it,[149] and, second, an act of Congress must have conferred it.[150] The fact that federal courts are of limited jurisdiction means that litigants in them must affirmatively establish that jurisdiction exists and may not confer nonexistent jurisdiction by consent or conduct.[151]

Finality of Judgment as an Attribute of Judicial Power

Since 1792, the federal courts have emphasized finality of judgment as an essential attribute of judicial power. In that year, Congress authorized Revolutionary War veterans to file pension claims in circuit courts of the United States, directed the judges to certify to the Secretary of War the degree of a claimant's disability and their opinion with regard to the proper percentage of monthly pay to be awarded, but empowered the Secretary to withhold judicially certified claimants from the pension list if he suspected "imposition or mistake." [152] The Justices then on circuit almost immediately forwarded objections to the President, contending that the statute was unconstitutional because the judicial power was constitutionally committed to the judicial department, the duties imposed by the act were not judicial, and the subjection of a court's opinions to revision or control by an officer of the executive or the legislature was not authorized by the Constitution.[153]

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the use of the word "all" in each of the federal question, admiralty, and public ambassador subclauses means that Congress must confer the entire judicial power to cases involving those issues, whereas it has more discretion in the other six categories.

[149] Which was, of course, the point of Marbury v. Madison, 5 U.S. (1 Cr.) 137 (1803), once the power of the Court to hold legislation unconstitutional was established.

[150] The Mayor v. Cooper, 73 U.S. (6 Wall.) 247, 252 (1868); Cary v. Curtis, 44 U.S. (3 How.) 236 (1845); Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850); United States v. Hudson & Goodwin, 11 U.S. (7 Cr.) 32, 33 (1812); Kline v. Burke Constr. Co., 260 U.S. 226 (1922). Some judges, however, have expressed the opinion that Congress's authority is limited by provisions of the Constitution such as the Due Process Clause, so that a limitation on jurisdiction that denied a litigant access to any remedy might be unconstitutional. *Cf.* Eisentrager v. Forrestal, 174 F.2d 961, 965–966 (D.C. Cir. 1949), *rev'd on other grounds sub nom*, Johnson v. Eisentrager, 339 U.S. 763 (1950); Battaglia v. General Motors Corp., 169 F.2d 254, 257 (2d Cir. 1948), *cert. denied*, 335 U.S. 887 (1948); Petersen v. Clark, 285 F. Supp. 700, 703 n.5 (N.D. Calif. 1968); Murray v. Vaughn, 300 F. Supp. 688, 694–695 (D.R.I. 1969). The Supreme Court has had no occasion to consider the question.

[151] Turner v. Bank of North America, 4 U.S. (4 Dall.) 8 (1799); Bingham v. Cabot, 3 U.S. (3 Dall.) 382 (1798); Jackson v. Ashton, 33 U.S. (8 Pet.) 148 (1834); Mitchell v. Maurer, 293 U.S. 237 (1934).

[152] Act of March 23, 1792, 1 Stat. 243.

[153] 1 American State Papers: Miscellaneous Documents, Legislative and Executive, of the Congress of the United States 49, 51, 52 (1832). President Washington transmitted the remonstrances to Congress. 1 Messages and Papers of the Presidents 123, 133 (J. Richardson comp., 1897). The objections are also appended to the order of the Court in *Hayburn's Case*, 2 U.S. (2 Dall.) 409, 410 (1792). Note that some of the