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Appellate Jurisdiction

Depicting the United States Supreme Court Jurisprudence on Congressional and Constitutional Limitations

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Considering the evolution United States Supreme Court's jurisprudence, the notion of three separate but equal branches of government falls short vis-à-vis the nature and function that the Court nowadays holds as the guardian of the United States constitutional system — including the integrity of the checks-and-balances system upon which the latter rests. The Court has, in short, the final word to say what the law of the land is. Yet neither its role nor its jurisdictional reach was entirely established in the U.S. Constitution. In fact, the two have been often contested. This article recounts and analyzes the path that led the U.S. Supreme Court to become the "supreme judge of the land" and, more decisively, with respect to the U.S. Congress and State courts. To that end, the article develops a threefold claim. First, it argues that the Court's gradual and methodological construction settling down the constitutional limits of other branches of government (while limiting its own), gave the Court its pivotal role. Second, it claims that the Court's seminal distinctions between original and appellate jurisdictions gave the Court its place within the jurisdictional system. Third, it maintains that the judicial review became the defining mechanism to set forth the constitutional limitations of Congressional and State courts' powers vis-à-vis the U.S. Supreme Court's own jurisdiction. Without it, the article concludes, the system of checks and balances would be an unplausible proposition.

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Introduction

Some of the most controversial and challenging issues in American society have been discussed through the United States Supreme Court's appellate jurisdiction. Interestingly, both legal and historical boundaries have been removed and sometimes restored thanks to the judicial role the appellate jurisdiction does confer. From abortion, privacy, gun control, immigration powers, seizure and search rights to freedom of speech, religion, electoral districts distribution, and same sex-marriage controversies have reached the highest court of the land by virtue of this prime jurisdictional function. At most during the last 215 years — and, more particularly, since *Marbury v. Madison* (1803)[1] — the Supreme Court has been modeling the extent of its jurisdiction by settling down critical yet not necessarily stated constitutional limits vis-à-vis the interpretation pf its jurisdictional attributions by other branches of government.

This appealing system of checks and balances originally ascertained by Articles I (legislative powers), II (executive power), and III (judicial power) of the U.S. Constitution has become nowadays a sophisticated structure to interpret and methodologically approach constitutional provisions and powers. Although the fundamental premises of the constitutional powers of each branch of government were established in these provisions, the possibility and limits for each branch of government to check the acts of another branch of government in order to balance the constitutional system of powers was not, in practice, that specific. Another yet far more difficult constitutional inquiry — *ab initio* at most — was to ascertain which branch decides whether the check exceeds the power or the limit.

After reviewing landmark decisions issued during the 19th and 20th century, this article claims that the U.S. Supreme Court's most consequential role to protect the integrity of the checks-and-balances system consisted in defining first the constitutional boundaries of its own powers. This article further claims that in order to become — and remain — the constitutional moderator of such a delicate system ("the supreme judge of the land"), the Court restricted itself from checking, at times, other branches' acts (e.g., the President powers of appointment held as political subjects).[2]

[1] Marbury v. Madison, 5 U.S. 137 (1803).

[2] *Id*. p. 166 (holding that "whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political").

The U.S. Supreme Court has further set forth the nature of the checks-and-balances system at different levels inwardly vis-à-vis actors and potential conflicts. Yet the resulting limitations are not deemed to be perceived from one branch of government with respect to another, but rather by one branch in its constitutional relationships to other branches of government. Here, the Court task of shaping the 'sense of law' constitutes its constitutional acumen. Not only has the Supreme Court's appellate jurisdiction helped preserve such balance, but it has also contributed to the progressive and methodological understanding of its powers by interpretating the powers of other branches of government in light if its jurisdictional limits. This article focuses on the constitutional limitations arising out of the U.S. Supreme Court's landmark decisions vis-à-vis the U.S. Congress and State courts.

