

Federalist #78 (excerpts), May 28, 1788

Building Context

While the Constitution was completed on September 17, 1787, it would need to be ratified by conventions of nine of the thirteen states. Alexander Hamilton, James Madison, and John Jay wrote and published a series of essays supporting the Constitution known as The Federalist. These essays were published in New York newspapers as New York was a state whose ratification of the Constitution was critical due to its size and location.

In Federalist #78, Hamilton explained the purpose and design of the federal judicial system as proposed under the Constitution and addressed the critiques presented by opponents of the document.

	Notes
According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices DURING GOOD BEHAVIOR ...The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best <u>expedient</u> which can be devised in any government, to secure a steady, upright, and impartial administration of the laws...	
The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them...The judiciary...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; and must ultimately depend upon the aid of the executive arm even for the <u>efficacy</u> of its judgments...	
Some <u>perplexity</u> respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power... The interpretation of the laws is the proper and peculiar <u>province</u> of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body...the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents	
Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its <u>statutes</u> , stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental...	
If, then, the courts of justice are to be considered as the <u>bulwarks</u> of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.	