CHAPTER 16
THE FEDERAL COURTS

CHAPTER OUTLINE

I. Politics in Action: Appealing to the Supreme Court (pp. 509–510)
   A. The Supreme Court has considerable power.
   B. The Supreme Court makes only the tiniest fraction of American judicial policy.

II. The Nature of the Judicial System (pp. 510–513)
   A. Introduction
      1. In criminal law cases, an individual is charged by the government with violating a specific law.
      2. Civil law involves no charge of criminality, but concerns a dispute between two parties.
   B. Participants in the Judicial System
      1. Litigants
         a. Every case is a dispute between a plaintiff and a defendant.
         b. **Standing to sue** means that litigants must have serious interest in a case.
         c. **Class action suits** permit a small number of people to sue on behalf of all other people similarly situated.
         d. **Justiciable disputes** are issues that are capable of being settled by legal methods.
      2. Groups sometimes try to influence courts by using particular cases and litigants and **amicus curiae briefs**.
      3. Attorneys

III. The Structure of the Federal Judicial System (pp. 513–518)
   A. Introduction
      1. Congress has created **constitutional courts** (lower federal courts) and **legislative courts** (courts for specialized purposes).
      2. Courts with **original jurisdiction** are those in which a case is heard first, usually in a trial.
      3. Courts with **appellate jurisdiction** hear cases brought to them on appeal from a lower court.
   B. District Courts
      1. The entry point for most litigation in the federal courts is one of the 91 **district courts**.
      2. Most of the cases handled in the district courts are routine.
   C. Courts of Appeal
      1. The U.S. **courts of appeal** are appellate courts empowered to review all final decisions of district courts.
2. The courts of appeal focus on correcting errors of procedure and law that occurred in the original proceedings of legal cases.

D. The Supreme Court
1. The pinnacle of the American judicial system is the U.S. **Supreme Court**.
2. Almost all of the business of the Court comes from the appellate process.

IV. The Politics of Judicial Selection (pp. 518–522)

A. The Lower Courts
1. According to **senatorial courtesy**, nominations for lower court positions are not confirmed when opposed by a senator of the president's party from the state in which the nominee is to serve.
2. The president usually has more influence in the selection of judges to the federal courts of appeal than to the federal district courts.

B. The Supreme Court
1. Nominations to the Court may be a president's most important legacy to the nation.
2. The president operates under fewer constraints in nominating members to the Supreme Court.
3. Nominations may run in to trouble at the end of a president’s term or when the president’s party is in the minority in the Senate.

V. The Background of Judges and Justices (pp. 522–526)

A. Judges serving on the federal district and circuit courts are all lawyers and overwhelmingly white males.
B. Supreme Court justices are an elite group.
C. Ideology is important in the selection of judges and justices.

VI. The Courts as Policymakers (pp. 526–533)

A. Accepting Cases
1. The most common way for the Court to put a case on its docket is by issuing to a lower federal or state court a **writ of certiorari**, a formal document that calls up a case.
2. The **solicitor general** is in charge of the appellate court litigation of the federal government.

B. Making Decisions
1. **Amicus curiae** ("friend of the court") briefs are briefs from parties who are interested in the outcome of the case but are not formal litigants.
2. An **opinion** is a statement of the legal reasoning behind the decision.
3. The vast majority of cases reaching the courts are settled on the principle of **stare decisis**, meaning that an earlier decision should hold for the case being considered.
4. All courts rely heavily upon **precedent**, the way similar cases were handled in the past, as a guide to current decisions.
5. **Original intent** holds that judges and justices should determine the intent of the framers of the Constitution regarding a particular matter and decide cases in line with that intent.
C. Implementing Court Decisions
   1. Judicial implementation refers to how and whether court decisions are
      translated into actual policy, affecting the behavior of others.
   2. Implementation of court decisions involves interpreting, implementing,
      and consumer populations.

