Judicial Independence and the Political Judiciary

- Courts serve the essential functions of settling disputes and interpreting the law.
- The most distinctive feature of the federal judiciary is its independence; it is separate from the other branches, and federal judges are appointed for life.
- Because judges have preferences about what government should do, courts are fundamentally political institutions.
“The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution. . . . The judiciary . . . has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment.”

—Alexander Hamilton, *Federalist 78*
The Judicial Process

- While judges are political actors, they are constrained by institutions and norms just as other political actors are.
- The main constraints are the Constitution and the laws, common law, legal precedents, and established judicial procedures.
Three Broad Categories of Cases

- Criminal law: disputes or actions involving criminal penalties
- Civil law; a system of jurisprudence for settling disputes that do not involved criminal penalties
- Public law: cases involving the action of public agencies or officials

There are specialized courts for different types of cases.
# Types of Law

<table>
<thead>
<tr>
<th>TYPE OF LAW</th>
<th>TYPE OF CASE OR DISPUTE</th>
<th>FORM OF CITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal law</td>
<td>Cases arising out of actions that violate laws protecting the health, safety, and morals of the community. The government is always the plaintiff.</td>
<td><em>U.S. (or state) v. Jones, Jones v. U.S. (or state)</em> if Jones lost and is appealing</td>
</tr>
<tr>
<td>Civil law</td>
<td>Law involving disputes between citizens or between a government and a citizen where no crime is alleged. Two general types are contract law and tort law. Contract cases are disputes that arise over voluntary actions. Tort cases are disputes that arise out of obligations inherent in social life. Negligence and slander are examples of torts.</td>
<td><em>Smith v. Jones, New York v. Jones, U.S. v. Jones, Jones v. New York</em></td>
</tr>
<tr>
<td>Public law</td>
<td>All cases in which the powers of government or the rights of citizens are involved. The government is the defendant. Constitutional law involves judicial review of the basis of a government’s action in relation to specific clauses of the Constitution as interpreted in Supreme Court cases. Administrative law involves disputes over the statutory authority, jurisdiction, or procedures of administrative agencies.</td>
<td><em>Jones v. U.S. (or state), In re Jones, Smith v. Jones</em> if a license or statute is at issue in their private dispute*</td>
</tr>
</tbody>
</table>
The Judicial Process: Precedents and *Stare decisis*

- In addition to the law, courts apply legal precedents—prior cases whose principles are used by judges as the bases for their decisions in present cases.
- *Stare decisis*—Latin for “let the decision stand,” is a judicial doctrine that a previous decision by a court should apply as a precedent in similar cases until that decision is overruled.
The Organization of the Court System: Types of Courts

• There are generally three types of court:
  – Trial court: the first court to hear a criminal or civil case
  – Appellate court: a court that hears the appeals of trial-court decisions
  – Supreme Court: the highest court in a state or the nation, which primarily hears cases on appeal

• They are functionally different and hierarchically organized.
The Structure of the U.S. Court System

Supreme Court of the United States

Requests for reviews

U.S. Court of Appeals

State supreme court

U.S. District Courts

State appellate courts

State trial courts

FEDERAL SYSTEM

STATE SYSTEM
The courts that serve as the trial courts in the federal court system are called

A. superior courts
B. federal district courts
C. state supreme courts
D. federal circuit courts of appeal
The courts that serve as the trial courts in the federal court system are called

A. superior courts
B. federal district courts
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The Organization of the Court System: Federal Courts

- Most cases are heard in state courts.
- Cases are heard in federal court if they involve federal laws, treaties, or the Constitution.
- Article III of the Constitution gives the U.S. Supreme Court appellate jurisdiction in most federal cases and gives the Congress power to create lower federal courts.
The Organization of the Court System: Federal Courts

- For the most part, Congress has assigned original and appellate jurisdiction to federal courts on a geographic basis:
  - There are 94 judicial districts.
  - There are 11 regional appellate circuits, plus the D.C. circuit.
- There are also several specialized federal courts that have nationwide jurisdiction for particular kinds of cases.
Regional Jurisdiction of Federal Courts of Appeal
Caseload in Federal Courts

- The caseload for federal courts has ballooned in recent decades to more than 450,000 cases per year.
- About 80 percent of cases end in district courts.
- About 2,000 cases from the appellate courts are appealed to the Supreme Court each year.
- The Supreme Court dismisses most of these cases without a ruling on the merits.
A man is accused of holding up a liquor store and stealing hundreds of dollars from the cash register. Where is this case heard first?

