

- How does the SCOTUS decide cases?
 - "EQUAL JUSTICE UNDER LAW"
 - SCOTUS charged w/ ensuring "equal justice under law"
 - It = uniquely American
 - Position & power stems from believe in Rule of Law & constitution
 - SCOTUS can invalidate laws or actions that conflicts with Constitution
 - Tasked w/ assuring individual rights
 - Uses "judicial review"
 - Note: JR NOT in Constitution
 - State courts used power
 - Hamilton & Madison stress important JR in Federalist Papers
 - Judicial review confirmed in 1803
 - Invoked by CJ John Marshall in *Marbury v. Madison*
 - Irony: power = necessary by nature of Constitution
 - Art III limits SCOTUS powers to dealing w/ "Cases" & "Controversies."
 - Justices must exercise discretion
 - SCOTUS judgment = virtually is final
 - How does SCOTUS maintain our republic?
 - Foundation of our legal system = English Common Law
 - Based on precedent
 - Began w/ Norman Conquest in 1066

- Henry II (1154-89) orders judges to record decisions
- Henry de Bracton & *De Legibus et Consuetudinibus Angliae*
- Common law rests on decisions by previous courts & judges
- Judges adhere to *stare decisis et non quieta movere*
- Common law established by custom - not by lawmakers
- Framers instill principles into US judicial system
 - Courts check laws against Constitution
 - Decisions = foundation for future legislation
- Potential danger = Judicial Activism
 - NOTE: warnings of Antifederalists
 - *Stare decisis* should “check” abuse
 - Judicial Activism
 - Vs. Judicial Restraint
 - Judicial activism is often maligned
 - Common critiques
 - BUT, judicial activism not always seen as negative
 - Juxtaposition: *Roe v. Wade* vs. *Dred Scott v. Sandford*
- Greatest issues = liberties & rights
 - Problem: govt policies treat people differently
 - Requirement = similarly situated persons must be treated similarly
 - NOTE: Gov’t may decide who is similarly situated

- General rule = all gov't classifications be "rational"
- Some classification need higher judicial standard
 - Such classifications = "suspect" classifications
 - Receive strict scrutiny by courts
 - "Strict scrutiny test"
 - Suspect restriction presumed illegal unless:
 - » a) gov't can demonstrate has very good reasons for its action, &
 - » B) gov't demonstrates classification = necessary to serve compelling interest
 - » & C) gov't demonstrates restriction = least burdensome means of achieving compelling interest
 - How do courts decide what classifications are suspect?
 - Tradition of stereotyping & discrimination
 - Impossibility of change
 - » NOTE: impossibility of change doesn't guarantee suspect status
 - Fundamental characteristics
 - Fundamental liberty
 - NOTE: biological Gender & immigration = "semisuspect"
 - NOTE: age, sexual orientation & wealth = "rational basis" scrutiny
- Issue of focus = 1st Amendment & Free Speech
 - Free Speech = fundamental liberty & subject to strict scrutiny
 - BUT, Speech often source of controversy

- Ex. Duck Dynasty's Phil Robertson vs. GLAAD
 - Does Robertson have freedom to say what he said?
 - Did A&E have right to suspend him?
- What is speech?
- Key Concepts = Freedom of Speech
- 1) Reflects founders view of dangers of official censorship
 - 2) "Speech" to framers = political speech
 - 3) NON-Political Speech can be restricted under rational basis
 - 4) Some political speech may be restricted vs. Time, Place, Manner
 - Ex. Free-Speech Zones
 - 5) Free speech only applies to gov't restrictions on expression.
 - Private individuals/corporations can limit free speech