In depicting the corollary premises of this far-reaching function, moreover, this article aims to assess the intricate aspects arising out of the Constitution's literal, textual, and practical meaning. First, I tackle the most fundamental dynamics, elements, and distinctions concerning both original and appellate jurisdictions. Here, my analysis conveys a critical reflection on the inception, preservation, and development of the U.S. constitutional system by exploring the preliminary balance the Supreme Court faces with respect to Congress and in light of evolving "jurisdictional restrictions." Next, the article deals with the interplay of constitutional limitations in relation to State courts. In this section, I depict each one of the asserted restrictions, along with their correlated jurisdictional responses (precedents). Finally, the article focuses on the appellate jurisdiction's most powerful tool: the judicial review. Here, moreover, I analyze the extension and current limitations of what has arguably become a cornerstone instrument of jurisdictional authority. All in all, I walk through the various landmark decisions of the United States Supreme Court that eventually portray the fundamental pillars of nearly 215-years model of appellate jurisdiction in America.

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I. Constitutional Reminiscence: From Original to Appellate Jurisdiction

As counter-balance limitations, the powers and constitutional competences of Congress over the original jurisdiction of the U.S. Supreme Court are, in fact, restrained. To begin with, the Court settled down the nature and extent of Congress powers with respect to the original prerogatives of the judiciary in *Marbury vs. Madison* (1803) by stating that Congress shall not limit the Court's original jurisdiction. The Constitution, moreover, provides very limitative doors for Congress to limit the Court's original jurisdiction. In fact, Article III, Section 1 of the U.S. Constitution, only suggests that Congress may grant concurrent original jurisdiction to lower federal courts.

Marbury v. Madison represents the first case in which the U.S. Supreme Court declares unconstitutional an act of Congress.[3] In *Marbury*, the Court limits the legislative powers of Congress by doing two things: making a seminal distinction between original and appellate jurisdiction vis-à-vis Congress' legislative powers, on the one hand, and attaching the nature and extent of its jurisdiction to the place and safeguard of the U.S. Constitution within the legal system — instituting thereby the judicial review.

> "If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their [its] jurisdiction shall be original; and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance.[4]
>
> The powers of the legislature are defined, and limited; and those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is the limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? …[5] It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each… If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply."[6]

[3] Prior to Thomas Jefferson's inauguration as the third President of the United States of America, Congress passed the Judiciary Act of 1801 creating various federal circuit judgeships. Before ending his mandate, President John Adams (Federal party) appointed several judges. One of the last appointees, William Marbury, did not however receive his commission before Jefferson's inauguration. Acting under instruction of President Thomas Jefferson (Democratic-Republican party), the new State Secretary, James Madison, withheld the commission while Marbury petitioned the U.S. Supreme Court to issue a *writ of mandamus* to compel Madison to act.

[4] *Id.* p. 174.

[5] *Id.* p. 178.

A historical reading of the U.S. Constitution leads to the ineluctable conclusion that Congress has no other power over the U.S. Supreme Court's original jurisdiction than to open a window for lower federal jurisdictions to share some jurisdictional prerogatives — for which no constitutional preeminence exists. This means that the Supreme Court does not only rise as the highest court in the country with regards to domains and matters properly brought before it through its original jurisdiction (lawsuits involving states, ambassadors, public ministers, and consuls),[7] but further has the power, based on its original jurisdiction, to review decisions on any subject in which a lower federal court jurisdiction has issued a decision involving constitutional challenges to federal law or the U.S. Constitution.

Congress' legislative powers concerning the U.S. Supreme Court's appellate jurisdiction are diverse, yet not necessarily broader. The Court has developed — precisely under its appellate jurisdiction — mechanisms that effectively counter-balance and even limit the constitutional powers of the other branches of government. For example, thanks to the judicial review, the Court has been able to gradually establish both the nature and the extent of its own jurisdictional boundaries. This includes limits and methods of interpretation concerning some of the most important constitutional issues (e.g., federalism, preemption, jurisdictional conflicts).

On the one side, landmark constitutional principles such as the Supremacy Clause (Article VI, Section 2 of the U.S. Constitution) and the Separation of Powers Doctrine have contributed not only to reassess the Court's power to review other branches' acts, but also to force the other branches of government to refrain themselves from unduly intervening in

[6] *Id.* pp. 177-78.

