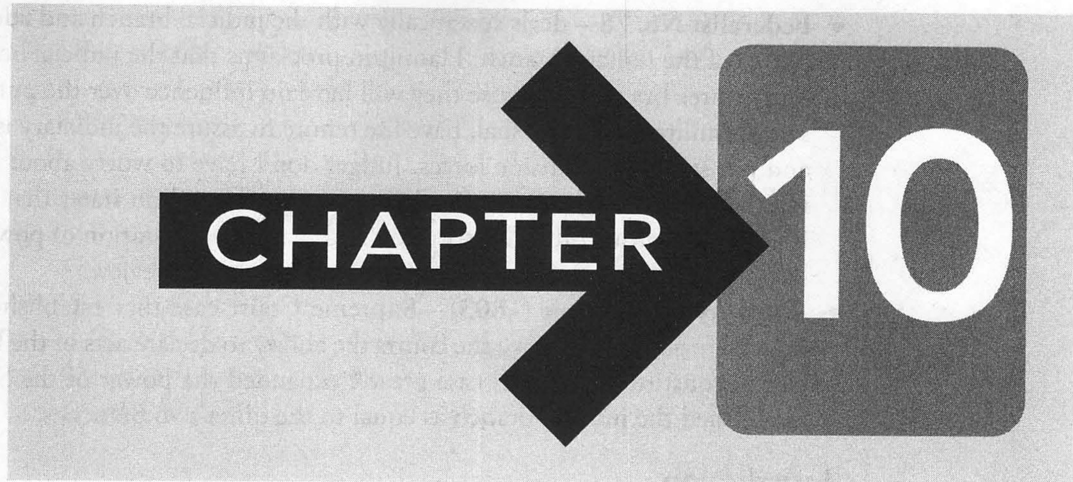

The National Judiciary

IN THIS CHAPTER

Summary: The United States has a dual system of courts—a federal court system and the court systems of each of the 50 states. Under the Articles of Confederation, there was no national court system. State courts had the sole power to interpret and apply laws. This weakness led to Article III of the Constitution, which states that there shall be one Supreme Court and that Congress may establish a system of inferior courts.

Key Terms

Article III
Federalist No. 78
Marbury v. Madison
jurisdiction
original jurisdiction
appellate jurisdiction
concurrent jurisdiction
constitutional courts
district courts
Courts of Appeals
legislative courts
Supreme Court
senatorial courtesy
rule of four
brief orders
writ of certiorari
certificate
brief
amicus curiae briefs
majority opinion
concurring opinion
dissenting opinion
precedents
stare decisis
executive privilege
judicial activism
judicial restraint
loose constructionist
strict constructionist

The Federal Court System

Foundation for Powers

- **Article III**—establishes the Supreme Court and gives Congress the power to establish the lower (inferior) courts, provides that judicial compensation cannot be lowered during tenure, provides **jurisdiction** of the courts, and addresses treason and its punishment.

- **Federalist No. 78**—deals specifically with the judicial branch and addresses the scope of power of the judicial branch; Hamilton proclaims that the judicial branch is the weakest of the three branches because they will have no influence over the purse (funding) or the sword (military). Judges shall have life tenure to assure the judiciary is truly independent and not swayed by outside forces. Judges don't have to worry about reelection or pleasing the other branches to retain their positions. Hamilton states that the judicial branch is created to protect the Constitution and maintain separation of powers and checks and balances. Hamilton even hints at the power of judicial review.
- ***Marbury v. Madison* (1803)**—Supreme Court case that established the principle of judicial review, which gave the courts the ability to declare acts of the legislature or executive unconstitutional. This case greatly expanded the power of the Supreme Court and established the judicial branch as equal to the other two branches.

Jurisdiction

Jurisdiction is the authority of the courts to hear certain cases. Under the Constitution, federal courts have jurisdiction in cases involving federal law, treaties, and the interpretation of the Constitution.

