The Federal Judiciary

I. Basic Legal Distinctions
II. Structure of Federal System
III. Supreme Court Past and Present
   A. Supreme Court Eras
   B. Decision-Making Procedures
   C. Appointments
IV. Activism v. Restraint
Key Distinctions

- Criminal v. Civil
- Roman law v. Common law
  - *Stare decisis* (“let the decision stand”)
- Original jurisdiction v. Appellate jurisdiction
  - Appeals on *legal grounds*, not evidence
  - Judicial panel, not jury
The United States Federal Courts

SUPREME COURT

APPELLATE COURTS

TRIAL COURTS

FEDERAL COURTS AND OTHER ENTITIES OUTSIDE THE JUDICIAL BRANCH

UNITED STATES SUPREME COURT

U.S. Courts of Appeals
12 Regional Circuit Courts of Appeals
1 U.S. Court of Appeals for the Federal Circuit

U.S. District Courts
94 Judicial Districts
U.S. Bankruptcy Courts

U.S. Court of International Trade

U.S. Court of Federal Claims

Military Courts (Trial and Appellate)

Court of Veterans Appeals

U.S. Tax Court

Federal administrative agencies and boards
Supreme Court Eras

- Federal v. States (1819-Civil War)
  - *McCulloch v Maryland* (1819)
  - *Dred Scott v. Sandford* (1857)

- Regulation of the National Economy (post-Civil War - 1930s)

- Civil Rights and Civil Liberties (1950s-Present)
  - *Roe v. Wade* (1973)
FDR’s Court Packing Plan
Enforcing *Brown v. Board of Education*

- Little Rock Central High, 1957
The Roberts Court

- BACK: Breyer, Thomas, Ginsberg, Alito.
- FRONT: Kennedy, Stevens, Roberts (Chief Justice) Scalia, Souter.
Supreme Court Decision-Making Procedure

- Receiving a Request for an Appeal
  - *Writ of Certiorari*
  - Do not have to hear *any* appeal!
- Deciding to accept that Request
  - Around 100 out of 7000 requests
  - ‘Rule of Four’
- Hearing the Case
  - Oral Arguments – ½ Hour per side
- Making the Decision and Writing an Opinion
  - Majority, Concurring, Dissenting
More and More Opinions...

Figure 9-2 Number of Dissenting and Concurring Opinions

Source: Lee Epstein et al., *The Supreme Court Compendium: Data, Decisions and Developments*, 3rd ed. (Washington, D.C.: Congressional Quarterly, 2003), Table 3-2, 211–215; and Table 3-3, 216–220. Updates provided by Lee Epstein.
Judicial Nominations

- Nomination Criteria
  - No formal requirements
  - Judicial Competence
  - Ideology
  - Race/Gender

- Nomination Process
  - Presidential Short-List
  - Interest Group Lobbying
  - Senate Judiciary Committee
  - Full Senate for Confirmation
  - Appointed for Life

“I got ‘borked’!!”
Restraint versus Activism

- **Judicial Restraint:** A judicial philosophy that argues courts should allow the decisions of other branches of government to stand, even when they offend a judge’s own sense of principles.

- **Judicial Activism:** A judicial philosophy that argues courts should use their power broadly to further justice, especially in areas of equality and personal liberty.