

Prelims *Political Practice* · Hilary Term 4

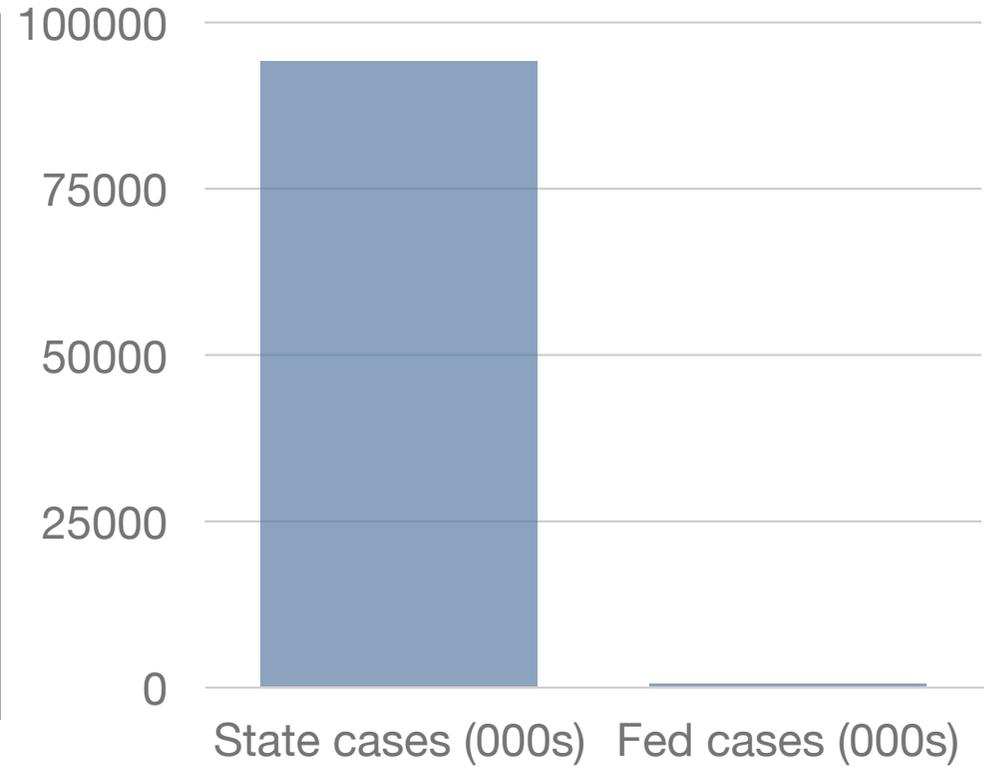
The US Supreme Court

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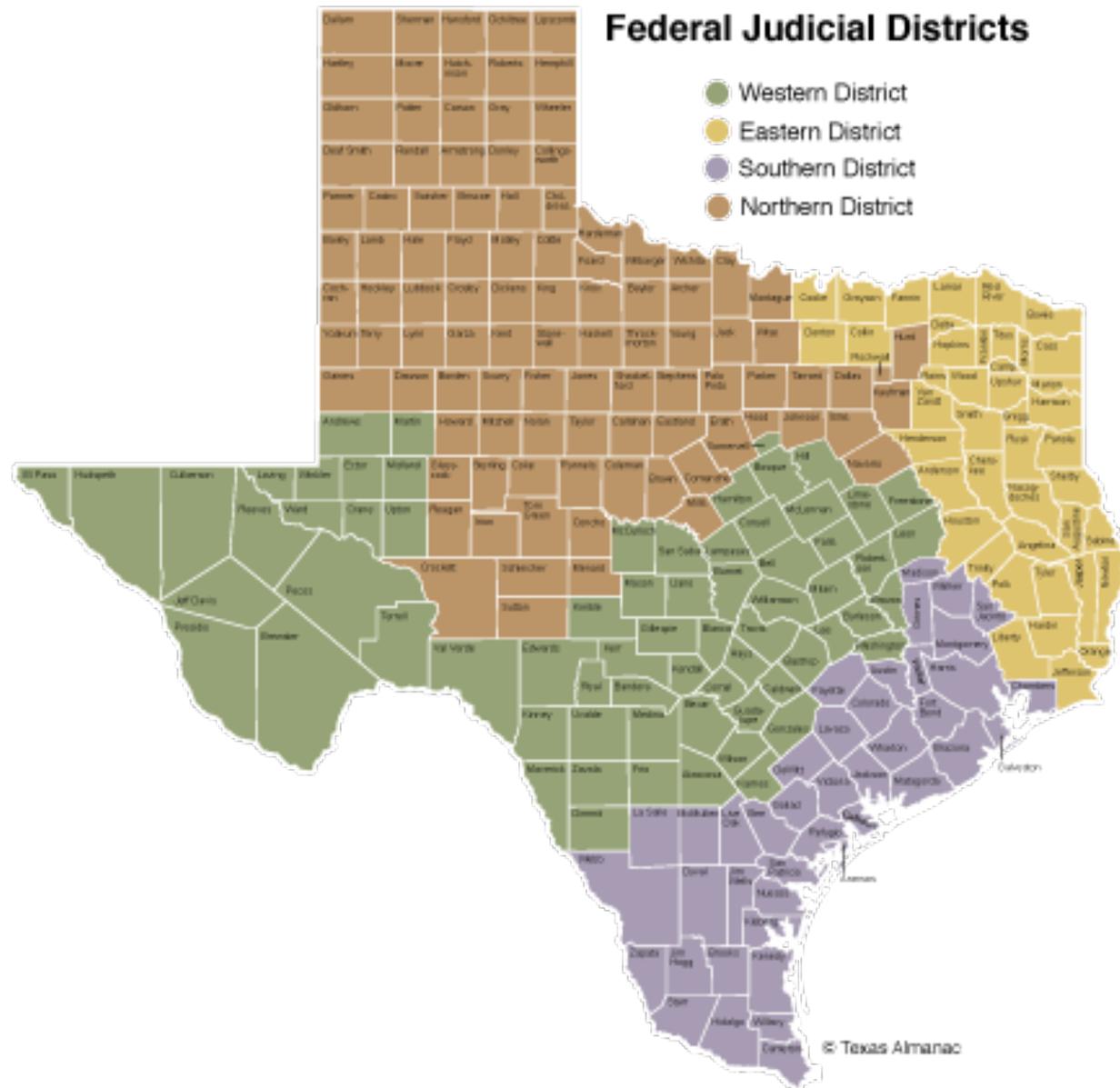
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US Supreme Court

- A powerful institution, potential “counter power”
 - where does it fit into the wider political system?
 - what kind of powers?
 - what constraints?
- underlying dilemma: how to shape a protector against tyranny which isn't capable of becoming a tyrant itself

