Chapter 8 - Judiciary

AP Government
The Structure of the Judiciary

A complex set of institutional courts and regular processes has been established to handle laws in the American system of government.

Article III of the Constitution vests the “judicial power of the United States” in the U.S. Supreme Court.
The Judicial Process

Traditionally “courts” were places where a sovereign or monarch ruled.

Contemporary American courts judge violations of the law and disputes between citizens and also rule on the rights of citizens and the extent of governmental power.

The basis for authority of judges is the Constitution and laws.
Judicial Politics

The proper role of the American judiciary is the subject of continuing controversy in American politics.

During the 20th century, liberals have generally defended judicial activism while conservatives have decried it.
Activism vs. Restraint

• A judicial philosophy that believes that when making decisions, the courts should remain as close as possible to the actual wording of the Constitution and other laws as well as to the original intent of lawmakers is considered to be indicative of judicial restraint.

• A judicial philosophy that believes that when making decisions, the courts should see beyond the text of the Constitution or a statute to consider broader societal implications for its decisions is considered to be indicative of judicial activism.
The Founding and the Federal Judiciary

When Anti-Federalists charged that the Constitution gave the judiciary too much power, Federalists countered that the judiciary was, in fact, “the least dangerous” branch of the national government.
“The judiciary is beyond comparison the weakest of the three departments of power.”
—Alexander Hamilton, *Federalist* 78

Judicial Power is comparatively weak:

1. Judiciary lacks the “force” to enforce its decisions.
2. Insulated from political forces, the judiciary lacks “will.”
3. Judges and justices have life terms (“during good behavior”) conducive to judicial independence
4. As nonelected officials, judges and justices have more leeway to protect minority rights and interests.
Type of Law
Judicial Process

• Relevant law or principle applied to the facts of case

• Two broad categories
  – Criminal law
  – Civil law
    • Public law – separate category of civil law.
Judicial Process

• Criminal Law
  – Government charges an individual with violating a statute enacted to protect the public health, safety, morals, or welfare.
  – The **plaintiff** is the party that brings charges.
  – The defendant is the individual or organization charged with a complaint in court.
  – Most Criminal cases start and are heard in state and local courts.
Judicial Process

• Civil Law
  – Disputes between individuals or between individuals and the government where no criminal violation is charged.
  – Monetary damages may be awarded for their actions.
  – Two most common cases involve contracts and torts
    • Contracts involves violating an agreement
    • Torts charges injuries due to negligence or malfeasance
Judicial Processes

• In deciding cases, precedents or prior decisions are considered.
• These precedents are applied under the doctrine of *stare decisis* or “let the decision stand.”
Judicial Processes

• Public Law
  – Plaintiff or defendant in a civil or criminal case seeks to show their case involves powers of government or the rights of citizens as defined under the Constitution or by statute.
  – Major form – Constitutional law
  – Enters realm of public law when constitutional rights are violated by the police.
  – Another area of public law is administrative law which involves disputes over the jurisdiction, procedures, or authority of bureaucratic agencies.
Structure of the Courts
Types of Courts

• There are federal and state court systems.
• Nearly 99% of all court cases in the United States are heard in state and local courts.
• Most of these are criminal cases
  – Murder, robbery, fraud, theft, and assault
• Civil cases – litigation starts in the state in which the activity in question took place.
• In both cases, many cases are decided before a trial.
  – In Criminal cases, this is known as a plea bargain.
Types of Courts

**Trial courts** are generally the first courts to hear criminal and civil cases.

**Appellate courts** hear the appeals of trial court decisions.

**Supreme Courts** (both the U.S. Supreme Court and state supreme courts) are the highest courts in a system, and they usually serve appellate functions.
Federal Jurisdiction

• Cases are heard in federal courts if they involve federal laws, treaties with other nations, or U.S. Constitution.

• Civil cases involving the citizens of more than one state and in which more than $70,000 is at stake may be heard in either the federal or state courts, usually depending on the preference of the plaintiff.

• Military has its own court system under the Uniform Code of Military Justice.
Federal Jurisdiction

• Congress has assigned jurisdiction based on geography.
  – 94 judicial districts with one each for 3 U.S. territories: Guam, U.S. Virgin Islands, Northern Marianas.
  – 11 Regional circuits and District of Columbia
    • Circuit courts exercise appellate jurisdiction over case in district.
• U.S. Court of International Trade – trade & customs
• U.S. Court of Federal Claims – suits against U.S.
• U.S. Court of Appeals for Veterans Claims
• U.S. Court of Appeals for the Armed Forces
About 10 percent of cases in district court and federal agencies are accepted by higher courts for appeals.

