Chapter 14

The Federal Judicial System:

Applying the Law

**Chapter Outline**

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A. Originalism Theory vs. Living Constitution Theory

B. Judicial Restraint vs. Judicial Activism

C. What Is the Judiciary’s Proper Role?

**Learning Objectives**

Having read the chapter, you should be able to do each of the following:

1. Discuss the criteria underlying the Supreme Court’s selection of cases, and describe the procedures employed in case selection.
2. Describe the Supreme Court’s policymaking process, and discuss the effect of this process on the related issues of legitimacy and compliance.
3. Detail the structure of the federal court system, and describe the purpose and operating procedures of U.S. district courts, courts of appeals, and other special courts.
4. Distinguish between the federal and state court systems, indicating the conditions under which a case originating in a state court can be appealed to the federal courts; and differentiate further between trial and appellate courts.
5. Explain the process of appointments of judges and justices to federal courts, and detail the factors that can influence this process.
6. Discuss the role of partisan politics in the appointment of federal judges and justices, particularly at the Supreme Court level, and discuss the impact that appointments can have on long-term judicial policy.
7. Provide an account of the political factors both inside and outside the Court that influence the decision-making of the justices.
8. Describe the constraints on judicial decision-making and the role of legal precedents on judicial interpretation of the law.
9. Discuss the proper role of the judicial branch in a working democracy, including originalism theory and the living constitution theory.
10. Distinguish between the philosophies of judicial activism and restraint, and provide a critique of each doctrine, discussing their underlying assumptions relating to the proper role of the Court in the American political system.

**Chapter Summary**

At the lowest level of the federal judicial system are the district courts, where most federal cases begin. Above them are the federal courts of appeals, which review cases appealed from the lower courts. The U.S. Supreme Court is the nation’s highest court. Each state has its own court system, consisting of trial courts at the bottom and one or two appellate levels at the top. Cases originating in state courts ordinarily cannot be appealed to the federal courts unless a federal issue is involved, and then the federal courts can choose to rule only on the federal aspects of the case. Federal judges at all levels are nominated by the president, and if confirmed by the Senate, they are appointed by the president to the office. Once on the federal bench, they serve until they die, retire, or are removed by impeachment and conviction.

The Supreme Court is unquestionably the most important court in the country. The legal principles it establishes are binding on lower courts, and its capacity to define the law is enhanced by the control it exercises over the cases it hears. However, it is inaccurate to assume that lower courts are inconsequential (the upper-court myth). Lower courts have considerable discretion, and the great majority of their decisions are not reviewed by a higher court. It is also inaccurate to assume that federal courts are far more significant than state courts (the federal court myth).

The courts have less discretionary authority than elected institutions do. The judiciary’s positions are constrained by the facts of a case and by the laws as defined through the Constitution, legal precedent, and statutes (and government regulations derived from statutes). Yet existing legal guidelines are seldom so precise that judges have no choice in their decisions. As a result, political influences have a strong impact on the judiciary. It responds to national conditions, public opinion, interest groups, and elected officials, particularly the president and members of Congress. Another political influence on the judiciary is the personal beliefs of judges, who have individual preferences that affect how they decide issues that come before the courts. Not surprisingly, partisan politics plays a significant role in judicial appointments.

In recent decades, as the Supreme Court has crossed into areas traditionally left to lawmaking majorities, the issue of judicial power has become more pressing, which has prompted claims and counter-claims about the judiciary’s proper role. Advocates of originalism theory argue that judges should apply the law in terms of the words of the law as they were understood at the time of enactment. Advocates of the living constitution theory hold that the law should be interpreted in light of changing circumstances. Judicial restraint and activism are two additional theories of the judiciary’s proper role. Advocates of judicial restraint claim that the justices’ personal values are inadequate justification for exceeding the proper judicial role; they argue that the Constitution entrusts broad issues of the public good to elective institutions and that the courts should ordinarily defer to the judgment of elected officials. Judicial activists counter that the courts were established as an independent branch and should not hesitate to promote general principles when necessary, even if this action brings them into conflict with elected officials.

