Power of the Federal Courts

Inquire: The Impact of Supreme Court Cases on America

Overview

The Supreme Court: they do not get to pass laws. They do not control the budget. They never go on television, on the radio, or on the Internet and explain their goals, plans, or policies. In fact, they seldom speak at all. They never campaign, they never issue a press release, and they never tweet or use any social media.

They are just nine lawyers: men and women who went to law school, most of whom spent time as judges in lower level federal courts or state courts. In fact, most Americans do not know all nine of their names.

They are just nine lawyers, and yet, perhaps the nine most powerful people on the planet. How much power do they have? They have enough to tell the president and Congress yes or no. They have enough to rewrite and revamp American society in ways Congress never could.

Big Question: What are the differences between judicial activism and judicial restraint, and how do these beliefs impact the justices’ decisions?

Watch: The Supreme Court and the Affordable Healthcare Act

In 2010, President Barack Obama signed into law the Patient Protection and Affordable Care Act (ACA), a statute that brought significant changes to the nation's healthcare system. With its goal of providing more widely attainable and affordable health insurance and health care, “Obamacare” was hailed by some, but soundly denounced by others as bad policy. Since the passage of the ACA, it has been a lightning rod for Constitutional challenges and emblematic of the history which illustrates the Court’s power and impact on legislation.

People who opposed the law and understood that a congressional repeal would not happen any time soon looked to the courts for help. They challenged the constitutionality of the law in National Federation of Independent Business v. Sebelius, hoping the Supreme Court would overturn it.

The power of judicial review enabled the law’s critics to exercise this opportunity, even though their hopes were ultimately dashed when, by a narrow 5–4 margin, the Supreme Court upheld the healthcare law as a constitutional extension of Congress’s power to tax. (In a surprise move, Chief Justice John Roberts, a conservative, voted with the majority, ruling it was a “tax” even though President Obama had spent two years telling America “it was not a tax.”)
Since this 2012 decision, the ACA has continued to face challenges, the most notable of which have also been decided by additional Supreme Court rulings. The conservatives won a battle in 2014 when the Supreme Court ruled in *Burwell v. Hobby Lobby* that, for religious reasons, some for-profit corporations could be exempt from the requirement that employers provide insurance coverage of contraceptives for their female employees.

But, the liberals claimed a victory in *King v. Burwell*, when the Court upheld the ability of the federal government to provide tax credits for people who bought their health insurance through an exchange created by the law.

With each ACA case it has decided, the Supreme Court has served as the umpire, upholding the law and some of its provisions on one hand, but ruling some aspects of it unconstitutional on the other. Both supporters and opponents of the law have claimed victory and faced defeat. In each case, the Supreme Court has further defined and fine-tuned the law passed by Congress and the president, with the Court determining which parts stay and which parts go. As a result, the Court has had the final say in how the ACA has manifested itself, the way it operates, and the way it serves its public purpose.

**Read: The Power of the Courts**

**Overview**

The power of the federal courts goes well beyond the original impact of the decisions. Sometimes, in fact, many times, the continuing impact of court cases is far-reaching with an influence on the future of the U.S. government that is far more important than the original decision.

**Marshall’s Decisions**

An obvious example is the *Marbury v. Madison* decision by Chief Justice John Marshall in 1803. In the short term, the decision freed James Madison and Thomas Jefferson from having to install a large number of Federalist judges. But, in the long term, the decision created the power of judicial review by the federal courts, elevating the Courts to a position of at least equality with the executive and legislative branches.

Chief Justice Marshall authored two additional decisions which were also omnipresent in their impact on the powers of the federal government.

The first was *McCulloch v. Maryland* (1819), wherein Chief Justice Marshall ruled that the federal government had “implied powers” that could be inferred from the expressed powers in the Constitution. (In *McCulloch*, the implied power was the power to open a bank.)