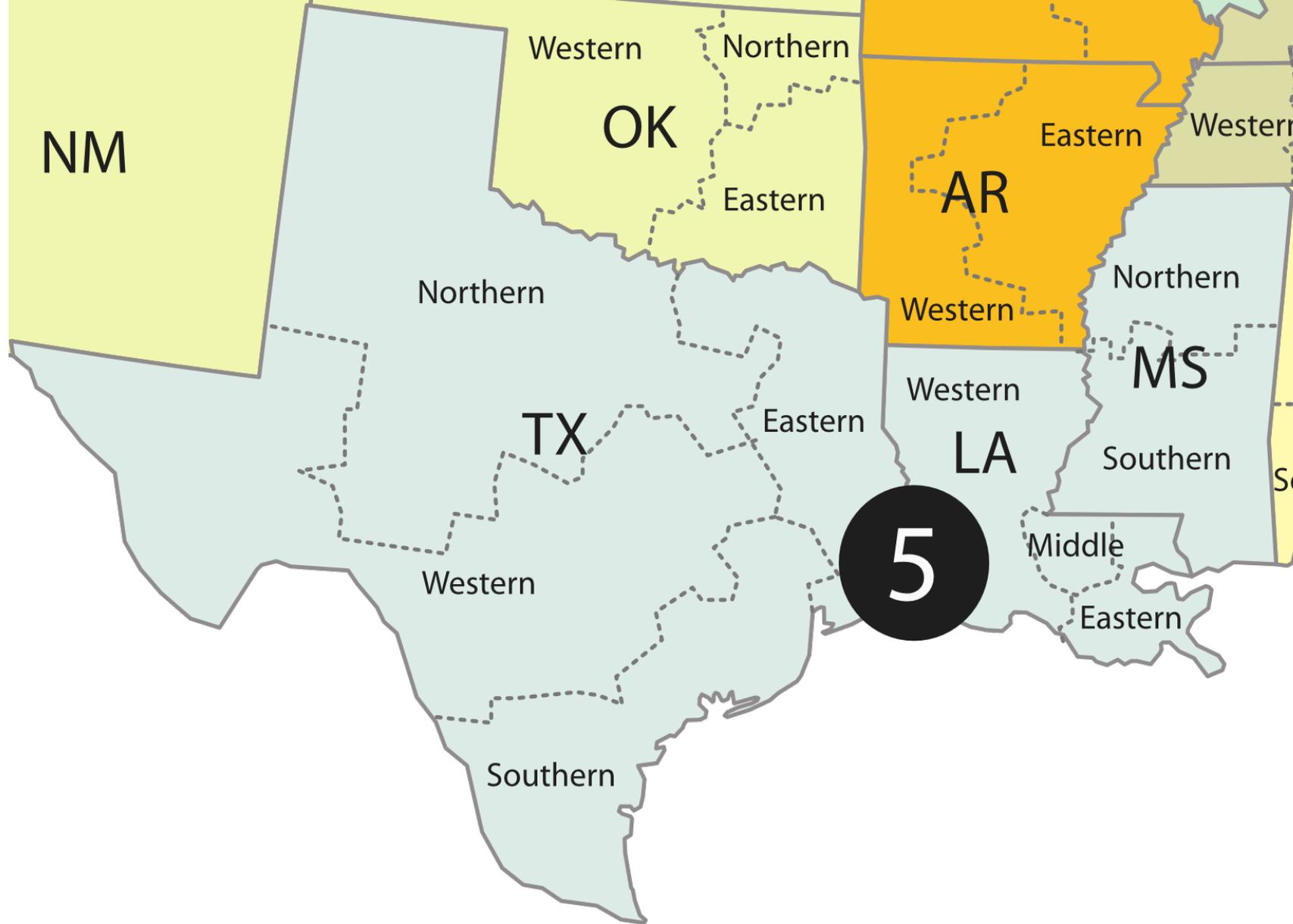


Don't forget state courts!



Federal District Courts
(94 districts)

