

When Should the Courts Act?

Judicial Activism vs. Judicial Restraint

Kristen Sublett, Susan McHale, Milton Bowens, Ann Kennedy, Alan Page, Jessie Potters
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Grade Level	9th – 12th Grade	**Time Frame**	2-3 class period(s)
Subject	Social Studies	**Duration**	150 minutes
Course	U.S. Government		

Essential Question

What should be the criteria for determining judicial activism?

Summary

Students will evaluate two key Supreme Court cases to create a definition of judicial activism and judicial restraint. Students will then use their definitions to analyze other Supreme Court cases to determine if they are judicial activism or judicial restraint.

Snapshot

Engage

Students will examine a political cartoon and answer questions in a class discussion.

Explore

Students will evaluate two Supreme Court cases to create definitions of judicial activism and judicial restraint.

Explain

Students will use their definitions to determine if other Supreme Court cases are examples of judicial activism or judicial restraint.

Extend

Students will select a case example that best exemplifies judicial activism and a case that best exemplifies judicial restraint and defend their answers.

Evaluate

The handouts from the explain section and the posters from the extend section can serve as evaluations. There are 2 additional options listed in in the detailed portion of this section.

Standards

Oklahoma Academic Standards (Social Studies: United States Government (9th through 12th grade))

USG.3.10: Analyze historic and contemporary examples of landmark Supreme Court decisions which have addressed and clarified individual rights under the First Amendment, including
USG.3.10C: Engel v. Vitale (1962)
USG.3.10D: Tinker v. Des Moines (1969)
USG.3.11: Analyze historic and contemporary examples of landmark Supreme Court cases which have specified individual rights of due process under the Constitution, including:
USG.3.11A: Mapp v. Ohio (1961)
USG.3.11C: Miranda v. Arizona (1966)
USG.3.11D: Roe v. Wade (1973)

Attachments

- Handout 1 - Spanish.docx
- Handout 1 - Spanish.pdf
- Handout 1 .docx
- Handout 1 .pdf
- Handout 2 - Spanish.docx
- Handout 2 - Spanish.pdf
- Handout 2.docx
- Handout 2.pdf
- Judicial Activism or Judicial Restraint teacher slides.pptx
- judicial activism political cartoon.pdf

Materials

- Teacher PowerPoint Slides
- Frayer Model Handout
- Judiciary Branch Political Cartoon
- Judicial Activism/Restraint Supreme Court Case Examples Handout

Engage

Think Pair Share Strategy-- Students view a political cartoon about the Judiciary (included in attachments and on PowerPoint Slide 2). The class will view a political cartoon and participate in a think, pair, share activity.. First, individually have students write down on notebook paper, what the answer to the questions below are (Think). Show power **slide 2**.

Questions for the political cartoon:

1. Who or what do each of the buildings in the cartoon represent?
2. How do these groups interact with each other?
3. What does it mean when the third building says, "We can fix that!" Is that their role?

Second, have students pair with an assigned partner and discuss their answers. Once pairs have discussed the cartoon, have pairs share their answers as a general class discussion.

Transition students to the Explore activity by explaining that the students are going to look at the range of powers the courts really do have.

Explore

Place the two key terms --judicial activism and judicial restraint--on the board and explain that these terms represent the span or range of powers of the Supreme Court.

Pose the essential question: What is the difference between judicial activism or judicial restraint? (PowerPoint **slide 3**)

Ask students what the word "activism" or "activist" means. The ask students what the word "restraint" or "to restrain" means. Tell students that the word judicial refers to the court system. Pass out Handout 1 (included in attachments) over the two court cases to the student pairs. Ask pairs to determine which court case is judicial activism and which case is judicial restraint.

Teacher's Note

The students may not know what these terms mean, but they should use the cases to help them further create their own definition of judicial restraint and judicial activism based on the differences they see between the two cases. We want the students to use deductive reasoning.

Have pairs discuss the cases and determine which is judicial restraint and which is judicial activism. They should express their reasoning for their choices. Call on as many pairs as possible.

