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| **Are the Supreme Court an imperial judiciary?** | **Are the Supreme Court ‘politicians in robes’?** |
| POWER – what power do they have? What checks are there on the power? Are they effective? | IDEOLOGY – do the court effectively make law? Do they use their ideology in their rulings? ***POLITICAL v JUDICIAL*** |
| **Intro**D – imperial. Lack of EFFECTIVE checksD – Power that they have – JR; Constitution is checkD – Not necessarily but could be | **Intro**D – politicians pursue agendas/ideologyD – SC limited by Consti in terms of ideology but rulings are hard to change political ramifications of those decisionsD – Not politicians in robes due to Consti |
| No enforcement/no initiation – Elected branch enforces rulings (e.g. Guantanamo Bay - ignored/Citizens United – Obama didn’t like)Court effectively can make law/rights – Obergefell (Same Sex Marriage, Abortion, Miranda Rights) – AO2 – they force states/federal govt to follow their ruling…they are unelected, Congress is legislative branchIgnore public opinion – guns therefore powerful. Democratic?Stare Decisis – They can choose whether to follow it or not. It’s an SC principle. However mostly do follow it. | Constitution – restricts themAO1 – NFIB v Sebelius – Roberts sided with liberalsAO2 – had to follow Consti despite ideologyAO3 – Consti is vague. So can be interpreted. It’s quite rare…Majority of rulings uncontroversial – 60-80% cases are not 5-4 so not ideological. Judicial interpretation. E.g Snyder v Phelps (8-1). Most significant cases (in media) are 5-4, but majority of cases not.Hard to change their rulings – Must link POLICY. Judicial Activism (inherently political). Creation of new rights/laws must be based on current climate. Vs. Stare decisis – inherently judicial, accepting that the previous Court made their ruling on Constitution etc.Responsible for great political cases (about individuals) – e.g. Bush v Gore, Trump v Hawaii, Nixon v US. But uncommon |
| ConcNot necessarily but could be. Law making power, but minimal amount of them 60-80. | ConcJudicial because everything with reference to the Constitution, but in some cases cannot help but be political |