CHAPTER FIVE

The Judicial Branch: The Supreme Court and the Federal Court System

CHAPTER OVERVIEW

This chapter focuses on the Supreme Court with less emphasis on the other federal courts, including District and Courts of Appeals, their structure, and jurisdiction. The Supreme Court’s historical evolution is covered along with the Court’s “internal” and “external” limits. An important theme is the Supreme Court’s role as a “political player.” The two competing approaches to judicial authority--activism and restraint--are also surveyed. The chapter ends with a case study on racial segregation, including the eventual judicial shift from Plessy v. Ferguson to Brown v. Board of Education.

LEARNING OBJECTIVES

After reading chapter 5, the student should be able to:

1. Diagram the federal court structure, noting the respective patterns of appellate and original jurisdiction.

2. Explain the operation of the U.S. Supreme Court and such related terms as "writ of certiorari" and "judicial review."
3. Outline the important stages of the Supreme Court’s history, noting key cases and their significance in each historical era.

4. Summarize the important internal and external limits operating on the Court.

5. Explain how and why the Court is such an important “political player” in the U.S. political system.

6. Distinguish between judicial activism and judicial restraint.

7. Understand the evolution of the Court and the political system’s treatment of racial segregation.

8. Explain the significance of the Court’s decision in Bush v. Gore vis-à-vis the 2000 presidential election.

OUTLINE

I. The Federal Court System

   A. U.S. District Courts. This is the base of the federal court system, the courts of original jurisdiction. Although there are 94 of them, the large volume of cases (almost 260,000) they handle has led to long delays in administering justice. Cases handled by these courts include civil rights issues and counterfeiting.

   B. Courts of Appeals. There are thirteen, which handle appeals from the district courts and from important regulatory commissions. Very few cases go beyond this level to the Supreme Court. One hundred seventy-nine circuit court judges handle almost 55,000 cases annually.

   C. Special Federal Courts. These courts were created by Congress to handle certain cases. The Claims Court deals with people’s
claims against government seizure of property, while the Court of Military Appeals, composed of three civilians, is the final judge of court-martial convictions.

D. Federal Judges. Nominated by the president and confirmed by the Senate. To preserve their impartiality, judges hold office for life, and can only be removed by impeachment. They cannot have their salaries reduced. Their appointments, however, are usually on a party basis. For example, 93 percent of LBJ’s appointments to federal judgeships were Democrats, whereas 93 percent of Richard Nixon’s were Republicans. Both Bush and Reagan selected many conservative judges, while Clinton made more liberal appointments, including two to the Supreme Court. Clinton appointed 373 federal judges by the end of his second term. Clinton appointed Ruth Bader Ginsburg in 1993 and Stephen G. Breyer in 1994 to the Supreme Court. Both have acted as a “brake” on the Court’s conservative tendencies. Ginsburg had a particularly vigorous dissent in the Court’s 2000 decision involving the stopping of the voting recount in Florida’s presidential election.

A majority of the Supreme Court has been appointed by Reagan and Bush. Reagan appointed the first woman to the Supreme Court, Sandra Day O’Connor, in 1981. Reagan also selected Anthony Kennedy, and Bush selected David Souter (conservatives later considered this a mistake). In addition, Senate confirmation hearings have become testier (Bork, Thomas), and this is likely to continue during the Bush Administration, given the pattern of divided government.

E. Jurisdiction. Refers to the matters over which a court may exercise its authority. The federal courts have jurisdiction over all disputes relating to the Constitution and treaties of the United States (jurisdiction assigned by the subject) and over all cases involving the United States as a party, two states or two citizens of separate states, ambassadors or a citizen of the United States
and a foreign citizen (jurisdiction assigned because of the parties). The courts have either exclusive jurisdiction or concurrent jurisdiction, which they share with state courts.

II. The United States Supreme Court

The membership includes one chief justice and eight associate justices (Congress can set by law the number of justices on the Supreme Court). A very small number of the total cases handled by the federal court system ever reach the Supreme Court. Of more than 10 million cases tried in American courts, only 7,400 petitions for review make it to the Supreme Court. Most cases appear only in the form of petitions for a writ of certiorari, which is an order of a higher to a lower court to send it the records of a case. The Court denies 85-90 percent of these petitions. The Court has both original and appellate jurisdiction.

