From the Constitution to Modern Government

Randy Beck, UGA School of Law
Yonatan Ben-Chaim, Graduate Assistant, UGA Law

The three decisions below illustrate the judiciary's leadership in upholding the rule of law by enforcing constitutional limits on government even when facing political pressure or unrest. Each involves judges setting aside political loyalties to fulfill the judicial oath. These cases show that judicial independence and the rule of law are mutually reinforcing. An independent judiciary helps ensure that constitutional limitations are enforceable against the government. Meanwhile, the rule of law supplies the source and sets the limits of legitimate judicial authority.

Marbury v. Madison

5 U.S. (1 Cranch) 137 (1803)

Background. Before leaving office, President John Adams appointed William Marbury to be a justice of the peace for the District of Columbia. Marbury's commission was signed and sealed but not delivered. The Jefferson administration withheld the commission. Marbury asked the Supreme Court directly for a writ of mandamus compelling Secretary of State James Madison to deliver the document.

Decision and reasoning. The Court concluded that Marbury, having been properly appointed by the President, had a legal right to the commission and that withholding the document violated that right. But the Court could not grant his requested remedy. The Judiciary Act of 1789 authorized the Court to exercise original jurisdiction in a case for a writ of mandamus, but the statute was inconsistent with Article III, which only allowed appellate jurisdiction in such cases. The opinion justified the practice of judicial review, defending the Supreme Court's duty to decline to enforce an act of Congress that conflicts with the Constitution.

Judicial independence and the rule of law.

- Before he became Chief Justice, Marshall was the Federalist Secretary of State who sealed Marbury's commission. His brother James was the one who failed to deliver the commission before the Republican administration of President Jefferson took office. Marshall's refusal to issue the writ of mandamus shows a judge carrying out his constitutional duty at the expense of his former political party.
- In declining to exercise the jurisdiction conferred by Congress, the Court acknowledged that constitutional limits constrain the judicial power, as well as the power of other branches.
- More fundamentally, Marbury's holding that courts have an independent duty to "say what the law is" and to apply the Constitution in preference to conflicting legislation sits at the heart of judicial independence as we understand the concept today.
- Key Concept: "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."

Ex parte Milligan

71 U.S. (4 Wall) 2 (1866)

Background. During the Civil War, military authorities arrested Lambdin Milligan, an Indiana civilian and lawyer who was neither a servicemember nor a prisoner of war. A military commission, as opposed to a civilian court, convicted him of conspiring against the U.S. government, inciting insurrection, and other related offenses and sentenced him to death. He sought habeas corpus relief in federal court and divided circuit judges, including David Davis, who was also a sitting Justice on the U.S. Supreme Court, passed the case to the Supreme Court. The questions presented were whether the commission had jurisdiction to try Mr. Milligan, and if not, whether to grant the writ and release him from custody.

Decision and reasoning. The Court held that the commission lacked jurisdiction and that Milligan was entitled to release. Constitutional rights, such as a right to a jury trial or to a tribunal composed of Article III judges, are not waived or trumped by military necessity "where the courts are open and their process unobstructed." Indeed, the Justices emphasized that the great insight of the Framers was that a Bill of Rights was needed to protect the people during troublesome times when the principles of constitutional liberty were most in peril. The five-Justice majority concluded that the Constitution prohibited Milligan's military trial because functioning civilian courts could administer criminal justice.

Key Passage: "This court has judicial knowledge that, in Indiana, the Federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances, and no usage of war could sanction a military trial there for any offence whatever of a citizen in civil life in nowise connected with the military service. . . . One of the plainest constitutional provisions was therefore infringed when Milligan was tried by a court not ordained and established by Congress and not composed of judges appointed during good behavior."

Judicial independence and the rule of law.

- Justice David Davis, a close friend and longtime political ally of Lincoln, wrote the majority opinion and thus serves as a model of impartiality and as a standard bearer for judicial independence.
- Ex parte Milligan stands for the important proposition that war and other emergencies do not automatically displace constitutional protections. On the danger to the Constitution in times of national emergency, one passage stands out: "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

Youngstown Sheet and Tube Co v. Sawyer

343 U.S. 579 (1952)

Background. During the Korean War, President Harry Truman issued Executive Order 10340 which directed Commerce Secretary Charles Sawyer to seize and operate steel mills to avert a strike threatening steel production. The steel companies sued. The district court, concerned by the government's nearly limitless theory of executive power, enjoined the seizure; the Supreme Court affirmed, 6-3.

Decision and reasoning. The majority opinion authored by Justice Black relied on the constitutional text and basic separation of powers principles to hold that the seizure lacked statutory or constitutional authorization. Justice Black viewed the seizure decision as "legislative." The President's duty to execute the laws and his authority as Commander in Chief did not empower him to make domestic seizure policy reserved to Congress. Other Justices who joined the majority opinion wrote separate opinions that diverged from Justice Black's formalistic reasoning.

Jackson's concurrence. Justice Jackson, FDR's former Attorney General, offered a three-part framework: presidential authority is strongest with congressional authorization; uncertain in the "zone of twilight" when Congress has neither granted nor denied authority; and weakest when presidential action conflicts with Congress's expressed or implied will. Justice Jackson concluded that the steel seizure was at the "lowest ebb" because it circumvented the specific procedures Congress had enacted.

Justice Jackson specifically refused to embrace arguments he had made to justify a similar seizure when he served as Attorney General: "The claim of inherent and unrestricted presidential powers has long been a persuasive dialectical weapon in political controversy. While it is not surprising that counsel should grasp support from such unadjudicated claims of power, a judge cannot accept self-serving press statements of the attorney for one of the interested parties as authority in answering a constitutional question, even if the advocate was himself."

Judicial independence and the rule of law

- All 9 Justices had been appointed by Presidents Truman and Roosevelt, so the Court's rejection of the government's position is an example of fidelity to the law triumphing over personal or political allegiances.
- President's Truman's almost immediate compliance with the Court's ruling is a testament to the strength and vitality of constitutional law and norms but also a reminder that such norms are essential for courts to effectuate their constitutional duties.
- The Constitution's allocation and separation of powers are tested during war or national emergencies, but not suspended. As the district court warned, suspending the separation of powers would be far more harmful to the public, than the contemplated strike.

References

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

Michael W. McConnell, *The Story of Marbury v. Madison: Making Defeat Look Like Victory*, *in* CONSTITUTIONAL LAW STORIES (2nd ed. 2009) (Michael C. Dorf, ed.)

Ex parte Milligan, 71 U.S. 2 (1866)

Supreme Court Historical Society, *Abraham Lincoln's Favorite Judge: David Davis, Politics, and the Supreme Court* (YouTube, Sept. 2026), https://www.youtube.com/watch?v=Z_2XCUHqIik

Curtis A. Bradley, *The Story of Ex parte Milligan: Military Trials, Enemy Combatants, and Congressional Authorization*, *in* PRESIDENTIAL POWER STORIES (2009) (Christopher H. Schroeder & Curtis A. Bradley, eds.)

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

Patricia L. Bellia, *The Story of the Steel Seizure Case*, *in* PRESIDENTIAL POWER STORIES (2009) (Christopher H. Schroeder & Curtis A. Bradley, eds.)

Baude, William, "Youngstown" (2026). *Public Law and Legal Theory Working Papers*. 26.3. https://chicagounbound.uchicago.edu/public_law_and_legal_theory