



# The Courts and The Judiciary

## Part I

The interpretation of the law is the proper and peculiar province of the courts. A constitution is, and must be regarded by judges as, fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.

Alexander Hamilton  
*Federalist Papers No. 78*

# The Foundations of American Law



- **case law**: roots in British system based on common law ... Judges shape law through decisions, interpretations and rulings, which are then collected into a body of law known as *case law* that other judges can use as reference. When judges make decisions, they look to similar cases for precedent, a court ruling from the past similar to the current case. The Latin phrase *stare decisis* denotes the legal doctrine of relying on precedent.
- **overturning precedent**: Supreme Court has power to overturn precedents ... example: *Brown v. Board of Education* (1954) overturned 1896 case *Plessy v. Ferguson*
- State and national courts are reluctant to overturn precedent because law needs to be stable for courts to have legitimacy. It would be impossible for anyone to obey a law that kept changing. But judges recognize law must change to stay relevant. **Courts need to strike a balance between stability and change.**

# The Foundations of American Law



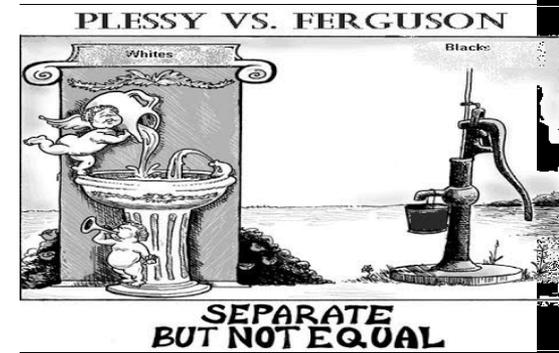
- **constitutions**: US Constitution is supreme law of the land. No law or act of government can violate its principles. Similarly, a state's constitution is the supreme law within a state's borders, so long as state constitution doesn't conflict with national Constitution.
- **statutes**: laws passed by Congress and state legislatures ... Some government agencies can issue administrative regulations that have force of law.
- **judicial review**: National courts have assumed the right to determine the constitutional legality of state and national laws, congressional and presidential acts, and lower-court rulings. Likewise, each state supreme court has assumed the power to determine the legality of legislative and gubernatorial decisions within its own borders.



# The Foundations of American Law: *Stare Decisis*



- ***stare decisis***: Latin for to *stand by things decided* ... idea that prior court decisions must be recognized as precedents
  - depends on a number of factors: (1) whether material facts are the same in current case and past case (2) status of court that made the past decision (3) the use, if any, of avoiding devices
  - Used in common law systems (US, UK). Civil law systems (France) believe it interferes with judge's ability to interpret law and legislature's ability to make law.
  - in court rulings, reliance on consistency with precedents
- **precedent**: previous court decision or ruling applicable to a particular case
- **legal distinction**: legal difference between a case at hand and previous cases decided by the courts
- **Advantages and Disadvantages of Judicial Precedent**



# The Foundations of American Law: *Stare Decisis*



- Sometimes a precedent must/should be overturned.
- Courts are agreed on the factors that should be considered before overturning prior rulings: workability, reliance, intervening developments in the law, changes, closeness of the voting, age of the prior decision and its merits.
- The leading case in deciding whether a court should follow the *stare decisis* rule in constitutional litigations is *Planned Parenthood v. Casey* (1992).
- In *Casey*, O'Connor, Kennedy and Souter reaffirmed *Roe v. Wade*. Their joint opinion remains single most extensive analysis of principle of *stare decisis*, and provides guidance on when Court should follow previous case and when it may overrule it.

## Casey v. Planned Parenthood (1992)

- **Major shift in abortion law**
  - State law required 24 hour waiting period and pro life pamphlet for abortions in 1<sup>st</sup> trimester
  - Minor girls required consent of at least one parent
- **Represented a significant weakening of *Roe v. Wade***



# The Foundations of American Law: *Stare Decisis*



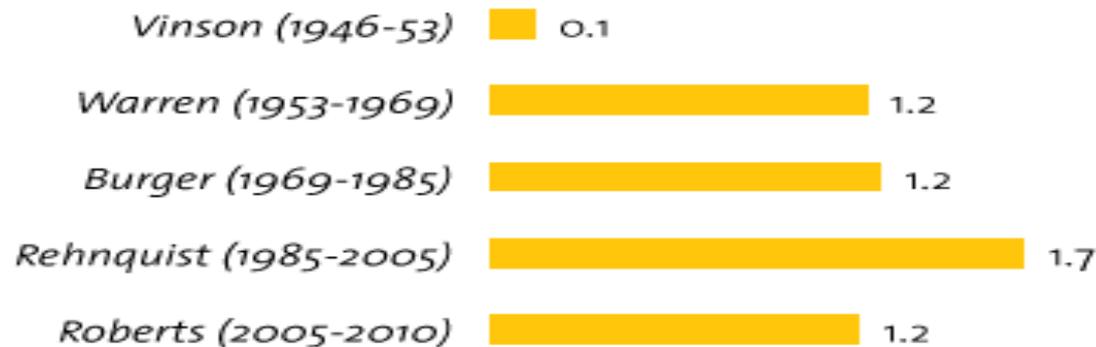
Casey established a 4-pronged test. In deciding when Court should follow previous case and when it may overrule it, Court should...

- determine whether the rule has proved to be intolerable simply in defying **practical workability**
- consider whether the rule is subject to a kind of **societal reliance** that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation
- determine whether related principles of law have so far developed as to have the old rule **undermined by later cases** and no more than a remnant of an abandoned doctrine
- find out whether **facts or our understanding of the facts have changed** and robbed the old rule of significant application or justification

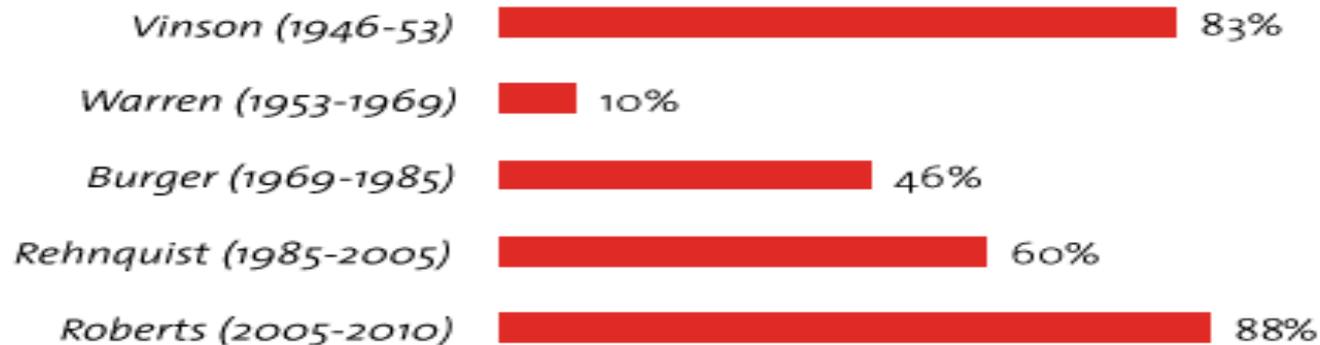
# The Foundations of American Law: *Stare Decisis*