The second was the case of *Gibbons v. Ogden* (1824), which was a case concerning interstate commerce on the Erie Canal. In *Gibbons*, Marshall ruled that the federal government had sole and complete interstate commerce powers, pursuant to the Interstate Commerce Clause in Article 1, §8 of the Constitution. Marshall went on to rule that “interstate commerce” was any commerce on “interstate waterways,” regardless of whether the “commerce” (traffic) actually crossed a state line.

In and of themselves, these cases were interesting, but certainly did not have the long-lasting, overwhelming impact of *Marbury*. Until they did.
For example, look at the *Civil Rights Act of 1964*, one of the most important laws in the history of the United States, as it outlaws (among other things) discrimination in restaurants, hotels, stores, and other establishments serving the public. But, where did Congress find the power in the Constitution to force a local establishment — a hamburger stand, for example — which does not actually have business outside the neighborhood where it is located, much less across state lines?

Look no further than *McCulloch* and *Gibbons*. Through the theory of implied powers, espoused by Chief Justice Marshall in *McCulloch*, and the interstate commerce powers, espoused by Chief Justice Marshall in *Gibbons*, if anything in the hamburger stand — building materials, the equipment, or the food — crossed state lines, or if the clientele *might* cross state lines, then the hamburger stand is involved in interstate commerce. Through the implied powers, Congress can force them to integrate their business.

From a case about a bank and a case concerning the Erie Canal, 140 years later comes the Civil Rights Act of 1964.

**Long-Lasting Implications**

The Supreme Court’s ability and power to influence the direction of the United States is second to none. Chief Justice Roger Taney’s morally bankrupt decision in the *Dred Scott v. Sanford* (1857) case was largely responsible for the Civil War, because Taney’s decision denied free states the right to outlaw slavery. Consider the *Plessy v. Ferguson* (1896) decision that created the “separate but equal” policy that led, in large part, to the segregation in the South and many of the problems that still plague America today. The *Brown v. Board of Education* (1954) reversed *Plessy*, and led to the Montgomery Bus Boycott, Martin Luther King, and the Civil Rights Movement.

More recently, think of the power of the Court to influence American society through *Roe v. Wade* (1973) on abortion, and the *Obergefell v. Hodges* (2015) case on same-sex marriage. Additionally, *Miranda v. Arizona* (1966) requires the *Miranda Rights* be read to every arrested person; *Gideon v. Wainwright* (1964) guarantees every criminal an attorney; these and many, many more are all decisions that have radically changed the American landscape. Some immediately, and some over time.

There is no doubt that the Supreme Court has the power to affect long term, comprehensive change in America — perhaps in ways that are actually beyond the abilities of the executive or legislative branches. The question is not if, but when. When will SCOTUS issue the next game changing decision?

**Reflect: Which Case was the Most Important?**

**Poll**

Take a look at the list of the Supreme Court cases below. Which do you think was the most important case of the Supreme Court’s decisions?

- Marbury v. Madison
- Obergefell v. Hodges
- Roe v. Wade
- Gibbons v. Ogden
- McCulloch v. Maryland
- Brown v. Board of Education
Expand: How Much Power Should the Judicial Branch Have?

Overview

Not everyone agrees on how much power the judicial branch should have. After all, federal judges and justices are appointed, not elected. As most Americans believe in democracy, shouldn't elected officials run the country? On the other hand, perhaps American government would be fairer if judges had even more power. Because they do not have to worry about reelection, they are relieved of the outside pressure of public opinion.

After all, the majority is not always right. It is no accident that the founders provided for elected officials in the legislature and appointed officials in the judiciary. They believed that freedom, equality, and justice are best achieved by a balance between the branches of government.

Checks on Judicial Power

The president and Congress have some control of the judiciary with their power to appoint and confirm appointments of judges and justices. Congress also may impeach judges (only seven have actually been removed from office), alter the organization of the federal court system, and amend the Constitution. Congress can also get around a court ruling by passing a slightly different law than one previously declared unconstitutional.

