



The Supreme Court: Position and Power

Political Education Subdivision

Introduction

The US Supreme Court is one of the three highest branches of the American government, but receives far less attention than the White House or Congress. The main reason for that is that it has no day-to-day politicking and deal-making for the media to write about. However, the Supreme Court rules on what the Constitution says is and isn't law. That gives it power over what Congress or Presidents try to push through. This power is exercised through many small, procedural cases, ones that don't fill headlines, but also through high profile ones that can be the final showdown for social or political battles. Overall, it's important to understand how this branch of government, as important as the other two but paid far less attention to, works, why it's important, and what political debates have risen up around it.

All policy papers follow the goals of the YACU by informing young Americans about political issues and allowing them to engage in discussion to share their views.

Background on the Supreme Court

The early Supreme Court (1788-1900) was one that worked to establish its own power and importance as a branch in government. Article III, Section I states that "The judicial Power of the United States, shall be vested in one supreme Court", and establishes how judges and courts are created and judges appointed.¹ Section II states that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made", giving the court the power of judging the highest cases in the country.² The Case of Marbury v. Madison led to the court

¹ "The Constitution of the United States: A Transcription," National Archives, November 4, 2015, <https://www.archives.gov/founding-docs/constitution-transcript>.

² Ibid.

ruling that it had the power to say what the law is and isn't, which is known as judicial review, and *McCulloch v. Maryland* allowed the court to enforce the Supremacy Clause of the Constitution, empowering the federal government.³

After its early years, the Court had difficulty upholding its power and the federal government's power, leaving many problems unsolved or unaddressed. Firstly, President Andrew Jackson ignored the decrees of the court in *Worcester v. Georgia* about treaties and state jurisdiction with Cherokee tribes, stating that "John Marshall [the Chief Justice] has made his decision, now let him enforce it", and added two Justices to the court, which helped to ensure his majority (although at the time, it was not as controversial an act as it is now).⁴ The Court did not fully assert federal power as much as it had earlier, ruling in the favor of states' power more.⁵ The *Dred Scott* case led to a dismissal of the case on procedural grounds, by considering the descendants of slaves to not be citizens, leaving slavery up to states to decide about and that slaves were property, a decision that led directly to the Civil War.⁶ In 1896, *Plessy v. Ferguson* enshrined the legality of segregation, a decision that echoes through American history.⁷

In the 20th century, the Supreme Court's role greatly expanded, especially in expanding the federal government. Antitrust laws passed by the federal government were upheld by the Court and enforced.⁸ The case of *Wickard v. Filburn* in 1942 gave the federal government the power to regulate whether a farmer could grow wheat on their own farm that wasn't for sale under the Interstate Commerce clause, a part of the drastic expansion of federal power during the New Deal.⁹ The Supreme Court also took an active role in the social issues of the day, advancing civil rights in cases like *Brown v. Board of Education*, which overturned the "separate but equal" policy that had upheld segregation.¹⁰ Finally, it upheld the rule of law, stating that President Nixon had to comply with subpoenas relating to the Watergate Scandal, a decision that enshrined no one being above the law.¹¹

³ "McCulloch v. Maryland," Oyez, 2019, <https://www.oyez.org/cases/1789-1850/17us316>.

⁴ "Packing (and Unpacking) the U.S. Supreme Court: A Brief History | Maryland State Bar Association – MSBA," Maryland State Bar Association – MSBA, October 13, 2020, <https://www.msba.org/packing-and-unpacking-the-u-s-supreme-court-a-brief-history/>.

⁵ Harrison, Brigid C., Jean Harris, and Michelle D. Deardorff. 2019. American democracy now.

⁶ "Dred Scott v. Sandford," Oyez, 2021, <https://www.oyez.org/cases/1850-1900/60us393>.

⁷ History.com Editors, "Plessy v. Ferguson," HISTORY (HISTORY, October 29, 2009), <https://www.history.com/topics/black-history/plessy-v-ferguson>.

⁸ "Antitrust Law in the U.S. Supreme Court," Justice.gov, June 25, 2015, <https://www.justice.gov/atr/speech/antitrust-law-us-supreme-court>.

⁹ "Wickard v. Filburn," Oyez, 2021, <https://www.oyez.org/cases/1940-1955/317us111>.

¹⁰ "Brown v. Board of Education of Topeka (I)," Oyez, 2021, <https://www.oyez.org/cases/1940-1955/347us483>.

¹¹ "United States v. Nixon," Oyez, 2021, <https://www.oyez.org/cases/1973/73-1766>.

In the modern day, the court plays an active and more partisan role in politics. It's returned to a more old school view, striking down campaign finance on free speech grounds, some gun free-zones on the Second Amendment, and upholding the distinctions between layers of government.¹² It's become the final fighting ground for many issues, from abortion to gay marriage, to the extent of what freedom of speech and freedoms of spending entail. Its appointments have grown more partisan and more impactful in politics today, and understanding how it works is important for voters choosing who will be voting for the President that appoints them and the Senators that confirm them.

Reforms on Positions

Historically, the Supreme Court has always valued continuity over change. Therefore, much of the positions and technicalities involved remain the same as they did when the court was first formed. However, there have been slight changes, most notably in the number of justices able to serve on the court. In fact, the amount has bounced back and forth before settling on the present day number of nine justices.¹³ As for term limits, justices have always had no specific limit, and were able to serve life terms unless the given judge is removed from office or makes the choice to retire. Recent efforts to alter certain restrictions on positions in the United States Supreme Court have been met with both support and disdain. Most of the popular propositions include the restructuring of the amount of justices and the number of years they are allowed to serve on the court. One of the most controversial is the limit of the amount of years a justice is able to serve. Proponents of creating laws that have defined term limits argue that lifetime appointments are an outdated aspect that need to be reformed with the changing times.¹⁴ They may add that current partisanship and political gridlock might be a result of this, or that the law for lifetime tenure was written too long ago to be relevant in the modern age.