the example of Texas

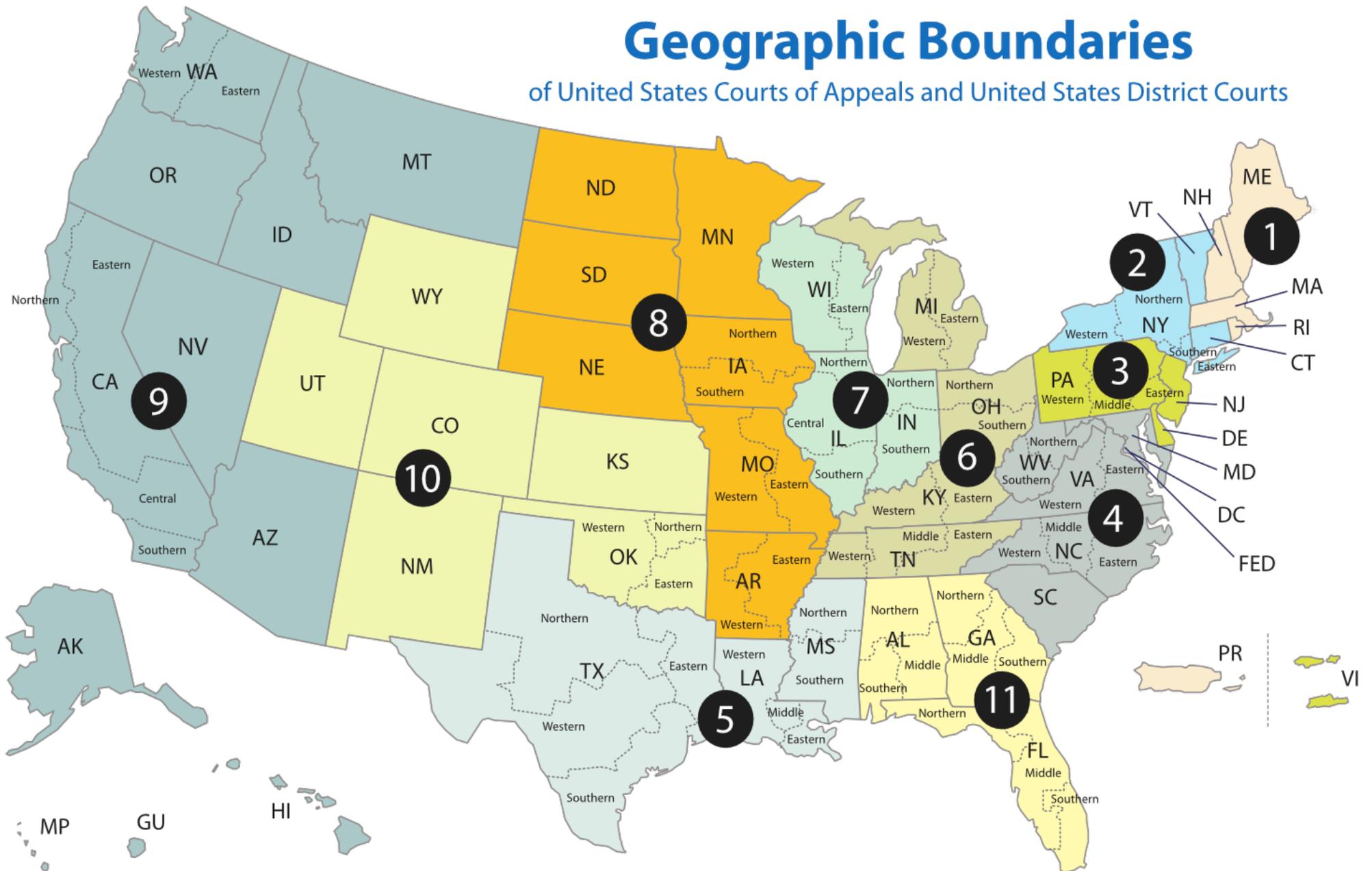


Appeals Court: 13
“circuits”

Texas in the 5th Circuit

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



Appeals Court “circuits”

(all thirteen)

