

**Module 5: The Judiciary**  
**Topic 1 Content: Judicial Activism and Judicial Restraint**

**Introduction**



**Glover Mint:** Welcome to the show. I'm Glover Mint, here with Demi Tracy. Also joining us today with her segment, *The Judgment Zone*, is Jeanne Marcel.

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**The Judgment Zone**



**Jeanne Marcel:** Since the Supreme Court is independent from the typical political pressure we see with Congress and the President, it may be difficult to see how a Justice may share beliefs with a particular political party. I wanted to help the audience understand how a Supreme Court Justice's judicial philosophy can steer the course of the nation's public policy for many years.

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**Judicial Philosophy**



**Jeanne Marcel:** Judicial philosophy can be described as a spectrum of constitutional interpretation. At one end of this spectrum is the concept of judicial activism. At the other end of the spectrum is judicial restraint.

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**Judicial Activism**

The graphic features a dark grey background with a horizontal bar in the center. The bar has a blue-to-red gradient. A white gavel icon is positioned on the left side of the bar. Below the bar, the word 'Activism' is written in yellow on the left, and 'Restraint' is written in yellow on the right. In the center, below the bar, the text 'Drag the Gavel Left or Right' is displayed. Below this entire section is a dark grey box with a light blue border containing the text 'Judicial Activism' in yellow, followed by a bulleted list of five points.

## Judicial Philosophy

Drag the Gavel Left or Right

**Activism** **Restraint**

### Judicial Activism

- The Constitution should have a looser interpretation.
- It is an evolving document and should be adapted periodically.
- It is impossible to know the full intentions of the Founding Fathers.
- The Constitution reflects necessary compromises.
- Federal courts should use the power of judicial review to fix important societal issues.

**Jeanne Marcel:** Judicial activism refers to the idea that the Constitution should have a looser interpretation by federal courts. Judicial activists believe that the Constitution is an evolving document that should be adapted periodically to better suit contemporary times. Supporters of this philosophy argue that it is impossible to know what the intentions of the Founding Fathers were; for example, the drafters could not predict the invention of the Internet or nuclear weapons. Instead, judicial activists believe the Constitution reflects the necessary compromises reached among many people with many ideas. They also subscribe to the belief that federal courts should use the power of judicial review to fix important societal issues. Supreme Court Justices are not elected and they serve for life, which allows them to make controversial decisions without the fear of losing office.

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**Judicial Restraint**

**Judicial Philosophy**

Drag the Gavel Left or Right

**Activism** **Restraint**

**Judicial Restraint**

- The Constitution should have a narrow interpretation.
- Judges should interpret the Constitution based on the Founding Fathers' original intentions.
- The Supreme Court should avoid ruling on constitutional issues.
- Laws should only be overturned if they are clearly unconstitutional.
- Public policy changes should come from the legislative branch.

**Jeanne Marcel:** Judicial restraint refers to the idea that federal courts should interpret the Constitution in a narrow manner. Those who are in favor of judicial restraint believe that a judge should interpret the Constitution based on the Founding Fathers' original intentions. Supporters of judicial restraint argue that the Supreme Court should avoid ruling on constitutional issues whenever possible; instead, they believe laws should only be overturned when they are clearly unconstitutional. Those who support the idea of judicial restraint are not completely opposed to adapting to changing times, but they would prefer that those changes come from the legislative branch. They argue that a loose interpretation of the Constitution allows judges to place their personal beliefs before legal reasoning.

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**Judicial Philosophy Conclusion**

**Judicial Philosophy**

**Activism** **Restraint**

- There is a lot of gray area between judicial activism and judicial restraint.
- There is continual tension between the two beliefs.
- The actions of individual judges shift between activism and restraint.
- **Precedent** refers to a previous court ruling on a specific legal question.
- Most judges respect precedent, by allowing a previous decision to stand in subsequent cases dealing with the same issue.

**Jeanne Marcel:** It is important to remember that the philosophies of judicial activism and judicial restraint are on a spectrum, which leads to a lot of gray area. There is continual tension between the two beliefs, even within one individual. For example, a Supreme Court Justice may consider himself a supporter of judicial restraint. The power of judicial review requires him to overturn legislation that is unconstitutional, which would be considered an act of judicial activism.

There is also the issue of precedent, which refers to a previous court ruling on a specific legal question. Most judges agree to respect precedent to a degree, by allowing a previous decision to stand in subsequent cases dealing with the same issue. This may interfere with a judicial activist's ability to interpret the laws in a looser manner.

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#### Ending of Episode



**Glover Mint:** There certainly is a lot of gray area in this debate. On one hand, judges should practice judicial restraint to avoid placing their personal views before the actions of the legislative branch, as this could be considered a violation of the separation of powers. On the other hand, there have been important times in the past when judges have intervened on behalf of Americans, such as overturning segregation.