A. The Final Authority? The Supreme Court is said to be the final authority, but a ruling may be reversed by a later Court ruling or by an amendment to the Constitution. (An 1895 Court decision striking down the federal income tax was reversed by the Sixteenth Amendment, which legalized that tax.) The Court also shares its power to interpret the constitution with the executive and legislative branches.

B. Early Years of the Court/Judicial Review and National Supremacy. In its first three years, no cases at all were brought to the Supreme Court. But two early decisions greatly increased the power of the Court. In Marbury v. Madison (1803) the Court invalidated an act of Congress for the first time, establishing the principle of judicial review; McCulloch v. Maryland (1819) held that the federal government is supreme within its sphere of powers. John Marshall, perhaps the Court’s greatest leader, was Chief Justice for both cases. In 1857, the Supreme Court invalidated the 1820 Missouri Compromise by its ruling in the
Dred Scott case. The ruling represented a major expansion of the court’s judicial powers.

C. **The Court After the Civil War.** Since the Civil War, the Court became both more active and more conservative in its response to the growth of government regulation of the economy. Many argue that the Court simply protected property rights of the rich and ignored public demands for government regulation. It continued to resist the expansion of state and federal regulatory power until 1937, when it was forced to leave the arena of economic policy making after a confrontation with Roosevelt. FDR also tried to “pack” the court, albeit unsuccessfully.

D. **The Modern Courts.** The Supreme Court today shows three major trends: (1) it has struck down much less legislation than did earlier Courts; (2) it has avoided protecting private property rights against government regulation; and (3) it has shown increased concern for the rights of individuals against the growing power of government. The Court has taken a leading role in eliminating racial discrimination, the reapportionment of election districts (Baker v. Carr), and in protecting the rights of criminal defendants (Miranda v. Arizona). The Burger Court, while less active than the Warren Court before it, made major decisions by legalizing abortion, allowing publication of the Pentagon Papers, allowing local communities to define obscenity, and restricting Affirmative Action programs. The Burger Court did leave the Miranda decision in place.

E. **The Rehnquist Court (1986- ).** The Rehnquist Court, although at first falling short of the hopes of Reagan conservatives for a sharp turn to the Right (it struck down conservative laws that allowed student-led prayers at high school football games and struck down another that banned partial-birth abortions), also overturned “liberal” laws (Boy Scouts hiring gay scoutmasters, the **Bush v. Gore** decision). However, in the 1995 term, the Court did move in a clear conservative decision in the areas of
race and religion (Rosenberger v. Rector and Visitors of University of Virginia), such as approving government funding for a religious activity. In the area of term limits, the Court ruled in 1998 that the president’s line-item veto authority was not constitutional (Clinton v. City of New York).

Other areas affected included limiting the power of Congress to regulate interstate commerce (United States v. Lopez), throwing out a congressional law that allowed victims of violence to sue in federal court against their assailants (U.S. v. Morrison), and ruling that the states were immune from suits brought under the Americans with Disabilities Act (University of Alabama v. Garrett). In short, the “focus of the Court seems to be on the federal government—including Congress—it views as too big, too powerful, and often, too incompetent.”

III. Strengths and Weaknesses of the Supreme Court

A. Internal Limits on the Court. The internal limits include the need for an actual case, the Court’s refusal to resolve political questions, the avoidance of constitutional issues whenever possible, and the tendency to follow precedent (stare decisis).

B. External Limits. These involved congressional powers to limit the Court’s jurisdiction and to approve Court nominees. With no army or bureaucracy to enforce its decisions, the Court’s authority rests with the other branches of the government and on all the political players accepting their opinions.

C. Strengths of the Court. Its enormous prestige, the fragmented nature of the American constitutional structure, and the legal profession (role of the ABA), which acts in large part as the court’s constituency, all add to the Court’s strengths. The court’s prestige is unquestionable. These supports and the Court’s self-limitations have preserved the unique tradition of
judicial review and the central importance of the Supreme Court in the political game.