VII. The Courts and the Policy Agenda (pp. 533–537)
   A. A Historical Review
         a. In Marbury v. Madison (1803), Chief Justice Marshall established
            the power of judicial review, the power of the courts to hold acts
            of Congress, and by implication the executive, in violation of the
            Constitution.
      2. The "Nine Old Men"
      3. The Warren Court
      4. The Burger Court
         a. The Burger Court was more conservative than the liberal Warren
            Court.
         b. In United States v. Nixon (1974), the Burger Court ordered
            President Nixon to turn over White House tapes to the courts.
      5. The Rehnquist Court

VIII. Understanding the Courts (pp. 537–541)
   A. The Courts and Democracy
   B. What Courts Should Do: The Scope of Judicial Power
      1. Judicial restraint is when judges adhere closely to precedent and play
         minimal policymaking roles.
      2. Judicial activism is when judges make bolder policy decisions, even
         charting new constitutional ground.
      3. The doctrine of political questions is a means to avoid deciding some
         cases, principally those regarding conflicts between the president and
         Congress.
      4. If an issue is one of statutory construction, in which a court interprets an
         act of Congress, the legislature routinely passes legislation that clarifies
         existing laws.

IX. Summary (pp. 541–542)

LEARNING OBJECTIVES

After studying Chapter 16, you should be able to:

1. Understand the nature of the judicial system.
2. Explain the organization of courts in the United States and the nature of their
   jurisdiction.
3. Describe the role of judges in the judicial process, as well as their backgrounds and how they were selected.

4. Discuss Supreme Court policymaking and judicial implementation.

5. Explain the role of the courts in shaping the policy agenda in America.

6. Evaluate how the courts operate in a democratic system and how their activities affect the scope of government.

The following exercises will help you meet these objectives:

Objective 1: Understand the nature of the judicial system.

1. Explain the difference between criminal law and civil law.

   Criminal Law:

   Civil Law:

2. List three regular participants in the judicial system other than judges.

   1.

   2.

   3.

3. What are justiciable disputes?
Objective 2: Explain the organization of courts in the United States and the nature of their jurisdiction.

1. What are the differences between constitutional courts and legislative courts?

   Constitutional Courts:

   Legislative Courts:

2. Complete the following table on the structure of the federal judicial system.

<table>
<thead>
<tr>
<th>Court</th>
<th>Number of Courts</th>
<th>Number of Judges</th>
<th>Jurisdiction</th>
<th>Policy Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court of Appeal</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Supreme Court</td>
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</tbody>
</table>

3. What is the role of a U.S. attorney?

Objective 3: Describe the role of judges in the judicial process, as well as their backgrounds and how they were selected.

1. Explain the practice of senatorial courtesy.

2. Name three conditions under which nominations to the Supreme Court are more likely to run into trouble.

   1.
   2.
   3.
3. Present a demographic profile of the "typical" federal judge.

4. List six criteria that have been important in choosing Supreme Court justices over the years.
   1. 
   2. 
   3. 
   4. 
   5. 
   6. 

Objective 4: Discuss Supreme Court policymaking and judicial implementation.

1. What are the four key functions of the solicitor general?
   1. 
   2. 
   3. 
   4. 

2. What are the functions of *amicus curiae* briefs?

3. What are the differences between a majority opinion, a dissenting opinion, and a concurring opinion?

   Majority Opinion:

   Dissenting Opinion:

   Concurring Opinion:
4. What is the difference between *stare decisis* and precedent?

*Stare Decisis:*

Precedent:

5. List and explain the three elements of judicial implementation according to Charles Johnson and Bradley Canon.

1.

2.

3.

Objective 5: Explain the role of the courts in shaping the policy agenda in America.

