Advanced Constitutional Law Writing Seminar

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Chapter 1

Constitutional Rights and Remedies

1.1 Federal Sovereign Immunity and the Remnants of *Marbury*

The United States cannot be sued without its consent. That axiom, rarely defended and almost never located in constitutional text, stands at the center of federal courts law. The paradox is obvious: *Marbury v. Madison* (1803) teaches that "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy." Yet the foundational doctrine of sovereign immunity ensures that not every wrong committed by the federal government can be redressed in court. This tension frames the modern structure of remedies against the United States.

The doctrine is neither self-evident nor inevitable. When Chief Justice John Marshall announced in *Cohens v. Virginia* that "the universally received opinion is, that no suit can be commenced or prosecuted against the United States" (19 U.S. (6 Wheat.) 264, 411 (1821)), he cited no text, only received understanding. The issue was only peripherally involved in the case, making the statement more of an unexamined truism than a reasoned holding—like saying the sky is blue, accurate but almost reflexive. The maxim was drawn from English common law—"the King can do no wrong"—and absorbed into American public law. From that foundation, courts and Congress built a system in which sovereign immunity is the baseline and waiver is the exception.

Yet Article III itself expressly mentions "Controversies to which the United States shall be a Party," which appears to contemplate suits involving the federal government. The founders left unresolved whether such suits would involve the United States as defendant as well as plaintiff, and Marshall's dictum in *Cohens* effectively assumed the narrower view without analysis. That structure matters because it shows how thin the promise of *Marbury* has always been. Courts recognize judicial review in theory, but practice is defined by a lattice of jurisdictional, statutory, and remedial limitations. Congress created the Court of Claims, enacted the Tucker Act, and later the Federal Tort Claims Act and the Administrative Procedure Act, each waiving immunity in discrete ways. The Supreme Court shaped officer-

suit doctrines and then narrowed *Bivens* remedies for constitutional violations. Jurisdictional doctrines—from *Stuart v. Laird* (1803) to *Ex parte McCardle* (1869) to *Patchak v. Zinke* (138 S. Ct. 897 (2018))—mark the limits of federal judicial power. Statutes like the Anti-Injunction Act and the Norris-LaGuardia Act cabin equitable relief. Even remedies that seem firmly established, such as vacatur under the APA, are now questioned, as Justice Barrett's footnote in *Trump v. CASA, Inc.* illustrates.

This essay traces those limits systematically. It begins with the assumption of sovereign immunity, then follows Congress's statutory structuring of remedies, the courts' improvisations in officer suits and *Bivens* actions, and the layered jurisdictional restrictions that hem in federal courts. The story is not one of expansion but of constraint: while *Marbury* stands for judicial review, the doctrines that surround it remind us that review is partial, contingent, and tightly controlled.

1.2 The Inherited Principle of Sovereign Immunity

1.2.1 English Common Law Roots

The maxim that "the King can do no wrong" was less about moral infallibility than about procedural posture: in English law, the Crown could not be sued in its own courts without consent. Redress was possible through petitions of right, requiring the King's *fiat justitia*. This tradition crossed the Atlantic. At independence, American courts assumed that the new sovereign—the United States—retained immunity unless it consented. The Constitution did not repudiate the principle, and Article III's reference to "Controversies to which the United States shall be a Party" was read as jurisdictional permission, not as an abrogation of immunity.

1.2.2 Early Supreme Court Recognition

The Court's earliest pronouncements are revealing for their lack of textual anchor.

Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821). The case arose from a criminal prosecution in Virginia against the Cohens brothers for selling District of Columbia lottery tickets in violation of state law. The issue before the Court was whether it had appellate jurisdiction over state criminal judgments. In the course of resolving that question, Chief Justice Marshall inserted a broad dictum: the United States could not be sued without consent. He relied on "universally received opinion," not constitutional text, and his comment was peripheral to the holding.

United States v. Clarke, 33 U.S. (8 Pet.) 436 (1834). The case arose from George J. F. Clarke's petition for confirmation of Spanish land grants in Florida following its cession to the United States. The central issue was the validity of those land titles, not sovereign immunity. But Chief Justice Marshall nonetheless reaffirmed, citing his own dictum in

Cohens, that "as the United States is not suable of common right, the party who institutes such suit must bring his case within the authority of some act of Congress, or the court cannot exercise jurisdiction over it." Id. at 444. Once again, the principle was asserted as established doctrine, not reasoned from first principles, and its connection to the actual dispute was peripheral.

United States v. Lee, 106 U.S. 196 (1882). The heirs of Robert E. Lee sought recovery of the Arlington estate, seized during the Civil War and converted into Arlington Cemetery. The Court allowed an officer suit to proceed, holding that officers could be enjoined from unconstitutional possession, but it reaffirmed that the United States itself could not be sued absent consent. What made the decision remarkable was the Court's development of a remedial workaround: by conceptualizing the suit as against individual officers rather than the sovereign, the Court opened a remedial path where precedent had been restrictive. The reasoning leaned heavily on the idea that unconstitutional actions fell outside sovereign authority. While this doctrinal move built upon existing precedent from cases like *Osborn v. Bank of United States* (1824), *Lee* represented the last successful invocation of the "nominal party rule" with only a narrow 5-4 majority. The timing coincided significantly with the post-Reconstruction Court's broader retreat from federal civil rights enforcement and growing accommodation of Southern interests. Between the Compromise of 1877, which ended federal troop protection in the South, and the *Civil Rights Cases* of 1883, which struck down the Civil Rights Act of 1875, the Court demonstrated what scholars term "Reconstruction fatigue"—a judicial willingness to prioritize sectional reconciliation over robust protection of federal rights. Prior efforts to sue federal officers had largely failed, and without the newly available federal question jurisdiction created by the 1875 Judiciary Act, such a case might never have been heard in federal court. *Lee* thus illustrates how jurisdictional grants and remedial innovation went hand in hand: a new jurisdictional hook made space for a new remedial theory. The case both reinforced immunity principles and simultaneously created an avenue to circumvent them, leaving a legacy of tension that persists in modern officer-suit doctrine. The logic was circular but effective: because the Constitution did not affirmatively authorize suits against the sovereign, the old common law presumption of immunity survived.

1.2.3 The State Analogy and *Hans v. Louisiana*

When the Court addressed state sovereign immunity in *Hans v. Louisiana*, 134 U.S. 1 (1890), it made explicit what had been implicit for the federal government. The Eleventh Amendment bars certain suits against states, but *Hans* read immunity more broadly, as a "fundamental postulate" of the constitutional structure. The reasoning—states did not surrender immunity absent explicit text—echoes the Court's approach to federal immunity. The doctrines differ in application, but both rest on structural assumptions, not textual grants.

Historical Sidebar: The Road to the Tucker Act

The Tucker Act of 1887 did not emerge from thin air. It was the culmination of decades of frustration with Congress's case-by-case handling of private claims against the government. For much of the nineteenth century, individuals with grievances—especially contractors supplying the Union during the Civil War—had to petition Congress directly for payment. The flood of private bills was overwhelming, and it bred perceptions of favoritism and corruption. Reformers, including President Lincoln in his 1861 Annual Message, pressed for a judicial forum to handle such claims. Congress experimented with half-measures. The Court of Claims was created in 1855, but its decisions were initially advisory only. The Bowman Act of 1883 allowed congressional committees to refer claims to the Court of Claims for findings, yet final payment still required legislation. By the mid-1880s the backlog had become intolerable, particularly with thousands of Civil War–related contract and property claims still unresolved. The federal government's growing role in construction, procurement, and infrastructure made the absence of enforceable remedies untenable: private parties were reluctant to contract with a sovereign that could breach without consequence.

