



## **The Judicial Branch, Civil Rights, and Civil Liberties: Notes**

### **In this lesson:**

- Judicial Branch Basics
- The Supreme Court
- Civil Rights

### **Judicial Branch Basics:**

- **Criminal Law: felonies, misdemeanor, prosecuted by the state against you**
- **Civil Law: money lawsuits between people and/or corporations-prosecuted by private lawyers, usually settled out of court**
- **Both Civil and Criminal Cases**
  - Trial and verdict by a jury of peers
  - The Judge runs the trial, sets punishment
- **Jurisdiction**
  - Original Jurisdiction: authority to hear a case for 1st time; must be heard by an original jurisdiction court before moving onto appellate (90% cases not appealed)
  - Appellate Jurisdiction: authority to hear cases that have been brought onto them on appeal from a lower court; can review court's findings and affirm their decision or reverse it
- **Court System #1: State Courts**
  - State Trial Courts: has original jurisdiction in state system
  - Appellate/Intermediate Courts: has appellate jurisdiction over trial courts
  - State Supreme Courts: can choose to initiate appellate jurisdiction
  - US Supreme Court
- **Court System #2: Federal Court**
  - Constitution and Early Federal Court History
    - Supreme Court is the only court mentioned in Constitution
    - Gives Congress power to create all other federal courts
    - Judiciary Act of 1789: established the idea of 3 tiered structure of the federal courts
      - Size of Supreme Court - 6 justices
      - 1869 - expanded to 9 justices
  - Selection of Lower Court Judges: all federal judges appointed by President and confirmed by Senate
  - District Courts
    - There are 94 district courts staffed with 700 total judged
    - Every state has at least 1 district court



- District courts handle 300,000+ cases per year; only 2% decided by trial because most settled by plea bargain
- Appeals Court (Circuit Courts)
  - Appellate courts that review district courts decisions; also can rule on decisions of regulatory agencies (no trials/testimony)

### **The Supreme Court:**

- **Basics: 9 total justices, chosen based on no constitutional requirements, life serving**
  - **1 Chief Justice, 8 Associate Judges**
- **Chief Justice**
  - Assign origin of opinion
  - Presides over meeting
  - Shapes court's direction (ideology)
- **Justice Selection**
  - **Considerations**
    - Competence: nominees expected to have really impressive legal accomplishments (like prior appellate court judicial experience or governmental experience)
    - Ideology: nominees will share the most important policy preferences and government philosophies/ideas with the President
    - Diversity: recent Presidents want to create courts that look like America
  - **Process Begins:**
    - President nominates judges
      - Potential justices investigated by FBI for personality, ratings, rulings, scandals
      - Interest groups weigh in, oppose justices bad for interest
      - President selects favorite
    - Senate Confirmation Process
      - Senate Judiciary Committee hold hearings, ask question about judges philosophy and rulings
      - Committee makes recommendation
      - Senate confirms with a majority vote
- **Journey to a Hearing:**
  - **Why does a case get heard by SCOTUS?**
    - Federal government asks for appeal
    - New civil rights/liberties
    - Case has conflicting appeals court decisions
    - Significant social/political urgency
  - **Writ of Certiorari:**



- An order by court directing lower court to send up the record and documents pertaining to a lower case so that the court can review it
- Allows court to control/limit its caseload = cases must have serious issue/need interpretation
- **Habeas Corpus:**
  - Issued to determine if the person's detention in prison is lawful; basically used for person to know what legal justification is for their imprisonment
- **Rule of Four:**
  - For a case to be heard on appeal at least 4 of the 9 judges must agree to hear the case
- **Amicus Curiae Brief**
  - Submitted by interest groups who argue for a decision and give legal reasoning as to why the court should rule that way
- **Hearing a Case**
  - **Filing of Briefs:**
    - written arguments for one side of the case; cite legal precedents, ideas, arguments; each side uses their briefs as a written argument to convince justices of your position on the case
  - **Oral Arguments**
    - Each attorney has 30 minutes to speak and answer questions from justices
  - **Conference and Vote**
    - After the case is heard, the justices meet privately/discuss/vote-majority wins
  - **Writing of Opinions**
    - After vote is taken, each side writes an opinion to be released to argue their viewpoints and why they are correct
- Majority Opinion: officially the "opinion of the court" viewed as the law of the land; legal reasoning given
- Concurring Opinion: justices sides with majority but had different reasons for doing so, articulates them here
- Minority/Dissenting Opinion: articulated disagreement with majority and why; have no legal standing but can be examined later
- **Factors that Influence SCOTUS decisions:**
  - **Precedent: refers to rule/interpretation of the law that all other lower courts use to decide their cases**
    - Stare decisis: principle that all courts should respect precedent
  - **Judicial Philosophy: general interpretation of how courts should function in 3 branch system**
    - Judicial Restraint: court should rely on precedent/tradition



