

The Judicial Branch

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The U.S. Legal System

Federal and most states' systems (except La.) based on *common law tradition* and use of *precedent*.

- *Criminal law*: involves offenses against society; the *state* is a party.
- *Civil law*: conflicts between individuals and corporations.
- Exception to *double jeopardy*.

Types of Law

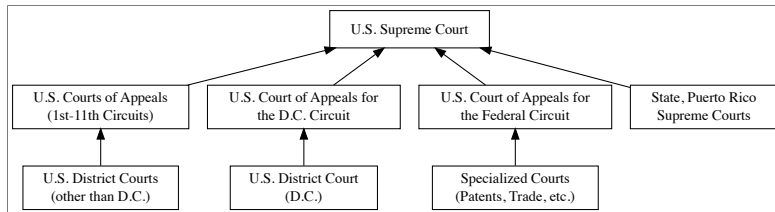
Federal courts regularly interpret four different forms of law.

- *Statutory law*
- *Constitutional law*
- *Administrative law*
- *Executive orders*

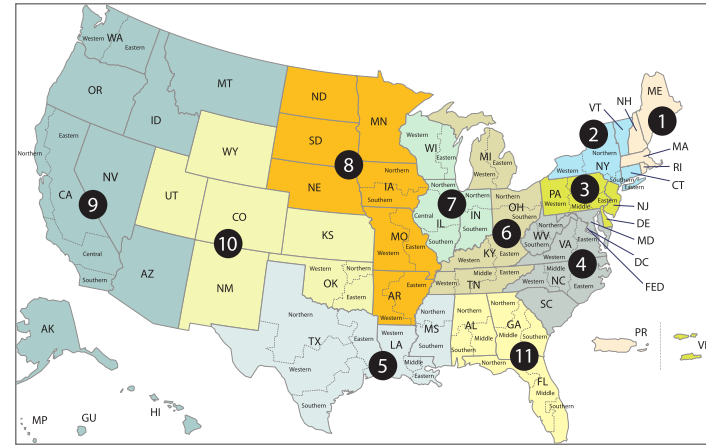
The Federal Judiciary

- 94 district courts – *original jurisdiction* in most cases.
- 13 Courts of Appeals
 - 11 regional circuits (numbered)
 - DC Circuit
 - Federal Circuit
- Supreme Court
 - Limited original jurisdiction
 - *Discretionary docket* for appeals

The Federal Court System



District and Circuit Courts



The Supreme Court



Supreme Court's Original Jurisdiction

Limited by Constitution to:

- Cases involving ambassadors and “other public ministers and consuls” from other nations.
- Certain cases in which states are a party (usually, controversies between two or more states).



Deciding to Decide

- Appeals from state courts of last resort and lower federal courts made using *writs of certiorari*.
- **Rule of Four** used to decide — more likely when...
 - **Circuit split** — lower courts disagree.
 - **Solicitor general** wants court to hear appeal.
- If cert is *not* granted, the lower court's decision stands and no further appeal is possible.

Hearing the Appeal

- The *petitioner* and *respondent* submit *briefs* discussing their arguments.
- Briefs from *amici curiae* and *solicitor general* are also common.
- Opposing sides usually get 30 minutes each to argue their case in **oral argument**.

Deciding the Case

- After oral argument, each case is discussed in *conference*.
- The majority opinion is assigned based on the preliminary vote...
 - By the chief justice: when the chief justice is in the majority.
 - Otherwise: by the most senior associate justice in the majority.
- Other justices may write *concurring* or *dissenting* opinions.

The Final Verdict

- The “final vote” is based on who signs each opinion.
- A majority opinion must be signed by five justices:
 - **Precedent** is based on majority opinions.
 - Only the majority opinion is binding on lower courts.
- If the lower court decision is overturned, usually the court remands the case back to implement a new solution based on its ruling.

Powers of the Chief Justice

- Speaks first in conferences.
- Responsible for court administration.
- Otherwise his/her leadership tends to be more informal — “first among equals.”



The Solicitor General

- The “Tenth Justice.”
- Argues the position of the government (administration) in appeals before the Supreme Court.
- Political appointee in the Department of Justice.
- Usually wins:
 - 70% of certiorari requests.
 - 75% of the time when taking sides in cases before the court.



The Politics of the Supreme Court

- Two major sources of controversy:
 - Nomination process.
 - How the court exercises *judicial review*.

Judicial Nominations

- Lifelong appointment “during good behavior.”
- Increased controversy as court decisions have become more politicized.
- Confirmation process:
 - Presidential nomination.
 - Rating by the *American Bar Association* (ABA).
 - Review by Senate Judiciary Committee.
 - Confirmation vote by full Senate.



Judicial Review

Court's exercise of *judicial review* can overturn popular laws.

- Court typically follows, rather than leads, public opinion.
- **State laws** much more likely to be struck down than federal laws.

How Judges Decide

Long-running dispute between scholars and practitioners over how judges and justices decide cases.

- **Legal model:** judges apply basic principles of jurisprudence to interpreting laws and the Constitution:
 - Respect for *stare decisis*.
 - Debate between **judicial restraint** and **judicial activism**.
- Judges take different approaches to reading laws:
 - Textualism.
 - Originalism.
 - “Living constitution” approach.

The political science of judging

Political scientists generally believe the legal model is inaccurate.

- **Attitudinal model:** judges decide cases politically; use legal reasoning *post hoc* to justify their conclusions.
- **Strategic model:** judges consider the larger political environment beyond their policy preferences to ensure their actions are not frustrated by other parts of government.

Limits on Judicial Power

While important, the courts are limited in power.

- States and other branches may fail to implement or enforce the court's decisions:
 - Desegregation.
 - School prayer.
 - The “legislative veto.”
- Laws can be changed to avoid court rulings.
- Constitution can be amended (rare).
- Justices can be threatened with removal from office or with potential “court packing.”