**Focus and Main Points**

The author discusses the federal judiciary and the work of its judges and justices in this chapter. The role and composition of the American judicial system is described, particularly that of the Supreme Court. The politics of federal court appointments is highlighted as well. The author also focuses on judicial policymaking and describes how legal and political factors come together to influence the decisions made by the justices. In addition, the controversy concerning the proper role of the judiciary in American politics is examined. The main points of the chapter are as follows:

* *The federal judiciary includes the Supreme Court of the United States, which functions mainly as an appellate court; courts of appeals, which hear appeals; and the district courts, which hold trials.* Each state has a court system of its own, which for the most part is independent of supervision by the federal courts.
* *Judicial decisions are constrained by applicable constitutional law, statutory and administrative law, and precedent.* Nevertheless, political factors have a major influence on judicial appointments and decisions; judges are political officials as well as legal ones.
* *The judiciary has become an increasingly powerful policymaking body in recent decades, raising the question of the judiciary’s proper role in a democracy*. The philosophies of judicial restraint and judicial activism provide different answers to this question.

**Major Concepts**

jurisdiction (of a court)

A given court’s authority to hear cases of a particular kind. Jurisdiction may be original or appellate.

original jurisdiction

The authority of a given court to be the first court to hear a case.

appellate jurisdiction

The authority of a given court to review cases that have already been tried in lower courts and are appealed to it by the losing party; such a court is called an *appeals court* or *appellate court*.

judicial review

The power of courts to decide whether a governmental institution has acted within its constitutional powers and, if not, to declare its action null and void.

writ of certiorari

Permission granted by a higher court to allow a losing party in a legal case to bring the case before it for a ruling; when such a writ is requested of the U.S. Supreme Court, four of the Court’s nine justices must agree to accept the case before it is granted certiorari.

precedent

A judicial decision that serves as a rule for settling subsequent cases of a similar nature.

brief

A written statement by a party in a court case that details its argument.

judicial conference

A closed meeting of the justices of the U.S. Supreme Court to discuss and vote on the case before them; the justices are not supposed to discuss conference proceedings with outsiders.

decision

A vote of the Supreme Court in a particular case that indicates which party the justices side with and by how large a margin.

opinion (of a court)

A court’s written explanation of its decision, which serves to inform others of the legal basis for the decision. Supreme Court opinions are expected to guide the decisions of lower courts.

majority opinion

A court opinion that results when a majority of the justices are in agreement on the legal basis of the decision.

plurality opinion

A court opinion that results when a majority of justices agree on a decision in a case but do not agree on the legal basis for the decision. In this instance, the legal position held by most of the justices on the winning side is called a *plurality opinion*.

concurring opinion

A separate opinion written by one or more Supreme Court justices who vote with the majority in the decision on a case but who disagree with its reasoning.

dissenting opinion

The opinion of a justice in a Supreme Court case that explains his or her reasons for disagreeing with the majority’s decision.

senatorial courtesy

The tradition that a U.S. senator from the state in which a federal judicial vacancy has arisen should have a say in the president’s nomination of the new judge if the senator is of the same party as the president.

facts (of a court case)

The relevant circumstances of a legal dispute or offense as determined by a trial court. The facts of a case are crucial because they help determine which law or laws are applicable in the case.

originalism theory

A method of interpreting the Constitution that emphasizes the meaning of its words at the time they were written.

living constitution theory

A method of interpreting the Constitution that emphasizes the principles it embodies and their application to changing circumstances and needs.

Judicial restraint

The doctrine that the judiciary should closely follow the wording of the law, be highly respectful of precedent, and defer to the judgment of legislatures. The doctrine claims that the job of judges is to work within the confines of laws set down by tradition and lawmaking majorities.

judicial activism

The doctrine that the courts should develop new legal principles when judges see a compelling need, even if this action places them in conflict with precedent or the policy decisions of elected officials.

Practice Exam

(Answers appear at the end of this chapter.)

**Multiple Choice**

1. In *Bush v. Gore* (2000),

a. a majority of justices ruled that the manual recount in Florida violated the equal protection clause.

b. the most conservative justices sided with George W. Bush.

c. Justice John Paul Stevens argued that the Florida high court had acted properly in ordering a recount.

d. the justices did not uphold the decision of the Florida Supreme Court.

e. All these answers are correct.

2. “Senatorial courtesy” refers to

a. the custom of allowing a senator from the same state as a Supreme Court-approved nominee to perform the swearing-in of that justice.

b. the right of the Senate Judiciary Committee to approve of all Supreme Court justice nominees.

c. the custom by which a senator from the state in which a lower-court vacancy has arisen should be consulted on the choice of the nominee if the senator is of the same party as the president.

d. the practice of seeking approval from the chairmen of the Senate Judiciary Committee by a president before nominating a Supreme Court justice.

e. the informal blessing that the Senate Judiciary Committee bestows on lower-court federal judgeship nominees.