Teacher's Note

Teacher answers to Supreme Court Cases-- Brown v. Board of Education (judicial activism) and Korematsu v. United States (judicial restraint) The decision in Korematsu held that in times of war, American citizens must make sacrifices and adjust to wartime security measures.

On the board, ask students now to define what judicial activism and judicial restraint mean. Share their answers on the board until a working definition of each are completed.

Optional--Return to and show the original political cartoon again (Powerpoint **slide 4**) where the Supreme Court says, "We can fix that". Ask students if that statement would be leaning more toward Judicial Activism or Judicial Restraint. (There is no right or wrong answer here--only opinion.) Have students explain their reasoning.

Explain

Frayer Model Strategy-- Pass out the Frayer Model handout (Handout 2, printed front and back on one sheet) to all students. Show powerpoint **slide 5**. On one side, it says Judicial Restraint and the other Judicial Activism. Leave the definitions of Judicial Restraint and Judicial Activism on the board.

Using their American government textbooks, student pairs are to look at Supreme Court cases and add them to their Frayer Model. They may wish to add a phrase or two of what each is about so they can discuss them later for the Extend activity. They should find at least 3 Supreme Court case examples for each Frayer Model. Student pairs should also discuss and write down pros and cons of Judicial Restraint and Judicial Activism on their Frayer Models.

Teacher's Note

It is hoped that each student pair will find different Supreme Court cases for their examples. The teacher should circulate as the students discuss which cases to use as examples and help pairs as needed.

If students do not have access to a textbook for this activity, or find it hard to use their textbooks, students can use the following websites to help them:

1. https://ballotpedia.org/Judicial_restraint
2. http://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks

Extend

Place several pieces of chart paper on the walls. Label two pieces Judicial Activism and two pieces Judicial Restraint. Have student pairs combine with another pair. The group of four are to choose one Supreme Court case from their Frayer Model examples that best demonstrates both Judicial Activism and Judicial Restraint each.

Allow 10 minutes for discussion. Calling on 1 group at a time, ask them to write down their example for restraint and activism on the corresponding posters and explain to their classmates why they chose the cases they did.

Evaluate

Both Handout 1 and the Frayer Model handout can serve as assessments for this lesson. The following are also optional activities to add as evaluations of what students have learned.

Option 1: 3-2-1 Strategy demonstrates their understanding of this lesson. Pose the question: When should the courts use judicial activism or judicial restraint? (Powerpoint slide 6)Have students individually write down the following on a sheet of notebook paper. They may need to refer back to their Frayer Model to help compose their answers.

1. 3 reasons or circumstances for the courts to practice Judicial Activism
2. 2 circumstances or reasons for the courts to practice judicial restraint
3. 1 court case in which you agreed with the decision of the Supreme Court

Option 2: Show the picture of the Lady with the scales of justice (powerpoint slide 7) . Explain that the lady represents the law. That the law should be blind to influence of special interests and the the scales represent justice for all. Point out that the scales are balanced so that fairness is emphasized. Ask students to create their own symbol/image for either Judicial Restraint or Judicial Activism.

Resources

- Toles, Tom. (2014). Judicial branch political cartoon. Washington Post. Retrieved from: https://www.washingtonpost.com/people/tom-toles/?clsrd&utm_term=.bf12f20b1072
- Think- Pair- Share Instructional Strategy: K20 Center. Copyright 2015, Board of Regents of the University of Oklahoma. Retrieved from: https://learn.k20center.ou.edu/strategy/d9908066f654727934df7bf4f5064b49
- Judicial activism definition (2017). Found in Wikipedia. Retrieved from: https://en.wikipedia.org/wiki/Judicial_activism#Definitions
- Judicial restraint definition (2017). Found in Wikipedia. Retrieved from: https://en.wikipedia.org/wiki/Judicial_restraint
- Supreme Court Landmarks (2017). United States courts website. Retrieved from: http://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks