

# 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 9)

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

# Three Eras of the Court's Judicial Review (2 of 9)

## 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 9)

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 9)

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 9)

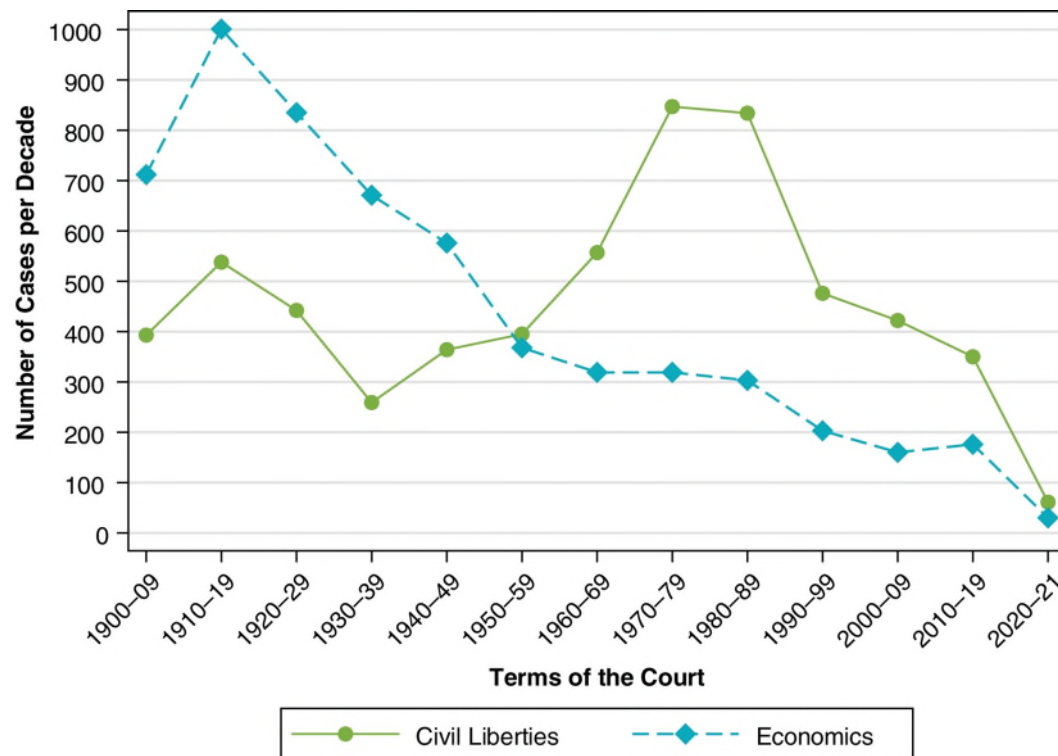
## Regulating the National Economy: The Primacy of Property Rights

- 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 9)

Figure 9.1: Caseload of the Supreme Court by Decade



# Three Eras of the Court's Judicial Review (7 of 9)

## 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 (8 of 9)

## 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 (9 of 9)

## 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 5)

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

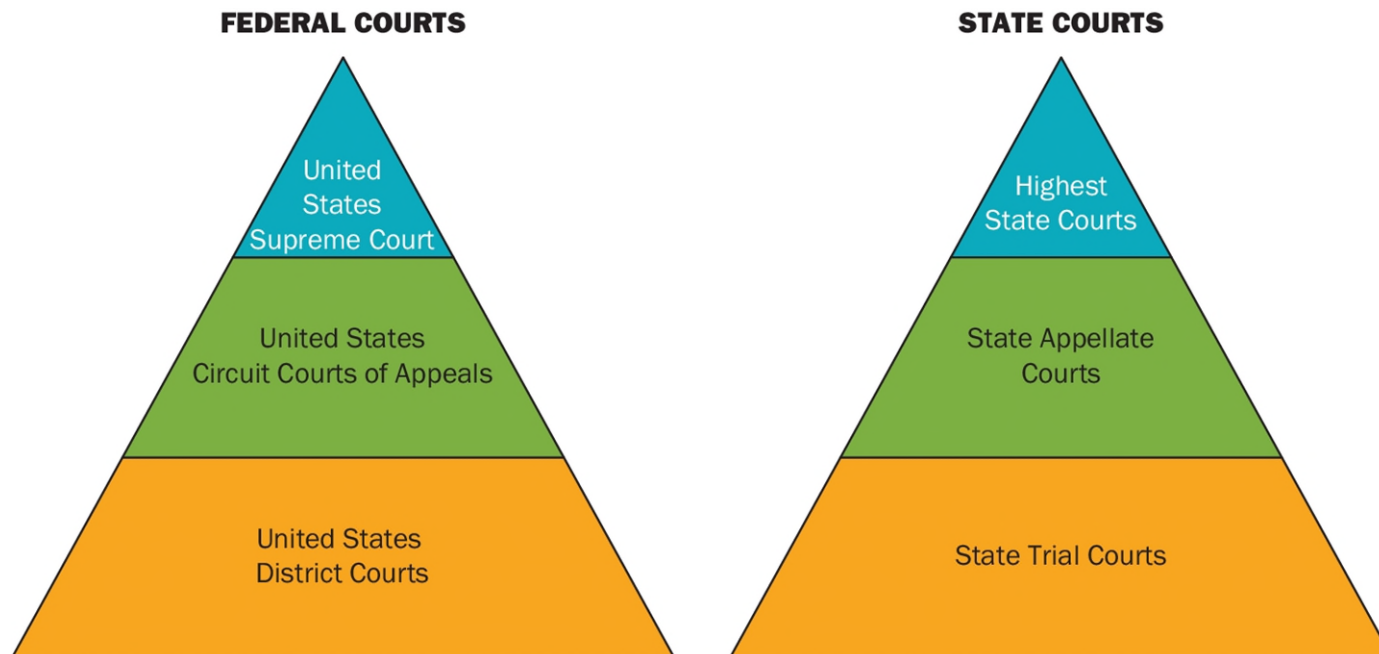
# The Structure of the Federal Judiciary (2 of 5)