The country is divided into 12 (primarily geographical) judicial circuits, each with a U.S. Court of Appeals.

Decisions made by U.S. Courts of Appeals can be appealed to the Supreme Court, though they are otherwise final.
Federal Jurisdiction

- Specialized courts not created under Article III of Constitution but under powers based on the legislative branch (Article I)
- Article I judges are appointed by the president and serve fixed terms of fifteen years.
- Three territorial courts were established under Article I
- Their judges are appointed for ten years.
Federal Jurisdiction

• Appeals usually based on violations of *due process*.

• *Writ of Habeas Corpus* used to release prisoners based on violations of their legal rights.

• Caseload in Federal Court up to 350,000 a year.

• 8,500 to 9,500 cases appealed to Supreme Court.

• Most are dismissed with about 84 to 91 cases given full review by the Supreme Court.
Judicial Appointees

• Federal judges are appointed by the president, usually from prominent members of the legal profession.

• Senators from the nominee’s state must indicate they support them, this is known as senatorial courtesy.

• Nominee considered by Senate Judiciary Committee and confirmed by majority vote of full Senate.

• Sometimes a filibuster may be used by a Senator to prevent a vote, thus stopping the appointment.
Structural features of the federal judiciary, including the number of justices and judges and the number and structure of lower federal courts, are determined by acts of Congress like the Judiciary Act of 1789 and the Judiciary Act of 1925.
The Supreme Court

Although the Constitution does not stipulate it, there are nine Supreme Court justices: eight associate justices and the chief justice.
According to the Constitution, federal justices and judges are nominated by the president and must be confirmed by the Senate.

Though politics dominates both the president’s decision and that of the Senate, both have important constitutional roles to perform.
Role of the Court
Role of the Court

• Judges are central players in important political institutions.
• This role makes them politicians.
• Three roles
  – Dispute Resolution
  – Coordinators
  – Interpreters of Rules
Dispute Resolution

• For any potential violations, people know they may take an alleged violator to court.
• This is after-the-fact
• The establishes the facts of case, metes out punishment, and compensates victims.
• Examples
  – Employee sues his or her employer for allegedly violating the terms of a privately negotiated employment contract.
  – A tenant sues a landlord for violating provisions of a lease.
  – Consumer sues a producer for violating the terms of a product warranty.
Coordination

• Legal consequences allows private parties to form rational expectations and thereby coordinate their actions in advance of possible disputes.
• Before-the-fact
• Examples
  – Prospective embezzler estimating odds of getting caught.
Rule Interpretation

• Judges engage in interpretive activity, trying to match the facts of a specific case to judicial principles and statutory guidelines.
• Does a 1927 statue regulating electronic transmissions of radio waves apply to television, cell phones, etc.
• Interpreting rules single most important role.
• If Congress is unhappy with a specific statutory interpretation, they may amend legislation to explicitly reverse a court ruling.
The Role of Judicial Review
The Influence of the American Judiciary

Despite the traditional limitations on judicial power and the American judiciary’s dependence on the other branches of government, the U.S. Supreme Court has become very influential in American politics and society.
Judicial Review

• The Supreme Court declares a new law recently passed by the Congress unconstitutional is one example of judicial review.

• Set by the *Marbury v. Madison* case of 1803.

• Between 1986 and 2007, 36 acts of Congress were struck down by the Supreme Court.
Judicial review is the Court’s power to determine the constitutionality of laws passed by state legislatures and Congress. Also, the actions of the President and Federal Agency may be scrutinized. Although judicial review was used sparingly in the 19th century, the Supreme Court’s ability to effectively “veto” acts of Congress and the states is the basis for its power in the American separation of powers system.
State Actions

• The power of the Supreme Court to review state legislation is not granted by the Constitution and is not inherent.

• Comes from the logic of the Supremacy Clause of Article VI – “Supreme Law of the Land”

• Civil Rights are examples of state laws overturned by the Supreme Court including interracial marriages in 1967 (Loving v. Virginia) and marital privacy and contraception in 1965. (Griswold v. Connecticut)
Judicial Review and Lawmaking

• The body of judge-made law is called common law.

• Appellate courts make use of common law and statutory law to make their rulings.

