

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?

