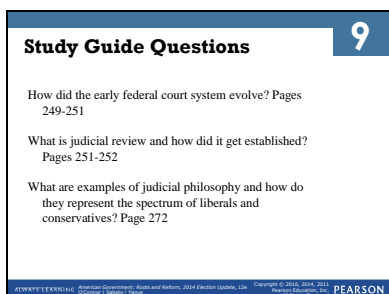


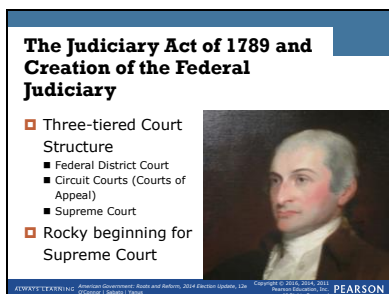
Slide 1



Slide 2



Slide 3



In spite of the Framers' intentions, the pervasive role of politics in the judicial branch quickly became evident with the passage of the Judiciary Act of 1789. Congress spent nearly the entire second half of its first session deliberating the various provisions of the act to give form and substance to the federal judiciary.

The Judiciary Act of 1789 established the basic three-tiered structure of the federal court system. At the bottom were the federal district courts—at least one in each state. If people participating in a lawsuit (called litigants) were unhappy with the

Chapter 9: Judiciary Judicial Philosophy & History

district court's verdict, they could appeal their case to the circuit courts, constituting the second tier. The third tier of the federal judicial system defined by the Judiciary Act of 1789 was the Supreme Court of the United States. Although the Constitution mentions the Supreme Court, it does not specify how many people should serve on it. Originally there were six members, then five, and then in 1869 it was permanently fixed at nine. Hampered by frequent changes in personnel, limited space for its operations, no clerical support, and no system of reporting its decisions, the early Court did not impress many people.

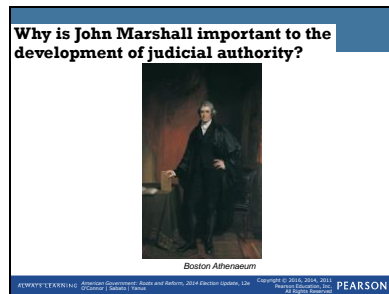
Slide 4



The evolution of the Supreme Court's role has resulted in large part through the leadership of some of the justices who have served. John Marshall, who headed the court from 1801 to 1835, is considered the most important of all the justices. Marshall established the practice of having the Court deliver opinions as one voice, rather than having each justice write his own.

The Marshall Court also established the supremacy of the federal government and Congress over state governments through a broad interpretation of the necessary and proper clause in *McCulloch v. Maryland*. Perhaps most importantly, the Marshall Court claimed the right of judicial review, the power of the court to review the acts of other branches of government and the states for constitutionality, in a case called *Marbury v. Madison*.

Slide 5



A single person can make a major difference in the development of an institution. Such was the case with John Marshall (1755–1835), who dominated the Supreme Court during his 34 years as chief justice. More of a politician than a lawyer, Marshall served as a delegate to the Virginia legislature and played an instrumental role in Virginia's ratification of the U.S. Constitution in 1787. He became secretary of state in 1800 under John Adams. When Oliver Ellsworth resigned as chief justice of the United States in 1800, Adams nominated Marshall. Marshall served on the Court until the day he died, participating in more than 1,000 decisions and authoring more than 500 opinions.

Chapter 9: Judiciary Judicial Philosophy & History

Slide 6

9.1 What did the case *Marbury v. Madison* establish?

- a. The importance of the "necessary and proper" clause
- b. The three-tiered federal court structure
- c. The authority of judicial review
- d. The number of justices on the Supreme Court

ALWAYS LEARNING American Government: Roots and Branches, 2014 Edition Update, 1/e © 2014, 2015, 2011 Pearson Education, Inc. PEARSON

Let's see what you have learned about the early Court by answering this brief question.

Slide 7

9.1 What did the case *Marbury v. Madison* establish?

- a. The importance of the "necessary and proper" clause
- b. The three-tiered federal court structure
- c. The authority of judicial review**
- d. The number of justices on the Supreme Court

ALWAYS LEARNING American Government: Roots and Branches, 2014 Edition Update, 1/e © 2014, 2015, 2011 Pearson Education, Inc. PEARSON

Marbury v. Madison, decided in 1803 under the Marshall Court, established the authority of the Supreme Court to review the constitutionality of actions of states and the federal government.

Slide 8

Judicial Philosophy and Decision Making

- ▣ Judicial Philosophy, Original Intent, and Ideology
- ▣ Public Opinion



ALWAYS LEARNING American Government: Roots and Branches, 2014 Edition Update, 1/e © 2014, 2015, 2011 Pearson Education, Inc. PEARSON


Justices do not make decisions in a vacuum. They must follow the law of previous cases. But, as we will discover in this section, other legal and "extra-legal" factors can be observed in Supreme Court decision making. Those include justices' philosophy and ideology, public opinion, and what the original intent of the Framers is presumed to have been.