## 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 5)

Figure 9.2: The Structure of the Federal and State Court Systems



# The Structure of the Federal Judiciary (4 of 5)

## The Supreme Court's Delegation

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



# The Structure of the Federal Judiciary (5 of 5)

## The Limits of Internal Control

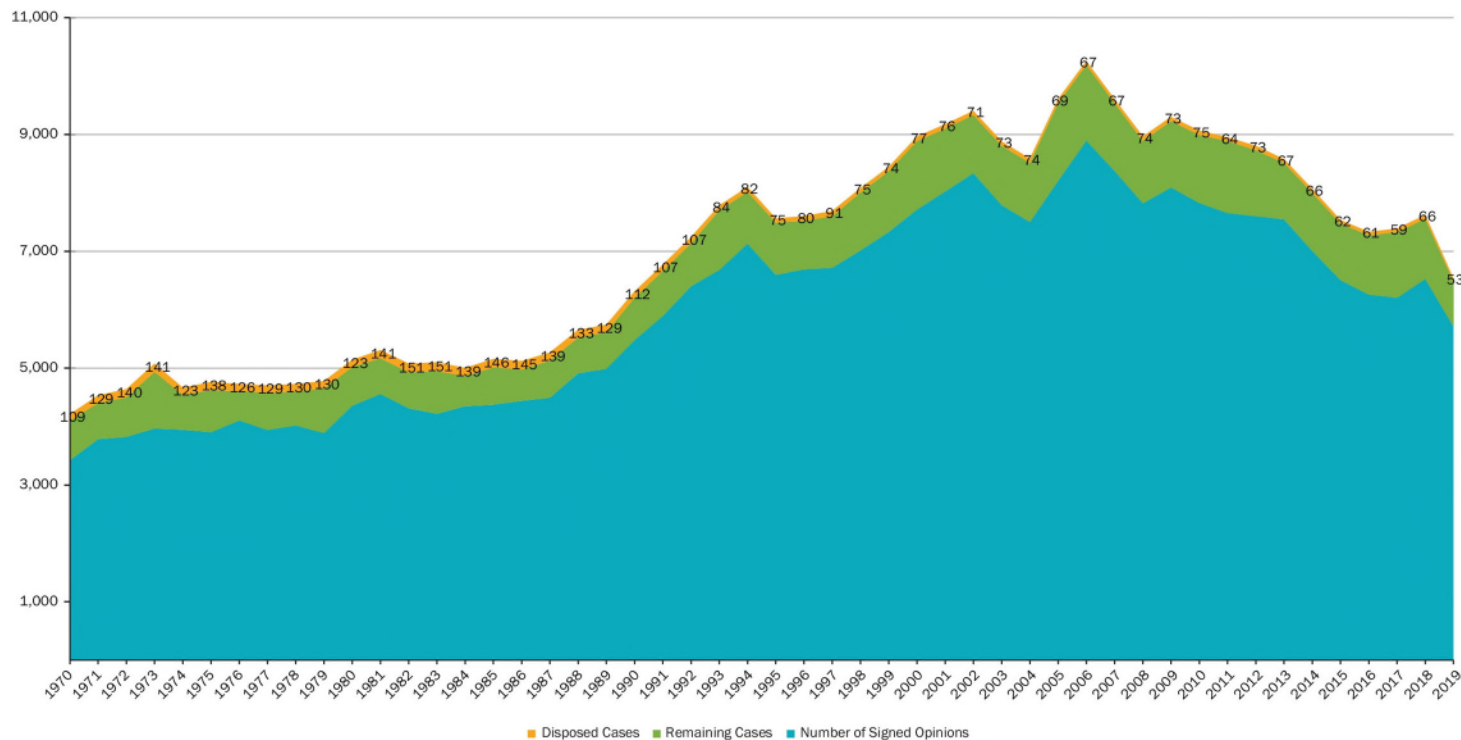
- Life tenure insulates judiciary
- Difficult to remove judges
- Resistance or abusing ambiguities
- Reversing lower-court decisions

