The Federal Courts

Chapter Summary

I. The Nature of the Judicial System

A. Introduction

The judicial system in the United States is an adversarial one in which the courts provide an arena for two parties to bring their conflict before an impartial arbiter. Most cases never reach trial because they are settled by agreements reached out of court. In a criminal law case, an individual is charged by the government with violating a specific law. Civil law involves disputes between two parties and defines relationships between them.

B. Participants in the Judicial System

Federal judges are restricted by the Constitution to deciding actual disputes rather than hypothetical ones. Two parties must bring a case to the court before it may be heard. Every case is a dispute between a plaintiff and a defendant, in which the former brings some charge against the latter. Litigants must have what is called standing to sue, that is, they must have serious interest in a case. Class action suits permit a small number of people to sue on behalf of all other people similarly situated. Conflicts must also be justiciable disputes, issues that are capable of being settled by legal methods.

Because they recognize the courts' ability to shape policy, interest groups often seek out litigants whose cases seem particularly strong. The National Association for the Advancement of Colored People and the American Civil Liberties Union have been particularly successful in litigation. Groups often submit *amicus* curiae briefs to the courts in support of their case. Lawyers are an indispensable actor in the judicial system. The audience for the judicial drama includes interest groups, the press, and the public.

II. The Structure of the Federal Judicial System

A. Introduction

Aside from specifying that there will be a Supreme Court, the Constitution left it to Congress to establish lower federal courts. The Judiciary Act of 1789 created the constitutional courts. Congress has also established legislative courts for specialized purposes. Courts with original jurisdiction are those in which a case is heard first, usually in a trial. Courts with appellate jurisdiction hear cases brought to them on appeal from a lower court.

B. District Courts

The entry point for most litigation in the federal courts is 1 of the 91 district courts. These are courts of original jurisdiction and the only federal courts in which trials are held. About 98 percent of all criminal cases in the United States are heard in state and local courts. Most civil suits in the United States are also handled in state and local courts. Actors in the district courts include U.S. marshals who serve the writs, federal magistrates who issue warrants and set bail, and an U.S. attorney who prosecutes violations of federal law and represents the U.S. government in civil cases. Most of the cases handled in the district courts are routine, and few result in policy innovations.

C. Courts of Appeal

The U.S. courts of appeal are appellate courts empowered to review all final decisions of district courts. Courts of appeal also have authority to review and enforce orders of many federal regulatory agencies. There are twelve judicial circuits plus a special appeals court called the U.S. Court of Appeals for the Federal Circuit.

D. The Supreme Court

The most important functions of the U.S. Supreme Court are resolving conflicts among the states and maintaining national supremacy in the law. There are eight associates and one chief justice in the Supreme Court. All nine justices sit together to hear cases and make decisions. They must first decide which cases to hear. The Court does have an original jurisdiction, yet very few cases arise under it. Cases may be appealed from both federal and state courts if they involve a substantial federal question. The majority of cases heard by the Supreme Court come from the lower federal courts. Judges draw upon their backgrounds and beliefs to guide their decision-making. Presidents work diligently to place candidates sympathetic to presidential policies on the bench.

III. The Politics of Judicial Selection

A. Introduction

Appointing a federal judge or a Supreme Court justice is a president's chance to leave an enduring mark on the American legal system. The president nominates persons to fill judicial slots and the Senate confirms each nomination by majority vote.

B. The Lower Courts

The customary manner in which the Senate disposes of state-level federal judicial nominations is through 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. Presidents usually check carefully with the relevant senator or senators ahead of time so that they will avoid making a nomination that will fail to be confirmed. The Department of Justice and the Federal Bureau of Investigation conduct competency and background checks on potential nominees. Candidates themselves are often active on their own behalf. The president usually has more influence in the selection of judges to the federal courts of appeal than to federal district courts. Individual senators are in a weaker position to determine who the nominee will be because the jurisdiction of an appeals court encompasses several states.

C. The Supreme Court

The president is vitally interested in the Supreme Court. When the chief justice's position is vacant, the president may nominate either someone already on the Court or someone from outside to fill the position. The president operates under fewer constraints in nominating persons to serve on the Supreme Court than in naming persons to be judges in the lower courts. The president relies on the attorney general and the Department of Justice to identify and screen candidates for the Court. Senators play a lesser role. Candidates for nomination usually keep a low profile. The Senate Judiciary Committee may probe a nominee's judicial philosophy in great detail. Since the mid-1960s six nominees have failed confirmation. Presidents whose parties are in the minority in the Senate or who make a nomination at the end of their terms face a greatly increased probability of substantial opposition. Opponents of a nomination usually must be able to question a nominee's competence or ethics in

order to defeat a nomination.

IV. The Backgrounds of Judges and Justices

The federal judiciary is composed of distinguished men and women. Judges serving on the federal district and circuit courts are all lawyers and overwhelmingly white males. Federal judges have typically held office as a judge or prosecutor, and often they have been involved in partisan politics. Supreme Court justices also have all been lawyers and mostly white males. Race and gender have become more salient criteria in recent years. Geography was once a prominent criterion for selection to the Court, but it is no longer very important. Justices have typically held high administrative or judicial positions before moving to the Supreme Court. Partisanship is another important influence on the selection of judges and justices. Only 13 of the 108 members of the Supreme Court have been nominated by presidents of a different party. Judgeships are also very prestigious patronage plums. Ideology is also important in the selection of judges and justices. Nominees are always questioned about their political and judicial philosophy. Members of the federal bench may try to time their retirements so that a president with compatible views will choose their successors. Presidents are usually pleased with their Court nominees. However, about one-fourth of the time they are not, as it is not easy to predict the policy inclinations of judicial nominees. Presidents do influence policy through the values of their judicial nominees. Presidents face pressures for representativeness in selecting judges. Less clear is what policy differences result when presidents nominate persons with different backgrounds to the bench. It does appear that Republican judges in general are somewhat more conservative than Democratic judges are.