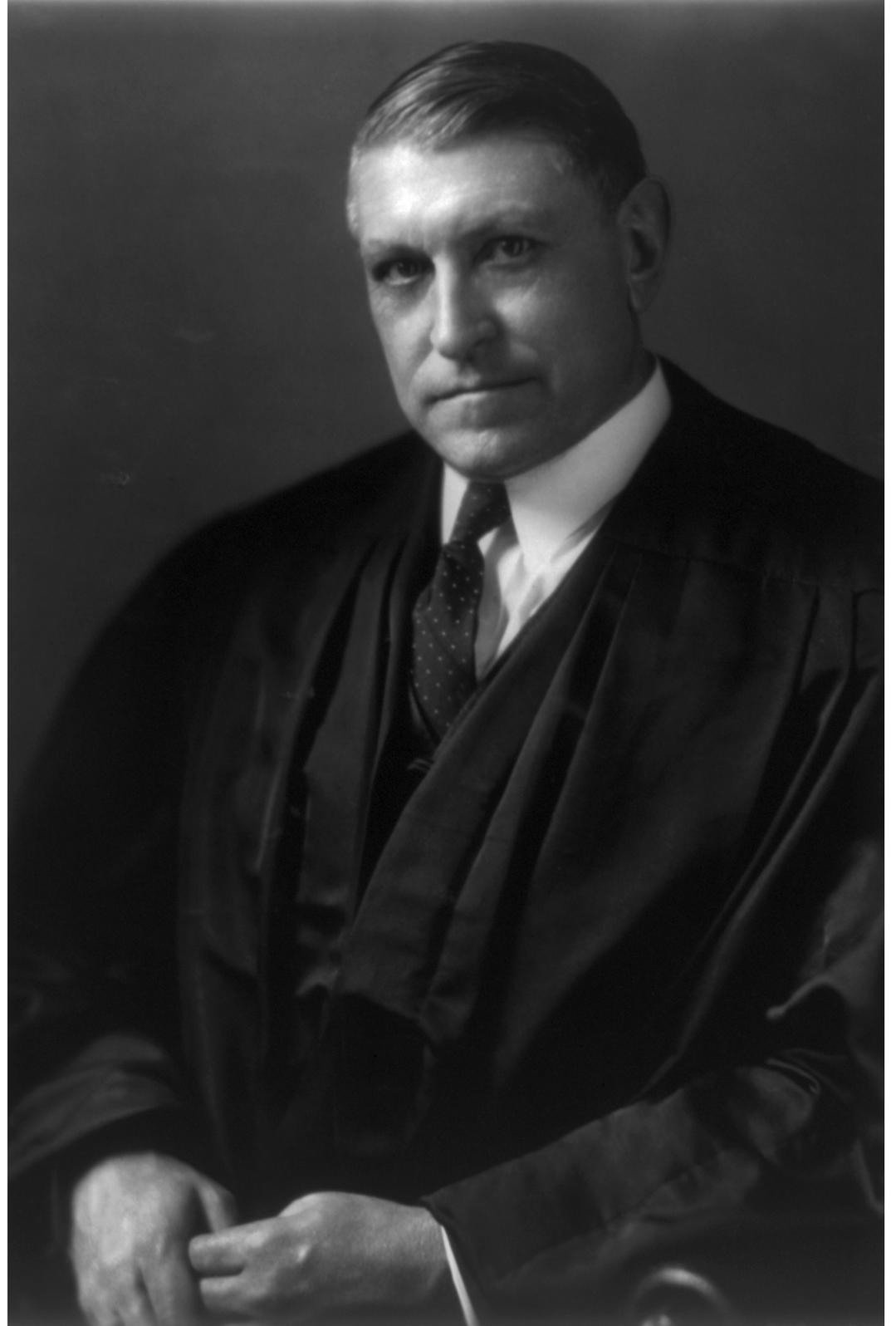
US Supreme Court

- one court hearing cases together
- 9 Justices
- choose approx 75 cases a year to decide from approx 7000 cases appealed
- support of four justices is enough to hear a case
- highest court but not a specialist constitutional court
- appointment by President, confirmation by Senate