• In numerous cases, from *Gideon v. Wainwright*, to *Baker v. Carr*, to *Miranda v. Arizona*, these laws are applied.
Operations of Supreme Court
Supreme Court

• Original jurisdiction in limited variety of cases
  – Between the U.S. and one of the fifty states
  – Between two or more of the states
  – Foreign Ambassadors or other ministers
  – One state against citizens of another state or against a foreign country.

• To hear cases and present a report on a dispute between states over land, water, or old debts, the Supreme Court generally appoints a retired judge known as a special master.
The Supreme Court in Action

Courts must establish and maintain standards of access to the judiciary.

Parties must have standing to sue, and cases must involve an actual and (more or less) current controversy; that is, cases cannot be moot.

**Standing** refers to the right of an individual or organization to initiate a court case, on the basis of their having a substantial stake in the outcome.
Rules of Access

• Courts apply certain criteria. Three major categories.

• **Case or Controversy**
  – Case must be actual controversy, not hypothetical.

• **Standing**
  – Parties must show they have a substantial stake in the outcome of the case.

• **Mootness**
  – Requirement that disqualifies cases bought too late; relevant facts have changed or resolved in other way.
More informally, of the thousands of cases it might hear, the Supreme Court is likely to accept cases that present important questions of civil rights and liberties and cases involving the federal government.

The Supreme Court sets most of its agenda by issuing writs of certiorari when four of the nine justices vote to review a lower court’s decision.
Supreme Court

- Accepts cases that involve conflicting decisions by the federal circuit courts.
- Preferences or priorities of the justices.
- Most cases reach the Supreme Court through a *writ of certiorari*.
  - Order to lower court to deliver the records of a particular case to be reviewed for legal errors.
- For certiorari to be granted, an agreement must be reached by *four justices* that Rule 10 has been satisfied.
  - Rule 10 is special or compelling reasons exists.
Controlling the Flow of Cases

• The individual having the greatest immediate influence over the work of the Supreme Court is the Solicitor General.

• Third in status in the Justice Department behind Attorney General and Deputy Attorney General.

• Government lawyer in all cases before appellate courts.

• Can even enter a case by filing a amicus curiae ("friend of the court") brief. Vital interest in the outcome of the case.
Controlling the Flow of Cases

• Every federal judge employs a law clerk to research legal issues and assist in the preparation of opinions.

• Each Supreme Court Justice is assigned four law clerks.
Once the Supreme Court decides to hear a case, there are several remaining stages of the process.

Litigants before the Court prepare written briefs and make oral arguments before the justices. Attorneys must present their cases within 30 minutes.

Outside groups might also submit *amicus curiae* ("friends of the court") briefs in an attempt to weigh in on the decision.
After briefs and arguments, justices meet in conference to discuss the case and vote.

Once they have voted, justices write **opinions** explaining their legal reasoning.
In most cases, the Supreme Court issues a **majority opinion** that is controlling.

In rare instances, no majority may emerge and justices write a **plurality opinion**.

Justices who disagree with the judgment of the majority often offer a **dissenting opinion**.

Those who agree with the ultimate conclusion but for different reasons might write a **concurring opinion**.
Tactical Considerations

• The Chief Justice often selects Justices to write majority opinions in an attempt to put the best political spin or argument forward.

• In the sensitive case that overturned the southern practice of prohibiting black participation in primaries, Smith v. Allwright (1944), the Chief Justice chose a southern democratic Justice from Kentucky to write the opinion.
Judicial Decision Making

• The judiciary is conservative in its procedures but its effect on society can be radical.
• The Supreme Court took an activists role in the areas of civil right, civil liberties, abortion, voting rights, and police procedures during the 1950s to the 1980s.
Supreme Court Justices

• Since the early 1980s, changes to the justices have swung the court toward a more conservative position on these issues.

• Presently, the following Justices are considered conservative
  – Scalia, Thomas, Roberts, Alito, Kennedy

• Presently, the following Justices are considered liberal
  – Ginsberg, Breyer, Souter, Stevens
Other Considerations
The “Nonpolitical” Judiciary

Justices and judges seek to reinforce the perception that they are “above politics” by tying their decisions to the Constitution, previous court decisions, and precedents.

Following the principle of *stare decisis* (that is, following past precedent), judges’ and justices’ goals are constrained to a degree by previous court rulings.
When testifying before the Senate Judiciary Committee prior to their confirmation to the Supreme Court, both Chief Justice John Roberts and Justice Samuel Alito pledged “due” deference to precedents claiming that they would be loathe to overturn “settled law” even if they disagreed with the case as originally decided.