**The Foundations of American Law**

There are three bases of American law:

1. **Case law: Court decisions that inform judicial rulings**
2. **Constitutions: Agreements, such the U.S. Constitution and the state constitutions, that outline the structure of government**
3. **Statutes: Laws made by governments**

**Case Law**

The American legal system has its roots in the British system, which is based on **common law.** In this system, judges shape the law through their decisions, interpretations, and rulings, which are then collected into a body of law known as *case law* that other judges can use as reference. When judges make decisions, they look to similar cases for **precedent,** a court ruling from the past similar to the current case. The Latin phrase **stare decisis** denotes the legal doctrine of relying on precedent.

***Example:*** *The Fourth Amendment states that citizens are protected from “unreasonable searches and seizures” and that search warrants can only be issued based on “probable cause.” Many cases have laid down rules about how the courts should handle such matters. In the case Mapp v. Ohio (1961), the Supreme Court applied the exclusionary rule—which states that any evidence obtained through an illegal search is excluded from trial—to state courts. Since then, judges have referred to the precedent set in Mapp v. Ohio to keep illegally obtained evidence out of the courtroom.*

**Overturning Precedent**

Judges rely on precedents when deciding their cases, but the Supreme Court also has the power to overturn precedents. Some of the most famous cases in American legal history have overturned precedents. For example, the civil rights case *Brown v. Board of Education* (1954), which outlawed segregation in public schools, overturned the 1896 case *Plessy v. Ferguson.* State and federal courts are reluctant to overturn precedent because the law needs to be stable for the courts to have legitimacy. It would be impossible for anyone to obey a law that kept changing. At the same time, judges recognize that the law must change to stay relevant. The courts need to strike a balance between stability and change.

**Constitutions**

The U.S. Constitution is the supreme law of the land. No law or act of government—at the local, state, or federal level—can violate its principles. Similarly, a state’s constitution is the supreme law within the state’s borders, so long as the state constitution does not conflict with the national Constitution.

**Marbury v. Madison**

Federal courts have assumed the power of **judicial review,** the right to determine the constitutional legality of state and federal laws, congressional and presidential acts, and lower-court rulings. Likewise, each state court has assumed the power to determine the legality of legislative and gubernatorial decisions within its own borders.

The power of judicial review is not codified in the Constitution, however. Many state supreme courts had already assumed this power by the time the Constitution was ratified in 1789, and Chief Justice John Marshall set a precedent for federal judicial review in the 1803 case *Marbury v. Madison.* Federal courts use their power of judicial review sparingly, primarily because they have no means of enforcing their decisions. Nevertheless, judicial review is the most significant power of the judiciary branch.

**Statutes**

Statutes are laws passed by Congress and states legislatures. Congress passed an unprecedented number of statutes in the twentieth century, covering such issues as environmental regulation, criminal law, and contracts. State governments can also pass statues according to the rules of their own constitutions. Some government agencies can issue administrative regulations, which have the force of law.

**Types of Law**

American courts handle three types of law:

**1. Criminal law:** Forbids people from acting in certain ways. In criminal cases, a government prosecutor brings charges against a defendant. The outcome is either acquittal or punishment.

**2. Civil law:** Governs how people relate to one another. It can involve disputes about contracts, suits over responsibility for injury, and the like. Both parties in a civil suit are private citizens; the government does not bring civil charges against people.

**3. Constitutional law:** Covers the fundamentals of the political system, including cases that test the constitutionality of a law or government action.

**Types of Courts and Jurisdiction**

There are two types of courts in the United States: federal and state. Each type of court has a certain **jurisdiction,** the unique power to hear and decide on certain types of cases. Federal courts, for example, have jurisdiction over cases that involve the national government or parties from more than one state or from another country. Only federal courts can hear these cases, not state courts. Each state court has jurisdiction over cases that involve disputing parties from within its own borders. There are four types of jurisdiction:

1. **Original jurisdiction: The authority to be the first court to hear a case**
2. **Appellate jurisdiction: The power to review cases already decided in lower courts**
3. **General jurisdiction: The power to hear any type of case**
4. **Limited jurisdiction/Exclusive: The power to hear only certain kinds of cases (such as tax cases)**
5. **Concurrent Jurisdiction: When two courts have the power to hear a case**

These types of jurisdiction are not mutually exclusive, which means that a court might have both original and limited jurisdiction or appellate and general jurisdiction. What type of jurisdiction does the Supreme Court have?

