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Appellate Jurisdiction

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

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The most controversial and challenging issues in American society have been resolved through the United States Supreme Court's appellate jurisdiction. Interestingly, both cultural and historical boundaries have been removed and sometimes restored thanks to the judicial powers that appellate jurisdiction does confer. In effect, issues on abortion, privacy, gun control, immigration, seizure and search constitutional rights along with freedom of speech, religion, electoral districts distribution, and same sex-marriage controversies have reached the highest judge of the land thanks to such prime jurisdictional level. Moreover, at most during the last 215 years and, more particularly, since *Marbury vs. Madison 1803*,[1] the United States Supreme Court has been modeling the extent of its jurisdiction by settling

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

down critical constitutional disquisitions related to its powers as well as to those held by other branches of government. This appealing system of checks and balances originally ascertained by Articles I, II, and III of the U.S. Constitution has become nowadays a sophisticated structure to read and methodologically approach constitutional provisions. As such, for the Supreme Court, becoming the utmost constitutional reference in the country was first a matter of constitutional method. The U.S. Supreme Court has undeniably set forth the nature of the checks-and-balance 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 with respect to another, but rather by one branch in its relationships of power to other branches. Hereto the U.S. Supreme Court task of shaping the 'sense of law' is a constitutional acumen. Not only does the Supreme Court preserve such inexpugnable balance, but it does further confront it to its own jurisdictional actions not so much in the light of who does what but from where the constitutional boundaries shall start.

In depicting the corollary premises of this far-reaching function, this Article aims to assess the intricate aspects arising out of the Constitution's literal text and practice. First, I tackle the most fundamental dynamics, elements, and distinctions concerning both original and appellate jurisdiction. Here, my analysis is directed at raising awareness along with a critical reflection around the very inception, conception, preservation, and development of the constitutional system itself by exploring the preliminary balance the Supreme Court faces with regards to Congress and considering the so called jurisdictional restrictions. Next, the Article deals with the interplay of constitutional limitations vis-à-vis federal and states courts. In this part, I depict and gradually point out each one of the asserted restrictions along with their correlated responses. Finally, the Article focuses on the appellate jurisdiction's most powerful tool: The judicial review. In particular, I analyze in this section 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, Congress powers and constitutional competences over the original jurisdiction of the Supreme Court are, in fact, quite restrained. First, the own Supreme Court settled down the nature and extent of Congress powers vis-à-vis the original prerogatives of the judiciary in *Marbury vs. Madison 1803*[2] by stating that Congress shall not limit or even legislate on the Supreme Court's original jurisdiction. Second, the Constitution itself does provide very limitative doors to be opened by Congress in any way that might limit such jurisdiction. For what is worth, Article III, Section 1 of the U.S. Constitution only suggests that Congress may grant concurrent original jurisdiction with respect to lower federal courts.

Therefore, a dispassionate reading of the U.S. Constitution leads to the ineluctable conclusion that Congress has no direct power whatsoever regarding the Supreme Court's original jurisdiction inasmuch as to open a window for lower federal jurisdictions to share some jurisdictional prerogatives, for which, again, no constitutional preeminence is deemed to exist.

In practice, the Supreme Court not only remains the highest court in the country regarding the domains and matters properly brought before it through its original jurisdiction (*i.e.,* lawsuits involving states,[3] ambassadors, public ministers and consuls),

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[2] *Id.*

[3] It is worth to notice that despite the 11th Amendment jurisdictional bar or State's Immunity Clause –which basically precludes lawsuits against state or federal government before federal courts– some exceptions exist, including but not limited to, the state court's consent. What's more, congressional powers to enforce other fundamental rights would enable Congress to pave the way for such lawsuits to prosper. It is importance to mark, nevertheless, that Congress powers to

but it also does retain the constitutional attribution to make decisions over any subject based on such original jurisdiction and upon which a lower federal court jurisdiction might have issued a decision raising constitutional concerns.