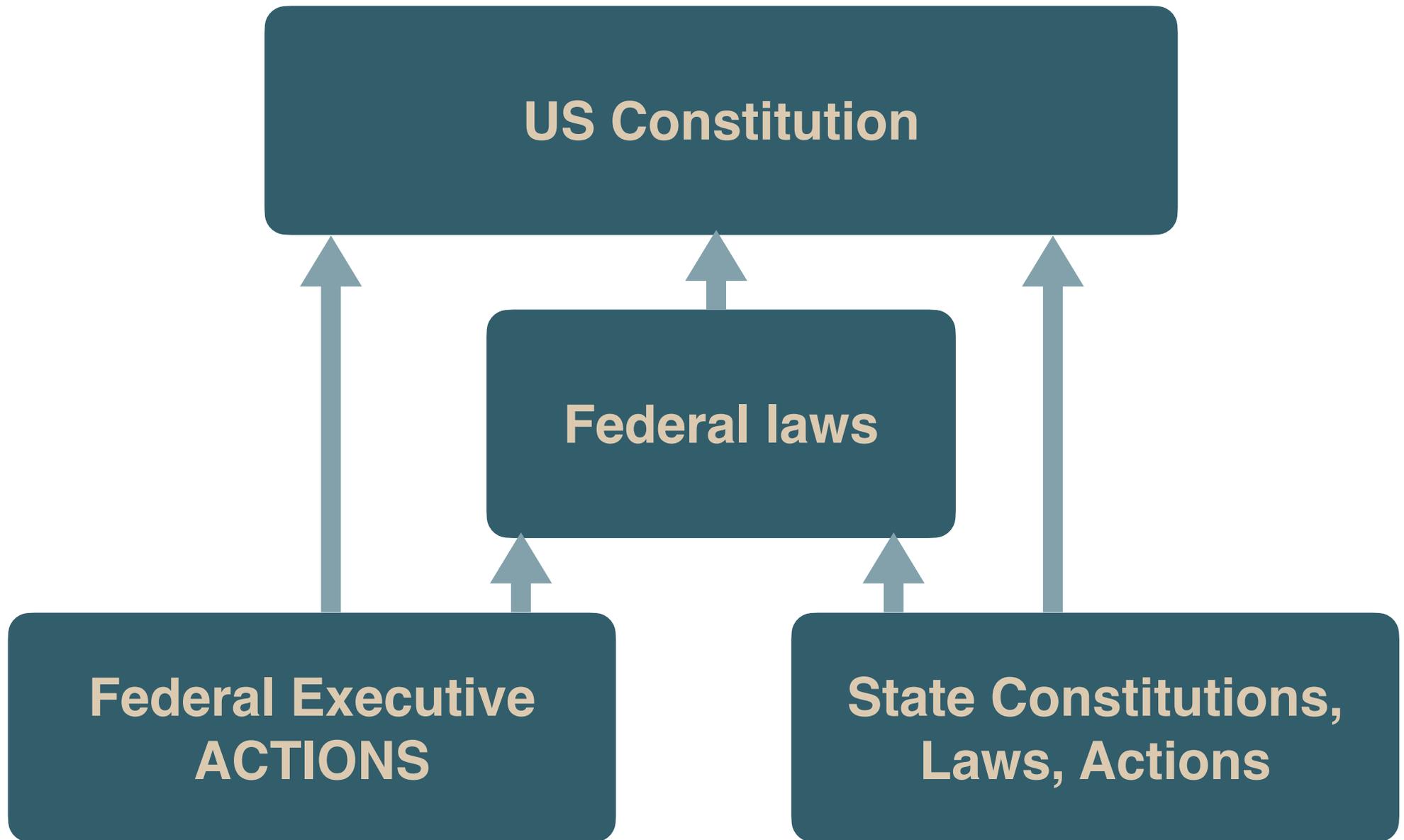
Judicial review

*to lay the article of the
Constitution which is invoked
beside the statute
which is challenged and to
decide whether the latter squares
with the former*

Justice Owen Roberts



Judicial review: a thoroughly confusing diagram



Major Supreme Court decisions: race

- *Scott v. Sandford* (1857) - “Dred Scott”: slavery/Missouri Compromise
- *Plessy v. Ferguson* (1896) - “separate but equal”, segregation
- *Brown v. Bd of Education* (1954/5) - desegregation “with all deliberate speed”
- *Bakke v. University of California* (1978) - discrimination & quotas
- *Grutter/Gratz v. Bollinger* (2003) - holistic “affirmative action”
- *Students for Fair Admissions v Harvard* (2023) - affirmative action in college admissions is unconstitutional

Major Supreme Court decisions: privacy/equality

- *Griswold v. Connecticut* (1965) - marital privacy
- *Roe v. Wade* (1973) - reproductive privacy
- *Bowers v. Hardwick* (1986) - no right to sexual privacy
- *Lawrence v. Texas* (2003) - oh yes there is
- *Obergefell v. Hodges* (2015) - right to equal marriage
- *Dobbs v Jackson Women's Health Organization* (2022) - overturns *Roe*

Major Supreme Court decisions: executive power

- *US v. Nixon* (1974): limits on 'executive privilege'
- *Clinton v. Jones* (1997): Presidents cannot postpone lawsuits
- *Hamdi v. Rumsfeld* (2004): (alongside many other detainee cases) limits on unrestrained executive power over detainees
- *Trump v. US* (2024): Presidential immunity

Constraining the Court I

- Judicial review: extensive power, how is it limited?
- interpreting the meaning of law isn't simple
- qv 9th & 10th Amendments:

9. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Constraining the Court II

- Segal and Spaeth *The Supreme Court and the Attitudinal Model* (but qv Bailey and Maltzman *The Constrained Court*)
