In an unusually strong statement, he claimed that the Senate's inaction left "too few judges and too much work" by allowing vacancies to remain unfilled. In 1997, the Senate confirmed only 36 judges, and only 17 in 1996, as compared to 101 judges in 1994. By early 1998, nearly 1 in 10 federal judgeships were vacant, with 26 of the 82 openings going unfilled for more than 18 months. The increasing workloads of the courts magnify the problem. Since 1990 the number of cases filed in courts of appeals has grown by 21 percent, and those brought to district courts have increased by 24 percent.

Quote

The President "should nominate candidates with reasonable promptness, and the Senate should act within a reasonable time to confirm or reject them."

Chief Justice William Rehnquist, 1997

The Supreme Court

Nine justices sit on the Supreme Court, although over the first 80 years of our nation's history the number varied from five to ten. The original number was set at six by the Judiciary Act of 1789 but has changed through the years. The number has been fixed at nine since 1869. Even Franklin Roosevelt could not change it, as he tried to do in 1937 when he asked Congress to increase it to 15. (See Almanac page 551.)

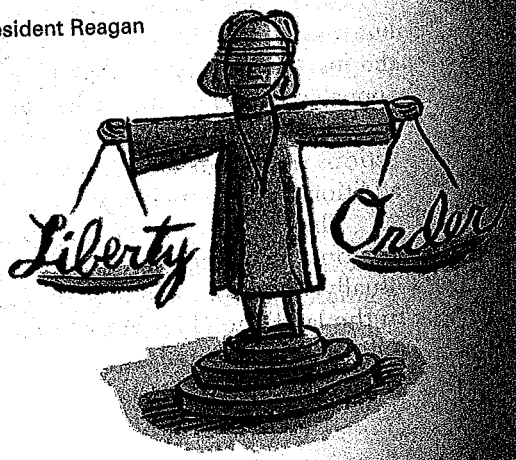
The Constitution does not list any specific responsibilities of the justices, but many duties have developed from laws and through tradition. Duties of the justices include deciding which cases to hear from among the thousands appealed to the Court each year, deciding the case itself, explaining the decision—called the Court's opinion—dealing with requests for special legal actions that come from their assigned circuits, and taking on occasional additional duties, such as serving on special commissions.

The chief justice has several additional duties, such as presiding over sessions and conferences. If he agrees with the majority decision, he usually writes the majority opinion. And, as the highest-ranking justice in the land, the chief justice supervises the general administration of the federal court system.

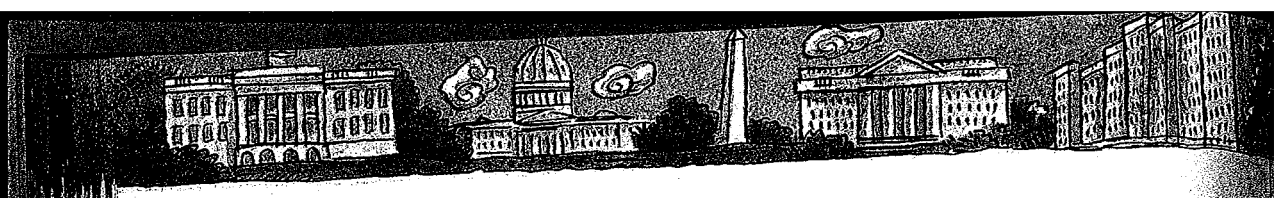
SUPREME COURT JUSTICES, 2000

JUSTICE	APPOINTING PRESIDENT	BIRTHPLACE	RACE/GENDER
William H. Rehnquist (Chief Justice of the United States)	Richard Nixon *	Wisconsin	White Male
John Paul Stevens	Gerald Ford	Illinois	White Male
Sandra Day O'Connor	Ronald Reagan	Texas	White Female
Antonin Scalia	Ronald Reagan	New Jersey	White Male
Anthony M. Kennedy	Ronald Reagan	California	White Male
David H. Souter	George Bush	Massachusetts	White Male
Clarence Thomas	George Bush	Georgia	African-American Male
Ruth Bader Ginsburg	Bill Clinton	New York	White Female
Stephen G. Breyer	Bill Clinton	California	White Male