[7] It is worth noting that despite the 11th Amendment's jurisdictional bar or State's Immunity Clause – which precludes lawsuits against State or federal government before federal courts – some exceptions exist, including State court's consent. In fact, congressional powers to enforce other fundamental rights would enable Congress to pave the way for such lawsuits. Still, Congress powers to enforce, for instance, Equal protection rights under 14th Amendment (allowing individuals to suit State governments before federal courts) remain exceptional. One of the exceptions for this jurisdictional bar is Congressional authorization. First, the Court has held that although Congress has the power to enforce constitutional rights (e.g., due process, equal protection rights) such power was exceptional. *See* Fitzpatrick v. Bitzer, 427 U.S. 445 (1976). Second, the Court has stated that Congress (generally) may not abrogate State immunity by exercising its powers under Article I. *See* Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996).

the exclusive interpretative functions of the Court as the supreme judge of the land whose natural attribution hinges on the preservation and balance of the constitutional order. Both the Supremacy Clause and the Separation of Powers Doctrine, as narrowed by the Court in *Marbury*, has ever since led the Court to size up a constitutional premise nowadays followed several high courts worldwide. Namely, being the Constitution a paramount law and the Supreme Court the natural judge with the final say on constitutional matters, the Court's decisions do not only enjoy from the highest constitutional authority but also from a distinct constitutional effect, in that they compel other branches of government to remain separated one from each other, while converging into a *constitutional equilibrium* for the breach of which a methodologically conceived and progressively modeled constitutional system of checks and balances has been created. I claim that the functionality of this system lies not only in what every branch can do by itself, but in what each branch cannot do with respect to other branches' exclusive competences.

A step further was still necessary for the U.S. Supreme Court to fully ascertain the effects of its original and appellate jurisdictions vis-à-vis the constitutionality of other branches' acts, powers, and decisions. This less embedded and, undoubtedly, more critical constitutional challenge did require for the Court to foresee its jurisdictional limits not only with respect to other branches, but increasingly in relation to other judges.

This jurisdictional inquiry was the critical concern that led to the *erga omnes* effects of the Court's leading precedent, *Fletcher v. Pack* (1810).[8] In *Fletcher*, and only seven years after *Marbury v. Madison,* the Court took another fundamental step to assess the extent and nature of its appellate jurisdiction as constitutional judge. In *Fletcher*, moreover, the Court set forth the inexorable requirement of constitutional preeminence based on the Separation of Powers Doctrine and the Supremacy Clause, so that its decisions could be respected both at federal and State level.

By elaborating on the same constitutional premise of *Marbury v. Madison*, the Court uses *Fletcher* to tackle the question of supremacy, this time vis-à-vis State courts. In Fletcher, the Court identifies the type of law that is subject to the proposed constitutional

prerogative, along with the effects of the Court's decisions vis-à-vis other judges — including, eventually, State judges. In *Fletcher*, further, the Court held that its jurisdictional power extents not merely to federal but also to State law, which therefore do include States constitutions.

Undoubtedly, such ruling would end up inevitably confronting a State supreme court's decision to those issued by the U.S. Supreme Court, especially in situations in which States' constitutional provisions are at stake. Notwithstanding these confrontational dilemmas, at present at most, it is incontestable — particularly since *Fletcher* — that the U.S. Supreme Court's decisions take precedent over both States and federal jurisdictions just as federal law and the Constitution of the United States are viewed and hold themselves to be superior to any State constitution. In this context, this decision implied that State courts — including States' supreme courts — are bound by federal law and, as such, by the U.S. Supreme Court's decisions.

II. Juridical Progression: The Interplay of Constitutional Limitations

It follows from this precedent that the U.S. Supreme Court would end up reviewing State courts' decisions in cases in which their constitutionality (under the U.S. Constitution and federal law) might be compromised. It is precisely this dilemma that led six years later to the historic decision of *Martin v. Hunter's Lessee* (1816).[9] Facing a constitutionality test over Virginia's legislation concerning the disposition of property rights inherited by British nationals during the American Revolution, the U.S. Supreme Court found itself here in a privileged position to interpret in appeal the constitutionality of the Virginia Supreme Court's prior rulings.

