

14.1 U. S. Courts: Purpose and Function



Image 14.1 Protesters Advocate for Same-Gender Marriage

The Marriage Equality Act vote in Albany, New York, 2011 (left), was just one of a number of cases testing the constitutionality of national and state law in the years leading up to the 2015 ruling on marriage equality and was a key issue at Seattle's 2012 Pride parade (right).
(Credit: OpenStax; left: modification of work by "Celebration chapel"/Wikimedia; Credit right: modification of work by Brett Curtiss).

Learning Objectives

- Examine the basic provisions of Article III of the *Constitution* and the Judiciary Act of 1789.
- Describe the evolving role of the courts since the ratification of the *Constitution*.
- Understand the concept of judicial review.
- Recognize how the courts make public policy.
- Explain why courts are uniquely situated to protect individual liberties and rights.

Chart 14.1 Learning Objectives on Courts and Civil Liberties

The U. S. courts are set up to achieve two significant functions: 1) as part of the system of checks and balances, they protect the sanctity of the *U. S. Constitution* from breaches by the other branches of government, and 2) they protect individual liberties and rights against societal and governmental oppression.

The Basic Structure of the Judicial Branch

At the national level, nine Supreme Court justices are nominated by the president and confirmed by the Senate for lifetime appointments. Hence, populist control over them is indirect at best, but this provides

the courts with needed independence. Court power is confined to interpreting the law rather than making the law, as law-making power resides with the legislative branch. Under the *Articles of Confederation*, there was no national judiciary. The *Constitution* addressed this need in Article III, which addresses “the judicial power of the United States” and is the shortest and least detailed of the three articles creating branches of government. This article calls for the creation of “one supreme Court,” establishes the Court’s **jurisdiction** (its authority to hear cases and make decisions) and notes the types of cases the Court may hear.

It distinguishes which are matters of **original jurisdiction** and which are for **appellate jurisdiction**. The *Constitution* also limits the Supreme Court’s original jurisdiction to those rare cases of disputes between states or between the United States and foreign ambassadors or ministers. So, for the most part, the Supreme Court is an appeals court, operating under appellate jurisdiction and hearing appeals from the lower courts. Under original jurisdiction, a case is heard for the first time, whereas under appellate jurisdiction, a court hears a case on appeal from a lower court and may change the lower court’s decision.

Under the *Constitution*, the development of the judicial system and the creation of the lower courts were left in the hands of Congress. In explaining the importance of an independent judiciary separated from the other branches of government, Hamilton said “interpretation” was a key role of the courts as they seek to protect people from unjust laws.^[1] But he also believed “the Judiciary Department” would “always be the least dangerous” because “with no influence over either the sword or the purse,” it had “neither force nor will, but merely judgment.”^[2] The courts were to make decisions and write opinions—not take action to write laws. With no control over how those decisions would be implemented and no power to enforce their choices, they could exercise only judgment based upon the Constitution and the law.

Consider the Original
Alexander Hamilton // Federalist No. 78. [...] The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder (trial by legislature), no ex-post-facto laws (after the fact), and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing [...emphasis added] No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid [...] That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws [...]. Alexander Hamilton, Federalist #78, at http://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-78.

Chart 14.2 Text from Federalist Paper No. 78

The first session of the first U.S. Congress laid the framework for today’s national judicial system, establishing in the **Judiciary Act of 1789**, the basic structure of the judicial branch. Although legislative changes over the years have altered it, the basic structure of the judicial branch remains as it was set early on. At the lowest level district courts, this is where federal cases involving national laws are tried, witnesses testify, and evidence and arguments are presented.

A losing party unhappy with a district court decision may appeal to the U. S. courts of appeal, where the decision of the lower court is reviewed—appellate jurisdiction—only if an identifiable procedural error or an error in applying the law is evident under the *U. S. Constitution*.

Still further appeal to the U.S. Supreme Court is possible; but, of the thousands of petitions for appeal, the Supreme Court will typically hear fewer than one hundred each year.^[3]

U. S. Supreme Court Jurisdiction	
Type of Jurisdiction	Description
original	Authority to directly hear rare cases involving disputes between states or between U.S. and foreign ambassadors and ministers.
appellate	Authority to hear cases brought on appeal from a lower court; over turn a prior decision after hearing oral arguments and reviewing written briefs about the legality of a prior court’s decision.

Chart 14.3 Defining Original and Appellate Jurisdiction



This public site maintained by the [Administrative Office of the U.S. Courts](#) provides detailed information from and about the judicial branch.

How did the new judiciary get started?



Image 14.2 Photo of the Exterior of the Supreme Court Building in Washington, D.C.

The Supreme Court building in Washington, DC, was not completed until 1935. Engraved on its marble front is the motto “Equal Justice Under Law,” while its east side says, “Justice, the Guardian of Liberty.” (Credit: US Courts)

Starting in New York in 1790, the early **Supreme Court** focused on establishing its rules and procedures.

It took years for the Court to establish its interpreter position, and it faced several setbacks on the way. In their first case of significance, *Chisholm v. Georgia* (1793), the justices ruled that the federal courts could hear cases brought by a citizen of one state against a citizen of another state, and that Article III, Section 2, of the *Constitution* did not protect the states from facing such an interstate lawsuit.^[4]

The decision was almost immediately overturned by the Eleventh Amendment, passed by Congress in 1794 and

ratified by the states in 1795. In protecting the states, the Eleventh Amendment put a prohibition on the courts by stating, “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” It was an early hint that Congress had the power to change the jurisdiction of the courts as it saw fit—**checks and balances** in action.

In an atmosphere of perceived weakness, the first chief justice John Jay, an author of *The Federalist Papers* and appointee of President George Washington, resigned his post to become Governor of New York. He later declined President John Adams’s offer of a subsequent term on the Supreme Court.^[5]

In fact, the Court might have remained in a state of what Hamilton called its “natural feebleness” if not for the man who filled the vacancy Jay had refused—the fourth chief justice, John Marshall. Often credited with defining the modern court, clarifying its power, and strengthening its role, Marshall served in the chief’s position for thirty-four years. One landmark case, *Marbury v. Madison*, during his tenure changed the course of the judicial branch’s history.

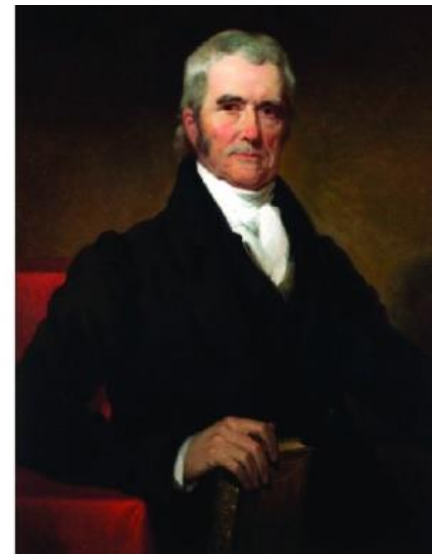
In 1803, the Supreme Court declared for itself the power of **judicial review**, a power that Hamilton referred to in Federalist #78 but is not expressly mentioned (enumerated) in the *Constitution*.

Judicial review is the power of the courts, as part of the system of checks and balances, to look at actions taken by the other branches of government and the states and determine whether they are constitutional.

If the courts find an action to be unconstitutional, it becomes null and void. Judicial review was established in the Supreme Court case *Marbury v. Madison* when, for the first time, the Court declared an act of Congress to be unconstitutional.^[6]



(a)



(b)

Image 14.3 Portraits of John Jay and John Marshall

“Life and Legacy.” The John Marshall Foundation. <http://www.johnmarshallfoundation.org> (March 1, 2016). John Jay (a) was the first chief justice of the Supreme Court but resigned his post to become governor of New York. John Marshall (b), who served as chief justice for thirty-four years, is often credited as the major force in defining the modern court’s role in the U.S. governmental system. (Credit: US Courts; OpenStax included image)

Marshall defined this power as the “very essence of judicial duty,” and it continues today as one of the most significant aspects of judicial power. Judicial review lies at the core of the court’s ability to check the other branches of government—and the states.

Since *Marbury*, the power of judicial review has continually expanded. The Court not only rules on actions of Congress and the president as unconstitutional, but it extended its power to include review of state and local actions.

Judicial review is not confined to the Supreme Court but is also exercised by the lower federal courts and even the state courts. Any legislative or executive action at the federal or state level inconsistent with the U.S. *Constitution* or a state constitution can be subject to judicial review.^[7]

MARBURY V. MADISON (1803)

The Supreme Court found itself in the middle of a dispute between the outgoing presidential administration of John Adams and that of incoming president (and opposition party member) Thomas Jefferson. It was an interesting circumstance at the time, particularly because Jefferson and the man who would decide the case—John Marshall—were themselves political rivals.