Congress powers vis-à-vis the Supreme Court's appellate jurisdiction are therefore diverse and yet, not necessarily broader. Moreover, the Supreme Court has –under its appellate jurisdiction– developed mechanisms, which effectively counter-balance and even limit the other two political, administrative, and juridical branches of government.

In effect, by virtue of the judicial review the Supreme Court has been able to set forth both the nature and the extent of its own jurisdictional boundaries. It has been, essentially, the interpretation of the constitutional doctrine and principles what ultimately has led the Court to rule on the limits and grounds of constitutional interpretation. On one side, landmark constitutional principles, such as supremacy clause (*i.e.*, Article VI, Section 2 of the U.S. Constitution) and the separation of powers doctrine so famously and eloquently developed by Chief Justice Marshall in *Marbury vs. Madison 1803*,[4] have contributed not only to reassess the Court's power to review other branches' acts and decisions against a progressively crafted constitutional backdrop but eventually to force the other branches of government to refrain themselves from unduly intervening in the exclusive interpretative functions of the Court as the supreme judge

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enforce, for instance, Equal protection rights under 14th Amendment allowing individuals to suit state or federal government before federal courts remain exceptional. In fact, one of the exceptions for this jurisdictional bar is Congressional authorization. On one side, the Supreme Court has held that although Congress has the power to enforce constitutional rights (e.g., due process, equal protection rights, etc) such power was absolute but exceptional, *see* Fitzpatrick v. Bitzer, 427 U.S. 445 (1976). On the other side, the Supreme Court has also 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).

[4] *Id.*

of the land whose natural attribution is, precisely, the preservation and balance of the constitutional order. This decision so vitally nourished by the separation-of-powers doctrine has, ever since its adoption, led the Supreme Court to size up a constitutional premise nowadays followed worldwide by many other highest courts: Being the Constitution a paramount law and the Supreme Court the natural judge with the final say on constitutional matters whose decisions ultimately aim to protect such paramount law, the Supreme Court's decisions do not only enjoy from the highest constitutional authority but further 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 is in place.

The functionality of this system lies not only on what every branch can do by itself, but essentially on what each branch cannot do with regards to the other branches' exclusive competences. Nevertheless, a step further was still necessary for the U.S. Supreme Court to fully ascertain the effects of its original and appellate jurisdiction vis-à-vis the constitutionality of other branches' acts and decisions. This less secular and, undoubtedly, critical challenge did require for the Court to see its jurisdictional limits not only with respect to other branches but increasingly in relation to other judges. In fact, it was this concern that mainly led to the *erga onmes* effects of *Fletcher vs. Pack 1810*.[5] In this decision, only seven years after the ruling of *Marbury vs. Madison*, the Court took another fundamental step to assess the extent and nature of its appellate jurisdiction as constitutional judge. In *Fletcher*, the Supreme Court set forth once for all not only the need of separation of branches but also the unavoidable requirement of

[5] Fletcher v. Peck, 10 U.S. 87 (1810).

constitutional preeminence so that its decisions could be fully respected both at federal and state level. By elaborating over the same constitutional premise of *Marbury vs. Madison*, the Court uses *Fletcher vs. Pack* to tackle the question of supremacy; this time vis-à-vis state courts. This landmark decision does indeed identify the type of law that is subjected to its constitutional prerogative as well as the effects of its decisions in relation to other judges, including, eventually, state judges. In this sense, the Supreme Court in *Fletcher* held that its jurisdictional power extents not only to federal but also to state law, which therefore includes states constitutions.

Undoubtedly, such a ruling would end up inevitably confronting a state supreme court's decision with those issued by the U.S. Supreme Court, especially in situations in which state's constitutional provisions were at stake. Notwithstanding these confrontational dilemmas, at present at most, it is incontestable –particularly since *Fletcher vs. Pack 1810*– 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 of America hold themselves superior to any state constitution. This decision further 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 the mentioned case law that the United States Supreme Court would end up reviewing state courts' decisions in cases in which the constitutionality of such acts might be eventually compromised. It is precisely this dilemma that six years

later led to the historical decision of *Martin vs. Lessee 1816*.[6] In facing a constitutionality test over Virginia's legislation concerning the confiscation of property during the American Revolution, the U. S. Supreme Court found itself in a privileged position to interpret in appeal the constitutionality of Virginias' courts prior rulings. With unanimous opinion wrote by Justice Joseph Story, the U.S. Supreme Court reversed the Virginia's Court decision based on federal law, for which hereinafter the Supreme Court's preeminence over constitutional matters did truly cover the law of the land without assuming the role of a court of appeal with respect to state law thanks to a rather very subtle constitutional equation: Any law, state or federal, contradicting federal or constitutional law is unconstitutional.