Courts also have limited power to implement the decisions that they make. For example, if the president or another member of the executive branch chooses to ignore a ruling, there is very little that the federal courts can do about it. For example, the Supreme Court ruled against the removal of the Cherokee from their native lands in 1831. President Andrew Jackson disagreed. He proceeded with the removal of the Cherokee, and the Supreme Court was powerless to enforce its decision.

The Power of the Courts

The federal courts' most important power is that of judicial review, the authority to interpret the Constitution. When federal judges rule that laws or government actions violate the spirit of the Constitution, they profoundly shape public policy. For example, federal judges have declared over 100 federal laws unconstitutional.

Another measure of the Supreme Court's power is its ability to overrule itself. In 1954, the Supreme Court ruled in Brown v. Board of Education of Topeka that schools segregated by race were unconstitutional. This reversed the 1896 Plessy v. Ferguson decision that upheld the doctrine of "separate but equal."

For the most part though, federal courts do have a great deal of respect for previous decisions. A very strong precedent called stare decisis (let the decision stand) directs judges to be cautious about overturning decisions made by past courts.

Judicial Activism vs. Judicial Restraint

The lack of agreement regarding the policy-making power of courts is reflected in the debate over judicial activism vs. judicial restraint.

Judicial activists believe that the federal courts must correct injustices that are perpetuated or ignored by the other branches. For example, minority rights have often been ignored partly because majorities
impose their will on legislators. Prayers in public schools support the beliefs of the majority but ignore the rights of the minority. The Constitution is often loosely interpreted to meet the issues of the present. In the words of former Justice Charles Evans Hughes, "We are under a Constitution, but the Constitution is what the judges say it is."

Supporters of judicial restraint point out that appointed judges are immune to public opinion, and if they abandon their role as careful and cautious interpreters of the Constitution, they become unelected legislators. According to Justice Antonin Scalia, "The Constitution is not an empty bottle... It is like a statute, and the meaning doesn't change."

Despite the debate over what constitutes the appropriate amount of judicial power, the United States federal courts remain the most powerful judicial system in world history. Their power is enhanced by life terms for judges and justices, and they play a major role in promoting the core American values of freedom, equality, and justice.

Lesson Toolbox

Additional Resources and Readings
Judicial Review: Crash Course Government and Politics #21
- A video talking about the Supreme Court’s most important case, Marbury v. Madison, and how the Court granted itself the power of judicial review
- https://www.youtube.com/watch?v=mWYFwI93uCM&t=122s

Title: Powers of the Federal Courts
- A video providing a brief discussion of the powers of the federal courts
- https://www.youtube.com/watch?v=JrJlryQyteA

Title: Judicial Powers and Limitations | Principles of the Constitution
- A video talking about Article Three of the U.S. Constitution, and how it establishes the judicial branch of the federal government which explains and applies the laws
- https://www.youtube.com/watch?v=hq0qMt1jO4w

Lesson Glossary

implied powers: powers not explicitly named in the Constitution but assumed to exist due to their being necessary to implement the expressed powers; ensured by the Court in McCulloch v. Maryland (1819)
interstate commerce powers: Congressional power to regulate commerce across state lines, ensured by the Court in Gibbons v. Ogden (1824)
judicial activism: the view that the courts should interpret the Constitution and the laws in order to serve the judges’ own visions regarding the needs of contemporary society
judicial restraint: theory of judicial interpretation that encourages judges to limit the exercise of their own power
judicial review: the authority to interpret the Constitution
stare decisis: the legal principle of determining points in litigation according to precedent
Check Your Knowledge

1. After a law is declared unconstitutional, Congress cannot create a new law that is even slightly different.
   A. True
   B. False

2. Chief Justice John Marshall’s only impact was in the court case Marbury v. Madison.
   A. True
   B. False

3. Only the chief justice can impeach current judges.
   A. True
   B. False

Answer Key:

Citations

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