Against this background, Representative John Randolph Tucker of Virginia steered through Congress the 1887 Act that bears his name. It granted the Court of Claims jurisdiction over monetary claims founded on contracts, statutes, or the Constitution, and extended concurrent jurisdiction in smaller cases to the district courts. The inclusion of constitutional claims—especially takings—reflected the Supreme Court's recognition in *United States v. Great Falls Manufacturing Co.* (1884) that property owners were entitled to just compensation when the government appropriated land. The Tucker Act thus institutionalized the idea that the United States must sometimes answer in damages, a concession to the practical demands of a modern economy built on public–private cooperation. The broader point is that the waiver was not born of abstract benevolence but of necessity. To have a functioning, mutually beneficial economy—one in which the federal government relied on private contractors and investors—Congress needed to assure those private actors of a judicial remedy. That lesson was absorbed in the economic domain. What is striking is that we have not been nearly so receptive to the notion that a mutually beneficial political and social order might also require broader waivers of sovereign immunity.

1.2.4 Jurisdictional Framing in *Sherwood*

United States v. Sherwood, 312 U.S. 584 (1941), crystallized the doctrine in the context of the Tucker Act. Enacted in 1887, the Act waived sovereign immunity for certain monetary claims against the United States and conferred jurisdiction on the Court of Claims and, in limited amounts, on district courts. Sherwood, a judgment creditor, attempted to invoke the Act to reach federal assets by suing in federal court. His claim, however, depended on resolving disputes among private parties before liability could attach to the United States. The Court rejected that maneuver, holding that the United States had not consented to have its liability litigated in conjunction with controversies between private parties. Justice Frankfurter's opinion stated flatly: "The United States, as sovereign, is immune from suit

save as it consents to be sued, ... and the terms of its consent to be sued in any court define that court's jurisdiction." Id. at 586. The argument that the Tucker Act opened the door to any suit in which the United States might ultimately be financially interested was squarely rejected. Immunity thus operated as a jurisdictional limit, not as a defense, and the Court insisted that the Act's waiver had to be read strictly to cover only the kinds of claims Congress clearly authorized.

1.2.5 Constitutional Grounding—or Lack Thereof

Where in the Constitution does this immunity rest? The text is silent. Article III's "cases and controversies" language, together with the Necessary and Proper Clause and Congress's authority to constitute tribunals, provides the framework for waivers. But the immunity itself is treated as a structural backdrop, carried over from English law. It functions like the *Hans* doctrine for states: not written, not voted upon, but deemed "fundamental." The result is that U.S. sovereign immunity is simultaneously constitutional and statutory. Constitutional, in that courts will not presume Congress has abrogated it, and statutory, in that only Congress can create the exceptions. This dual character explains why waivers like the Tucker Act and FTCA are construed narrowly. The presumption is not against remedies in general, but against remedies against the sovereign.

1.2.6 Early Practice and Its Implications

From the start, Congress and the Court worked against the presumption rather than dismantling it. Congress created limited remedial forums, like the Court of Claims in 1855. The Supreme Court developed doctrines permitting officer suits when federal officials exceeded constitutional or statutory authority. But no one seriously proposed that Article III itself authorized general suits against the United States. That settlement carries forward to today. Federal courts may strike down statutes and enjoin officers, but when the United States is named as defendant, jurisdiction depends on statute. The premise that the sovereign is immune without consent is neither written in the Constitution nor seriously questioned in doctrine. It is the quintessential "extra-constitutional but everybody knows" principle.

1.3 The Court of Claims and the Tucker Act

The Court of Claims was the first significant institutional concession that the United States could not always stand aloof from private rights. Created in 1855, it began as a modest tribunal that heard claims and reported its findings to Congress for legislative action. The Court's decisions were initially advisory, and Congress retained ultimate discretion to appropriate money. This arrangement did little to reduce the torrent of private bills; by the 1860s, Congress was still consumed with petitions from suppliers, contractors, and civilians who claimed debts from the government. President Abraham Lincoln, in his First Annual

Message in 1861, framed the dilemma starkly: "It is as much the duty of Government to render prompt justice against itself, in favor of citizens, as it is to administer the same between private individuals." He urged the creation of a true judicial remedy rather than piecemeal legislative relief.

Congress responded in 1863 by strengthening the Court of Claims, making its judgments final subject to appeal to the Supreme Court. This innovation gave contractors and property owners a more predictable avenue of redress, although recovery remained limited to monetary damages. By the 1880s, however, the sheer scale of federal contracting and the residue of Civil War claims made even this system insufficient. The Bowman Act of 1883 allowed congressional committees and executive departments to refer claims to the Court of Claims for fact-finding, but the final disposition still required congressional approval. Between 1883 and 1887, the Attorney General's reports noted thousands of referrals, underscoring how overwhelmed the system remained.

The Tucker Act of 1887 completed the transition from legislative grace to judicial remedy. Sponsored by Representative John Randolph Tucker of Virginia, the Act gave the Court of Claims jurisdiction over monetary claims "founded upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States." 24 Stat. 505 (1887). It also extended concurrent jurisdiction to the district courts for claims not exceeding $10,000, the so-called "little Tucker Act." The statute thus created a two-tiered system: large claims went to the Court of Claims, smaller claims could be pursued locally.

The inclusion of constitutional claims was particularly significant. The Supreme Court had just decided *United States v. Great Falls Manufacturing Co.*, 112 U.S. 645 (1884), which held that a property owner was entitled to compensation when the federal government appropriated land for a canal. The Court reasoned that such takings were effectively contracts implied in law. The Tucker Act codified this insight, explicitly allowing suits founded upon the Constitution, thereby creating a judicial remedy for Takings Clause violations. The Act stopped short of waiving immunity for torts or for equitable relief, keeping the waiver tightly circumscribed.

The Tucker Act immediately raised questions about the scope of jurisdiction. Could a plaintiff use it as a hook to litigate complex disputes that only indirectly involved the United States? *United States v. Sherwood*, 312 U.S. 584 (1941), answered no. Sherwood, a judgment creditor, attempted to sue in federal court under the Tucker Act to reach federal assets, but his claim depended on adjudicating disputes among private parties. Justice Frankfurter held that the United States had not consented to have its liability litigated in conjunction with private controversies. The Court emphasized that "the terms of [the United States'] consent to be sued in any court define that court's jurisdiction." Id. at 586. *Sherwood* reinforced the idea that waivers are to be construed strictly, and jurisdiction exists only to the extent Congress clearly authorized.

A generation later, *United States v. Testan*, 424 U.S. 392 (1976), sharpened this point. The Court held that the Tucker Act itself does not create substantive rights; it merely confers jurisdiction where another source of law authorizes money damages. *Testan* involved federal

employees seeking back pay under the Classification Act. The Court concluded that the statute did not create a right to compensation for misclassification, and therefore the Court of Claims lacked jurisdiction. This interpretation has guided Tucker Act jurisprudence ever since: a plaintiff must point to a separate, money-mandating provision of law.

United States v. Mitchell (Mitchell II), 463 U.S. 206 (1983), illustrates the potential breadth of this approach when such a provision exists. There, Native American allottees sued the United States for mismanagement of timber resources on their trust lands. The Court held that the Tucker Act conferred jurisdiction because the Indian timber statutes and regulations created fiduciary obligations enforceable in money damages. By contrast, in *Mitchell I*, 445 U.S. 535 (1980), the Court had denied jurisdiction because the statutes then invoked were too general. The juxtaposition shows how finely the Court parses statutory text to determine whether a damages remedy lies.

The Tucker Act, then, represents both a major step forward and a continuing constraint. It assured contractors and property owners that the sovereign could be held financially accountable, a crucial step for a modern commercial state. But it also entrenched the principle that only Congress can decide when and how the United States may be sued. The result is a system where remedies exist, but only in the narrow corridors Congress has unlocked.

1.4 The Federal Tort Claims Act

The Federal Tort Claims Act (FTCA), enacted in 1946, was another major waiver of sovereign immunity, but with a different orientation. Whereas the Tucker Act addressed contracts and statutory rights, the FTCA opened the door to tort liability. Before 1946, individuals injured by federal employees had virtually no remedy except to petition Congress for a private bill. The pressure for reform became acute after a U.S. Army Air Corps B-25 bomber crashed into the Empire State Building in 1945, killing 14 people and injuring dozens more. The victims had no direct cause of action against the federal government. Public outrage highlighted the irrationality of a system that left tort victims uncompensated while Congress ground through hundreds of private bills each year.

