

LECTURE / DISCUSSION / DEBATE  
THE FEDERAL JUDICIARY

**Terms and concepts to know:**

Article III of the Constitution	Jurisdiction
Standing	Supremacy clause
Judiciary Act of 1789	Marbury v. Madison (judicial review)
Common law	<i>Stare decisis</i>
Equity law	Statute law
Criminal and civil law	Adversary process
Appellate procedure	<i>Writ of Certiorari</i>
<i>Amicus Curiae</i> brief	Opinion-majority, concurring, dissenting
Senatorial courtesy	Judicial activism / restraint

**Study and discussion questions:**

1. Discuss the concept of judicial review. Why do you think Americans have largely ignored this unusual usurpation of power and accepted it without too much fuss?
2. Discuss the concept of Supreme Court opinions. Why do you think the content of the opinion might be as important (maybe more important) than the decision itself?
3. Discuss the concepts of judicial activism and judicial restraint. Which type of jurisprudence do you favor and why?
4. How has history and culture of the U.S., as well as the structure of our government, enhanced the role that law plays in American politics?
5. In what ways does Swidorski's analysis challenge the notion of the neutrality of the law?
6. To what extent does Swidorski see a role for the law and the courts in creating social change? Compare his views on this issue with those of Howard Zinn in his article on the Constitution.
7. Parenti's chapter on the Supreme Court takes the position that the court itself is not a "neutral" arbiter of the Constitution and law. What evidence does he give to prove this controversial point? Is it convincing?
8. Describe some of the important people and events that have shaped the Supreme Courts' opinions as detailed in the Rosen article, "Supreme Court Inc." How does this relate to recent rulings by the court on the question of campaign financing?
9. In summarizing the points of his article, Flory notes that "the American judiciary, far from providing a democratic check on corporate and government power, instead exercises an aristocratic check on all forms of popular power and a despotic discipline against the most marginalized in society." If you agreed with his position (not everyone would), what is the likelihood of we can "expand her [Ruth Bader Ginsberg's] vision of equality to include truly democratic courts—citizen courts."

**Readings:**

Heineman. *American Government*, Chapter 11.  
WEB – Readings from "The Federal Judiciary" links.

**Video:** *Supreme Revenge: Battle for the Court*