3. Who was the first female Supreme Court justice in the United States?

a. Ruth Bader Ginsburg

b. Sandra Day O’Connor

c. Jeanne Kirkpatrick

d. Kay Bailey Hutchison

e. Nancy Kassebaum

4. Who was the first African American Supreme Court justice in the United States?

a. Clarence Thomas

b. Antonin Scalia

c. Thurgood Marshall

d. Louis Brandeis

e. Felix Frankfurter

5. Which of the following statements is true?

a. The vast majority of cases involve issues of statutory and administrative law.

b. The vast majority of cases involve issues of constitutional law.

c. Statutory law is derived from administrative law.

d. Administrative law is set by legislatures instead of government agencies.

e. Most cases are state cases and involve issues of constitutional law.

6. The president that made 30% and 25%, respectively, of his federal judge appointees from women and minority groups was

a. Ronald Reagan.

b. George H. W. Bush.

c. George W. Bush.

d. Bill Clinton.

e. Richard Nixon.

7. The American legal system is based on the \_\_\_\_\_\_\_\_ tradition.

a. Irish

b. French

c. English

d. Italian

e. Greek

8. Which of the following does NOT act as a constraint on federal judges?

a. U.S. Constitution

b. statutory law

c. precedent

d. political preferences of judges

e. All of the answers are correct *except* political preference of judges.

9. Which of the following decisions suggests that the Supreme Court justices are attentive to public opinion?

a. voluntary school prayer in the public schools

b. desegregation of public schools with “all deliberate speed”

c. police informing suspected felons of their rights

d. ban on burning the flag

e. None of these answers is correct.

10. The Supreme Court is most likely to grant certiorari when

a. the lower appellate court acted improperly.

b. a particularly vague legal issue is involved.

c. a high-ranking member of the Senate requests it.

d. the U.S. government through the solicitor general requests it.

e. the Court believes it has a chance to set strong precedent.

11. In deciding who will write the opinion for the majority in a Supreme Court ruling,

a. the senior justice in the majority picks the opinion author when the chief justice is not in the majority.

b. the most senior member of the majority is automatically chosen as the opinion writer.

c. an informal vote is taken among the justices to decide who the writer will be.

d. the decision is made by the most senior member of the dissenting minority.

e. top consideration is given to the justice who has had the least opportunity to write opinions.

12. Typically, the Supreme Court justices review less than \_\_\_\_\_\_\_\_ percent of the cases heard by the circuit court of appeals.

a. 1

b. 10

c. 20

d. 33

e. 50

13. Which of the following is an aspect of the merit plan method of appointing judges?

a. The public chooses the individual judge to serve from a short list of acceptable candidates provided by the governor.

b. The public chooses the individual judge to serve from a short list of acceptable candidates provided by a judicial selection commission.

c. The governor-selected judge must run in a public election against other independent candidates.

d. The governor appoints a judge from a short list of acceptable candidates provided by a judicial selection commission.

e. The governor selects the judge to serve from a short list of candidates approved by the voters.

14. \_\_\_\_\_\_\_\_ was rejected as a Supreme Court nominee in 1987.

a. Anthony Kennedy

b. Douglas Ginsberg

c. Robert Bork

d. Clarence Thomas

e. David Souter

15. Which of the following is true of courts of appeals?

a. They act as interpreters of law rather than as supervisors of the legal system.

b. They generally presume the facts found by the district courts to be correct.

c. They create their own case records to review instead of using the lower court’s records.

d. New evidence is often but does not have to be introduced in an appeals case.

e. Most courts of appeals rely on juries.

16. Which of the following justices was NOT a Republican appointee?

a. William Rehnquist

b. Sandra Day O’Connor

c. Antonin Scalia

d. Anthony Kennedy

e. Stephen Breyer

17. What is an amicus curiae brief?

a. “on behalf of the court” brief

b. “friend of the court” brief

c. “educate the court” brief

d. “to help the court” brief

e. None of these answers is correct.

18. The Supreme Court established the power of judicial review in

a. Article III of the Constitution.

b. the Judiciary Act of 1789.

c. *Federalist* No.78.

d. *Marbury v. Madison* (1803).

e. *McCulloch v. Maryland* (1819).