- ***original jurisdiction***—Lower courts have the authority to hear cases for the first time; in the federal system district courts and the Supreme Court (in a limited number of cases) have original jurisdiction where trials are conducted, evidence is presented, and juries determine the outcome of the case.
- ***appellate jurisdiction***—Courts that hear reviews or appeals of decisions from the lower courts; Courts of Appeals and the Supreme Court have appellate jurisdiction.
- ***concurrent jurisdiction***—Allows certain types of cases to be tried in either the federal or state courts.

Structure of the Judicial System

The federal judicial system consists of constitutional courts and legislative courts. **Constitutional courts** are the federal courts created by Congress under Article III of the Constitution and the Supreme Court. Also included are the **district courts**, **Courts of Appeals**, Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade. Congress has created special or **legislative courts** (Territorial Courts, U.S. Tax Court, U.S. Court of Appeals for the Armed Forces) to hear cases arising from the powers given to Congress under Article I. These legislative courts have a narrower range of authority than the constitutional courts.

District Courts

Congress, under the Judiciary Act of 1789, created the district courts to serve as trial courts at the federal level. Every state has at least one district court; larger states may have several, with Washington D.C., and Puerto Rico each having one court. There are currently 94 districts. The district courts have original jurisdiction; they do not hear appeals. District courts decide civil and criminal cases arising under the Constitution and federal laws or treaties. More than 80% of all federal cases are heard in the district courts.

Courts of Appeals

Congress created the Courts of Appeals in 1891 to help lessen the work load of the Supreme Court. The Courts of Appeals decide appeals from U.S. district courts and review decisions of federal administrative agencies. There are 13 U.S. Courts of Appeals. The states are

divided into circuits, or geographic judicial districts. There is also a circuit for Washington, D.C., and a Federal Circuit, which hears cases involving federal agencies. The Courts of Appeals have appellate jurisdiction only; they may only review cases already decided by a lower court. A panel of judges decides cases in the Courts of Appeals.

Supreme Court

The only court actually created directly by the Constitution is the **Supreme Court.** It is the highest court in the federal judicial system. It is the final authority in dealing with all questions arising from the Constitution, federal laws, and treaties. The Supreme Court has both original and appellate jurisdiction. Most of the cases heard in the Supreme Court are on appeal from the district and appellate courts of the federal judicial system; however, cases may come to the Supreme Court from state Supreme Courts, if a federal law or the Constitution is involved. The U.S. Supreme Court may also hear cases of original jurisdiction if the cases involve representatives of a foreign government, or certain types of cases where a state is a party.

The decisions of the Supreme Court may have a strong impact on social, economic, and political forces in our society. Congress establishes the size of the Supreme Court, having the power to change the number of justices. The current size of the Supreme Court was set in 1869. Today, the Supreme Court consists of nine judges—eight associate justices and one chief justice. They are all nominated by the president and confirmed by the Senate.

Judicial Selection

The president appoints federal judges, with confirmation by the Senate. Under the Constitution, there are no formal qualifications for federal judges. Federal judges serve "during good behavior," which generally means for life. The notion of the life term was to allow judges to be free from political pressures when deciding cases. Federal judges may be removed from office through impeachment and conviction.

Lower Courts

Because of the large number of appointments made to the lower courts, the Department of Justice and White House staff handle most of these nominations. **Senatorial courtesy**, the practice of allowing individual senators who represent the state where the district is located to approve or disapprove potential nominees, has traditionally been used to make appointments to the district courts. Because the circuits for the Courts of Appeals cover several states, individual senators have less influence and senatorial courtesy does not play a role in the nomination process. The Senate tends to scrutinize appeals court judges more closely, since they are more likely to interpret the law and set precedent.

Supreme Court

The higher visibility and importance of the Supreme Court demands that the president give greater attention to the nomination of Supreme Court justices. Presidents only make appointments to the Supreme Court if a vacancy occurs during their term of office. When making appointments, presidents often consider:

- *party affiliation*—Choosing judges from their own political party.
- *judicial philosophy*—Appointing judges who share their political ideology.

