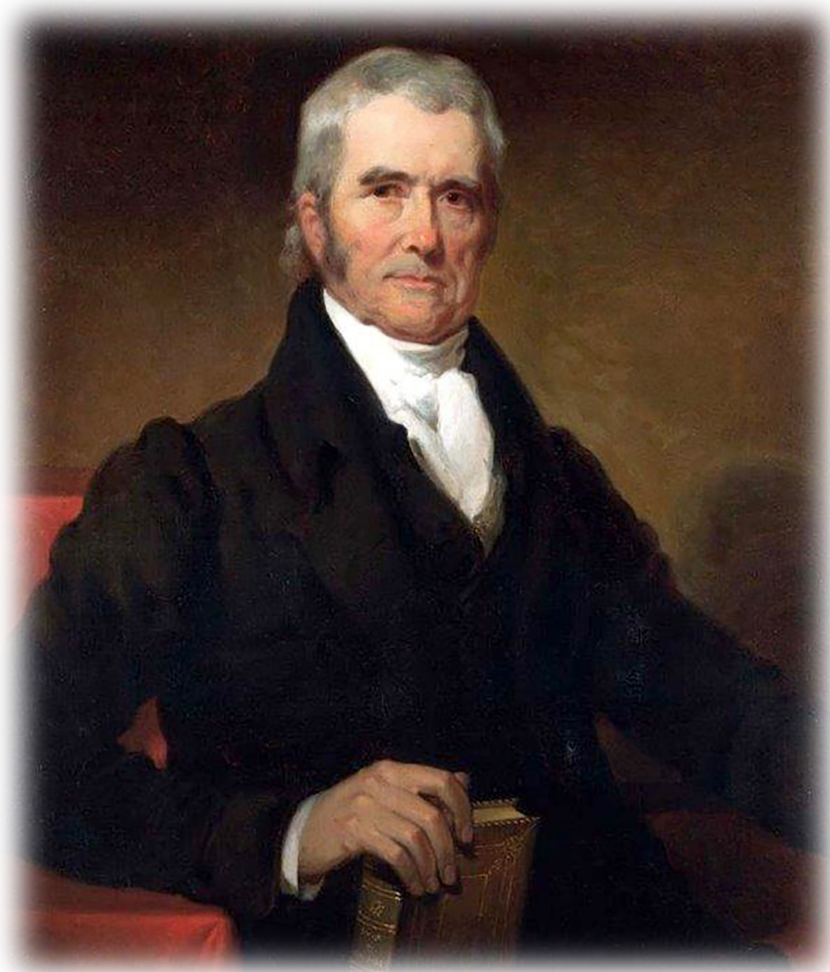
Cases that Shaped the Federal Courts

American Insurance Co. v. Canter

1828



Chief Justice John Marshall

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Central Question

Did the Constitution require Congress to give judges of territorial courts the same tenure and salary protections afforded to judges of federal courts located in the states?

Historical Context

As many residents of the original states began to migrate westward in the years after the Revolutionary War, pushing into frontier areas previously occupied only by Native Americans, the federal government began to organize those areas by creating territories. In 1787, the Confederation Congress passed the Northwest Ordinance, establishing laws governing the settlement of the area north of the Ohio River. After the adoption of the Constitution, Congress established the Southwest, Mississippi, and Indiana Territories between 1790 and 1800. Thomas Jefferson's purchase of Louisiana from the French in 1803 doubled the size of the country and led to the creation of several new territories in the ensuing years.

The Northwest Ordinance set a precedent that territorial status would not be permanent. The Ordinance provided for a "temporary" government and set conditions for dividing the territory into states which would eventually be admitted to the Union. Likewise, Article IV of the Constitution, which gave Congress exclusive authority over all U.S. territories, provided for the admission of new states. Accordingly, Congress provided a process by which inhabitants of a territory, once its population was sufficient, could petition for statehood. Between 1791 and 1821, the number of states in the Union nearly doubled, rising from 13 to 24.

The temporary status of territorial governments posed a potential conflict with Article III of the Constitution, which provided that the judges of the federal courts would hold their offices during good behavior. Congress could have interpreted the tenure provision of Article III as an absolute mandate applying to any court it might establish. On the contrary, however, Congress frequently created courts for the territories—and authorized territorial legislatures to create additional courts—that deviated from the terms of Article III. While some territorial judges held office during good behavior, many served only for a term of four years. The *Canter* case involved the first constitutional challenge to the authority of a federal territorial court whose judges lacked tenure during good behavior pursuant to Article III.