# Judicial Decision-Making (1 of 10)

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

# Judicial Decision-Making (2 of 10)

Figure 9.3: Cases Filed with and Placed on the Supreme Court's Docket



# Judicial Decision-Making (3 of 10)

## Selecting Cases

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

# Judicial Decision-Making (4 of 10)

## Selecting Cases: Resolving Lower-Court Disagreements

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

# Judicial Decision-Making (5 of 10)

## Selecting Cases: Taking Cues from Others

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

# Judicial Decision-Making (6 of 10)

## Doctrine: Policymaking by the Court

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

# Judicial Decision-Making (7 of 10)

Doctrine: Policymaking by the Court:  
Procedural Doctrine

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



# Judicial Decision-Making (8 of 10)

## Doctrine: Policymaking by the Court: Substantive Doctrine

- Current doctrine allows abundant discretion
- Restraint
- Activism

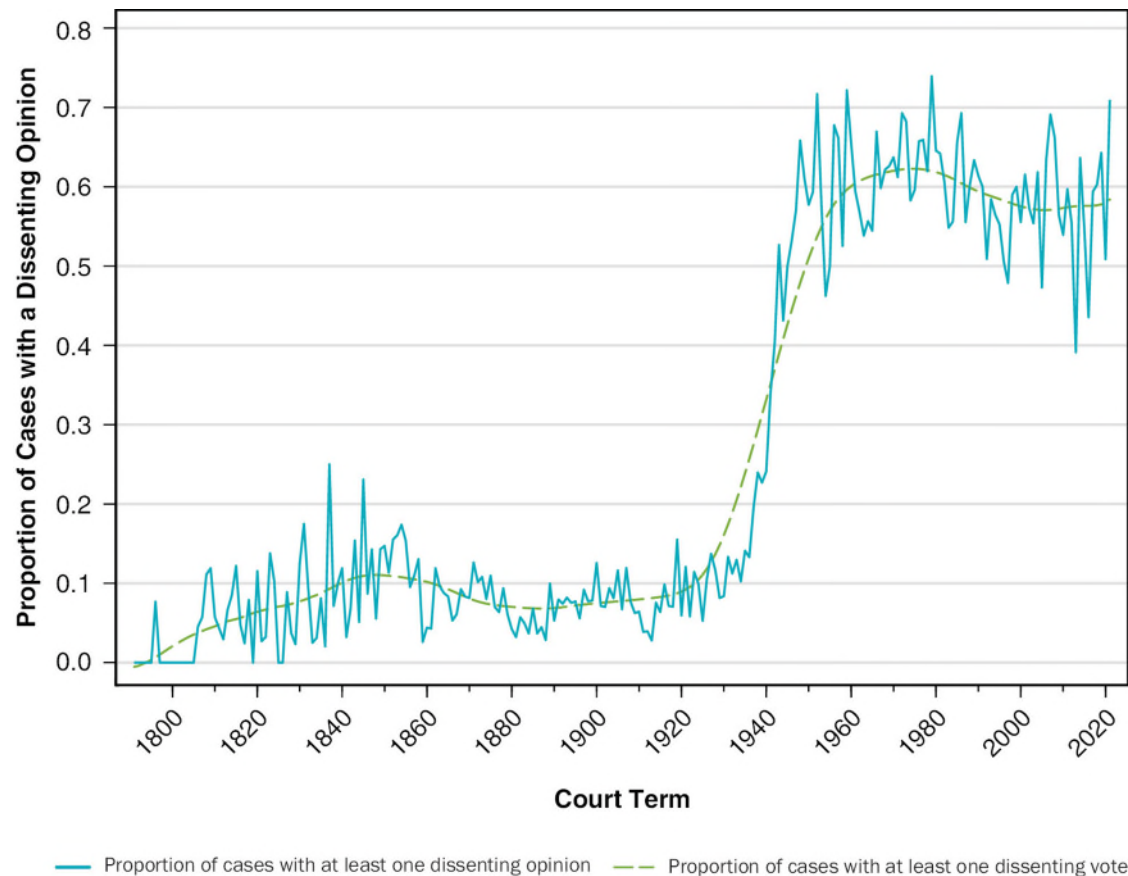
# Judicial Decision-Making (9 of 10)