[8] Fletcher v. Peck, 10 U.S. 87 (1810).
[9] Martin v. Hunter's Lessee, 14 U.S. 304 (1816).

The facts of the case[10] placed both the Supreme Court of Virginia and the Supreme Court of the United States in direct confrontation to decide the constitutionality of U.S. international treaties vis-à-vis State legislation. With unanimous opinion wrote by Justice Joseph Story, the U.S. Supreme Court reversed the Virginia's Court decision based on federal law. More so, the U.S. Supreme Court established constitutional preeminence over constitutional matters — this, further, without assuming the role of a court of appeal with respect to State law thanks to a rather subtle interpretative formulation whereby any law (State or federal) contradicting federal law or the U.S. Constitution is therefore unconstitutional.

Constitutional wisdom always calls for prerogatives and limits just as the law does through its constant correlation of rights, duties, and facts. While not absolute, the limit for the U.S. Supreme Court in this case[11] concerned the possibility of reversing a State court's decision when the controversy does not refer to federal law but, quite noticeably, to State law. The prevalent constitutional principle states that in the face of adequate and independent state law grounds the Supreme Court should not intervene.

Furthermore, the constitutional prerogative to oversight States' and other branches' decisions not conforming to the U.S. Constitution remains notwithstanding a central constitutional premise.

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[10] The case concerns a British national resident of the State of Virginia who left a large tract of land to his nephew (nonresident British national) during the War of Independence. According to State statutes of 1780, British nationals were barred from inheriting land in Virginia. Yet both the Treaty of Paris of 1783 (ending the war with Britain) and the Jay's Treaty of 1795 (establishing peaceful relations with Britain) protected the property interests of British nationals in the United States. In due course, the Supreme Court of Virginia declared the treaties to be unconstitutional with Virginia's law. The Court's ruling was based on a dual sovereignty theory, which the U.S. Supreme Court rejected. That is, each system, federal and State government, have their own highest court, for which none is deemed to be superior to the other. *See* Hunter v. Martin, 18 Va. 1, 4, 9 (1815).

[11] There are situations where notwithstanding the controversy does not fully warrant federal law considerations, a judicial resolution made exclusively on State law grounds appears nonetheless unclear, for which a constitutional test is required to determine on what grounds must the decision be finally upheld. In this context, the U.S. Supreme Court may decide an aspect or point of the controversy relying exclusively on federal law grounds, which thereafter remands to the state court for the subsequent resolution considering only state law aspects. *See* Michigan v. Long, 463 U.S. 1032 (1983).

As case law progresses, the interplay of constitutional limitations and competences around the checks-and-balances system appears less diffuse. Steadily, the Court found itself facing a more complicated task: specifically, assessing the conformity of its acts and decisions under federal law and in relation to States and other branches of government. This landmark prerogative appears somehow less evident when analyzed against the backdrop of Congress' constitutional prerogatives and, more particularly, vis-à-vis proposed regulation of the U.S. Supreme Court's appellate jurisdiction.

Article III, Section 2, Clause 2 of the United States Constitution stipulates that Congress may regulate the jurisdiction of tribunals and federal courts. This provision was a key element in the decision *ExParte McCardle* (1868).[8] In *McCardle*, the Supreme Court sought its appellate jurisdiction to review lower courts' decisions affecting constitutional rights — and, in the case at hand, the *Habeas Corpus* right of William McCardle for what he thought constituted an unlawful imprisonment — being threaten when Congress decided to suspend the Court's jurisdiction based on the Congress' interpretation of Article III, Section 2.

This Court ruling, however, has been seminal to protect henceforth the Court's appellate jurisdiction. The Court took this opportunity to explore the legislative extent of this particular provision by concluding that although Congress had an undeniable constitutional prerogative to legislate over federal courts' jurisdiction, such prerogative should not be considered absolute — this includes the power to introduce constitutional limits and exceptions. This response was, at best, insufficient to ascertain clear constitutional boundaries vis-à-vis Congress powers, for which the Supreme Court ought itself to state more precise restrictions by setting specific limits that protect its appellate jurisdiction. For example, in a more divided opinion written by Justice Kennedy, the U.S. Supreme Court struck down Congress jurisdictional limitations on *Habeas Corpus Writs* based on the Military Commissions Act of 2006.