A. state-level trial court
B. federal district court
C. federal circuit court of appeal
A man is accused of holding up a liquor store and stealing hundreds of dollars from the cash register. Where is this case heard first?

A. state-level trial court
B. federal district court
C. federal circuit court of appeal
Federal Trial Courts and Federal Appellate Courts

- District judges are assigned on the basis of workload; the busiest federal district court has 28 judges.
- Circuit courts of appeal have between three and 28 permanent judgeships, depending on workload.
The Supreme Court

• Article III of the Constitution states: “The judicial power of the United States, shall be vested in one Supreme Court.”

• By law, the Supreme Court has one Chief Justice (now titled Chief Justice of the United States) and eight Associate Justices.

• The Chief Justice presides over the Court’s public sessions, gets to speak first during deliberations, and gets to vote last.
How Judges Are Appointed

• The president nominates federal judges, and the Senate must confirm.
• Senatorial courtesy: Before nominating a person for a federal judgeship, the president finds out whether the candidate’s home-state senators support the nomination.
Supreme Court Appointments

• Since the 1950s, nominees to the Supreme Court have been questioned in depth by the Senate Judiciary Committee.
• Recent nomination fights have been intensely ideological.
• Presidents have turned more and more to sitting federal appellate court judges, who have proven records that can be read.
## Supreme Court Justices

<table>
<thead>
<tr>
<th>NAME</th>
<th>YEAR OF BIRTH</th>
<th>PRIOR EXPERIENCE</th>
<th>APPOINTED BY</th>
<th>YEAR OF APPOINTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antonin Scalia</td>
<td>1936</td>
<td>Federal judge</td>
<td>Reagan</td>
<td>1986</td>
</tr>
<tr>
<td>Anthony M. Kennedy</td>
<td>1936</td>
<td>Federal judge</td>
<td>Reagan</td>
<td>1988</td>
</tr>
<tr>
<td>Ruth Bader Ginsburg</td>
<td>1933</td>
<td>Federal judge</td>
<td>Clinton</td>
<td>1993</td>
</tr>
<tr>
<td>Stephen G. Breyer</td>
<td>1938</td>
<td>Federal judge</td>
<td>Clinton</td>
<td>1994</td>
</tr>
<tr>
<td>Samuel A. Alito, Jr.</td>
<td>1950</td>
<td>Federal judge</td>
<td>G. W. Bush</td>
<td>2006</td>
</tr>
<tr>
<td>Sonia Sotomayor</td>
<td>1954</td>
<td>Federal judge</td>
<td>Obama</td>
<td>2009</td>
</tr>
<tr>
<td>Elena Kagan</td>
<td>1960</td>
<td>Solicitor general</td>
<td>Obama</td>
<td>2010</td>
</tr>
</tbody>
</table>
Courts as Political Institutions

• Three roles for courts in the political system:
  – Dispute resolution: fact finding and judgment
  – Coordination: providing before-the-fact incentives and disincentives for behavior
  – Rule interpretation: filling in “gaps” in the law

• This is the Institution Principle at work.
The Power of Judicial Review

• Judicial review: the power of the courts to declare actions of the legislative and executive branches invalid or unconstitutional

• Judicial review is not explicitly granted to the Court in the Constitution but was asserted by the Court in *Marbury v. Madison* (1803).
Marbury v. Madison (1803)

- William Marbury had been granted a judicial commission, but the commission had not been delivered in time.
- Marbury sued, and the Court ruled that the portion of the Judiciary Act of 1789 that gave the Court power to compel Madison to deliver the commission was invalid.
- The Court thus asserted that it had the power to rule a law unconstitutional.
The Use of Judicial Review

• The Court did not use judicial review much right after *Marbury v. Madison*, but it has used it quite a bit more frequently in recent decades.