Legal Debates Before *Canter*

Congress first provided for the appointment of judges to serve for a term of years when it established the position of justice of the peace for the District of Columbia in 1801. In

1802, the Supreme Court decided *United States v. More*, in which a justice of the peace was indicted for accepting payment for performing a judicial service after the statute authorizing him to do so had been repealed. The defendant argued that the repeal of the statute was unconstitutional, having violated the Article III prohibition against diminishing the compensation of federal judges. The Circuit Court of the District of Columbia ruled for the defendant and dismissed the indictment. Judge William Cranch wrote the majority opinion, asserting that More was a judge of an inferior court within the terms of Article III. "It is difficult to conceive," he wrote, "how a magistrate can lawfully sit in judgment, exercising judicial powers, and enforcing his judgments by process of law, without holding a court." Judge William Kilty dissented, arguing that provisions of the Constitution such as Article III did not apply in the District of Columbia, leaving More without constitutional protection against a reduction in salary.

When the U.S. attorney for the District of Columbia sought review in the Supreme Court, More's counsel relied on Judge Cranch's opinion that his client was a judge within the meaning of Article III, and cited a statement Chief Justice John Marshall had made in deciding *Marbury v. Madison* a year earlier. In that case, Marshall asserted that a justice of the peace of the District of Columbia was not subject to removal by the President of the United States. More's attorney reasoned that in making this statement, Marshall had implicitly acknowledged that justices of the peace were Article III judges. The prosecutor rebutted this assertion, arguing that the Chief Justice had determined only that a justice of the peace was entitled to serve during good behavior for a term of years as provided by statute, and not indefinitely, as would be the case under the Constitution. The Supreme Court failed to reach the merits in *More*, however, as Chief Justice Marshall ruled that the Court lacked jurisdiction. At the time *Canter* came before it, therefore, the Supreme Court had not ruled on the constitutional validity of federal judges not possessing the tenure and salary protections of Article III.

The Case

In 1825, a ship carrying cotton from New Orleans to France suffered a shipwreck near the west coast of Florida, then a territory of the United States. The cotton was saved by local inhabitants, who took it to Key West, where it was sold to compensate those who had salvaged it. (Under the common law of salvage, one who helps to recover property lost at sea is entitled to receive a portion of the value of the property recovered.) An inferior territorial court created by Florida's legislature approved the sale and ordered that 76% of the sale proceeds be paid to the salvagers. David Canter purchased 356 bales of the cotton in Key West and shipped it to Charleston, South Carolina, for resale there.

The owners of the ship transferred their rights to the American Insurance Company, which had insured the cargo during its voyage. The insurance company then brought an action in rem (an action against the property; the case is sometimes referred to as *American Insurance Company v. 356 Bales of Cotton*) in the U.S. District Court for the District of South Carolina, seeking the return of the cotton. The sale in Key West was invalid, the company claimed, because the territorial court there—the judges of which lacked Article III status—was not competent to approve it. Canter challenged the suit, arguing that the sale was valid and that he was a legitimate purchaser of the property.

The district court declared the Key West sale invalid, but awarded American Insurance only a small portion of the property, ruling that their claim to the rest could not be proven. Both the insurance company and Canter appealed, and the U.S. Circuit Court for the District of South Carolina reversed, holding that the sale was valid and that Canter was entitled to all of the cotton he had purchased. American Insurance then appealed to the Supreme Court of the United States.

The Supreme Court's Ruling

Chief Justice John Marshall wrote the opinion for the Supreme Court, which ruled 7–0 in favor of Canter, holding that the territorial court in Key West had been competent to approve the sale of the cotton, making Canter its rightful owner.

Although much of it was devoted to other issues, Marshall's 1828 opinion later came to be known best for its stance on one particular question: whether the Constitution's grant of "the judicial power" to courts established under Article III precluded a grant of admiralty jurisdiction to a non-Article III territorial court. Marshall concluded that the requirements of Article III did not apply in the territories. Because the territorial judges held their positions for four years rather than during good behavior, he reasoned, Florida's territorial courts were not "constitutional courts," in which the Constitution vested the judicial power, but were "legislative courts," which Congress had created pursuant to its authority to govern the territories. The jurisdiction of the territorial courts was therefore not part of the judicial power defined by Article III, but was instead conferred by Congress in the exercise of its general powers. In legislating for the territories, Marshall wrote, Congress was exercising powers analogous to those of a state government and was not bound by the requirements of Article III when acting in this capacity.

Aftermath and Legacy

Some have argued that Marshall's reasoning in *Canter* was circular because the Chief Justice used the lack of Article III protection for territorial judges as the basis for concluding that Article III did not apply in the territories. Many commentators have suggested that

Marshall was attempting to craft a practical solution so that territorial courts, intended to be temporary, would not be required to have life-tenured judges. Nevertheless, *Canter* established that Congress could, under certain circumstances, create courts staffed by judges not covered by the tenure and salary protections of Article III. In 1856, the Court built upon this principle by establishing in *Murray's Lessee v. Hoboken Land & Improvement Company* what came to be called the "public rights" doctrine. The doctrine recognized that certain issues, arising between the government and other parties, could be resolved by the executive or legislative branches without judicial intervention. The public rights doctrine helped give rise to the modern administrative state, forming the basis for the adjudication of a wide range of issues by agencies and non-Article III courts.

