


American Government and Politics Today

Chapter 14 The Courts




NAME THEM





Front row, left to right: Associate Justice Stephen G. Breyer, Associate Justice Clarence Thomas, Chief Justice John G. Roberts, Jr., Associate Justice Ruth Bader Ginsburg, Associate Justice Samuel A. Alito.
Back row: Associate Justice Neil M. Gorsuch, Associate Justice Sonia Sotomayor, Associate Justice Elena Kagan, Associate Justice Brett M. Kavanaugh.

KEY JUSTICES

- John Jay was the first
 - Chisholm v. Georgia lawsuit (his decision leads to the 11th amendment prohibiting suits against states in Federal Court)
 - Felt job so weak he leaves to be Gov. of NY

Originally 6 Sup. Ct. Justices, the number would fluctuate, but in 1869 it is set at 9 and has remained so since then but can be changed

The Marshall Court: *Marbury v. Madison* (1803) and Judicial Review

- *Federalist No. 78*
- ***Marbury v. Madison***
 - Necessary and proper clause
 - National supremacy
- *McCulloch v. Maryland*
 - National supremacy
 - Broad interpretation of the commerce clause



- John Marshall (1801-1835) has the greatest impact: (Federalist long after all others gone)
 - *Marbury v. Madison* (1803)
 - *McCulloch v. Maryland* (1819)
 - *Gibbons v. Ogden* (1824)

- Other Justices of some fame:
 - Justice Taney (Dred Scott)
 - Justice Holmes (1st amendment)
 - Justice O'Connor (1st woman)
 - Justice Marshall (1st African-American)
 - Justice Rehnquist (limiting executive privilege)
 - Justice Warren (rights of the accused and Brown)
 - Justice Roberts (present Chief Justice)

Understanding the Courts

■ The Courts and Democracy

- Courts are not very democratic.
 - Not elected
 - Difficult to remove judges and justices
- The courts often reflect popular majorities.
- Groups are likely to use the courts when other methods fail, which promotes pluralism.
- There are still conflicting rulings leading to deadlock and inconsistency.

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The Common Law Tradition

- American law stems from English legal tradition. Unlike many other countries, English law is based on *common law*. Common law is judge-made law based initially on the prevailing custom and eventually on legal *precedent*. Common law is based on *stare decisis*, which means to stand on decided cases. If a legal situation occurs that has previously been decided, the decision in the initial case is binding on the current situation. The major advantages to this type of system are efficiency and stability.

Sources of American Law

- Constitutions
- Statutes and Administrative Regulations
- Case Law

ARTICLE III

- Weakest Branch in Constitution originally
- Hamilton's Federalist Essay #78
- Judiciary Act of 1789 established the court system we know today
- Three Tier System
- At least One District Court in every state

The Federal Court System

- Basic Judicial Requirements
 - Jurisdiction. This is the authority to hear and decide cases. The Constitution says that the federal courts have jurisdiction in cases that meet one of the following criteria:
 - The case involves a federal question
 - The case involves diversity of citizenship
 - Standing to Sue

The Nature of the Judicial System

Introduction:

- Two types of cases:
 - Criminal Law: The government charges an individual with violating one or more specific laws.
 - Civil Law: The court resolves a dispute between two parties and defines the relationship between them.
- Most cases are tried and resolved in state, not federal courts.
 - Cases of burglary or divorce

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The Nature of the Judicial System

Participants in the Judicial System

- Litigants
 - Plaintiff—the party bringing the charge
 - Defendant—the party being charged
 - Jury—the people (normally 12) who often decide the outcome of a case
 - Standing to sue: plaintiffs have a serious interest in the case; have sustained or likely to sustain a direct injury from the government
 - Justiciable disputes: a case must be capable of being settled as a matter of law.

