CHAPTER 15: THE JUDICIAL SYSTEM AND CIVIL LIBERTIES

IF YOU ONLY LEARN SIX THINGS IN THIS CHAPTER . . . .

1. The judicial system of the United States is clearly divided into state jurisdictions and federal jurisdiction, with state controls over most civil and criminal cases.
2. The modern interpretations of the 14th Amendment represent one of the greatest legal shifts in the history of the nation. All states must provide all citizens due process and equal protection rights, thus beginning the process of the "incorporation" of national standards into state legal codes.
3. Federal court judges and justices have strong political leanings and views. These views are expressed as liberal and conservative biases and are used by judges and justices to try to steer courts in certain political directions.
4. The Supreme Court hears a small minority of cases sent to it on appeal. Supreme Court rulings tend to be on cases of national significance with regard to the interpretation of civil rights and obligations.
5. The majority of the most famous Supreme Court decisions were brought to the court in the 1960s and 1970s, during many of the major civil rights debates.
6. Courts have very carefully structured methods of deciding cases, defining rights and defining the groups of citizens who might be affected by cases.

INTRODUCTION

Legal issues in the United States are classified in several ways. *Civil cases* cover issues of claims, suits, contracts, and licenses. *Criminal cases* cover illegal actions or wrongful acts and can result in fines, imprisonment, and possibly even the death sentence. When courts rule, they use four

kinds of law. The first is *common law*, which is derived from precedents set by courts of the past. Common law traditions can extend back to rights established in colonial, English, and some French courts (Louisiana). When legislative bodies create laws, these codes become *statutory law*. Because the public elects the representatives who create statutory law, courts consider it more compelling than common law. When agencies create rules and rulings that concern their areas of influence, these become *administrative law*. *Constitutional law* covers the broad area of interpretation under judicial review.

TWO-COURT SYSTEMS

The court structure of the United States remains one of the best examples of the federal system. States have unique legal traditions, handle most civil and criminal cases that occur in the country, and have separate systems for appeals from lower courts. The states' jurisdictions have always been given the label *general law*.

Federal courts work within the boundaries of federal law—cases that are "*limited and exclusive jurisdiction*" go to federal courts. Only those cases arising from interstate issues, conflicts with federal authorities, issues specific to sections of the Bill of Rights, and crimes listed as federal in nature by Congress are heard in federal courts. The Supreme Court has ruled in many cases to expand federal authority, but such expansions only occur after specific legal challenges. States continue to hold rule over most legal activities in the country.

Basics of the Dual Court System

The following fall under "general law and jurisdiction" of the United States:

- Most civil disputes between citizens are settled in state civil courts.
- Most criminal disputes in the United States are settled in state criminal courts.
- Appeals from state courts are sent to state appeals court systems. Such appeals may end in state supreme courts. Many of these are known as "courts of last resort."

The following fall under "limited and exclusive jurisdiction" of federal law:

- Federal civil disputes are heard in specific federal courts or federal district courts.
- Federal criminal cases are usually heard in federal district courts.
- Examples of federal "limited and exclusive jurisdiction" from the Constitution or laws passed by Congress include these:
  - Citizens of one state versus citizens of another state
  - The counterfeiting of U.S. currency
  - Kidnapping
  - Mail fraud

- Interstate trade conflicts
- National banking conflicts
- Conflicts with federal officials, agencies, and the federal government
- U.S. border issues
- Crossing state lines with the intent to commit crimes (i.e., RICO laws covering interstate crime syndicates)
- Conflicts with the civil rights of citizens
- Conflicts over patents, copyrights, and customs rulings

LAYERS OF DUAL COURTS

Both the states and the federal court systems consist of layers of courts. At the federal level, most cases begin in *district courts* that are found in most urban centers. If appeals are granted, cases move to regional *courts of appeals* or *circuit courts*. There are 12 such courts of appeals.

