

An independent judiciary with the power of judicial review—the power to decide the constitutionality of acts of Congress, the executive branch, and state governments—can be a potent political force. The judicial branch of the United States government has developed its power from the earliest days of the nation, when Marshall and Taney put the Supreme Court at the center of the most important issues of the time.

From 1787 to 1865, the Supreme Court focused on the establishment of national supremacy. From 1865 to 1937, it struggled with defining the scope of the government’s power over the economy. In the present era, it has deliberated about personal liberties.

It became easier for citizens and groups to gain access to the federal courts in the mid- to late twentieth century. This is the result of judges’ willingness to consider class action suits and amicus curiae briefs and to allow fee shifting. The lobbying efforts of interest groups also had a powerful effect. At the same time, the scope of the courts’ political influence has increasingly widened as various groups and interests have acquired access to the courts, as the judges have developed a more activist stance, and as Congress has passed more laws containing vague or equivocal language. Still, the Supreme Court controls its own workload and grants certiorari to a very small percentage of appellate cases. As a result, although the Supreme Court is the pinnacle of the federal judiciary, most decisions are made by the twelve circuit courts of appeals and the ninety-four federal district courts.

ESSENTIAL QUESTIONS

The purpose of this chapter is to give the student a preview of the major questions to be asked throughout the textbook and to introduce key terms. After reading and reviewing the material in this chapter the student should be able to do each of the following:

- Explain what judicial review is and trace its origins.
- List and comment on the three eras of varying Supreme Court influences on national policy.
- Explain what is meant by a dual court system and describe its effects on how cases are processed, decided, and appealed.
- List the various steps that cases go through to reach the Supreme Court and explain the considerations involved at each step.
- Discuss the dimensions of power exercised today by the Supreme Court and the opposing viewpoints on an activist Supreme Court.

VOCABULARY

activist approach
amicus curiae
blue slip
brief
class action suit
concurring opinion
constitutional court
courts of appeals
dissenting opinion
district courts

diversity cases
federal question cases
judicial review
legislative court
litmus test
Marbury v Madison
McCulluch v Maryland
opinion of the Court
original jurisdiction
per curiam opinion

plaintiff
political question
precedent
remedy
senatorial courtesy
sovereign immunity
standing
stare decisis
strict constructionist
writ of certiorari