The terms Marshall invented to distinguish Article III courts from non-Article III courts, i.e., "constitutional courts" and "legislative courts," remain widely used (with "Article I" often used interchangeably with "legislative"). In the 190 years since *Canter* was decided, the Supreme Court has not established a clear set of principles to determine the circumstances under which a case can be adjudicated by a judge serving for a limited term, but has instead ruled on the constitutionality of non-Article III courts on a case-by-case basis.

Congress has created non-Article III adjudicatory bodies in several contexts, including U.S. consular courts in foreign countries, military courts-martial, the Court of Private Land Claims, the U.S. Court for the Indian Territory, and the U.S. Tax Court. In 1973, in *Palmore v. United States*, the Supreme Court recognized the validity of non-Article III courts in the District of Columbia, based on Congress's strong legislative interest in governing the District. The U.S. District Courts for the territories of Guam, the Northern Mariana Islands, and the Virgin Islands employ judges who serve for limited terms.

Although the holding of *Canter* remains valid law, Chief Justice Marshall's assertion in that case that non-Article III courts are "incapable of receiving" the judicial power defined by Article III was eventually rejected by the Supreme Court. In *Glidden v. Zdanok*, a 1962 case involving the Article III status of two federal courts of specialized jurisdiction, Justice John Marshall Harlan wrote: "Far from being 'incapable of receiving' federal-question jurisdiction, the territorial courts have long exercised a jurisdiction commensurate in this regard with that of the regular federal courts and have been subjected to the appellate jurisdiction of this Court precisely because they do so."

Discussion Questions

- Why do you think the framers of the Constitution included tenure during good behavior and protection against reduction in salary for federal judges?
- What was Chief Justice Marshall's justification for holding that the requirements of Article III did not apply to the territories? Do you agree with his reasoning?
- Should U.S. territories have the same types of federal courts as the states, or are there good reasons to treat them differently?
- How did *Canter* help to lay the groundwork for the administrative state that flourished in the twentieth century?

Documents

Supreme Court of the United States, Opinion in *American Insurance Company v. Canter*, March 15, 1828

In an opinion that some have considered circular in its reasoning, Chief Justice John Marshall ruled in Canter *that territorial courts having judges appointed for a term of four years were not subject to the Article III requirement of judicial tenure during good behavior. The Constitution granted to Congress plenary authority over the territories, and it was that authority, rather than Article III, that permitted the establishment of territorial courts.*

It has been contended, that by the Constitution the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction; and that the whole of this judicial power must be vested "in one Supreme Court, and in such inferior Courts as Congress shall from time to time ordain and establish." Hence it has been argued, that Congress cannot vest admiralty jurisdiction in Courts created by the territorial legislature.

We have only to pursue this subject one step further, to perceive that this provision of the Constitution does not apply to it. The next sentence declares that "the Judges both of the Supreme and inferior Courts, shall hold their offices during good behaviour." The Judges of the Superior Courts of Florida hold their offices for four years. These Courts, then, are not constitutional Courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised in the states in those Courts, only, which are established in pursuance of the 3d article of the Constitution; the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general, and of a state government.

We think, then, that the Act of the territorial legislature, erecting the Court by whose decree the cargo of the Point a Petre was sold, is not "inconsistent with the laws and Constitution of the United States," and is valid. Consequently, the sale made in pursuance of it changed the property, and the decree of the Circuit Court, awarding restitution of the property to the claimant, ought to be affirmed with costs.

Document Source: *American Insurance Company v. Canter*, 26 U.S. 511, 546 (1828).

Supreme Court of the United States, Opinion in *United States v. Coe*, October 29, 1894

In addition to territorial courts, Congress created several courts—whose judges were not protected by the tenure and salary guarantees of Article III—devoted to the resolution of certain types of disputes. In United States v. Coe*, the Supreme Court ruled that Congress had acted within its authority in creating the Court of Private Land Claims to resolve land claims in U.S. territories once forming part of Mexico. Citing* Canter*, the Court noted that Congress could rely on its authority over the territories, rather than its Article III power, in creating such a court.*

The principal ground relied on by appellee is that the Court of Private Land Claims is not a tribunal vested with judicial power in virtue of any provision of the Constitution, and, therefore, the Congress had no power to confer upon this court jurisdiction to entertain appeals from its decisions.

By article 8 of the treaty of Guadalupe-Hidalgo and article 5 of the Gadsden treaty, the property of Mexicans within the territory ceded by Mexico to the United States was to be "inviolably respected," and they and their heirs and grantees were to enjoy with respect to it "guaranties equally ample as if the same belonged to citizens of the United States." … While claimants under grants made by Mexico or the Spanish authorities prior to the cession had no right to a judicial determination of their claims, Congress, nevertheless, might provide therefor if it chose to do so.… And it was for this purpose that the act of March 3, 1891, was passed, establishing the Court of Private Land Claims for the settlement of claims against the United States to lands "derived by the United States from the Republic of Mexico, and now embraced within the Territories of New Mexico, Arizona, or Utah, or within the States of Nevada, Colorado, or Wyoming."

