

Judicial Philosophy and Constitutional Interpretation

◆ **Judicial Philosophy:** the set of ideas and beliefs that dictate how judges will rule in particular cases.

Judicial Liberal	Judicial Conservative
<ul style="list-style-type: none"> ★ Believes the Constitution is a living document and is open to new evaluation, interpretation, and modernization. ★ Believes that the text of the Constitution evolves over time. ★ Believes that precedent (<i>stare decisis</i>) should be a factor in deciding legal matters. Hence, previously argued cases and court decisions are to be followed by subsequent courts. ★ Many are labeled as “activist” by opposing groups because it involves resolving cases based on convictions and preferences. ★ These types of judges are typically nominated by Democratic presidents. ★ Believes in a “loose” interpretation of the Constitution (loose constructionism). 	<ul style="list-style-type: none"> ★ Believes the Constitution is a firmly defined document and is not open to new interpretation. ★ Many believe that precedent (<i>stare decisis</i>) should not be a factor in deciding legal matters. ★ <u>Originalism</u>: many are “originalists” meaning that the Constitution means the same thing today that it meant in 1787. The meaning can be changed only through amendments. ★ Typically viewed a practicing judicial “restraint”. ★ <u>Textualism</u>: a statute’s (laws) original meaning as evidenced in the text should govern how a judge should interpret it. ★ These types of judges are typically nominated by Republican presidents. ★ Believes in a “strict” interpretation of the Constitution (strict constructionism).
Judicial Moderate	
<ul style="list-style-type: none"> ★ Judge does not typically vote or make decisions “in line” with traditional liberal or conservative positions. ★ Judge will have a liberal perspective on some issues and conservative slant on others. ★ On the U.S. Supreme Court, these judges are typically are the “swing vote”. ★ <u>Minimalism</u>: Minimalists offer small, case-specific interpretations of the law as an alternative to the “excesses” of “extremists” on both sides. Great importance is placed on precedent and <i>stare decisis</i>. ★ Only small interpretations away from precedent, narrowly-applied, and based on the general direction of the country represent true judicial restraint. ★ Allow for a living Constitution with a slightly more restrained view than judicial liberals. 	

Where do the justices of the Robert’s Court belong on this continuum?



★ **What does the phrase “legislating from the bench” mean?**

Judicial Restraint and Judicial Activism

★ All judges exercise discretion, but not all engage in policy making to the same extent. Some are less willing to declare laws or actions of government officials unconstitutional, whereas others, classified as "activist", are more willing to do so. **Judicial restraint and judicial activism are belief systems and role concepts that people think judges should adopt and follow when they decide cases.** Political science research shows that justices' votes are more of a reflection their ideology. Therefore, it is usually more important to know whether a judge is conservative or liberal. However, understanding the judicial philosophy of a justice will help us better understand how they come to their decisions/rulings.

Judicial Restraint	Judicial Activism
<ul style="list-style-type: none"> • Defined: the idea that judges should play a minimal policy-making role, leaving policy decisions to the other two branches. • other branches should take the lead because they are more closely connected to the people. • <u>Restrained judges believe...</u> <ul style="list-style-type: none"> - that the judiciary is the least democratic branch because federal judges are appointed for life rather than elected and reelected. - that the judiciary is the least capable branch because judges are generalists who lack the expertise and resources that legislators and bureaucrats use to make policy. - that the power to declare laws unconstitutional is more effective if it is used sparingly. - that showing appropriate deference and following proper procedures are more important than reaching desired results. 	<ul style="list-style-type: none"> • Defined: the idea that judges make policy decisions and interpret the Constitution in new ways. • judicial activists believe that federal courts must correct the injustices that the other branches do not. • <u>Activist judges believe...</u> <ul style="list-style-type: none"> - legislators are often captive of special interests. (As a result, activist judges have a more flexible and pragmatic view of separation of powers.) - that the power to declare laws unconstitutional is enhanced if it is used frequently- urging colleagues to "use it or lose it"- because the public gets accustomed to it . - Constitution must be loosely interpreted to meet the needs of the present.

SOURCE: Welch, Gruhl, Comer, and Rigdon. American Government, 10th edition, 2006. Pages 451-452