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The American Legal System and the Courts

Chapter 10

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In this chapter we will learn about

- The notion of law and the role that it plays in democratic society
- The constitutional basis for the American judicial system
- The dual system of state and federal courts in the United States
- The Supreme Court and the politics that surround and support it
- The relationship of citizens to courts in America



The role of law in democratic societies

- Provide security
- Provide predictability
- Resolve conflict
- Reflect and enforce conformity to society's values
- Distribute benefits and rewards society has to offer and allocate the costs of those good things

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Characteristics of the American legal tradition

- Based on common law instead of civil law
- Adversarial instead of inquisitorial
- Litigious

Kinds of law

- Substantive laws vs. procedural laws
- Criminal laws vs. civil laws

Kinds of law, cont'd.

- Constitutional laws
- Statutory laws
- Administrative laws
- Executive orders

The development of judicial review

- Hamilton and *Federalist* No. 78
 - Least dangerous branch of government
 - Court had power of neither the purse nor the sword
 - Approved of judicial review because it would check the momentary passions of the people

The development of judicial review, cont'd.

- *Marbury v. Madison*
- John Marshall and the expansion of the power of the Supreme Court
- Used sparingly to strike down federal law; more frequently to strike down state law

Understanding jurisdiction

- Courts with original jurisdiction
 - U.S. district courts
 - State trial courts
- Courts with appellate jurisdiction
 - U.S. courts of appeals
 - State intermediate appellate courts
 - State supreme courts
- Court with both original and appellate jurisdiction
 - U.S. Supreme Court

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U.S. district courts

- Lowest level of federal court system
- 94 district courts (each state has at least one)
- Hear both criminal and civil cases
- Juries responsible for verdict

U.S. courts of appeals

- Arranged into 12 circuits
- Solely appellate jurisdiction
- No new evidence or witnesses
- Panel of three judges makes ruling, not a jury

Selection of judges

States

- Method varies by state
 - Appointment
 - Nonpartisan election
 - Partisan election

Federal

- All federal judges are nominated by the president and confirmed by the Senate
- Senatorial courtesy is often invoked for lower level federal courts

The U.S. Supreme Court

- Nine justices
- Appointed by the president, confirmed by the Senate
- Serve lifetime terms
- Can be impeached

Four criteria considered for Supreme Court appointments

- Merit
- Political ideology
 - Strict constructionism vs. judicial interpretivism
- Reward
- Representation

Choosing which cases to hear

- Petitioning the Supreme Court
- The role of law clerks
- The Rule of Four
- Other influences, including whether U.S. government is a party in the case

Deciding cases

- Judicial activism vs. judicial restraint
- External factors
 - Public opinion
 - Executive branch
 - Amicus briefs

Writing opinions

- Opinion
 - chief justice, if in the majority, will assign this opinion to someone in the majority
 - If chief justice is in the minority, senior-most justice in the majority assigns the opinion
- Concurring opinion
- Dissenting opinion

The citizens and the courts

- Equal treatment by the criminal justice system
- Equal access to the civil justice system