The argument is that the court thus created, composed of judges holding office for a time limited, is not one of the courts mentioned in article 3 of the Constitution, whereby the judicial power of the United States is vested in one Supreme Court and in such inferior courts as Congress may from time to time establish, the judges of which hold their offices during good behavior, receiving at stated times for their services a compensation that cannot be diminished during their continuance in office, and are removable only by impeachment; and that the appellate power of this court cannot be extended to the revision of the judgments and decrees of such a court. Granting that the Court of Private Land Claims does not come within the third article, the conclusion assumes either that the power of Congress to create courts can only be exercised in virtue of that article, or, that judicial tribunals otherwise established cannot be placed under the supervisory power of this court.

It must be regarded as settled that section 1 of article 3 does not exhaust the power of Congress to establish courts. The leading case upon the subject is *American Insurance*

Co. v. Canter, 1 Pet. 511, 546, in which it was held in respect of territorial courts, Chief Justice Marshall delivering the opinion, that while those courts are not courts in which the judicial power conferred by article 3 can be deposited, yet that they are legislative courts created in virtue of the general right of sovereignty which exists in the government over the Territories, or of the clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States.…

The case before us relates to the determination of a claim against the United States to lands situated in the Territory of Arizona, and, as it was clearly within the authority of Congress to establish a court for such determination, unaffected by the definitions of article 3, the question is not presented whether it was within the power of Congress to create a judicial tribunal of this character for the determination of title to property situated in the States, where the courts of the United States, proper, are parts of the Federal system, "invested with the judicial power of the United States expressly conferred by the Constitution, and to be exercised in correlation with the presence and jurisdiction of the several state courts and governments." …

And as wherever the United States exercise the power of government, whether under specific grant, or through the dominion and sovereignty of plenary authority as over the Territories … that power includes the ultimate executive, legislative, and judicial power, it follows that the judicial action of all inferior courts established by Congress may, in accordance with the Constitution, be subjected to the appellate jurisdiction of the supreme judicial tribunal of the government. There has never been any question in regard to this as applied to territorial courts, and no reason can be perceived for applying a different rule to the adjudications of the Court of Private Land Claims over property in the Territories.

Document Source: *United States v. Coe*, 155 U.S. 76, 84–86 (1894).

Supreme Court of the United States, Opinion in *O'Donoghue v. United States*, May 29, 1933

In 1933, the Canter *case was distinguished with respect to the federal courts of the District of Columbia. In* O'Donoghue*, the Court ruled that the judges of these courts were protected by Article III and could not have their salaries diminished. While territorial courts were intended to be transitory, the District of Columbia was meant to be the permanent seat of the federal government. The Court of Appeals and the Supreme Court of the District of Columbia were therefore "constitutional courts" analogous to the U.S. courts of appeals and district courts in the states.*

In July, 1932, the Comptroller General of the United States held that the Court of Appeals and the Supreme Court of the District of Columbia are "legislative" courts and not "constitutional" courts whose judges are entitled to the protection of Art. III, § 1, of the Constitution ....

Thereupon, the disbursing officer of the Department of Justice, pursuant to the ruling of the Comptroller General, reduced the annual compensation by 10 per cent. in the case of Justice O'Donoghue, and by 20 per cent. in the case of Justice Hitz, and over their protests paid to them for the months of July to December, 1932, inclusive, their compensation at this reduced rate....

It is averred in the petitions that the ruling of the Comptroller General and the resulting deductions contravene Art. III, § 1, of the Constitution, since plaintiffs were appointed to serve during good behavior and to receive a compensation which constitutionally cannot be diminished during their continuance in office....

This court has repeatedly held that the territorial courts are "legislative" courts ... and that they are not invested with any part of the judicial power defined in the third article of the Constitution....

The authority upon which all the later cases rest is *American Insurance Co. v. Canter* ....

A sufficient foundation for these decisions in respect of the territorial courts is to be found in the transitory character of the territorial governments....

How different are the status and characteristics of the District of Columbia! The pertinent clause of the Constitution (Art. I, § 8, cl. 17) confers the power on Congress to "exercise exclusive legislation ... over such district ... as may ... become the seat of the government of the United States." These are words of permanent governmental power. The District, as the seat of the national government, is as lasting as the States from which it was carved or the union whose permanent capital it became....

In *American Insurance Co. v. Canter*, *supra*, the Chief Justice gave as a conclusive reason why the territorial courts were not constitutional courts vested with the judicial power designated in Art. III of the Constitution that—"They are incapable of receiving it." It is not hard to justify this observation in respect of courts created for a purely provisional government to serve merely between events; but the District Supreme Court and Court of Appeals are permanent establishments—federal courts of the United States and part of the federal judicial system. *Federal Trade Comm'n v. Klesner*, 274 U.S. 145, 154, 156:

"The parallelism between the Supreme Court of the District and the Court of Appeals of the District, on the one hand, and the district courts of the United States and the circuit courts of appeals, on the other, in the consideration and disposition of cases involving what among the States would be regarded as within federal jurisdiction, is complete." ...

