

Are judges politicians in disguise?

When reviewing the functions of the judges, and how and why decisions are made, there are many factors which should come into consideration. The judicial branch should interpret the law and constitution, and to make neutral and impartial decisions. Judges, in theory, should be fair, unbiased, neutral, impartial and not based or linked to any political party or movement.

However, it has been argued in the past that judges are too alike to politicians, as decisions made by the Supreme Court judges have, and will not be mechanical, but in a lot of cases too biased and political. This argument is strongly supported by the outcome of the major Supreme Court case, Roe vs. Wade. This case was a landmark decision which concerned abortion rights for women. Previously, abortion was a very questionable issue and was not allowed in most states. The case had two arguments put forward, one being 'pro life' which did not agree with abortion, and supported by the republicans, and the other being 'pro choice', which was supported by democrats. Which ever decision was made, the result was always going to be accused of being biased towards one political party, and therefore the neutrality and whether judges are non partisan, would be questions. The eventual decision was that the woman should have the choice, meaning the democrats view was supported and placed by the Supreme Court judges, causing debate on whether the decision was mechanical or political, and raising the issue if judges are too alike to politicians.

A main argument put forward that judges cannot be independent and partisan was when Historian Howard Zinn has claimed in his book A People's History of the United States that the justices cannot be independent, as the members are chosen by the president and ratified by the Senate. Likewise, he says that they cannot be neutral between the rich and the poor, as they are almost always from the upper class.

Judicial review is a major function of the United States judiciary branch. Judicial review is when the laws, and constitution are questioned by the judiciary and their interpretation is checked. Judicial review is one of the greatest and most controversial contributions of the constitution to the law and government. Power of the Supreme Court to overturn any legislation or governmental action is deemed as inconsistent with the constitution, bill of rights or federal law. If judicial review causes a change in these laws, then the decision made is not likely to be mechanical, but to have a political swing. Also, the interpretation of the constitution is also open to bias by judges, again showing that judges could be too alike politicians.

The Marbury vs. Madison case was a landmark decision that affected judicial review. President John Adams gave a last minute appointment before leaving the office to William Marbury as an official in the District of Columbia. The incoming Secretary of State James Madison who was responsible for these appointments didn't carry out that appointment; therefore William Marbury sued James Madison and challenged the Supreme Court to forceably appoint Marbury to the position. The Supreme Court decided that to forceably appoint Marbury to the position is something that the Constitution doesn't allow the Supreme Court to do. In making this decision, the Supreme Court established their power of "judicial review", which allows them to strike down laws that they found unconstitutional.

There is another case which is a direct challenge to the neutrality and non partisanship of the Supreme Court judges. The Bush vs. Gore case concerned the recounting of ballots was unconstitutional.

The courts decision was highly controversial as the majority decisions were made up on what appeared to be partisan. This was because the five justices voting in favour of Bush were all appointed by Republicans and the two justices appointed by Democrats, voted in favour of Gore. This could be considered as controversial as the decisions made appear to be clearly politically swayed decisions, and not mechanical which is what they are supposed to be based upon.

Judicial interpretation is also an issue when debating whether judges are too political. This is because when interpreting and reviewing the constitution and law, the judge's decisions could be biased if they are partisan. This means that some Supreme Court decisions could be questioned and accused of being changed or interpreted when they are not needed to be. This is called judicial activism, as it is a tendency by judges to consider outcomes, attitudinal preferences, and other public policy issues in interpreting existing law.

In scenarios when this could be questioned, the argument whether judges are too political can be answered by using judicial restraint. This is when judges limit their own power, unless they are clearly unconstitutional.

When judges are appointed, it can raise the issue that the appointment and nomination is politically biased. When there becomes a vacancy in the supreme court by means of death, retirement, or the rare action of impeachment, the President nominates a candidate in which he think is suitable for the role. The president can appoint anyone who he wishes, but the nominee has to be confirmed by the senate, and the senate judiciary committee. The process begins and ends on the floor of the senate.

In recent history, there has been a very controversial instance of the nomination process, in which GW Bush nominated Harriet Meirs to replace Sandra Day O'Connor after her retirement. The nomination was considered extremely controversial as Meirs was firstly not a judge, and also and ex political advisor of Bush. She was seen as only put forward for the position as she was a 'crony' of Bush, which was met with an objection from the public and from the senate. Meirs withdrew her nomination, and Sam Alito was later appointed.

This case is a major example of how the court could become biased or partisan, and how judges could be very similar to the politicians.

However, another famous instance was Chief Justice Earl Warren's appointment. President Eisenhower expected him to be a conservative judge, but his decisions are arguably among the most liberal in the Court's history. This was described by Eisenhower as 'the worst damn decision I ever made'. This instance is evidence of how judges could be wrongly perceived in their political views.

Warren Burger, who was the Chief Justice of the 'Burger Court' between 1969 to 1986 was considered a conservative and a strict constructionist. Although his political involvement was slow to start with, it was considered to have become too powerful in later years. He delivered a variety of major decisions on abortion, capital punishment, religious establishment, and school desegregation, which are seen as leargely political decisions.

Burger was also involved in such political decisions as the maintenance of checks and balances between the branches of government. On July 24, 1974 he led the court in a 8-0 decision in United States v. Nixon. This was President Nixon's attempt to keep memos and tapes relating to the Watergate scandal private. The ongoing scandal caused Nixon to resign in order to avoid impeachment.

When looking at the power of the supreme court judges, it can be said they are often too powerful on political decisions as all their decisions will come into conflict have to deal with constitutional issues. There are two main examples of Supreme Court cases which demonstrate this point. Firstly, the Brown vs. Board of Education case is a landmark decision of the United States Supreme Court, which overturned earlier rulings such as Plessy vs Ferguson, by declaring that state laws which had separate public schools for black and white students and the issue that black children didn't have equal educational opportunities. The Warren Court's unanimous (9-0) decision stated that "separate educational facilities are inherently unequal." This came into conflict with the Equal Protection Clause of the Fourteenth Amendment, this decision paved the way for integration, and the civil rights movement.

The second case is Grutter vs Bollinger, which included a Law School applicant who claimed to be rejected on grounds on racial discrimination. The Supreme Court upheld the affirmative action admissions policy of the University of Michigan Law School. The decision was 5-4.

The power of Supreme Court judges also shows they have a wide jurisdiction. This means that they can apply judgement to any law or government action, and can also overrule the President, Congress, and executive department. This power may encourage judges to become more like politicians as their political involvement has to potential to be very large.

Another very important point is that too much power is in the means of constitutional questions, which is because the supreme courts judgement go almost always unchallenged, again, it appears that the judges are taking on the roles of political judgments.

The Supreme Court judges also have a very large involvement with the people, and with civil rights. This again could encourage political involvement as may civil rights groups see the court as a way of achieving their goals.

However the main point which questions the political involvement of judges is the fact that the range of issues that is dealt with by the judges and courts has increased and extended largely in recent years, as the courts now rule on issues such as the economy, which is generally seen as a politicians issue to deal with. Furthermore to this point, some institutions and groups may avoid reaching decisions, so the Supreme Court may take this responsibility. This could also increase political involvement.

When Rehnquist was Chief Justice, he was expected to push the Supreme Court in a more conservative direction under his leadership. Many expected to see changes was in limiting the power of the federal government and in increasing the power of state governments. When Rehnquist died, John Roberts was appointed. The direction of the Roberts court has not been clearly defined as conservative or liberal. The political leanings of the current court have not been portrayed, therefore it is unfair to say the current court is too political, but evidence in the past could suggest that judges are politicians in disguise.