

Is the judiciary really
the weakest branch
of government



Judicial Branch is established under Article III of the Constitution. It was created to be the weakest of all three branches of government. Each branch has its own characteristics, but what distinguishes this branch from other two is that Judiciary is passive. It cannot act until someone brings case in front of them.

Even if some law or act is unconstitutional, courts are powerless to do anything on their own. Contrary to Judiciary, other two branches are active, and have power to attack other subjects. The reason that Judiciary has passive role is because it supposed to serve as defense mechanism and to protect rights and privileges of the people. In fact, Alexander Hamilton pointed out in his Federalist paper number 78 “ The Executive ... holds the sword of the community.

The legislature ... commands the purse ... prescribes the rules ... The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment...” It is clear from this that Judiciary is the weakest branch of government or at least it was. Many people believe that Judiciary gain much more power than the frames intended to give and interpretation of intended rights is different from what it should be. The Article III is short and it would seem that answer on the question “ what rights did the framers intended to give? ” should be also short and simple.

However topic is controversial and there is no one right answer. The simple reason for that is because even among the framers there was no consent

about every single issue, or section and article they put into constitution. The content of the Constitution was result of negotiations between two groups whose beliefs were pretty much different. In my opinion such a broad interpretation of Article III (but also many other articles and amendments) was exactly because the framers could not reach consensus about some detailed and explicit Article that would explain and cover every single situation and how the law should be applied. Nothing better could be than perfect constitution that covers all possible topics and situations and for every problem or disagreement that occurs to look in the book for the solution, but unfortunately that is not possible and word “ interpretation” will still be in use. Framers gave us only a base or foundation upon which we have to build our society.

For few years while they were building foundation they certainly could not write a perfect document that would not require any future changes.

Therefore, there is Article V of the Constitution that allows its amending. But that is not enough. As I already mention the broad interpretation of the Articles and Amendments require Judiciary to take the part in the game. Judiciary has huge power and even though it is independent it still can be controlled by president or congress.

The fact that president has a power of appointing the federal and the Supreme Court judges with congressional approval tells enough about the strength of the Judiciary compared to executive and legislative branch.

Judiciary is powerful and strong, but as long it is not in extensive conflict with other two branches. There are no many cases where the Supreme Court struck down acts of Congress or president. Maybe the most famous are <https://assignbuster.com/is-the-judiciary-really-the-weakest-branch-of-government/>

Marbury v. Madison (1803), New Deal Programs (1930s) and United States v. Nixon (1974).

Even in many of those cases the Supreme Court was cautious in making decision. If the Supreme Court is not sure its decision will be implemented it would not rule the certain way. The Supreme Court decisions are political. Presidents tend to appoint judges who have similar political view.

Therefore, the president and the Congress by appointing and approval actually can influence future decisions. Although the Supreme Court is independent the players (nine justices) are appointed not only because of their experience and knowledge, but because of their political affiliations. However, this can only partly influence the strength and independents of the Court. In many situations Judiciary was the first who recognized the incoming “wind of change” and according to that made many landmark decisions in the area of civil rights and liberties. That shows importance of Judiciary, but it does not mean that Judiciary is stronger than other two branches. For each landmark decision in the area of civil rights the Court waited a long time before finally decided to change interpretation of the law (more than 100 years for full incorporation of the Bill of Rights into XIV amendment).

Basically when the public began to change opinion the Court did too. For instance in the 1954 when was the case Brown v. Board of Education, public opinion was considerably different from 1896 and the case Plessy v. Ferguson.

Over the time the Supreme Court gained the power. The Judiciary is the system of courts, but it is also a “process”. As the historic circumstances <https://assignbuster.com/is-the-judiciary-really-the-weakest-branch-of-government/>

were changing the Judiciary had to adapt too. In the last fifty years there were two judicial revolutions that increased the power of the Court.

The first one was in the area of civil rights when the Court liberalized many public policies. In the second revolution the Judiciary made some institutional changes in judicial procedures. One of the changes was liberalizing the “standing”. Traditional meaning of standing was that person or group that brings case before the court should show personal injury to themselves, but now almost any group can challenge the action of administrative agency and to bring the case before the federal court. The second institutional change was allowing class-action suits.

Those suits are lawsuits in which large number of people gets together around common interest to bring or defend the suit. In the last institutional change federal courts begin with implementation of “ structural remedies,” which means that the judge under his authority will monitor implementation of decision. The above-mentioned resulted in increased number of cases that are filed in the Supreme Court each year. Almost 10 000 cases are filed each year compared 20 years ago when around 5 000 cases were filed.

In my opinion, belief that the Judiciary gained so much power that framers would be shocked if somehow they could travel through time is unreasonable. Filing case statistic explains a little bit my argument. With the 2000 cases per year filed in 1960s and 10 000 now is easy to understand increased workload and interest in court ruling. With five times more cases per year there are more chances to find some landmark case. These data does not prove that Judiciary has too much power but only that is the best

mechanism to seek out protection for constitutionally guaranteed rights To be clear about this let me say again that the Supreme Court beginning with the case Marbury v.

Madison until today gained enormous power. Hamilton who said in his Federalist #78 " the judiciary is beyond comparison the weakest of the three departments of power" would understand this increase in power and would have no objections. Many people think he would. And of course, powers which the Court has now in his time would be understood as threatening. But also it is in his time when the slavery was approved by law and many other sections of law that would be not acceptable today.

In short, if Hamilton could travel through time and see all changes in society he would approve judicial power, but if he would find out about Courts power without knowing the whole history of changes he would be shocked. As I said, Judiciary is a process that will never end it, it lasts for more than 200 years and it is absolutely normal to experience changes, and our generation has an obligation to modify inherited law according to particular circumstances. On the same way our generation modifies power of the government branches and interpretation of the constitution, future generations will do the same thing on the way they find works the best for their time.