* Appointed as chief justice in 1986 by President Reagan



PREVIOUS POSITION	YEAR APPOINTED
Assistant Attorney General, office of Legal Counsel, State of Arizona	1971
U.S. Seventh Circuit Court of Appeals	1975
Arizona Court of Appeals	1981
U.S. Court of Appeals, District of Columbia Judicial Circuit	1986
U.S. Ninth Circuit Court of Appeals, State of California	1987
New Hampshire Supreme Court	1990
U.S. Court of Appeals, District of Columbia Judicial Circuit	1991
U.S. Court of Appeals, District of Columbia Judicial Circuit	1993
U.S. First Circuit Court of Appeals, State of Massachusetts	1994



THE SUPREME COURT AT WORK

To many Americans, Supreme Court justices seem rather mysterious. We usually picture them in long, black robes holding court in a massive building nicknamed "The Marble Palace." We know little about them but consider them somehow "above politics."

Do the justices really have any important effect on the lives of citizens? A closer look at the Supreme Court shows the justices' important role in shaping government policy.

1. Choosing the Cases

The Court's term begins officially on the first Monday in October. The nine justices meet in a small conference room to decide which cases they will hear out of the 7,000 or so petitions they receive annually. The Supreme Court does not have to hear any appeals that they do not want to consider. About 90 percent of their cases are brought by **writ of *certiorari*,** an order to send up the case record because of a claim that the lower court mishandled the case. In the end the justices hand down about 80 to 120 signed rulings. The justices never explain the reason for their choices, a fact that reflects the nature of this least public of the three branches of government.

According to Chief Justice William Rehnquist in his 1987 book, *The Supreme Court: How It Was, How It Is*, three important factors determine whether or not a case is accepted. The first is whether the legal question has been decided differently by two lower courts. For example in *Koon v. United States* (1996), the California appeals court disagreed with the trial judge's sentence given to police officers accused of beating African-American motorist Rodney King. The Supreme Court took the case and sent it back to the California courts for reconsideration. A second reason a case may be heard is if a lower-court decision conflicts with an existing Supreme Court ruling. For example, the constitutionality of the all-male Virginia Military Institute's policy of not admitting women was the primary issue in the *United States v. Virginia* (1996). Finally, the Court may hear the case if the issue could have significance beyond the two parties in the case. For example, the Court struck down congressional districts in *Shaw v. Hunt* (1996), holding that race should not be the sole factor in drawing district boundaries.

The justices reject most of the appeals, but they discuss petitions flagged by one or more of them in earlier readings. Then they vote aloud, one at a time by seniority, starting with the chief justice. A petition will be heard if a minimum of four justices vote to accept the case, a practice known as the Rule of Four. The most junior justice takes notes that will be passed to a clerk for public announcement. Cases are refused for many reasons, not

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writ of *certiorari*—literally, "made more certain"; an order from a higher court requiring a lower court to send the record of a case for review.

necessarily because the justices agree with the decision of the lower court. Some, for example, are rejected because they represent a controversy that the justices do not want to be involved in or because the person challenging a law has not actually been harmed.

2. Hearing the Cases

The hearings for the cases are public. On Mondays, Tuesdays, and Wednesdays, starting in October, the justices listen to lawyers present each side of two or three cases a day. (Some cases, however, are decided without oral arguments.) The public may attend on a first-come first-served basis. Since the Court's sessions end in June and cases do not carry over into the next session, as many as four cases a day may be heard.

Before a case is heard in open court, the justices receive briefs, in which lawyers from each side present legal arguments, historical materials, and related previous decisions. The justices often receive *amicus curiae* briefs from individuals, interest groups, or government agencies that have an interest in the case and claim to have information vital to the decision.

3. Deciding the Cases

After the public hearing, the justices again meet privately. Although the discussions in these meetings are secret, they may be described as spirited and substantial. The chief justice presides, usually opening the discussion by stating the facts of the case and making suggestions for deciding the case. Each member of the Court is then asked, in order of seniority, to give his or her views and conclusions. About one-third of the decisions are unanimous, and the rest are split. The Court is sometimes criticized for the large number of split decisions, but the cases that reach them are almost always the tough ones that have led to disagreement in the lower courts. The Court functions as the final say, and the decisions are rarely easy. After the vote, the most senior justice in the majority assigns the task of writing the **majority opinion.** This is the official opinion of the court. If the chief justice has agreed with the decision, he often will draft it in consultation with the others. The most senior justice on the losing side decides who will write the **dissenting opinion** of those justices who do not agree with the Court's majority decision. Sometimes one or more of the justices who agree with the Court's decision may write a **concurring opinion** to make or emphasize a point not made by the majority opinion.