[12] ExParte McCardle, 74 U.S. 506 (1869).

Congress created these commissions based on Article III, Section 2 provision of the United States Constitution. In *Boumediene v. Bush* (2008),[13] the Supreme Court considered these limitations to be unconstitutional. The Court held that while Congress had constitutional power to create and place limits over certain courts, such power was not absolute. In the alternative — as stated by the Court — absolute limitation from Congress could undermine the constitutional system of checks and balances, for which Congress can neither remove nor limit the Court's authority to say "what the law is."[14]

Although reaching the appellate jurisdiction of the United States Supreme Court does not convey an 'ordinary matter'[15] the Court has intended that beyond the case and controversy at issue the avocation of its jurisdiction never shall be cast doubt by other jurisdictions' or branches' decisions. Instead, more often than not, the Court's jurisprudence seems to indicate that a more suitable limit may result from either original or extended interpretation methods deriving from the Constitution itself.[16] As it turns out, the resulting and current methods of constitutional interpretation in the United States have been developed thanks to the use of the judicial review mechanism, enabling the United States Supreme Court to reach the limits and extensions of its otherwise inherent powers ascertained after more than 215-years of jurisprudence.

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13 *Boumediene v. Bush*, 553 U.S. 723 (2008).

14 *See* Marbury v. Madison, *supra* note 6, p. 178.

15 In fact, reaching out the appellate jurisdiction of the U.S. Supreme Court does require concrete means to effectively trigger this jurisdiction. First, by virtue of its discretionary review (following, for instance, a petition for a *writ of certiorari*), the U.S. Supreme Court may choose to hear cases whose controversies have or are being developed before either district federal courts, appellate courts, or States supreme courts. Yet unlike discretionary avocation (by virtue of direct appeal), the U.S. Supreme Court must hear cases coming from lower federal jurisdictions in which a panel of judges decide an injunctive relief (e.g., Voting Rights Act, 28 U.S.C. 1253). Also, the U.S. Supreme Court may use the *final judgment rule*, which enables it to hear cases beyond interlocutory review only and after a final judgment is rend, by either the highest state court, a U.S. court of appeal, or a federal district court. These jurisdictional paths are, in practice, very restrictive – especially considering the high volume of pending petitions, for which the most common mean available to activate the U.S. Supreme Court's appellate jurisdiction is the discretionary review. For more details on the extent of the U.S. Supreme Court's discretionary power, *see* Maryland v. Baltimore Radio Show Inc., 338 U.S. 912 (1950).

16 In effect, either original (textual) or living interpretation methods of the U.S. Constitution has proven more effective to restrain and even expand the jurisdictional prerogatives of the U.S. Supreme Court. For a more practical approach on extended or living interpretation method, *see* Trop v. Dulles, 356 U.S. 86 (1958). For a more precise depiction on how textualism or originalism does work, *see* District of Columbia v. Heller, 554 U.S. 570 (2008).

III. Appellate Jurisdiction Assertion: The Judicial Review in Action

I argue that the most difficult task for the U.S. Supreme Court sorts not only from being called upon the limits of its own jurisdiction, but from the restrictions the judicial review brings — especially considering that it is nowadays being used in various domestic jurisdictions around the world.[17]

The U.S. Supreme Court's jurisprudence on judicial review's core elements (standing, timeless presentation, justiciability) has been quite precise. Accordingly, a lawsuit containing a constitutional challenge against federal law must be properly filed in federal court. This, essentially, involves three procedural requirements: (i) the plaintiff must have constitutional standing, (ii) the lawsuit must be timely filed, and (iii) the lawsuit cannot be affected by justiciability issues or constitutional abstention problems. As such, the very idea of constitutional standing does require for the plaintiff to establish an actual interest in the outcome of a real controversy by proving a not necessarily economic,[18] yet particularized,[19] and direct[20] injury, which the plaintiff has either suffered or is likely to suffer[21] as a result of the violation of his constitutional and federal rights by the defendant. This, further, considering the legal assertion of an injury-in-fact, its causation, and the need for constitutional redressability.[22]