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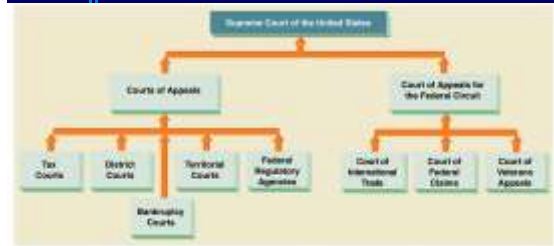
The Nature of the Judicial System

Participants in the Judicial System

- Groups
 - Use the courts to try to change policies
 - *Amicus Curiae* briefs used to influence the courts
 - “friend of the court” briefs used to raise additional points of view and information not contained in briefs of formal parties
- Attorneys
 - 800,000 lawyers in United States today
 - Legal Services Corporation: lawyers to assist the poor
 - Access to quality lawyers is not equal.

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The Federal Court System



Types of Federal Courts

- U.S. District Courts
- U.S. Courts of Appeals
- The United States Supreme Court
- Specialized Federal Courts and the War on Terrorism
 - The FISA Court
 - Alien “Removal Courts”

The Structure of the Federal Judicial System

District Courts (91 federal courts)

- Original Jurisdiction: courts that hear the case first and determine the facts - the trial court
- Deals with the following types of cases:
 - Federal crimes
 - Civil suits under federal law and across state lines
 - Supervise bankruptcy and naturalization
 - Review some federal agencies
 - Admiralty and maritime law cases
 - Supervision of naturalization of aliens

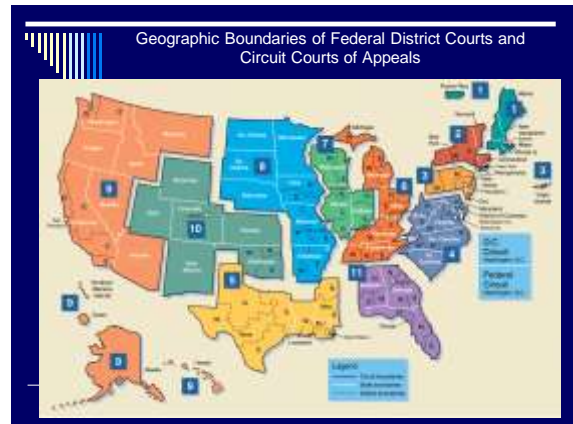
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The Structure of the Federal Judicial System

Courts of Appeal

- Appellate Jurisdiction: reviews the legal issues in cases brought from lower courts
- Hold no trials and hear no testimony
- 12 circuit courts
- U.S. Court of Appeals for the Federal Circuit – specialized cases
- Focus on errors of procedure and law

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The Structure of the Federal Judicial System

The Supreme Court

- Ensures uniformity in interpreting national laws, resolves conflicts among states and maintains national supremacy in law
 - 9 justices – 1 Chief Justice, 8 Associate Justices
 - Supreme Court decides which cases it will hear—controls its own agenda
 - Some original jurisdiction, but mostly appellate jurisdiction
 - Most cases come from the federal courts
 - Most are civil cases

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The Structure of the Federal Judicial System

TABLE 16.1

Sources of Full Opinions in the Supreme Court, 2007

TYPE OF CASE	NUMBER OF CASES
Original jurisdiction	0
Civil actions from lower federal courts	47
Federal criminal and habeas corpus cases	17
Civil actions from state courts	4
State criminal cases	3
Total	71

Source: "The Supreme Court, 2006 Term: The Statistics," Harvard Law Review 121 (November 2007): 447-480.

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Parties and Procedures

- **Plaintiff**, the person or organization that initiates a lawsuit.
- **Defendant**, the person or organization against whom the lawsuit is brought.
- **Litigate**, to engage in a legal proceeding or seek relief in a court of law; to carry on a lawsuit.

Parties and Procedures (cont.)

- **Amicus Curiae brief**, a brief (a document containing a legal argument supporting a desired outcome in a particular case) filed by a third party, or *amicus curiae* (Latin for "friend of the court"), who is not directly involved in the litigation but who has an interest in the outcome of the case.
- **Procedural Rules**
 - **Civil contempt** is failing to comply with a court's order for the benefit of another party. **Criminal contempt** is obstructing the administration of justice or bringing the court into disrespect.

