

The Judiciary

Department of Political Science and Government
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1 Presidency (cont.)

2 The Judiciary

3 Preview of Next Time

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Cheney's Law

- Frontline episode about Bush administration efforts to increase executive power in the immediate post-September 11th era
- <http://video.pbs.org/video/1082073775/>
- We'll just watch the first 15 minutes or so

Think–Pair–Share

- Take 45 seconds to think about the following:
 - What keeps the President from asserting complete unilateral authority?
- Discuss for 90 seconds with the person sitting next to you
- Share with the class

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Common Law

- U.S. legal system is based in English Common Law
- Most states and the federal courts enforce pre-1776 British laws and precedent
- *Stare decisis*: precedent whereby judicial decisions have the force of law
- Modifications noted in Constitution and Bill of Rights, e.g.,
 - No Bills of Attainder
 - 1st Amendments prohibits libel cases
 - No *ex post facto* laws
 - Trial by jury

The Judiciary

- Constitution was an extremely minimal framework
- Recall the *Articles* gave Congress judicial authority
- Court gets to regulate itself
- Congress can create lower courts

The Supreme Court (SCOTUS)



The Supreme Court (SCOTUS)

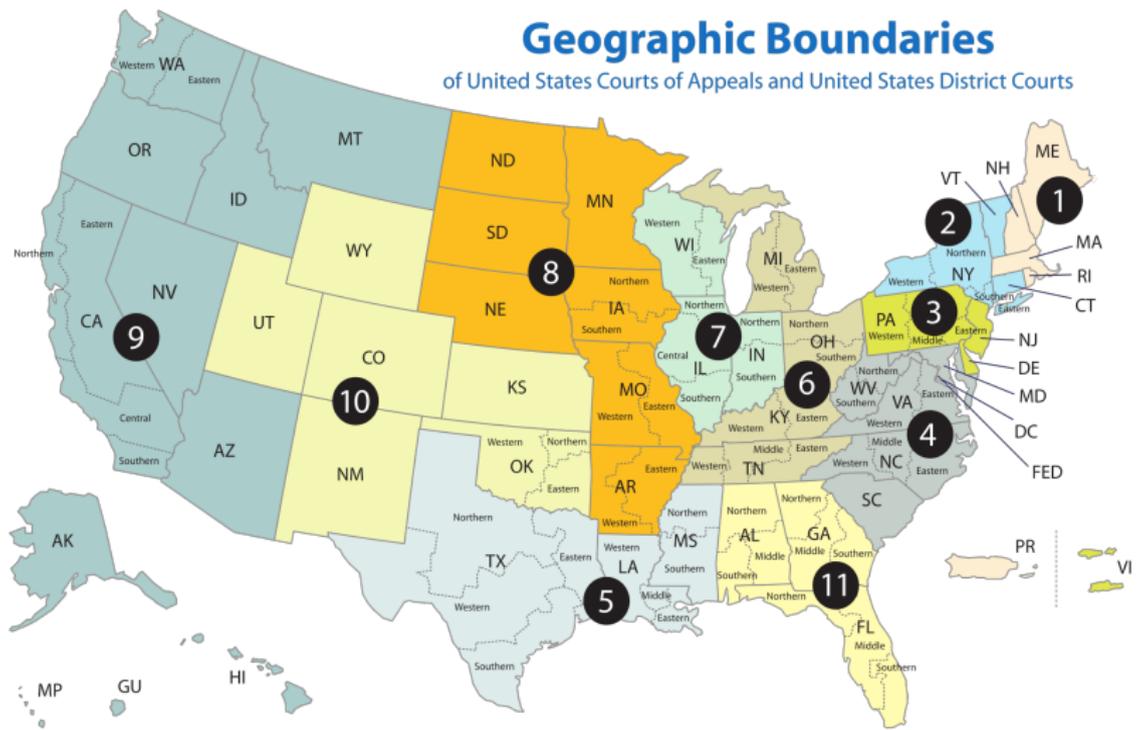
- Nine justices (by convention)
- Meet annually
- Appointed by President, approved by Senate
- Members serve lifetime terms
- Court of last resort
- Jurisdiction
 - Original (defined by Constitution)
 - Appellate (defined by Congress)

Lower Federal Courts

- 94 U.S. District Courts
- 12 U.S. Court of Appeals circuits
- Other “Courts of Special Jurisdiction”
 - E.g., Court of Federal Claims
- Military Courts

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



State Courts

- Regulated by individual states
- 48 states have Supreme Court
 - OK and TX have separate criminal and civil superior courts
 - Justices typically serve fixed, renewable terms
 - Four states have life terms
- State district courts
- County/local courts
- Judges obtain office through either election or appointment

Federalism

- State courts are not subordinate to federal courts
- Federal laws overrule state laws when in conflict
- Federal appeals courts cannot review laws addressing only *state* laws
- Appeals from state supreme courts can be taken to the Supreme Court if a federal law or constitutional issue is at-stake

Interbranch Relations

- President appoints federal judges
- Congress can impeach judges/justices
- Judiciary has no enforcement or revenue-raising powers
- SCOTUS can declare laws and executive actions unconstitutional
 - Only when case exists

Route to Supreme Court Review

- No one has a right to a SCOTUS appeal hearing
- SCOTUS grants *certiorari* on its own discretion
- Without cert., lower court rulings stand
- Caseload: about 10,000 cases/year
- Cert. granted: 80–90
- Cert. guarantees nothing

When Does SCOTUS Grant cert.?

- Litigant appeals lower court ruling
- Reasons aren't always clear
 - Public opinion?
 - Interbranch relations?
 - "Split circuits"
- Law clerks recommend cases to justices
- Litigants can repeatedly request cert.
- Requires four justices
 - Decisions require majority rule

How does SCOTUS decide cases?

- Written petitions from litigants
- Amici curae (friend of the court) briefs
- Oral arguments
- Secret meeting of justices
- Writing of opinions
 - Opinion of the court
 - Concurring opinions
 - Dissenting opinions
- Presentation of ruling

How does SCOTUS decide cases?

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- Ideology
- Interbranch relations
- Public legitimacy

Questions about SCOTUS?

Activity: Important Cases

- List of important SCOTUS cases
- Research the cases online
- Share with the class and discuss

Example: *Marbury v. Madison* (1803)

- Marbury feels he deserves a public commission
- He challenges the government (Madison) at Supreme Court
- SCOTUS sides with Marbury on substance
- But! SCOTUS denies Marbury on grounds that Congress could not grant SCOTUS original jurisdiction in this case
- Conclusion: SCOTUS asserts right of judicial review

Open Discussion

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Next session's agenda

- No class next week

- State and local politics
 - Differences between states
 - Electoral politics

Sign-up for Presentations

