



Judicial activism and restraint

Judicial activism emphasises the position of the federal courts as a co-equal branch of government. Certain minority groups may be neglected or subjected to oppression by legislatures which are, of necessity, influenced by the views of the majority (who voted for them). The Supreme Court, it is said, therefore has a particular responsibility to minorities. This form of thinking is particularly associated with liberalism and the Warren and Burger courts.

In contrast, the concept of judicial restraint emphasises the limits that the courts should place upon their own role. They should, in most circumstances, defer to the elected branches of government. According to rules laid down by Justice Louis D. Brandeis in 1936, the Supreme Court would interpret a statute so as to avoid ruling it unconstitutional 'even if a serious doubt of constitutionality is raised'. Brandeis's approach was echoed in 2000 by Anthony Kennedy, a member of the Rehnquist Court:

Do I make policy? Was I appointed for life to go around answering these great questions and suggesting answers to the Congress? That's not our function...it's very dangerous for people who are not elected, who have lifetime positions to begin taking public stances on issues that political branches of government must wrestle with.

Judicial restraint is often associated with conservatism. Those on the right reacted against the activism of the Warren and Burger courts, arguing that the powers and prerogatives of the elected branches of government were being usurped by appointed judges. However, in the 1930s, when the Supreme Court overturned parts of President Roosevelt's New Deal, it was Roosevelt's backers who questioned the legitimacy of the court's actions and called upon it to play a less assertive role.

Furthermore, in recent years the Court's ruling in *Bush v. Gore* (2000), and in cases such as *US v. Lopez* (1995) that widened the jurisdiction of the individual states, have been described as 'conservative activism'.