President Adams had appointed William Marbury to a position in Washington, DC, but his commission was not delivered before Adams left office. Marbury petitioned the Supreme Court to use its power under the Judiciary Act of 1789 and issue a **writ of mandamus** (mandate, command, compel an action) to force the new president's secretary of state James Madison to deliver the commission documents. Madison refused. A unanimous Court under the leadership of Chief Justice John Marshall ruled that although Marbury was entitled to the job, the Court did not have the power to issue the writ and order Madison to deliver the documents, because the provision in the Judiciary Act giving the Court that power was unconstitutional.^[8]

Perhaps Marshall feared a confrontation with the Jefferson administration and thought Madison would refuse his directive anyway. In any case, his ruling shows an interesting contrast in the early Court. The Court declined a power—issuing a writ of mandamus—given to it by Congress; however, it laid the foundation for legitimizing a much more important power—judicial review. Marbury never got his commission, but the Court's ruling in the case has become more significant for the precedent it established.

As the first time the Court declared an act of Congress unconstitutional, it established the power of judicial review—a key power enabling the judicial branch to remain a powerful check on the other branches of government.

As Marshall put it, “it is emphatically the province and duty of the judicial department to say what the law is.”^[9]

Even with judicial review in place, the courts do not always stand ready to throw out actions of the other branches of government. The United States has a common law system in which law is largely developed through binding judicial decisions. These decisions build upon one another over the decades and centuries, informing decisions made by the courts today.

The U. S. Court System and Public Policy Making

In their role as policymakers, Congress and the President tend to consider broad questions of public policy and their costs and benefits. The courts consider specific cases with narrower questions, enabling

them to focus more closely than other government institutions, in their role of interpreting the law. While the legislature can make policy through statute/law, and the executive can implement and enforce policy through regulations and administration based upon constitutionally delegated power or legislative authority, the judicial branch can indirectly influence policy through its rulings and interpretations. Thus, as cases are brought to the courts, court decisions shape policy outcomes through interpretation of these laws and the *U. S. Constitution*.

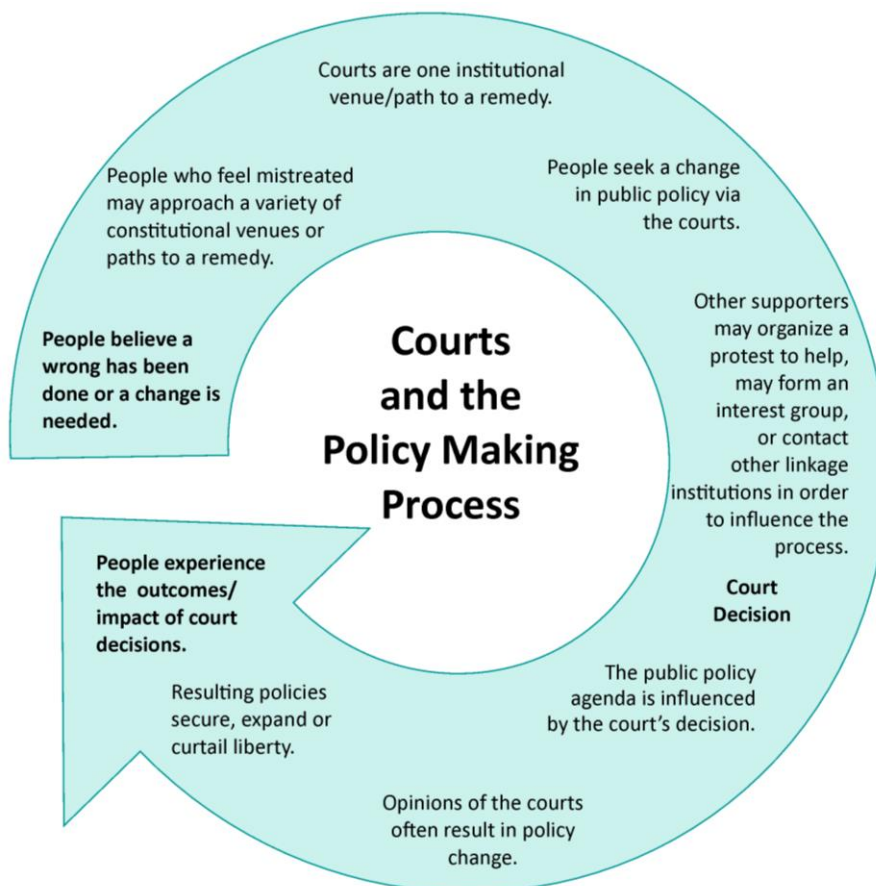


Chart 14.4 Policy Making and the Courts Diagram

Consider health care, for example. In 2010, President Barak Obama signed into law the Patient Protection and Affordable Care Act (PPACA), a statute to change the nation's healthcare system. The goal was providing more widely attainable and affordable health insurance, and "Obamacare" was hailed by some and soundly denounce by others. People who opposed the law and understood a congressional repeal would not happen eminently sought help in the courts. They challenged the constitutionality of the law in *National Federation of Independent Business v. Sebelius*, hoping the Supreme Court would overturn the PPACA.^[10] The practice of judicial review enabled the law's critics to exercise this opportunity, even though their hopes were dashed by a narrow 5-4 margin when the Supreme Court upheld the law as an extension of Congress' power to tax.

Since the 2012 decision, the ACA has continued to face challenges, the most notable of which is a setback in 2014, when the Court ruled in *Burwell v. Hobby Lobby* that, for religious reasons, some for-profit

corporations could be exempt from the requirement that employers provide insurance coverage of abortifacients for their female employees.^[11] The ACA attained a victory in *King v. Burwell* when the Court upheld the ability of the federal government to provide tax credits for people buying health insurance through an exchange created by the law.^[12]

With each ACA case, the Supreme Court served as the umpire, upholding the law and some of its provisions but ruling some aspects unconstitutional. Supporters and opponents claim victory, while the Court further defines and fine-tunes the law—thus impacting public policy in this area.