def·i·ni·tions

majority opinion—the view of the Supreme Court justices who agree with a particular ruling.

dissenting opinion—a Supreme Court opinion by one or more justices in the minority who oppose the ruling.

concurring opinion—a Supreme Court opinion by one or more justices who agree with the majority's conclusion but wish to offer differing reasons.

Law clerks stay very busy at this point, writing draft opinions, researching past cases, and even making recommendations to the justices. The justices do not trade votes during this process, but they engage in a constant conversation by way of memos. Drafts may be circulated and discussed for weeks, or even months, but all decisions must be made by June when the Court generally finishes its session.

Beginning in mid-spring, the Court stops hearing oral arguments and focuses on public releases of decisions. Rulings traditionally are handed down on Mondays, although as June approaches, they are announced almost every day. The process again becomes public at this point, and the entire Court sits at the bench in the main courtroom. The justice who wrote the majority opinion announces the opinion and gives the facts of the case and details of the Court's decision. After the last case is announced, the session ends, and a new one begins the following October.

4. Implementing Decisions

Once a decision is made, sometimes the public responds quickly in implementing it. For example, in *United States v. Virginia* (1996) the Court ordered the all-male Virginia Military Institute to admit women. Later, the Citadel, a military college in Charleston, South Carolina, decided to admit female students for the first time. No court order was needed for the action. Other times action does not follow for many years. The famous *Brown v. Topeka* (1954) case declared "separate but equal" public facilities unconstitutional, but segregated school districts continued to exist for years thereafter. President Eisenhower refused to state clearly that Americans should comply with the decision. Southern governors—such as Orville Faubus of Arkansas and George Wallace of Alabama—blocked the decision from being implemented in their states. The Court needed more decisions and the cooperation of national and state executives and legislatures—as well as some media publicity—before the *Brown* decision was enforced across the country.

POLICY-MAKING POWER OF THE SUPREME COURT

The Supreme Court is the highest court in the most powerful judicial system in the world. As the Court interprets the meaning of laws, it also exerts great policy-making influence. Most people think of policy making as passing laws, but in truth all three branches of government shape policy. Congress certainly makes policies when it considers and passes new legislation. Although the executive branch theoretically carries out only the laws passed by Congress, its departments and agencies shape policy in the ways they execute the laws. The modern President now takes the initiative in developing a budget, influencing public opinion, and setting goals for the country in a way that his predecessors never did. Like it or not, the Supreme Court and other federal courts also determine policy through judicial review, setting precedents, and overturning decisions.

Precedents

An informal rule of judicial policy making has been ***stare decisis,*** a Latin term that means "let the decision stand." *Stare decisis* is based on using **precedents,** the custom of settling a court case in accordance with earlier decisions on similar cases. The personal values and beliefs of individual justices, the influence of one justice on another, changes in the American political climate and public opinion—these are just some of the factors that influence the decisions of the Court. Precedent gives continuity and stability to the meaning of law and sets the standard for the measurement of equal justice.

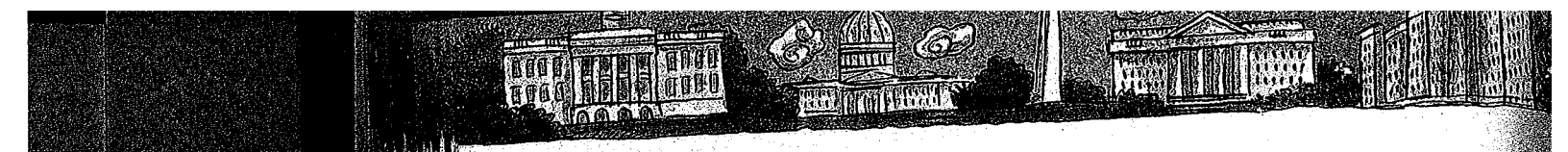
On the other hand, times and attitudes change, and the composition of the Court changes. The Supreme Court has overruled its own precedent dozens of times. One example is *West Virginia State Board of Education v. Barnette* (1943) in which the Court ruled that mandatory flag salute laws in public schools interfere with the free exercise of religion. In supporting a family that considered the flag a "graven image," and thus against their religious beliefs, that Court overturned the earlier *Minersville School District v. Gobitis* (1940) decision in which the Court had upheld the school policies.