- *race, gender, religion, region*—Considering these criteria may help bring balance to the court or satisfy certain segments of society.
- *judicial experience*—Previous judicial experience as judges in district courts, Courts of Appeals, state courts.
- *"litmus test"*—A test of ideological purity toward a liberal or conservative stand on certain issues such as abortion.
- *acceptability*—Noncontroversial and therefore acceptable to members of the Senate Judiciary Committee and the Senate.
  - — American Bar Association—The largest national organization of attorneys; often consulted by presidents; rates nominees' qualifications.
  - — interest groups—May support or oppose a nominee based on his or her position on issues of importance to the interest group; use lobbyists to pressure senators.
  - — justices—Endorsements from members of the Supreme Court may help a nominee.

Background of Judges

Almost all federal judges have had some form of legal training, have held positions in government, or have served as lawyers for leading law firms, as federal district attorneys, or as law school professors. Some federal judges have served as state court judges. Until recently, few African Americans, Hispanics, or women were appointed as judges to the lower federal courts. Lyndon Johnson appointed the first African American, Thurgood Marshall, to the Supreme Court; Ronald Reagan appointed the first woman, Sandra Day O'Connor.

The Court at Work

The term of the Supreme Court begins on the first Monday in October and generally lasts until June or July of the following year.

Accepting Cases

Thousands of cases are appealed to the Supreme Court every year; only a few hundred cases are actually heard. Most of the cases are denied because the justices either agree with the lower court decision or believe that the case does not involve a significant point of law. Cases that are accepted for review must pass the **rule of four**—four of the nine justices must agree to hear the case. Many of the cases accepted may be disposed of in **brief orders**—returned to the lower court for reconsideration because of a related case that was recently decided. Those cases presented to the Supreme Court for possible review may be appealed through:

- ***writ of certiorari***—An order by the Court (when petitioned) directing a lower court to send up the records of a case for review; usually requires the need to interpret law or decide a constitutional question.
- ***certificate***—A lower court may ask the Supreme Court about a rule of law or procedures in specific cases.

Briefs and Oral Arguments

Once a case reaches the Supreme Court, lawyers for each party to the case file a written **brief**. A brief is a detailed statement of the facts of the case supporting a particular position by presenting arguments based on relevant facts and citations from previous cases. Interested

the case claimed that racial segregation resulted in inferior facilities, accommodations, and treatment of their children.

The lower courts ruled in favor of the Board of Education, based on the prior ruling of *Plessy v. Ferguson*, a case that upheld state laws requiring segregated transportation on trains. When the case was appealed to the U.S. Supreme Court, the Court ruled that segregation of whites and blacks in school was indeed unconstitutional, as it was harmful to black students.

This ruling ignored the legal doctrine of stare decisis, which requires judges to uphold prior rulings of higher courts. Instead of relying on the ruling in *Plessy v. Ferguson*, which was a similar case, the Supreme Court overruled it.

Judicial Restraint

The philosophy of **judicial restraint** holds that the Court should avoid taking the initiative on social and political questions, operating strictly within the limits of the Constitution (**strict constructionist**) and upholding acts of Congress unless the acts clearly violate specific provisions of the Constitution. Judicial restraint involves only a limited use of judicial powers and advocates the belief that the Court should be more passive, allowing the executive and legislative branches to lead the way in policymaking.

Examples of judicial restraint include *Dred Scott v. Sandford* (1857), which declared that slaves were not protected by the Constitution and could never become citizens, and *Plessy v. Ferguson* (1896), which upheld the constitutionality of "separate but equal," preserving segregation.

Checks on the Supreme Court

The Supreme Court plays a very important role in our government. It is the highest court in the land, the court of last resort. Through the power of judicial review, it plays a vital role in providing for limited government. It protects civil rights and liberties by striking down laws that violate the Constitution.