If further appeals are allowed, the Supreme Court of the United States finalizes the case. A few cases listed in Article 3 of the Constitution are given *original jurisdiction*, which means they are heard first and only by the Supreme Court. Such cases involve ambassadors, public ministers, or states suing other states. In modern times, such cases are usually limited to state disputes concerning boundaries, water, or mineral rights. All cases brought to the Supreme Court on appeal from lower courts (appellate jurisdiction) can be accepted or rejected by the Supreme Court, unless a lower state or federal court has declared a law unconstitutional.

CREATION OF "JUDICIAL REVIEW"

The single most significant change in judicial history was the creation of the power of *judicial review*. The Supreme Court used the twists and turns of the 1803 decision in *Marbury v. Madison* to establish its authority over interpreting the constitutional status of the acts of Congress. Some early leaders, such as Thomas Jefferson, would have preferred *legislative review*, but the court precedent has stood the test of the centuries.

William Marbury headed a list of Federalist appointees that claimed that Jefferson and his Secretary of State James Madison were hiding their appointment papers. Marbury demanded that the Court force the delivery of the papers by using a law that Congress had created, giving the Supreme Court the power to make the ruling. Chief Justice John Marshall ruled that the law that gave them such powers was itself unconstitutional and, therefore, they couldn't give the order to the president. Jefferson and the Congress had to accept the idea of judicial review or grant the Supreme Court power to demand any order it chose over the other branches. The court took over the power to interpret the words of the Constitution.

THE "SECOND" CONSTITUTION

Within the dual court system, the greatest change has been the use of the 14th Amendment to apply many sections of the Bill of Rights to state laws. As previously mentioned, states have separate sets of jurisdiction. This was originally interpreted to mean that the civil rights listed in the Bill of Rights applied only to federal cases and the actions under the federal government. But when the Civil War solved the issue of states practicing slavery, the 13th, 14th, and 15th Amendments were written to redefine how states could legally deal with residents' rights of freedom, citizenship, and voting. The 14th Amendment contains language that requires all states to give all citizens *due process* and *equal protection*.

Case decisions in the 20th century caused interpretations where specific rights in the other amendments applied to states through the 14th Amendment's requirements. This development is now known as the *Incorporation Doctrine*. Now states must, in their own courts and laws, give citizens protections such as rights to counsel and rights for limited search, seizure, or arrest. Because courts must wait for specific challenges to be brought before them by litigants, some sections of the Bill of Rights have not been *incorporated* through the 14th Amendment.

THE 14TH AMENDMENT

Prior to the 14th Amendment (1868), dual federalism dominated views of federal laws. The legal sections of the Constitution were for federal courts and claims. State constitutions covered state laws. The Bill of Rights held for federal courts, not state courts.

Key phrases in the 14th Amendment include the following:

- "All persons born...in the United States" (therefore in all states)
- "No State shall make or enforce any law which shall abridge the privileges...of citizens of the United States"
- "...nor shall any State deprive any person of life, liberty, or property, without *due process of law*; nor deny to any person...*the equal protection of the laws*." Note the key legal shift. The amendment slides into the area of matching state rules with federal rules.
- The Bill of Rights can become the foundation of limits for all states. This legal principle is known as *incorporation*. The Supreme Court has given a great deal of consideration to the amount of incorporation in different cases. As the Supreme Court has analyzed various Bill of Rights claims through the 14th Amendment, the issue of selective incorporation of the due process clause has come to the forefront. In the late 1800s, a railway and property case contained early uses of incorporation. The Gitlow case of 1925 is noted as the key and significant incorporation of free speech rights. Several major cases of the civil rights era selectively incorporated other Bill of Rights sections. As of 2005, the "equal protection" section of the 14th Amendment had not been used for incorporation cases, nor have

Bill of Rights issues of indictment by grand juries (the 5th Amendment), the right to a civil trial in civil suits (the 7th Amendment), or the need for 12 jurors and unanimous verdicts. The Supreme Court's incremental application of incorporation is the essence of selective incorporation.

Rights in the Bill of Rights That Have Been "Incorporated" through the 14th Amendment via Supreme Court Rulings

Note that not *all* of the rights listed in the Bill of Rights have been "incorporated," because some of the rights have not been challenged in cases or have not been accepted for such challenges by the Supreme Court.