## Average number of precedents overturned per term, by chief justice



## Percentage of precedents overturned by conservative-leaning rulings

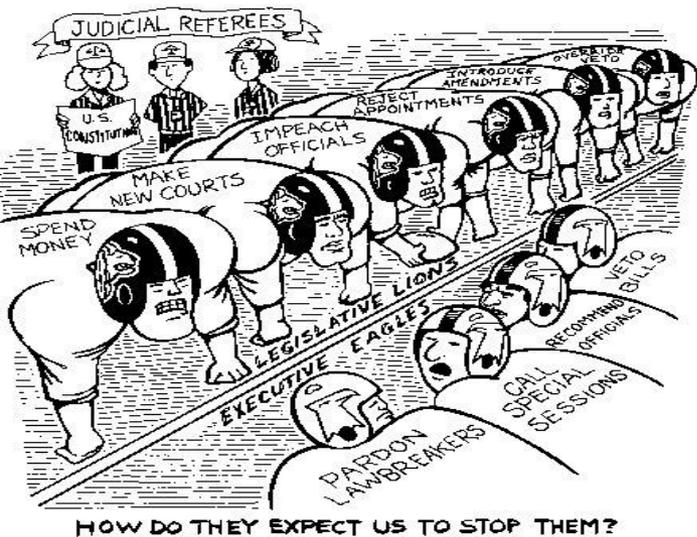


Includes only rulings in cases with oral arguments. Source: Supreme Court Database

# The Foundations of American Law: Statutory Interpretation



- ...the judicial act of applying laws of Congress, rather than the Constitution, to specific cases
- **cannot assume intentions**, rather interpret what is there and apply it
- Sometimes words of a statute have a plain and straightforward meaning but in many cases there is some ambiguity or vagueness in the words of the statute that must be resolved by courts.



- example: Supreme Court heard case involving endangered species ... nothing specific in the Constitution ... Had to apply vague 1973 congressional law. Court's interpretation of law gave it teeth. Said it was intended to protect all species.

# The Foundations of American Law: Statutory Interpretation

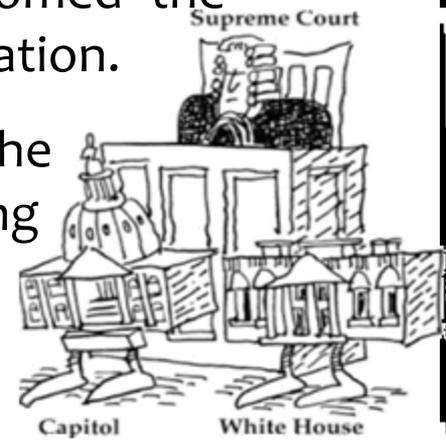


- **general principles**
  - **meaning**: text of statute is used first and it is read as written, using ordinary meaning of words of statute
  - **conflict of laws within a federation**: states have authority over relevant matter in their respective jurisdictions
  - **internal and external consistency**: a statute is interpreted so as to be internally consistent ... a particular section of statute can't be divorced from rest of act
  - **statements of the legislature**: findings, declarations (of policy or of intent) or sense of Congress or of either house
- Courts also use textual, substantive and deference **canons** for understanding words of text ... give common sense guidance to courts in interpreting meaning of statutes.

# The Foundations of American Law: Judicial Review



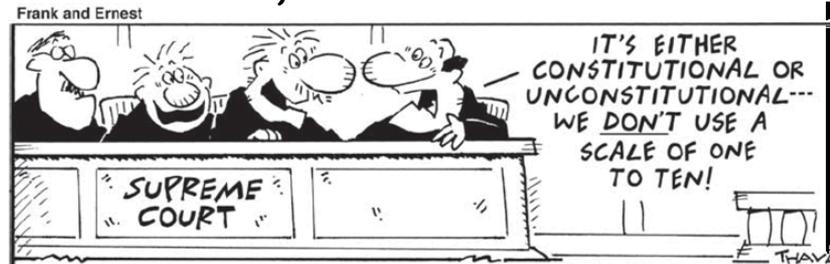
- ...power of courts to declare null and void laws of Congress and of state legislatures that they find unconstitutional ... allows judiciary to review the constitutionality of acts of other branches of government and of states
- Although judicial review is consistent with several provisions of the Constitution and the argument for its existence may be derived from these provisions, it's not *explicitly* stated in the Constitution.
- Practically all of the framers who expressed an opinion on the issue in the convention appear to have assumed and welcomed the existence of court review of the constitutionality of legislation.
- Alexander Hamilton and James Madison had underlined the importance of judicial review in the *Federalist Papers* urging adoption of the Constitution ... example: *Federalist #78*.



# The Foundations of American Law: Judicial Review



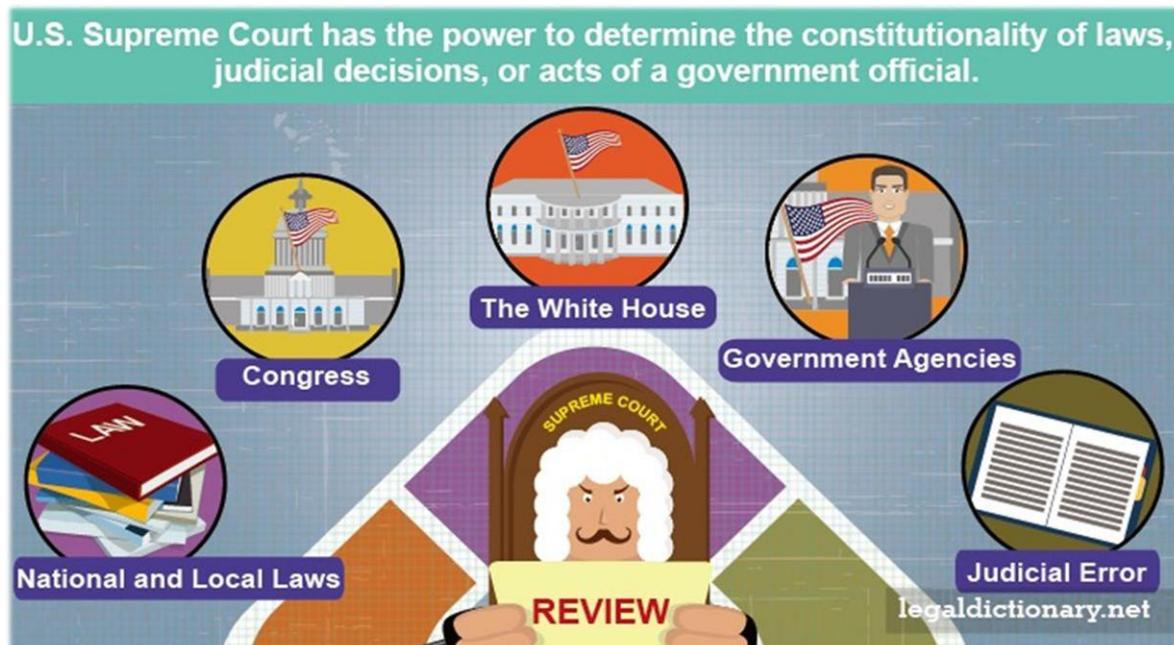
- The Constitution affirms itself as *supreme law of the land*.
- Constitutional interpretation and application were made necessary by the very nature of the Constitution.
- Prior to 1789, *state* courts had already overturned legislative acts which conflicted with state constitutions.
- In enacting the Judiciary Act of 1789, Congress explicitly made provision for the exercise of the power.
- Prior to *Marbury* the power seems very generally to have been assumed to exist by the justices themselves.
- *Marbury v. Madison* (1803): Supreme Court asserted the power of judicial review for the first time ... Marshall said judicial review could be implied from Constitution's supremacy clause ... **Judicial review of national government's acts was settled with Marbury.**