Supreme Court 9-0 rulings, 5-4 rulings, and all other rulings, 2008-2019

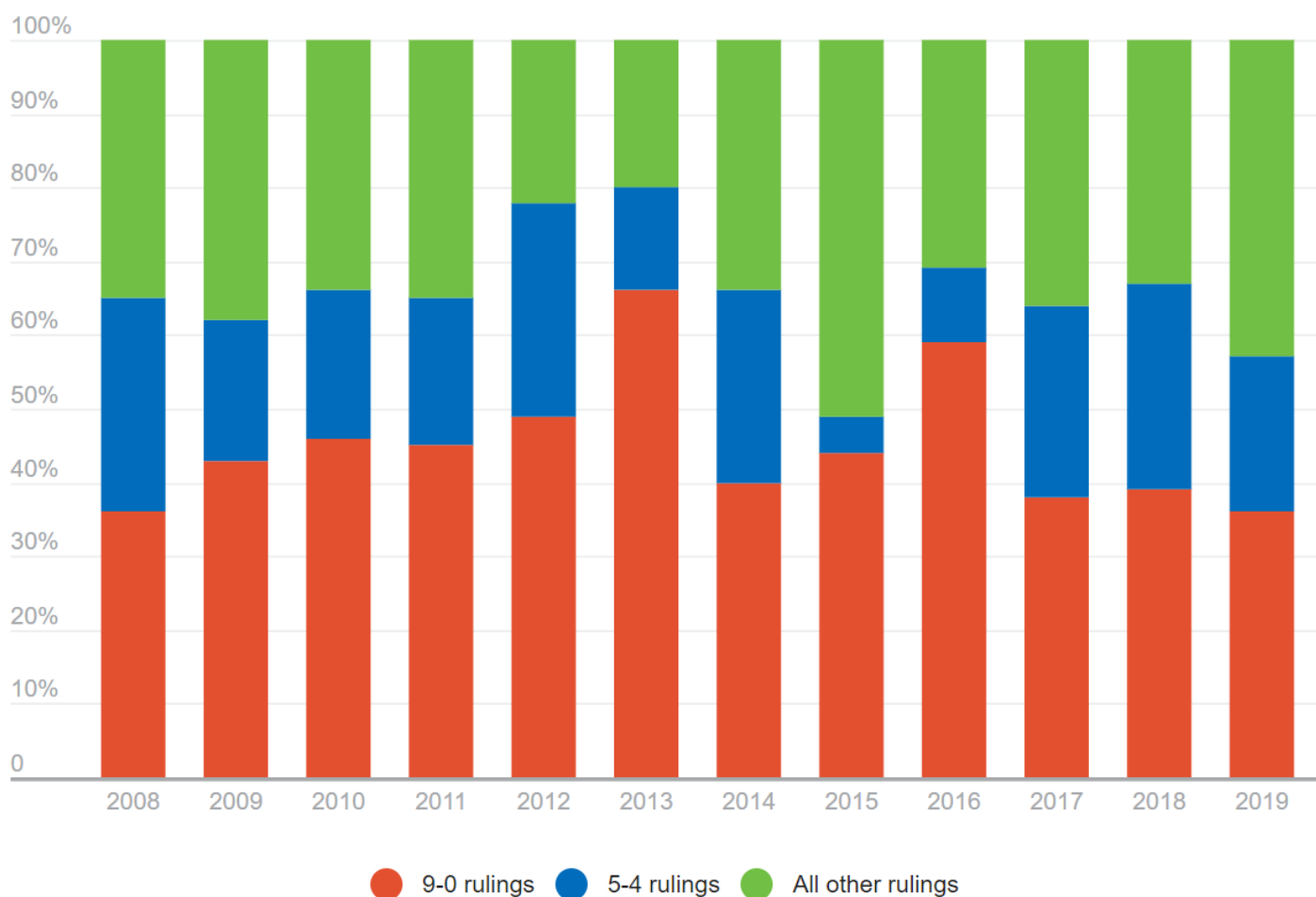


Chart 14.5 SCOTUS Rulings 2008 to 2019 from the Austin American Statesman, Louis Jacobson, PolitiFact.com, 24 June 2021 and SCOTUSBlog

As an interesting exercise, SCOTUSBlog provided information illustrating Supreme Court rulings where the vote was 9-0 ranged as high as sixty-six present in 2013. 9-0 rulings are less rare than most people believe, but it is important to remember that most SCOTUS decisions involve technical rather than controversial or dramatic issues.

Protecting Individual Rights Against Societal and Governmental Oppression

As part of **checks and balances**, courts protect the *Constitution* from breaches by the other branches of government, and they protect individual rights against societal and governmental oppression.

The purpose of the courts, outlined in the preamble to the *Constitution*, is to establish justice. This system of justice, to support the rules made by citizens via their representatives, is to provide restitution of some form for individuals residing in this country who are damaged or harmed by other individuals or government itself, which attempts to take away their life, health, or property.

While the U.S. Supreme Court and state supreme courts exert power over many individuals when reviewing laws or declaring acts of other branches unconstitutional, they become particularly important when a single individual or group comes before them with an alleged wrong.

A citizen or group that feels mistreated may approach a variety of institutional venues in the U. S. system for assistance in changing policy or seeking support. Organizing protests, garnering special interest group support, and changing laws through the legislative and executive branches are all possible; but, an individual is more likely to find the courts especially well-suited to analyzing the particulars of his/her case.

The **judiciary** is arguably the branch where the individual has the best chance to be heard and where the Constitution provides guarantees that individual action against the life, liberty and property of another will be reviewed in a fair manner.

In a court case, it is one party versus the other. It is up to an impartial person or group, such as the judge or jury, to determine which party prevails. The federal court system is most often called upon when a case touches on constitutional rights. Over time, the courts have made many decisions broadening the civil rights and liberties of individuals.

In this same vein, the courts are key interpreters of the *U. S. Constitution*, continuously interpreting it and applying it to modern times and circumstances. Certainly, when the Bill of Rights first declared that government could not abridge freedom of speech, its framers could never have envisioned Facebook™ or any other modern technology.

Freedom of speech, for example, just like many constitutional concepts, has come to mean different things to different generations and the courts have designed the lens through which we understand the *Constitution* in modern times.

It is often said that the *Constitution* changes less by amendment and more by interpretation. Rather than collecting dust on a shelf, the 230-year-old document has come with us into the modern age.

QUESTIONS TO CONSIDER

1. How do courts make decisions?

[Show Answer](#)

they follow established legal procedure; they rely on precedent; they use the Constitution; etc.

2. How do they exercise their power to protect individual rights?

[Show Answer](#)

courts may preempt states' slower decision making processes to intervene on behalf of individuals

3. What distinguishes the Supreme Court from all others?

[Show Answer](#)

SCOTUS has both appellate and original jurisdiction; specifically granted power as the highest court

4. Why do you believe the *Constitution's* framers chose lifetime terms?

[Show Answer](#)

personal opinion; debate selection/appointment versus election

TERMS TO REMEMBER

appellate jurisdiction—where the decision of the lower court is reviewed due to a legal or procedural error

Article III—establishes a third branch of government, the judiciary

checks and balances—limitations placed on governmental power; separation into branches that oversee one another

judicial review—the power of the courts to review actions taken by the other branches of government and the states and to rule on whether those actions are constitutional

judiciary—judicial authority, courts, judges, justices

Judiciary Act of 1789—expands on Article III with details about additional federal/national courts, court structure and operations

jurisdiction—the power of a court to hear a case on appeal or to hear a case for the first time

Marbury v. Madison—the 1803 Supreme Court case that established the courts' power of judicial review and the first time the Supreme Court ruled an act of Congress to be unconstitutional

original jurisdiction—where federal cases involving national laws are tried, witnesses testify, and evidence and arguments are presented

Supreme Court—highest federal/national court; 8 justices and 1 chief justice; largely discretionary power to hear cases on appeal; limited original jurisdiction

writ of mandamus—paperwork compelling an action, court requires a specific action

1. Alexander Hamilton, Federalist #78, at <http://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-78>. ²
2. Alexander Hamilton, Federalist #78, at <http://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-78>. ²
3. "The U.S. Supreme Court." *The Judicial Learning Center*. <http://judiciallearningcenter.org/the-us-supreme-court/> (March 1, 2016). ²
4. *Chisholm v. Georgia*, 2 U.S. 419 (1793). ²
5. Associated Press. "What You Should Know About Forgotten Founding Father John Jay," *PBS Newshour*. July 4, 2015. <http://www.pbs.org/newshour/rundown/forgotten-founding-father>. ²
6. *Marbury v. Madison*, 5 U.S. 137 (1803). ²
7. Stephen Hass. "Judicial Review." *National Juris University*. [http://juris.nationalparalegal.edu/\(X\(1\)S\(wwbysi5iswopllt1bfpzfkjd\)\)/JudicialReview.aspx](http://juris.nationalparalegal.edu/(X(1)S(wwbysi5iswopllt1bfpzfkjd))/JudicialReview.aspx) (March 1, 2016). ²
8. *Marbury v. Madison*, 5 U.S. 137 (1803). ²
9. *Marbury v. Madison*, 5 U.S. 137 (1803). ²
10. *Ibid*.
11. *National Federation of Independent Business v. Sebelius*, 567 U.S.__(2012).
12. *Burwell v. Hobby Lobby*, 573 U.S.__(2014).
13. *King v. Burwell*, 576 U.S.__(2015).

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14.2 U. S. Courts: Structure and Procedure



Image 14.4 Interior Photo of 5th Circuit Court's Courtroom

Inside the United States Court of Appeals for the Fifth Circuit (Credit: United States Courts at <http://www.ca5.uscourts.gov/>).

Learning Objectives

- Describe the court system's basic structure.
- Explain how you are protected by different U.S. court systems.
- Describe the differences between the U.S. district courts, circuit courts, and the Supreme Court.
- Explain the significance of precedent in the courts' operations.
- Describe how judges are selected for their positions.
- Analyze the structure and important features of the Supreme Court.
- Explain how the judiciary is checked by the other branches of government.

Chart 14.6 Learning Objectives on How Courts Function

The judiciary is multi-layered with courts at both the national, state, county, and local levels. Adding complexity, the court systems sometimes intersect and overlap each other, and no two states are exactly alike in court structure. The organization of state courts does not perfectly mirror the more clear-cut system found at the federal level.^[1]

Cases heard by the U.S. **Supreme Court** come from two primary pathways: (1) the **circuit courts**, or U.S. courts of appeal (after the cases have originated in the federal **district courts**), and (2) state supreme courts (when there is a substantive constitutional question in the case).

Precedent set by each ruling (decision of the judges or justices), particularly by the Supreme Court, builds on principles set by earlier cases and frames the ongoing decisions of the courts. Reliance on precedent has enabled the federal courts to operate for the most part with logic and consistency helping validate their role as the key interpreters of the *Constitution* and the law—a legitimacy particularly vital in the United States where citizens do not elect federal judges and justices but are subject to their rulings.