Should the courts follow the lead of Congress and the President, waiting for the other branches to make laws and take actions that the courts may or may not judge to be constitutional? The argument that the courts go too far in policy making is an old one. The debate about policy-making power is evident in the conflicting points of view on judicial activism and judicial restraint.

def·i·ni·tions

precedent—a judicial decision that is used as a standard in later similar cases.

stare decisis—literally, "let the decision stand"; the practice of basing legal decisions on established Supreme Court precedents from similar cases.



U.S. SUPREME COURT JUSTICES

NAME	APPOINTED BY PRESIDENT	JUDICIAL OATH TAKEN	DATE SERVICE TERMINATED
CHIEF JUSTICES			
John Jay	Washington	1789	1795
John Rutledge	Washington	1795	1795
Oliver Ellsworth	Washington	1796	1800
John Marshall	John Adams	1801	1835
Roger Brooke Taney	Jackson	1836	1864
Salmon Portland Chase	Lincoln	1864	1873
Morrison Remick Waite	Grant	1874	1888
Melville Weston Fuller	Cleveland	1888	1910
Edward Douglass White	Taft	1910	1921
William Howard Taft	Harding	1921	1930
Charles Evans Hughes	Hoover	1930	1941
Harlan Fiske Stone	Franklin D. Roosevelt	1941	1946
Fred Moore Vinson	Truman	1946	1953
Earl Warren	Eisenhower	1953	1969
Warren Earl Burger	Nixon	1969	1986
William Hubbs Rehnquist	Reagan	1986	
ASSOCIATE JUSTICES			
James Wilson	Washington	1789	1798
William Cushing	Washington	1790	1810
John Blair	Washington	1790	1795
John Rutledge	Washington	1790	1791
James Iredell	Washington	1790	1799
Thomas Johnson	Washington	1792	1793
William Paterson	Washington	1793	1806
Samuel Chase	Washington	1796	1811
Bushrod Washington	John Adams	1799	1829
Alfred Moore	John Adams	1800	1804
William Johnson	Jefferson	1804	1834
Henry Brockholst Livingston	Jefferson	1807	1823
Thomas Todd	Jefferson	1807	1826
Gabriel Duvall	Madison	1811	1835
Joseph Story	Madison	1812	1845
Smith Thompson	Monroe	1823	1843
Robert Trimble	John Quincy Adams	1826	1828
John McLean	Jackson	1830	1861
Henry Baldwin	Jackson	1830	1844
James Moore Wayne	Jackson	1835	1867
Philip Pendleton Barbour	Jackson	1836	1841
John Catron	Van Buren	1837	1865

CONTINUED

U.S. SUPREME COURT JUSTICES CONTINUED

NAME	APPOINTED BY PRESIDENT	JUDICIAL OATH TAKEN	DATE SERVICE TERMINATED
John McKinley	Van Buren	1838	1852
Peter Vivian Daniel	Van Buren	1842	1860
Samuel Nelson	Tyler	1845	1872
Levi Woodbury	Polk	1845	1851
Robert Cooper Grier	Polk	1846	1870
Benjamin Robbins Curtis	Fillmore	1851	1857
John Archibald Campbell	Pierce	1853	1861
Nathan Clifford	Buchanan	1858	1881
Noah Haynes Swayne	Lincoln	1862	1881
Samuel Freeman Miller	Lincoln	1862	1890
David Davis	Lincoln	1862	1877
Stephen Johnson Field	Lincoln	1863	1897
William Strong	Grant	1870	1880
Joseph P. Bradley	Grant	1870	1892
Ward Hunt	Grant	1873	1882
John Marshall Harlan	Hayes	1877	1911
William Burnham Woods	Hayes	1881	1887
Stanley Matthews	Garfield	1881	1889
Horace Gray	Arthur	1882	1902
Samuel Blatchford	Arthur	1882	1893
Lucius Quintus C. Lamar	Cleveland	1888	1893
David Josiah Brewer	Harrison	1890	1910
Henry Billings Brown	Harrison	1891	1906
George Shiras, Jr.	Harrison	1892	1903
Howell Edmunds Jackson	Harrison	1893	1895
Edward Douglass White	Cleveland	1894	1910*
Rufus Wheeler Peckham	Cleveland	1896	1909
Joseph McKenna	McKinley	1898	1925
Oliver Wendell Holmes	Theodore Roosevelt	1902	1932
William Rufus Day	Theodore Roosevelt	1903	1922
William Henry Moody	Theodore Roosevelt	1906	1910
Horace Harmon Lurton	Taft	1910	1914
Charles Evans Hughes	Taft	1910	1916
Willis Van Devanter	Taft	1911	1937
Joseph Rucker Lamar	Taft	1911	1916
Mahlon Pitney	Taft	1912	1922
James Clark McReynolds	Wilson	1914	1941
Louis Dembitz Brandeis	Wilson	1916	1939

