The Judiciary of the United States

The U.S. Supreme Court building was completed in 1935, ahead of schedule and under budget.
Explain the significant of...

*Federalist 10*
Executive Order
Discretionary Authority
*Youngstown Steel v. Sawyer*
Reapportionment
*Citizens United v. FEC*
Categorical Grants
Essential Question

How do the nation’s courts compete and cooperate with the other branches to settle legal controversies and to shape public policy?
Constitutional Authority in Article III

Turn to page 635 in AMSCO and answer the following:

1. What branch of government has the authority to establish courts other than the SCOTUS?
2. Why can’t Congress “diminish” the salaries of judges in office?
3. Identify 3 types of cases that federal courts may hear.
4. Why are the Framers so specific in their definition of “treason,” as stated in Article III? (Be mindful of the historical context in which they were writing)
A Fix to the Articles of Confederation

-How did the Courts operate under the Articles of Confederation?

-How do the Courts, established by the Constitution, remedy these problems?

-See page 191
Checks & Balances Involving the Judiciary

1. How can the President check the Supreme Court’s powers?
2. How can the Courts check the President’s powers?
3. How can Congress check the Supreme Court’s powers?
4. How can the Courts check Congress’ powers?
Understanding the Constitutional provisions of the Judiciary, read a portion of *Brutus 15*. Why does Brutus argue that lifetime tenure for judges is necessary in Britain but not in the United States? How are judges “superior to that of the legislature? Write down as many arguments that Brutus makes as you can.
Why is the judiciary the “least dangerous” branch of government?

Why is independence and permanency necessary for judges?

What does Hamilton mean when he says “the servant is above the master?” Why does he say this is problematic?
INTRODUCTION TO THE FEDERAL COURTS

I) Types of law

A. Statutory: deals with written statutes; tend to be detailed (laws written by Congress).

B. Common (Case law).
   1. Based upon a system of unwritten law.
   2. Unwritten laws are based upon precedents.
   3. Judges rely upon the principle of “stare decisis” (“let the decision stand”), i.e., they rule according to precedent which bring stability to the law
   4. This is the basic system of law in Britain and it followed over here (law should be applied equally)

C. Criminal: concerns violations of the criminal code, i.e., violations against society. In these cases a government entity (law enforcement agency) acts as the prosecution
D: Civil: concerns disputes between two parties rather than violations against society.

– 1. Examples: breach of contract, slander, medical malpractice (government is not a party)

– 2. **Writ of mandamus**: court order for one party to perform a certain act.

– 3. **Injunction**: court order that forbids a party to perform a certain act.

– 4. A **class action** lawsuit involves a suit brought by a group of people who share a common grievance
INTRODUCTION TO THE FEDERAL COURTS

• II) Judicial power is **passive**. Courts cannot reach out and “take” cases. Cases must come to them.

• Ill) Only those with **standing** may challenge a law or govt. action, i.e., only one who has sustained or is near sustaining an “injury” may bring a case to court. One cannot challenge a law simply because one does not happen to like it.

• IV) **Dual system of courts**: In our federal system, we have both federal and state courts. We will confine our discussion to federal courts.
Cases Commenced in Federal Court

CIVIL VS. CRIMINAL CASES
Structure of the federal court system

• V) Two types of federal courts.
  • A. Article I (legislative, or special) courts.
    – 1. Created to carry out the enumerated powers of Congress.
    – 2. Judges in these hold fixed not life, terms of office.
    – 3. Examples of these courts:
      • a. Claims Court: hears lawsuits against the federal government.
      • b. Court of Military Appeals.
      • c. District of Columbia Courts.
  • B. Article III (constitutional) courts.
    – 1. Article III of the Constitution deals with the judiciary, and creates a Supreme Court while also giving Congress the power to create “inferior” (lower) courts. These three levels of courts form the main basis of our federal court system.
    – 2. Judges in these courts hold life terms. See Federalist #78
Structure of the federal court system

3. The three levels of constitutional courts:
   a. **District Courts:**
      1) Handles 90% of all federal cases.
      2) 94 such courts, — 610 judges.
      3) Cases are tried by a judge and jury.
      4) Use *grand juries* to issue indictments (orders that charge an individual with a crime. Does not mean that one is guilty; it merely means that one will be tried.)
      5) A petit (trial) jury decides the outcome of a case.
      6) Use magistrates, who issue warrants, hold preliminary hearings, and set bail.
      7) Jurisdiction: **original** (first place a case is heard)
      8) May try civil, criminal, or constitutional cases.
      9) Decisions may be appealed to Courts of Appeals.
      10) Plaintiff (initiating action) vs. Defendant (answering action)
b. **Courts of Appeals** (Circuit Courts). 1) Are 12 of these, spread out in 12 districts, or “circuits.”
   - 2) 156 judges try > 18,000 cases a year.
   - 3) Cases tried by a panel of three judges, except when all judges of a Circuit Court hear a case “en banc.”
   - 4) Jurisdiction: appellate.
     - Hears appeals from District Courts and regulatory commissions.
   - 5) Decisions may be appealed to the Supreme Court.
The Circuit Courts (Court of Appeals)
They only hear appeals from the lower District Court. This is called appellate jurisdiction. 2. The nation is divided into geographic areas called circuits. There are 12 circuits. 3. There are three judges on a circuit court. They make rulings together as a 3 judge panel.