19. Most federal cases are resolved by

a. mediators.

b. district court judges.

c. circuit court judges.

d. Supreme Court justices.

e. None of these answers is correct.

20. The sovereignty of each state is protected by

a. federal law.

b. Article VI of the Constitution.

c. the First Amendment.

d. the Tenth Amendment.

e. heritage and cultural traditions.

**True/False**

1. The Supreme Court is given both original and appellate jurisdiction by the U.S. Constitution.

a. True

b. False

2. A majority of the cases the Supreme Court hears come to it through its appellate jurisdiction.

a. True

b. False

3. In contrast to Supreme Court judges, federal judges can be appointed by the president without Senate approval.

a. True

b. False

4. Partisanship is no longer an important factor in the nomination of lower-court judges by the president.

a. True

b. False

5. No federal agencies outside of the Justice Department have judicial powers.

a. True

b. False

6. The Supreme Court is responsive to public opinion, although much less so than Congress or the president.

a. True

b. False

7. Advocates of judicial restraint contend that judicial policymaking undermines the fundamental principle of self-government.

a. True

b. False

8. Advocates of judicial activism maintain that the courts should work closely within the confines of legislation and precedent, seeking to discover their application to specific cases rather than searching for new principles.

a. True

b. False

9. The facts of a case are important in determining which laws are applied to the case.

a. True

b. False

10. The chief justice of the Supreme Court must be a member of the majority decision of the Court in order for it to be valid.

a. True

b. False

**Essay**

1. How do the Supreme Court justices select their cases every year?
2. Describe the structure of the federal court system.
3. Why should voters in a presidential election be attentive to the issue of presidential appointment of federal judges?
4. What are some external influences on the Supreme Court justices?
5. Explain the differences between judicial activism and judicial restraint.

Answers to the Practice Exam

**Multiple Choice Answers**

* + 1. e 11. a
    2. c 12. a
    3. b 13. d
    4. c 14. c
    5. a 15. b
    6. d 16. e
    7. c 17. b
    8. d 18. d
    9. b 19. b
    10. d 20. d

Multiple Choice Explanations

1. In this case, a majority (5-4) of the Supreme Court justices reversed the decision of the Florida Supreme Court and halted the manual recount. The correct answer is (e).
2. Senatorial courtesy, a tradition that dates back to the 1840s, holds that a senator from the state in which a vacancy has arisen should be consulted on the choice of the nominee if the senator is of the same party as the president (c).
3. Sandra Day O’Connor (b) was the first female appointed as justice in 1981.
4. Thurgood Marshall (c) was the first African American appointed as justice in 1967.
5. The correct answer is (a), as the vast majority of cases that arise in courts involve issues of statutory and administrative law rather than constitutional law.
6. Clinton (d) made the federal judiciary more diverse than the others. Women and minority group members are key supporters of the Democratic Party. Not surprisingly, Democratic presidents have been more likely than Republicans to appoint members from these groups in society to the federal bench. Of President Bill Clinton’s appointees, roughly 30 percent were women and 25 percent were members of racial or ethnic minority groups.
7. The U.S. system is based on the English (c) common-law tradition.
8. While the Constitution, federal law, and past precedent may constrain judges, their political preferences (d) typically do not.
9. After the initial ruling in *Brown v*. *Board of Education*, the justices determined that desegregation would occur “with all deliberate speed” (b) a year later. The justices could have ordered immediate desegregation or on a fixed timetable. They were concerned that public opposition to their decision might be too strident.
10. The Supreme Court is most likely to grant certiorari when the U.S. government through the solicitor general (the high-ranking Justice Department official who serves as the government’s lawyer in Supreme Court cases) requests it (d).
11. When part of the majority, the chief justice decides which justice will write the majority opinion. Otherwise, the senior justice in the majority picks the opinion author. Thus (a) is the correct answer.
12. The Supreme Court reviews very few cases, and generally less than 1 percent (a) of all cases heard by federal appeals courts.
13. Under the merit plan, the governor appoints a judge from a short list of acceptable candidates provided by a judicial selection commission. The selected judge must then periodically be reviewed by the voters, who, rather than choosing between the judge and an opponent, simply decide by a “yes” or “no” vote whether the judge should be allowed to stay in office (d).
14. Bork (c) was rejected due to opposition from Senate Democrats who felt that he was too conservative.
15. Appellate judges act as supervisors in the legal system, reviewing trial court decisions and correcting what they consider to be legal errors. Facts found by district courts are ordinarily presumed to be correct; thus, the answer is (b).
16. Stephen Breyer (e) was appointed by President Bill Clinton in 1994.
17. Interest groups participate in court cases through “friend of the court” (b) briefs.
18. Chief Justice John Marshall and the other justices gave the Court this power in the *Marbury* (d) ruling.
19. Most federal cases end with the district court’s (b) decision.
20. The Tenth Amendment (d) protects the sovereignty of each state, and each state has its own court system.