The Supreme Court is also subject to limitations under the system of checks and balances:

- The president nominates and the Senate can approve or reject Supreme Court justices, which impacts the ideological makeup of the court and affects its rulings
- The Supreme Court lacks the ability to enforce its rulings. The president or the states can ignore the ruling.
- Congress has the power to write new legislation which can clarify a law and modify the impact of the Court's decision
- Congress has the power to propose constitutional amendments which, if approved by the states, can undo Supreme Court decisions
- Congress has the authority to create courts inferior to the Supreme Court
- Congress has the authority to establish jurisdiction of courts which can affect the Court's ability to hear certain types of cases
- Congress may alter the size of the Supreme Court, changing the balance of power within the Court
- The House of Representatives can impeach federal judges and the Senate, after conducting a trial of impeachment, can remove a judge from a federal court
- The Supreme Court cannot initiate judicial review of legislation. The Court is required to wait until a party who has been directly and significantly injured by the legislation challenges its constitutionality.

› Review Questions

Multiple-Choice Questions

1. Under the guidelines of the Constitution, which of the following is NOT within the jurisdiction of the federal courts?
   (A) cases involving federal law
   (B) cases involving interpretation of state constitutions
   (C) cases involving interpretation of the federal Constitution
   (D) treaties

2. Federal courts created by Congress under Article III of the Constitution include the Supreme Court, district courts, the Courts of Appeals, Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade. These courts can best be described as
   (A) legislative courts
   (B) territorial courts
   (C) constitutional courts
   (D) original courts

3. When making an appointment to the Supreme Court, presidents
   (A) remain impartial by refusing candidate endorsements from members of the Supreme Court
   (B) often select a candidate who is neither decidedly liberal or conservative
   (C) tend to ignore race as a consideration for selecting a judge
   (D) tend to choose judges from their own political party

4. Which of the following best describes the formal qualifications for a federal judge?
   (A) They serve "during good behavior."
   (B) The president appoints them with the approval of the House of Representatives.
   (C) They serve at the discretion of the president.
   (D) They serve at the discretion of the Congress.

5. Which of the following has little bearing when the president makes an appointment to the Supreme Court?
   (A) party affiliation
   (B) judicial philosophy
   (C) likability
   (D) "litmus test"

6. Who was the first president to appoint an African American to the Supreme Court?
   (A) Richard Nixon
   (B) Lyndon Johnson
   (C) Ronald Reagan
   (D) John Kennedy

7. Which term best describes the Supreme Court's issuance of an order directing a lower court to send up its record for review?
   (A) certificate
   (B) rule of four
   (C) *amicus curiae*
   (D) writ of certiorari

8. The majority opinion, issued by the Supreme Court as the final decision of a case, becomes the standard or guide that will be followed in deciding similar cases in the future. This standard or guide is known as a
   (A) precedent
   (B) brief
   (C) argument
   (D) decision

9. Which court was first known for narrowing the rights of defendants?
   (A) Warren Court
   (B) Rehnquist Court
   (C) Burger Court
   (D) New Deal Court

10. The judicial philosophy that advocates the courts' active role in policymaking is called
    (A) strict constructionist
    (B) judicial activism
    (C) loose constructionist
    (D) judicial restraint

Question 11 refers to the quotation below.

> "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each."
>
> — Chief Justice John Marshall

11. Which of the following principles is most accurately reflected in the quote from John Marshall?
    (A) republicanism
    (B) constitutionalism
    (C) judicial review
    (D) checks and balances

Free-Response Question

12. There has been considerable debate over the years on what the role of the Supreme Court should be. Some courts have practiced judicial activism, while others have not.
    (A) Describe the principle of judicial activism.
    (B) Discuss one argument in favor of a Supreme Court that practices judicial activism.
    (C) Discuss one argument against a Supreme Court that practices judicial activism.

› Answers and Explanations

1. **B.** Cases involving state constitutions are heard in state courts, not federal courts. The other answer choices are within the jurisdiction of the federal courts.

2. **C.** Constitutional courts include the Supreme Court, district courts, the Courts of Appeals, the Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade. Legislative courts (A) hear cases arising from the powers given to Congress under Article I. Territorial courts (B) are a type of legislative court. There are courts with original jurisdiction, but there are no courts termed "original courts" (D).

3. **D.** The Supreme Court has both original and appellate jurisdiction.