The District Courts (94 total)
1. These are local federal courts located in major population centers. (e.g. Denver, San Jose, Tallahassee and Brooklyn). 2. They hear trials. These are jury trials. 3. Since cases begin here they have what is called "original jurisdiction."
Supreme Court
- Highest court in the federal system
- Nine Justices, meeting in Washington, D.C.
- Appeals jurisdiction through certiorari process
- Limited original jurisdiction over some cases

Courts of Appeal
- Intermediate level in the federal system
- 12 regional “circuit” courts, including D.C. Circuit
- No original jurisdiction; strictly appellate

District Courts
- Lowest level in the federal system
- 94 judicial districts in 50 states & territories
- No appellate jurisdiction
- Original jurisdiction over most cases
The 12 Appellate Courts of the United States
THE SUPREME COURT

• **Background.**

• **A. Only court mentioned in Const. (Article III).**

• **B. Consists of 8 Associate Justices and I Chief Justice.**
  – 1. Number of Justices is set by Congress.
  – 2. When position of Chief Justice is vacant, the President can appoint someone already on the Court (e.g., Rehnquist) or someone who is not on the Court (e.g., Warren)

• **C. Highest court in the land – “the court of last resort.”**

• **D. Key powers:**
    • a. More than 1000 state laws have been declared unconstitutional.
    • b. More than 120 federal laws have been declared unconstitutional.
    • C. Some presidential actions have been declared unconstitutional.
  – 3. Power to overrule earlier Supreme Court decisions (e.g., Brown v. Board overturning Plessy v. Ferguson).
THE SUPREME COURT

• **Jurisdiction**
  
  • A. **Original:** in cases involving:
    – 1. States.
  
  • B. **Appellate:** in cases from:
    – 2. State supreme courts.
    – 3. Cases from appellate jurisdiction are far more numerous than from original jurisdiction.

• **How cases reach the Supreme Court:**
  
  – A. Thousands of requests are made for Supreme Court decisions, but relatively few requests are granted. Recent trend is for even fewer cases to be accepted each year.
  
  – B. (< 90 per year)
THE SUPREME COURT

• **Rule of 4**: In order for the Court to decide a case, 4 Justices must agree to even hear the case.

• Denying a decision may mean any number of things:
  – 1. Case lacks a substantial federal issue.
  – 3. Court agrees with a lower court.

• C. When a party requests a Supreme Court decision, it files a petition for a **writ of certiorari** ("to be made certain").
  – These petitions are screened by the Court’s law clerks, and then reviewed by the Justices on the rule of 4 basis noted above.

• D. When the Justices accept a case, they then decide whether to ask for more information and oral arguments from the attorneys or whether to decide the case quickly on the basis of the attorneys briefs.
  – Cases decided without further Information are announced with a **per curiam** opinion. This is a very brief unsigned statement of the Court’s decision.
WRIT OF MANDAMUS
(order to do something)
Marbury v. Madison (1803)

- Marshall ruled that Madison’s refusal to deliver Marbury’s commission was illegal.
- Section 13 of Judiciary Act of 1789 is unconstitutional because it seeks to enlarge the original jurisdiction of the Supreme Court beyond that permitted in Constitution.
- Although Judicial Review is mentioned by Hamilton in *Federalist* 78, it only became court precedent after the *Marbury* case.
Opinions of the Court

1. Types:
   a. Unanimous: expresses opinion of all nine Justices. —1/3 of the cases are decided by a 9-0 vote.
   b. Majority: expresses opinion of majority.
   c. Dissenting: expresses opinion of minority. If the Court later overturns itself, it may draw upon a minority opinion for its reasoning.
   d. Concurring: written by a Justice who agrees with majority’s conclusions, but for different reasons.

2. Assigning of opinions.
   a. If Chief Justice voted with the majority, he will write or will assign someone in the majority to write the opinion.
   b. If the C.J. is in the minority, the most senior Justice among the majority assigns the opinion.
n3. **Purposes of opinions.**

*na.* Communicate the Court’s reasoning to the public.