Constitutional wisdom always calls for prerogatives and limits just as the law does through its constant correlation of rights and duties. While not absolute, the limit for the Supreme Court in this case[7] restricts the possibility of reversing a state court's decision whenever the controversy does not refer to federal law but, quite conspicuously, to state law. Further the constitutional principle states that in the face of adequate and independent state law grounds the U.S. Supreme Court should not intervene.

The constitutional prerogative to oversight states' and other branches' decisions not conforming to the U.S. Constitution remains notwithstanding a central constitutional

[6] Martin v. Hunter's Lessee, 14 U.S. 304 (1816).

[7] There are situations in which 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 further required to determine upon what grounds must the decision be finally upheld. In this context, the Supreme Court may decide the controversy by 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).

premise. As case law progresses, however, the interplay of constitutional limitations and competences around the check and balance system appears less diffuse. On one hand, the Supreme Court –in addition to its own set of competences and powers– faces a more complicated task when it comes to assess the conformity of their acts and decisions against federal law in relation to states and other branches of government. This landmark prerogative appears somehow less evident when analyzed in light 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 disposition was a key element in *ExParte McCardle 1868*.[8] In this case, the Supreme Court used 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 or in danger when Congress decides to suspend the Court's jurisdiction based on the attributions conferred by Article III, Section 2. The Supreme Court's ruling, however, turned out to be seminal to protect its appellate jurisdictional powers henceforth. The Court took indeed this opportunity to explore the 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 and, more particularly, beyond the power to introduce limits and exceptions.

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

This response was nevertheless 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 protecting its appellate jurisdiction. As such, in a more divided opinion written by Justice Kennedy, the Supreme Court struck down Congress jurisdictional limitations on *Habeas Corpus* rights that were based on the Military Commissions Act of 2006, which Congress did enact following Article III, Section 2 provision of the United States Constitution. In *Boumediene vs. Bush 2008*,[9] the Supreme Court considered such limitations to be unconstitutional. In particular, the Court held that while Congress had a 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 Supreme Court's authority to say, "what the law is."[10]

Although reaching the appellate jurisdiction of the United States Supreme Court is not, in fact, an ordinary matter,[11] the Court has intended that beyond the case and

[9] Boumediene v. Bush, 553 U.S. 723 (2008).

[10] In fact, this quote was originally written by Chief Justice Marshall in *Marbury v. Madison 1803*, which once again, does show that the U.S. Supreme Court's pathway leading to the interpretation of its constitutional role has been undoubtedly a major historical task, *see* Madison v. Marbury 1803, supra *Id.*

[11] In fact, reaching out the appellate jurisdiction of the Supreme Court does require concrete means to trigger its jurisdiction. First, by virtue of its discretionary review, following 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. Next, unlike discretionary avocation, on direct appeal, the U.S. Supreme Court must hear cases coming from lower federal jurisdictions in which a panel of judges does decide an injunctive relief (*e.g.*, Voting Rights Act, 28 USC, Section 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 even a federal district court. These jurisdictional paths that in theory appear to be broad and very accessible are, in practice at most, very restrictive, especially considering the high volume of pending petitions, for which the most common mean available to activate the United States Supreme Court's appellate

controversy at issue the avocation of its jurisdiction never shall be casted doubt by other jurisdictions or branches' decisions. Instead, more often than not and, the Court's jurisprudence seems to indicate that a more suitable limit may result from either original or extended interpretation methods of the Constitution itself.[12] As it turns out, the resulting and current methods of constitutional interpretation in the United States have been indeed 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 nowadays ascertained after more than 200 years of jurisprudence.