The FTCA created a general cause of action against the United States for "injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of a government employee acting within the scope of employment. 28 U.S.C. §1346(b)(1). The Act made the United States liable "in the same manner and to the same extent as a private individual under like circumstances." Id. This language incorporated state tort law as the rule of decision. The statute also provided for administrative exhaustion: claimants must first present their claims to the relevant federal agency before filing suit. 28 U.S.C. §2675.

The Act was not unconditional. Congress included numerous exceptions, codified at 28 U.S.C. §2680. The most important is the discretionary function exception, which preserves immunity for claims "based upon the exercise or performance or the failure to exercise or

perform a discretionary function or duty." This provision, interpreted broadly in *Dalehite v. United States*, 346 U.S. 15 (1953), shields government decisions involving policy judgment. Other exceptions exclude claims arising from combatant activities, foreign country torts, and certain intentional torts; in 1974, Congress added the "law enforcement proviso" to §2680(h), extending the waiver to a set of intentional torts by federal investigative or law enforcement officers. See *Millbrook v. United States*, 569 U.S. 50, 55–57 (2013). Even with amendments, the list of exceptions remains formidable.

Several cases illustrate the contours of FTCA liability. In *Indian Towing Co. v. United States*, 350 U.S. 61 (1955), the Court held that the government could be liable for negligent operation of a lighthouse. Justice Frankfurter explained that once the government undertakes an activity that private actors also perform, it must act with due care. In *United States v. Varig Airlines*, 467 U.S. 797 (1984), by contrast, the Court applied the discretionary function exception to bar suits challenging the FAA's certification of aircraft, reasoning that regulatory oversight involved policy choices immune from judicial second-guessing.

The FTCA intersects uneasily with constitutional claims. Plaintiffs often attempted to plead tort theories to recover for harms that were essentially constitutional wrongs—unlawful searches, violations of due process, cruel and unusual punishment. The Supreme Court has consistently refused to conflate the two. *FDIC v. Meyer*, 510 U.S. 471 (1994), is the pivot. Meyer, an officer at a failed thrift, alleged that the Federal Savings and Loan Insurance Corporation, later the FDIC as receiver, terminated him without the process guaranteed by the Fifth Amendment. He pursued damages directly against the federal agency. The Court unanimously rejected the claim, holding first that constitutional torts are not "cognizable" under 28 U.S.C. §1346(b) because the FTCA incorporates only state-law duties, not federal constitutional norms, and second that *Bivens* does not extend to suits against federal agencies. See id. at 477–85. As the Court put it, "in essence, Meyer asks the Court to imply a damages action based on a decision that presumed the absence of that very action," and creating direct agency liability would impose a "potentially enormous financial burden" better left to Congress. Id. at 485–86. The opinion of the Court was by Justice Thomas; there were no dissents.

The practical effect is a remedial gap with concrete constitutional dimensions. Fourth Amendment search-and-seizure claims, Fifth Amendment due process claims (including coerced confessions or deprivation of liberty or property without law), Sixth Amendment fair-trial claims, and Eighth Amendment conditions-of-confinement or deliberate-indifference claims do not enter the FTCA simply because they allege constitutional wrongs. Plaintiffs must either identify a parallel state-law tort claim that fits the FTCA's terms—sometimes possible under the law-enforcement proviso, see 28 U.S.C. §2680(h); *Millbrook v. United States*, 569 U.S. 50, 55–57 (2013)—or proceed against individual officers under *Bivens*, where available. See *Carlson v. Green*, 446 U.S. 14, 18–23 (1980) (FTCA does not displace *Bivens* remedy). The key point after *Meyer* is that the FTCA does not itself furnish a vehicle for vindicating constitutional rights, even when the same facts might support a state-law tort analogue.

The FTCA also interacts with other immunity doctrines. It substitutes the United States as defendant in place of individual employees, thereby protecting federal workers from per-

sonal liability for on-the-job negligence. The Westfall Act of 1988 strengthened this substitution mechanism, making the FTCA the exclusive remedy for most torts committed by federal employees acting within the scope of employment, except for constitutional claims preserved by statute. See 28 U.S.C. §2679(b)(1)–(2)(A). This exclusivity underscores the policy rationale: compensate victims while insulating individual employees from crushing liability.

Yet the FTCA is not a comprehensive solution. Its state-law orientation produces uneven results, as liability depends on the fortuity of where the tort occurred. Its exceptions leave large areas—military, regulatory, foreign—beyond judicial reach. And its refusal to incorporate constitutional wrongs ensures that some of the gravest injuries inflicted by federal officials cannot be redressed through its framework. The Act remains a landmark in the gradual chipping away of sovereign immunity, but its gaps remind us that Congress chose a limited waiver tailored to negligence and akin wrongs, not a wholesale opening of the courthouse doors. Those gaps leave open a question that looms over the next chapters: if tort and contract remedies are so carefully contained, where are citizens to turn when the alleged wrong is constitutional at its core?

1.5 The Administrative Procedure Act and Its Limits

The Administrative Procedure Act of 1946 (APA) remains the most significant statutory vehicle for challenging unlawful federal agency action. It offers both a waiver of sovereign immunity and a framework for judicial review. Yet the APA is no open-ended license to sue. Its text and the Court's interpretations have steadily circumscribed the availability of review and the scope of remedies. To understand the doctrine, we need to move step by step: the waiver in §702, the prerequisites for review in §704, the grounds for setting aside agency action in §706, the contested remedy of vacatur, and finally the built-in limits in §§701(a)(1) and 701(a)(2), together with jurisdiction-stripping statutes and channeling regimes. The story is one of both empowerment and retrenchment.

1.5.1 Section 702: Waiver of Sovereign Immunity

Section 702 provides that "[a]n action in a court of the United States seeking relief other than money damages ... shall not be dismissed nor relief therein be denied on the ground that it is against the United States." 5 U.S.C. §702. The provision did not create substantive rights; it lifted the bar of sovereign immunity so that plaintiffs could obtain equitable relief against federal agencies. But this waiver is not universal. The Supreme Court has emphasized that the President is not an "agency" under the APA, meaning presidential actions are not reviewable. In *Franklin v. Massachusetts*, 505 U.S. 788 (1992), Massachusetts challenged the Secretary of Commerce's census tabulations used for apportioning seats in the House of Representatives. The Court held that the "final action" was the President's transmission of the numbers to Congress, and because the President is not an agency, the APA provided no review. Similarly, in *Dalton v. Specter*, 511 U.S. 462 (1994), the Court held that decisions

by the President on military base closures, though preceded by agency recommendations, were not reviewable under the APA. These cases mark the outer limit of the waiver: agency action, yes; presidential action, no.

1.5.2 Section 704: Prerequisites for Review

Section 704 allows review only of "final agency action for which there is no other adequate remedy in a court." The "final agency action" requirement is critical. In *Bennett v. Spear*, 520 U.S. 154 (1997), ranchers challenged a biological opinion issued by the Fish and Wildlife Service that constrained water usage. The government argued the opinion was merely advisory. The Court disagreed, laying down a two-part test: final agency action must (1) mark the consummation of the agency's decision-making process, and (2) determine rights or obligations, or have legal consequences. Because the biological opinion had binding effects on water allocation, it qualified as final and reviewable.

The "adequate remedy" limitation prevents duplicative review. In *Elgin v. Department of Treasury*, 567 U.S. 1 (2012), federal employees challenged their dismissal on constitutional grounds. The Court held that because the Civil Service Reform Act provided an exclusive remedial scheme, APA review was unavailable. The APA is not a freestanding route to court when Congress has built a specialized review process.

1.5.3 Section 706: Grounds for Review

Section 706 directs courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, an abuse of discretion, contrary to law, unsupported by substantial evidence, or, under §706(2)(B), "contrary to constitutional right, power, privilege, or immunity." This last phrase confirms that agency action can be reviewed not only for statutory defects but also for constitutional violations. The canonical example is *INS v. Chadha*, 462 U.S. 919 (1983). Chadha, an immigrant, faced deportation but obtained suspension of deportation from the Attorney General. The House of Representatives then exercised a legislative veto to overturn that decision. The Supreme Court held that the one-House veto violated the Constitution's requirements of bicameralism and presentment. Because the agency had acted pursuant to an unconstitutional statute, its action was "contrary to constitutional right" and had to be set aside under §706. *Chadha* illustrates the breadth of §706: the APA authorizes courts to police constitutional boundaries.

