

Introduction to American Politics

Week 10: Courts

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28 March 2023

Attendance



Outline

- *Federalist 78*
- Kernell et al. (Ch. 9)
- Scalia and Breyer
- Addt'l materials
- Wrap-up

Section 1

Discussion

Overview: The U.S. Courts

- Article III provides for *the* Supreme Court, and other “inferior” courts that Congress can create/disband at any time
- Buildup to and resolution of *Marbury v. Madison* → why was this case particularly important for the judiciary?
- Judicial power has varied widely over time → how and why?
- Structure, jurisdiction, delegation, and doctrine
- The judiciary's place in the separation of powers
- **Consider: How do polarization and politicization impact the courts?**

Scalia: *A Matter of Interpretation*

- At its core, this is about *statutory interpretation* (not constitutional interpretation)
- Proposes that while American judges have generally done well developing the common law, they lack a unified theory of statutory interpretation
- Legislative *intent* and *history* are irrelevant → instead, we should focus on the **text** itself
- Scalia claims that this approach helps to prevent judges from interpreting statutes based on what they themselves think it *ought* to mean
- Argues against the “Living Constitution” approach

Breyer: *Active Liberty*

- Agrees with Scalia that judges should defer to the elected branches when it comes to democratic policies → *but*, argues that democracy also requires judges to guard citizens' rights
- Emphasizes that a **purposive** approach to law is more consistent with American democracy
- Argues that the use of text alone is too restrictive, and prevents judges from adequately dealing with the context of each unique case
- While courts should generally defer to the elected branches in situations where they have more expertise, judges can be more active when they encounter laws and decisions that infringe on abstract democratic principles (e.g., participatory self-government)

Additional materials

- 5-4 podcast
- Biskupic → justices as strategic bargainers (esp. the CJ)
- *Associated Press* (2004) → Pledge of Allegiance and court curbing
- Cohen & Brown → more court “curbing” (congressional overrides of *statutory* decisions)
- Dinan → addt'l debate over the Pledge
- Mauro → institutional role of the CJ
- Wade → information theory applied to voting coalitions
- Wallsten → big curbs on courts (esp. the 9th Circuit)
- Presidential Commission on the Supreme Court

Section 2

Outro

Outro

- Office hours today: 12:30-1:30pm in Monroe 450

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