Notwithstanding Congress powers on plaintiff's standing are certainly broader, these powers are not absolute. In *Lujan v. Defenders of Wildlife* (1992),[23] a case where the lawsuit was dismissed due to the plaintiffs' lack of standing after basing their claims on a hypothetical — as opposed to concrete — injury.

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[17] For example, the judicial review has been integrated and vested in other legal systems upon different nominations and institutions, including the Federal Constitutional Court of Germany, the Constitutional Counsel of France, the Constitutional Court of Italy, the Superior Constitutional Tribunal in Austria, several Superior Courts in Scandinavian law, and a vast majority of Constitutional Courts. Moreover, the judicial mechanism has progressed to other set of legal and constitutional actions, allowing appellate and superior jurisdictions to control acts and decisions not only regarding other branches of government but also eventually lower and higher levels of jurisdictions. This is the case of the *renvoi préjudiciel* in France (art. 61-1 French Republic Constitution), the *acción de amparo* in Mexico (arts. 102 and 107, Constitution of Mexico), the direct review or *verfassungskonforme auslegung* on constitutional rights protection in Germany (art. 71-1, Basic Law), the *constitutional review mechanism* of the South African Constitutional Court (art. 33 of South Africa's Constitution), the *acción de tutela* of the Colombian Constitutional Court (art. 86 of Colombia Political Constitution), or the *recurso de amparo* instituted in the Constitutions of Spain (arts. 56,

The Supreme Court has held that while Congress has the power to set forth grounds or even new standing interests, so that a large group of plaintiffs may eventually benefit from judicial review, it does not have the power to eliminate existing constitutional requirements vis-à-vis cases and controversies — which otherwise would enable citizens to file lawsuits indiscriminately against all actors and regulations.

The U.S. Supreme Court has nonetheless accepted certain limitations and some exceptions on constitutional standing, which came more from its own jurisprudence than from Congressional acts. In particular, the Court has allowed some taxpayers, third parties, and citizens standing exceptions. For instance, a taxpayer is deemed to have constitutional standing to file a lawsuit in federal court against the government for the purpose of contesting bill errors, tax amounts, or event to challenge specific congressional appropriations (notwithstanding Congress spending power) provided such appropriations violate the Establishment Clause.[24] Moreover, municipalities can be sued due to injuries caused while using tax revenues.[25]

161, 162, Spain Constitution), Argentina (art. 43, Constitution of Argentina), Peru (art. 200, Constitution of Peru), and Chile (art. 21, Constitution of Chile), along with *tutela and habeas corpus* in the Philippines (art. 3, Philippines Constitution).

18 The U.S. Supreme Court has held that for the plaintiff to have constitutional standing the suffered or likely to be suffered injury needs not to be economic. *See* United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973).

19 Nor does require the plaintiff to prove the injury was or is likely to be suffered by all, but rather limited to the plaintiff, or even to a particularized group. *See* Warth v. Seldin, 422 U.S. 490 (1975).

20 It does not matter how many people are additionally injured, as all that matters is that the plaintiff is directly injured. *See* Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007).

21 It is worth noting that the injury required here does not exclusively relates to pass injuries. In the likelihood of its occurrence, constitutional standing encompasses future injuries as well. As such, the U.S. Supreme Court has held that an organization does assert its constitutional standing against environmental regulations based on the harm such regulations may cause, in which case the Court sees the likelihood of injury, albeit future, certain and, as such, potentially effective. However, the Court has also indicated that unless recreational or esthetic rights of members of such organizations are deemed to be affected with the challenged action, environmental harm cannot warrant constitutional standing to the organization. Moreover, unless new action threatens concrete interests, once a lawsuit is settled and regardless of the alleged injury, the organization loses constitutional standing. *See* Summers v. Earth Island Institute, 555 U.S. 448 (2009).