1.5.4 Remedies: Vacatur and Its Critics

The APA instructs courts to "set aside" unlawful agency action, but what does that mean? For decades, courts treated "set aside" as authorizing vacatur—wiping the rule or order from the books. Unlike an injunction, which binds specific parties, vacatur operates universally. For example, when the D.C. Circuit invalidates an EPA regulation, that rule no longer

governs anyone. The Supreme Court long acquiesced in this practice. But in *Trump v. CASA, Inc.*, 602 U.S. ___ (2024), which concerned a presidential order restricting birthright citizenship, Justice Barrett raised doubts. In footnote 10, she suggested that "set aside" might mean only that courts should disregard unlawful rules in the cases before them, not erase them universally. Though dictum, this remark has sparked intense debate. If vacatur is not authorized, relief under the APA would shrink dramatically, leaving only party-specific remedies and heightening the stakes of universal injunctions.

1.5.5 Section 701(a)(1): Statutory Preclusion of Review

The APA does not apply where "statutes preclude judicial review." 5 U.S.C. §701(a)(1). Congress sometimes writes explicit bars. For example, in *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), milk consumers sought to challenge milk market orders under the APA. The statute gave producers—but not consumers—the right to participate in the administrative scheme. The Court held that this structure implied a congressional intent to preclude consumer suits. Where Congress provides a detailed scheme for certain parties, others are excluded.

Immigration law provides clearer examples. The Immigration and Nationality Act contains provisions limiting judicial review of removal orders. In *Kucana v. Holder*, 558 U.S. 233 (2010), the Court interpreted one such provision narrowly, preserving judicial review where possible. But later statutes, including the REAL ID Act of 2005, consolidated and restricted review of removal orders, channeling them to the courts of appeals. These statutes demonstrate how Congress can withdraw APA review in sensitive fields.

1.5.6 Section 701(a)(2): Committed to Agency Discretion

Even when no statute bars review, courts lack jurisdiction if action is "committed to agency discretion by law." 5 U.S.C. §701(a)(2). The provision recognizes that some decisions are so infused with policy judgment that courts have no standards to apply. The leading case is *Heckler v. Chaney*, 470 U.S. 821 (1985). Death row inmates petitioned the FDA to prevent states from using unapproved drugs for lethal injection. The FDA refused to act. The Court held that agency decisions not to enforce are "committed to agency discretion." Prosecutorial discretion, with its blend of resource allocation and policy, resists judicial review. Similarly, in *Lincoln v. Vigil*, 508 U.S. 182 (1993), the Court held that the Indian Health Service's decision to reallocate funds from one program to another was committed to agency discretion, because the statute gave no meaningful standards to judge how lump-sum appropriations should be spent.

National security and foreign affairs often trigger §701(a)(2). In *Department of Navy v. Egan*, 484 U.S. 518 (1988), the Court held that decisions to grant or revoke security clearances are committed to agency discretion, given the President's constitutional role as Commander in Chief. Likewise, in *Webster v. Doe*, 486 U.S. 592 (1988), the Court held that the CIA Director's decision to terminate an employee "whenever he shall deem such

termination necessary or advisable in the interests of the United States" was unreviewable for statutory claims. However, the Court allowed constitutional claims to proceed, drawing a sharp distinction between statutory and constitutional review.

1.5.7 Jurisdiction-Stripping and Channeling Statutes

Beyond §701, Congress sometimes enacts jurisdiction-stripping statutes that channel or eliminate judicial review. These laws do not merely preclude review in certain contexts; they restructure the forum. In *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), a coal company challenged Mine Safety and Health Administration regulations in district court. The statute provided a detailed administrative review process culminating in the court of appeals. The Court held that the APA suit was barred because Congress had created a specific channel for review. Similarly, in *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010), the Court clarified that preclusion depends on whether the statutory scheme allows meaningful judicial review, whether the claim is wholly collateral, and whether agency expertise is relevant. Most recently, in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), the Court held that constitutional challenges to the structure of agencies could bypass statutory review schemes and be brought directly in district court. The decision reflects a narrowing of *Thunder Basin*, but the principle remains: Congress can channel APA review into specific routes, and courts will respect that unless meaningful review is impossible.

1.5.8 Synthesis

The APA's structure is both capacious and constrained. Section 702 opened the courthouse door by waiving sovereign immunity, but *Franklin* and *Dalton* remind us that the President remains outside the APA's reach. Section 704 ensures that only final, otherwise unremediable actions are reviewable. Section 706 empowers courts to police not just statutory errors but constitutional violations, as in *Chadha*, yet leaves remedies uncertain in the wake of *CASA*'s challenge to vacatur. And §§701(a)(1) and 701(a)(2), together with jurisdiction-stripping statutes, mark off zones where the judiciary must abstain: statutory preclusion, unreviewable discretion, and congressionally mandated channels. Taken together, these doctrines reveal a statute that is neither a blunt weapon against all agency action nor a dead letter. It is a carefully structured compromise, reflecting Congress's 1946 attempt to codify judicial review while preserving executive discretion and legislative control. The result is a body of law in which review is broad but never absolute, always subject to the constitutional balance of powers.

1.6 Officer Suits, Injunctions, and *Trump v. CASA*

Before the APA, the principal path to equitable relief was the officer suit. The logic was simple but formalistic: if an officer acts beyond statutory or constitutional authority, he

ceases to represent the sovereign and may be enjoined in his individual capacity. This doctrine, rooted in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), which concerned actions against state officers rather than federal ones, with the first major federal officer case emerging later in *United States v. Lee*, 106 U.S. 196 (1882), and crystallized in *United States v. Lee*, 106 U.S. 196 (1882), offered a workaround to sovereign immunity. But the line between ultra vires and authorized action proved elusive. Later cases, such as *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949), cut back, holding that as long as officers acted within delegated authority—even if unlawfully—the suit was effectively against the United States and barred by immunity. Injunctions against federal officers thus became tightly circumscribed. Plaintiffs could sue to prevent plainly unconstitutional or jurisdictionally excessive actions, but not to challenge ordinary exercises of discretion. The APA partially displaced this terrain by providing a direct statutory path, but officer suits remain important when APA review is unavailable, such as in cases involving presidential action or when statutes preclude APA review.

Trump v. CASA, Inc. illustrates the modern stakes. The case involved a presidential order seeking to restrict birthright citizenship, which was challenged by advocacy groups and local governments as unconstitutional. The lower courts issued nationwide injunctions against implementation. On review, the Supreme Court reversed, holding that the Judiciary Act of 1789 did not authorize federal courts to issue injunctions that extend beyond the parties before them. The majority, emphasizing the statutory text, drew a distinction between remedies that bind defendants in relation to plaintiffs and remedies that purport to nullify executive action on a nationwide basis. In doing so, the Court placed limits on the use of injunctions as a systemic check on executive power.

The Court's reasoning suggests a tightening circle. APA review may soon be limited if vacatur is cut back. Injunctions against federal officers are already constrained to party-specific relief. What remains is declaratory judgment—a weaker remedy, and one whose deterrent power depends on executive compliance. The trajectory is toward narrower, more individualized remedies, leaving systemic challenges more difficult to mount. This brings the narrative full circle: *Marbury v. Madison* promised judicial review, but doctrines of sovereign immunity, statutory waiver, and remedial limitation have progressively defined its scope. As we turn next to *Bivens* and constitutional torts, the tension sharpens: when constitutional rights are violated, and neither the FTCA nor the APA nor broad injunctions provide redress, what remains of *Marbury*'s assurance that for every right, there is a remedy?