1. Explain the principle of judicial review.
2. Complete the following table on public policy and the Supreme Court.

<table>
<thead>
<tr>
<th>Court</th>
<th>Basic Ideology</th>
<th>Judicial Restraint or Judicial Activism</th>
<th>Key Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Court</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Burger Court</td>
<td></td>
<td></td>
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<tr>
<td>Rehnquist Court</td>
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</tbody>
</table>

Objective 6: Evaluate how the courts operate in a democratic system and how their activities affect the scope of government.

1. In what ways might it be said that courts are not a very democratic institution?

2. Explain the difference between judicial activism and judicial restraint.

   Judicial Activism:

   Judicial Restraint:
3. Define the terms "political question" and "statutory construction" as they apply to the Supreme Court and give an example of each.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Question</td>
<td></td>
<td></td>
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<tr>
<td>Statutory Construction</td>
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</tbody>
</table>

**KEY TERMS**

*Identify and describe:*

- standing to sue
- class action suits
- justiciable disputes
- *amicus curiae* briefs
- original jurisdiction
- appellate jurisdiction
- district courts
courts of appeal

Supreme Court

senatorial courtesy

solicitor general

opinion

stare decisis

precedent

judicial implementation

original intent

Marbury v. Madison

judicial review

United States v. Nixon
judicial restraint

judicial activism

political questions

statutory construction

Compare and contrast:

standing to sue and class action suits

original jurisdiction and appellate jurisdiction

district courts, courts of appeal, and Supreme Court

stare decisis and precedent

Marbury v. Madison and judicial review

judicial restraint and judicial activism

political questions and statutory construction
Name that term:

1. These are capable of being settled by legal methods.

_________________________

2. This is a way of disposing of state-level federal judicial nominations.

_________________________

3. This office represents the government before the Supreme Court.

_________________________

4. Interested parties who are not litigants submit these.

_________________________

5. This is a statement of the legal reasoning behind a Supreme Court decision.

_________________________

6. This determines how and whether court decisions are translated into policy.

_________________________

7. This is sometimes referred to as strict constructionism.

_________________________

8. This Supreme Court case hastened the resignation of a president.

_________________________

9. This doctrine is used to avoid deciding some cases.

_________________________
USING YOUR UNDERSTANDING

1. Investigate the composition of the current Supreme Court in terms of the different types of individuals that are found there. Find out who appointed them, their political party affiliations, their ages, their ethnicities, their religions, their home states, their previous occupations, and other such defining characteristics. Then see if you can find out how the different justices voted on some recent court cases having to do with public policy issues. Try to develop a profile of the Supreme Court in which you relate the characteristics of its members to their voting behaviors. Briefly discuss the implications of a justice's background for the way he or she behaves on the bench.

2. Conduct a study of judicial selection by comparing the two Supreme Court nominations from the Clinton administration (Ruth Bader Ginsburg and Stephen G. Breyer) with the two nominations from the George W. Bush administration (Samuel A. Alito and John G. Roberts). How do Bush’s choices differ from Clinton’s choices? How did the nominations differ? What were the most important factors influencing the presidents' choices? Who else was considered as a potential nominee by each president, and why were the successful candidates chosen instead of any of the others? How did the public react to the nominations? How did the Senate react to the nominations? Compare the confirmation hearings of the nominees. How did they differ and how were they similar? Evaluate the judicial selection process for Supreme Court justices in light of these cases. Is the process fair? How might the process be improved?

MULTIPLE CHOICE QUESTIONS

Circle the correct answer:

1. One of the differences between criminal law and civil law is that in civil law
   a. there is no charge that a law has been violated.
   b. there is no jury.
   c. the case cannot be appealed.
   d. the government cannot be one of the litigants.
   e. common law takes precedent over statutory law.

2. Standing to sue is determined by
   a. the judiciary committee of Congress.
   b. whether or not the case involves a class action suit.
   c. the solicitor general's office.
   d. whether or not the litigants have a serious interest in a case.
   e. a court-appointed jury.
3. One constraint on federal courts is that they may decide only
   a. statutory law.
   b. appellate cases.
   c. justiciable disputes.
   d. constitutional issues.
   e. interstate conflicts.