Courts in a Federal Structure (layers of courts)

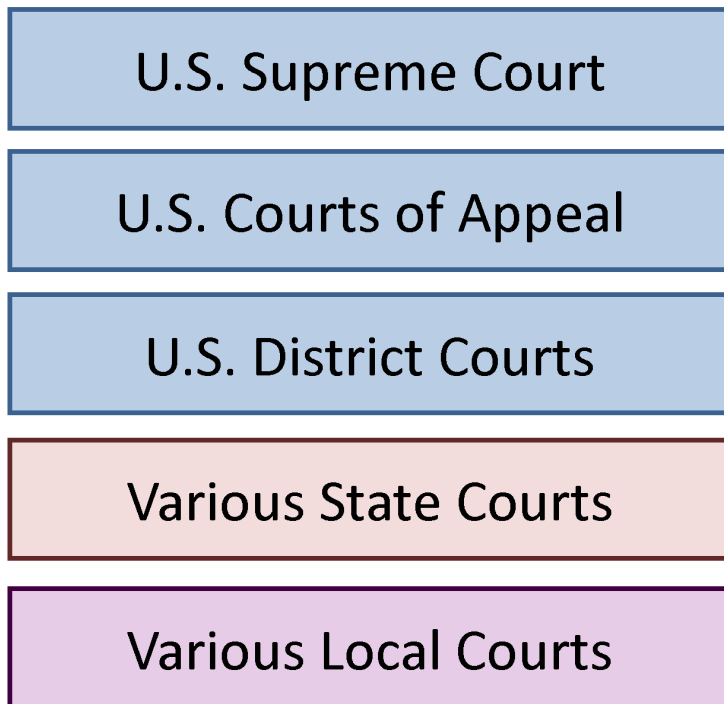


Chart 14.7 Diagram Illustrating Structure of U.S. Courts

The U.S. court system operates on the principle of **stare decisis** (let the decision stand) meaning today's decisions are based largely on rulings from the past, and tomorrow's rulings rely on what is decided today. Consistency of precedent ensures greater stability in law and constitutional interpretation contributing to the court system's legitimacy. As former Supreme Court justice Benjamin Cardozo summarized it years ago, "Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts."^[2]

The Supreme Court decides based upon numerous factors. If the justices **affirm** a lower court's decision, they declare it valid and allow it to stand (**stare decisis**).^[3]

When an appellate court sends a case back to a lower court for further proceedings the decision is to **remand**.

The lower court is often required to do something differently, but that does not always mean the court's final decision will change.^[4] When an appellate court **reverses** (sets aside) the decision of a lower court because of an error, it is a **reversal**, which is often followed by a remand. For example, if the defendant argued on appeal that certain evidence should not have been used at trial, and the appeals court agrees, the case will be remanded in order for the trial court to reconsider the case without that evidence.^[5]

There are ninety-four U.S. **district courts** in the fifty states and U.S. territories, of which eighty-nine are in the states (at least one in each state).

The others are in Washington, DC; Puerto Rico; Guam; the U.S. Virgin Islands; and the Northern Mariana Islands. These are the **original jurisdiction** trial courts of the national system. No district court crosses state lines, and a single judge oversees each one. Some cases are heard by a **petit jury** (jury of peers

deciding on the credibility of evidence presented at trial) and some are **bench trials** (judge acts as both judge and jury based on both law and fact).

There are thirteen **U.S. Courts of Appeal**, or circuit courts of **appellate jurisdiction**, eleven across the nation and two in Washington, DC (the DC circuit and the federal circuit). Each court is overseen by a rotating panel of three judges who review the rulings of the trial (district) courts within their geographic circuit. These courts, established under Article III, provide for life-time appointments for judges.

Geographic Boundaries

of United States Courts of Appeals and United States District Courts

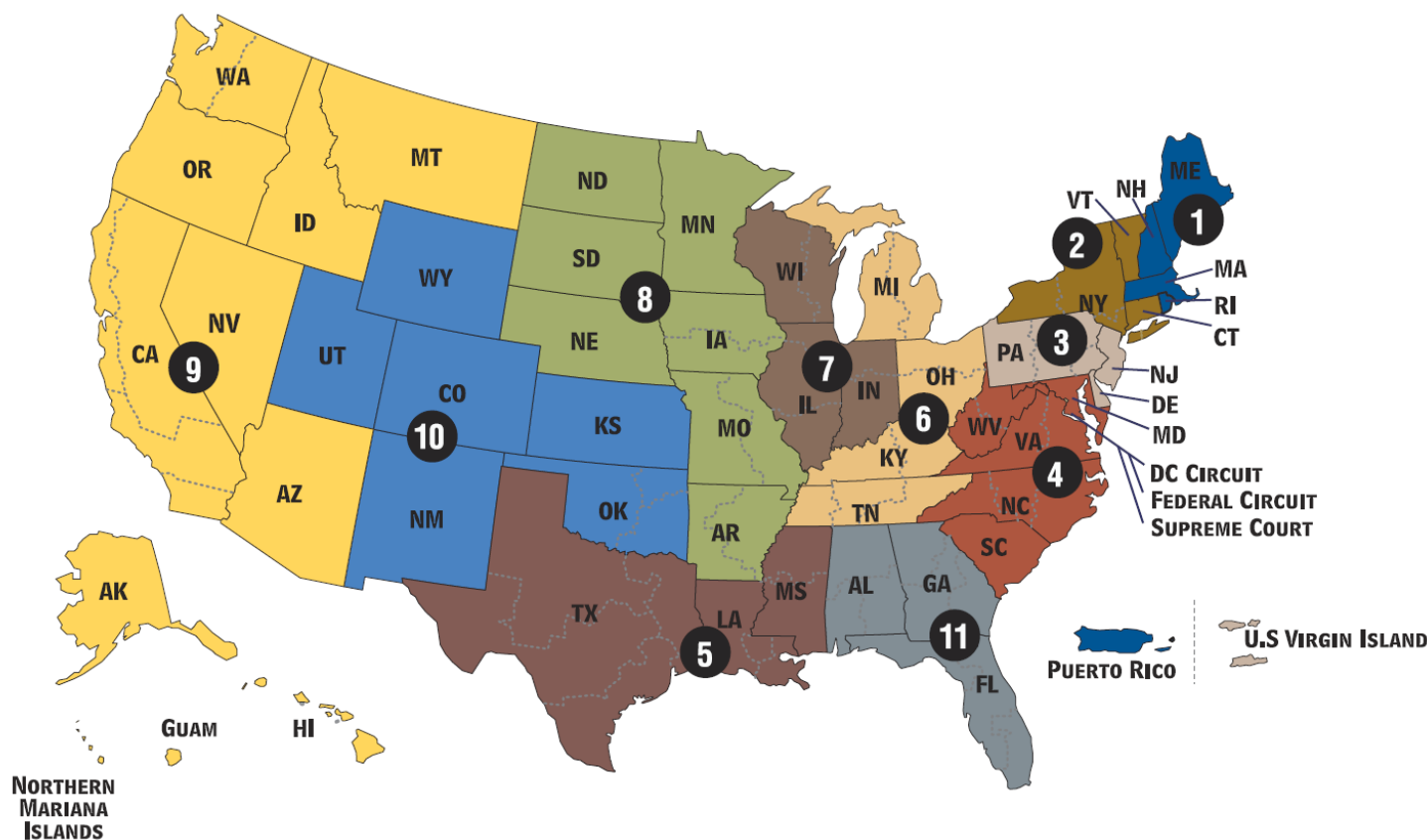


Chart 14.8 Map of U.S. Circuit Courts of Appeals and District Courts

There are thirteen judicial circuits: eleven in the geographical areas marked on the map and two in Washington, DC.
(Credit: U S Courts; http://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf)

Other federal trial courts exist with specialized jurisdictions—Court of International Trade, Court of Federal Claims, and U.S. Tax Court. Specialized federal appeals courts include the Court of Appeals for the Armed Forces and the Court of Appeals for Veterans Claims. Cases from any of these courts may also be appealed to the Supreme Court, although that result is very rare; and, judges do not serve for life.

The Supreme Court of the United States, sometimes abbreviated SCOTUS, is a one-of-a-kind institution. While a look at the Supreme Court typically focuses on the nine justices themselves, they represent only the top layer of an entire branch of government that includes many administrators, lawyers, and assistants who contribute to and help run the overall judicial system. The Court has its own set of rules for choosing cases, and it follows a unique set of procedures for hearing them. The Court's decisions not



Image 14.5 Interior Photo of Supreme Court

Photo of the interior of the Supreme Court (Credit: Supreme Court at <https://www.supremecourt.gov/about/photos.aspx>).

only affect the outcome of the individual case before the justices, but also creates lasting impacts on legal and constitutional interpretation for the future.