# The Foundations of American Law: Judicial Review



- Judicial review regarding state law settled with *Martin v. Hunter's Lessee* (1816).
- Judicial review increased Supreme Court's legal authority, making it a much stronger branch.
- initially, quite unique ... currently, quite common



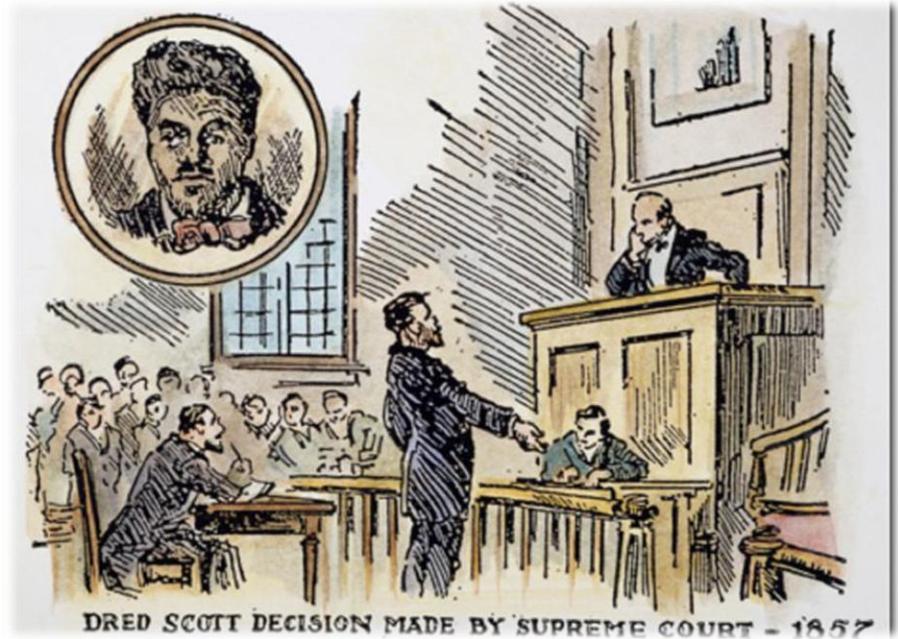
# The Foundations of American Law: Judicial Review in Practice



Manner in which the courts interpret the Constitution can have serious consequences for the nation.

## *Dred Scott v. Sandford* (1857)

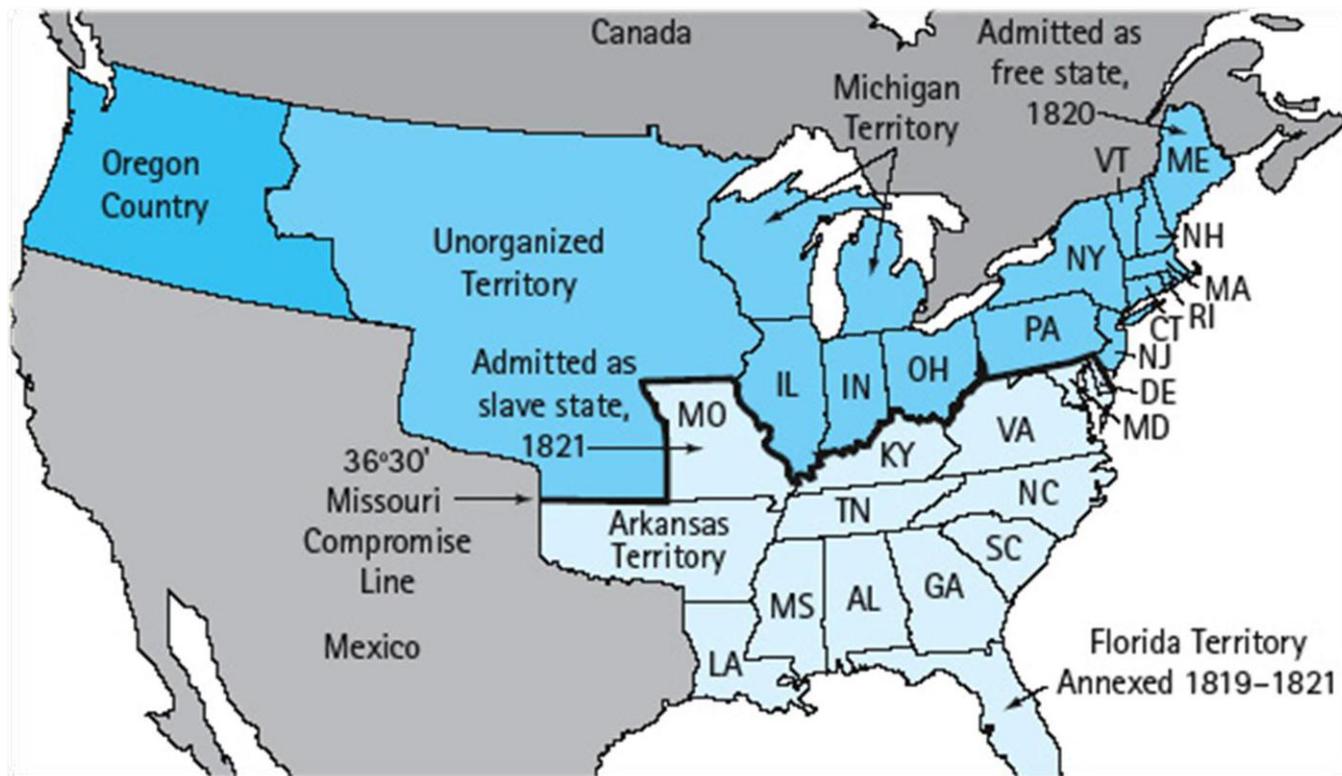
- Court declared the Missouri Compromise unconstitutional and said Congress could not prohibit slavery in the territories.
- restriction on property rights



# The Foundations of American Law: Judicial Review in Practice



The Missouri Compromise was an 1820 agreement that averted a sectional crisis by fixing a line (pictured) south of which slavery would be permitted. Areas north of the line would be free. The *Dred Scott* decision invalidated the agreement.



# The Foundations of American Law: Judicial Review in Practice



## *Lochner v. New York (1905)*

- Court said state of New York could not regulate the number of hours bakers worked because it deprived them of the right to work as long and as hard as they liked.
- Oliver Wendell Holmes dissented ... insisted the Constitution should be interpreted as a living document

**Lochnerized:** Corporations have Constitutional rights.  
Unions? Not so much.



# The Foundations of American Law: Judicial Review in Practice



## *Schechter Poultry Corp v. US (1935)*

- Court found the National Industrial Recovery Act (NIRA), which addressed labor and competition in the private sector, an unconstitutional intrusion on the power of the states to regulate commerce inside their own borders.
- Court also struck down the Agricultural Adjustment Act (AAA).
- Decision at odds with president and Congress.
- FDR proposed radical changes to Court.
- Stalemate resolved when justice switched vote.