In the light of all that has now been said, we are unable to perceive upon what basis of reason it can be said that these courts of the District are incapable of receiving the judicial power under Art. III. In respect of them we take the true rule to be that they are courts of the United States, vested generally with the same jurisdiction as that possessed by the inferior federal courts located elsewhere in respect of the cases enumerated in § 2 of Art. III.…

We hold that the Supreme Court and the Court of Appeals of the District of Columbia are constitutional courts of the United States, ordained and established under Art. III of the Constitution; that the judges of these courts hold their offices during good behavior, and that their compensation cannot, under the Constitution, be diminished during their continuance in office.

Document Source: *O'Donoghue v. United States*, 289 U.S. 516, 526–27, 535–36, 538, 544–45, 551 (1933).

Charles A. Loring, *Hastings Law Journal*, 1955

In a 1955 law review article, California attorney Charles Loring argued that the creation of territorial courts whose judges lacked tenure during good behavior was unconstitutional. The Constitution gave Congress no authority to confer judicial power other than pursuant to Article III, he asserted. Loring was highly critical of Chief Justice John Marshall's opinion in Canter*, calling it "some of the oddest reasoning ever resorted to."*

Judges of the United States District Courts in Hawaii hold office for six years, in Puerto Rico eight years, in Alaska four years, in the Virgin Islands four years, in the Canal Zone eight years, in Guam four years, Judges of the Tax Court of the United States hold office for twelve years. On the other hand, by recent amendment Judges of the United States Court of Claims, the United States Court of Customs and Patent Appeals, and United States Customs Court each hold office during good behavior. This, however, is by act of Congress, not by virtue of the constitutional provisions. These latter courts are said to be "legislative courts," not constitutional courts. How is it possible for judges of courts in the territories to exercise the judicial power of the United States and still hold office for a term of less than good behavior?

It has been judicially declared that courts created by act of Congress for the territories are created not by virtue of authority conferred on Congress under article III, section 1, but by virtue of authority conferred by article IV, section 3, as follows:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.…"

By virtue of this language it has been held in a number of cases that Congress has the constitutional power to create a court and endow it with judicial power even when Congress does not so act under article III, section 1. We thus have the anomalous situation where a court purports to exercise the judicial power of the United States derived from a source other than article III of the Constitution. It has been said by eminent authority:

"The territorial courts, e.g., those of Hawaii and Alaska, do not exercise 'judicial power of the United States', but a special judicial power conferred upon them by Congress, by virtue of its sovereign power over these places (See art. IV, sec. III, ¶ 2). Their judges accordingly have a limited tenure and are removable by the President."

These cases, in effect, establish that there are in fact two governments of the United States: one government of the United States exists and operates within the territorial limits of the forty-eight states and is divided into three parts, executive, legislative and judicial; the other government of the United States exists and operates within the territories of the United States and the entire sovereignty of such government, executive, legislative and judicial, is vested in the Congress. Furthermore, none of the personal guarantees of the United States Constitution apply to such latter government excepting only as Congress in its infinite wisdom shall expressly so provide. For example there is no constitutional right to trial by jury in such territory. Whatever rights a citizen possesses in the territories of the United States he possesses by virtue of the grace of Congress and not by virtue of the guarantees of the Constitution.

It should be noted that article IV, section 3 makes no reference to or provision for judicial power to be exercised by the legislative branch in the territories. It provides only, and that very briefly, for the enactment of, "Needful Rules and Regulations Respecting the Territory." Some people might argue that this at least leaves some doubt about the judicial power, and therefore there is room for "interpretation."

The Constitution, however, eliminates any ambiguity on the subject. It defines what is meant by "judicial power." It says, in part:

"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; …" (Emphasis added.)

Section 1 vests judicial power of the United States in judges who shall hold office during good behavior. Section 2 defines the judicial power of the United States as extending to all cases in law and equity which arise under the laws of the United States.

There is nothing in the Constitution limiting the judicial power of the United States to the territorial limits of the states themselves. On the contrary, the framers of the Constitution expressly intended that the judicial power should extend beyond those territorial limits. As a part of the same section 2, of article III, defining the judicial power of the United States, the Constitution further provides:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; *but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.*" (Emphasis added.)

In the debate in the Constitutional Convention on August 28, 1787, Madison's notes with reference to this clause read:

"The object of this amendment was to provide for trial by jury of offences committed out of any state."

But not in Guam!

If the judicial power of the United States under the Constitution applies only within the territorial limits of the states, how is it possible for a person to commit a crime against the United States outside of the territorial limits of the States? The Constitution provides for the trial of such a crime and it can only do so if the Constitution applies at the point where the crime is committed!