Supreme Court Structure & Procedure

The original court in 1789 had six justices, but Congress set the number at nine in 1869, and it has remained there ever since. There is one **chief justice**, who is the lead or highest-ranking judge on the Court, and eight **associate justices**. All nine serve lifetime terms, after successful nomination by the president and confirmation by the Senate.



While not formally connected with the public the way elected leaders are, the Supreme Court nonetheless offers visitors a great deal of information at its official website. For unofficial summaries of recent Supreme Court cases or news about the Court, visit the Oyez website or SCOTUSblog.

The **Supreme Court** begins its annual session on the first Monday in October and ends the following June. Every year, there are literally thousands of people who would like to have their case heard before the Supreme Court, but the justices will select only a handful to be placed on the **docket**, which is the list of cases scheduled on the Court's calendar. The Court typically accepts fewer than 2 percent of the cases it is asked to review every year.^[6] Case names, written in italics, list the name of a petitioner versus a respondent, as in *Roe v. Wade*, for example.^[7]

For a case on appeal, the case name indicates which party lost at the lower level of court: The party unhappy with the lower court's decision, as it relates to a legal or procedural error, brings the appeal and is the **petitioner**, or the first-named party in the case. For example, in *Brown v. Board of Education* (1954), Oliver Brown was one of the thirteen parents who brought suit against the Topeka public schools for discrimination based on racial segregation.

Most often, the petitioner is asking the Supreme Court to grant a **writ of certiorari**, a request that the lower court send up its record of the case for review. Once a writ of certiorari (*cert.* for short) has been granted, the case is scheduled on the Court's docket. The Supreme Court exercises discretion in the cases it chooses to hear, but four of the nine Justices must vote to accept a case. This is called the **Rule of Four**.

For decisions about *cert.*, the Court's Rule 10 (Considerations Governing Review on Writ of *Certiorari*) takes precedence.^[8] The Court is more likely to grant certiorari when there is a conflict on an issue between or among the lower courts. Examples of conflicts include (1) conflicting decisions among different courts of appeals on the same matter, (2) decisions by an appeals court or a state court conflicting with precedent, and (3) state court decisions that conflict with federal decisions. Occasionally, the courts will fast-track a case that has special urgency, such as *Bush v. Gore* in the wake of the 2000 election.^[9]

The **solicitor general** is the lawyer who represents the federal government before the Supreme Court: he/she decides which cases (in which the United States is a party) should be appealed from the lower courts. About two-thirds of all Supreme Court cases involve the federal government.^[10]

The solicitor general determines the position the government will take on a case. The attorneys of his/her office prepare and file the petitions and briefs, and the solicitor general (or an assistant) presents the oral arguments before the Court. Once a case has been placed on the docket, **briefs** (short written arguments explaining each party's view of the case) must be submitted. People and groups that are not party to the case but are interested in its outcome may file an **amicus curiae** ("friend of the court") brief giving their opinion, analysis, and recommendations.

How are decisions made and opinions written?

With briefs filed, the Court hears **oral arguments** in cases from October through April. The proceedings are quite ceremonial. When the Court is in session, the robed justices make a formal entrance into the courtroom to a standing audience and the sound of a banging gavel.

The Court's marshal (head of the Court's police force/position like bailiff) presents them with a traditional chant: "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! [Hear ye!] All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"^[11]

During oral arguments, each side's lawyers have thirty minutes to make their legal case, though the justices often interrupt the presentations with questions. The justices consider oral arguments not as a forum for a lawyer to restate the merits of his or her case as written in the briefs, but as an opportunity to get answers to any questions they may have.^[12]

When oral arguments have been concluded, the justices have to decide the case, and they do so in conference, which is held in private twice a week when the Court is in session and once a week when it is not.^[13] The judges take an initial vote in private before the official announcement of their decisions is

made public. Oral arguments are open to the public. Cameras are not allowed in the courtroom; however, an artist's illustration or rendering (drawing) is often available.^[14]

Though they lack their own mechanism for enforcement of their rulings and power remains checked and balanced by the other branches, the effect of the justices' opinions on the workings of government, politics, and society in the United States is much more significant than the attention they attract might indicate.

Every Court opinion sets precedent for the future. The Supreme Court's decisions are not always unanimous, however; the published **majority opinion**, or explanation of the justices' decision, is the one with which a majority of the nine justices agree. It can represent a vote as narrow as five in favor to four against. A tied vote is rare but can occur at a time of vacancy, absence, or abstention from a case, perhaps where there is a conflict of interest. In the event of a tied vote, the decision of the lower court stands. If he/she is in the majority, the chief justice decides who will write the opinion. If not, the most senior justice ruling with the majority chooses the writer.

Likewise, the most senior justice in the dissenting group can assign a member to write the **dissenting opinion**; however, any justice who disagrees with the majority may write a separate dissenting opinion.

If a justice agrees with the outcome of the case but not with the majority's reasoning in it, that justice may write a **concurring opinion**. Dissenting opinions can also be instructive. If the Court's decision, expressed in the written majority opinion, significantly changed precedent or the role/processes of government, dissenting opinions may also garner significant attention.

By the 1930s, the practice of racial segregation was widespread and vigorously maintained. When devastating floods hit Arkansas in 1937, for example, white refugees and black refugees were cared for in separate relief facilities.

A series of Farm Security Administration photographs documenting the flood demonstrates the pervasive nature of segregation. After hearing arguments by NAACP lawyer Thurgood Marshall, the Supreme Court overruled the Plessy decision on May 17, 1954.

Dissents can also become the basis for future Supreme Court rulings. In *Brown v. the Board of Education*, an unanimous Court adopted Justice Harlan's dissent in Plessy v. Ferguson that segregation violated the Thirteenth and Fourteenth Amendments to the Constitution."^[15]

The "Consider the Original" below contains key elements of his dissent. Appendix U provides a fuller text of *Plessy v. Ferguson* 163 U.S. 537 (1896).

Consider the Original

U.S. Supreme Court//*PLESSY v. FERGUSON*, 163 U.S. 537 (1896)
May 18, 1896. Mr. Justice HARLAN dissenting.

"In respect of civil rights, common to all citizens, the constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. Every true man has pride of race, and under appropriate circumstances, when the rights of others, his equals before the law, are not to be affected, it is his privilege to express such pride and to take such action based upon it as to him seems proper. But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation as that here in question is inconsistent not only with that equality of rights which pertains to citizenship, national and state, but with the personal liberty enjoyed by everyone within the United States.

[...] But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is therefore to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment of citizens of their civil rights solely upon the basis of race."

Chart 14.9 Text Excerpt from *Plessy v. Ferguson*



Image 14.6 Photo of Justice Harlan by C.M. Bell, Library of Congress Archive

Judicial Philosophy: Judicial Activism and Judicial Self-Restraint

A justice's decisions are influenced by how he/she defines his/her role as a jurist. Some justices believe strongly in **judicial activism**, which aims to interpret the Constitution as a dynamic document adjusting to society's changing needs. As stated by Supreme Court Justice Oliver Wendell Holmes, "Provisions of the Constitution of the United States are not mathematical formulas... but are organic living institutions.^[16] Judicial activism may bypass the legislative process in policy making without public opinion or debate. Under the activist view, constitutional requirements should be read regarding current standards of equality rather than those of past decades or centuries. Activist judges cite cases such as *Brown v. Board of Education of Topeka, Kansas* as proof that activist interpretation in the courts is sometimes necessary. In *Brown*, the majority opinion stated, "[...] we cannot turn the clock back to 1868, when

the [14th] Amendment was adopted, or even to 1896, when *Plessy v. Ferguson* was written. We must

consider public education in the light of its full development and its present place in American life.^[17] Justice Holmes said about a case, “The case before us must be considered in the light of our whole experience and not merely [...] what was said a hundred years ago.”^[18] Enthusiastic activists try to advocate for judicial activism citing desegregation achieved in two of the cases which employed equal protection clause as an example.

An Opinion on the Issue

Cesar Hernandez, Austin Community College...

Judicial activism is similar to judicial review in the sense that both allow the declaration of laws as unconstitutional. These two procedures can lead the Supreme Court to ultimately cancel laws and acts considered unconstitutional. However, judicial review and judicial activism are motivated by distinct reasons. The Supreme Court will engage in judicial review if the constitutionality of some legislation is in question. In judicial activism, the reasons for reviewing legislation are more personal—aiming to create laws based on ideology and a desired outcome. Past Justice Antonin Scalia points out that “[...] judges are selected precisely for their skill as lawyers; whether they reflect the policy views of a particular constituency is not (or should not be) relevant” (see *Obergefell v. Hodges* at the Supreme Court’s website). Judicial activism is questionable since it is guided by the personal beliefs of judges. Judges are not supposed to be influenced by any personal beliefs and their only objective should be to uphold the Constitution.