22 The so called "injury-in-fact" refers to the defendant's threat being actual and imminent as distinctive from conjectural or hypothetical. The causation relates to an easily traceable defendant's conduct leading to the plaintiff's injury. The redressability hereto required encompasses the likelihood that the defendant's conduct will cause the plaintiff's injury unless a favorable court decision will redress or prevent such event. *See* Friends of the Earth Inc. et al. v. Laidlaw Environmental Services, Inc., 528 U.S. 167 (2000).

Furthermore, a plaintiff may file lawsuit in federal court on behalf of a non-present affected or injured person provided that either a difficult assertion of constitutional rights is involved,[26] a special relationship with such person and the actual plaintiff exists,[27] an organization is acting on behalf of its injured members,[28] or an indirect violation of constitutional rights affecting such relationship could result.

Lastly, citizens otherwise precluded from challenging or enforcing directly federal law on constitutional grounds, may nonetheless file lawsuit in federal court to compel adherence rather than enforcement of a specific federal statute, for which the plaintiff must prove that has or is likely to suffer a concrete and actual injury.

Timeless presentation of a particular lawsuit in federal court is an essential element to acquire constitutional standing, too. This, in particular, refers to the possibility that regardless of the injury, the sole constitutional consideration to be made is whether the lawsuit can be effectively filed not too late (moot), not too soon (unripe). The *ripeness rule* states that for the case to be ready for constitutional litigation, a plaintiff must prove that either an actual injury or an imminent threat thereof exists. The alternative is considered speculative and often dismissed on premature adjudication grounds. For example, in *United States v. Texas* (1998),[29] the U.S. Supreme Court summarized the meaning of the ripeness rule holding: "A claim is not ripe for adjudication if it rests upon events that may not occur as anticipated or that may not occur at all."

Still, according to the Supreme Court decision *Abbott Laboratories v. Gardner* (1967),[30] it is possible for the plaintiff to be considered ready for constitutional litigation before even federal regulation is passed provided that, if the contended legislation is passed, the issues raised by the plaintiff in the lawsuit both fit the judicial record and appear at most likely to cause him (or the ones he represents) hardship.

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[23] Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).
[24] *See* Flast v. Cohen, 392 U.S. 83 (1968).
[25] *See* Crampton v. Zabriskie, 101 U.S. 601 (1879).
[26] *See* Campbell v. Louisiana, 523 U.S. 392 (1998).
[27] *See* Singleton v. Wulff, 428 U.S. 106 (1976).

The *mootness rule* requires for the plaintiff to be heard and for the lawsuit to be properly filed on time (or, at least, not too late) as an existing and live-controversy at each stage of the judicial review is constitutionally required; otherwise, further proceedings would have no effect. This was the case in *DeFunis v. Odegaard* (1974),[31] in which a student's claim on admission rights was dismissed as moot once it became clear for the Court such student would graduate even before the Court could rend its decision.

This 'sense of law' nowadays applicable to the controversy and depicted from the *mootness test* is not absolute, as sometimes unfolding events, such as the likelihood of repetition,[32] the voluntary cessation of the wrongful act,[33] the possibility of upcoming class actions,[34] or even textual, structural, and historical evidence[35] could keep the controversy alive.

Another possible constitutional and congressional limitation to the Supreme Court's appellate jurisdiction, at least from the perspective of judicial review, ensues from justiciability issues. The premise hereto is that advisory opinions, declaratory judgments, or political questions defeat the very purpose of constitutional review, which could eventually lead to the case's dismissal. In general, declaratory issues will not be decided or granted when a case has no real controversy or raises actual injury.

More conspicuously, when it comes to assess its jurisdiction vis-à-vis acts and decisions made by either the Congress or the executive branch based on political matters, the Supreme Court has recognized both rules and exceptions, which by their very nature are excluded from judicial review and thereby from the Court's appellate jurisdiction.

