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- I. Judicial review pp. 289-95 [see also, part VII on next page]
- A. Definition: any federal court's power to review actions or decisions of any other branch or level of government to either uphold them as constitutional or to invalidate them as unconstitutional
 - B. Origin: *Marbury v. Madison* (1803) Box, pp. 292-93
 - C. Approaches
 1. Strict-constructionist: the judiciary has no *enumerated* power to review; therefore, it should defer to elected branches
 2. Activist: the judiciary has the *inherent* power (and duty) to review in order to protect fundamental Constitutional freedoms from hasty & passionate majorities
 - D. The power of the judiciary to exercise judicial review is *strongly* related to the structure of *government*
 1. Little dispersion of power (unitary & parliamentary): more deference
 2. Much dispersion of power (federal & presidential): more activism
 - E. The exercise of judicial review is unrelated to the judge or justice's political ideology (*both* conservative and liberal judges and justices are judicial activists when their most fundamental values are threatened by legislative or executive actions)
 1. Government-guaranteed order vs. individual freedom issues
 - a. Economic
 - (1) Class-action punitive awards in tort law suits
 - (2) Factory closings
 - b. Social/moral
 - (1) Abortion
 - (2) Sexually-oriented material in entertainment media
 - (3) Mind-altering drugs
 - c. Political
 - (1) Nonviolent political protest
 - (2) Military conscription
 2. Government-guaranteed equality vs. individual freedom issues
 - a. Economic
 - (1) Natural environment
 - (2) Human health, & safety
 - b. Social/moral
 - (1) Public-school attendance zones
 - (2) Gated communities
 - c. Political
 - (1) Election-campaign contributions
 - (2) Election-campaign spending
- II. The development of the federal courts Figure 12.1, p. 295
- A. 1790 - 1936: *conservative* judges and justices are in the majority and use judicial review to protect national supremacy and property rights and to restrict civil liberties in many order v. freedom cases
 1. National supremacy (Marshall, 1801-35) and slavery (Taney, 1836-64)
 2. Government and the economy (Chase, Waite, Fuller, White, Taft, Hughes, 1865-1936)
 - B. 1937 - 1985: *liberal* judges and justices are in the majority and use judicial review to protect civil rights and civil liberties in many equality vs. freedom cases (Hughes, Stone, Vinson, Warren, Burger)
 - C. 1986 - present: a divided U.S. Supreme Court under Chief Justice Roberts Box, p. 311
 1. Liberal wing: Breyer, Ginsburg, Sotomayor, Kagan
 2. Centrists: Kennedy (except abortion cases, where he votes with the conservative wing of the Court)
 3. Conservative wing: Chief Justice Roberts, Scalia, Thomas, Alito

III. The structure of the federal courts

A. Types Figure 12.2, p. 296

1. Constitutional (general jurisdiction — supreme, appellate, district courts)
2. Legislative (specialized jurisdiction — tax court, customs court, patent & copyright court, etc.)

B. Selecting judges Figure 12.3, p. 299; Box p. 300

1. Senatorial courtesy
2. The 'litmus' test

IV. The jurisdiction of the federal courts Box, p. 303

- A. Original
- B. Appellate

V. Getting to court

- A. Fee shifting
- B. Standing
- C. Class-action suits

VI. The Supreme Court in action

- A. Decisions
- B. Opinions
 1. Per curiam
 2. Opinion of the Court
 3. Concurring
 4. Dissenting

VII. The power of the federal courts pp. 308-12

- A. The power to make policy Box, p. 310
- B. Views of judicial activism
- C. The causes of judicial activism

VIII. Checks on judicial power

- A. Congress and the courts
- B. Public opinion and the courts