

THE JUDICIAL BRANCH



THE JUDICIARY

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THE JUDICIARY

- Alexander Hamilton penned in the Federalist # 78 that the judiciary would be the “**least dangerous branch** of government. It lacked the teeth of both the other branches of government; it had neither the power of the sword nor the power of the purse.”
- Today the federal courts are very powerful.
- Nevertheless, the courts still have two basic limitations: they have neither the power of the purse, nor the of the sword.
- The court cannot fund programs or their implementation nor can it force compliance with its rulings.

The Constitution and the National Judiciary

- Article III of the Constitution establishes:
 - a Supreme Court in which the judicial power of the United States is vested
 - life tenure or 'good behaviour' for judges
 - judges receive compensation that cannot be diminished during their service
 - such inferior courts as Congress may choose to establish
 - the original jurisdiction of the Supreme Court
- The intent of Article III was to remedy the failings of the Articles of Confederation which left judicial matters to the states.

Judicial Review

- Judicial review is the power of a court to decide if a law or other legal issue contravenes the Constitution, and overturn it.
- This power is not mentioned in the Constitution.
- Judicial review was established by the Marshall Court for itself and posterity in *Marbury v. Madison* (1803).
- *Marbury's* long-term effect has been to allow the Court to have the final say in what the Constitution means.

Judicial Review

- Judges have used this power sparingly.
- The power has only been used about 140 times to strike down acts of Congress.
- Although more frequently (over 1200 times) to invalidate acts of state legislatures.

The American Legal System

- The American legal system is a dual system:
 - state courts--actually 50 different 'systems'
 - federal courts
- Both systems have three tiers:
 - trial courts--litigation begins and courts hear the facts of the case at hand (original jurisdiction)
 - appellate courts--decide questions of law, not fact (appellate jurisdiction)
 - high or supreme courts

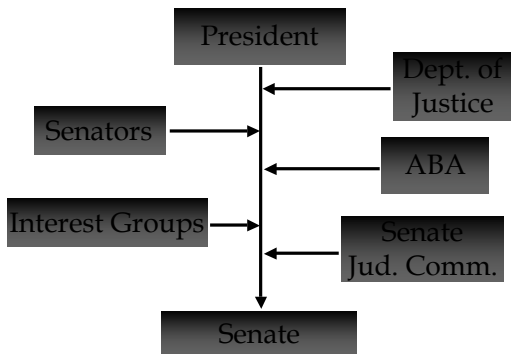
Federal Selection Process

- The selection of judges is a very political process.
- Judges are nominated by the president and confirmed by the Senate.
 - Often presidents solicit suggestions from members of the House of Representatives, Senators, their political party, and others.
- Provides president opportunity to put philosophical stamp on federal courts

Who are Federal Judges?

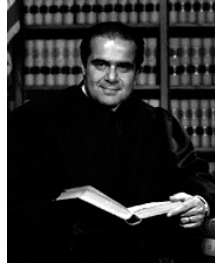
- Typically federal judges have:
- held previous political office such as prosecutor or state court judge
 - political experience such as running a campaign
 - prior judicial experience
 - traditionally been mostly white males
 - been lawyers

Federal Selection Process



Nomination Criteria

- ✓ No constitutional qualifications
- ✓ Competence
- ✓ Ideology/Policy Preferences
- ✓ Rewards
- ✓ Pursuit of Political Support
- ✓ Religion
- ✓ Race and gender



How the Justices Vote

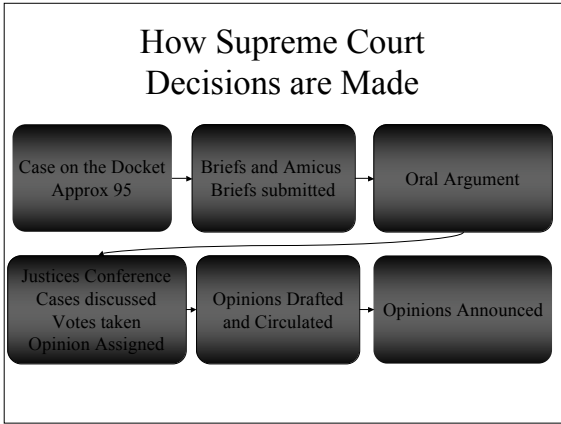
Legal Factors

- **Judicial Philosophy**
 - Judicial Restraint - advocates minimalist roles for judges, and the latter
 - Judicial Activism - feels that judges should use the law to promote justice, equality, and personal liberty.
- **Precedent**
 - Prior judicial decisions serve as a rule for settling subsequent cases of a similar nature.

How the Justices Vote

Extra-Legal Factors

- **Behavioral Characteristics**
 - The personal experiences of the justices affect how they vote. Early poverty, job experience, friends and relatives all affect how decisions are made.
- **Ideology**
 - Ideological beliefs influence justices' voting patterns.
- **The Attitudinal Model**
 - A justice's attitudes affect voting behavior.
- **Public Opinion**
 - Justices watch TV, read newspapers, and go to the store like everyone else. They are not insulated from public opinion and are probably swayed by it some of the time.



Judicial Policy Making and Implementation

- All judges make policy.
- This was particularly noticeable following the Court ordered desegregation in 1954 *Brown* ruling.
- Courts do not have the power to implement their decisions. The executive branch must enforce the Court's decisions.

The Supreme Court Today

- According to a 1990 poll, only 23% of Americans knew how many justices sit on the Supreme Court, and two-thirds could not name a single member.
- In 1998, a poll of teenagers showed that only 2% could name the Chief Justice.
- The Supreme Court, and the federal court system, have a number of powers and some significant limitations.
- The courts are peopled by individuals like all of us who are influenced by participation in society.