** Named Chief Justice*

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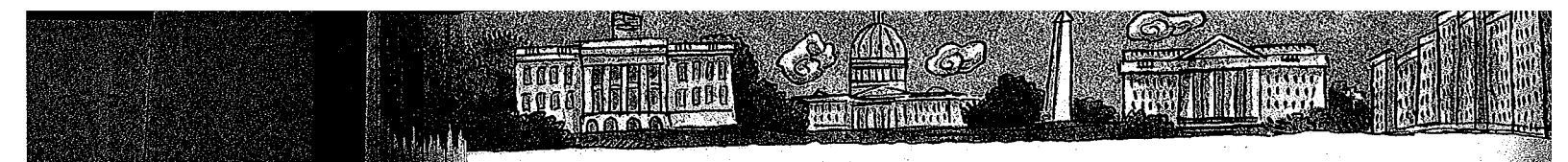


U.S. SUPREME COURT JUSTICES

NAME	APPOINTED BY PRESIDENT	JUDICIAL OATH TAKEN	DATE SERVICE TERMINATED
John Hessin Clarke	Wilson	1916	1922
George Sutherland	Harding	1922	1938
Pierce Butler	Harding	1923	1939
Edward Terry Sanford	Harding	1923	1930
Harlan Fiske Stone	Coolidge	1925	1941*
Owen Josephus Roberts	Hoover	1930	1945
Benjamin Nathan Cardozo	Hoover	1932	1938
Hugo Lafayette Black	Franklin D. Roosevelt	1937	1971
Stanley Forman Reed	Franklin D. Roosevelt	1938	1957
Felix Frankfurter	Franklin D. Roosevelt	1939	1962
William Orville Douglas	Franklin D. Roosevelt	1939	1975
Frank Murphy	Franklin D. Roosevelt	1940	1949
James Francis Byrnes	Franklin D. Roosevelt	1941	1942
Robert Houghwout Jackson	Franklin D. Roosevelt	1941	1954
Wiley Blount Rutledge	Franklin D. Roosevelt	1943	1949
Harold Hitz Burton	Truman	1945	1958
Tom Campbell Clark	Truman	1949	1967
Sherman Minton	Truman	1949	1956
John Marshall Harlan	Eisenhower	1955	1971
William J. Brennan, Jr.	Eisenhower	1956	1990
Charles Evans Whittaker	Eisenhower	1957	1962
Potter Stewart	Eisenhower	1958	1981
Byron Raymond White	Kennedy	1962	1993
Arthur Joseph Goldberg	Kennedy	1962	1965
Abe Fortas	Lyndon Johnson	1965	1969
Thurgood Marshall	Lyndon Johnson	1967	1991
Harry A. Blackmun	Nixon	1970	1994
Lewis F. Powell, Jr.	Nixon	1972	1987
William H. Rehnquist	Nixon	1972	1986*
John Paul Stevens	Ford	1975	
Sandra Day O'Connor	Reagan	1981	
Antonin Scalia	Reagan	1986	
Anthony McLeod Kennedy	Reagan	1987	
David H. Souter	Bush	1990	
Clarence Thomas	Bush	1991	
Ruth Bader Ginsburg	Clinton	1993	
Stephen G. Breyer	Clinton	1994	