III. Appellate Jurisdiction Assertion: The Judicial Review in Motion

While the virtues and technical intricacies of this judicial mechanism are briefly discussed herein, I contend that the most difficult task yet sorts from the Supreme Court being called upon the limits of its own jurisdiction but upon the restrictions this secular mechanism does actually entail, especially considering it is nowadays present in various domestic jurisdictions around the world.[13] In its very nature and progressive

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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).

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

[13] For instance, the judicial review has been fully integrated in other legal systems upon various existing nominations, including but not limited to, the Federal Constitutional Court of Germany, the Constitutional Counsel in 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 and Tribunals in South America and Africa. The laminar distinction here, though, lies on the mechanism's juridical conception to assess and restrain actions coming from other jurisdictions and branches of government whereas in other countries it does

extension, the United States Supreme Court's jurisprudence has been indeed highly influential. In the United States, for instance, to challenge federal law on constitutional grounds, the lawsuit must be properly filed in federal court and the plaintiff's pretension preceded by constitutional standing, which encompasses the need for timeless presentation not otherwise 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,[14] yet concrete, particularized,[15] and direct[16] injury, which the plaintiff has either suffered or likely to suffer[17] as a result of the alleged

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merely appear as a collateral function to control other branches' decisions. The vertical similarity, nevertheless, hinges on the constitutional aspiration to conform authorities and institutions' decisions to the Constitution, which varies in functions and levels of concentration or delegation vis-à-vis constitutional interpretation, including, increasingly, human rights protection. Still more, this judicial mechanism has transmutably progressed to other set of legal and constitutional actions, allowing appellate and superior jurisdictions to control or, otherwise conform, acts and decisions not only in relation to public branches but gradually with respect to lower and higher judges. This is the case of the *renvoi préjudiciel* of the French Constitutional Counsel; the *acción de amparo* in Mexico; the direct review or *verfassungskonforme auslegung* with regard to constitutional rights protection in Germany; the *constitutional review mechanism* of the South African Constitutional Court; the *acción de tutela* of the Colombian Constitutional Court; and the *recurso de amparo* instituted in the Constitutions of Spain, Argentina, Peru, and Chile as well as the prerogative writs of *tutela and habeas corpus* in Philippines.

[14] In several of its most distinguished decisions, the U.S. Supreme Court has stated that for the plaintiff to have constitutional standing the suffered or likely to be suffered injury needs not to be economic. *See, e.g.*, United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973).

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

[16] According to current case law, it does not matter how many people are also or additionally injured, as all that matters is that the plaintiff is directly injured, *see* Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007).

[17] It is worth to notice that the injury required here does not exclusively relates to pass injuries. What is more, in the likelihood of its occurrence constitutional standing does incorporate 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 that such regulations entail or 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 held 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 such organization. Further, unless

violation of her or his constitutional and federal rights by the defendant vis-à-vis the legal assertion of an injury-in-fact, its causation, and the need for constitutional redressability.[18]

Notwithstanding Congress powers on standing are certainly broader, these powers are not absolute. In *Lujan v. Defenders of Wildlife 1992*,[19] a case in which plaintiffs were deemed to lack standing after basing their claims on an hypothetical rather than concrete injury, the Supreme Court 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 however the power to eliminate existent constitutional requirements vis-à-vis cases and controversies, which would otherwise permit 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 have come 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 tax payer is deemed to have constitutional standing to file a lawsuit in federal court against the government to contest bill errors or tax amounts; municipalities can also be sued due to

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new action threats concrete interests, once a lawsuit is settled and regardless of the alleged injury, the organization loses constitutional standing against such action or regulation, *see* Summers v. Earth Island Institute, 555 U.S. 448 (2009).

[18] The injury in fact refers to the defendant's threat being actual and imminent as distinctive from conjectural or hypothetical. The causation here 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, e.g.,* Friends of the Earth Inc. et al. v. Laidlaw Environmental Services, Inc., 528 U.S. 167 (2000).

