THE DEVELOPMENT OF AN INDEPENDENT AND POWERFUL FEDERAL JUDICIARY

* The framers of the Constitution generally agreed that they wanted the Court to be independent, but they did not specify in great detail the organization of the Court and they disagreed on how powerful the Supreme Court should be. The Federalists wanted a weak judiciary, while the Antifederalists wanted a strong judiciary.
  + Due to this conflict, many of the details about the Supreme Court were left up to the Congress.
  + Congress passed the **Judiciary Act of 1789,**which provided details about how the federal judiciary would be organized, creating the Office of the Attorney General, circuit courts, and**district courts** in which most federal cases are tried. The Act also expanded the Supreme Court’s**appellate jurisdiction**, allowing the high court to hear appeals from and change or uphold the decisions of lower courts.
* **Judicial Review**
  + Using the 1803 case *Marbury v. Madison*, Chief Justice Marshall established **judicial review**, giving the Court the power to strike down a law or executive action that it finds unconstitutional.
    1. At issue in the case was the Judiciary Act’s authorizing of the Supreme Court to issue**writs of mandamus**—orders directed at lower courts, government officials, or government agencies to perform some act required by law —,effectively expanding the Supreme Court’s original jurisdiction.
  + Judicial review has allowed the Court to gain equal footing in the system of checks and balances and the separation of powers.
  + When reviewing the constitutionality of law, the Supreme Court can engage in two forms of interpretation:
    1. **Constitutional interpretation**is the process of determining whether a law or government action is supported by the Constitution.
    2. **Statutory interpretation** is the process of determining the meaning of a law and the contexts in which that law applies.
  + The process of interpreting the Constitution and resolving different interpretations of the law is an inherently political activity.

AMERICAN LEGAL AND JUDICIAL SYSTEM

 **Fundamentals**

* A **plaintiff** is the person of party who brings a case to the court, while the **defendant** is the person or party against whom a case is brought.
* The final decision of the court is the **verdict**. If a case is settled before the end of the trial, the outcome is called a **plea bargain**.
* Differences between criminal and civil cases:
  1. In criminal cases, the amount of evidence to reach a decision, or **standard of proof**, is much higher than it is for civil cases.
  2. In criminal cases, the **burden of proof**is on the plaintiff, who must demonstrate that the defendant is not innocent. However, in civil cases, the burden of proof can [apply](http://www.wwnorton.com/college/polisci/american-politics-today2/core/ch/13/outline.aspx) to either party.
  3. A **class action**[**lawsuit**](http://www.wwnorton.com/college/polisci/american-politics-today2/core/ch/13/outline.aspx) is a special type of civil suit in which a case is brought by a group of individuals on behalf of themselves and others in the general public who are in similar circumstances.
* Other characteristics:
  1. Our system is an **adversarial system,**meaning that lawyers on both sides get to present their case and challenge the opposing side.
  2. Much of our system is based on **common law**, meaning the law is based on previous court cases rather than legislation.
     1. **Precedent**is a powerful legal norm that applies previous court cases to future cases if they address the same legal questions.
  3. In civil cases, the plaintiff must have **standing** in the case, meaning that he or she must be justified in bringing a case to the court.
  4. Choosing the appropriate court for a case requires understanding which courts have**jurisdiction**—the legal authority to hear and decide cases—over the specific legal question.

 **Courts and Federalism**

* There are two parallel tracks of the court system across levels of government: state and local courts, and federal courts.
  1. Each track involves trial courts, followed by intermediate appeals courts and ultimately the final appeals courts.
* District courts are the “workhorses” of the legal system as the majority of legal action takes place there.
  1. There are eighty-nine federal district courts, handling over 250,000 legal filings per year.
* **Appeals courts** serve as an intermediate level of the courts, where appeals for lower court decisions are heard.
  1. Most cases end here, though a very few decisions reached in the appeals courts can be appealed in the Supreme Court as well.
* The Supreme Court is the “court of last resort” for cases appealing decisions at the district and appellate court levels.
  1. The Supreme Court resolves conflicts between lower courts, or between state and federal law, or between states in an effort to make sure that the Constitution is consistently applied across the United States.

 **The Selection of Judges**

* State-level judges can be selected a number of ways: appointment by the governor, appointment by the state legislature, partisan elections, nonpartisan elections, or via the Missouri Plan, where the judge is selected by the governor from a list compiled by a nonpartisan steering committee.
  1. While elections mean that judges will be more responsive to public opinion, they may also undermine the courts’ role as protector of unpopular minority rights. Moreover, election of judges also raises the potential for conflicts of interest if campaign contributors have cases before the court.
* Federal judges are appointed by the president with the “advice and consent” of the Senate.
  1. Many nominations are fierce battles, as federal judges have significant influence and lifetime tenure.
  2. The Constitution does not list any qualifications for serving on the federal court.
* Presidents have broad discretion in whom they appoint, and often attempt to influence the ideological direction of the Court.
  1. While the president can make a good guess about how a justice is likely to rule on a given case or constitutional question, presidential guesses are not always accurate.
* The Senate rarely rejects federal court nominees because of qualifications, but often does so for political and ideological reasons.
  1. Though district and appellate court nominations have been contested lately, the norm of**senatorial courtesy** is still commonly upheld, meaning that the president will consult with his or her party’s senators from the relevant state in choosing a district court nominee.