*nb.* Establish precedents for future cases -- importance of *stare decisis.*

*C.* Drop “hints” that Congress, the states, or the President should take certain actions, e.g., “In the absence of any action by Congress…”
Limitations of SCOTUS

The Supreme Court is the highest court in the land, but it is possible of evading Court decisions:

A. **Amending the Constitution.** The Court cannot strike down something as unconstitutional **if it is in the Constitution**!

B. When a decision is made, it is “remanded” to a lower court to carry out the Supreme Court’s decision. The lower court will have a certain amount of leeway in doing this.

C. The executive branch may simply not carry out the decision (e.g., Jackson’s famous line: “John Marshall has made his decision. Now let him carry it out.”)

D. State and local governments may simply not carry it out, either (e.g., desegregation, school prayer)

E. “The Constitution may be what the Supreme Court says it is, but a Supreme Court opinion is what a trial judge or a policeman or a school board or a city council says it is.”
Judicial restraint.

A. Philosophy that the courts should allow the states and the other two branches of the federal government to solve social, economic, and political problems.

B. Federal courts should act only in those situations where there are clear constitutional questions.

C. Courts should merely interpret the law rather than make law.

Judicial Activism

A. Philosophy that the Courts can use their power to strike down laws and reverse public policy

B. Federal courts can act to alter policy even if it reverses an act of Congress or the President

C. It can be both liberal and conservative depending on the decision
Judicial Activism v. Judicial Restraint

- Beginning on page 201 at “An Evolving Court,” research examples of the SCOTUS practicing judicial activism and judicial restraint.

Provide the name of the case, year, decision, and why it upholds either “judicial activism” or “judicial restraint”
1. Why would a justice write a concurring opinion?
2. After a Court makes a decision on a case, what limitations does it face?
3. Provide a specific instance when SCOTUS practiced judicial activism? Restraint?
4. Why might the SCOTUS deny a writ of certiorari? Accept a writ of certiorari?
Interactions with Other Branches

Presidential Appointment and Senate Confirmation

• Perhaps one of the most lasting decisions a President can make
• Court appointees are interviewed by the Senate Judiciary Committee
• Although justices are independent, they seek out nominees that have ruled in a manner ideologically similar to the President
• Presidents have been dis
A. Liberals.
1. Ruth Bader Ginsburg (Clinton, 1993, 74)
2. Stephen Breyer (Clinton, 1994, 70)
3. Sonia Sotomayor (Obama, 2009, 55)
4. Elena Kagan (Obama, 2010, 50)

B. Conservatives.
1. John Roberts (CJ, Bush Jr., 2005, 52)
4. Samuel Alito (Bush Jr., 2006, 57)
5. Brett Kavanaugh (Trump, 2018)
A. Liberals.
1. Ruth Bader Ginsburg (Clinton, 1993, 74)
2. Stephen Breyer (Clinton, 1994, 70)
3. Sonia Sotomayor (Obama, 2009, 55)
4. Elena Kagan (Obama, 2010, 50)

B. Conservatives.
1. John Roberts (CJ, Bush Jr., 2005, 52)
4. Samuel Alito (Bush Jr., 2006, 57)
5. Brett Kavanaugh (Trump, 2018)
Getting Nominated is a tough process...

President Reagan announces the retirement of Chief Justice Warren Burger, far right, in 1986 and nominates Rehnquist to be Burger's successor and Antonin Scalia, left, to be an associate justice replacing Rehnquist.
Getting Nominated is a tough process...

Prior to his confirmation hearings to become chief justice, Rehnquist meets with Sen. Strom Thurmond (R-S.C.), chairman of the Senate Judiciary Committee.
Getting Nominated is a tough process...

Clarence Thomas shares a laugh with photographers prior to the start of his Senate confirmation hearings in September 1991.
Getting Nominated is a tough process…

Joseph Biden, flanked by Edward M. Kennedy (D-Mass.), right, and Strom Thurmond chairs a Senate Judiciary Committee hearing on the confirmation of David Souter in 1990. The Senate confirmed Souter by a vote of 90 to 9.
Getting Nominated is a tough process…

Getting Nominated is a tough process…
Getting Nominated is a tough process...

In June 1993, President Bill Clinton introduces Ruth Bader Ginsburg as his choice for associate justice to succeed Justice Byron White.
Getting Nominated is a tough process...
Each of the 94 federal districts in the U.S. has a lead attorney that prosecutes federal cases.

- They have jurisdiction over federal civil and criminal issues in their district.
- They are appointed by the President for 4 year terms and confirmed by the Senate (political appointments).
- The President has the power to remove the Attorney General at will.
- Pres. Trump threatened to fire former Attorney General Jeff Sessions after he recused himself from the Russia Investigation.

Recuse: to not get involved in a legal matter due to a conflict of interest.
The Judiciary of the United States

Chapter 14.1

AP Government and Politics

Mr. Brennan