Sections 1 and 2 of article III speak of the entire judicial power of the United States. No more and no less! If it is judicial power arising under the laws of the United States, if it is exercised by a court of the United States in any area subject to the sovereignty of the United States, the conclusion seems manifest that it must be exercised by a judge who has been appointed to hold office during good behavior, and who may not be removed from office except by impeachment. . . .

How did we arrive at this peculiar position that a United States District Judge in Los Angeles serves for good behavior but a United States District Judge in Honolulu serves for only six years? The judicial story has its genesis in an obscure case involving 356 bales of cotton. . . .

In some of the oddest reasoning ever resorted to, the United States Supreme Court disposed of the appellant's contentions that the Territorial Court was exercising the judicial power of the United States, by asserting:

(a) Article III section 1 of the United States Constitution provides that judges exercising judicial power of the United States shall be appointed to hold office during good behavior;

(b) The judges of the Florida Court were appointed only for four years;

(c) Conclusion: Therefore, such judges could not be exercising the judicial power of the United States as defined in article III of the Constitution. The court appears not to have considered the possibility of a fallacy—that its minor premise was wrong—that the limitation on the tenure of office of the territorial judges was an unconstitutional violation of article III.

The fundamental fallacy in the case is the implied assumption that some sovereignty existed in the Territory of Florida separate, apart, and independent of the sovereignty of the United States of America, as expressed in the Constitution of the United States. The complete sovereignty of a territory is vested in the United States of America. It cannot be partially vested elsewhere. It cannot be suspended partially in mid-air. Congress apparently thought the Constitution of the United States extended to the Florida Territory because, as counsel for the appellant pointed out in his argument, it required an oath from the officers of the Territory to support the Constitution of the United States. This they could hardly do if the Constitution did not apply in the Territory.

Even if it be contended that some different or special sovereignty applies to territories acquired by treaty, the judicial power of the United States, as set forth in article III of the Constitution would still apply because of section 2, which says it extends to cases arising under treaties made pursuant to the Constitution....

This is one instance in which a king supplanted the Constitution of the United States. King Cotton! 356 Bales!

Referring to this opinion by Chief Justice Marshall, the United States Supreme Court in an opinion written by Justice Brown has said:

"As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, *it must act independently of the Constitution and upon territory which is not part of the United States within the meaning of the Constitution.*" (Emphasis added.)

Can Congress act independently of the Constitution? From what source did it acquire any such sovereignty and power? What is the nature of "territory which is not part of the United States"? How can Congress exercise power under article IV section 3 in such territory?

The conclusion indicated does not "necessarily" follow. Another possible conclusion is that the limitation on the tenure of office is unconstitutional....

Article III, section 2, in defining judicial power speaks of "the laws of the United States." It makes no distinction between laws enacted under article I and laws enacted under article IV. Can it be said that an enactment of Congress under article IV with reference to a territory is not a law of the United States? If such an enactment is a law of the United States, why does the judicial power of the United States not apply to it under article III? ...

The sovereignty of the United States is coextensive with the territory subject to the jurisdiction of the United States and either the Constitution, as the written expression of that sovereignty, extends in its entirety to all of such territory, or none of it does. Congress derives its entire authority solely from the Constitution. How can Congress purport to

exercise authority over an area to which the Constitution does not apply? If Congress is there—the Constitution is there. And if the Constitution is there, the judicial power of the United States is there. If the judicial power of the United States is there, the judges who exercise that judicial power must be appointed for a term of good behavior.

The judicial power of the United States is coextensive with the sovereignty of the United States. Article III, section 2, recognizes no lesser limitation. Article IV, section 3, only empowers Congress to legislate with respect to the territories outside of the forty-eight states but such article does not confer judicial power on the Congress.

Congress will still have the power under article III to create inferior courts in the territories but the judges thereof must be appointed to hold office during good behavior. Anything less presupposes the divisibility of our principle that the Federal Judiciary must be independent.

One of the bases of the Revolutionary War was that England denied to the people of the Colonies the rights which it accorded to free Englishmen in the Mother Country. If we continue to deny that the Constitution and laws of the United States apply to all of the territories of the United States, and if we continue to insist that only laws enacted under article IV, section 3, apply to such territories, we are no better than the England we revolted against.

Document Source: Charles A. Loring, "Judicial Power and Territorial Judges," *Hastings Law Journal* 7, no. 1 (November 1955): 62–67, 69–71 (footnotes omitted).