**True/False Answers**

1. a 6. a

2. a 7. a

3. b 8. b

4. b 9. a

5. b 10. b

**Essay Answers**

1. The Supreme Court justices have almost complete discretion in choosing the cases that they want to hear. The large majority of cases that reach the Supreme Court do so through a writ of certiorari, in which the losing party in a lower-court case explains in writing why its case should be ruled on by the Court. The writ of certiorari is requested by the Supreme Court if at least four of the justices agree to do so. Each year, there are about 8,000 applications for certiorari, but the justices only accept less than 100 cases for a full hearing and signed ruling.
2. The federal court system is basically a three-tiered structure. The lowest federal courts are the district courts and there are 94 in existence at the present time. Each state has at least one district court. Federal cases typically originate in district courts, which are trial courts where each party presents its side of the case. District courts are the only courts in the federal system in which juries hear testimony. Most cases are presided over by a single judge, and most federal cases are resolved here in the federal system. Yet when cases are heard on appeal from district courts, they go to one of the 13 circuit courts of appeals. These courts do not use juries. They are first-level appellate courts, where the facts are presumed to be correct, and generally cases are adjudicated by a panel of three judges. For the vast majority of all litigants, the circuit courts represent the last hope, as the Supreme Court justices only accept about 1 percent of all appeals. Circuit court judges are interested in the application of the law. The highest tribunal in the United States is the federal Supreme Court. The Supreme Court is the highest-level appellate court (though it does have some original jurisdiction), and the nine justices who serve on this Court both observe precedent and are stronger establishers of precedent and even the constitutionality of certain actions or laws.
3. Citizens should be more attentive to presidential appointments because, first, they are lifetime appointments that are irrevocable the vast majority of the time. Judicial nominees are likely to hold office long after the president leaves office. Second, the judiciary is a powerful and independent branch of government, and many constitutional conflicts are resolved by federal judges, particularly since they exercise judicial review. Third, partisanship affects the decisions that judges and justices make. The political leanings of   
     
   judges can affect the outcome of the case. The partisan leaning of the majority of judges on the court may influence decisions in that direction for many years to come.
4. Although federal judges exercise a great deal of independence, they are influenced by parties external to cases. Judges want to be perceived as being fair; otherwise their decisions will not be obeyed. Thus, judges are not completely indifferent to public opinion, interest groups, and elected representatives. It is clear that public opinion has been duly considered in some judicial decisions. For example, when the justices ordered segregated school systems to desegregate, they decided that, in order to quell opposition to their decision, desegregation would take place “with all deliberate speed.” Interest group officials make their opinions known to the judiciary through the lawsuits they file. This is a common strategy with groups such as the American Civil Liberties Union. Groups can also participate in cases brought by others through *amicus curiae* briefs. Congress can wield influence over federal courts in a number of ways. The Supreme Court’s size and appellate jurisdiction are determined by Congress, and Congress can rewrite legislation that members feel the judiciary has misinterpreted. The president can influence the judiciary primarily through enforcement of judicial decrees. In addition, judicial appointments provide the president with opportunities to influence the judiciary’s direction.
5. Judicial activism is a theoretical doctrine that acknowledges the principles of precedent and majority rule, but emphasizes the belief that the courts should develop new legal principles when judges perceive a compelling need, even if this action places them in conflict with the policy decisions of elected officials. Judicial activists believe that judges should not be overly deferential to existing legal principles or to elected officials, and they should engage in policymaking when necessary. Judicial activism is sometimes associated with liberal justices, but history reveals that conservative majorities have also led the Court in trends of activist rulings. The doctrine of judicial restraint holds that the judiciary should be highly respectful to precedent and should defer to the judgment of legislatures. The restraint doctrine holds that public issues should be decided in nearly all cases by elected officials rather than judges. The theorists who endorse this judicial philosophy are generally conservative in their political views.