Which Cases Reach the Supreme Court?



- ▢ When two lower courts are in disagreement.
- ▢ When a lower court's ruling conflicts with an existing Supreme Court ruling.
- ▢ When a case has broad significance (as in desegregation or abortion decisions).
- ▢ When a state court has decided a substantial federal question.

Which Cases Reach the Supreme Court? (cont.)



- ▢ When the highest state court holds a federal law invalid, or upholds a state law that has been challenged as violating a federal law.
- ▢ When a federal court holds an act of Congress unconstitutional.
- ▢ When the solicitor general is pressuring the Court to hear a case.

The Supreme Court's Work

- 99% of Supreme Court Cases are remanded
 - This means that they original decision is upheld (supported)
- The chief justice acts as a guide/chairperson but his vote holds no more weight than that of another judge.
- Arguments/debates within the court are considered private
- Lawyers are very limited in what they may present to the judge.

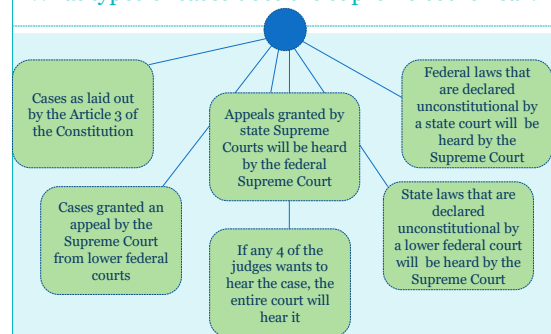
Cases before the Court

- Granting Petitions for Review. Review is granted by a writ of *certiorari*. To issue a writ, a minimum of four justices must agree that the case should be heard by the Supreme Court (the "rule of four").
- Deciding Cases
 - ▢ Once the Court has decided to accept a case, both parties in the case will submit legal briefs and (usually) make oral arguments.
 - ▢ If the Court is unanimous in the ruling, one justice will be assigned to write the opinion of the Court. If the justices are divided on the reasoning of the outcome, there will be a majority opinion and dissenting opinions.

Supreme Court Decisions

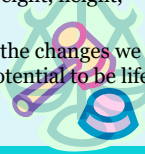
- Once the court has reached a majority of 5 to 9 justices, they will share their decision with the legal community, and explain what it means for future decisions:
 - Majority Opinion: Discusses how the case at hand influences the interpretation of the Constitution.
 - Minority Opinion: Discusses the opinion of those who do not agree with the ruling.
 - Concurrent Opinion: Those who voted with the Majority, but do not agree with the Majority Opinion, may publish their opinion as to how the ruling should affect the interpretation of the Constitution.

What types of cases does the supreme court hear?



Why does the Supreme Court matter?

- The Supreme Court has been instrumental in the development of Civil Rights and Civil Liberties in the United States.
- Have guaranteed the rights of citizens independent of their skin color, race, age, gender, political or religious beliefs, sexual preference, weight, height, disability.... And the list goes on.
- This list will never remain stagnant...the changes we experience in our lifetime have the potential to be life altering for many.



The Selection of Federal Judges

- Judicial Appointments
 - Federal District Court Judgeship Nominations
 - Federal Courts of Appeals Appointments
 - Supreme Court Appointments
- Partisanship and Judicial Appointments
- The Senate's Role

The Politics of Judicial Selection

- **Presidents appoint members of the federal courts with “advice and consent” of the Senate.**
- **The Lower Courts**
 - Appointments handled through Senatorial Courtesy:
 - Unwritten tradition where a judge is not confirmed if a senator of the president's party from the state where the nominee will serve opposes the nomination
 - Has the effect of the president approving the Senate's choice
 - President has more influence on appellate level

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The Politics of Judicial Selection