Supreme Court of the United States, Opinion in *Palmore v. United States*, April 24, 1973

In 1970, Congress created purely local courts for the District of Columbia, the judges of which did not have tenure during good behavior. In 1973, the Supreme Court of the United States ruled that these courts were constitutional. Part of the Court's reasoning relied on an analogy to the territorial courts at issue in the Canter *case.*

[T]his case requires us to decide whether a defendant charged with a felony under the District of Columbia Code may be tried by a judge who does not have protection with respect to tenure and salary under Art. III of the Constitution. We hold that, under its Art. I, § 8, cl. 17, power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with the District of Columbia Code, are not accorded life tenure and protection against reduction in salary. In this respect, the position of the District of Columbia defendant is similar to that of the citizen

of any of the 50 States when charged with violation of a state criminal law: neither has a federal constitutional right to be tried before judges with tenure and salary guarantees.…

Art. I, § 8, cl. 17, of the Constitution provides that Congress shall have power "[t]o exercise exclusive Legislation in all Cases whatsoever, over" the District of Columbia. The power is plenary. Not only may statutes of Congress of otherwise nationwide application be applied to the District of Columbia, but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes. Congress "may exercise within the District all legislative powers that the legislature of a State might exercise within the State; and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States." …

Pursuant to its Clause 17 authority, Congress has from time to time enacted laws that compose the District of Columbia Code. The 1970 Reorganization Act amended the Code by creating the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, the courts being expressly "established pursuant to article I of the Constitution." … The Superior Court, among other things, was vested with jurisdiction to hear criminal cases involving alleged violations of the criminal laws applicable only to the District of Columbia … the District of Columbia Court of Appeals, with jurisdiction to hear appeals in such cases.…

Palmore's argument is straightforward: Art. III vests the "judicial Power" of the United States in courts with judges holding office during good behavior and whose salary cannot be diminished; the "judicial Power" that these courts are to exercise "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 …"; the District of Columbia Code, having been enacted by Congress, is a law of the United States; this prosecution for violation of § 22–3204 of the Code is therefore a case arising under the laws of the United States, involves an exercise of the "judicial Power" of the United States, and must therefore be tried by an Art. III judge.

This position ultimately rests on the proposition that an Art. III judge must preside over every proceeding in which a charge, claim, or defense is based on an Act of Congress or a law made under its authority. At the very least, it asserts that criminal offenses under the laws passed by Congress may not be prosecuted except in courts established pursuant to Art. III. In our view, however, there is no support for this view in either constitutional text or in constitutional history and practice.

Article III describes the judicial power as extending to all cases, among others, arising under the laws of the United States; but, aside from this Court, the power is vested "in

such inferior Courts as the Congress may from time to time ordain and establish." The decision with respect to inferior federal courts, as well as the task of defining their jurisdiction, was left to the discretion of Congress. That body was not constitutionally required to create inferior Art. III courts to hear and decide cases within the judicial power of the United States, including those criminal cases arising under the laws of the United States. Nor, if inferior federal courts were created, was it required to invest them with all the jurisdiction it was authorized to bestow under Art. III.... Congress plainly understood this, for until 1875 Congress refrained from providing the lower federal courts with general federal-question jurisdiction. Until that time, the state courts provided the only forum for vindicating many important federal claims. Even then, with exceptions, the state courts remained the sole forum for the trial of federal cases not involving the required jurisdictional amount, and for the most part retained concurrent jurisdiction of federal claims properly within the jurisdiction of the lower federal courts.

It is also true that throughout our history, Congress has exercised its power under Art. IV to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" by creating territorial courts and manning them with judges appointed for a term of years. These courts have not been deemed subject to the strictures of Art. III, even though they characteristically enforced not only the civil and criminal laws of Congress applicable throughout the United States, but also the laws applicable only within the boundaries of the particular territory. Speaking for a unanimous Court in *American Ins. Co. v. Canter*, 1 Pet. 511 (1828), Mr. Chief Justice Marshall held that the territorial courts of Florida, although not Art. III courts, could hear and determine cases governed by the admiralty and maritime law that ordinarily could be heard only by Art. III judges. "[T]he same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general, and of a state government." *Id*. at 26 U. S. 546. This has been the consistent view of this Court. Territorial courts, therefore, have regularly tried criminal cases arising under the general laws of Congress, as well as those brought under territorial laws....

We cannot agree that *O'Donoghue* governs this case. The District of Columbia courts there involved, the Supreme Court and the Court of Appeals, had authority not only in the District, but also over all those controversies, civil and criminal, arising under the Constitution and the statutes of the United States and having nationwide application. These courts, as this Court noted in its opinion, were "of equal rank and power with those of other inferior courts of the federal system...." ... Relying heavily on congressional intent, the Court considered that Congress, by consistently providing the judges of these courts with lifetime tenure, had indicated a "congressional practice from the beginning [which]

recognize[d] a complete parallelism between the courts of the District [of Columbia] and the district and circuit courts of appeals of the United States." …

The case before us is a far cry from *O'Donoghue*. Here, Congress has expressly created two systems of courts in the District. One of them is made up of the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, which are constitutional courts manned by Art. III judges to which the citizens of the District must or may resort for consideration of those constitutional and statutory matters of general concern which so moved the Court in *O'Donoghue*. The other system is made up of strictly local courts, the Superior Court and the District of Columbia Court of Appeals. These courts were expressly created pursuant to the plenary Art. I power to legislate for the District of Columbia … and to exercise the "powers of … a State government in all cases where legislation is possible." . . .

