

## James Crump

**Title:** “An Inquiry into the Nature and Causes of Judicial Review”

**Faculty Advisor:** Dr. Jeffrey Malanson

**Paper written for:** History A303: United States from 1789-1840 (Fall 2016)

My name is **James Bradley Crump**. I am a legal studies senior here at IPFW, and will begin a graduate program for a Master of Law in the fall of 2017. I also spent six years in the Army. I have held various undergraduate legal internships, some of which have been in the Fort Wayne area. These include Malloy Law LLC and the Allen County Prosecutor’s Office. I have also held various research positions. Regionally, I have conducted research with the Center for Social Research at IPFW. Nationally, I was recognized as a research assistant for The Federalist Society for Law and Public Policy Studies. At The Federalist Society, my work included the National Lawyers 2016 CLE, extensive research into public discourse and cognitive scientist George Lakoff for grant proposals, critique of Akhil Amar’s *The Constitution Today*, and *inter alia* content edit of the newly released book, *DC Confidential: Inside the Five Tricks of Washington*. While in DC this past summer, I was also awarded a fellowship with the Fund of American Studies. I attended various lectures from bi-partisan and partisan think tanks, the South African embassy, the State Department, and a multitude of high-level executives and government officials. Additionally, I completed a course through The Fund of American Studies and the Reagan Foundation on Leadership and the American Presidency, which resulted in academic excellence and deeper appreciation for the uncertainties that face a presidency. Today, I am here to open all to a new world and deeper understanding of judicial review.

### **Abstract**

Long before the Constitution was ratified, the notion of judicial review is found. The basic understanding of judicial review is that it is the prerogative of the judiciary to validate or invalidate law. Was judicial review merely a consequence of Marshall’s “shrewd politicking,” as legal historians Benedict and Urofsky claim? Was *Marbury v. Madison* (1803) a divergence from the intent of the General Convention and framers? Is it a validation of judicial activism? The weight of the evidence will show the contrary. Notwithstanding contemporary wisdom from many in the academy, judicial review was not manifested in *Marbury v. Madison* (1803), judicial review was not an act of loose construction (and therefore not a validation of Living Constitution theory of contemporary times) or shrewd politicking; rather, judicial review was *de facto* known, implied by a consensus, and ubiquitously applied. This truism is “too plain to be contested.”

### **Bibliographical Note**

Sources used entail: *The Federalist Papers*, *The Ideological Origins of American Federalism*, *Intellectual Origins of American National Thought*, *Blackstone’s Commentaries on the Laws of England*, *American Constitutional History*, *Madison’s Hand*, various cases and writings. Moreover, two dominate legal authorities on the matter: “*Marbury v. Madison* and the Doctrine of Judicial Review” by Crowin, and “*A Critical Guide to Marbury v. Madison*” by Alstyne.