- Privacy (not listed in the Bill of Rights but implied and interpreted from several amendment cases)
- Free speech (1st Amendment)
- Free press (1st Amendment)
- Freedom of religion (1st Amendment)
- Assembly and petition rights (1st Amendment)
- "Association" (1st Amendment)
- Search and seizure (4th Amendment)
- "Exclusion" of evidence (implied in cases dealing with the 4th Amendment, such as *Mapp v. Ohio*)
- Self-incrimination (6th Amendment)
- Confront witnesses (6th Amendment)
- Impartial jury (6th Amendment)
- Speedy trial (6th Amendment)
- Right to counsel (6th Amendment)
- Public trial (6th Amendment)
- Cruel and unusual punishment (8th Amendment)

STRUCTURE OF THE FEDERAL COURT SYSTEM

Lower Federal Courts (trial courts where juries may be present; run by federal judges)

- U.S. District Courts (94 sitting across the country, as of 2009)
- Various military courts and tribunals
- Courts, hearings, panels of various federal agencies, including independent agencies
- Bankruptcy Courts (officially they are units of the District Courts)
- U.S. Court of Federal Claims (claims against the United States, 16 judges run this court)
- U.S. Court of International Trade
- U.S. Tax Court
- Courts of the District of Columbia
- U.S. Territorial Courts (Guam, Northern Marianas Islands, U.S. Virgin Islands)
- Foreign Intelligence Surveillance Court

Appeals Courts (also run by federal judges)

- Legislative Appeals Courts
- U.S. Court of Appeals for the Armed Services
- U.S. Court of Appeals for the Federal Circuit (from Federal Claims Court...)
- The U.S. Courts of Appeals (13 circuits, including DC, 6 to 28 judges in each; these 13 courts hear appeals from the Federal District Courts)

The Supreme Court

- **Nine federal justices** (The number is set by Congress.)
- **Original jurisdiction** cases cover foreign diplomats, United States versus a state, a state versus another state, a state versus citizens of another state, a state versus a foreign country.
- **Appellate jurisdiction** covers cases granted from U.S. courts of appeals, state supreme courts, the U.S. Court of Appeals for the Armed Services, and the Court of Appeals for the Federal Circuit.
- The vast majority of cases appealed to the Supreme Court under *writs of certiorari* are denied hearings by the Supreme Court justices. Thousands of requests are made annually, but the Supreme Court will hear only about 100 cases. Those cases not granted hearings are returned (*remanded*) to the last court, where that decision stands.

Federal Judicial Terms

Federal judges and Supreme Court justices can serve for life terms. This makes their initial selection important and very political. Members of the judiciary are expected by liberals and conservatives to express strong political viewpoints on the uses of the Constitution. The spectrum of opinions forms around the issue of the powers of government, just like the sides taken by parties. Liberals want a stronger use of the laws aimed at providing flexible protections with the goal of equality. They believe that the Constitution can be interpreted broadly and adapted easily for the changing issues of modern times. Conservatives support more limited controls by courts, emphasizing liberty and regional governments like states. When presidents are trying to fill the many court vacancies, they rely on advisors and members of Congress to suggest names of judges and lawyers whose political viewpoints are parallel to their own.

Once a nomination is sent by the president, the Senate Judiciary Committee plays the key role of supporting or opposing the judge's political slant. Those who favor a more open interpretation of the powers of the Constitution are labeled *judicial liberals*, and those who oppose that view are *judicial conservatives*.

THE SUPREME COURT'S WORK

Justices of the Supreme Court must be nominated by the president and approved by the Senate. The work and decisions of the Supreme Court are the focus of national scrutiny. The vast majority (99 percent) of cases appealed to the court are *remanded*, making the lower court's decision final. Challenges of constitutional importance can stem from business contracts, interstate and international trade, criminal case challenges, and issues as simple as traffic stops. Appeals are submitted through *writs of certiorari*, and cases are usually supported by national organizations that want to help argue the positions with briefs and summaries. These "*Friends of the Court*" submit *amicus curiae* briefs to help the court interpret challenges and legal histories. Groups such as the American Civil Liberties Union (ACLU) are famous for their legal teams that volunteer to help with costs and court procedures to help clarify important civil rights and liberty questions.

