

# Political Science 17.20

## Introduction to American Politics

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### **The Judiciary**

#### Lecture 10 (March 12, 2013)

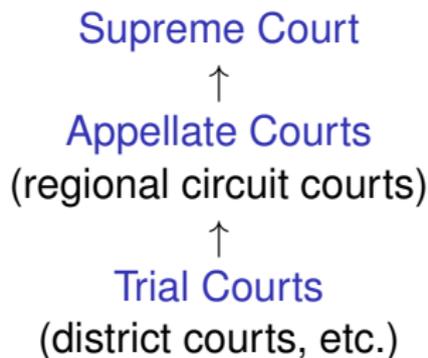
# Outline

- 1 The Judiciary in a Democracy
- 2 Judicial Decision Making
- 3 Judicial Decision Making in Practice

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# The Role of the Federal Judiciary



**Responsibility:** Interpret, reconcile, and apply the law  
→ **judicial review** (strike down laws as unconstitutional)

# Judicial Review Over Time

- **Judicial Jurisdiction:** *Marbury v. Madison* (1803)
- **Slavery:** *Dred Scott v. Sandford* (1857)
- **Property Rights:** *Lochner v. New York* (1905)
- **Civil Rights:** *Brown v. Board of Education of Topeka* (1954)
- **Privacy Rights:** *Roe v. Wade* (1973)
- **Federalism:** *Nat'l Fed. of Ind. Business v. Sebelius* (2012)
  - Medicaid expansion infringed on states' rights.
  - But individual mandate valid under Congress's taxation (not commerce) power.

# The Countermajoritarian Difficulty

How can **judicial review**, which involves appointed judges nullifying the decisions of democratically elected officials, be **justified in a democracy**?

- Umpire in constitutional system
- Protector of the rights of minorities and powerless
- Guardian of democratic processes

Is the countermajoritarian difficulty really a problem in practice?

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# What Motivates Judges?

Unlike members of Congress, federal judges do not have to worry about reelection. So how do they decide cases? One answer is **legal** considerations:

- Facts of the case
- Text of the constitution/statute
- Legislative intent
- Precedent (*stare decisis*)

Legal model has historically dominated legal education

# The Attitudinal Model

- There is often no single “correct” decision or “neutral” set of criteria → inherently subjective
- Different judges come to different conclusions on the law based on their sincere **policy preferences**.

# Judges as Strategic Political Actors

**Strategic Model:** Judges are motivated by policy goals but are constrained in a number of ways.

- Institutional and professional legitimacy
- Public opinion
- Reaction of other branches
- Capacity to implement decisions

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# Multiple Motivations

Empirically, judges seem to be motivated by a number of considerations, but they also tend to line up ideologically like members of Congress do.

# Countermajoritarian Decisions Are Rare

- Judiciary rarely out of line with dominant political coalition
- Federal judges typically strike down **state** laws.
- Nonmajoritarian difficulty:
  - Dominant coalition may be unable or unwilling to decide
  - Clashing majorities
- Abortion: difficult cross-cutting issue for both parties

# Implementing Judicial Decisions

*Marbury v. Madison* was unusual in that it was **self-implementing**. By contrast, most exercises of judicial review involve getting other political institutions (cities, states, the president) to **do** something.

- Abortion vs. civil rights

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