- **The Supreme Court**
 - Fewer constraints on president to nominate persons to Supreme Court
 - President relies on attorney general and DOJ to screen candidates
 - 1 out of 5 nominees will not make it
 - Presidents with minority party support in the Senate will have more difficulty.
 - Chief Justice can be chosen from a sitting justice, or as a new member to the Court

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The Politics of Judicial Selection

TABLE 16.2

Unsuccessful Supreme Court Nominees since 1900

NOMINEE	YEAR	PRESIDENT
John J. Parker	1930	Hoover
Abe Fortas ^a	1968	Johnson
Homer Thornberry ^b	1968	Johnson
Clement F. Haynesworth Jr.	1969	Nixon
G. Harold Carswell	1970	Nixon
Robert H. Bork	1987	Reagan
Douglas H. Ginsburg ^a	1987	Reagan
Harriet Miers ^a	2005	G. W. Bush

^aNomination withdrawn. Fortas was serving on the Court as an associate justice and was nominated to be chief justice.

^bThe Senate took no action on Thornberry's nomination.

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The Backgrounds of Judges and Justices

- **Characteristics:**
 - Generally white males
 - Lawyers with judicial and often political experience
- **Other Factors:**
 - Generally of the same party and ideology as the appointing president
 - Judges and justices may not rule the way presidents had hoped they would have.

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The Backgrounds of Judges and Justices

TABLE 16.3

Backgrounds of Recent Federal District and Appeals Court Judges

BACKGROUND	Appellate Court				District Court			
	U.S. SUP.	CIRCUIT	DIST.	STATE	U.S. SUP.	CIRCUIT	DIST.	STATE
Bar/degree(s)	99	99	99	99	99	99	99	99
Academic background	22	22	4	4	22	11	12	4
Public service	62	62	46	46	62	62	62	46
Corporate law	22	22	46	46	22	22	46	46
Government law	4	4	4	4	4	4	4	4
Business and law	4	4	4	4	4	4	4	4
Government of law	4	4	4	4	4	4	4	4
Other	4	4	4	4	4	4	4	4
Industry or work (N)	11	11	11	11	11	11	11	11
Government	11	11	11	11	11	11	11	11
Other	4	4	4	4	4	4	4	4
Industry (Y)	11	11	11	11	11	11	11	11
Government	11	11	11	11	11	11	11	11
Other	4	4	4	4	4	4	4	4
Industry (N)	11	11	11	11	11	11	11	11
Government	11	11	11	11	11	11	11	11
Other	4	4	4	4	4	4	4	4
Industry (Y)	11	11	11	11	11	11	11	11
Government	11	11	11	11	11	11	11	11
Other	4	4	4	4	4	4	4	4
Industry (N)	11	11	11	11	11	11	11	11
Government	11	11	11	11	11	11	11	11
Other	4	4	4	4	4	4	4	4

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The Backgrounds of Judges and Justices

TABLE 16.4

Supreme Court Justices, 2009

NAME	YEAR OF BIRTH	PREVIOUS POSITION	MEMORABLE INCIDENT	YEAR OF CONSTITUTION
John G. Roberts Jr.	1955	U.S. Court of Appeals	G. W. Bush	2005
John Paul Stevens	1920	U.S. Court of Appeals	Ford	1975
Antonin Scalia	1936	U.S. Court of Appeals	Reagan	1986
Anthony M. Kennedy	1932	U.S. Court of Appeals	Reagan	1982
David H. Souter	1939	U.S. Court of Appeals	Bush	1990
Clarence Thomas	1948	U.S. Court of Appeals	Bush	1991
Ruth Bader Ginsburg	1923	U.S. Court of Appeals	Carter	1993
Stephen G. Breyer	1942	U.S. Court of Appeals	Carter	1994
Sonnia A. Sotomayor	1954	U.S. Court of Appeals	G. W. Bush	2009