Chapter 9: Judiciary Judicial Philosophy & History

Slide 9

Judicial Philosophy, Original Intent, and Ideology

- ▣ Judicial philosophy and ideology
 - Judicial restraint
 - Judicial activism
 - Strict constructionism



ALWAYS LEARNING | American Government: Roots and Reform, 2014 Edition Update, 1st Edition | Copyright 2015, 2014, 2011 Pearson Education, Inc. All Rights Reserved. PEARSON

One of the primary issues concerning judicial decision-making focuses on what is called the activism/restraint debate. Advocates of judicial restraint argue that courts should allow the decisions of other branches of government to stand, even when they offend a judge's own principles. Because judges are not elected, they should leave policy making to the elected branches.

Judicial activism is the opposite: justices help create public policy through their decisions. The case *Roe v. Wade*, which liberalized abortion laws, is considered an example of judicial activism.

Those who support judicial restraint tend to agree that justices should be strict constructionists. In other words, justices should interpret the Constitution as the Framers wrote and originally intended it.

Slide 10

Earl Warren Court & Judicial Activism

- ▣ *Brown v. Board of Education*
- ▣ *Gideon v. Wainwright*
- ▣ *Mapp v. Ohio*
- ▣ *Miranda v. Arizona*



ALWAYS LEARNING | American Government: Roots and Reform, 2014 Edition Update, 1st Edition | Copyright 2015, 2014, 2011 Pearson Education, Inc. All Rights Reserved. PEARSON

Elected California governor in 1942, Earl Warren secured major reform legislation during his three terms in office. He was appointed the 14th chief justice of the U.S. Supreme Court in 1953. The landmark case of his tenure was *Brown v. Board of Education of Topeka* (1954), in which the Court unanimously determined the segregation of schools to be unconstitutional. The Warren Court also sought electoral reforms, equality in criminal justice and the defense of human rights before its chief justice retired in 1969.

The Court ruled that the 'one-person, one-vote' principle controls in all legislative apportionments. The result has been an electoral reform shifting

Chapter 9: Judiciary Judicial Philosophy & History

voting power from rural districts to urban and suburban areas.


In addition to racial and political equality, the Warren Court sought equality in criminal justice. The landmark here was *Gideon v. Wainwright* (1963), which required counsel for indigent defendants. Warren's emphasis on fairness in criminal proceedings also led to *Mapp v. Ohio* (1961), barring illegally seized evidence and *Miranda v. Arizona* (1966), requiring warnings to arrested persons of their right to counsel, including appointed counsel if they could not afford one.

His court was considered to follow the judicial philosophy of judicial activism.

Slide 11

William O. Douglas

- Only Supreme Court Justice from Washington State
- Went to Yakima High School
- Went to Whitman College
- Youngest appointment to Supreme Court
- Record for longest continuing service on Supreme Court



STWATZ/STANBROOK, American Government: Paths and Politics, 2014 Edition, Pearson, Inc. © 2014 Pearson Education, Inc. Pearson Education, Inc. and its imprint(s) have no affiliation with, and are not endorsed by, PEARSON

Determined and competitive in nature, William O. Douglas set the record for longest continuous service on the Supreme Court. Douglas was born on October 16, 1898, in Maine, Minnesota. Shortly after his father's death in 1904, the Douglas family moved to Yakima, Washington, where Douglas spent most of his youth. He went to Whitman College in Walla Walla on a full scholarship. He arrived in New York City to attend Columbia Law School in 1922 with only six cents in his pocket. Douglas graduated second in his class at Columbia in 1925. He became the second-youngest Supreme Court appointee in history when appointed Associate Justice of the Supreme Court by President Roosevelt and confirmed on April 4, 1939. Douglas was well-known for his strict commitment to civil liberties and authored many opinions that expressed his views on individual rights, such as

Chapter 9: Judiciary Judicial Philosophy & History

free speech. He supported the right to privacy, limits on government interference, and the rights of illegitimate children.

House Minority Leader Gerald R. Ford to call for Douglas' impeachment in 1970, but the charges were rejected. On December 31, 1974, Douglas suffered a stroke and was partially paralyzed. He returned to the Supreme Court but submitted his letter of retirement in 1975 after 36 years on the bench. He passed away on January 19, 1980.

https://www.oyez.org/justices/william_o_douglas

Slide 12

Thurgood Marshall

- a. Born in Baltimore
- b. Graduated second in his college class
- c. Argued Brown v. Board of Education with NAACP
- d. 1st African-American on the Supreme Court

ALWAYS LEARNING | Copyright 2014 Pearson Education, Inc. All Rights Reserved. PEARSON

Thurgood Marshall had a fresh, passionate voice and became a champion of civil rights, both on the bench and through almost 30 Supreme Court victories before his appointment, during times of severe racial strains. Marshall was born in Baltimore, Maryland, on July 2, 1908. When Marshall's father had a day off, he would occasionally take his sons to court so they could watch the legal procedure and arguments presented. Afterwards, the three would debate legal issues and current events together. Marshall's father would challenge his sons on the points they made, constantly encouraging them to prove their case. Growing up in Baltimore, Marshall experienced the racial discrimination that shaped his passion for civil rights early on. Marshall was accepted to Lincoln University in Oxford, Pennsylvania. He graduated college in 1930 as a top-notch student.