[19] Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

injuries caused while using tax revenues;[20]and even a tax payer may challenge specific congressional appropriations and notwithstanding Congress spending power provided such appropriations violate the Establishment Clause.[21]

Moreover, 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,[22] a special relationship with such person and the actual plaintiff exists,[23] an organization is acting on behalf of its injured members,[24] 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 that citizen must prove that has or is likely to suffer a concrete and actual injury.

Timeless presentation of a lawsuit in federal court is an essential element to acquire constitutional standing. This, essentially, refers to the possibility that regardless of the injury the sole consideration to be made is whether the lawsuit can be effectively filed not too late or moot, not too soon or unriped. On one side, the ripeness rule does state 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 here is indeed considered speculative and often dismissed on premature adjudication grounds.

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[20] *See* Crampton v. Zabriskie, 101 U.S. 601 (1879).
[21] *See* Flast v. Cohen, 392 U.S. 83 (1968).
[22] *See* Campbell v. Louisiana, 523 U.S. 392 (1998).
[23] *See* Singleton v. Wulff, 428 U.S. 106 (1976).
[24] *See* Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977).

For example, in *United States v. Texas 1998*,[25] the U.S. Supreme Court, in a very articulated ruling, summarized the meaning of the ripeness rule: "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*,[26] 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 hardship. On the other side, the mootness test 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, because otherwise further proceedings would have not effect. This was the case in *DeFunis v. Odegaard 1974*,[27] in which a student's claim on admission rights was dismissed as moot once it became clear for the Court that 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 however absolute as sometimes unfolding events, such as the likelihood of repetition,[28] the voluntary cessation of the wrongful act,[29] the possibility of upcoming class actions,[30] or even textual, structural, and historical evidence,[31] could keep the controversy alive.

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[25] *See* supra note *Id*. 7.
[26] Abbott Laboratories v. Gardner, 387 U.S. 136 (1967).
[27] DeFunis v. Odegaard, 416 U.S. 312 (1974).
[28] *See, e.g.*, Roe v. Wade, 410 U.S. 113 (1973).
[29] *See, e.g.*, United States v. W. T. Grant Co., 345 U.S. 629 (1953).
[30] *See, e.g.*, United States Parole Commission v. Geraghty, 445 U.S. 388 (1980).
[31] *See, e.g.*, Zivotfsky v. Clinton, 566 U.S., (2012).

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 dismissal. In general, declaratory issues won't be decided or granted when a case has no real controversy or actual injury.

More conspicuously, when it comes to asses its jurisdiction vis-à-vis acts and decisions made by either Congress or the executive branch based on political matters, the own 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. In *Baker v. Carr 1962*,[32] the Supreme Court highlights 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. An exception, nevertheless, has been introduced by the mentioned *Zivitofsky v. Clinton 2012*[33] doctrine 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*,[34] 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

[32] Baker v. Carr, 369 U.S. 186 (1962).
[33] *See supra* note *Id.* 30.
[34] *See* Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941).

unsettled state law, which again by its very nature is better off to be left to the states. Under *Younger Abstention Doctrine*,[35] 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.[36]

Conclusion

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 Constitution by using the very instrument upon which its appellate jurisdiction has been shaped: The judicial review. As such, the United States 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' acts and restrictions to such jurisdiction may or not prosper, the U.S. Supreme Court has further developed thorough 215-years of solid and articulated *stare decis* not only a methodological and philosophical understanding on the ways to effectively trigger its appellate jurisdiction, but inconspicuously, if not progressively, a neat interpretation of the narrative, nature, and extent of its constitutional authority. Jurisdictional limits must thereby be placed only within defined constitutional

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

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

boundaries, for which other considerations, while in some instances important, remain nonetheless inconsequential.

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 steady. The system of checks and balances that nourishes the Court's jurisdictional extensions does therefore retrieve its ineluctable assertion as the constitutional backdrop against which jurisdictional powers and constitutional competences are established, defined, or limited among the various constitutional actors while edifying a ductile judicial mechanism that has ultimately shaped constitutional interpretation in America.

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