The Supreme Court

Inquire: What Does the Supreme Court Do?

Overview

SCOTUS — the Supreme Court of the United States — is certainly the most private and secretive of all the branches of the United States government. During their confirmation hearings, all prospective Supreme Court justices are vetted and questioned, and their private lives are often laid bare for all to see. However, once they walk into the "Marble Palace" that is the Supreme Court building as a justice, they almost completely vanish from the public eye.

The discussions about the cases are held in private, and there is little to no public discourse between justices. The whole arena in which the decisions are made is very private.

So, what does the Supreme Court do? How are decisions arrived at by these nine potentially most powerful people on the planet? To the best of our knowledge, what is the process?

Big Question: How does the Supreme Court enforce its decisions?

Watch: The Unpower Of Enforcement

Each branch of the U.S. government has checks and balances to ensure that no one branch is all powerful. Supreme Court justices have great power, including total judicial review over every act of Congress and the president. The most significant check on the Supreme Court is executive and legislative leverage over the implementation and enforcement of its rulings. This process is called judicial implementation. While it is true that courts play a major role in policymaking, they have no mechanism to make their rulings a reality. Remember, it was Alexander Hamilton in Federalist Number 78 who remarked that the courts had "neither force nor will, but merely judgment." When the Supreme Court ruled the Indian Relocation Act unconstitutional, President Andrew Jackson was reported to have said, "John Marshall has made his decision, now let him enforce it." The Court’s ruling was basically ignored, leading to the tragic Trail of Tears and the needless deaths of thousands of Native Americans.

Abraham Lincoln ignored Chief Justice Roger B. Taney’s order finding the suspension of habeas corpus rights in 1861 unconstitutional. Thus, Court rulings matter only to the extent they are heeded and followed.

The Court relies on the executive to implement or enforce its decisions and on the legislative branch to fund them. As the Jackson and Lincoln stories indicate, presidents may simply ignore decisions of the Court, and Congress may withhold funding needed for implementation and enforcement. Fortunately for the Court, these situations rarely happen. The other branches tend to provide support rather than
opposition. In general, presidents have tended to see it as their duty to both obey and enforce Court rulings, and Congress seldom takes away the funding needed for the president to do so.

For example, in 1957, President Dwight D. Eisenhower called out the military by executive order to enforce the Supreme Court’s order to racially integrate public schools in Little Rock, Arkansas. Eisenhower told the nation: “Whenever normal agencies prove inadequate to the task and it becomes necessary for the executive branch of the federal government to use its powers and authority to uphold federal courts, the president’s responsibility is inescapable.”

Even though enforcement by the executive and legislative branches is the norm, there is always that one nagging question with any SCOTUS decision — who will enforce it? Or, will some president or some Congress say, “Well, the Supreme Court has made its decision; let’s see them enforce it!”

Read: The Justices’ Decisions

Overview

The judiciary is the least covered and least publicly known of the three branches of government. The inner workings of the Supreme Court and its day-to-day operations certainly do not get as much public attention as its rulings, and only a very small number of its announced decisions are enthusiastically discussed and debated. The Court’s 2015 *Obergefell v. Hodges* decision on same-sex marriage was the exception, not the rule. Most Court opinions are filed away quietly in the *United States Reports*, sought out mostly by judges, lawyers, researchers, and others with a particular interest in reading or studying them. However, every now and then, a case attracts a huge interest — as *Obergefell* did.

We sometimes envision the justices formally robed and cloistered away in their chambers, unaffected by the world around them. However, the reality is that they are not isolated, and a number of outside factors influence their decisions. The Court lacks a mechanism for enforcing their rulings; however, the effect of the justices’ opinions on the workings of government, politics, and society in the United States is much more significant than the attention they attract might indicate.

Judicial Opinions

Supreme Court opinions set precedent for the future. Their decisions are not always unanimous. However, the published majority opinion, or explanation of the justices’ decision, is the one with which a majority of the nine justices agree. It can represent a vote as narrow as five in favor to four against. A tied vote is rare but can occur at a time of vacancy, absence, or abstention from a case, perhaps where there is a conflict of interest. In the event of a tied vote, the decision of the lower court stands.