1.7 *Bivens* and Constitutional Torts

Even as statutory and equitable avenues narrowed, the Court in the twentieth century recognized a direct cause of action for damages against federal officers who violated the Constitution. The seminal case is *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). There, federal narcotics agents allegedly entered Webster Bivens's home without a warrant, manacled him, and conducted a search in violation of the Fourth Amendment. The Court held that Bivens could sue the officers directly for damages,

even absent a statute authorizing such a remedy. Justice Brennan's majority opinion framed the action as necessary to vindicate constitutional rights, channeling *Marbury v. Madison* to argue that a right without a remedy would be hollow.

The *Bivens* doctrine was groundbreaking because it supplied a personal-capacity damages remedy against federal officers despite sovereign immunity. Unlike officer suits for equitable relief, which targeted ultra vires action, *Bivens* recognized that even actions taken under color of federal authority could give rise to personal liability if they violated the Constitution. The doctrine reflected *Marbury*'s maxim that for every right there must be a remedy, but it did so by shifting the remedial focus from sovereign to individual liability. The doctrine established in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), provides a narrow, judicially-created cause of action for damages against federal officials who violate constitutional rights. This remedy was never statutory; it was inferred directly from the Constitution itself as a necessary tool for accountability. However, the Supreme Court has grown increasingly hostile to expanding this doctrine, a trend starting in *Chappell v. Wallace*, 462 U.S. 296 (1983), and culminating in its recent decision in *Egbert v. Boule*, 596 U.S. ___ (2022).

In *Chappell v. Wallace*, 462 U.S. 296 (1983), the Court refused to extend *Bivens* to enlisted military personnel seeking damages from superior officers, citing special factors of military discipline. In *Bush v. Lucas*, 462 U.S. 367 (1983), it declined to create a *Bivens* remedy for a federal employee disciplined for speech, reasoning that Congress had provided a comprehensive remedial scheme. In *Egbert*, the Court considered claims from an innkeeper who alleged that a U.S. Border Patrol agent violated his Fourth Amendment rights through unlawful entry and excessive force, and his First Amendment rights through retaliation. The Court declined to extend a *Bivens* remedy to either claim. Writing for the majority, Justice Thomas declared that creating new causes of action is a "disfavored judicial activity" and properly the domain of Congress. The Court's modern two-step test for *Bivens* claims asks (1) whether the case presents a new context and (2) if so, whether "special factors" counsel hesitation. *Egbert* effectively collapsed this inquiry into a single question: is there any reason to think Congress is better suited to create a remedy? The decision held that if Congress has legislated in a given area, even without providing a damages remedy, or if there are national security considerations, courts must abstain. The mere existence of alternative, even incomplete, remedial processes—such as internal agency grievance procedures—is now sufficient reason for judicial hesitation.

The practical effect of *Egbert* is the near-complete foreclosure of new *Bivens* claims, creating a significant remedial gap for individuals whose rights are violated. The doctrine is now confined to the precise factual circumstances of its three original applications: a Fourth Amendment search and seizure claim against federal narcotics agents (*Bivens*); a Fifth Amendment equal protection claim for gender discrimination in federal employment (*Davis v. Passman*, 442 U.S. 228 (1979)); and an Eighth Amendment claim for deliberate indifference to a federal inmate's medical needs (*Carlson v. Green*, 446 U.S. 14 (1980)). Outside of these narrow contexts, individuals are left with few options. For example, if a federal official infringes upon a person's religious freedoms, retaliates against speech, or deprives them of property without due process, no federal damages remedy may be available. Nor can victims typically turn to other federal statutes, such as the Federal Tort Claims

Act (FTCA), to fill this void. The FTCA is not a substitute for two primary reasons. First, it waives sovereign immunity for common law torts as defined by state law (e.g., negligence, battery), not for violations of the U.S. Constitution. Second, the FTCA contains a critical "intentional tort exception" under 28 U.S.C. §2680(h), which bars lawsuits against the government for acts like false arrest, malicious prosecution, and abuse of process. While a "law enforcement proviso" carves out a limited exception for some of these torts, it is not comprehensive and fails to cover constitutional harms that have no direct common law equivalent.

Ultimately, the Court's modern jurisprudence reflects a profound deference to Congress rooted in separation-of-powers concerns. By refusing to create or extend remedies, the Court has shifted the burden of protecting constitutional rights from federal overreach squarely to a legislative body that has not acted to provide a comprehensive solution. Thus, *Egbert v. Boule* signals not just a freezing of the *Bivens* doctrine but arguably its effective end as a tool for constitutional accountability in any new context, leaving many wrongs without a remedy.

1.8 Jurisdictional and Remedial Limitations

Federal courts are not plenary bodies empowered to adjudicate any dispute; they are tribunals of limited jurisdiction whose remedial powers are carefully hedged by constitutional and statutory constraints. Over two centuries of jurisprudence reveals a consistent push and pull between judicial assertion of remedial authority and congressional or structural limits. This Part examines those jurisdictional and remedial limitations, beginning with early precedents, then tracing statutory restrictions, and culminating in modern doctrines that narrow federal courts' reach.

1.8.1 Historical Limits on Jurisdiction

Stuart v. Laird and Early Precedents

One of the earliest cases on congressional control over federal jurisdiction, *Stuart v. Laird*, 5 U.S. (1 Cranch) 299 (1803), decided in the same Term as *Marbury v. Madison*, affirmed that Congress possessed broad authority to structure the lower federal courts and to transfer jurisdiction among them. The Court upheld Congress's abolition of circuit courts created by the Judiciary Act of 1801 and reassignment of their caseloads, reasoning that the Constitution vested Congress with power to "ordain and establish" inferior courts under Article III. This case reflected the basic principle that Congress, not the judiciary, determines the jurisdictional contours of federal tribunals. The Judiciary Act of 1789 itself was modest in scope. It withheld "arising under" federal question jurisdiction from the lower courts entirely, leaving such claims to be litigated in state courts unless they fell within another head of jurisdiction, such as diversity. Diversity jurisdiction itself was limited by an amount-in-

controversy requirement—initially $500—that ensured only cases of sufficient gravity would enter federal court. See Judiciary Act of 1789, ch. 20, §11, 1 Stat. 73, 78.

Ex parte McCardle and the Exceptions Clause

The Supreme Court's jurisdiction, too, has been shaped by congressional restriction. In *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869), a Mississippi newspaper editor detained by military authorities during Reconstruction sought habeas corpus relief. While his appeal was pending, Congress repealed the statute granting the Supreme Court appellate jurisdiction over such habeas cases. The Court dismissed for lack of jurisdiction, emphasizing that Article III's Exceptions Clause permits Congress to make exceptions to the Court's appellate jurisdiction. *McCardle* thus stands for the proposition that Congress may withdraw jurisdiction even in pending cases, though the Court preserved an alternative habeas path under the Judiciary Act of 1789.

United States v. Klein

Yet congressional power is not limitless. In *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872), the Court invalidated a statute that sought to dictate the outcome of pending claims by requiring courts to treat a presidential pardon as conclusive evidence of disloyalty in suits for the recovery of seized property. Congress had essentially tried to tell courts: 'if you see a pardon, you must rule against the claimant'—converting what should have been evidence of loyalty into proof of its opposite. The Court held that while Congress may limit jurisdiction, it cannot manipulate jurisdictional rules to compel particular case outcomes or impair the constitutional prerogatives of the President. *Klein* thus marks a structural boundary: jurisdiction-stripping may not be used as a subterfuge for dictating substantive results.

Patchak v. Zinke

A modern echo of these debates appeared in *Patchak v. Zinke*, 583 U.S. 449 (2018). David Patchak sued to challenge the federal government's acquisition of land in trust for a Native American tribe. While litigation was ongoing, Congress enacted the Gun Lake Act, which stripped federal courts of jurisdiction over suits relating to that land. A plurality upheld the statute, reasoning that Congress had permissibly withdrawn jurisdiction without prescribing a rule of decision. Justice Sotomayor concurred, emphasizing the importance of separating jurisdiction-stripping from outcome-dictation, while Chief Justice Roberts dissented, warning that Congress was functionally deciding the case by extinguishing jurisdiction. *Patchak* illustrates the persistent tension in this domain.