FUNCTIONS OF THE SUPREME COURT

The Supreme Court functions in a very egalitarian manner. The chief justice is a guide and meeting chairperson but has no special voting powers. The chief does not have to be part of the majority. Conferences and debates in the court have traditionally been relatively secret events, with only recently books and memoirs published revealing how decisions are argued or finalized. In the few times that public hearings are held in Washington, D.C., the procedures are formal. Attorneys are very limited in their presentations, and any member of the court can ask any question he or she considers important.

Once the court has a majority of five to nine justices, it can explain to the legal community what it wants the decision to mean for the law. The *majority opinion* becomes the guide to interpreting the decision's effect on the use of the Constitution. If one to four justices disagree with the ruling, the court can publish a *minority opinion* explaining those opinions. Minority opinions are often used by the legal community for future challenges. Sometimes justices who voted with the majority may not agree with the legal principals given in the majority opinion. They might publish *concurrent opinions* that signal a different approach to the way the majority ruling might be used by the legal community.

Jurisdiction of the U.S. Supreme Court

- The Supreme Court hears original cases as listed in Article 3 of the Constitution.
- It also hears cases that are granted an appeal hearing by the Supreme Court from lower federal courts (*writ of certiorari* grants under the Rule of 4).
- If any four of the justices want to rule on a case, the entire court hears it.
- If state laws are declared unconstitutional by a lower federal court, then they move to the Supreme Court.
- If federal laws are held unconstitutional by a state court, then they move to the Supreme Court.
- Appeals granted from cases in state supreme courts can be heard by the U.S. Supreme Court.

Supreme Court Activism and Restraint

A second, and equally important, form of interpretation occurs with Supreme Court decisions. *Judicial restraint* is the guiding principle that courts will not overturn previous court decisions and opinions. Courts will focus on the limits of government, the responsibilities of legislatures to correct social disputes, and the rights of states. *Judicial activism* has goals of correcting previous decisions through new cases that overturn previous rulings and correcting mistakes made by other governmental bodies. "Activism" can take on liberal or conservative agendas, and the term has been divided by some into *policy activism* versus *structural activism.* Policy activism concerns rulings that attempt to correct problems with civil liberties, such as privacy. Structural activism is aimed at correcting the ways different layers of government have attempted to change their powers.

The Importance of Court Rulings

Supreme Court rulings are central to understanding the development of civil rights and civil liberties in the United States. Civil rights stem from the Declaration of Independence statement that "all men are created equal," rights given by the "equal protection" section of the 14th Amendment, and laws from Congress. They cover minority group issues such as racial

discrimination, voting rights, and privacy. Civil liberties cover the freedoms that citizens have from governmental interference and control. Many federal liberties were incorporated under the due process section of the 14th Amendment as it applies to the other portions of the Bill of Rights. Courts have used different legal tests (see the cases that follow) to determine which groups can claim which kinds of rights. Courts have determined that women are a minority group due to persistent historic forms of discrimination. Minority status also applies to ethnic minorities and to people with certain disabilities.

Precedent-setting court cases are the focus of much study and memorization. They have been used to create a list of law interpretations, limits on police powers, limits on citizens' rights, and limits on governmental actions. These cases, listed in the following table, summarize the various interpretations of key rights such as speech, religion, and search and seizure.

SOME OF THE MOST FAMOUS COURT CASES

Different texts and sources list various "famous" or "key" cases. The following table attempts to present those cases likely to be mentioned in AP exams.

