Political Science 17.20
Introduction to American Politics

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The Judiciary
Lecture 10 (March 12, 2013)
Outline

1. The Judiciary in a Democracy
2. Judicial Decision Making
3. Judicial Decision Making in Practice
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1. The Judiciary in a Democracy
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The Role of the Federal Judiciary

```plaintext
Supreme Court
  ↓
Appellate Courts (regional circuit courts)
  ↓
Trial Courts (district courts, etc.)
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Responsibility: Interpret, reconcile, and apply the law → **judicial review** (strike down laws as unconstitutional)
Judicial Review Over Time

- **Judicial Jurisdiction:** *Marbury v. Madison* (1803)
- **Slavery:** *Dred Scott v. Sandford* (1857)
- **Property Rights:** *Lochner v. New York* (1905)
- **Civil Rights:** *Brown v. Board of Education of Topeka* (1954)
- **Privacy Rights:** *Roe v. Wade* (1973)
  - Medicaid expansion infringed on states’ rights.
  - But individual mandate valid under Congress’s taxation (not commerce) power.
The Countermajoritarian Difficulty

How can judicial review, which involves appointed judges nullifying the decisions of democratically elected officials, be justified in a democracy?

- Umpire in constitutional system
- Protector of the rights of minorities and powerless
- Guardian of democratic processes

Is the countermajoritarian difficulty really a problem in practice?
1. The Judiciary in a Democracy

2. Judicial Decision Making

3. Judicial Decision Making in Practice
Unlike members of Congress, federal judges do not have to worry about reelection. So how do they decide cases? One answer is legal considerations:

- Facts of the case
- Text of the constitution/statute
- Legislative intent
- Precedent (*stare decisis*)

Legal model has historically dominated legal education
The Attitudinal Model

- There is often no single “correct” decision or “neutral” set of criteria → inherently subjective
- Different judges come to different conclusions on the law based on their sincere policy preferences.
Judges as Strategic Political Actors

**Strategic Model:** Judges are motivated by policy goals but are constrained in a number of ways.

- Institutional and professional legitimacy
- Public opinion
- Reaction of other branches
- Capacity to implement decisions
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Multiple Motivations

Empirically, judges seem to motivated by a number of considerations, but they also tend to line up ideologically like members of Congress do.
Countermajoritarian Decisions Are Rare

- Judiciary rarely out of line with dominant political coalition
- Federal judges typically strike down state laws.
- Nonmajoritarian difficulty:
  - Dominant coalition may be unable or unwilling to decide
  - Clashing majorities
- Abortion: difficult cross-cutting issue for both parties
Implementing Judicial Decisions

*Marbury v. Madison* was unusual in that it was self-implementing. By contrast, most exercises of judicial review involve getting other political institutions (cities, states, the president) to do something.

- Abortion vs. civil rights
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