**The Federal Courts**

There are three layers of authority in the federal court system:

1. **The Supreme Court is the highest federal court in the country.**
2. **The twelve Courts of Appeals and the Court of Appeals for the Federal Circuit have moderate jurisdiction.**
3. **Several district and specialized courts have the most restricted jurisdiction in the federal court system.**

**The Structure of the Federal Courts**

**The Supreme Court**

The Supreme Court is the highest court in the land. Sometimes it hears cases as a trial court, but most of the time the Court functions as an appellate court. The Court has traditionally consisted of nine justices: one chief justice and eight associate justices. Although Congress has the power to change the number of justices, the number has held steady at nine justices since 1869. Supreme Court justices serve for life.

**Selecting Cases**

The Supreme Court receives thousands of appeals every year but hears only a small percentage of them. The Court meets in closed session to decide which cases to hear. The Court generally follows the **rule of four** in choosing cases: If four justices want to hear a case, the Court will accept it. When the Court decides to hear a case, it issues a **writ of certiorari,** a legal document ordering a lower court to send a case to the Supreme Court for review. The writ of certiorari signals that the Supreme Court will hear the case. The Court tends to hear only cases of great importance, such as cases involving a constitutional matter or a possible overturning of precedent.

The Court is more likely to grant a writ of certiorari if one of the appellants is the U.S. government. The solicitor general, a high-ranking official in the Justice Department, submits the requests for certiorari and argues cases in front of the Court as the lawyer for the federal government.

**Briefs and Oral Arguments**

Both parties in a case must submit **briefs** to the Court, documents that present the party’s position and argument. Sometimes, other groups submit **amicus curiae briefs** (friend of the court briefs), which present further arguments in favor of one party or the other. The justices read the briefs and then may hear **oral arguments,** in which both parties have thirty minutes to make their case before the full Court. During oral arguments, the justices frequently interrupt the attorneys to ask questions.

**Deciding Cases**

After oral arguments, the justices meet in **judicial conference** to discuss the case. Sometimes the Court issues a **per curiam rejection,** an unsigned decision that reaffirms lower court’s ruling. This rejection means that the Supreme Court has decided not to hear the case. Only the justices and their clerks attend the conference, and the proceedings are kept secret. After debating the case, the justices vote. The Court then issues a **decision,** which states the Court’s ruling, and an **opinion,** which explains the Court’s legal reasoning behind its decision.

There are several types of opinions:

* **Majority opinions** are issued when at least five justices agree with the legal reasoning behind the decision. These opinions form new precedents that lower courts must follow.
* **Plurality opinions** are issued when several justices agree with the decision but not the legal reasoning behind it. A plurality opinion represents the views of a majority of the justices on the winning side.
* **Concurring opinions** are issued by justices who agree with the winning side but disagrees with the legal reasoning.
* **Dissenting opinions** are issued by justices who opposed the ruling decision and favored the losing party in a case. Dissenting opinions explain why the dissenting justices find the ruling decision wrong.

The decision can **affirm** the lower court’s ruling, in which case that ruling stands. If the Supreme Court finds error in the lower court’s ruling, it can **reverse** the ruling. Sometimes when a case is reversed, it gets **remanded,** or sent back to a lower court for a new trial or proceeding.

The following table summarizes some of the most important court cases in American history.

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| **LANDMARK SUPREME COURT CASES** | | |
| **Case** | **Date** | **Significance** |
| Marbury v. Madison | 1803 | Courts assumed the power of judicial review (the power to declare laws unconstitutional) |
| McCulloch v. Maryland | 1819 | Granted the federal government broad powers through the necessary and proper clause |
| Dred Scott v. Sanford | 1857 | Forcibly returned a slave to his owner in the South and thus increased tensions over slavery |
| Plessy v. Ferguson | 1896 | Ruled that “separate but equal” was constitutional; legalized segregation and Jim Crow laws |
| Brown v. Board of Education | 1954 | Overturned Plessy; declared segregation unconstitutional |
| Mapp v. Ohio | 1961 | Expanded the exclusionary rule to cover state courts |
| Gideon v. Wainwright | 1963 | Ruled that the government must supply a lawyer to those who cannot afford one |
| Miranda v. Arizona | 1966 | Ruled that police must inform people they are about to question of their right against self-incrimination |
| Roe v. Wade | 1973 | Legalized abortions in the first trimester of pregnancy |
| Bush v. Gore | 2000 | Decided the 2000 presidential election by ruling that the Florida Supreme Court was wrong in ordering a recount |

**Courts of Appeals**

The U.S. Courts of Appeals hear cases from federal district courts that have been appealed. The United States has twelve Courts of Appeals, each of which covers a **circuit,** a geographic area containing several district courts. For this reason, the Courts of Appeals are also known as circuit courts. When a party appeals a decision made in a district court, a circuit court reviews the details of the case. The Courts of Appeals do not hold trials; if a new trial is warranted, the Courts of Appeals send the case back to the district court. Courts of Appeals will not review all cases that have been appealed. Cases only get reviewed for a good reason, such as if the ruling discarded precedent.