Marbury v. Madison, 1803	Judicial review established.
McCulloch v. Maryland, 1819	Federal "implied powers" supreme; federal banks allowed.
Gibbons v. Ogden, 1824	Commerce Clause gives Congress broad powers.
Dred Scott v. Sanford, 1857	Slaves are not citizens but property.
Munn v. Illinois, 1876	Feds can regulate businesses crossing state lines.
Plessy v. Ferguson, 1896	"Separate but Equal" allowed for state laws.
Schenk v. U.S., 1919	"Clear and Present Danger Test" to limit speech.
Gitlow v. New York, 1925	Limits on "anarchy," but free speech "incorporated."
Near v. Minnesota, 1931	No "prior restraint" of the freedom of the press.
Korematsu v. U.S., 1944	Government can intern (detain) citizens in emergencies.
Brown v. Board of Ed., 1954	Overturned *Plessy* in public schools.
Roth v. U.S., 1957	Obscenity is not free speech.
Mapp v. Ohio, 1961	Warrants needed for evidence to be used (exclusion).
Baker v. Carr, 1962	State apportionment must be "one man = one vote."
Engel v. Vitale, 1962	No school-led daily prayer in public schools.
Gideon v. Wainright, 1963	States must provide attorneys in state courts.
Heart of Atlanta v. U.S., 1964	Commerce Clause applies to private business/interstate activities.
Griswold v. Connecticut, 1965	Information about birth control is a privacy right.

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SOME OF THE MOST FAMOUS COURT CASES (con't)

Different texts and sources list various "famous" or "key" cases. The following table attempts to present those cases likely to be mentioned in AP exams.

Miranda v. Arizona, 1966	Police must explain rights at the time of arrest.
Terry v. Ohio, 1968	Police can search and seize with probable cause.
Lemon v. Kurtzman, 1971	Some government aid to church schools is allowed (Lemon Test).
N.Y. Times v. U.S., 1971	No prior restraint of the stolen *Pentagon Papers.*
Miller v. California, 1973	Community standards determine obscenity.
Roe v. Wade, 1973	First trimester abortions legal as medical privacy.
U.S. v. Nixon, 1974	Executive privilege does not extend to criminal cases.
Gregg v. Georgia, 1976	Death penalty upheld within the 8th Amendment.
Buckley v. Valeo, 1976	Campaign money limits, but independent and personal money allowed.
Regents v. Bakke, 1978	No racial quotas allowed, but race can be considered.
New Jersey v. TLO, 1985	School searches without warrants possible.
Hazelwood v. Kuhlmeier, 1988	School newspapers can be edited by teachers, administrators.
Texas v. Johnson, 1989	Flag burning is a form of political free speech.
Planned Parenthood v. Casey, 1992	States can put some restrictions on *Roe* rights.
Santa Fe ISD v. Doe, 2000	No school-led prayers at extracurricular events.
Gratz v. Bollinger, 2003	Affirmative action at colleges okay but limited.

The Chief's Role

Courts are named after the chief justice, but the chief has no special powers over the other justices. The chief organizes meetings and guides discussions, but all other justices have equal votes. Any five justices make the majority vote in a case, whether or not the chief is one of the majority. If the chief is part of the majority, he or she assigns the writing of the majority opinion to one of the justices. This might affect how the opinion is expressed to the legal community.

There have been 17 chief justices under 44 U.S. presidents. The following four are possibly the most famous and represent significant court eras and changes:

John Marshall	1801–1835	34 years	Helped found many early court powers.
Roger Taney	1836–1864	28 years	Dominated mid-1800s and Civil War.
Earl Warren	1953–1969	16 years	Major civil rights changes and cases
William Rehnquist	1986–2005	19 years	Major conservative influence

CIVIL LIBERTIES AND EQUAL PROTECTION

Categories of people who are considered for equal protection include the following:

- Age groups
- Racial classification groups
- Gender groups
- Economic status groups

Who is qualified for assistance and who isn't? How do the categories match needs? If people are told that they are not qualified for assistance, how may they challenge that governmental decision?

TESTS COURTS USE TO DETERMINE CLASSIFICATION STATUS OF CITIZENS

Rational Basis Test (now replaced)	If the state can prove that a classification scheme is rational, it might be allowed to separate citizens, as on the basis of gender.
Strict Scrutiny Test	The state must prove a "compelling state interest" in the classification scheme and must narrowly use items such as race to classify citizens.
Intermediate Scrutiny Test	This is usually used for gender classification systems and must be substantially related to the need for the scheme.
Heightened Scrutiny	This has generally replaced the rational basis test and requires that government classifications based on gender must be related to an important governmental objective that doesn't discriminate.