Most typically, though, the Court will put forward a majority opinion. If he or she is in the majority, the chief justice decides who will write the opinion. If not, then the most senior justice ruling with the majority chooses the writer. Likewise, the most senior justice in the dissenting group can assign a member of that group to write the dissenting opinion. However, any justice who disagrees with the majority may write a separate dissenting opinion. If a justice agrees with the outcome of the case but not with the majority’s reasoning in it, that justice may write a concurring opinion. Court decisions are released at different times throughout the Court’s term, but all opinions are announced publicly before the Court adjourns for the summer. Some of the most controversial and hotly debated rulings are released near or on the last day of the term and thus are avidly anticipated.
Influences on the Court

If a case meets the criteria for the Supreme Court’s attention, the Court will grant *cert.*, an abbreviated form of the word *certiorari*. Many of the same players who influence whether or not the Court will grant *cert.* in a case also play a role in its decision-making, including law clerks, the solicitor general, interest groups, and the media. In addition, legal, personal, ideological, and political influences weigh on the Supreme Court and its decision-making process. On the legal side, United States courts, including the Supreme Court, cannot make a ruling unless they have a case before them, and even with a case, courts must rule on its facts. Although the Court’s role is interpretive, justices are still constrained by the facts of the case, the Constitution, relevant laws, and the Court’s own precedent.

A justice’s decisions are influenced by how he or she defines his or her role as a jurist. Some justices believe strongly in *judicial activism*, or the need to defend individual rights and liberties. They aim to stop actions and laws by other branches of government that they see as infringing on these rights. A judge or justice who views the role with an activist lens is more likely to use his or her judicial power to broaden personal liberty, justice, and equality. Still, others believe in *judicial restraint*, which leads them to defer decisions (and thus policymaking) to the elected branches of government and stay focused on a narrower interpretation of the Bill of Rights. These justices are less likely to strike down actions or laws as unconstitutional and are less likely to focus on the expansion of individual liberties. While it is typically the case that liberal actions are described as unnecessarily activist, conservative decisions can be activist as well.

Critics of the judiciary often deride activist courts for involving themselves too heavily in matters they believe are better left to the elected legislative and executive branches. However, as Justice Anthony Kennedy has said, “An activist court is a court that makes a decision you don’t like.”

Justices’ personal beliefs and political attitudes also matter in their decision-making. Although we may prefer to believe a justice can leave political ideology or party identification outside the doors of the courtroom, the reality is that a more liberal-thinking judge may tend to make more liberal decisions and a more conservative-leaning judge may tend toward more conservative ones. Although, this is not true 100 percent of the time, and an individual’s decisions are sometimes a cause for surprise. The influence of ideology is real, and at a minimum, it often guides presidents to select nominees who mirror their own political or ideological image. It is likely not possible to find a potential justice who is completely apolitical.

And the courts themselves are affected by another “court” — the court of public opinion. Though somewhat isolated from politics and the volatility of the electorate, justices may still be swayed by special-interest pressure, the leverage of elected or other public officials, the media, and the general public. As times change and the opinions of the people change, the Court’s interpretation is likely to keep up with those changes. Take, for example, rulings on sodomy laws. In 1986, the Supreme Court upheld the constitutionality of the State of Georgia’s ban on sodomy, but it reversed its decision 17 years later, invalidating sodomy laws in Texas and 13 other states.

Reflect: Judicial Activism or Judicial Restraint?

Poll

Do you think the Court should make law — judicial activism; or should it just interpret the law — judicial restraint?
Expand: What Does the Supreme Court Do?

Overview

Supreme Court justices are somehow different from other well-known figures in government. They dress in long black robes. They almost never appear on magazine covers, and they seem to stay on the court forever. They announce their decisions periodically, then disappear into their "Marble Palace."

In anger, President Franklin D. Roosevelt once called them "nine old men." What connections do they have to real-world government and politics, and what work do they do? The power of the Court is reflected in the work it does, and its decisions often shape policy as profoundly as any law passed by Congress or any action taken by the president.

The Power of Choice

The Court receives about 7,000 petitions every year. It has almost complete control over which cases it will hear. The justices choose about 90 percent of their 100 to 120 cases by writ of certiorari, an order to send up a case record from a lower court.

Typically, the justices discuss any cases one of them has recommended from earlier readings. The Rule of Four governs their choices: if four justices vote to hear a case, all nine agree to it.