4. **A.** Federal judges are appointed by the president with confirmation by the Senate (B) and serve during "good behavior" (C, D).

5. **C.** The nominee's personality is not a primary consideration in the nomination process. The president may consider party affiliation (A) and judicial philosophy (B) when appointing justices to the Supreme Court. A "litmus test" may also serve as a gauge of the nominee's purity toward a liberal or conservative stand on certain issues (D).

6. **B.** In 1967, Lyndon Johnson appointed Thurgood Marshall, the first African American on the Supreme Court.

7. **D.** A writ of certiorari is a court order directing a lower court to send up the records of a case for review. A certificate (A) is an appeal in which a lower court asks the Supreme Court about a rule. The rule of four is used to determine which cases the justices will consider (B). An *amicus curiae* brief is a "friend of the court" brief submitted by nonlitigants who have an interest in the outcome of the case (C).

8. **A.** A precedent is a standard used by the courts to decide similar cases. A brief (B) is a detailed statement of the facts of a case supporting a particular position. An argument (C) is the presentation of a case before a court. A decision (D) is the final ruling of a court.

9. **C.** The Supreme Court under Chief Justice Warren Burger was the first to narrow the rights of defendants after those rights were broadened under the Warren Court (A). The Rehnquist Court (B) continued to narrow the rights of defendants. The New Deal Court (D) focused on consideration of laws designed to end the Great Depression.

10. **B.** The philosophy of judicial activism advocates policymaking by the courts. A strict constructionist (A) view holds that justices should base decisions on a narrow interpretation of the Constitution. A loose constructionist view (C) believes that judges should have freedom in interpreting the Constitution. Judicial restraint (D) is a philosophy that holds that the court should avoid taking the initiative on social and political questions (D).

11. **C.** John Marshall's quote, from the opinion in *Marbury v. Madison*, describes the power of judicial review. Republicanism occurs when the people exercise their power by delegating it to representatives chosen by them through the election process (A). Constitutionalism is when government is based upon constitutional principles (B). Checks and balances occurs when each branch of the national government has certain controls (checks) over the other two branches.

12. **A.** Judicial activism is the belief that the courts should play an active role in determining national policies. This philosophy advocates applying the Constitution to social and political questions.

    B. Supporters of judicial activism argue that it is necessary to correct injustices and promote needed social changes. Justices can use their powers to correct justices and shape social policy on such issues as civil rights and protections of civil liberties.

    C. Opponents of judicial activism believe that activist judges are making laws, not just interpreting them. The courts are assuming responsibilities that belong exclusively to the legislative and executive branches of government. Critics point out that federal judges are not elected, they are appointed for life terms. As a result, when judges begin making policy decisions about social or political changes society should make, they become "unelected legislators." Consequently, the people lose control of the right to govern themselves.

❯ Rapid Review

- Article III of the Constitution establishes the Supreme Court and a system of inferior courts.
- Jurisdiction is the authority of the federal courts to hear certain cases. Jurisdiction may be original, appellate, or concurrent.
- The Supreme Court, the Courts of Appeals, and district courts are constitutional courts.
- The Supreme Court was created directly by the Constitution. It is the highest court in the United States, having both original and appellate jurisdiction.
- Federal judges are appointed by the president and confirmed by a majority of the Senate.
- Presidents make appointments to the Supreme Court only when a vacancy occurs during a president's term of office.
- Almost all federal judges have some form of legal training.
- The Supreme Court hears only a few hundred cases each year from the several thousand cases submitted.
- Cases may be presented to the Supreme Court for possible review by writ of certiorari, certificate, or the submission of an *amicus curiae* brief.
- Oral arguments allow both sides time to present their arguments to the justices.
- Law clerks research information presented in oral arguments and briefs.
- Supreme Court decisions are explained in written statements known as opinions. Opinions may be majority, concurring, or dissenting.
- Courts are often termed liberal or conservative, depending on the decisions of the court and the guidance of the chief justice.
- Judicial philosophy may follow the lines of judicial activism or judicial restraint.