## Deciding Doctrine

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

# Judicial Decision-Making (10 of 10)

Figure 9.4: Number of Dissenting and Concurring Opinions



# The Supreme Court's Place in the Separation of Powers (1 of 8)

- 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 8)

## 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 8)

## 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 8)

## Judicial Recruitment

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

# The Supreme Court's Place in the Separation of Powers (5 of 8)

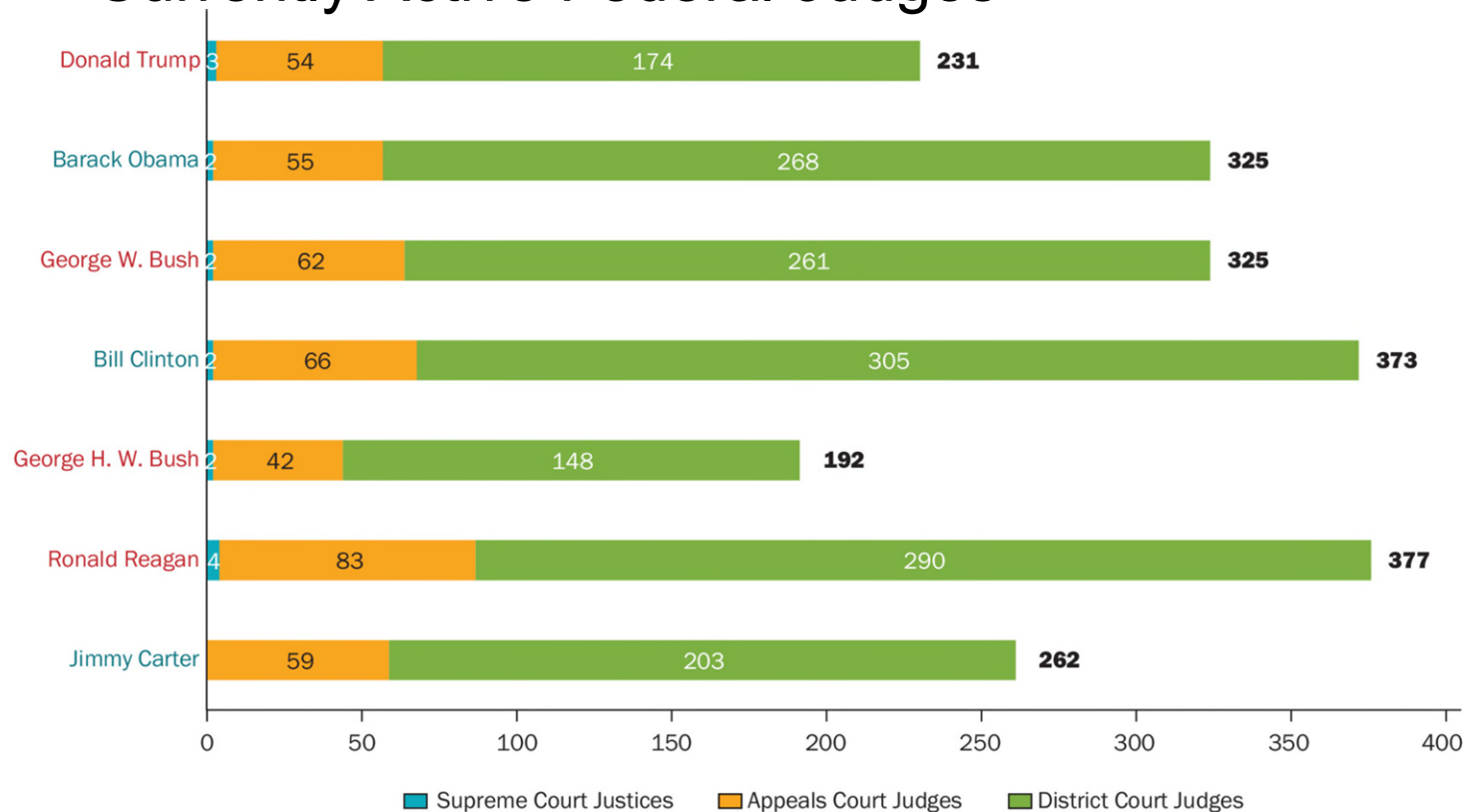
## Judicial Recruitment

- 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 8)