Other Historical Restrictions

Congress has often chosen not to extend federal jurisdiction to its logical maximum. For example, the "well-pleaded complaint rule," established in *Louisville & Nashville Railroad Co. v. Mottley*, 211 U.S. 149 (1908), limits federal question jurisdiction to claims arising under federal law as they appear on the face of a properly pleaded complaint, not anticipated defenses. Similarly, until 1875, there was no general statutory grant of federal question jurisdiction to the lower federal courts; only then did Congress provide such authority, significantly expanding federal judicial power. See Act of Mar. 3, 1875, ch. 137, 18 Stat. 470.

1.8.2 Statutory Limitations on Remedies

The Anti-Injunction Act

Congress has imposed significant statutory limits on the remedial powers of federal courts. A central example is the Anti-Injunction Act (AIA), 26 U.S.C. §7421, which provides that, absent limited exceptions, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." This bar channels disputes into a pay-first, litigate-later model: taxpayers must pay the disputed tax and then sue for a refund. The Supreme Court has construed the AIA broadly. In *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1 (1962), the Court held that injunctions may be allowed only if it is clear that the government could not prevail under any circumstances and equity jurisdiction otherwise exists. More recently, in *National Federation of Independent Business v. Sebelius (NFIB)*, 567 U.S. 519 (2012), Chief Justice Roberts distinguished between a "tax" for constitutional purposes and a "penalty" for purposes of the AIA. Although the Affordable Care Act's individual mandate was upheld as a tax under Congress's taxing power, the Court concluded it functioned as a penalty for AIA purposes and thus did not bar pre-enforcement suits. This subtle distinction underscores the doctrinal complexity surrounding the AIA.

The Declaratory Judgment Act

The Declaratory Judgment Act, 28 U.S.C. §2201, empowers federal courts to issue declaratory relief but explicitly excludes federal tax controversies. This exclusion works hand in glove with the AIA, ensuring that taxpayers cannot circumvent the prohibition on pre-enforcement injunctions by seeking declaratory judgments instead. See *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974).

The Norris–LaGuardia Act

The Norris–LaGuardia Act of 1932, 29 U.S.C. §§101–115, curtails federal courts' power to issue injunctions in labor disputes. Passed against the backdrop of judicial hostility to orga-

nized labor, the Act withdraws jurisdiction from federal courts to issue injunctions in cases arising out of labor disputes, except under narrowly defined conditions. In *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), the Court carved out a limited exception, permitting injunctions to enforce arbitration agreements under collective bargaining contracts. Nevertheless, the Act remains a prominent statutory constraint on equitable remedies.

AEDPA and Habeas Corpus Restrictions

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) wrought dramatic restrictions on federal habeas corpus review. Codified at 28 U.S.C. §2254(d), AEDPA bars federal courts from granting habeas relief to state prisoners unless the state court's adjudication was contrary to, or an unreasonable application of, clearly established Supreme Court precedent, or was based on an unreasonable determination of the facts. The statute also imposes a one-year statute of limitations and strict limits on successive petitions. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Court upheld these restrictions as within Congress's power to regulate jurisdiction, noting that some minimal habeas review remained under the Constitution. AEDPA exemplifies Congress's ability to restrict both the jurisdiction of federal courts and the scope of remedies available to petitioners.

1.8.3 Synthesis

These jurisdictional and remedial limitations reveal a pattern. Congress and the Court have consistently limited federal judicial power, often invoking separation of powers and federalism concerns. *Stuart v. Laird* confirmed congressional authority to structure jurisdiction. *Ex parte McCardle* validated jurisdiction-stripping, while *Klein* and *Patchak* defined limits. Statutory regimes such as the AIA, the Declaratory Judgment Act, and the Norris–LaGuardia Act demonstrate Congress's targeted curtailment of remedies. AEDPA underscores the modern tendency to restrict access to federal habeas relief, even for those alleging constitutional violations. The overall effect is to cabin federal judicial power and leave many disputes—particularly those implicating taxation, labor relations, and state criminal justice—largely outside the scope of robust federal judicial remedies. These limits, while often justified in structural terms, create zones where constitutional rights may be underenforced, echoing the broader theme of constrained remedies that runs throughout modern doctrine.

1.9 Conclusion

The story of remedies against the federal government is one of enduring constraint. From Marshall's casual dictum in *Cohens* to the carefully cabined waivers of the Tucker Act, FTCA, and APA, the United States has never fully embraced *Marbury*'s promise that every

right must have a remedy. Instead, Congress and the Court have constructed a lattice of permissions and prohibitions, authorizing narrow paths of relief while closing others. Officer suits offered a workaround, only to be curtailed. *Bivens* once seemed to open constitutional tort law, but *Egbert* now suggests its demise. The APA expanded review of agency action, yet footnotes in *Trump v. CASA* call even familiar remedies like vacatur into question. Jurisdictional doctrines—from *Stuart v. Laird* and *McCardle* to *Klein* and *Patchak*—remind us that federal courts operate only within boundaries Congress defines, often retreating from the broadest possibilities of Article III. Statutes like the Anti-Injunction Act, Norris–LaGuardia Act, and AEDPA show that Congress regularly limits remedies to protect its own prerogatives or policy choices. The cumulative result is that rights against the sovereign are always partial, conditional, and politically contingent. *Marbury* promised more than practice has delivered, leaving the federal courts powerful in theory but constrained in fact.

Chapter 2

A Law Student's Guide to LaTeX and Overleaf: From Apprehension to Advantage

It's Time to Add a Tool

You've spent years mastering Microsoft Word and Google Docs. You can format a brief in your sleep, you know the shortcuts for footnotes, and the thought of "track changes" is second nature. These tools are familiar, intuitive, and comfortable. They are the digital equivalent of a well-worn path. So, the idea of learning something called "LaTeX" might sound like a solution in search of a problem, an unnecessary detour into a world of code and complexity.

This guide is here to persuade you otherwise. The goal is not to dismiss your current skills but to add a powerful, specialized tool to your professional toolkit. Adopting LaTeX, especially through the modern platform Overleaf, is an investment that pays dividends in the quality, stability, and professionalism of your written work. It is the single best system for producing complex, long-form documents—the very kind that will define your academic and professional career.

This guide is structured in six parts. First, we will address the "emotional burdens"—the myths and anxieties about LaTeX. Second, we will demystify the core concepts. Third, we will introduce a powerful hybrid workflow using AI. Fourth, we will explore the Overleaf platform itself. Fifth, we will cover the essential skill of debugging. Finally, we will look beyond standard documents to other powerful applications of LaTeX, including presentations and universal document conversion.

2.1 Letting Go—The Emotional Burdens of Embracing a New Workflow

The biggest hurdle in moving to LaTeX is not technical; it is psychological. It requires letting go of the immediate, visual gratification of a "What You See Is What You Get" (WYSIWYG) editor.

2.1.1 Burden 1: "I have to see the final format as I type."

In Word or Google Docs, when you make a word bold, it becomes bold instantly. When you change a margin, the text reflows before your eyes. This constant visual feedback feels productive and reassuring. LaTeX works differently. You write in a plain text editor, using commands to describe how you *want* the document to look.

The Reframe: This separation of content and formatting is LaTeX's core strength, allowing you to focus purely on your writing. You describe the *structure* of your content (e.g., this is a section, this is a footnote), and you let the LaTeX engine handle the complex typographical rules. This leads to a more focused writing process and a more consistent, professional final product. And, if you really can't let go of WYSIWIG, many editors, including Overleaf (see below) give you two crutches: the first is a Visual Mode that approximates WYSIWIG capabilities as you write; the second is what is known as "Auto-compile" that lets you see the real-world effects of your edits within seconds of typing them and without a need for any user intervention. Furthermore, as we'll discuss, modern workflows with AI allow you to do your initial drafting in a familiar environment like Word and convert your text to LaTeX later, giving you the best of both worlds.

2.1.2 Burden 2: "It looks like coding. It must be hard."

The appearance of backslashes and curly braces can be intimidating. The fear is that you need to be a computer scientist to use it.

