Judicial Decisions: Crash Course Government and Politics #22

Crash Course: U.S. Government and Politics
https://youtube.com/watch?v=QjLcLguoKC4
https://nerdfighteria.info/v/QjLcLguoKC4

Craig: Hello, I'm Craig, and this is Crash Course Government and Politics, and today we're gonna look at the Supreme Court from a different angle. We're gonna try to get inside the justices' heads. Bwahahahahah! Not literally, obviously, but we're gonna look at the factors that influence the way they decide cases, other than the structure of the court system.

So we're pretty far away from the Constitution here and straddling the nebulous world of government, politics, and dare I say it, history.

[Theme Music]

Justices, especially on the Supreme Court, are supposed to be independent, but that doesn't mean they make their decisions in a vacuum. They make them in an office, just like most people who work.

More importantly, they're influenced by a number of factors other than the case that's in front of them. In terms of their role in government, justices might be influenced by Congress, because they know that, unless the case involves the Constitution directly, congress can respond to a decision overturning a law by passing a new law. Once justices have been selected and confirmed, the President has minimal effect on judicial decisions although he's somewhat influential on lower court justices who might one day want to be on the Supreme Court.

So you lower court justices, you be nice to that prezzy, OK? Knowing that the President get to make the call on who gets to be a justice with the help of the Senate of course, federal judges are more likely to make rulings that are more likely to get them considered for the court. Since the president only serves eight years maximum, though, it's hard for judges to know who will be President when a vacancy in the court opens up, so the President isn't much of a factor.

Much more influential on justices is history, which works in two ways. First, the principles of precedent and stare decisis constrain the possible decisions that justices can make. Second, and more historical in the sense we think of history, justices know that their decisions will be studied by generations of historians, and lawyers, and YouTube viewers, and they are very well aware that some decisions, like Dred Scott, Brown V. Board, and Roe V. Wade, can have an enormous impact on American history. And now the historical stakes are even higher, because they know that their decisions will be talked about by a bearded balding man on YouTube forever.

Judges may behave strategically and consider the way that their decisions will be implemented by the executive branch or how a part of one decision will lay the foundation for a change in the law in a decision later. Although it isn't supposed to matter, judges are influenced by their political ideology, whether they're liberal or conservative or possibly by their party affiliation, whether they're Democrats or Republicans or the Tea Party or the Green. Party or they're party animals, like Ruth Bader Ginsberg.

Party affiliation and political ideology are certainly important in the selection process -- it's pretty rare that a Democratic president selects a Republican judge to be on the Supreme Court, especially these days, although sometimes it happens that a justice turns out to be more or less conservative or liberal than the president thought. Former Justice David Souter is a good example of a judge appointed by a Republican who turned out to be much more to the liking of Democrats.

Finally, and perhaps most important, judges are influenced by their philosophical orientation, by this I mean their judicial philosophy, not whether they're existentialists or logical positivists.

While I'm sure that there are many judicial philosophies out there, the two which matter most, at least in terms of the way commentators talk about the Court, are judicial activism and judicial restraint. Let's not show any restraint in actively going to the Thought Bubble right now.

Judicial activism is the idea that the Court should act as an instrument of policy, making it much more like the other two branches of government.

Judicial activists tend to look beyond the text of the Constitution and statutes, instead choose to consider the broader social implications of the decisions they render. Activist judges are supposedly eager to overturn Congressional legislation to further their policy goals, and they're often accused by opponents of making law from the bench. Judicial activism is often associated with liberal or Democratic justices, but it's not that simple.

Judicial restraint, as the name implies, is the idea that judges should pay close attention to the precedent when they make their decisions, and that any changes that they make to the law should be incremental. They are the judicial tortoises to the activist hares. Judicial restraint is sometimes confused with originalism, the idea that any new law should be interpreted in the light of the Constitution as it was written in 1787.

Basically a 'What Would James Madison Do?' orientation. Although advocates of judicial restraint often rely on the Constitution's text, it's later precedent that restrains them more than the Constitution does. Judicial restraint is often equated with conservatism, which makes sense, as conservatives generally are against change, but as with judicial activism, the equivalence isn't perfect.

The two different philosophies are each associated with different historical moments. The high tide of judicial activism occurred between the 50s and the mid-70s, when Earl Warren and Warren Burger were the Chief Justices. During this time, the Court made important decisions: expanding civil rights, voting rights, the right to privacy, and the rights of people accused of crimes.

From the 1980s through the early 2000s, the Court led by William Rehnquist was known for its judicial restraint, dialing back civil rights, affirmative action, and desegregation programs and attempting to rein in the power of the national government and devolve some power back to the states. Thanks, Thought Bubble. So a minute ago, I said that activism wasn't the same as political liberalism and restraint wasn't the same as conservatism.

Let me try to explain what I meant. Mainly, the issue here is the claim that conservative justices practice judicial restraint. If you've been paying attention to the Court recently, you'll see that this isn't always the case.

The current Supreme Court led by Chief Justice John Roberts has five generally conservative justices and four that are usually considered liberal. The conservatives were all appointed by Republican presidents and the liberals by Democratic presidents. These conservative justices have been pretty activist in some of their decisions, however.

For example, the Citizens United case broke with previous precedent and allowed much more campaign fundraising than prior court decisions had, which is something that political conservatives wanted. Recently, the Roberts court invalidated parts of the Voting Rights Act, which had been passed originally in 1965 and renewed by Congress in 2010. Here's why this is problematic: one of the core tenets of judicial restraint is that courts are not supposed to

overturn the decisions of a democratically-elected.

Congress in order to make policy, unless Congress has passed laws that are clearly unconstitutional. It can work the other way, too. While the Warren court was generally pretty activist and stocked with politically liberal justices, Justice Breyer, who's usually considered politically liberal and was appointed by a Democrat, believes that judicial change should be incremental and doesn't want to make decisions that will cause sweeping changes.

So he's exercising judicial restraint. So, I'm going to stop here, otherwise we're going to fall into the trap of talking politics, and I don't want to do that with him around, 'cause he's always trying to sue American. Eagle Apparel for violating his right of publicity, and I think it's fine, they've had that trademark for quite some time!

I'm sorry, but you don't really have those rights, you're not human or even a real eagle. So let me just remind you of a few things in attempt to be as clear as possible. First, judicial philosophy is not the same thing as political ideology, even though the media, especially the television media, likes to say they are.

Judicial philosophy refers to activism and restraint, while political ideology refers to liberalism or conservatism. It's possible to be both politically conservative and judicially activist, and vice versa. Second, there's lots of factors that influence the way judges make decisions, and the judges rarely let you know which one is at work.

Whenever you look at a Court decision, which we're gonna do soon, think about which factors went into that decision, especially in the way that Congress and the Executive will react to it. Remember, despite what you may hear, all decisions are highly political, except the decision to end this video. Thanks for watching; see you next week.

Crash Course Government and Politics is produced in association with PBS Digital Studios. Support for Crash Course US Government comes from Voqal. Voqal supports non-profits that use technology and media to advance social equity.

Learn more about their mission and initiatives at voqal.org. Crash Course was made with the help of all of these judicial activists. Thanks for watching.