• Judicial review has been used to:
  – reverse state actions
  – overturn federal agency actions
  – challenge presidential action
  – overturn federal law
Supreme Court Rulings
Invalidating Acts of Congress

NUMBER OF CASES

1789–1829  |  1
1830–1859  |  1
1860–1889  |  15
1890–1919  |  20
1920–1949  |  33
1950–1979  |  44
1980–2008  |  56
The Process of Judicial Review

1. Constitution
2. Supreme Court
   - President: Appoints justices
   - Congress: Approves appointments
   - Past decisions (precedents): Constrain future decisions
   - Power to review (Marbury v. Madison)
     - Congressional acts
     - Presidential and administrative actions
     - State laws
Landmark Supreme Court Cases

Not all cases and decisions are equally important. Landmark cases are decisions that revolutionize an area of law and announce new legal standards or have far-reaching political consequences.

<table>
<thead>
<tr>
<th>Case Title</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marbury v. Madison</td>
<td>1804</td>
<td>The Court declared part of the Judiciary Act unconstitutional, establishing judicial review.</td>
</tr>
<tr>
<td>McCulloch v. Maryland</td>
<td>1819</td>
<td>The Supreme Court justified the “implied powers” of the government under the Constitution, enabling Congress and the president to assert their authority beyond those activities explicitly mentioned in the Constitution.</td>
</tr>
<tr>
<td>Gibbons v. Ogden</td>
<td>1824</td>
<td>This decision establishes the supremacy of the federal government over the states in the regulation of commerce so as to create uniform business law.</td>
</tr>
<tr>
<td>Dred Scott v. Sandford</td>
<td>1857</td>
<td>The Court declared that people of African origin brought to the United States as part of the slave trade were not given the rights of citizenship under the Constitution and could, therefore, claim none of the rights and privileges that the Constitution provides.</td>
</tr>
<tr>
<td>Plessy v. Ferguson</td>
<td>1896</td>
<td>The Court interpreted the post–Civil War amendments to the Constitution in such a way as to allow segregation, so long as facilities were “separate but equal.”</td>
</tr>
<tr>
<td>Lochner v. New York</td>
<td>1905</td>
<td>The Court established a general right to enter freely into contracts as part of business, including the right to purchase and sell labor. The decision made it more difficult for unions to form.</td>
</tr>
<tr>
<td>Schenck v. United States</td>
<td>1919</td>
<td>The Court declared that the right to free speech does not extend to words that are “used in such circumstances and of such a nature as to create a clear and present danger.”</td>
</tr>
<tr>
<td>Korematsu v. United States</td>
<td>1944</td>
<td>The Court allowed the United States government to intern Japanese-Americans in concentration camps during World War II as a safeguard against insurrection or spying.</td>
</tr>
<tr>
<td>Brown v. Board of Education</td>
<td>1954</td>
<td>The Court ruled that separate educational facilities could not be equal, overturning Plessy, and ordering an end to segregation “with all deliberate speed.”</td>
</tr>
<tr>
<td>Mapp v. Ohio</td>
<td>1961</td>
<td>The Court ruled that all evidence obtained by searches and seizures in violation of the federal Constitution is inadmissible in a court of law.</td>
</tr>
<tr>
<td>Baker v. Carr</td>
<td>1962</td>
<td>The justices established that the Court had the authority to hear cases involving legislative districting, even though that is a “political matter,” ultimately guaranteeing equal representation in the state legislatures and the U.S. House of Representatives.</td>
</tr>
<tr>
<td>Griswold v. Connecticut</td>
<td>1965</td>
<td>The Court struck down a Connecticut law prohibiting counseling on the use of contraceptives and declared that the Bill of Rights implied a right to privacy.</td>
</tr>
<tr>
<td>Roe v. Wade</td>
<td>1973</td>
<td>The Court held that a mother may abort her baby for any reason up to the point that the fetus becomes “viable” and that any law passed by a state or Congress inconsistent with this holding violated the right to privacy and the right to enter freely into contracts.</td>
</tr>
<tr>
<td>Kelo v. City of New London</td>
<td>2005</td>
<td>The Court upheld the power of local government to seize property for economic development.</td>
</tr>
<tr>
<td>Boumediene v. Bush</td>
<td>2008</td>
<td>The Court declared that foreign terrorism suspects have the constitutional right to challenge their detention (using the writ of habeas corpus) at the Guantánamo Bay naval base in U.S. courts, even though the detainees are not citizens.</td>
</tr>
</tbody>
</table>
The Supreme Court in Action: Access

