

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

the Justices declined a request of President Washington to tender him advice respecting legal issues growing out of United States neutrality between England and France in 1793.³⁴⁵ Moreover, the refusal of the Justices to participate in a congressional plan for awarding veterans' pensions³⁴⁶ bespoke a similar adherence to the restricted role of courts. These restrictions have been encapsulated in a series of principles or doctrines, the application of which determines whether an issue is met for judicial resolution and whether the parties raising it are entitled to have it judicially resolved. Constitutional restrictions are intertwined with prudential considerations in the expression of these principles and doctrines, and it is seldom easy to separate out the two strands.³⁴⁷

The Two Classes of Cases and Controversies

By the terms of the foregoing section, the judicial power extends to nine classes of cases and controversies, which fall into two general groups. In the words of Chief Justice Marshall in *Cohens v. Virginia*:³⁴⁸ "In the first, jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends '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.' This cause extends the jurisdiction of the court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied, against the express words of the article. In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more states, between a state and citizens of another state,' and 'between a state and foreign states, citizens or subjects.' If these be the parties, it is entirely unimportant, what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."³⁴⁹

Judicial power is "the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who

³⁴⁵ 1 C. Warren, *supra* at 108–111; 3 CORRESPONDENCE AND PUBLIC PAPERS OF JOHN JAY 633–635 (H. Johnston ed., 1893); Hart & Wechsler (6th ed.), *supra* at 50–52.

³⁴⁶ *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792), discussed "Finality of Judgment as an Attribute of Judicial Power," *supra*.

³⁴⁷ See, e.g., Justice Brandeis dissenting in *Ashwander v. TVA*, 297 U.S. 288, 341, 345–348 (1936). Cf. *Flast v. Cohen*, 392 U.S. 83, 97 (1968); *Rescue Army v. Municipal Court*, 331 U.S. 549, 568–575 (1947).

³⁴⁸ 19 U.S. (6 Wheat.) 264 (1821).

³⁴⁹ 19 U.S. at 378.