ACCESS TO THE SUPREME COURT

* The Supreme Court receives roughly 9,000 cases a year, but fewer than 1 percent of appeals are actually heard by the Court. Those cases that the justices agree to hear constitute the Court’s **docket**.
* Cases can reach the Supreme Court in one of four ways:
  + The Supreme Court has**original jurisdiction**over cases involving conflicts between two states, foreign ambassadors, or foreign countries, and therefore gets to handle these cases first. Justices may choose to assign cases in which they have original jurisdiction to lower courts.
  + **Cases on appeal**are those cases that Congress requires the Supreme Court to hear.
  + A **writ of certification**is issued when an appeals court asks the Supreme Court for instructions on a point of law before deciding a case.
  + **A writ of certiorari**is issued when at least four of the nine justices agree to hear a case that has reached them via an appeal from the losing party in a lower court’s ruling. It is by far the most common route to the Court.
* There are three primary criteria for the selection of cases, requiring actual “cases and controversies”:
  + **Collusion**requires that the litigants not agree on the desired outcome of the case, indicating that they are not cooperating or conspiring.
  + **Mootness**requires that the controversy still be relevant when the Court hears the case.
  + **Ripeness**requires that the central issue or controversy has actually taken place. The Court will not act preemptively.
* Justices still have a great degree of personal discretion over what cases they will hear:
  + Most justices use a **cert pool**, where law clerks screen cases that come to the Supreme Court and recommend to the justices which cases should be heard.
  + Justices place these relevant cases on the “discuss list,” where they are considered in conference with other justices.
  + While justices can pick and choose the cases they decide to hear, they can only choose the cases that come to them: they cannot seek out cases on which they want to rule.
  + Cases that have generated a lot of activity from interest groups or governmental parties are more likely than others to be heard. Especially likely to be heard are cases involving the **solicitor general**, a presidential appointee in the Department of Justice who conducts all litigation on behalf of the federal government before the Supreme Court and supervises litigation in the federal appellate courts.

HEARING CASES BEFORE THE SUPREME COURT

* Justices prepare for a case by reading **briefs** which outline the arguments of and are filed by both parties. Outside interests may also submit **amicus curiae** or “friend of the court” briefs, which offer arguments in defense of one side or another.
* When the case is scheduled, the justices hear **oral arguments**from the lawyers from each party, each side generally getting a half an hour to present.
* Following the arguments, the justices meet in conference to discuss and vote on the cases.
* After justices indicate their vote choice, the most senior justice in the majority decides who will write the majority opinion.

This facilitates a number of goals:

* + It ensures smooth operation of the Court.
  + It plays to the justices’ individual areas of expertise.
  + It allows the Court to act strategically based on external relations, internal politics, and the personal policy goals of the opinion assigner.
* Once the majority opinion has been drafted, it is circulated and the justices have the option of joining the majority, writing a separate concurring opinion, or dissenting.

SUPREME COURT DECISION MAKING

* **Legal Factors**
  + Rulings based on precedent involve using previous decisions on similar cases to inform current decisions.
  + Language of the Constitution
    1. **Strict constructionists**argue that the Constitution should be interpreted based on its language alone.
       1. In places where the wording of the Constitution is unclear, strict constructionists believe that judges should be guided by **the original intent** of the Founders.
          1. Critics of strict constructionists argue in favor of a **living Constitution**that takes into account the changes in society and national circumstances rather than the text alone.
* **Political Factors**
  + Political ideology
    1. Rather than following a neutral application of the law, justices are subject to political influence.
       1. The **attitudinalist approach**argues that there is a liberal-conservative divide on issues such as defendant’s rights, abortion, or national intervention in the states, and that justices are ideologically consistent in their rulings across issues.
  + Strategic approach
    1. A strategic approach considers how justices calculate their actions based on the preferences of other justices, the president, and Congress. Under this model, the median voter in Court has significant influence.
  + Separation of powers
    1. Justices clash on how active the court should be in intervention in the other branches of government.
       1. Supporters of **judicial restraint**argue that the Court should be reserved and defer to democratically elected branches of government, and not strike down their laws.
       2. Supporters of **judicial activism**argue that the Court should assert its interpretion of the law, even if it overrules the actions of the elected branches of government.
  + Outside influences: Interest groups and public opinion
    1. Public opinion indirectly influences Supreme Court decision making, because Court nominees are selected and approved by the president and the Senate, all of whom are popularly elected.
    2. Furthermore, when the public articulates a clear position on an issue, the Court often agrees with the public.

THE COURT AS A POLICY MAKER

The Court has difficulty enforcing decisions: sometimes it can force its views on other the branches of government, while other times it requires their support.

* The Court relies on its reputation to gain compliance with its decisions; it often relies on executive or congressional action to support them.
  + Without executive or congressional support, the Court is often powerless to enforce its rulings.
* Generally, the Court is careful not to encroach on the power of either the president or Congress unless it is necessary.
  + It does strike down congressional or presidential action occasionally, as when it required Nixon to submit his secret tapes of the Watergate break-in.