The Reframe: This was true twenty years ago, but modern tools have eliminated this barrier. **Overleaf has changed everything** by providing a simple, web-based interface with nothing to install and a live preview.

Moreover, you don't have to write virtually any of the code yourself anymore. With the rise of powerful AI tools, you can now write your draft in a standard word processor and then ask the AI to convert it to clean, well-structured LaTeX code. Your job then becomes one of an editor, not a coder—you simply paste the generated code into Overleaf and refine it. Yes, occasionally the AI will make errors, but generally they are not hard to fix.[1] If

[1]Overleaf gives you one free "fix" per day using its internal AI. You can pay Overleaf for more. But often you can just plop your LaTeX code into an AI, tell it the error message you are gettig, and plead for help. I have had very good success this way.

you can learn the citation rules in *The Bluebook*, you can absolutely learn to edit the basic commands of LaTeX.

2.1.3 Burden 3: "My collaborators and professors don't use it."

Law school is a collaborative environment. The fear is that using a different tool will isolate you or create workflow problems.

The Reframe: Overleaf is built for collaboration. It functions much like Google Docs, allowing multiple users to edit a document simultaneously, leave comments, and track changes. You can simply share a link, and your collaborators can work with you in their web browser without needing to install anything. Because LaTeX files are just plain text, they are also incredibly robust and future-proof, preventing the frustrating document corruption that can happen with large Word files. Plus, if you ever collaborate with people in other academic disciplines, particularly the sciences, you will be way ahead; LaTeX is ubiquitous there.

2.2 Understanding the Foundation—The Core Ideas of LaTeX

To use LaTeX effectively, you only need to understand a few fundamental concepts.

2.2.1 Concept 1: The Source Code and the Compiled Output

Your work in LaTeX is divided into two parts:

1. The `.tex` **file (the source)**: A plain text file where you write your content and embed formatting commands.
2. The `.pdf` **file (the output)**: The final, beautifully typeset document that LaTeX generates from your source file.

Analogy: Think of the source file as the architect's blueprint and the compiled PDF as the finished building. To make a change, you must amend the blueprint (the `.tex` source).

2.2.2 Concept 2: Commands and Arguments

Commands are instructions that start with a backslash (\) and often take an "argument" in curly braces (`{}`).

- `\section{Introduction}`: Creates a numbered section heading.

- `\textit{stare decisis}`: Formats text in italics.
- `\footnote{See Marbury v. Madison, 5 U.S. 137 (1803).}`: Creates a perfectly formatted footnote.

2.2.3 Concept 3: The Preamble and the Document Body

- **The Preamble:** Everything before `\begin{document}`. This is where you set up global rules, load packages (`\usepackage{...}`), and define the title and author.
- **The Document Body:** Everything between `\begin{document}` and `\end{document}`. This is where you write your actual content.

2.2.4 Concept 4: Environments

Environments apply formatting to an entire block of text, defined by a `\begin{...}` and `\end{...}` pair. Common examples include `quote` for block quotes and `itemize` for bulleted lists.

2.2.5 Concept 5: Modularity and Keeping Your Work Organized

For large documents, you can split your work into multiple `.tex` files (e.g., `introduction.tex`, `argument.tex`) and use the `\input{...}` command in a master file to assemble them. This keeps your project organized and manageable.

2.2.6 Concept 6: Packages

Packages are the cornerstone of modern LaTeX's success, transforming a basic typesetting system into a versatile powerhouse. At its core, LaTeX handles text and math simply, but packages extend it infinitely—there's one for nearly every need, from advanced graphics (TikZ) and bibliographies (biblatex) to chemistry diagrams (chemfig) and presentations (beamer). Decades of community contributions have built an incredibly rich infrastructure, with over 6,000 packages on CTAN (Comprehensive TeX Archive Network), fostering innovation and reusability.

To find LaTeX packages without getting technical, think of them as add-ons that expand what LaTeX can do. Here's a simple way to discover them:

Visit the main online library for LaTeX tools (called CTAN—it's like a free app store for this stuff) at ctan.org. Just type in keywords like "graphics" or "tables" in their search bar to browse options. Check out a helpful online forum where people ask and answer LaTeX questions (called TeX Stack Exchange—it's like Reddit for this topic). Search there for recommendations on what others use for your needs. Use any regular search engine, like

Google, or an AI and type something straightforward such as "LaTeX add-on for drawing diagrams." You'll get quick suggestions.

2.3 The Hybrid Workflow: Using AI as Your LaTeX Converter

The single most powerful way to ease into LaTeX is to not start there at all. You can leverage your existing skills in Word or Google Docs and use Artificial Intelligence as your personal conversion assistant. This hybrid workflow allows you to separate the creative act of writing from the technical act of formatting.

The Process:

1. **Write in Your Comfort Zone:** Draft your brief, memo, or article in Microsoft Word or Google Docs. Focus entirely on the substance: your arguments, research, and prose. Use the basic styling you're used to—bold, italics, headings, and footnotes.

2. **Use AI to Convert:** When your draft is in a good place, copy the text (or the whole document) and paste it into an AI chat model (like Gemini, Claude, or ChatGPT). Use a prompt like: *"Please convert the following text into well-structured LaTeX. Use the 'article' document class. Ensure that footnotes are created with the* [2] *command and that section headings are properly identified."*

3. **Review and Refine in Overleaf:** The AI will generate the complete LaTeX source code. Copy this code and paste it into a new, blank project in Overleaf. The PDF will compile on the right, and you will see your document, now professionally typeset. Your job is now simply to review and refine it, fixing any small errors and making adjustments.

This workflow is revolutionary. It allows you to spend 90% of your time focusing on legal writing and only 10% on refining the final, professional layout in Overleaf. It turns LaTeX from something you have to *write* into something you simply *edit*.

2.4 Overleaf—Making LaTeX Easy and Collaborative

Overleaf is the modern interface that makes all of this practical and accessible. It is a cloud-based platform that removes the technical hurdles and adds the collaborative features you are used to.

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[2]

2.4.1 1. The Two-Pane Editor: Instant Feedback

On the left, you have your `.tex` source code. On the right, you have a live preview of the compiled PDF. As you type on the left, the preview on the right automatically updates, giving you an immediate feedback loop that makes learning intuitive.

2.4.2 2. Nothing to Install, Ever

Overleaf runs a full LaTeX distribution on its servers. You never have to install anything, and your document will compile the same way on any computer, anywhere.

2.4.3 3. Templates, Templates, Templates

Overleaf has a massive gallery of templates for law review articles, moot court briefs, résumés, and more. The most effective way to start is to find a template you like and simply replace the placeholder text with your own content (or with the code generated by your AI assistant).

2.4.4 4. Error Handling for Humans

When your code has an error, Overleaf flags it in plain English and jumps your cursor directly to the line in the source code where the error occurred, making it easy to find and fix.

2.4.5 5. Real-Time Collaboration

Overleaf's collaboration features are on par with Google Docs. You can share a link, see live edits, use a full "Track Changes" feature, and leave comments in the margins of either the source code or the final PDF.

2.4.6 6. Version Control

Screw it up? The free version of Overleaf lets you go back through the 24 hours of changes, which is useful for short-term recovery but not for long projects. You can also compare different versions.

2.4.7 7. Comments

Real-time commenting in Overleaf enables collaborators to add feedback directly on specific parts of the document without altering the text. To use it, highlight a section of the

source code or PDF preview, then click the "Add Comment" button (or use the shortcut Ctrl+Alt+M on Windows/Linux, Cmd+Option+M on Mac). Comments appear in a sidebar, tied to the highlighted text, and update instantly for all users. You can reply to comments to create threaded discussions, resolve them once addressed (hiding them but keeping them in history), or delete them if needed. Notifications alert collaborators of new comments or replies.

2.4.8 8. References

Overleaf integrates with popular reference managers like Zotero, Mendeley, and Papers to streamline bibliography handling. To set it up, go to your Overleaf account settings and link your reference manager account—this typically involves authorizing Overleaf to access your library via OAuth. Once connected, you can sync your entire reference collection as a .bib file directly into your project. Changes in the manager (e.g., adding a new citation in Zotero) automatically update the Overleaf bibliography upon sync, and vice versa for some tools. Benefits include easy import of references without manual entry, automatic formatting for various styles (APA, MLA, possibly Bluebook[3]), and real-time updates for collaborative projects.