# The Foundations of American Law: Judicial Review in Practice



- Given these examples, is judicial review a bad thing? Is it undemocratic?
- Some say yes ... but others see judicial review as a valuable **protection against majority infringement on minority civil rights and civil liberties.**
- Seldom used ... Court has declared national laws unconstitutional 180 times between 1803 and 2016.
- The US Supreme Court has sought to avoid reviewing the constitutionality of acts where they could be decided on other grounds, an attitude and practice exemplifying **judicial restraint.** The Court developed a **series of rules** under which it has avoided passing on a large part of the constitutional questions pressed on it for decision.

# The American Legal System: Some Definitions



- **trial courts**: courts of original jurisdiction where a case begins
- **appellate courts**: courts that generally review only findings of law made by lower courts, courts of appeal
- **jurisdiction**: authority vested in a particular court to hear and decide issues in any particular case

- Jurisdiction is a court's authority to hear a case.

- Types of jurisdiction:

- Original jurisdiction – courts in which a case is first heard.

- Appellate jurisdiction – courts that hear cases brought to them on appeal from a lower court.

- Exclusive jurisdiction – cases that can be heard only in certain courts.

- Concurrent jurisdiction – cases that can be heard in either a federal or a state court.

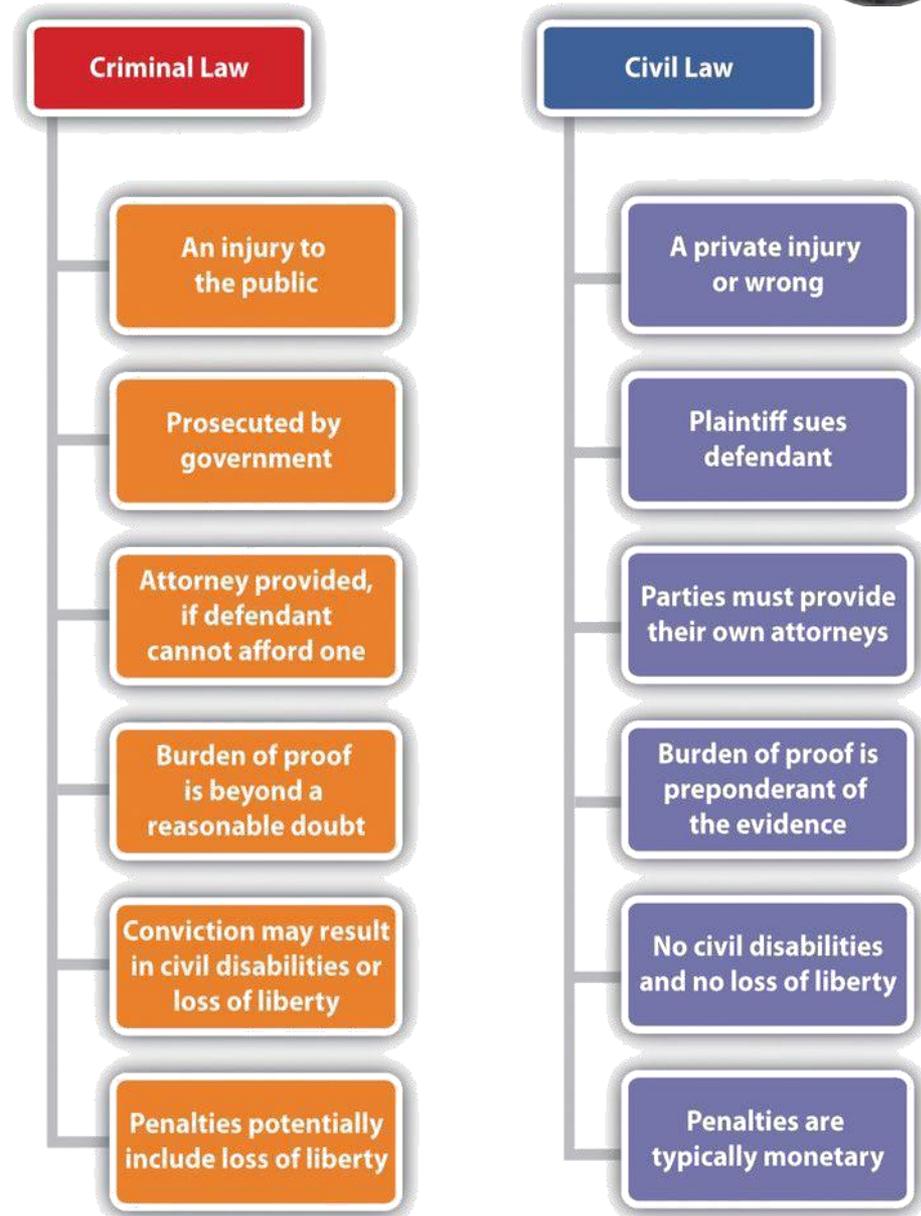
- **original jurisdiction**: jurisdiction of courts that hear a case first, usually in a trial ... Courts determine facts of a case under original jurisdiction.

- **appellate jurisdiction**: power vested in appellate court to review and/or revise decision of a lower court

# The American Legal System: Some Definitions



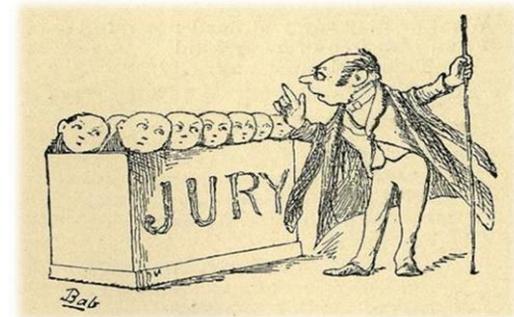
- **criminal law**: codes of behavior related to the protection of property and individual safety
- **civil law**: codes of behavior related to business and contractual relationships between groups and individuals



# The American Legal System: Some Definitions



- In trials there are two sides.
  - **plaintiff**: the person bringing the suit
  - **defendant**: the person against whom the complaint is made
- There are two types of juries.
  - **grand juries**: bring indictments
  - **petit (trial) juries**: decide cases
- Trials settle alleged violations of the criminal and civil codes.
  - **civil code**: regulates relations among individuals ... Violators are sued by presumed victims, who ask courts to award damages.
  - **criminal code**: regulates relations between individuals and society ... Alleged violators are prosecuted by the government.



# The American Legal System: Some Definitions



## A Timeline of a Civil Lawsuit



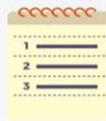
### Incident Occurs

All civil lawsuits begin with one person's or company's act, allegedly causing harm to another.



### Decision

The individual who was harmed must make a choice whether to pursue legal action. This person should consider the costs, the time required, and the risks versus benefits of a lawsuit.



### Suit is Filed

Once the plaintiff's lawyer has created a Summons & Complaint and had it served on the defendant by a marshal, the lawsuit has officially begun.



### Reply

The defendant and his or her lawyer work together to create a pleading. The reply may be one of a number of different pleadings which may include an Answer, a Motion to Dismiss, a Motion to Strike or a Request to Revise the Complaint.



### Discovery

The opposing parties gather as much information as possible about the other's claims and evidence.



