

## CHAPTER 15 - The Courts

### OVERVIEW

Federal judges are appointed for life subject to good behavior as a way of insulating them from politics. While they are not required to do so, they tend to be guided by stare decisis or the precedents which, helps insure legal stability. Early on the Supreme Court asserted its power to judge the constitutionality of laws through judicial review.

The courts, however, are not totally insulated from politics. Politics enters into the selection of federal judges. Court decisions tend to reinforce prevailing public opinion. If the decisions are considered too controversial they may be challenged by an amendment to the Constitution (in constitutional interpretation cases), by a revision of a statute (in statutory interpretation cases), or politicians may merely refuse to enforce them.

Most of the judicial work in the United States is done by lower federal and state judges.

### OUTLINE

#### I. State Courts

- Every state has its own judicial arrangements, but in most the basic structure has three tiers.

##### A. State Trial Courts: The Judicial Workhorses

- Most cases are decided at the very first tier, the trial court, where, as the name suggests, all trials in the state courts are held. In trials, there are two sides: the plaintiff, the party bringing the complaint, or suit, and the defendant, the party accused of violating the civil or criminal code, against whom the complaint is made. Trials settle alleged violations of the civil and criminal codes.

##### B. The Politics of Selecting Judges

- State courts are in a position to be significantly influenced by politics because of the way judges are selected. In 39 of the 50 states, at least some judges are elected.

##### C. Prosecuting State Cases

- The district attorney determines the evidence.

#### II. An Independent and Powerful Federal Judiciary

##### A. Tenure and Salary

- The framers of the Constitution believed the appointment of federal judges for life tenure was essential to the system of separation of powers. The Constitution further protects judicial independence by fixing judicial salaries.

##### B. Judicial Review

- This is the power of the courts to declare laws they find unconstitutional to be null and void. The Constitution does not explicitly mention this power.
- The Supreme Court asserted its power to exercise judicial review in the 1803 case of Marbury v. Madison. The case came about when President John Adams nominated Mr. Marbury to a judgeship (a "midnight appointment"). The Senate voted to confirm, but Thomas Jefferson was inaugurated before

Marbury's commission was delivered. Thomas Jefferson refused to deliver the commission and Marbury, relying on Section 13 of the 1789 Judiciary Act, took his request for a writ of mandamus to the Supreme Court on original jurisdiction.

- John Marshall ruled that the Constitution, in enumerating the Court's original jurisdiction, implied that Congress could not add to it; therefore, Section 13, giving Congress original jurisdiction in cases not mentioned in Article III was unconstitutional and therefore null and void. Marshall reasoned that the Constitution was established as an act of the people, whereas laws were acts of the people's representatives; thus, the Constitution takes precedence over laws.

### **1. Approaches to Constitutional Interpretation**

- One method of constitutional interpretation is original intent. The interpreter seeks to ascertain what those who wrote the Constitution meant when they wrote it. This original intent is found by studying historical documents.
- Another method of interpreting the Constitution is living constitution: judge the constitutionality of laws in light of the entire history of the United States as a nation. The idea with this method is to keep the Constitution current or allow it to adapt to modern circumstances.
- Another method of interpreting the Constitution is called the plain meaning of the text: judges should be guided by exactly what the words used in the Constitution mean not what someone intended nor someone else's vague understanding of American historical experience.
- There are advantages and disadvantages to each method of interpretation.

### **C. Judicial Review in Practice**

- Three times the Supreme Court created constitutional crises by defying the declared will of Congress and the president.
- The first was the Dred Scott case in 1857, declaring the Missouri Compromise (1820) unconstitutional. This decision convinced Northerners that slavery would be extended throughout the Union and for Southerners it helped justify secession.
- A second case creating a constitutional crisis was *Lochner v. New York* (1905). The Court refused to allow states to regulate working conditions in certain establishments, in this case, a bakery. The decision was subsequently overruled.
- A third instance is the case of *Schechter Poultry Corporation v. United States* (1935). The Court ruled, among other things, that Congress had exceeded its constitutional authority to regulate the selling of chickens since what it regulated was intrastate not interstate commerce. This fine distinction between intrastate and interstate commerce was later overruled.
- Decisions like these have resulted in some calling for an end to judicial review. Two things explain why judicial review survives. First, the Court does

not use it excessively. Second, when it does declare a law unconstitutional, it is usually because the president and the Congress no longer support a law.

#### **D. Statutory Interpretation**

- This is the judicial act of interpreting and applying ordinary laws, rather than the Constitution, to specific cases.

### **III. The Federal Court System**

- The Supreme Court is the linchpin of the national court system, but the lower courts are where most of the day-to-day work of the federal judicial branch is carried out.

#### **A. District Courts**

- Congress first created district courts in 1789. There are 94 U.S. district courts today. Most federal cases begin and end here.
- During these trials there is a plaintiff and a defendant, covering criminal law and civil law.

#### **B. Appeals Courts**

- There are 13 U.S. Courts of Appeal: one for each of the 11 circuits, one for Washington, D.C. and a federal circuit court hearing specialized cases over the entire United States.
- At each court three judges sit to hear cases although in exceptional cases, all the judges working at a circuit hear a case in what is called a plenary session.

#### **C. Specialized Courts**

- The Court of International Trade handles cases concerning international trade and customs. The Court of Federal Claims hears suits concerning federal contracts, money damages against the United States, and other issues involving the federal government. Appeals from these cases go to the appeals court for the federal circuit covering the entire United States.