Chapter 9: Judiciary Judicial Philosophy & History


After being denied by his first choice, the University of Maryland Law School, due to the color of his skin, Marshall decided to go to Howard University. Marshall graduated as valedictorian of his class in 1933 and moved back to Baltimore.

Marshall started to volunteer with the NAACP and eventually became one of their attorneys, joining his mentor Houston to argue cases together. He won his first case arguing that the University of Maryland Law School should allow an African-American admission. In 1952 Marshall argued *Brown v. Board of Education*. The case was reargued in 1953, and after 5 months of waiting, the Supreme Court delivered its opinion that invalidated the separate but equal doctrine. In 1961, President Kennedy appointed Marshall as federal judge to the Second Circuit Court of Appeals in New York City. In 1967, President Johnson appointed him as the first African-American to be an Associate Justice on the U.S. Supreme Court. Marshall's voice was a liberal one which held great influence early on in his term. As a proponent of judicial activism, he believed that the United States had a moral imperative to move progressively forward. greatly to opinions on constitutional law. Marshall's voice remained strong until his retirement, when he was succeeded by Associate Justice Clarence Thomas. Marshall died on January 24, 1993 of heart failure in Bethesda, Maryland.

https://www.oyez.org/justices/thurgood_marshall

Slide 13

Sandra Day O'Connor



- a. Born in Baltimore
- b. Graduated second in his college class
- c. Argued *Brown v. Board of Education* with NAACP
- d. 1st African-American on the Supreme Court

ALWAYS LEARNING | American Government: Assets and Activities, 2014 Edition Update, 1st Edition | © 2015, 2014, 2011 Pearson Education, Inc. | PEARSON

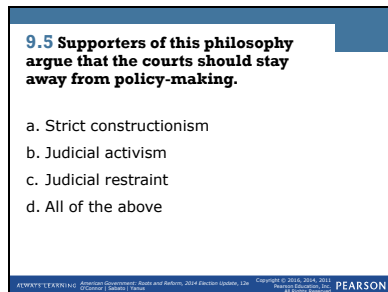
Sandra Day O'Connor will always be known as the first woman to serve on the Supreme Court of the United States, but her impact reaches much further than that. O'Connor was born in El Paso, Texas on March 26, 1930. At sixteen, she was admitted to Stanford University, where she earned a bachelor's degree in Economics. In 1950 she was admitted to Stanford Law. During her time at Stanford Law, she worked on the board of editors for the Stanford Law Review. She completed law school in just two years as opposed to the usual three. She graduated third in her class, with one of the students ahead of her being fellow future justice, William H. Rehnquist. In 1957, she began working as the Assistant Attorney General of Arizona. She moved to her first position in the judiciary in 1975 after winning the election for a seat in the Superior Court of Maricopa County, and was appointed to the Arizona Supreme Court of Appeals four years later. She worked in the state supreme court for only two years before President Ronald Reagan nominated her in 1981 to become the first female justice to serve on the United States Supreme Court. She was unanimously approved by the Senate. In 1992, O'Connor served as the swing vote that reaffirmed the *Roe v. Wade* decision in the abortion rights case *Planned Parenthood v. Casey*, despite the Republican push to overturn *Roe*. O'Connor continued to promote women's interests in two cases that protected the rights of young girls in school being harassed by their classmates and held the schools liable for such harassment. Over the course of her two decades on the court, the conservative justice became known as

Chapter 9: Judiciary Judicial Philosophy & History

a somewhat unpredictable voter. She retired from the bench in 2006 to care for her husband, who was diagnosed with Alzheimer's disease.

https://www.oyez.org/justices/sandra_day_oconnor

Slide 14



9.5 Supporters of this philosophy argue that the courts should stay away from policy-making.

- a. Strict constructionism
- b. Judicial activism
- c. Judicial restraint
- d. All of the above

ALWAYS LEARNING American Government: Roots and Reform, 2014 Election Update, 1/e Copyright © 2015, 2014, 2011 Pearson Education, Inc. All Rights Reserved. PEARSON

Before we move on to the last section of this chapter, please answer this multiple-choice question about judicial philosophy.

Slide 15



9.5 Supporters of this philosophy argue that the courts should stay away from policy-making.

- a. Strict constructionism
- b. Judicial activism
- c. Judicial restraint**
- d. All of the above

ALWAYS LEARNING American Government: Roots and Reform, 2014 Election Update, 1/e Copyright © 2015, 2014, 2011 Pearson Education, Inc. All Rights Reserved. PEARSON

Supporter of this philosophy say the courts should leave standing the policy actions of other branches of government, even if they violate the Constitution.