V. The Courts as Policymakers

A. Accepting Cases

Courts of original jurisdiction cannot refuse to consider a case. Appeals courts control their own agenda. Approximately 7,500 cases submitted to the U.S. Supreme Court must be read, culled, and sifted. Every Wednesday and Friday the nine justices meet in conference. At these conferences they decide which cases they want to discuss. If four justices agree to grant review of a case, it can be scheduled for oral argument or decided on the basis of the written record. 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). Cases that involve major issues are likely to be selected by the Court. The Court has tried to avoid certain political issues. The solicitor general has an important influence on the Court. The solicitor general's functions include: 1) to decide whether to appeal cases the government has lost in the lower courts, 2) to review and modify the briefs presented in government appeals, 3) to represent the government before the Supreme Court, and 4) to submit a brief on behalf of a litigant in a case in which the government is not directly involved. Ultimately the Supreme Court decides very few cases.

B. Making Decisions

At the conferences, the justices also discuss cases actually accepted and argued before the Court. Before the justices enter the courtroom they have received prepared written briefs, including *amicus curiae* briefs, which attempt to influence the Court's decisions and raise additional points. The government may submit these in cases in which it has an interest. Once a tentative vote has been reached, it is necessary to write an opinion, a statement of the legal reasoning behind the decision. Broad and bold opinions have far-reaching implications for future cases. Dissenting opinions are those written by justices opposed to all or part of the majority's decision. Concurring opinions are those written not only to support a majority decision but also to stress a different constitutional or legal basis for the judgment. 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. All courts rely heavily upon precedent, the way similar cases were handled in the past, as a guide to current decisions. The Supreme Court is in a position to overrule its own precedents and has done so. It is often easy to identify consistent patterns in the decisions of justices. Media coverage of the Court tends to be short and shallow.

C. Implementing Court Decisions

Judicial implementation refers to how and whether court decisions are translated into actual policy, affecting the behavior of others. Implementation of court decisions involves several elements. First, the interpreting population (lawyers and judges) understands and reflects the intent of the original decision in their subsequent actions. Second, the implementing population includes local officials. Judicial decisions are more likely to be smoothly implemented if implementation is concentrated in the hands of a few highly visible officials. Third, every decision involves a consumer population that must be aware of its newfound rights and stand up for them. Congress and presidents can also help or hinder judicial implementation. The fate and effect of a Supreme Court decision are complex and unpredictable.

VI. The Courts and the Policy Agenda

A. Introduction

Until the Civil War, the dominant questions before the Court concerned the strength and legitimacy of the federal government and slavery. From the Civil War until 1937, questions of the relationship between the federal government and the economy predominated. From 1938 to the present, the paramount issues before the Court have concerned personal liberty and social and political equality.

B. A Historical Review

The most important development during the Marshall Court was the case of *Marbury v. Madison*, which 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. This case also illustrates that the courts must be politically astute in exercising their power over the other branches. Franklin Roosevelt tried to increase the number of justices on the Court to add ones who would be sympathetic to his New Deal. The Warren Court was very active in shaping public policy especially in the area of school segregation and rights of criminal defendants. The Burger Court followed the principal of strict constructionism. The Burger Court ordered President Nixon to turn White House tapes over to the courts, hastening his resignation (*United States v. Nixon*, 1974). The present Court, the Rehnquist Court, has not created a revolution in constitutional law. It has limited rather than reversed rights established by liberal decisions such as those regarding defendants' rights and abortion.

VII. Understanding the Courts

A. The Courts and Democracy

In some ways, the courts are not a very democratic institution, but the courts are not entirely independent of popular preferences and are not as insulated from the normal forms of politics as one might think. Courts can also promote pluralism. When groups go to court, they use litigation to achieve their policy objectives.

B. What Courts Should Do: The Scope of Judicial Power

Courts make policy on both large and small issues. Many scholars and judges favor a policy of judicial restraint, in which judges adhere closely to precedent and play minimal policymaking roles, leaving policy decisions strictly to the legislatures. On the other side are proponents of judicial activism, in which judges make bold policy decisions, even charting new constitutional ground with a particular decision. Judicial activism or restraint is not the same as liberalism or conservatism.

Federal courts have developed a doctrine of political questions as a means to avoid deciding some cases, principally those regarding conflicts between the president and Congress. Judges often attempt to avoid deciding a case on the basis of the Constitution, preferring less contentious "technical" grounds. From the earliest days of the republic federal judges have been politically astute in their efforts to maintain the legitimacy of the judiciary and to conserve their resources. The decisions of activist courts can be overturned through appointment powers or constitutional amendments. If the issue is one of statutory construction, in which a court interprets an act of Congress, the legislature routinely passes legislation that clarifies existing laws and, in effect, overturns the courts. Thus the description of the judiciary as the "ultimate arbiter of the Constitution" is hyperbolic; all the branches of government help define and shape the Constitution.