

Topic/Issue Presented:

It is said that the American legal system is a "nation of laws, not men." This means the system is meant to be embedded in and guided by the notions of consistency, uniformity, and fairness in achieving society's objectives. We all are too familiar with the justice:

In this way, justice manages to balance equity and fairness with blind justice. With strength, she imposes this power on others. The idea is that justice protects the minority/powerless from the tyranny of the majority. People often equate the American legal system with "justice." However, some say, this is an assumption that is neither reflected in the structure of the judicial system nor in history.

Critics argue that a "court of law" is not always concerned with dispensing justice, and at its worst, the law can become a perversion of justice. If this is true, the question then becomes: what role does this Court have in society.

This course had you examine what is the role of courts in society, and how it uses law to achieve this objective. As you review the lessons, keep in mind the big-picture questions:

- Can justice be "blind"?
- Should justice be "blind"?

As we discussed early in the semester, the Constitution might not only have allowed the Court to intervene, but it might have required it. Instead, as we discussed, as the Federalist Papers assured, under its interpretative authority of "judicial review" the Court invalidates a law or action that conflicts with the Constitution. As *Madison v. Marbury* recognized, an unconstitutional legislative or executive action is invalid. The issue is not an unelected group of judges with life tenure stepping in the shoes of another branch overturning law or actions that the Court personally opposes: rather, respect for the Constitution requires action.

Through this perspective, you will analyze the actions of the so-called "liberal" and "conservative" judicial approaches. A survey of opinions seems reveals a history of seemingly inconsistent philosophies. There are examples of both liberal and conservative judges engaging in judicial activism as well as judicial restraint. As we explored throughout this semester, the terms may not be about politics. The question is *whether* and *how the* judge actually believes his/her power is restrained by the Constitution.

Instructions/Question Prompt :

(1) Examine the legacy of “Mr. Civil Rights,” Justice Thurgood Marshall. He famously described his judicial approach by simply saying “You do what you think is right and let the law catch up.” You will examine whether the acclaimed “activist” judges like Justice Thurgood Marshall actually acted on a belief of government “conservatism.” Form your opinion by

(1a) **Required** read this supplemental discussion here

(1b) watch this documentary on Thurgood Marshall’s legacy.

<https://youtu.be/fFsRVZpfjql>

(1c) skim Justice Marshall's explanation on his belief in the Constitution (attached in the email)

(1d) explore further this Thurgood Marshall’s legacy by conducting brief research (internet, blogs, news articles, law review journals, etc.). This question is intentionally broad and vague; you will research a topic of interest to you that specifically forms your opinion on whether based on the example you found you believe he was a “liberal” or “conservative” judge.

(2) Compare this debate about Justice Marshall with a similar debate of another Judge. This question is intentionally broad and vague. Based on your interest, it allows you to explore further either a judge or a social cause (like civil rights or the women’s rights movement) that evidences judicial “activism” or “restraint.”

(2a) skim our Learning Modules that outlined the Justice’s votes (both to accept review of a case and the decision) to form an opinion on the Justices’ patterns and trends.

(2b) Conduct brief research (internet, blogs, news articles, law review journals, documentaries, etc.) to identify a judge or cause that best illustrates this idea that what commonly is thought of as “conservatively” or “liberal” but is not. In other words, find for example another judge that is accused of being “conservative” or “liberal” but whose decisions or arguments reflect a contrary approach.

To illustrate: recall, we discussed at length, Chief Justice Robert’s so-called “brand of conservatism.” Or the arguments made in the Travel Ban or Census Question cases that masked the “real” issue was constitutional authority under separation of powers.

(3) By answering each question below, in about **3-5 pages (approx. 1,500-2,500)** you will, collectively, analyze what it means to be a “liberal” vs. “conservative” judge. Your answer must state your opinion as explained and supported by specifically cited references to the course materials, assignment supplemental materials, and your research.

(3a) Show your understanding of the course lessons/materials by explaining in your own words, what is traditionally meant by calling a judge an “liberal” or “conservative.” Your explanation must include citations to specific cases or arguments made that you believe best illustrates what is meant by calling a judge an “liberal” or “conservative.” Your answer must address whether these terms are the same or different than “activist” and “restrained.”

(3b) Explain in your own words, whether you believe Thurgood Marshall had a “liberal” or a “conservative” judge. You must use examples from the documentary or assignment information to describe your position; avoid generalities (e.g., “he advocated for civil rights”). Rather, you must specifically describe how that example illustrates what it means to be “liberal” or “conservative.”

(3c) Explain what you learned of in your research of another example of a judge or cause that is commonly is thought of as “conservatively” or “liberal” but is not. (include a hyperlink or copy to the source(s)) Summarize in your own words why the judge or cause is labelled a “conservative” or “liberal” issue. Then, describe in your own words what you found and whether you agree with the label “conservative” or “liberal” on it. In other words, explain whether and why you agree or disagree with the arguments you researched by applying our course materials to it.

To illustrate: “In X article, the argument is made that the challenges to the Voter’s Rights Act is not actually about politics. Instead, as Y article explained, the “real” issue underlying the cases is over state rights. But I disagree because according to our lessons and my research on X, I found there were challenges brought by Z party that the Supreme Court did not accept review on.”

(3d) Based on specifically cited references to each: the course materials/lessons, Thurgood Marshall, and your research, explain what do you believe it means for a judge to be “liberal” or “conservative.” This is your analysis instead of the “traditional” definition in (3a).

To illustrate: recall our lessons on political question, Selecting Cases, interpretative approaches staying within the Four Corners of the law, etc.

(3e) Explain whether you agree or disagree with Justice Marshall's judicial approach that "You do what you think is right and let the law catch up." Your answer must address whether you believe justice can blind (based on constitutional authority) and, if so, if it should be blind (based on social expectations of the role of court).