court held that Congress does not have the authority to expand the scope of another branch's authority within the United States Constitution. (E.g., the Judiciary Act of 1789 expanded the scope of the Supreme Court's original jurisdiction beyond Article III of the Constitution and was thus unconstitutional).

IV. Putting courts to the test. (Real life examples of the rule of law and the need for impartiality in the courts).

A. 1974 - President Richard Nixon resigns and Gerald Ford says: "My fellow Americans, our long national nightmare is over. Our Constitution works. Our great Republic is a **government of laws and not of men**. Here the people rule." (Subpoena to President Nixon created a constitutional crisis but he obeyed the Court's ruling.)

B. Civil rights cases.

C. Any lawsuit - What lawyers do every day. (Real life examples of our cases and the need for independent judiciary).

V. Quotes of interest:

A. "Justice, justice, shalt thou pursue." Deuteronomy The Bible 16:20.

B. "Injustice anywhere is a threat to justice everywhere." Martin Luther King, Jr., Letter from Birmingham Jail 1963.

C. "Man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary." Reinhold Niebuhr, *Children of Light and the Children of Darkness*, 1944.

D. "Why has government been instituted all? Because the passions of men will not conform to the dictates of reason and justice without constraint." *The Federalist* 15, Alexander Hamilton.

E. "The love of justice in most men is simply the fear of suffering injustice." Francois Duc de la Rochefoucauld (1613-1680).

F. "Justice discards party, friendship and kindred, and is therefore represented as blind." Joseph Addison (1672-1719), *the Spectator*.

G. "in America, the law is King. For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other." Thomas Paine, Common Sense.