IV. The Court as a Political Player

A. Introduction. The Court is a political as well as a legal institution; it makes decisions that set public policy. Its authority remains dependent on the acceptance of its decisions by other branches of the government and by the public. The Court cannot ignore the reactions to its decisions in Congress or in the nation.

B. Judicial Restraint Versus Judicial Activism. These are the two competing approaches to the use of judicial authority. Judicial restraint calls for the Court to play a passive role, allowing the other branches of government to lead the way in shaping policy. Judicial activism sees the Court as an active partner with the other branches in resolving problems facing the country. The Warren Court exemplified judicial activism. Judicial activism and restraint should not be confused with liberal vs. conservative. A recent example is the Rehnquist Court decisions limiting federal authority over the states and halting the vote count in the 2000 Florida election were seen as activist conservative reversals of liberal policies.

V. Case Study: Separate but Equal?

The Court’s role as a political player is revealed in the changing political forces surrounding the issue of racial segregation. After the Civil War, attempts were made by the radical Republicans, who controlled Congress, to guarantee Blacks full civil rights. Both the increasing power of the White South and Supreme Court rulings negated the civil rights laws. In the Plessy v. Ferguson decision in 1896, the Court approved the doctrine of “separate but equal,” thereby sanctioning legal segregation of the races through state “Jim Crow” laws. Although the court increasingly undercut the doctrine of segregation starting in the 1930s, it did not overrule Plessy until
1954 in Brown v. Board of Education. After this decision, the Court moved to encourage integration in a number of areas of American life and to support the civil rights movement. The Court’s tardiness in overruling Plessy, as well as its present reluctance to vigorously combat discrimination, reflects the larger political climate and the political limits in which the Court operates.

**KEY CHAPTER TERMS AND IDENTIFICATIONS**

- Article III of the Constitution
- State courts
- U.S. District Courts
- original and appellate jurisdiction
- U.S. Courts of Appeals or Circuit Courts of Appeal
- special federal courts
- U.S. Claims Court
- U.S. Court of Military Appeals
- Robert H. Bork
- Alcee Hastings
- Anita Hill and Clarence Thomas
- Chief Justice Earl Warren
- Sandra Day O’Connor, Ruth Bader Ginsburg
- Senatorial courtesy
- exclusive and concurrent jurisdiction
- Supreme Court of the United States
- writ of certiorari
- Dred Scott decision (1857) and Missouri Compromise (1820)
- Marbury v. Madison (1803) and judicial review
- McCulloch v. Maryland (1819) and national supremacy
- Chief Justice John Marshall
- States’ rights vs. federal powers
- FDR’s “court-packing scheme”
- reapportionment
- Baker v. Carr (1962)
- Miranda v. Arizona (1966)
Pentagon Papers
“political questions”
Burger Court
Rehnquist Court
Rosenberger v. Rector of University of Virginia (1995)
Clinton v. City of New York (1997)
University of Alabama v. Garrett (2001)
Dickerson v. United States (2000)
“Political Questions”
precedent or stare decisis
Judicial Restraint vs. Judicial Activism
Court’s prestige
ABA
Thirteenth, Fourteenth, and Fifteenth Amendments
Jim Crow laws, “Sundown Ordinances”
Plessy v. Ferguson (1896)
Brown v. Board of Education (1954)

TEACHING SUGGESTIONS

1. Review the backgrounds and judicial philosophies of the nine current justices of the Supreme Court. Ask members of the class to consider which justices comprise the “liberal faction” and which justices belong to the “conservative” coalition. Then, examine a couple of current Supreme Court rulings to demonstrate how the Court’s internal fragmentation, especially the recent 5-4 divisions, affected these rulings.

2. Arrange a debate between two student teams regarding the merits and demerits of judicial activism versus judicial restraint. Make sure both liberals and conservatives are represented on both sides. The students can prepare short briefing papers on the two judicial philosophies, which may be distributed to other members of the class prior to the
debate. The teams may wish to use Bush v. Gore as part of their presentations.

SUGGESTED RESEARCH ASSIGNMENTS

1. Ask a panel of students to research the kinds of pressures placed upon Supreme Court nominees when they undergo Senate confirmation. The students can research those “rejected” examples, such as Bork and Carswell, controversial nominees such as Clarence Thomas, and successful nominees such as Sandra Day O’Connor or Clinton’s 1994 choice, Stephen Breyer.