4. The Tax Court, Court of Military Appeals, Court of Claims, and Court of International Trade are examples of
   a. Legislative courts
   b. Appellate courts
   c. Supreme courts
   d. Independent regulatory commissions
   e. Courts of appeal

5. ______ courts are the only federal courts in which trials are held and in which juries may be impaneled.
   a. District
   b. Appellate
   c. Supreme
   d. Legislative
   e. Specialized

6. For handling cases at the courts of appeal level, the United States is divided into ______ judicial circuits, including one for the District of Columbia.
   a. 55
   b. 26
   c. 12
   d. 51
   e. 91

7. Which of the following statements about the Supreme Court is FALSE?
   a. Congress has altered the size of the Supreme Court many times.
   b. The Constitution sets the number of Supreme Court justices at nine.
   c. In 1866, Congress reduced the size of the Court from 10 to seven so that Andrew Johnson could not nominate new justices to fill vacancies.
   d. Congress increased the size of the Court to nine during President Grant’s administration because it was confident that he would nominate judges that Congress approved of.
   e. All of the above are false.
8. The customary manner in which the Senate disposes of federal judicial nominations in one state is through
   a. the seniority system.
   b. senatorial courtesy.
   c. majority vote, usually along party lines.
   d. judicial review.
   e. state's review.

9. Usually more than 90 percent of presidents' judicial nominations are members of
   a. the Department of Justice.
   b. law school faculties.
   c. state legislatures.
   d. their own party.
   e. Congress.

10. A *writ of certiorari*
    a. means that judges have decided a case on the basis of precedent.
    b. frees a detained person whom a court has found is being held in violation of due process.
    c. is used by the Supreme Court to call up a case.
    d. is the official record of a court's decision, stating the facts of the case and the rationale for the decision.
    e. is used to move a case from a court of original jurisdiction to a federal district court.

11. A *per curiam* decision is a
    a. decision without explanation.
    b. decision by the court not to hear a case.
    c. written opinion of a case.
    d. decision that can be used as a precedent.
    e. court decision of narrow scope that can be issued by a single judge in limited circumstances.

12. Original intent suggests
    a. the Constitution should be interpreted according to the intent of the Framers.
    b. the decision must stand.
    c. the content of an opinion is as important as the decision.
    d. all Supreme Court nominees must not be opposed.
    e. plaintiffs must have a serious interest in a case.
13. Judicial review means
   a. the right of the Congress to determine whether a decision of the Supreme Court is or is not Constitutional.
   b. the power to remove Supreme Court justices from the bench if deemed unfit to retain office.
   c. the right of the president to determine whether a decision of the Supreme Court is or is not constitutional.
   d. the right of the courts to determine the constitutionality of acts of the legislature and/or the executive.
   e. the solicitor general's oversight of the courts to make sure that rulings are uniform nationwide and that procedural due process is being followed by all courts.

14. The Rehnquist Court
   a. slowly chipped away at liberal decisions.
   b. was deeply divided between liberals and conservatives, and personality conflicts have added to a court in turmoil.
   c. created a revolution in constitutional law.
   d. was a disappointment to conservatives.
   e. went further to shape public policy than the Warren Court.

15. In *Federalist*, No. 78, Hamilton argued that the judiciary would
   a. be the most dangerous branch.
   b. be the least dangerous branch.
   c. control the purpose.
   d. control the sword.
   e. both c and d.

16. Advocates of _______ emphasize that the courts may alleviate pressing needs, especially of those who are weak politically or economically, left unmet by the majoritarian political process.
   a. judicial activism
   b. the jurisprudence of original intent
   c. judicial restraint
   d. judicial implementation
   e. judicial review

17. As a means to avoid deciding some cases, the federal courts have developed a doctrine of
   a. judicial precedent.
   b. strict constructionism.
   c. statutory construction.
   d. judicial activism.
   e. political questions.