The *O'Donoghue* Court had before it District of Columbia courts in which the consideration of "purely local affairs [was] obviously subordinate and incidental." … Here, on the other hand, we have courts the focus of whose work is primarily upon cases arising under the District of Columbia Code and to other matters of strictly local concern. They handle criminal cases only under statutes that are applicable to the District of Columbia alone. *O'Donoghue* did not concern itself with courts like these, and it is not controlling here.

Document Source: *Palmore v. United States*, 411 U.S. 389, 390–91, 397–98, 400–03, 405–07 (1973).

Cases that Shaped the Federal Courts

This series includes case summaries, discussion questions, and excerpted documents related to cases that had a major institutional impact on the federal courts. The cases address a range of political and legal issues including the types of controversies federal courts could hear, judicial independence, the scope and meaning of "the judicial power," remedies, judicial review, the relationship between federal judicial power and states' rights, and the ability of federal judges to perform work outside of the courtroom.

- *Hayburn's Case* (1792). Could Congress require the federal courts to perform non-judicial duties?
- *Chisholm v. Georgia* (1793). Could states be sued in federal court by individual citizens of another state?
- *Marbury v. Madison* (1803). Could federal courts invalidate laws made by Congress that violated the Constitution?
- *Fletcher v. Peck* (1810). Could federal courts strike down state laws that violated the Constitution?
- *United States v. Hudson and Goodwin* (1812). Did the federal courts have jurisdiction over crimes not defined by Congress?
- *Martin v. Hunter's Lessee* (1816). Were state courts bound to follow decisions issued by the Supreme Court of the United States?
- *Osborn v. Bank of the United States* (1824). Could Congress grant the Bank of the United States the right to sue and be sued in the federal courts?
- *American Insurance Co. v. Canter* (1828). Did the Constitution require Congress to give judges of territorial courts the same tenure and salary protections afforded to judges of federal courts located in the states?
- *Louisville, Cincinnati, and Charleston Rail-road Co. v. Letson* (1844). Should a corporation be considered a citizen of a state for purposes of federal jurisdiction?
- *Ableman v. Booth* (1859). Could state courts issue writs of habeas corpus against federal authorities?
- *Gordon v. United States* (1865). Could the Supreme Court hear an appeal from a federal court whose judgments were subject to revision by the executive branch?
- *Ex parte McCardle* (1869). Could Congress remove a pending appeal from the Supreme Court's jurisdiction?
- *Ex parte Young* (1908). Could a federal court stop a state official from enforcing an allegedly unconstitutional state law?
- *Moore v. Dempsey* (1923). How closely should federal courts review the fairness of state criminal trials on petitions for writs of habeas corpus?

- *Frothingham v. Mellon* (1923). Was being a taxpayer sufficient to give a plaintiff the right to challenge the constitutionality of a federal statute?
- *Crowell v. Benson* (1932). What standard should courts apply when reviewing the decisions of executive agencies?
- *Erie Railroad Co. v. Tompkins* (1938). What source of law were federal courts to use in cases where no statute applied and the parties were from different states?
- *Railroad Commission of Texas v. Pullman Co.* (1941). When should a federal court abstain from deciding a legal issue in order to allow a state court to resolve it?
- *Brown v. Allen* (1953). What procedures should federal courts use to evaluate the fairness of state trials in habeas corpus cases?
- *Monroe v. Pape* (1961). Did the Ku Klux Klan Act of 1871 permit lawsuits in federal court against police officers who violated the constitutional rights of suspects without authorization from the state?
- *Baker v. Carr* (1962). Could a federal court hear a constitutional challenge to a state's apportionment plan for the election of state legislators?
- *Glidden Co. v. Zdanok* (1962). Were the Court of Claims and the Court of Customs Appeals "constitutional courts" exercising judicial power, or "legislative courts" exercising powers of Congress?
- *United States v. Allocco* (1962). Were presidential recess appointments to the federal courts constitutional?
- *Walker v. City of Birmingham* (1967). Could civil rights protestors challenge the constitutionality of a state court injunction, having already been charged with contempt of court for violating the injunction?
- *Bivens v. Six Unknown Named Agents* (1971). Did the Fourth Amendment create an implied right to sue officials who conducted illegal searches and seizures?
- *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982). Did the Bankruptcy Reform Act of 1978 violate the Constitution by granting too much judicial power to bankruptcy judges?
- *Morrison v. Olson* (1988). Could Congress empower federal judges to appoint independent counsel investigating executive branch officials?
- *Mistretta v. United States* (1989). Could Congress create an independent judicial agency to guide courts in setting criminal sentences?
- *Lujan v. Defenders of Wildlife* (1992). Could an environmental organization sue the federal government to challenge a regulation regarding protected species?
- *City of Boerne v. Flores* (1997). Could Congress reverse the Supreme Court's interpretation of the Constitution through a statute purportedly enforcing the Fourteenth Amendment?