

## The Exercise of the U.S. Supreme Court's Power of Judicial Review: Theory and Practice

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### Abstract

In framing the Constitution of the United States, severe debates arose between the Federalists and the Antifederalists over the Supreme Court's power of judicial review. The Federalists alleged that as the Court was the weakest of the three branches of the government, it was least possible for the Court to exercise its power of judicial review to encroach on the privileges of the Congress. By contrast, the Antifederalists feared that the Court's exercise of judicial review would make the Court a despotic branch. After the practical exercise of its power of judicial review for about two hundred years, the Supreme Court has proved neither the weakest branch as Alexander Hamilton had assumed nor the despotic branch as Thomas Jefferson had supposed. In general, the Supreme Court is nothing more than a part of the majority party, and its exercise of judicial review is to legitimate rather than to invalidate the acts passed by the Congress. Nevertheless, in specific transient periods when the majority party coalition is crumbling and unstable, the Court may exercise its power of judicial review to declare the acts of the Congress unconstitutional.