Figure 9.5: Obama Appointed the Largest Share of Currently Active Federal Judges



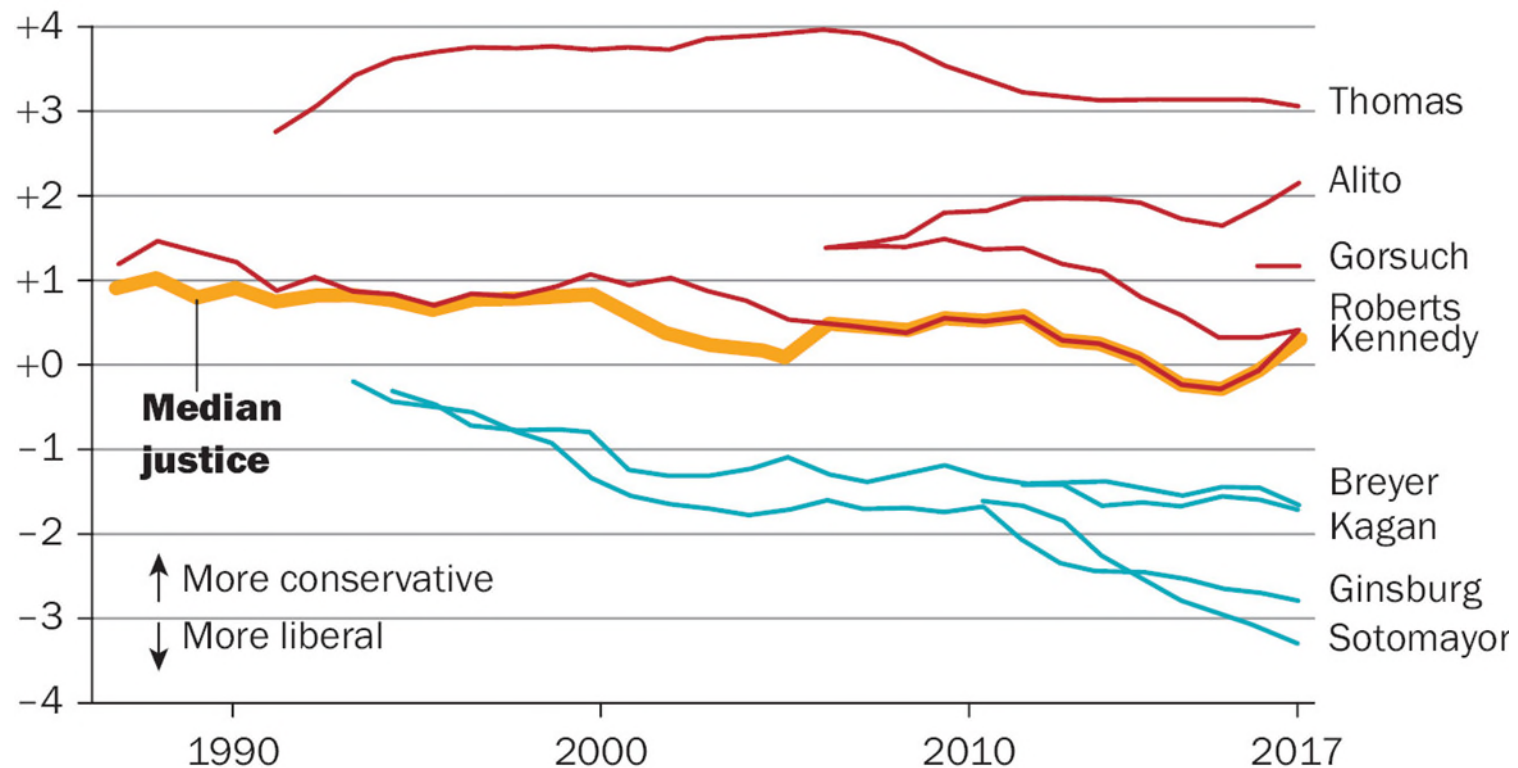
# The Supreme Court's Place in the Separation of Powers (7 of 8)

## Judicial Recruitment: Judicial Ideology

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

# The Supreme Court's Place in the Separation of Powers (8 of 8)

Figure 9.6: The Distribution of Ideological Voting on the Supreme Court



# Does a Politicized Judiciary Alter Separation of Powers?

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