Chapter Thirteen: The Courts
Learning Outcomes

1. Explain the main sources of American law, including constitutions, statutes and regulations, and the common law tradition.

2. Describe the structure of the federal court system and such basic judicial requirements as jurisdiction and standing to sue.
3. Discuss the procedures used by the United States Supreme Court and the various types of opinions it hands down.

4. Evaluate the manner in which federal judges are selected.

5. Consider the ways in which the Supreme Court makes policy, giving examples from the Rehnquist and Roberts courts.
6. Explain the forces that limit the activism of the courts in making policy.
Common law tradition
- Precedent
  - *Stare decisis*
Constitutions
Statutes/administrative regulations
Case law
Basic judicial requirements:
- Jurisdiction
- Standing to sue

Parties to lawsuits
- Plaintiff (initiates the lawsuit)
- Defendant (subject of lawsuit)
- Class-action suit
The Federal Court System

- Procedural rules
  - Shapes litigation process
  - Protects rights and interests of all parties
  - Identifies issues for court
  - Contempt
The Federal Court System

- Types of federal courts
  - U.S. district courts
    - General jurisdiction
    - Trial courts
  - U.S. courts of appeals
    - Limited jurisdiction
    - Appellate courts
  - Supreme Court
The Federal Court System

- U.S. Supreme Court
  - Highest level
  - Mostly appellate court
  - Some original jurisdiction
The Federal Court System

- Federal courts and war on terrorism
  - FISA Court
  - Alien removal court
  - Enemy combatants
    - Guantánamo detainees
    - Bagram Air Base detainees
Which cases reach the Supreme Court?

- No absolute right of appeal
- Appellate jurisdiction discretionary

Factors:
- Differing lower courts
- Conflicts previous Court ruling
- Broad significance
- Solicitor General appeal

Writ of *certiorari* and “rule of four”
The Supreme Court at Work

- Court procedures
  - Research
  - Abstracts, records and briefs
  - Oral arguments (no evidence)
  - Private deliberation
Decisions and Opinions
- Affirmed—enforcement of decision
- Reversed—void previous decision
- Remanded—send back to original court
- Opinion *per curiam*
The Supreme Court at Work

- Types of Opinions
  - Unanimous
  - Majority
  - Concurring
  - Dissenting

- United States Reports (official record)
Judicial Appointments

- All federal judges appointed
- President nominates, Senate confirms
  - Work experience, intelligence, judicial philosophy, competency, gender, religion, race, age
- Senatorial courtesy
- Partisanship
The Selection of Federal Judges

- Senate’s role
  - Confirms Supreme Court appointments
    - About 20% of nominees not confirmed
  - Confirms lower court appointments
  - Takes 60 votes to confirm
Policymaking and the Courts

- Judicial review
  - *Marbury v. Madison*
  - Supreme Court rulings have most impact
- Judicial activism
- Judicial restraint
Strict versus Broad Construction

- Strict → “letter of the law”
- Broad → determine content and purpose
The Rehnquist Court
- Conservative anchor, began rightward movement of Court
- Often closely divided

The Roberts Court
- Few controversial cases in first term
- Continued rightward drift
  - *Citizens United v. Federal Election Commission*
  - *McDonald v. Chicago*
The Roberts Court

- Stephen Breyer
- Ruth Bader Ginsburg
- Samuel Alito, Jr.
- Anthony Kennedy
- John Roberts, Jr.
- Antonin Scalia
- Clarence Thomas
- Elena Kagan
- Sonia Sotomayor

(Kagan—AP Photo/Pablo Martinez Monsivais, File; Sotomayor—AP/Charles Dharapak; remaining photos—The U.S. Supreme Court)
What Checks Our Courts?

- Executive checks
  - Judicial implementation
- Legislative checks
  - Constitutional amendments
  - Rewriting laws
- Public opinion
What Checks Our Courts?

- Judicial Traditions and Doctrines
  - Self-restraint
  - Narrowed focus
  - Stare decisis doctrine
  - Will only hear justiciable disputes
  - Hypothetical and political questions
  - Impact of lower courts
If the Supreme Court oral arguments are televised, do you think it will only appeal to those that already follow the Supreme Court and its decisions?
In the *Federalist Paper* No. 78, Alexander Hamilton called the judicial branch the weakest because it lacks the power of the purse and the power of the sword. Can you refute Hamilton's claims using current examples? Is the judicial branch the weakest of the three?
How does the arrival of a new justice change the makeup of the Court? What is the impact of a new justice in the cases that the Court takes?
Do you believe that it is the role of the Supreme Court to determine cases involving same-sex marriage, the right to die, and a woman’s right to an abortion?
Questions for Critical Thinking

Should federal judges run for election? What would be the harm to society if judges were held to the same accountability standards as elected officials?
Questions for Critical Thinking

★ Should judges advocate for judicial activism or judicial restraint? How can these judicial doctrines affect our daily lives?