- Judicial Activism: courts should correct injustices other government branches ignore or cause
  - Promote social justice and progress
- **Public Opinions: how public feels about certain case; can be important but courts are protected**
  - Supreme Court is protected from political pressures and public opinion because...
    - Lifelong terms: the Constitution stipulates justices serve for life, so they're independent and unafraid of criticism or political repercussions
    - Can't decrease pay: Constitution says salary can't be reduced so Congress can't control through power of the purse
    - Certiorari process: they get to grant Writs of Certiorari (pick cases) regardless of politics
    - Limited access: public can only listen to records, not televisions, to constituents, town halls, etc
  - Supreme Court is aware of/sensitive to the forces of political opinion because...
    - Political process: elected officials appoint and confirm judges so viewpoints of judicial branch is kept in mainstream of politics
    - Propose amendments: If Congress hates SCOTUS interpretation of Constitution, they can propose amendments to the Constitution
    - Add justices: Congress can pack the court by increasing the number of justices, minimizing current political preferences of the Court (FDR)
    - Impeachment: Congress can impeach/remove judges (extremely rare)

### Civil Rights:

- **Civil War/Reconstruction Amendments:**
  - **13th Amendment: banned slavery/involuntary servitude**
  - **14th Amendment:**
    - **Due Process Clause (civil liberties): people are due legal/constitutional rights that protect them from certain government actions**
    - **Equal Protection Clause (civil rights): policies protecting people against discriminatory treatment by government/private individuals**
  - **15th Amendment: banning voting discrimination by race/color**
- **Early Problems**
  - Black Codes and Jim Crow Laws: laws that limited African Americans freedom and equality, created in South to oppress African Americans after Civil War



- Voting Discrimination & Restrictions
  - Literacy Tests: Jim Crow laws that required people to take tests to prove they were educated enough to vote
  - Poll Taxes: required tax that people had to pay to get to vote
  - Grandfather Clause: can fail these tests and not pay taxes but still vote if your grandfather voted (mainly for whites)
- **Equal Protection Clause and Civil Rights**
  - **Martin Luther King Jr.'s Letter from a Birmingham Jail**
    - Background: Arrested for unlawful protest
    - Argument against him: He should wait; problems will be solved without protests, marches
    - Goal: Create nonviolent tension in society to draw attention to inequality/create change
    - Problems: Lynching, police violence, poverty, segregation, discrimination
    - Main Idea: 14th Amendment, Equal Protection Clause must be followed; the state is one carrying unequal treatment of citizens
    - Effect: Inspired the Civil Rights Act of 1964
- **Legislation to battle racial inequality/discrimination**
  - **Civil Rights Act of 1964**
    - Ended Jim Crow segregation by making racial discrimination illegal in hotels, motels, restaurants, and other public places
    - Prohibited discrimination on the basis of race, color, national origin, religion, and gender
    - Created the Equal Employment Opportunity to monitor and enforce protections against job/hiring discrimination
    - Gave power to Department of Justice to initiate lawsuits to force the desegregation of public facilities/schools
    - SCOTUS review: upheld outlawing of segregation of public places via the Interstate Commerce Clause
- **Legislation to battle racial voting inequalities/discrimination**
  - **24th Amendment (1964)**
    - Banned poll taxes in federal elections; SCOTUS banned poll taxes in state elections in 1966 by applying amendment to states
  - **Voting Rights Act of 1965**
    - Outlawed literacy tests and other tactics that disenfranchised African Americans since the end of the Civil War
    - Called for federal oversight of voter registration in areas that had a significant history of discriminatory practices & laws
    - Greatly improved voter registration disparity which resulted in increase in number of elected African Americans



- **Women's Civil Rights**
  - **Early Status**
    - Women were considered citizens, but lacked political rights
    - Male created system of law; women lack power to divorce, sell property
    - Denied educational/career opportunities
  - **Early Political Organizations**
    - Seneca Falls Convention (1848): Organized by Elizabeth Cady Stanton and others
      - Called for abortion of legal, economic, and social discrimination against women
    - 19th Amendment: women get suffrage (right to vote)
    - Equal Rights Amendment (1972)
      - Called for "equality of rights under the law; shall not be denied or abridged by the US or any state on account of gender"
      - Fell 3 states short of 3/4ths necessary for ratification
- **Affirmative Action**
  - Policy applying to most federal agencies/universities/employers to take positive/active steps to remedy discrimination
  - President Johnson's executive order for affirmative action in hiring minorities
  - Also amended to women
  - Can create a reverse discrimination
- **Federalist No. 78: The Judicial Branch is the weakest of the 3 branches**
  - **Judicial Branch doesn't have the enforcement or purse of the other branches**
  - **Justices should serve life terms to preserve court's independence**
  - **Judicial Review: court's role is to decide whether a governmental action is constitutional**
- **Incorporation: Due Process Clause of 14th Amendment extends most of the protections of the Bill of Rights to the states**
- **Selective Incorporation: gradual process where SCOTUS has made several decisions that incorporate the Bill of Rights into the Due Process Clause**