How do they choose their cases? Generally, the Court considers only cases that have far-reaching implications beyond the two parties involved in the dispute. For example, a case in which a student sues an assistant principal for searching a locker may shape the privacy rights of all students in public schools. The Court also tends to hear cases in which two lower courts have reached conflicting decisions. And, it tends to look closely at lower court decisions that contradict earlier Supreme Court decisions.

Hearing and Deciding a Case

Hearings begin in October every year, and the last cases are usually heard in June. The justices receive briefs, or summaries of arguments, from the lawyers ahead of time. Often they receive *amici curiae*, or briefs prepared by groups not party to the case, that support one side or the other. The hearings are open to the public and are strictly timed. Each side has 30 minutes to present its case, and the justices typically ask questions and even debate one another during the allotted time.

After the public hearing, the justices meet together privately to discuss the case. They share their opinions, debate the issues, and eventually come to a conclusion. Each justice takes a side individually, and because there are nine justices (an uneven number), one side always wins.

Announcing and Implementing a Decision

When the Court announces a decision, the individual justice’s opinions are revealed. A unanimous decision (9-0) indicates that the justices were in total agreement. This vote is rare because the cases that have been chosen are the tough ones. Decisions are usually split 6-3, 7-2, or 5-4.

Along with the decisions, the justices release explanations for each side. A majority opinion is prepared (usually by the senior justice on that side), and the justices whose point of view did not prevail release a
dissenting opinion. A justice who agrees with the majority decision but reaches the same conclusion for different reasons sometimes presents a concurring opinion.

The power of the Court to implement its decisions is limited. For example, in the famous 1954 case Brown v. Board of Education of Topeka, the justices ruled that racial segregation (separate but equal) in public places is unconstitutional. But, it took many years for school districts to desegregate.

The Court has no means (such as an army) to force implementation. Instead, it must count on the executive and legislative branches to enforce its decisions. In the civil rights movement, the Court led the way, but the other branches had to follow before real change could take place.

Despite the Supreme Court's limitations in implementing decisions, the justices often set policies that lead to real social change. So even though justices don't do a great deal of their work in public, their decisions are very important. The Supreme Court has real power in the American political system.

Lesson Toolbox

Additional Resources and Readings

Supreme Court of the United States Procedures: Crash Course Government and Politics #20
- A video discussing what happens when a case makes it to the Supreme Court of the United States (SCOTUS)
  - https://www.youtube.com/watch?v=7sualy8OiKk

Judicial Decisions: Crash Course Government and Politics #22
- A video discussing the factors that influence judicial decisions
  - https://www.youtube.com/watch?v=QjLcLguoKC4

How a case gets to the US Supreme Court
- A video discussing how a case gets to the U.S. Supreme Court
  - https://www.youtube.com/watch?v=KEjgAXxrkXY

Lesson Glossary

**majority opinion**: an opinion of the Court with which more than half of the nine justices agree

**dissenting opinion**: an opinion written by a justice who disagrees with the majority opinion of the Court

**concurring opinion**: an opinion written by a justice who agrees with the Court’s majority opinion but has different reasons for doing so

**certiorari**: often abbreviated cert. in the United States; a process for seeking judicial review and a writ issued by a court that agrees to review

**judicial activism**: a judicial philosophy in which a justice is more likely to overturn decisions or rule actions by the other branches unconstitutional, especially in an attempt to broaden individual rights and liberties

**judicial restraint**: a judicial philosophy in which a justice is more likely to let stand the decisions or actions of the other branches of government

**amici curiae**: plural of amicus curiae ("friend of the court"); someone who is not a party to a case and may or may not have been solicited by a party, who assists a court by offering information, expertise, or insight that has a bearing on the issues in the case, and is typically presented in the form of a brief
Check Your Knowledge

1. When a Supreme Court ruling is made, justices may write a _____________ to show they agree with the majority but for different reasons.
   A. brief
   B. dissenting opinion
   C. majority opinion
   D. concurring opinion

2. Despite the Supreme Court making decisions that should lead to social change, they have no means of forcing implementation.
   A. True
   B. False

3. Typically, the justices discuss any cases one of them has recommended from earlier readings, and if four justices vote to hear a case, then all nine agree to it.
   A. True
   B. False

Answer Key:
1. D  2. A  3. A

Citations

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