** Named Chief Justice*

Judicial Activism vs. Judicial Restraint

A number of prominent Supreme Court justices—from John Marshall in the early nineteenth century to Earl Warren in the 1950s and 1960s—have generally supported the view of **judicial activism,** the belief that it is appropriate for judges to make bold policy decisions and even chart new constitutional ground. Judicial activists believe that the other two branches represent the majority of Americans and that they usually make fair decisions for most people. However, sometimes an individual's rights may suffer because he or she is always outvoted by the majority. In this case, the courts are the best branch for defending the individual's rights and making policy to help those who are weak economically or politically. For example, most judicial activists would argue that the rights of African Americans were ignored for decades by Congress and Presidents. In *Brown v. Topeka Board of Education* (1954), for example, the Court led the other branches in policy making. The result was justice where it had previously been denied. (See page 317.)

Judicial activism is opposed by the policy of **judicial restraint,** the belief that the courts should leave policy decisions to the legislative and executive branches. Advocates of this view argue that the federal courts, composed of unelected judges, are the least democratic branch of government. They believe that judges should not get involved in political questions or conflicts between the President and Congress. Justices may be legal experts who specialize in defining rights and duties, but they have no special expertise in government.

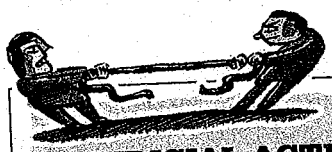
Note that judicial activism or restraint differs from liberalism or conservatism. At any given time, the Supreme Court may be described as liberal, moderate, conservative, or divided. Since justices are appointed one by one, the Court tends to change gradually over a period of years. Although some might assume that liberals—who favor change—are activists, there is almost no correlation between activism and a liberal ideology. Nor do conservatives necessarily practice judicial restraint.

One reason that people tend to associate activism with liberalism is that the most activist Court in recent times, the Warren Court (1953–1969), was also known for its liberal political views. Led by Chief Justice Earl Warren, the Court rulings strengthened desegregation efforts and the civil liberties and rights of defendants. However, the actions of other Courts through the years illustrate that conservatism does not equal restraint, and liberalism does not equal activism.

def·i·ni·tions

judicial activism—the belief that Supreme Court justices should actively make policy and sometimes redefine the Constitution.

judicial restraint—the belief that Supreme Court justices should not actively try to shape social and political issues or redefine the Constitution.



Vs.

JUDICIAL ACTIVISM vs. JUDICIAL RESTRAINT

The debate between judicial activism and judicial restraint began in the early days of the United States and continues through the present.

JUDICIAL RESTRAINT

"The Constitution is not an empty bottle . . . , it is like a statute, and the meaning doesn't change." A democratic system "is destroyed if the smug assurances of each age are removed from the democratic process and written into the Constitution."

Antonin Scalia
Associate Justice, 1996

(Referring to the Court of the 1970s): "For the most part, the Court was neither out in front of, or did it hold back, social change. Instead, what occurred was what engineers might call a positive feedback process, with the Court functioning as an amplifier sensitively responding to, and perhaps moderately accelerating, the pace of change."

Ruth Bader Ginsburg
Associate Justice, 1997

JUDICIAL ACTIVISM

"We are under a Constitution, but the Constitution is what the judges say it is."

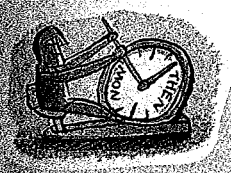
Charles Evans Hughes
Associate Justice, 1910–1916
Chief Justice, 1930–1941

[The Supreme Court should be] "a leader in a vital national seminar that leads to the formulation of values for the American people."

Arthur S. Miller
legal scholar, 1982

"The genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be the measure to the vision of our times."

William J. Brennan, Jr.
former Associate Justice, 1981



Then and Now

THE BURGER COURT (1969–1986)

The Burger Court demonstrates that liberalism does not necessarily mean activism. Richard Nixon chose Warren Burger, a conservative judge on the District of Columbia Court of Appeals, as chief justice. Although most of the justices were appointed by Republican Presidents, this moderate Court followed the activist tradition, knocking down 34 statutes compared to the Warren Court's 25. The Burger Court narrowed defendants' rights (a conservative view), but it also upheld a woman's right to have an abortion in *Roe v. Wade* (1973), required school busing in certain cases, and upheld affirmative action programs (all reflecting a liberal position).