On the other hand, those opposing laws defining term limits may state that life tenure prevents the court from becoming too politicized in the first place and ensure that judges are able to rule objectively without the

¹² "Federalism and the U.S. Supreme Court," Americanbar.org, 2021, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol29_2002/fall2002/irr_hr_fall02_federalism/.

¹³ Russell Wheeler, "Should We Restructure the Supreme Court?," Brookings (Brookings, March 2, 2020), <https://www.brookings.edu/policy2020/votervital/should-we-restructure-the-supreme-court/>.

¹⁴ "The Court as an Institution - Supreme Court of the United States," Supremecourt.gov, 2021, <https://www.supremecourt.gov/about/institution.aspx>.

influence from the public in making decisions that is usually present in elected officials.¹⁵ Additionally, they may add that lifetime appointments give more independence to justices in general. Overall, positions in the Supreme Court have been subject to scrutiny in the public eye for decades, leading to much debate over technicalities which will assist in setting the precedent for law and change in our country.

Reforms on Power

Various methods have been proposed that would limit the power of the supreme court. One such proposal is the concept of so-called “jurisdiction stripping.”¹⁶ This would in effect allow congress to determine which cases the Supreme Court could receive. Congress already possesses the power to determine the jurisdiction of the lower federal courts. However, Congress’ power is undetermined in regards to the jurisdiction of the Supreme Court. This idea originates in 1896 in *Ex parte McCardle*, 74 U.S. 506. In recent times, the Military Commissions Act of 2006 striped the federal court’s jurisdiction over Guantanamo Bay Prisoners.

Another proposed method is that of requiring a supermajority in decisions. This would require a 7-2 vote, as suggested by law professors Ryan Doerfler and Samuel Moyn.¹⁷ Further reforms can be gleaned from the case *Dred Scott v. Sanford*. President Lincoln defied the court’s ruling. Departmentalism is the idea that different branches can have separate constitutional interpretations.¹⁸ As Jefferson wrote in Federalist 78, the judiciary “has no influence over either the sword or the purse” and it “must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.” According to Whittington, “A departmentalist president would readily insist that the chief executive is independently responsible for understanding the boundaries of his own constitutional office and refraining from overstepping them.” This could be dangerous however, as some presidents may overstep these boundaries.¹⁹

¹⁵ “The Supreme Court of the United States | United States Senate Committee on the Judiciary,” Senate.gov, 2021, <https://www.judiciary.senate.gov/nominations/supreme-court#:~:text=Like%20all%20Federal%20judges%2C%20Supreme,served%20on%20the%20Supreme%20Court>.

¹⁶ Dyanna Ballou, “Jurisdiction Stripping and the Supreme Court - the RDM Knowledge Blog,” RDM | Rasmussen Dickey Moore, October 14, 2020, <https://rdm.law/jurisdiction-stripping-and-the-supreme-court/>.

¹⁷ Ryan Doerfler and Samuel Moyn, “Democratizing the Supreme Court,” Ssrn.com, 2020, <https://doi.org/>.

¹⁸ Keith Whittington, “Departmentalism, Judicial Supremacy and DACA,” Lawfare, February 26, 2018, <https://www.lawfareblog.com/departmentalism-judicial-supremacy-and-daca>.

¹⁹ Ibid.

Finally, the process of congress overruling the Supreme Court decisions can be improved. One concept is that of omnibus legislation that would overrule several supreme court cases in one fell swoop. This could reduce the impact of decisions that stripped people's rights or discrimination.²⁰ Another way of improving the process would be standardized, expedited review of supreme court cases by congress.²¹ The Congressional Review Act allows Congress 30 days to vote on legislation on a legislative solution to decisions they deem harmful.

Conclusion

Overall, the Supreme Court and the role it plays in policy is something that will likely enter into discussion more and more. Our process of appointing and keeping Justices has come under increasing scrutiny recently, especially on their term length and structure. The powers of the court have been criticized over time, especially since they aren't elected officials, but they also provide expert and uncorrupt decisions. The powers of the court and how appointments happen are issues that deserve debate. Youth debates being based on actual facts and ideas people hold will make sure that proposed changes will be taken more seriously, from either side.

There is an urgent need in America for civil political discussion and education on both sides of debates about the Supreme Court. The YACU hopes that this policy paper has been able to provide enough information for you to consider your own ideas and to continue to advocate for what you believe in.

Disclaimer:

This policy paper is not intended to express an opinion nor endorsement of any particular policy. This serves solely to provide analysis of articles and facts presented in news media and professional sources. Any opinions that may be interpreted by the reader are not those of the authors and the organization and are not to be taken as so. For more information regarding the intent of the policy paper or elaboration of this disclaimer, please contact Political Director Andrew Juan at andrew@yacu.org. However, please direct all other comments, concerns, and questions to info@yacu.org.

²⁰Rachel M Cohen and Marcia Brown, "Congress Has the Power to Override Supreme Court Rulings. Here's How.," The Intercept, November 24, 2020, <https://theintercept.com/2020/11/24/congress-override-supreme-court/>.

²¹Ganesh Sitaraman, "The Atlantic," The Atlantic (theatlantic, November 16, 2019), <https://www.theatlantic.com/ideas/archive/2019/11/congressional-review-act-court/601924/>.

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