bring a case before it for decision."[131] It is "the right to determine actual controversies arising between diverse litigants, duly instituted in courts of proper jurisdiction."[132] The terms "judicial power" and "jurisdiction" are frequently used interchangeably, with "jurisdiction" defined as the power to hear and determine the subject matter in controversy between parties to a suit[133] or as the "power to entertain the suit, consider the merits and render a binding decision thereon."[134] The cases and commentary however, support, indeed require, a distinction between the two concepts.

Jurisdiction is the authority of a court to exercise judicial power in a specific case and is, of course, a prerequisite to the exercise of judicial power, which is the totality of powers a court exercises when it assumes jurisdiction and hears and decides a case.[135] Judicial power confers on federal courts the power to decide a case and to render a judgment that conclusively resolves a case. Included within the general judicial power are the ancillary powers of courts to punish for contempt of their authority,[136] to issue writs in aid of jurisdiction when authorized by statute,[137] to make rules governing their process in the absence of statutory authorizations or prohibitions,[138] to order their own process so as to prevent abuse, oppression, and injustice, and to protect their own jurisdiction and officers in the protection of property in custody of law,[139] to appoint masters in chancery, referees, auditors, and other investigators,[140] and to admit and disbar attorneys.[141]

As judicial power is the authority to render dispositive judgments, Congress violates the separation of powers when it purports to alter final judgments of Article III courts.[142] Once such in-

---

[131] Justice Samuel Miller, On the Constitution 314 (1891).

[132] Muskrat v. United States, 219 U.S. 346, 361 (1911).

[133] United States v. Arrendondo, 31 U.S. (6 Pet.) 691 (1832).

[134] General Investment Co. v. New York Central R.R., 271 U.S. 228, 230 (1926).

[135] Williams v. United States, 289 U.S. 553, 566 (1933); Yakus v. United States, 321 U.S. 414, 467–68 (1944) (Justice Rutledge dissenting).

[136] Michaelson v. United States, 266 U.S. 42 (1924).

[137] McIntire v. Wood, 11 U.S. (7 Cr.) 504 (1813); *Ex parte* Bollman, 8 U.S. (4 Cr.) 75 (1807).

[138] Wayman v. Southard, 23 U.S. (10 Wheat.) 1 (1825).

[139] Gumbel v. Pitkin, 124 U.S. 131 (1888).

[140] *Ex parte* Peterson, 253 U.S. 300 (1920).

[141] *Ex parte* Garland, 71 U.S. (4 Wall.) 333, 378 (1867).

[142] Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 218–19 (1995). The Court was careful to delineate the difference between attempting to alter a final judgment, one rendered by a court and either not appealed or affirmed on appeal, and legislatively amending a statute so as to change the law as it existed at the time a court issued a decision that was on appeal or otherwise still alive at the time a federal court reviewed the determination below. A court must apply the law as revised when it considers the prior interpretation. Id. at 226–27. Article III creates or authorizes Congress to create not a collection of unconnected courts, but a judicial *department*