[Used with permission 06/25/2019 from Cesar Hernandez]

Chart 14.10 Opinion of Student on Judicial Activism

Other judges advocate for **judicial restraint**, leading them to defer decisions (and thus policymaking) to the elected branches of government staying focused on a stricter interpretation of the Constitution and the Bill of Rights. Judicial restraint encourages the judiciary to limit the exercise of a justice’s power, where judicial activists are seen as seeking to substitute personal judgement on the validity, meaning, or scope of a law for that of the democratically elected legislators. They reject that judges should be constantly reassessing and reinterpreting the meaning of the words of the Constitution. Rather, most judicial restraint advocates focus on the original meaning of the written text of the U.S. Constitution or an adopted law based on what “reasonable persons” living at the time of the adoption would have understood as the meaning.^[19]

The dissenting opinion of Justice Antonin Scalia in “Consider the Original” expresses this concern. See additional information in Appendix E. Regardless of opinions on activism or restraint, courts should require the government to prove the reasonableness of the law—to analyze and rigorously scrutinize the government’s reasons to intervene.

Consider the Original

Past Justice Antonin Scalia offered a dissenting opinion in the recent court decision on same-sex marriage illustrating his opinion on the role of the Supreme Court.

Today's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact— and the furthest extension one can even imagine—of the Court's claimed power to create "liberties" that the Constitution and its Amendments neglect to mention. *This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves.* (emphasis added)

This is a naked judicial claim to legislative—indeed, super-legislative—power; a claim fundamentally at odds with our system of government. Except as limited by a constitutional prohibition agreed to by the People, the States are free to adopt whatever laws they like, even those that offend the esteemed Justices' "reasoned judgment." A system of government that makes that the People subordinate to a committee of nine unelected lawyers does not deserve to be called a democracy. (emphasis added)

Chart 14.11 Excerpt from *Obergefell v. Hodges*

Congress has the ability under the *Constitution* to curtail the judiciary. The legal system is bound to the belief in stare decisis—following legal precedent—deferring to legislative process where laws are made, and then not entering into a position where they make law for popularly elected representatives.^[20]

Justice Anthony Kennedy has said, "An activist court is a court that makes a decision you don't like."^[21] Justices' personal beliefs and political attitudes also matter in their decision-making. Although we may prefer to believe a justice can leave political ideology or party identification outside the doors of the courtroom, the reality is that a more liberal-thinking judge may tend to make more liberal decisions and a more conservative-leaning judge may tend toward more conservative ones. The influence of ideology is real; and, at a minimum, it often guides presidents to aim for nominees who mirror their own political or ideological image.

The courts themselves are affected by another "court"—the court of public opinion. Though somewhat isolated from politics and the volatility of the electorate, justices may still be swayed by special-interest pressure, the leverage of elected or other public officials, the mass media, and the general public.

Court decisions are released at different times throughout the Court's term, but all opinions are announced publicly before the Court adjourns for the summer. Some of the most controversial and hotly debated rulings are released near or on the last day of the term and thus are avidly anticipated.

An Opinion on the Issue

Raymond Jamieson, Austin Community College...

The most evil word in politics is “necessary.” The word necessary comes with the connotation that if not for some extraneous force, an action would not normally be taken. Politicians use the word necessary to connive people into disregarding the means to focus on the end. I believe the Supreme Court acted on the notion that abusing their power was necessary in the *Obergefell* case. They personally believed in gay marriage and believed the will of the people supported gay marriage; therefore, they deemed it necessary to go outside of the law to enforce their power and be the heroes of America. They did this despite Scalia’s dissent that the “public debate over same-sex marriage displayed American democracy at its best.” I believe the Court side-stepped the democratic process and imposed their will on the public like a parent standing between squabbling children. By using the Fourteenth Amendment that states, “No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States,” they have pronounced that THEY may define privileges and immunities as anything they please. In this case, they expanded same-sex marriage to that category. Their actions may have resounding consequences—possibly to be seen in future cases as un-American by the same people that celebrated this ruling as evidence of democracy and freedom.

[Used with permission 06/25/2019 from Raymond Jamieson; credit to the Supreme Court of the United States, *Obergefell v. Hodges* case, 26 June 2015 and the U.S. Constitution, Amendment XIV, Section 1, National Archives]

Chart 14.12 Student Opinion on *Obergefell v. Hodges*

Although the courts’ role is interpretive, judges and justices are still constrained by the facts of the case, the *Constitution*, the relevant laws, and the courts’ own precedent.

How do checks and balances work with the judicial branch?

Both the executive and legislative branches check and balance the judiciary in many ways. The president can leave a lasting imprint on the bench through his or her nominations, even long after leaving office.

The president may also influence the Court through the solicitor general’s involvement or through the submission of *amicus curiae* briefs in cases in which the United States is not a party.

Congress has checks on the judiciary, retaining power to modify the court structure and appellate jurisdiction, and the Senate may accept or reject presidential nominees to the federal courts. Faced with a court ruling that overturns one of its laws, Congress may rewrite the law or even begin a constitutional amendment process.

The most significant check on the Supreme Court is executive and legislative leverage over the implementation and enforcement of its rulings. This process is called **judicial implementation**.

While it is true that courts play a major role in policymaking, they have no mechanism to make their rulings a reality. Remember it was Alexander Hamilton in *Federalist* No. 78 who remarked that the courts

had “neither force nor will, but merely judgment.” And even years later, when the 1832 Supreme Court ruled the State of Georgia’s seizing of Native American lands unconstitutional,^[22] President Andrew Jackson is reported to have said, “John Marshall has made his decision, now let him enforce it,” and the Court’s ruling was basically ignored.^[23]

Abraham Lincoln famously ignored Chief Justice Roger B. Taney’s order finding Lincoln’s early Civil War suspension of habeas corpus rights unconstitutional. Thus, court rulings matter only to the extent they are heeded and followed.

The Court relies on the executive to implement or enforce its decisions and on the legislature to fund them. For example, in 1957, President Dwight D. Eisenhower called out the military by executive order to enforce the Supreme Court’s order to racially integrate the public schools in Little Rock, Arkansas.

Eisenhower told the nation: “Whenever normal agencies prove inadequate to the task and it becomes necessary for the executive branch of the federal government to use its powers and authority to uphold federal courts, the president’s responsibility is inescapable.”^[24]

Executive Order 10730 nationalized the Arkansas National Guard to enforce desegregation because the governor refused to use the state National Guard troops to protect the black students trying to enter the school.



Image 14.7 Photo of Black Students Integrating Central High School

President Eisenhower sent federal troops to escort nine black students (the “Little Rock Nine”) into an Arkansas high school in 1957 to enforce the Supreme Court’s order outlawing racial segregation in public schools. (Credit: OpenStax included image)

The fate of court decisions rests on their credibility, their viability, and the assistance given by the other branches of government. It also relies on tradition and precedent.

Although not everyone agrees with the decisions made by the Court, rulings are generally accepted and followed, and the Court is respected as the key

interpreter of the laws and the *Constitution*. Over time, its rulings have become yet another way policy is legitimately made, and justice more adequately served in the United States.

First Time	Supreme Court Famous Firsts
Catholic	Roger B. Taney (1836)
Jewish	Louis J. Brandeis (1916)
Former President	William Howard Taft (1921)
African American	Thurgood Marshall (1967)
Woman	Sandra Day O'Connor (1981)
Hispanic	Sonia Sotomayor (2009)

Chart 14.13 Information on Supreme Court "Firsts"

How are judges & justices selected?

On the U.S. Supreme Court, there are nine justices—one chief justice and eight associate justices. Circuit courts each contain three justices, whereas federal district courts have just one judge each. At the federal level, the president nominates a candidate to a judgeship or justice position. The nominee must be confirmed by a majority vote in the U.S. Senate—checks and balances, a function of the Senate's "advice and consent" role. All judges and justices in the national courts serve life terms (Article III regular courts).

The president's nominee is then discussed (and sometimes hotly debated) in the Senate Judiciary Committee. After a committee vote, the candidate must be confirmed by a majority vote of the full Senate. He/she is then sworn in, taking an oath of office to uphold the *Constitution* and the laws of the United States.

When a vacancy occurs in a lower federal court, by custom, the president consults with that state's U.S. senators (usually if they are of the same party as the president) before making a nomination. Through such **senatorial courtesy**, senators exert considerable influence on the selection of judges in their state, especially those senators who share a party affiliation with the president. In many cases, a senator can block a proposed nominee just by voicing his or her opposition. Thus, a presidential nominee typically does not get far without the support of the senators from the nominee's home state.