- what if Justices just use legal argument to impose their preferences - as S&S say

simply put, Rehnquist votes the way he does because he is extremely conservative; Marshall voted the way he did because he is extremely liberal

Is there anything to limit (a narrow majority of) the Court's power to impose its own preferences on society?

Constraining the Court III: separation of powers

- Article III vagueness
 - court packing/Article III - FDR in 1937
 - jurisdiction/Article III - Jenner-Butler Bill
- impeachment
- Constitutional Amendment/Congressional rewriting of disputed statute

Constraining the Court IV: judicial limits

- “case or controversy”: *Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question* - de Tocqueville
- judicial restraint (maybe - especially for some Justices - but who enforces?)
- enforcement problems - Federalist 78 (Hamilton): *The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.*



“John Marshall has made his decision; now let him enforce it”

Andrew Jackson

Constraining the Court V: disobedience

- Jackson (apocryphal) re *Worcester v. Georgia* (1832)
- but qv Presidential obedience enforcement
 - *US v Nixon* (1974) - although N's resignation then inevitable
 - *Cooper v Aaron* (1957) - Eisenhower uses federal troops to desegregate, despite his personal lack of enthusiasm for the decision
- and qv limited effects of *Bush v. Gore* (2000) on court's public legitimacy
- (maybe more impact from *Dobbs*?)

Constraining the Court VI: structural constraints

- law is *slow*
 - focus on hearings, process, preparation = ill suited to change things that require detailed action in many cases (desegregation; immigration?)
- justices are part of/selected by governing elite
 - see eg shift from pro- to anti-segregation views roughly in line with contemporary elites (Klarman, *From Jim Crow to Civil Rights*)