### Trial

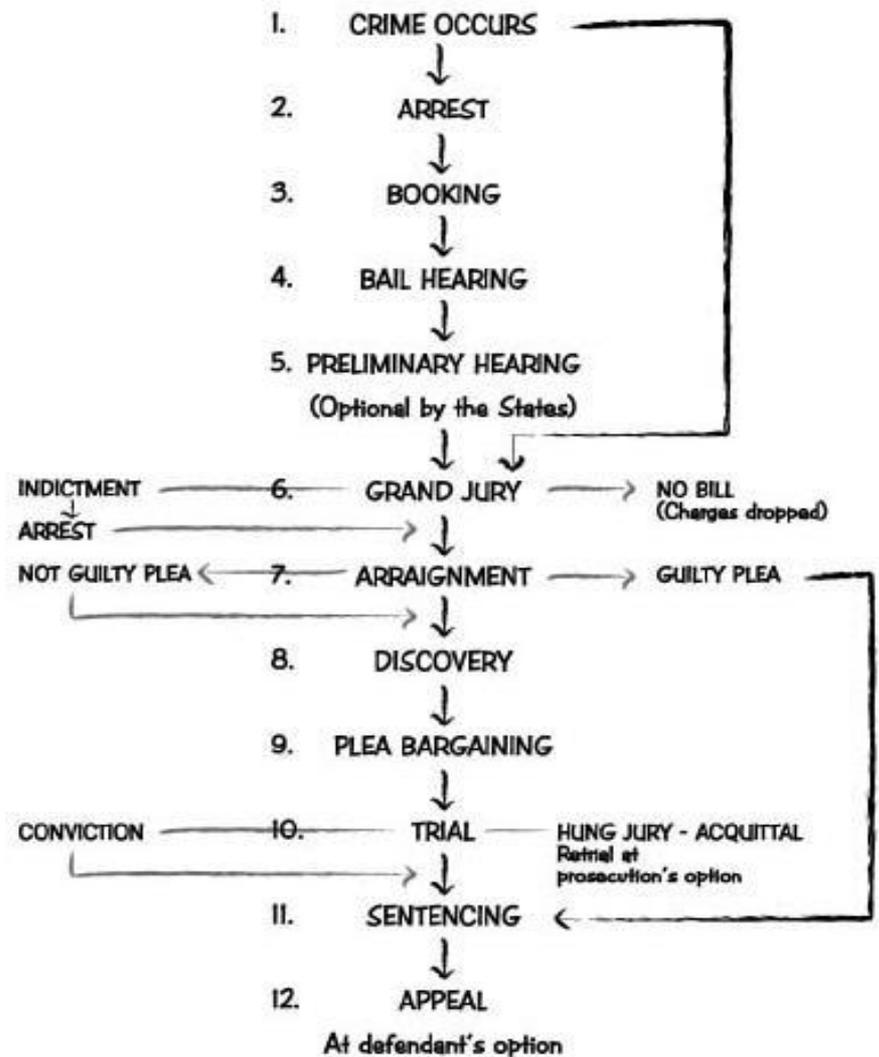
The plaintiff and his or her lawyer must prove whether it is more likely than not that the defendant committed the alleged wrongful acts.



### Judgement

After the jury deliberates in private, they come to a verdict. The verdict will determine whether the defendant is liable, and if damages are sought, whether the defendant should also pay damages.

## BASIC PROCEDURE IN A CRIMINAL CASE



# Differences Between Civil and Criminal Trials



	Criminal Trial	Civil Trial
Plaintiff	The government	Private person or group
At issue	Duty of citizens to obey the law	Legal rights and obligations of citizens to one another
Type of wrongdoing	Transgression against society	Harm to private person or group
Remedy	Punishment (fine, imprisonment, etc.)	Compensation for damages
Standard of proof	Beyond a reasonable doubt	Preponderance of the evidence
Can defendant be forced to testify?	No	Yes

# Differences Between Trial and Grand Juries

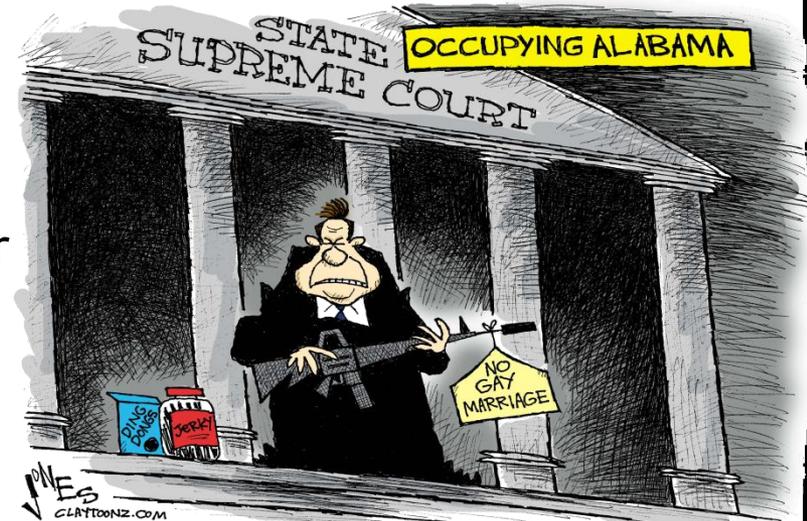


<i>TRIAL JURY</i>	<i>GRAND JURY</i>
<ul style="list-style-type: none"><li>• 6-12 members</li><li>• Role is to decide whether the defendant injured the plaintiff (civil case) or committed the crime as charged (criminal case)</li><li>• Trials are generally public, but jury deliberations are private.</li><li>• Defendants have the right to appear, testify, and call witnesses on their behalf.</li><li>• Final outcome is a verdict in favor of plaintiff or defendant in a civil case, or guilty/not guilty in a criminal case.</li></ul>	<ul style="list-style-type: none"><li>• 16-23 members</li><li>• Role is to determine whether there is "probable cause" to believe that an individual has committed a crime and should be put on trial.</li><li>• Grand jury proceedings are not open to the public.</li><li>• Defendants and their attorneys do not have the right to appear before the grand jury.</li><li>• Final outcome is decision to indict (formally accuse) the defendant or not.</li></ul>