2. Divide the class into three sub-groups. Let one group prepare an oral report on the current Court’s attitude toward federalism. Another group can report on the latest rulings affecting civil rights while a third group can handle cases affecting police powers.

MULTIPLE-CHOICE QUESTIONS

1. The following federal courts were established by the Constitution
   a. the Courts of Appeals
   b. the United States District Courts
   c. the Supreme Court
   d. all of the above

2. There are _____ United States district courts.
   a. ninety-four
   b. up to 15
   c. 11 (plus one in Washington, D.C.)
   d. 179
3. Judicial review is
   a. the power to declare acts of any state or local government unconstitutional.
   b. the power to declare laws of any state or local government unconstitutional.
   c. the power to strike down acts of any branch of the federal government.
   d. all of the above

4. Which case established the principle of national supremacy?
   a. Roe v. Wade
   b. McCulloch v. Maryland
   c. Marbury v. Madison
   d. Brown v. Board of Education

5. The following insulates judges from political pressures
   a. they are not allowed to vote in federal elections
   b. appointment for life
   c. their salaries cannot be reduced
   d. both b and c are correct

6. The Special Federal Courts
   a. were created by the military to court-martial soldiers.
   b. addresses “civil rights” cases only.
   c. are known for showing “judicial restraint.”
   d. were created by Congress to deal with people’s claims against government seizure of property.

7. The Warren Court’s Baker v. Carr decision dealt with
   a. apportionment.
   b. abortion rights.
   c. segregation.
   d. Affirmative Action.
8. The first woman appointed to the Supreme Court was
   b. Anita Hill.
   c. Sandra Day O'Connor.
   d. Madeline Albright.

9. Congress has the right to impose which of the following limits on the Court?
   a. It can set when and how often the court will meet
   b. It can establish the number of justices
   c. It can limit the Court’s jurisdiction
   d. all of the above

10. Senatorial courtesy
    a. gives a senator a role in appointing judges.
    b. means that questioning judicial nominees follows committee seniority.
    c. played a role in confirming judges in the nineteenth century, but is no longer practiced.
    d. is a judicial theory expounded on by Warren Burger.

11. Judicial activism
    a. is closely identified with the Warren court.
    b. views the court as an active participant in shaping government policy.
    c. may result in conservative as well as liberal positions.
    d. all of the above

12. The case of **Plessy v. Ferguson** upheld
    a. racial segregation.
    b. states' rights.
    c. habeas corpus.
    d. none of the above
13. Which Chief Justice is considered the most influential in U.S. history?
   a. William Rehnquist
   b. Roger B. Taney
   c. John Marshall
   d. John Jay

   a. invalidated the Missouri Compromise.
   b. upheld the Wilmot Proviso.
   c. declared the “one man, one vote” rule.
   d. challenged the right to own slaves.

   a. is an example of a voting rights case.
   b. is an example of a racial discrimination case.
   c. is an example of a criminal defendant case.
   d. is an example of a states’ right case.

16. Who appointed the second female justice?
   a. George Bush
   b. Ronald Reagan
   c. Bill Clinton
   d. Jimmy Carter

17. Considered the “least dangerous branch of government,” the Supreme Court derives its influence from
   a. the fragmented nature of the American constitutional structure.
   b. the legal profession.
   c. being able to use the police to enforce the law.
   d. a and b only
18. Between 1900 and the mid-1930s, the Supreme Court exercised judicial review primarily in what kinds of cases?
   a. economic regulatory cases  
   b. civil liberties  
   c. separation of powers  
   d. racial discrimination

19. Judicial activism
   a. was the philosophy that guided Oliver Wendell Holmes Jr.  
   b. was rejected by the Warren Court.  
   c. is the idea that the Courts should play a central role in shaping government policy.  
   d. all of the above

20. In United States v. Lopez, the Court
   a. legalized betting on horse races.  
   b. limited Congress’ ability to regulate interstate commerce.  
   c. established judicial review.  
   d. limited states' rights to set term limits.