Checks on Judicial Power

Despite the powerful policy-making role that courts play in the United States—especially those that practice judicial activism—they do not operate without restraint. There are a number of important checks on judicial power. For instance, the courts are limited in the types of cases and issues they may hear. Four other important constraints on judicial power are described below:

1. LIMITED POWERS OF ENFORCEMENT A judge has no police force or army. Although people who do not comply with a court order risk being charged with contempt of court, they can sometimes get away with ignoring the order for long periods of time. For example, long after the Supreme Court decided that prayers should not be allowed in public schools, schools all over the country were still allowing those prayers.

2. CONGRESS Congress may check the judiciary by its powers to:

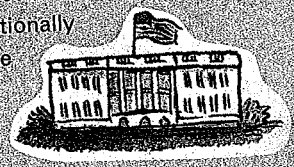
- ★ confirm all presidential nominees to federal judgeships,
- ★ impeach judges and justices,
- ★ alter the organization of the federal court system (other than the Supreme Court), and
- ★ amend the Constitution.

Congress may also repass a slightly different version of a law the courts declare unconstitutional or restrict the kinds of remedies that courts may impose.

Headlines

ELECTION 2000: THE SUPREME COURT'S DECISION

Did judicial activism go too far in the presidential election of 2000? Should judges always be "above politics"? One of the many controversies of the unusual election centered around the Supreme Court's role in blocking the recounts of disputed ballots in Florida. The election was so close that the winner in Florida would also win the presidency, and Republican George W. Bush led Democrat Al Gore in Florida by a narrow margin of a few hundred votes. Gore sought a recount, hoping that he could reverse the results of the initial counts. In a sharply divided opinion, the Court ruled that the Florida Supreme Court's method of doing the recounts was constitutionally flawed but could not be repaired in time to meet the deadline for selecting presidential electors. Their decision ended the recounts, and Bush was declared the winner of the election.



Critics of the Court claimed that the election involved "political questions"—issues best left to elected officials in the legislative and executive branch—or, at the very least, to courts at the state level. The justices grappled openly with whether or not a "federal question" was at issue in the election. The split in the Court is reflected in their contrasting comments about judicial responsibility:

"None are more conscious of the vital limits on judicial authority than are the members of this court. . . . [We have an] unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront."

Majority Opinion
Bush v. Gore, 2000

"Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the nation's confidence in the judge as an impartial guardian of the rule of law."

Dissenting Opinion
John Paul Stevens
Bush v. Gore, 2000

3. **THE PRESIDENT** The President's ability to check the judiciary lies in his power to appoint justices and to enforce or ignore Court decisions. For example, President Dwight Eisenhower was initially reluctant to enforce the Court's 1954 ruling to integrate schools. He sent the National Guard to Little Rock, Arkansas, in 1957, after massive resistance by state and local officials convinced him to act.

4. **PUBLIC OPINION** In some ways it might seem federal judges are isolated from public opinion. After all, they are not elected and have no constituency to answer to. Some believe that society's views are irrelevant and that they should consider only the original intent of the Founders when interpreting the law. Yet, the courts are not entirely independent of popular opinion and changing political moods. For instance, if the Supreme Court strays too far from public opinion, the backlash can make the decision impossible to apply and weaken the Court's authority. In *Dred Scott v. Sandford* (1857), the Court declared that slaves cannot be citizens and that Congress had no power to forbid slavery in the U.S. territories. (See page 296.) The strong public outrage helped set off the Civil War. Decisions that go against popular opinion are sometimes overturned later as the views of the public—or the Court justices—change. For instance, the decision in *Plessy v. Ferguson* (1896) that "separate but equal" public facilities were constitutional was overturned by *Brown v. Board of Education* (1954). Court decisions often reflect the values of the American society during a particular historical era.

In 1788 Alexander Hamilton wrote in *The Federalist* No. 78 that the "judiciary is beyond comparison the weakest of the three [branches]. . . ." Whether that assessment is still true today is debatable. The power of judicial review and the Supreme Court's increasing role as a shaper of public policy have established the U.S. judiciary as the most influential judicial system in the world. U.S. policies and laws are ultimately tested in the courts.