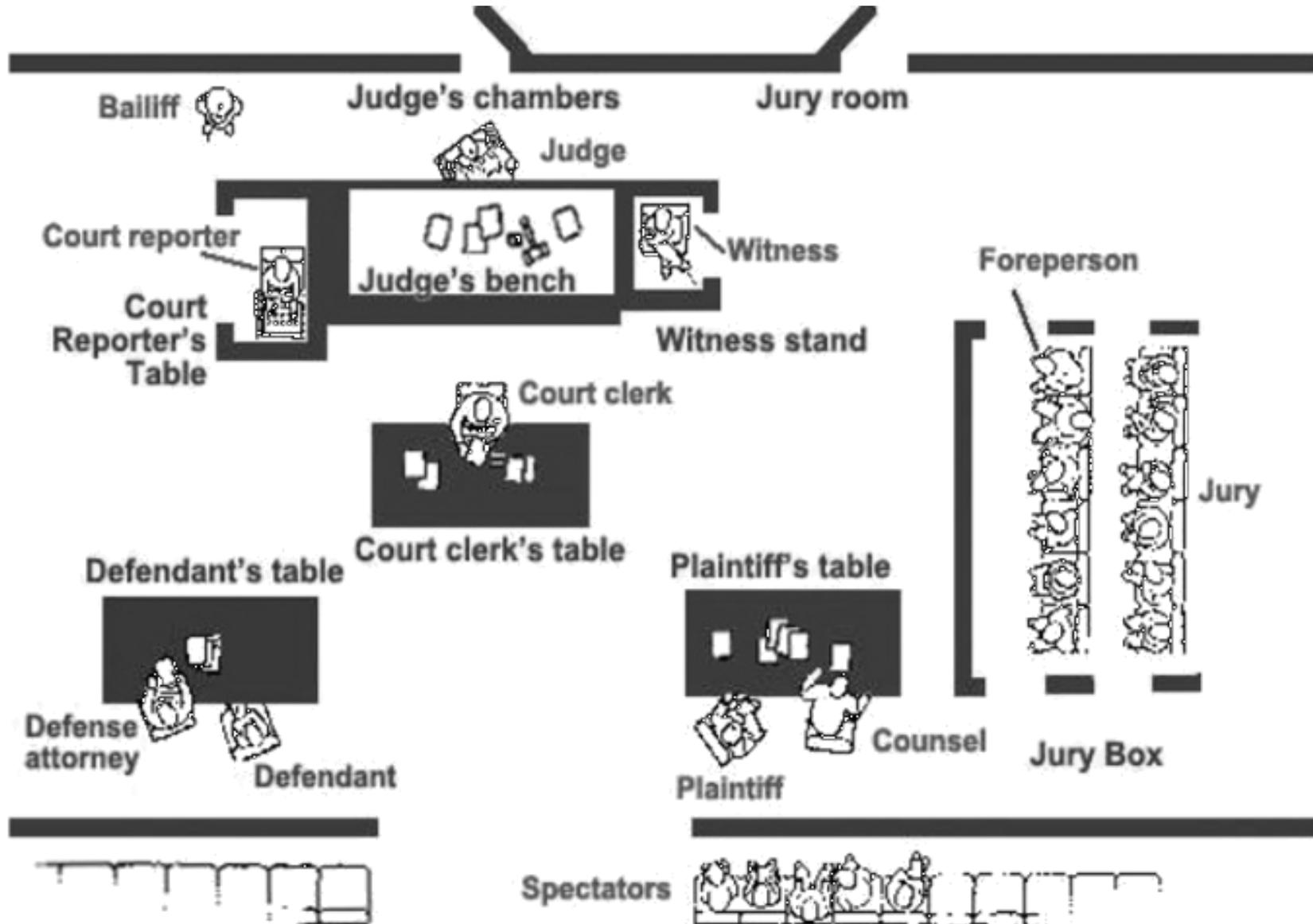
# State Courts



- First American courts were state courts.
- no national judiciary under Articles
- Constitution created national judiciary but most legal cases still handled at state level.
- Every state has its own judicial arrangements.
  - basic structure: trial courts, courts of appeals, courts of last resort
  - Decisions of state supreme courts may be appealed to the US Supreme Court if the case involves a national statute or interpretation of the US Constitution.



# State Courts



# State Courts



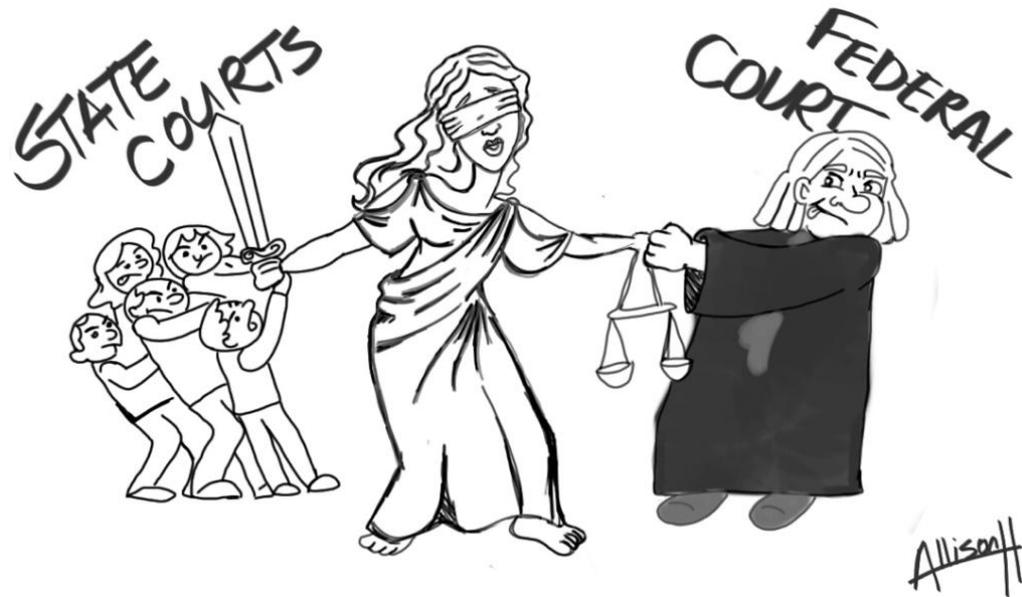
- State courts are more influenced by politics.
  - In 39 of 50 states at least some judges are subject to election.
  - In others, they are appointed by state legislature, governor or agency.
- Judicial campaigns are generally low key events.
- Interest groups have more impact on state judicial elections.
- [State Courts, Money and Politics](#)



# The US Dual Court System



- There is one court system for the national government and one court system in each of the states.
- Most laws, legal disputes and court decisions are located in the states.
- The most important political and constitutional issues eventually reach the national courts.



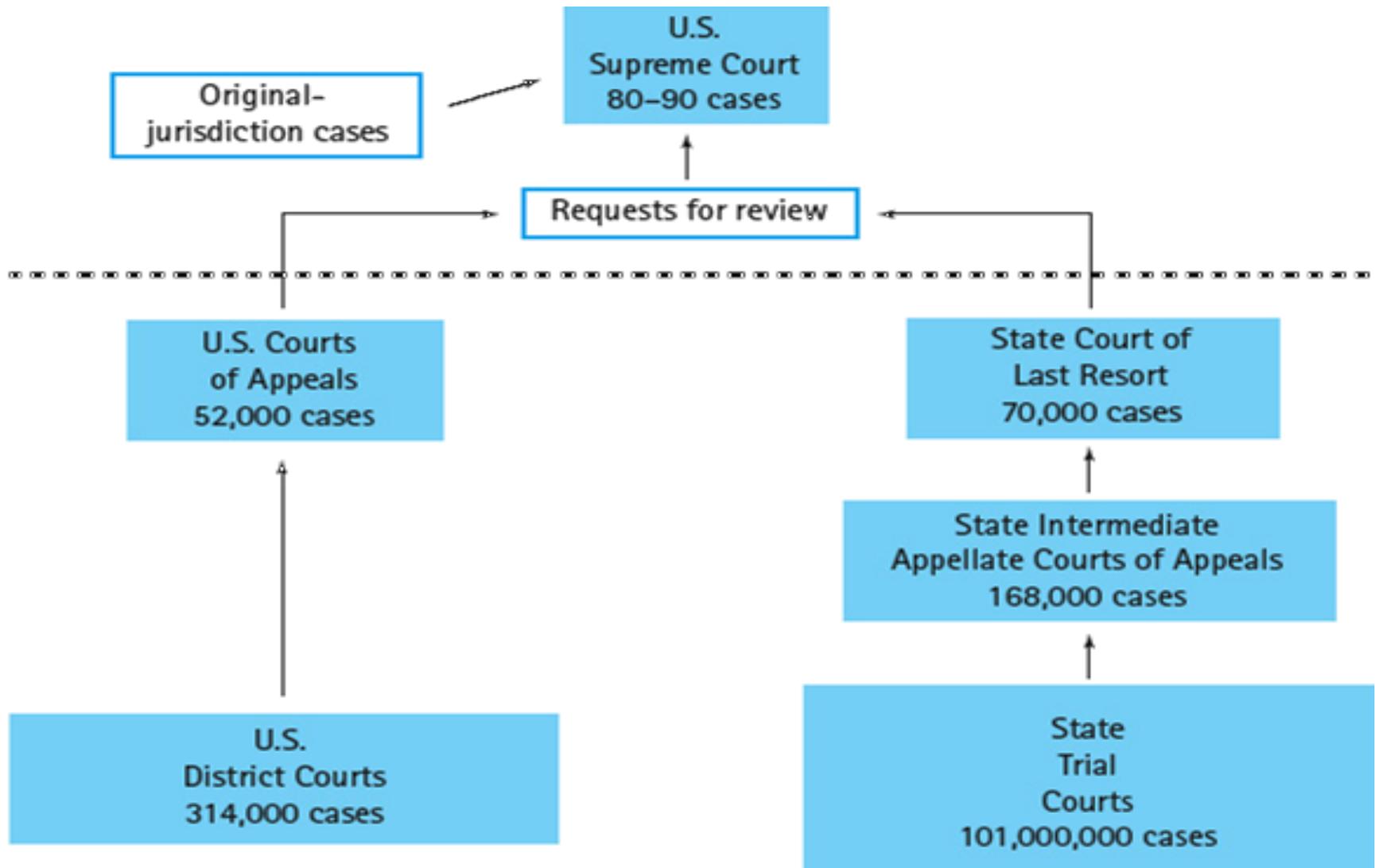
# Relationship between State and National Courts