- The Constitution defines judicial power as extending to “cases and controversies.”
- This means:
  - No advisory opinions
  - Parties must have standing—the right of an individual or organization to initiate a case
  - The issue must not be moot—a case that no longer requires resolution
Cases Filed in the U.S. Supreme Court
Beyond those rules, the Court chooses to hear cases based on the preferences and priorities of the justices.

The justices’ clerks pore over all petitions and generate memos on the various cases, and any one justice can ask that a case be considered for a hearing.

The nine justices meet to decide which cases will be granted *certiorari*.
Writ of *certiorari*: a formal request by an appellant to have the Supreme Court review a decision of a lower court

Generally, *certiorari* is granted when:

- there are conflicting decisions by two or more lower courts
- there are conflicts between a lower court decision and a previous Supreme Court decision
Clicker Question

How many of the nine justices must agree to grant a writ of *certiorari*?

A. 1
B. 4
C. 5
D. 9
Clicker Question

How many of the nine justices must agree to grant a writ of *certiorari*?

A. 1
B. 4
C. 5
D. 9
Reaching the Supreme Court through **Certiorari**

- **U.S. Supreme Court**
  - Created by Article III of Constitution (justices appointed for life).

- **Certiorari discretionary review**
  - Federal Courts
    - **U.S. Court of Appeals**
      - 12 circuits
      - Decides questions of law based on briefs and oral argument.

  - State Courts
    - State supreme courts decide issues of law based on briefs and oral argument.
    - Intermediate appellate courts (in 40 states)
    - State trial courts often known as superior or circuit courts, try questions of law and fact, with and without a jury.

- **Federal agencies**
  - Inferior trial courts
Controlling the Flow of Cases

- Solicitor General: The Solicitor General (an officer in the Justice Department) screens out many cases in which the federal government is a party.
- Law clerks: Each justice has four clerks, drawn from the top law schools in the country, who screen cases for justices and assist in general legal research.
The Supreme Court’s Procedures

• Parties to the case file briefs.
  – Briefs are documents in which the attorneys explain why the Court should rule in their favor.
  – *Amicus curiae* briefs are filed by those who are interested in the case but not a party to it.

• Oral arguments come next.
  – Attorneys appear before the Court, present their arguments, and answer questions from the justices.
The Supreme Court’s Procedures

• Conference
  The case is discussed and a preliminary vote taken.

• Opinion Writing
  – One of the members of the majority is assigned the task of writing a majority opinion.
  – Drafts of the opinion are circulated, and changes may be suggested.
  – Justices in the minority write one or more dissents.
The Supreme Court’s Decision-Making Process

- Petitions
- Certiorari pool
- Discuss list
- Conference
- Briefs
  - Amicus curiae briefs
- Oral argument
- Conference
- Opinions and dissents
Judicial Decision Making: Restraint vs. Activism

- Judicial restraint: the judicial philosophy whose adherents refuse to go beyond the text of the Constitution in interpreting its meaning.
- Judicial activism: the judicial philosophy that posits that the Court should see beyond the text of the Constitution or a statute to consider broader societal implications for its decisions.
Judicial Decision Making: Political Ideology

• The extent of the liberal or conservative attitudes of justices plays an important role in their decisions.
• Activism and restraint are not synonymous with liberal and conservative.
The Expanding Power of the Judiciary

- During the 1960s and 1970s, the courts liberalized standing—more could sue.
- The courts also broadened the scope of relief by allowing for class-action lawsuits.
- The courts also began to employ structural remedies, sometimes retaining control of a case until a mandate was implemented.
- All are expansions of judicial power.
Is the rise of judicial power good for democracy?

A. Yes! The courts are in a unique position to represent the powerless.

B. No! The courts are not electorally accountable and cannot possibly represent the views of 300 million Americans.