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Policymaking and the Courts

- Judicial Review: the power of the courts to determine whether a law or action by the other branches of government is constitutional
- Judicial Activism and Judicial Restraint
- Strict versus Broad Construction
 - Strict construction*, a judicial philosophy that looks to the "letter of the law" when interpreting the Constitution or a particular statute.
 - Broad construction*, a judicial philosophy that looks to the context and purpose of a law when making an interpretation

The Courts as Policymakers

Accepting Cases

- Use the "rule of four" to choose cases
- Issues a *writ of certiorari* to call up the case
- Supreme Court accepts few cases each year

FIGURE 16.3
Obtaining Space on the Supreme Court's Docket



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The Courts as Policymakers

Accepting Cases (continued)

- The Solicitor General:
 - a presidential appointee and third-ranking office in the Department of Justice
 - is in charge of appellate court litigation of the federal government
 - Four key functions:
 - Decide whether to appeal cases the government lost
 - Review and modify briefs presented in appeals
 - Represent the government before the Supreme Court
 - Submit a brief on behalf of a litigant in a case in which the government is not directly involved

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The Courts as Policymakers

Making Decisions

- Oral arguments heard by the justices
- Justices discuss the case
- One justice will write the majority opinion (statement of legal reasoning behind a judicial decision) on the case

FIGURE 16.4
The Supreme Court's Decision-Making Process



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The Courts as Policymakers

■ Making Decisions (continued)

- Dissenting opinions are written by justices who oppose the majority.
- Concurring opinions are written in support of the majority but stress a different legal basis.
- *Stare decisis*: let previous decision stand unchanged
- Precedent: how similar past cases were decided
 - May be overruled
- Original Intent: the idea that the Constitution should be viewed according to the original intent of the framers

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The Courts as Policymakers

■ Judicial implementation

- How and whether court decisions are translated into actual policy, thereby affecting the behavior of others
- Must rely on others to carry out decisions
 - Interpreting population: understand the decision
 - Implementing population: the people who need to carry out the decision—may be disagreement
 - Consumer population: the people who are affected (or could be) by the decision

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The Courts and the Policy Agenda

■ A Historical Review

- John Marshall and the Growth of Judicial Review
 - *Marbury v. Madison* (1803) established judicial review—courts determine constitutionality of acts of Congress
- The “Nine Old Men”
- The Warren Court
- The Burger Court
- The Rehnquist Court

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Ideology and the Rehnquist Court

- The ideology of the justices determines the kinds of policy that the courts will make.
- The Rehnquist Court attempted, to a limited degree, to restore states' rights. Notably, the Court limited the rights of citizens to sue their own states in federal courts.
- The Court has been relatively cautious on civil rights issues, ruling that affirmative action is acceptable but within strict limits. One striking ruling in support of the civil rights of gay men and lesbians, however, was the abolition of anti-sodomy laws in 2003 through *Lawrence v. Texas*.

What Checks Our Courts?

- Executive Checks
 - The president has the power to enforce judicial decisions through the use of the bureaucracy. In rare cases a president may refuse to implement a decision. More frequently, presidents use their power of appointment to check the judiciary.
- Legislative Checks
 - Constitutional amendments
 - Revision of laws
- Public Opinion

Judicial Traditions and Doctrines

- To a certain extent, the courts also check themselves.
- Hypothetical and Political Questions.
 - The tradition of refusing to adjudicate hypothetical questions serves as one check. The doctrine that many issues (political questions) ought to be resolved by the elected branches of government is also a restraint.
- The Impact of the Lower Courts.
 - If lower courts dislike a Supreme Court ruling, they cannot overturn it but can seek to apply it in as limited a fashion as possible.



Questions for Critical Thinking

- Why do laws exist? What happens if someone violates the law? What if the law is not fair or just? Who makes the law?
- Should judges be making policy? Since they are not elected, is it dangerous for those who do not face the public scrutiny in any meaningful way to directly make policy?



Questions for Critical Thinking

- What checks do the executive and the legislature have on the judiciary? Does the bureaucracy have any checks? Does the public?