- Relationship vague under first few decades of the Constitution.
- *Martin v. Hunter's Lessee* (1816): Supreme Court ruled it had the power to review and overturn the decisions of state courts.
- *McCulloch v. Maryland* (1819): Supreme Court first declared a state law unconstitutional.
- Power to review state laws is essential for maintaining basic uniformity in the laws of the US.
- Have found over 1,100 state statutes and constitutional provisions contrary to the national Constitution.



# Relationship between State and National Courts



# Relationship between State and National Courts

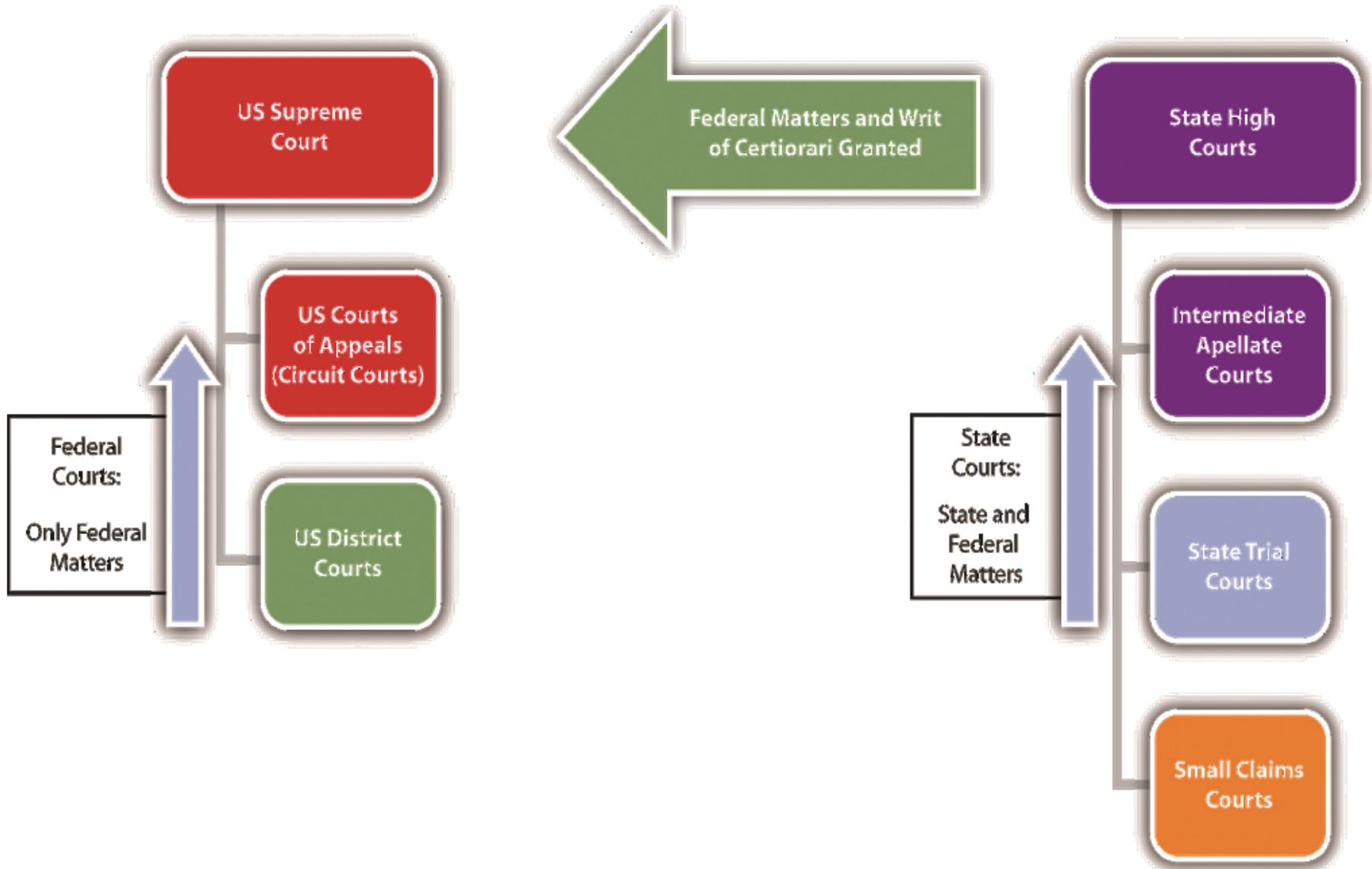


## double jeopardy

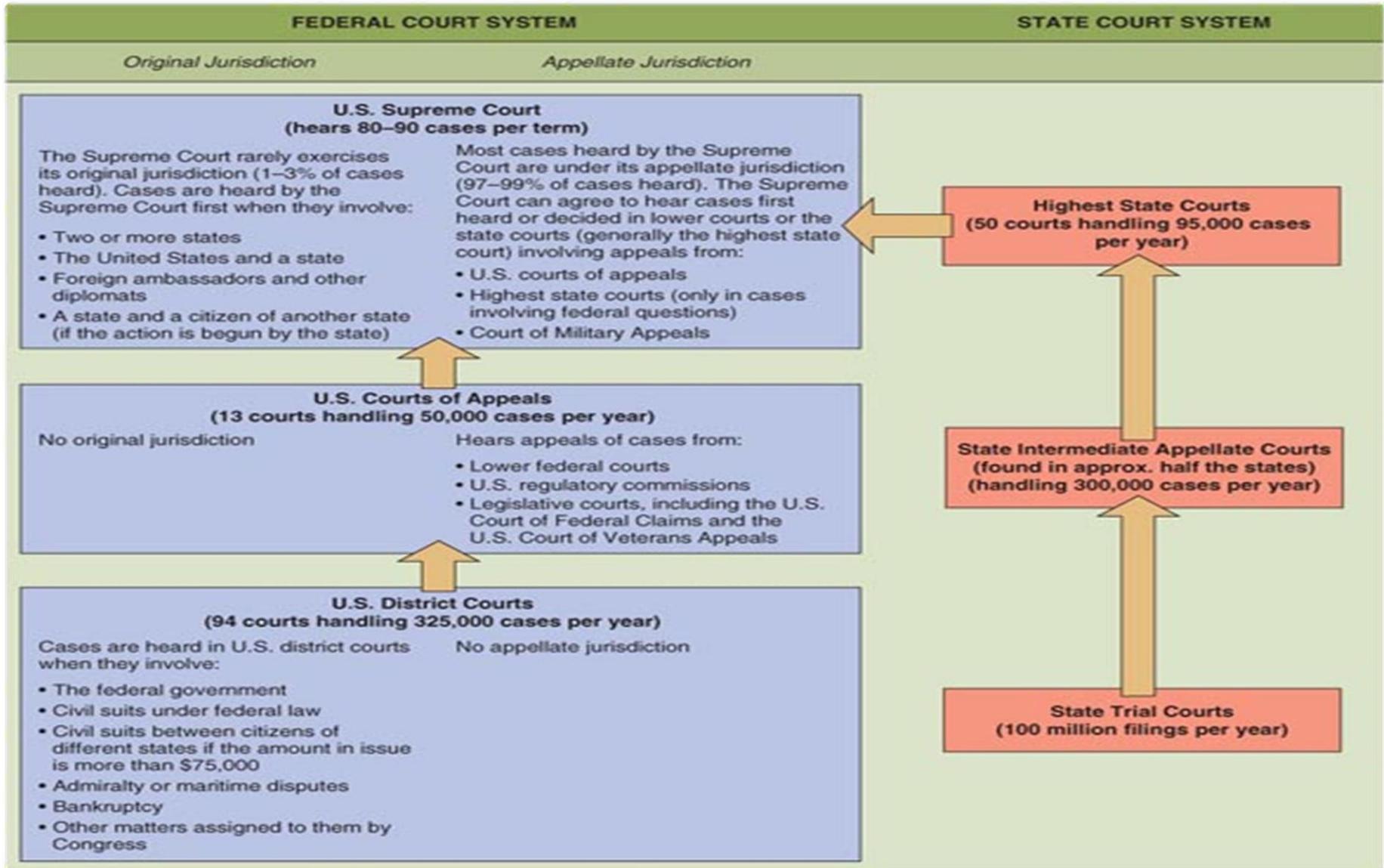
- 5th amendment prohibits double jeopardy (placing someone on trial for the same crime twice) but something similar to it can occur if a person is tried in both national and state courts.
- unusual
- 1995 bombing of a federal building in Oklahoma constituted a violation of both state laws against murder and national laws against conspiracy and manslaughter.
- Rodney King case: Officers not found guilty at state level. National prosecutors brought charges and convicted two of the four officers at national level.



# Relationship between State and National Courts



# Relationship between State and National Courts



# The Constitution and the Creation of the National Judiciary



- Framers devoted little time to the creation of the judiciary.
  - Federalists believed it posed little of the threat of tyranny they feared from the other two branches.
  - Anti-federalists did see the judiciary as a threat.
- Framers left it to Congress to design the national judiciary.

## Types of Federal Courts

- Article III Courts
  - 94 District Courts
  - 12 U.S. Courts of Appeals
  - U.S. Court of Appeals for the Federal Circuit
  - U.S. Court of International Trade
- Article I Courts
  - U.S. Court of Appeals for the Armed Services
  - U.S. Court of Appeals for Veterans Claims
  - U.S. Court of Federal Claims
  - U.S. Tax Court
  - Territorial Courts
  - Courts of the District of Columbia

# The Constitution and the Creation of the National Judiciary



- **Article III** (the Judicial Article): provides very little detail about the organization and operations of the judicial branch
- **section 1**: the constitutional courts (specifically created by the US Constitution or Congress pursuant to its authority in Article III)
  - establishes Supreme Court
    - grants Congress power to design the details of the Supreme Court
  - grants Congress power to establish other courts as it saw fit, *inferior courts*
    - national district courts
    - national courts of appeal

# The Constitution and the Creation of the National Judiciary



- **Article III** (the Judicial Article)
  - **section 2**: specifies the judicial power of the Supreme Court and discusses the Court's original and appellate jurisdiction ... specifies that all national crimes, except those involving impeachment, shall be tried by jury in the state in which the crime was committed
  - **section 3**: defines treason and mandates that at least two witnesses appear in such cases
- **Article I**: Congress may constitute tribunals inferior to the Supreme Court.
  - Congress has used to establish specialized courts, known as **legislative courts** (established by Congress for specialized purposes, such as the Court of Military Appeals).