#### **D. Selection of Federal Judges**

- The Constitution states that federal judges shall hold their offices during good behavior, which is understood to be a life term. Presidents nominate federal judges, the Senate gives or withholds consent, and the president appoints if the Senate consents. Senatorial courtesy applies in some cases. Almost always, presidents nominate federal judges who are members of the same political party as themselves. Although uncommon, the Senate does reject some nominees, usually due to some financial or personal problem uncovered during the Senate confirmation process. Although judges can be impeached, it is very rare.

#### **E. Deciding to Prosecute**

- Suspected violations of federal law are usually investigated by the Federal Bureau of Investigation, which gives the evidence to prosecutors in the office of a federal district attorney. The district attorney may ask a grand jury of 16 to 23 citizens to issue an indictment.
- District attorneys hold a particularly high political profile. They leave the more routine cases to state officials, focusing instead on highly-visible, attention grabbing activities. If they are particularly successful, they may become candidates for higher office.

## **F. Relations between State and Federal Courts**

- For the first few decades under the Constitution, the relationship between state and federal legal and judicial systems remained vague. Then in 1816, the Supreme Court ruled that it had the power to review and, if necessary, to overturn the decisions of state courts.

## **IV. The Supreme Court**

- In its 2007-2008 terms, the Supreme Court issued full opinions in only 70 cases. Still, its decisions provide the framework for the country's entire judicial system.

### **A. The Politics of Supreme Court Appointments**

- The judicial system is supposed to be politically blind. Despite this ideal, however, the process by which justices are selected is a political one, and it has become more so in recent decades.

### **B. Stare Decisis**

- This means that the Court will follow precedents (earlier decisions) when deciding similar cases.
- By doing so, the Court creates stability in the legal system. When the Court does deviate from an earlier decision, it tries to do so by recognizing a legal distinction between the earlier case and the case at hand.
- Parties to a case who lose can appeal their case to a higher court. If the higher court agrees with them, it can order a reversal, the overturning of a lower-court decision.

### **C. Certs**

- Today nearly all cases argued before the Supreme Court get there upon the grant of cert, which is a shorthand for the Latin phrase writ of certiorari. This means "to be informed"; if four Justices vote cert the case will be sent up from the lower court so the Supreme Court can be informed of it.
- There are about seven thousand cert requests a year, but the Court only grants a small fraction (about 80 during the 1999-2000 term).

### **D. The Role of the Chief Justice**

- The U.S. Supreme Court consists of eight associate justices and one chief justice. One special privilege of the chief justice is to assign the writing of the majority opinion if the chief justice voted with the majority. They may also use their position to facilitate compromise and achieve consensus.

### **E. The Role of the Solicitor General**

- The Solicitor General is the government's lawyer before the Supreme Court. Because the Supreme Court pays strict attention to the Solicitor General, the officer is sometimes referred to as the Tenth Justice.
- Although selected by the president, the Solicitor General is an employee of the Justice Department.

### **F. The Role of Law Clerks**

- Much of the day-to-day work of the Supreme Court is conducted by each justice's clerks. Each has between two and four clerks, who have usually clerked for a lower court judge. Some claim that the real decisions of the Supreme Court are made by the clerks; others view clerks as better at

deciding cases than insulated justices. The truth probably lies between these two views.

### **G. Supreme Court Decision Making**

- Supreme Court sessions begin on the first Monday in October. Prior to deciding a case, the justices can read the lawyers' written briefs detailing their arguments. The justices then listen to the oral arguments of the lawyers before a plenary session of the Court. The justices will later discuss the case in a private conference. It is here that the will (if there is one) of the majority becomes known. If the chief justice is not in the majority, the most senior justice writes the majority opinion or assigns it to someone else.
- Whoever writes the opinion circulates drafts to all the justices, and it is not unusual for an opinion to go through several drafts. Some authoring justices have, at this stage, "lost a court"; that is, they worded the opinion in such a way that one or more justices change their minds. Justices who vote with the majority may write an individual opinion explaining how their reasoning differed with that expressed in the majority opinion. This is called a concurring opinion. Justices who do not vote with the majority also write a minority opinion and may also explain their reasoning in what is called a dissenting opinion.
- Once a decision has been reached by the Court, it usually sends or remands the case to a lower court for implementation.

### **H. Voting on the Supreme Court**

- One study found that information about the political views of a justice going through confirmation allowed a correct prediction as to how the justice would later decide cases over 60 percent of the time in the area of civil liberties.

## **V. Checks on Court Power**

- Other branches of government can alter or circumscribe court decisions.

### **A. Constitutional Amendment**

- A Supreme Court interpretation of the Constitution can be overruled by amending the Constitution. This was done with the eleventh (a citizen of one state cannot sue another state without the state's consent) and sixteenth amendments (making income taxes constitutional). Due to the difficulty in amending the Constitution, some consider this the weakest check on the Court.

### **B. Statutory Revision**

- A Supreme Court interpretation of a statute can be modified by revising the statute.

### **C. Non-implementation**

- Court decisions can be checked simply by being ignored. Though unlikely today, presidents can ignore Court decisions. Strong resistance to lower-court decisions by state and local governments is not unknown.

- To ensure implementation of judicial orders, courts sometimes appoint a receiver, an official who has the authority to see that judicial orders are carried out.

## **VI. Litigation as a Political Strategy**

- The Courts have increasingly been used by advocacy groups to place issues on the political agenda, particularly when elected officials have not responded to group demands.
- Advocacy groups can file class action lawsuits on behalf of all individuals in a particular class, even if they are not actually involved in the suit. This keeps each and every individual similarly situated from having to sue to receive compensation.