2.5 Debugging—Your First Aid Kit for LaTeX Errors

No matter how careful you are, you will eventually see a red error message in Overleaf. This is not a sign of failure; it is a normal part of the process. The key is to not be intimidated and to know how to solve problems systematically.

2.5.1 Your Most Powerful Tool: AI Debugging

Before you spend hours searching online forums, use your AI assistant. The odds are extremely high that the AI has seen your exact error thousands of times before.

The AI Debugging Workflow:

1. **Read the Error:** In Overleaf, look at the error message. It might look cryptic, but it often contains clues.

2. **Copy and Paste:** Copy the error message itself. Then, copy the line of code that Overleaf has highlighted as the source of the error, along with a few lines before and after it for context.

[3]There is some complexity here that I am investigating. It may be possible to use a "fork" of Zotero called JurisM and sync it with Overleaf, but this needs investigating (a great student volunteer project

3. **Ask the AI:** Paste the error and the code into your AI assistant and ask a simple question, such as: *"I'm getting this LaTeX error. Can you tell me what's wrong with my code and how to fix it?"*

The AI will almost always identify the problem (e.g., "You're missing a closing curly brace on your `\footnote` command") and provide you with the corrected code snippet. This turns a potentially frustrating roadblock into a 30-second fix.

2.5.2 The Top 10 Beginner Errors and Their Solutions

Here are the most common issues you're likely to encounter:

1. **Missing a Closing Curly Brace }**
   - **Symptom:** The formatting of your document goes haywire after a certain point, or you get a "Runaway argument?" error.
   - **Problem:** `\textit{This is an example`
   - **Fix:** `\textit{This is an example}`
2. **Using a Special Character Without Escaping It**
   - **Symptom:** Strange errors or characters not appearing. The most common culprits are `&`, `%`, `$`, `#`, `_`, `{`, `}`.
   - **Problem:** `This will cause an error & so will this.`
   - **Fix:** `This will cause an error \& so will this.` (Put a `\` before the special character).
3. **Misspelled Command or Environment**
   - **Symptom:** "Undefined control sequence" error.
   - **Problem:** `\secion{My Title}` or `\begin{itemise}`
   - **Fix:** `\section{My Title}` or `\begin{itemize}`
4. **Missing `\usepackage{}` in the Preamble**
   - **Symptom:** "Undefined control sequence" for a command that you know is correct.
   - **Problem:** You use `\includegraphics{logo.png}` in your document body but forgot to add `\usepackage{graphicx}` in the preamble.
   - **Fix:** Add the required package to the preamble.
5. **Using Math Commands Outside of a Math Environment**
   - **Symptom:** "Missing $ inserted" error.

- **Problem:** `The variable _x_ is important.` (Underscores are for subscripts in math mode).
- **Fix:** `The variable \textit{x} is important.` or `The variable $x$ is important.` if it is mathematical.

6. **"File Not Found" Error**
   - **Symptom:** LaTeX can't find an image or an input file.
   - **Problem:** `\includegraphics{my_image.PNG}` when the file is actually named `my_image.png`.
   - **Fix:** Ensure the file name is spelled *exactly* right, including capitalization and the file extension. Make sure the file has been uploaded to your Overleaf project.
7. **Text After** `\end{document}`
   - **Symptom:** "Extra `\endgroup`" or similar errors.
   - **Problem:** You have text, even a single character, after the final `\end{document}` command.
   - **Fix:** Delete anything that comes after `\end{document}`.
8. `\maketitle` **Without** `\title`**,** `\author`**, or** `\date`
   - **Symptom:** Error message about missing commands.
   - **Problem:** You use `\maketitle` in the document body but haven't defined `\title{...}` in the preamble.
   - **Fix:** Make sure to define `\title`, `\author`, and `\date` in the preamble before calling `\maketitle`.
9. **Incorrect List Item Command**
   - **Symptom:** Errors inside a list environment.
   - **Problem:** Using `*` or `-` to start a list item instead of `\item`.
   - **Fix:** Every item in an `itemize` or `enumerate` list must begin with the `\item` command.
10. **"Paragraph ended before** `\somecommand` **was complete"**
    - **Symptom:** A "Runaway argument?" error.
    - **Problem:** This often happens when a command that requires an argument (like `\footnote{...}`) is missing its closing brace, and LaTeX keeps reading until it hits a blank line (which signifies a new paragraph).
    - **Fix:** Find the command mentioned in the error and ensure its argument is properly enclosed in `{}`.

2.5.3 The Infamous "Overfull \hbox" Warning

You will frequently see a warning (not a red error) that says `Overfull \hbox`. This is not a critical error that stops compilation. It is LaTeX's polite way of telling you: "I have a line of text that is too long to fit within the margins, so it's sticking out a little bit."

This usually happens with long, unbreakable strings of text like URLs or complex chemical formulas. For a draft, **you can usually ignore this warning.** For a final version, you can fix it by:

- Rephrasing the sentence to avoid the long word at the end of a line.
- Using the `url` package (`\usepackage{url}` in the preamble), which allows LaTeX to break long URLs intelligently.
- Manually suggesting a hyphenation point if LaTeX doesn't know how to hyphenate a word.

2.6 Beyond the Brief—Other Applications of LaTeX

Once you are comfortable with the basics, you'll find that the LaTeX ecosystem is useful for much more than just writing papers. Because you are creating structured, plain-text content, you can easily repurpose it for different formats.

2.6.1 Professional Presentations with Beamer

Beamer is a document class for LaTeX that creates professional-quality PDF slideshows instead of standard documents. Think of it as the LaTeX equivalent of PowerPoint or Google Slides.

Why use Beamer?

- **Consistency:** Your presentation will have the same high-quality typography and consistent look as your written papers.
- **Focus on Content:** Just like with an article, you focus on the structure of your presentation (frames, titles, bullet points) and let Beamer handle the layout and design.
- **Reusability:** You can easily copy and paste content, citations, and even complex tables from your LaTeX paper directly into your Beamer presentation without having to reformat anything.

Starting with Beamer is easy in Overleaf. Simply open a new project and choose one of the many available Beamer presentation templates. You'll find the structure is very similar to a standard document, using `\begin{frame}` and `\end{frame}` to define each slide. This is perfect for moot court oral arguments, conference presentations, or teaching.

2.6.2 The Universal Translator: Pandoc

Pandoc is a free, command-line utility that has been called the "Swiss-army knife" of document conversion. It can read and write dozens of different formats. This is an incredibly powerful tool for a student who needs to navigate different format requirements.

With Pandoc, you can:

- **Convert LaTeX to Word:** Write your primary document in Overleaf, and if a professor or journal requires a `.docx` file for submission, you can use Pandoc to convert your `.tex` source into a well-formatted Word document.
- **Convert Markdown to LaTeX:** Many people take notes in a simple, clean format called Markdown. Pandoc can take those notes and convert them into a structured LaTeX document, automatically creating sections and lists.
- **Go from LaTeX to HTML:** If you want to publish an article on a personal website or blog, Pandoc can convert your LaTeX source into clean HTML.

While Pandoc is a command-line tool and not integrated directly into Overleaf, learning its basic commands (e.g., `pandoc mydocument.tex -o mydocument.docx`) is a small time investment that provides immense flexibility, ensuring your work is never locked into a single format.

Conclusion: An Investment in Your Professional Future

Learning LaTeX and Overleaf is not about abandoning the tools you know. It is about recognizing that for producing high-stakes, professional documents, there is a superior tool available. With AI-assisted workflows, the initial learning curve has been flattened almost completely. You can draft in a familiar space, use AI for the heavy lifting of conversion, and use Overleaf for the final, professional polish.

The documents you produce will have a typographical quality that is difficult to achieve in a word processor. Your workflow will be more stable and organized. You are not just learning a new piece of software; you are adopting a professional standard for scholarly communication.