

Chapter 9: The Federal Judiciary

Setting the Stage for Judicial Review (1 of 2)

- Judiciary Act of 1801.
- Rushed judicial appointments.
- Democratic-Republicans assuming control.
- Strength of judicial veto.

Setting the Stage for Judicial Review (2 of 2)

- *Marbury v. Madison*.
 - Marshall's three key questions.
- Writ of mandamus.
- Dred Scott.

Three Eras of the Court's Judicial Review (1 of 8)

- Fluctuating levels of Court intervention.
- Three unresolved Constitutional questions.
- Eras based on these questions.

Three Eras of the Court's Judicial Review (2 of 8)

Nation versus State

- Marshall's Court favored federalism.
- National government superior to states.
- Applied judicial review to states.

Three Eras of the Court's Judicial Review (3 of 8)

Nation versus State: *McCulloch v. Maryland* and National Supremacy

- Nationally chartered bank heavily taxed.
- States couldn't tax federal activity.
- Necessary and proper clause.

Three Eras of the Court's Judicial Review (4 of 8)

Nation versus State: *Dred Scott v. Sandford* and States' Rights

- Chief Justice Roger B. Taney.
- Dred Scott precipitated Civil War.
- Discredited Supreme Court.
- National government over state.

Three Eras of the Court's Judicial Review (5 of 8)

Regulating the National Economy: The Primacy of Property Rights

- Industrial Revolution raised new concerns.
- Corporations as “persons.”
- Inconsistent rulings.
- Rising economic conservatism in Court.

Three Eras of the Court's Judicial Review (6 of 8)

Regulating the National Economy: A National Consensus and the Court's About-Face

- Court-packing plan.
- Sympathy for New Deal programs.
- Proved unpopular in Congress.
- Justice Owen Roberts' switch.

Three Eras of the Court's Judicial Review (7 of 8)

The Rise of Civil Rights and Civil Liberties

- Relationship of individual and government.
- Judiciary retreat from interstate commerce.
- Constraint of separation of powers.
- Fourteenth Amendment cases.

Three Eras of the Court's Judicial Review (8 of 8)

A Fourth Era? Reasserting Judicial Review and a Return to States' Rights

- Common factor: broad interpretations.
- Civil Rights Act of 1964.
- Return of conservative Supreme Court.
- Attorney general.

The Structure of the Federal Judiciary (1 of 4)

- Constitution mentions only Supreme Court.
- Allows for creating more courts.
- Constitutional courts.
 - To handle litigation.

The Structure of the Federal Judiciary (2 of 4)

Jurisdiction of the Federal Courts

- Limited jurisdiction; complex scope.
 - Federal questions.
 - Questions about inter-state conflict.
- Complicated by state courts.

The Structure of the Federal Judiciary (3 of 4)

The Supreme Court's Delegation

- District courts.
- Courts of appeals.
- Supreme Court.
 - Decentralization.

The Structure of the Federal Judiciary (4 of 4)

The Limits of Internal Control

- Life tenure insulates judiciary.
- Difficult to remove judges.
- Resistance or abusing ambiguities.
- Reversing lower-court decisions.

Judicial Decision-Making (1 of 8)

- Growing docket at most levels.
- Decreasing Supreme Court caseload.
- Reduction in mandatory cases.
- Ideological division in Court.

Judicial Decision-Making (2 of 8)

Selecting Cases

- Increasing discretion.
- Writ of certiorari.
- Rule of four.
- Strategic view of petitions.

Judicial Decision-Making (3 of 8)

Selecting Cases: Resolving Lower-Court Disagreements

- Judges seek cases resolving conflicts.
- Eliminating ambiguities.
- Same-sex marriage rights.

Judicial Decision-Making (4 of 8)

Selecting Cases: Taking Cues from Others

- Justices listen to interested parties.
- Amicus curiae.
- Solicitor general.

Judicial Decision-Making (5 of 8)

Doctrine: Policymaking by the Court

- Judicial doctrine.
 - Procedural doctrine.
 - Substantive doctrine.
 - Doctrines may clash.

Judicial Decision-Making (6 of 8)

Doctrine: Policymaking by the Court:
Procedural Doctrine

- Standardized operating procedures.
- Stare decisis.
- Emolument clause.
- National injunctions.

Judicial Decision-Making (7 of 8)

Doctrine: Policymaking by the Court: Substantive Doctrine

- Current doctrine allows abundant discretion.
- Restraint.
- Activism.

Judicial Decision-Making (8 of 8)

Deciding Doctrine

- Two elements: vote and opinion.
- Majority opinion subject to debate.
- Dissenting opinion.
- Concurring opinion.

The Supreme Court's Place in the Separation of Powers (1 of 6)

- Obstacles in other branches.
- Suggested lack of internal resources:
 - Limited veto and enforcement authority.
 - Huge caseload and life tenure.

The Supreme Court's Place in the Separation of Powers (2 of 6)

Absence of Judicial Enforcement

- No formal enforcement authority.
- Monitoring for compliance is costly.
- Congress and president may resist.

The Supreme Court's Place in the Separation of Powers (3 of 6)

Constitutional and Statutory Control

- Article III empowers Congress.
- Congress may amend Constitution.
- Frequently passes contradictory legislation.

The Supreme Court's Place in the Separation of Powers (4 of 6)

Judicial Recruitment

- Senatorial courtesy.
- Blue slips.
- Filibuster.
- Failure of these controls.

The Supreme Court's Place in the Separation of Powers (5 of 6)

Judicial Recruitment

- Divided governments: stalling and rejection.
- Presidential criteria for nominee.
 - Increasingly reliant on outsiders.

The Supreme Court's Place in the Separation of Powers (6 of 6)

Judicial Recruitment: Judicial Ideology

- Appointees similar to appointing president.
- Lower levels also shift policy.
- Ideology.

Does a Politicized Judiciary Alter Separation of Powers?

- Senate has almost no influence.
- Presidents appoint more political judges.
- Judges likelier to block implementation.