21. If an individual took a civil rights case to a U.S. District Court and lost, he or she could appeal the case to the next level in the federal court structure, which would be the
   a. U.S. Supreme Court.  
   b. U.S. Court of Appeals.  
   c. U.S. Court of Military Appeals.  
   d. U.S. Claims Court.

22. Robert H. Bork is significant because
   a. he was the first African American nominated to the Supreme Court.  
   b. he was a longtime advocate of judicial activism.  
   c. he was defeated in a bitter battle over the ideological composition of the Court.  
   d. he was the last non-lawyer to serve on the Supreme Court.
23. Of the more than 10 million cases tried every year in American courts, how many petitions for review make it to the Supreme Court?
   a. about 500,000
   b. about 7,400
   c. about 1,000
   d. about 25

24. “Court-packing” refers to
   a. appointing only judges of your party to the bench.
   b. intimidating judges by filling the court with rowdy observers.
   c. the occasion when the judges rule on more cases than the norm.
   d. none of the above

25. In Plessy v. Ferguson, the Supreme Court ruled that
   a. segregation was related to the superiority of the White race.
   b. slaves were property and therefore had no rights under the Constitution.
   c. segregation was in and of itself contrary to the Fourteenth Amendment.
   d. none of the above

26. The Supreme Court case of Dickerson v. United States (2000) dealt with
   a. the Miranda ruling
   b. the Pentagon Papers
   c. Roe v. Wade
   d. United States v. Nixon

27. President Clinton appointed the following justices
   a. Thomas and Souter
   b. Ginsburg and Thomas
   c. Ginsburg and Scalia
   d. Ginsburg and Breyer
28. The Rehnquist Court has recently limited
   a. federal powers to regulate abortion.
   b. federal powers to regulate interstate commerce.
   c. federal powers to set term limits.
   d. anyone’s right to burn flags.

29. The doctrine of political questions
   a. was established by William Howard Taft.
   b. cannot be reversed once it has been applied to a case.
   c. allowed the courts to avoid ruling on President Bush’s use of
      force against Iraq.
   d. none of the above

30. The United States has approximately how many lawyers?
   a. half a million
   b. almost one million
   c. two million
   d. three million

TRUE-FALSE QUESTIONS

1. The Sixteenth Amendment overturned a Supreme Court holding that the property tax was unconstitutional.

2. Under the doctrine of precedent, the Supreme Court cannot overturn earlier decisions.

3. Though there are up to 15 judges on an appeals court, only three usually hear each case.

4. The doctrine of “national supremacy” is found in the Preamble to the Constitution.

5. A writ of certiorari is an order to any lower court to send the entire record of a case to a higher court for review.
6. There have always been nine judges on the Supreme Court.

7. Partisanship never plays a role in appointing judges.

8. The most active Supreme Court terms were the first years of the Republic because the Court had to rule on a large number of “separation of powers” cases.

9. Political conservatives are in favor of judicial restraint.

10. The Supreme Court is a political institution that sets national policy by interpreting the law.

ESSAY QUESTIONS

1. In what ways is the federal court system responsive to political issues? In what ways is it shielded from political pressures?

2. Discuss the relationship between judicial activism and judicial restraint, and liberalism and conservatism. How do the Warren and Rehnquist Courts conform to these terms?

3. Discuss the role that partisanship plays in appointing and confirming judges.

4. The author claims that the Supreme Court is “clearly the weakest of the three branches.” Has the court gotten “weaker” or stronger in recent years? Explain.

5. Is there evidence that the overturning of the “separate but equal” doctrine in Brown v. Board of Education was not a sudden reversal? Discuss, citing historical details.

6. What was the historic significance of Bush v. Gore? Why did Justice
Stevens argue that the decision harmed the nation’s confidence in judges?

7. Which Supreme Court Justices have disappointed those presidents who originally appointed them? Cite some specific examples.

8. From a historical perspective, why does the author assert that “one of the ironies of American democracy is that the least democratic branch is also the most popular”?

9. What was the legal significance of the following recent rulings by the Rehnquist Court—(a) Clinton v. City of New York; (b) U.S. v. Morrison; (c) University of Alabama v. Garrett?

10. Why and how does the Supreme Court avoid “political questions”?