Outline Topic IX

The Courts

I. The Federal Courts are not Traditionally Considered to be Law/Policy-Making Institutions

Yet, rightly or wrongly, they are, in fact, Co-equal Partners in the Law-Making Process

II. Organization of the Federal Courts
A. District Courts
   1. Lowest Level of Federal System
   2. 94 Federal Districts – at least one in each state
   3. Judges appointed by President, with the “advice and Consent of Senate, and serve for life (i.e., ‘good behavior’)
   4. Courts created by act of Congress

B. Courts of Appeals
   1. Middle Level of Federal System
   2. 11 circuits plus District of Columbia
   3. 3-30 judges appointed for life
   4. Created by act of Congress
C. Supreme Court
   1. Highest Court
   2. 9 Justices (by tradition) appointed for life

D. Various other specialized Courts -- Court of Claims, Court of Customs and Patent Appeals, Court of Military Appeals, etc.
III. Jurisdiction  
A. District Courts have Original Jurisdiction (no appellate jurisdiction) in any case involving  
1. The United States Federal Criminal or Civil Code  
2. Disputes between 2 or more states  
3. A state and citizens of another state  
4. Citizens of different states in large $ disputes  
5. States or Us Citizens vs Foreign nations or citizens  
6. Diplomatic representatives of other nations  
7. All cases involving the U.S. Constitutions, laws passed by Congress, Treaties to which the US is a party, admiralty and maritime matters  
8. NO MOOT OR HYPOTHETICAL CASES must be real CASES IN CONTROVERSY  
9. Decides both the LAW and the FACTS of a case
B. Courts of Appeals
   1. Have only appellate jurisdiction
   2. No Original Jurisdiction
   3. Decides Issues of Law NOT of Facts – hears no evidence, calls no witnesses. Decides cases based on briefs submitted by the two sides and oral arguments from the lawyers.
   4. If it decides a case was wrongly decided, it remands the case to lower courts to decide again.

C. Supreme Court Jurisdiction
   1. Limited Original Jurisdiction (in cases involving states or diplomats)
   2. Mostly Appellate Jurisdiction (decides law not facts)
   3. Supreme Court Must Review a very small number of cases.
   4. Most cases the Court can decide whether to review the case, or Not. More than 80% of appeals are turned down
   5. If Court decides to hear a case it issues a Writ of Certiorari
IV. Court was not intended as a Law (or Policy) Making Body. The Power of the Courts to make Law has derived from various sources

A. Formal Powers of the Court
1. Judicial Review – Power to hold laws or other acts of government unconstitutional
   a. Not Specified in Constitution
   b. Asserted by Court in Marbury v. Madison
2. Laws can be rewritten or the Constitution Amended to override the Court, but this is difficult to do
3. Judicial Independence makes it hard for other branches to ‘discipline’ the Courts
   a. Can’t remove justices except for cause (impeachment).
   b. Can’t reduce pay of Justices during their tenure on Court
   c. Can’t alter jurisdiction of Supreme Court except by constitutional amendment

B. Informal Powers of Court -- Power to interpret meaning of laws.
C. Limits on Courts Powers by President and Senate
   1. Impeachment
   2. Appointment/Ratification of new Justices
   3. Change Law or Amend Constitution

D. Outside Influence on Courts
   1. Interest Groups – Amicus Curiae Briefs
   2. Public Opinion – The Supreme Court follows the election returns

IV. How Should Courts Interpret the Law?
   A. Strict Construction
      1. Plain Meaning – but plain to whom? when?
      2. Original Intent – whose intent and how do we know?
   B. Precedent
   C. Balancing
   D. Guiding Principles
   E. Activist Policy Making

V. The Supreme Court – The Most or Least Majoritarian Branch?