Most presidential appointments to the federal judiciary go unnoticed by the public, but when a president has the rarer opportunity to make a Supreme Court appointment, it draws more attention. That is particularly true now, when many people get their news primarily from the Internet and social media. Presidential nominees for the courts typically reflect the chief executive's own ideological position.

With a confirmed nominee serving a lifetime appointment, a president's ideological legacy has the potential to live on long after the end of his or her term.^[25]

The lower courts are more diverse today. The U.S. judiciary has expanded to include women and minorities at both the federal and state levels.^[26] However, the number of women and people of color on the courts still lag behind the overall number of white men. As of 2021, the federal judiciary consists of

67 percent men and 33 percent women. In terms of race and ethnicity, 74 percent of federal judges are White, 12 percent African American, 8 Hispanic American, and 4 percent Asian American.^[27]



Image 14.8 Photo of 2023 Supreme Court Justices

The justices of the U.S. Supreme Court at the Supreme Court Building in Washington, D. C. left to right front row: Associate Justices Sonia Sotomayor, Clarence Thomas, with Chief Justice John G. Roberts, Jr. and Associate Justices Samuel A. Alito, Jr. and Elena Kagan; back row: Associate Justices Amy Coney Barrett, Neil M. Gorsuch, Brett M. Kavanaugh, and Ketanji Brown Jackson. Credit: Fred Schilling, Collection of the Supreme Court of the United States, 2023)

QUESTIONS TO CONSIDER

1. Is a multi-layered courts system within the federal structure a positive for individuals? Why/why not?

[Show Answer](#)

there is potentially more access in a multi-layered system

2. When it comes to filling judicial positions in the federal courts, do you believe race, gender, religion, and ethnicity should matter? Why or why not?

[Show Answer](#)

personal opinion, open for debate

3. In what ways is the court system better suited to protect the individual than are the elected branches of the government?

[Show Answer](#)

courts can force a hearing for individuals where Congress or the Executive may not listen until they believe a sufficient number of individuals are impacted/complaining

TERMS TO REMEMBER

affirm—decision of the court to agree with or uphold a lower court decision

amicus curiae—literally a “friend of the court” and used for a brief filed by someone who is interested in but not party to a case

appellate court—reviews cases already decided by a lower or trial court and that may change the lower court’s decision

appellate jurisdiction—function of the court is to hear appeals on procedural or legal error occurring at lower court or court of original jurisdiction

associate justice—any justice sitting on the Supreme Court of the United States that is not the Chief Justice

bench trials--judge acts as both judge and jury based on both law and fact

brief—written legal argument presented to a court by one of the parties in a case

chief justice—highest-ranking justice on the Supreme Court

circuit courts the appeals (appellate) courts of the federal court system that review decisions of the lower (district) courts; courts of appeal

concurring opinion—written decision by a justice who agrees with the Court’s majority opinion but has different reasons for doing so

courts of appeals—the appellate courts of the federal court system that review decisions of the lower (district) courts; also called circuit courts

dissenting opinion—written decision by a justice who disagrees with the majority opinion of the Court

district court—the trial courts of the federal court system where cases are tried, evidence is presented, and witness testimony is heard

docket—the list of cases pending on a court’s calendar

judicial activism—judicial philosophy in which a justice is more likely to actively intervene, overturn, or alter actions of the other branches of government

judicial implementation—a check on the Supreme Court; executive and legislative leverage over the implementation and enforcement of rulings

judicial restraint—judicial philosophy in which a justice is more likely to let stand the decisions or actions of the other branches of government

majority opinion—written decision of the Court with which more than half the nine justices agree

oral argument— words spoken before the Supreme Court (usually by lawyers) explaining the legal reasons behind their position in a case and why it should prevail

original jurisdiction—function of court to hear original testimony, cross-examination, viewing of evidence, etc.

petit jury--jury of peers deciding on the credibility of evidence presented at trial

petitioner—party unhappy with the lower court's decision bringing the appeal or the first-named party in the case

precedent—the principles or guidelines established by courts in earlier cases that frame the ongoing operation of the courts, steering the direction of the entire system

remand—decision to send a case back to the lower court for further proceedings

reverse—decision to overturn a lower court ruling/decision

Rule of Four—Supreme Court custom in which a case will be heard when four justices decide to do so

senatorial courtesy—an unwritten custom by which the president consults the senators in the state before nominating a candidate for a federal vacancy there, particularly for court position at the District Court Level

solicitor general—lawyer who represents the federal government and argues some cases before the Supreme Court

stare decisis—the principle by which courts rely on past decisions and their precedents when making decisions in new cases

Supreme Court—highest federal/national court; original and appellate jurisdiction

writ of certiorari—order calling up the records of the lower court so a case may be reviewed; sometimes abbreviated cert.

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LICENSES AND ATTRIBUTIONS

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PUBLIC DOMAIN CONTENT

- SUPREME COURT OF THE UNITED STATES Syllabus OBERGEFELL ET AL. v. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT No. 14u2013556. Argued April 28, 2015u2014Decided June 26, 2015. **Authored by:** Associate Justice Antonin Scalia. **Provided by:** Supreme Court of the United States. **Located at:** https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf. **License:** [Public Domain: No Known Copyright](#)

14.3 U.S. Courts:

Due Process and Equality Under the Law



Image 14.9 Photo of Court Gavel

(Credit: United States Courts at <http://www.uscourts.gov/about-federal-courts/federal-courts-public>)

Learning Objectives

- Understand the difference between civil and criminal procedure in the U.S. judicial system.
- Describe the types of litigants involved in a court case.
- Explain the various types of trial available to individuals within the justice system.
- Describe the basics of jury selection and the importance of juries.

Chart 14.14 Learning Objectives on Civil and Criminal Procedure

Consider the Original

From Thomas Jefferson to Isaac H. Tiffany, 4 April 1819...

"Liberty [...] is unobstructed action according to our will: but rightful liberty is unobstructed action according to our will, within the limits drawn around us by the equal rights of others. I do not add 'within the limits of the law'; because law is often but the tyrant's will, and always so when it violates the right of an individual."

National Archives: Founders Online at <http://founders.archives.gov/documents/Jefferson/98-01-02-0303>

Chart 14.15 Excerpt from Letter Between Jefferson and Tiffany

Courts interpret contractual agreements between parties. Sometimes the parties' dispute over the meaning of the contract, and sometimes the dispute concerns an infraction against the rules that hold people accountable to the contract. No matter whether the dispute is about a criminal activity or a civil

action, each individual party to the process, **litigant**, is guaranteed a protected right to **due process**. The *Constitution*, the people's contract with the government, enumerates this protection no matter the race, gender, age, socioeconomic status, or personal ability of any individual involved in a legal dispute. Not only is everyone to receive due process (equity and standardization of procedure), they are also to be treated equally by the judicial system despite any factor of birth, situation, or circumstance.

Two Types of Procedural Dispute: Civil and Criminal

Courts hear two different types of disputes: criminal and civil. Under **criminal procedure**, governments establish rules and punishments. Laws define conduct that is prohibited because it can harm others, and laws also impose punishment. Crimes are usually labeled based on their nature and seriousness; felonies are the more serious crimes. When someone commits a criminal act, the government (state or national, depending on which law has been broken) charges that person with a crime, and the case brought to court contains the name of the charging government, as in *Miranda v. Arizona* discussed below.^[1]

Criminal procedure involves processing (**prosecuting/prosecution**) cases against individuals (**defendant/defense**) accused of harming others and includes the decision about punishment for criminal actions. A **verdict** (opinion or judgement) of guilt or innocence is sought in criminal cases.

Civil procedure involves two or more private (usually non-government) parties, at least one of whom (**plaintiff**) alleges harm or civil injury (**tort**) committed by the other (**defendant/respondent**). A decision in favor of one of the parties is sought in civil cases based upon a level of proof called **preponderance of evidence**.

The plaintiff makes a choice of basic trial procedure. The choice is between a **bench trial** (judge determines both fact and law) or a **petit jury** trial (random citizens called to serve to determine the facts).

The basic steps in both civil and criminal procedure vary according to individual cases and case complexities. The chart on the following page is a basic selection of procedural steps generally associated with the constitutional protection of due process.

In both criminal and civil matters, the judges and juries decide the remedy and resolution of the case, and in all cases, the U.S. Supreme Court is the final court of appeal. Although the Supreme Court tends to draw the most public attention, it typically hears fewer than one hundred cases every year. About 90 percent of all cases in the U.S. court system are heard at the state level.^[2] The federal/national courts handle approximately 2-3 thousand cases a year while state courts adjudicate several million. State courts handle criminal and civil matters (personal injury, malpractice, divorce, family, juvenile, probate, contract disputes, and real estate cases).