THE JUDICIARY AND THE POLITICAL SPECTRUM

Justices and judges have political interests and agendas. Federal judges try to build a legacy of political biases to improve their standing for advancement under Republican or Democratic administrations. The selection of Supreme Court justices has always been a game of maneuvering for liberal, conservative, or moderate ideals. The history of presidents and judicial appointments has been a history of selections for the "correct" biases. Recent famous examples include Eisenhower's disappointment with Earl Warren's liberalism, the Senate's rejection of Reagan's conservative nominee Robert Bork, and Antonin Scalia's rise as the conservative standard on the court.

Presidents have a long and consistent record of selecting an overwhelming number of judges and justices with political beliefs similar to their own. Members of the courts tend to follow the biases of the major parties, with the additional consideration of broad or limited interpretations of the Constitution. This is known as *judicial restraint* versus *judicial activism.*

KINDS OF JUDICIAL BIASES/VIEWPOINTS

Judicial Liberals

They tend to support the following:

- Broad interpretations of the Elastic Clause ("necessary and proper")
- Broad interpretations of civil rights acts and laws
- Pro-choice decisions
- Strict limits on the separation of church and state (no school prayer)
- Affirmative action programs to end discrimination

Judicial Conservatives

They tend to support the following:

- Stricter limits on the use of the Commerce Clause (less power for feds)
- Limited uses of "necessary and proper" in context of Article 1, Section 8
- More local and state control of civil rights questions
- Pro-life decisions
- Community standards for speech and obscenity
- The government's role in protecting from obscenity, immorality
- Affirmative action as a form of reverse discrimination
- Community and moral limits to lifestyle choices

Judicial Restraint

Also known as *strict constructionism* or *original intent*

They tend to support the following:

- The idea of not overturning previous cases if possible
- Natural rights of citizens that government must leave alone
- Article 3 as a statement of Supreme Court powers to resolve disputes only
- Article 3 as *not* giving the Supreme Court the right to "create" policy
- The 9th and 10th Amendments, leaving rights to citizens and states
- The idea that Congress should be in charge of new policy or create amendments
- The idea that proper state authority should be emphasized
- The idea that the Founding Fathers built a government of limits and these should be followed

Judicial Activism (Policy Activism; Structural Activism)	Also known as *broad constructionism* or *loose constructionism* They tend to support the following: • Overturning previous cases more easily if those are seen as wrong • Judicial review as a proper and well-established power • The 14th Amendment giving the federal government power to "incorporate" • The idea that the history of state and local courts is a history of abuses of civil rights and segregation and the feds should step in • The idea that the Constitution is silent on rights like "privacy" and "innocent until proven guilty" so the courts can protect these broadly • The idea that the Founding Fathers expected leaders to adapt the Constitution over time and wrote the document with this in mind • The idea that courts might try to correct laws, institutions, or state controls over issues such as search and seizure rights, privacy rights, counsel rights. (These are often seen as pro-liberal in bias.) • The idea that courts might try to change the ways the federal, state, or local governments try to set up rules, controls, laws that affect the federal system. (These are liberal or conservative biases.)

STATUS OF THE JUDICIARY AND THE PUBLIC

Ways the judiciary is insulated:

- Once appointed, judges and justices may serve for life.
- Due to judicial review powers, the Supreme Court interprets the Constitution for the rest of the country.

Ways the judiciary "answers" to the public:

- Judges and justices may be impeached and removed by Congress.
- Past records of opinions and actions are used to evaluate judges for their appointments.
- Congress can react to unpopular decisions by leading the charge to amend the Constitution to reflect a more popular form.
- Future court cases may be used to reverse decisions.
- The Supreme Court can hold off on extremely controversial issues by not accepting lower court appeals that concern such issues.