**Treason**

# The Constitution and the Creation of the National Judiciary



- Framers gave national judges **tenure for life** *with good behavior*.
  - Did not want judges to be subject to the whims of politics, the public or politicians.
  - Hamilton argued in *Federalist 78* that the *independence of judges* is needed to *guard the Constitution and the rights of individuals*.
- **Constitutional checks on judiciary**
  - Congress has the authority to alter the Court's jurisdiction.
  - Congress can propose constitutional amendments that, if ratified, can effectively reverse judicial decisions.
  - Congress can impeach and remove national judges.
  - President (with advice and consent of Senate) appoints national judges.

# The Judiciary Act of 1789



...established the basic **three-tiered structure** of the national court system

- **district courts**: at least one in each state, each staffed by a national judge
- **circuit courts**: avenue for appeal
  - Each circuit court initially composed of one district court judge and two itinerant Supreme Court justices who met as a circuit court twice a year.
- ...set size of **Supreme Court**: chief justice and five associate justices
- Number of justices changed to 9 in 1869.

## **U.S. Supreme Court**

1 Court

## **U.S. Courts of Appeals**

13 Circuits (12 Regional and 1 for the Federal Circuit)

## **U.S. District Courts**

94 Districts, each with a Bankruptcy Court  
Plus

U.S. Court of International Trade  
U.S. Court of Federal Claims

# Structural Change and Constitutional Interpretation



Generally speaking, the Supreme Court has had four distinct historical eras.

- **traditional period:** from birth of the Constitution until end of 19th century, justices primarily concerned with national-state authority, jurisdictional boundaries between national and state governments were at heart of judiciary's most significant cases, embraced a notion of interpretation based on a *fair reading* of Constitution and moderate form of judicial review, least active era
- **transitional period:** from the end of 19th century until 1937, justices primarily concerned with government regulation of the economy especially idea of *laissez faire* economics, maintained theory of traditional era while practicing more activist form of judicial review



# Structural Change and Constitutional Interpretation



- **modern period**: from 1937 until 1969, justices' concern with civil rights and liberties began in earnest in 1940s and can be thought of as relationship between individual and government, developed new activist theories of constitutional interpretation and judicial review
- **conservative retrenchment**: from Warren's retirement in 1969 until present, more conservative Court, justices primarily concerned with limiting/reversing previous laws and Court decisions (civil rights, defendant rights, state rights, campaign contributions, antitrust protections, abortion, affirmative action, immigration, voting rights, government-favored religion, equal protection), embraced idea of conservative activism rather than judicial restraint by striking down record numbers of democratically legislated laws and programs

# continued in The Courts and The Judiciary Part II