The federal courts hear cases involving foreign governments, patents, copyright infringement, Native American rights, maritime law, bankruptcy, or controversies between two or more states. Cases arising from activities across state lines (interstate commerce) are also subject to federal court jurisdiction, as are cases in which the United States is a party. A dispute between two parties not from the same state or

nation and in which damages of at least \$75,000 are claimed is handled at the federal level. Such a case is known as a diversity of citizenship case.^[3]



Chart 14.16 Outlining Criminal and Civil Procedure in the Courts

Original Chart by Deborah S. Hoag and Rachel Brooks, Austin Community College

It is possible that issues of federal law may start in the state courts before making their way to the federal side. Any case starting at the state and/or local level may make it into the federal system on appeal—but only on points that involve a federal law or question, and usually after all avenues of appeal in the state courts have been exhausted.

Consider the case *Miranda v. Arizona*.^[4]

Ernesto Miranda, arrested for kidnapping and rape (violations of state law), was convicted and sentenced to prison after a key piece of evidence—his own signed confession—was presented at trial in the Arizona court. On appeal to the Arizona Supreme Court and then the U.S. Supreme Court, the case requested to exclude Miranda's confession on the grounds that its admission was a violation of his constitutional rights.

By a slim 5–4 margin, the justices ruled that the confession should be excluded from evidence. In obtaining it, the police had violated Miranda’s Fifth Amendment right against self-incrimination and his Sixth Amendment right to an attorney. Miranda’s original conviction was overturned.



Image 14.10 Photo of Jury

Photo of jurors in a jury box inside a courtroom.
(Credit: OpenStax included image; moodboard/Brand X
Pictures/Getty Images)

The Supreme Court considered only the violation of Miranda’s constitutional rights, not whether he was guilty of the crimes with which he was charged. He was retried in state court in 1967, the second time without the confession as evidence. Miranda was found guilty again based on witness testimony and other evidence and sent to prison. Miranda’s story is a good example of the tandem operation of the state and federal court systems. His guilt or innocence of the crimes was a matter for the state courts, whereas the constitutional questions raised by his trial were a matter for the federal courts.

HAVE YOU EVER SERVED ON A JURY?

Since judges and justices are not elected, we sometimes consider the courts removed from the public; however, this is not always the case. Average citizens may get involved with the courts firsthand as part of their decision-making process. If you have not already been called, you may receive a summons for jury duty from your local court system. You may also be asked to serve federal **jury duty**, such as U.S. district court duty or federal grand jury duty. Local or state jury service is more common.

While your first reaction may be to start planning a way to get out of it, participating in jury service is vital to the operation of the judicial system. It provides individuals in court the chance to be heard and to be tried fairly by a group of their peers. Jury duty has benefits for those who serve as well. You will no doubt come away better informed about how the judicial system works. Who knows? You might even get an unexpected surprise, as some citizens in Dallas, Texas did recently when former President George W. Bush showed up to serve jury duty with them. Prospective jurors participate in the jury selection process called **voir dire**.

Voir dire consists of the judge informing court administrators of how many prospective jurors may be needed for the situation of a case. Jurors are brought from a waiting area to the courtroom, where both the prosecution and defense are allowed to ask them questions. If you listen carefully, you may be able to ascertain, from the questions asked, what the trial is likely to involve. You may be dismissed based upon an answer you provide or because there are, in the end, too many prospective jurors from which to choose. If you are selected, you will be empaneled on the jury for the duration of the trial.

MARIJUANA LAWS AND THE COURTS

There are so many differences in marijuana laws between states, and between the states and the national government. What is legal in one state may be illegal in another, and state laws do not cross state

Marijuana Legal Status by State

Legend:

- Illegal (Red)
- Decriminalized (Orange)
- Medicinal only (Yellow)
- Medicinal and decriminalized (Blue)
- Recreational (Green)

State	Legal Status
WA	Recreational
OR	Recreational
MT	Medicinal only
ID	Illegal
ND	Illegal
SD	Illegal
WY	Illegal
UT	Illegal
NV	Medicinal and decriminalized
CA	Medicinal and decriminalized
CO	Recreational
AZ	Medicinal only
NM	Medicinal only
TX	Illegal
OK	Illegal
NE	Decriminalized
IA	Illegal
MO	Illegal
KS	Illegal
LA	Medicinal only
MS	Decriminalized
AL	Illegal
GA	Illegal
SC	Illegal
FL	Illegal
TN	Illegal
KY	Illegal
WV	Illegal
VA	Illegal
NC	Decriminalized
DE	Illegal
MD	Illegal
DC	Illegal
PA	Illegal
NJ	Illegal
CT	Illegal
RI	Illegal
MA	Medicinal and decriminalized
NH	Medicinal and decriminalized
VT	Medicinal and decriminalized
ME	Medicinal and decriminalized
AK	Recreational
HI	Medicinal only

Marijuana laws vary remarkably across the fifty states. In most states, marijuana use is illegal, as it is under federal law, but some states have decriminalized it, some allow it for medicinal use, and some have done both. Marijuana is currently legal for recreational use in four states, per state law.

(Credit: OpenStax included image)

Differences among the states have also prompted a number of lawsuits against states with legalized marijuana. People opposed to state laws seek relief from the courts. They want courts to resolve the contradictions and conflicts between states as well as between states and the national government. Citing concerns over cross-border trafficking, difficulties with law enforcement, and violations of the Constitution's supremacy clause, Nebraska and Oklahoma have petitioned the U.S. Supreme Court to intervene and rule on the legality of Colorado's marijuana law, hoping to get it overturned.^[5]

Just as the laws vary across the states, so do judicial rulings and interpretations, and the judges who make them. That means there may not be uniform application of the law—even of the same law—

nationwide. We are somewhat bound by geography and do not always have the luxury of picking and choosing the venue for our case. So, while having such a decentralized and varied set of judicial operations affects the kinds of cases that make it to the courts and gives citizens alternate locations to get their case heard, it may also lead to disparities in the way they are treated once they get there.

QUESTIONS TO CONSIDER

1. What is the difference between a bench and petit jury trial?

[Show Answer](#)

In a bench trial, the judge acts as both judge and jury. In a petit jury trial, citizens form the jury.

2. What is the essential point to remember from the decision in *Miranda v. Arizona*?

[Show Answer](#)

Every accused person should understand their basic protections of civil liberties, and they should be asked at the earliest point if they do understand.

TERMS TO REMEMBER

bench trial—judge acts as both judge and jury (no petit jury of peers)

civil procedure—processing cases between private individuals seeking resolution of disputes regarding non-criminal law private rights and remedies

criminal procedure—processing cases against individuals accused of harming others; punishment for those actions

defendant—individual accused of harming others and involved in the legal process

due process—consistent procedure within the justice system

jury duty—citizens called to hear civil disputes or criminal cases in the court system; tasked with determining outcome/verdict

litigant—each individual party to a court case; including defendant/respondent, prosecutor, plaintiff

Miranda v. Arizona—case involving criminal procedure, accused persons must be informed of their constitutional rights upon arrest

petit jury trial—12 member jury of citizens, determines verdict/decision

plaintiff—private (non-government) parties alleging harm or civil injury committed by the another (defendant/respondent)

preponderance of evidence—which side has the best argument and evidence

prosecution/prosecutor—Criminal procedure involves processing cases against individuals (defendant) accused of harming others

respondent—party to a court case (litigant) defending against a charge of civil injury

tort—civil injury

verdict—opinion or judgement of guilt or innocence sought in criminal cases

voir dire—jury selection process

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1. *Miranda v. Arizona*, 384 U.S. 436 (1966). [?](#)
 2. "State Courts vs. Federal Courts." *The Judicial Learning Center*. <http://judiciallearningcenter.org/state-courts-vs-federal-courts/> (March 1, 2016). [?](#)
 3. "State Courts vs. Federal Courts." *The Judicial Learning Center*. <http://judiciallearningcenter.org/state-courts-vs-federal-courts/> (March 1, 2016). [?](#)
 4. *Miranda v. Arizona*, 384 U.S. 436 (1966). "U.S. Court System." *Syracuse University*. <http://www2.maxwell.syr.edu/plegal/scales/court.html> (March 1, 2016). [?](#)
 5. *States of Nebraska and Oklahoma v. State of Colorado*. Motion for Leave to File Complaint, Complaint and Brief in Support. December 2014. <http://www.scribd.com/doc/250506006/Nebraska-Oklahoma-Lawsuit>. [?](#)

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