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[28] *See* Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977).
[29] United States v. Texas, 523 U.S. 293 (1998).
[30] Abbott Laboratories v. Gardner, 387 U.S. 136 (1967).
[31] DeFunis v. Odegaard, 416 U.S. 312 (1974).
[32] *See* Roe v. Wade, 410 U.S. 113 (1973).
[33] *See* United States v. W. T. Grant Co., 345 U.S. 629 (1953).
[34] *See* United States Parole Commission v. Geraghty, 445 U.S. 388 (1980).
[35] *See* Zivotfsky v. Clinton, 566 U.S., (2012).

In *Baker v. Carr* (1962),[36] the Supreme Court held that there are central aspects of government whose political motivation or nature concerns exclusively to the other branches of government, which are often situated in a better position to make such decisions (political, administrative). An exception, nevertheless, has been introduced by the aforementioned doctrine, *Zivitofsky v. Clinton* (2012),[37] raising textual, structural, and historical evidence grounds whereby certain evidence on the record may lead to constitutional review despite the political nature of the controversy at issue.

Finally, the U.S. Supreme Court has developed two specific doctrines related to constitutional abstention. Under *Pullman Doctrine*,[38] a federal court using appellate jurisdiction may refrain from issuing a ruling based on constitutional grounds whenever such court esteems that the resolution of the case before it hinges on rather unsettled State law, which again by its very nature is better to be left to states courts. Under *Younger Abstention Doctrine*,[39] a federal court may refrain itself from hearing a pending criminal case in which a state's strong interest is at stake, which nonetheless comprises counted exceptions.[40]

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[36] Baker v. Carr, 369 U.S. 186 (1962).

[37] *See supra* note *Id.* 30.

[38] *See* Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941).

[39] *See* Younger v. Harris, 401 U.S. 37 (1971).

[40] One could argue, for instance, that *Roe v. Wade 1973* was, in fact, within such exceptions since despite strong State interest of the State of Texas in resolving the controversy on its own giving criminal policy and health care concerns. Still, less conflicting exceptions appear on harassment, employment or bad faith prosecution. *See* Roe v. Wade, 410 U.S. 113 (1973).

Conclusion

Since John Marshall's opinion in *Madison v. Marbury*, the United States Supreme Court found its pivotal role as guardian of the integrity of the constitutional system. Historical attempts (both by Congress and State courts) reciting or circumscribing what the U.S. Supreme Court may or ought to do have backfired through the judicial review by limiting instead those branches and courts' powers.

In the eventual outcome of a constitutional controversy calling for interlocutory or final review issued by the highest constitutional judge of the land, the U.S. Supreme Court has made a self-evolving and reflexive reading of the U.S. Constitution by using the very instrument on which its appellate jurisdiction has been established: the judicial review. As such, the U.S. Supreme Court has become the premier constitutional jurisdiction of the country, for which its appellate jurisdiction does acquire not only relevance but, as herein has been shown, constitutional preeminence.

In deciding whether lower jurisdictions' rulings (either from federal or States courts), or even other branches' decisions may or not prosper, the U.S. Supreme Court has further developed thorough 215-years of jurisprudence not only a methodological and philosophical understanding on the ways its appellate jurisdiction may be triggered, but inconspicuously (if not progressively) a suitable interpretation of the narrative, nature, and reach of its constitutional authority.

Jurisdictional limits ought to be placed only within defined constitutional boundaries, for which other considerations however sound they might appear, remain nonetheless inconsequential. The U.S. Supreme Court holds the last word to ascertain what the law of the land is. Accordingly, acceptable restrictions to the U.S. Supreme Court's appellate jurisdiction have been tested against both the Constitution and the Supreme Court's jurisprudence, for which only existing specific exceptions remain. The system of checks and balances that nourish the Court's jurisdictional powers (extensions) does therefore

retrieve its ineluctable assertion thanks to the way its jurisdictional powers and constitutional competences are established, defined, or limited. Therefore, considering the role of the judicial review as well as the Court's jurisprudence limiting Congress' legislative powers and State courts' interpretations with regards to its own jurisdiction, the integrity of the checks-and-balances system hinges, further, on the judicial review.

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