**The Court of Appeals for the Federal Circuit**

The U.S. court system also has a thirteenth Court of Appeals, called the Court of Appeals for the Federal Circuit. This court has national jurisdiction over certain cases, such as those in which the U.S. government is a defendant.

**Specialized Federal Courts**

The federal court system includes a number of specialty courts that fall outside the primary

**Judicial Philosophy, Politics, and Policy**

Although judges do not run on a platform, as do elected officials, they nevertheless hold political beliefs that influence their decisions. People strongly debate the role of the courts in politics and the role that personal beliefs and political philosophy should play.

**Judicial Philosophy**

**Judicial philosophy** is the way in which a judge understands and interprets the law. Laws are universal, but they must be applied to particular cases with unique circumstances. To do this, judges interpret the law, determining its meaning and sometimes the intent of those who wrote it.

The main types of contrasting judicial philosophies include judicial activism versus judicial restraint, loose constructionism versus strict constructionism, and living document versus original intent.

Some judges develop a philosophy of activism, using the bench to enact social and political change. Other judges practice a philosophy of restraint, believing that judges must interpret the law strictly rather than seek to make new laws. And all judges, regardless of their philosophies, develop their own methods of reading the Constitution. Some judicial philosophies tend to coincide with certain political views. Most strict constructionists, for example, are also advocates of judicial restraint, but not all. Similarly, many advocates of judicial restraint also follow the doctrine of original intent. These views, however, do not always overlap. As a result, judicial philosophies are not the same as political ideologies.

We explore these philosophies in more detail in the following tables.

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| **JUDICIAL ACTIVISM VERSUS JUDICIAL RESTRAINT** | | |
|  | **Judicial Activism** | **Judicial Restraint** |
| **Beliefs** | Courts should overturn bad laws and create new policies | Courts must interpret the law, not legislate new policies |
| **Example** | Warren Court (1953–1969) | Rehnquist Court (1986–2005) |
| **Key Decisions** | Advanced civil rights and the rights of the accused | Limits on expansion of federal power |
| **Politics** | Tend to be liberal | Tend to be conservative |

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| **LOOSE CONSTRUCTIONISM VERSUS STRICT CONSTRUCTIONISM** | | |
|  | **Loose Constructionism** | **Strict Constructionism** |
| **Beliefs** | Courts should read the Constitution expansively and should not limit themselves to what is explicitly stated | Courts should not reinterpret the Constitution |
| **Example** | Warren Court (1953–1969) | Rehnquist Court (1986–2005) |
| **Key Decisions** | Exclusionary rule, right to a government-funded attorney for the poor | Restrictions on abortion, eliminating federal rules for state governments |
| **Politics** | Tend to be liberal | Tend to be conservative |

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| **LIVING DOCUMENT VERSUS ORIGINAL INTENT** | | |
|  | **Living Document** | **Original Intent** |
| **Beliefs** | The Constitution must grow and adapt to new circumstances. | Courts should interpret the Constitution as the framers intended. |
| **Example** | Warren Court (1953–1969) | Rehnquist Court (1986–2005) |
| **Key Decisions** | Expansion of use of interstate commerce clause | Restrictions on privacy rights |
| **Politics** | Tend to be liberal | Tend to be conservative |

**Constructionism in Action**

Privacy is not explicitly mentioned in the Constitution, so strict constructionists of the Constitution believe that the only privacy rights Americans have are those specifically outlined in the Constitution, such as protection against illegal searches. On the one hand, according to the strict constructionists, there is no general right to privacy. Loose constructionists, on the other hand, assert that a general right to privacy can be inferred from the rights that were explicitly listed by the framers. Privacy rights have taken center stage in many court cases, including Roe v. Wade (1973).

**Checks on the Courts**

The legislative and executive branches check the power of the judiciary branch in several ways. The main way of limiting the courts’ power lies with **judicial implementation,** the process by which a court’s decision is enforced. The executive branch must enforce court decisions, but if the president or governor disagrees with a ruling, he or she sometimes ignores it or only partially enforces it. Legislatures can also limit the courts through the power of the purse. If Congress refuses to appropriate funds for implementing a Supreme Court decision, that decision will not be enforced. Congress and state legislatures also have the power to amend the Constitution, which they can do to counter a court ruling.