American Political Institutions: Congress, the Executive, and the Courts

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August 1st, 2012
Judiciary

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Courts: limited formal powers, Responsive to public opinion (even though unelected)
Supreme Court: US Civics Class

Virtuous defenders of American freedom - Republican Schoolmaster

- Brown v Board of Education: desegregation of schools
- Separate but equal, inherently unequal
- Defenders of the minorities
- Omnipotence

- Roe v Wade: Legalize abortion
- Decisions are binding
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Congress creates Judiciary

1789 Judiciary act:
- Set Supreme Court at 6 members (now 9)
- Established district and circuit court system
- Set initial jurisdiction for courts

Congress continues to appropriate funds, reshape courts, and (occasionally) threaten to remove funding to hear classes of cases
Federal Court System

Two types of courts:
  - District Courts
    - Trial courts
    - Place of origin for federal trial and civil cases
    - > 600 Judges, 94 districts
  - Appellate Courts
    - Intermediary between district courts and Supreme Court
    - 12 circuit courts
    - Questions of law, rather than questions of fact
    - If appeal filed, court must hear
    - Court of last resort

District, Appeals courts exercise substantial legal influence
Selecting Federal Judges

**Substantial**: Senate influence over lower-court judges
- Technically: same process as Supreme Court
  - President nominates
  - Senate votes
- Reality: Senate “courtesy”
  - Home State senators asked for consent
  - Blue slipping: home state senators asked for veto
- Presidents seek out home state senator advice
- Increasing contentiousness
  - Hatch and blue slipping
  - Vacant judicial positions (10% of Article III courts remain vacant)

**Life time appointments**
Selecting the Supreme Court

Presidents: dominate Supreme Court nominate process

- Professional reputation
  - Candidates need to be stellar scholars of law
  - If not: revolt from within coalition Harriet Miers

- Representational considerations
  - Geographical distribution
  - Religious
  - Gender
  - Race

- Doctrinal
  - Are nominees liberal or conservative?
  - Segal and Cover (1989): Pre-confirmation editorials
    1) Identify ideology
    2) Predict future voting patterns
  - There are surprises:
    - David Souter
    - Appointed: strict constructionist (conservative)
    - drifted to the middle of court
Supreme Court Appointments

- Judiciary committee:
  - Hearing on candidate’s qualifications
  - Litmus test on candidate

- Increasing politicization
  - Once common for close to unanimous votes
  - 1987 appointment of Robert Bork
    - Lewis Powell (moderate) retires
    - Reagan appoints Bork, who holds some controversial opinions
    - Senate Democrats/Liberals form coalition to block nomination

- Tit/Tat: both Supreme Court/federal judiciary → fraying of cooperation
Judicial Review

Marbury v Madison:

1) Marbury has a legal right to office
2) Marbury was right to appeal to laws
3) Supreme Court: had no original jurisdiction in this matter

Unconstitutional: a component of the 1789 Federal Judiciary act

Establishes: Judicial review → process of courts affirming/invalidating the constitutionality of law
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“You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps”

—Thomas Jefferson
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Judicial Review and Limitations

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- Unitary Executive: There is one executive
  - Signing Statements: Bush used signing statements to deem components of law unconstitutional
  - Non-partisan: Bush with torture, president Obama with section 3 of DOMA
Briefly: How Cases Make it To Supreme Court and What They Decide

Three paths:

1) Original jurisdiction: rare

2) Appeal from circuit court
   - Writ of certiorari: 4/9 justices agree to review
   - No writ: lower court decision final

3) State Supreme Court: only with federal question

Arrive to court, hear oral arguments (justices can question):

Four types of opinions

1) Majority opinion: requires five justices and defines new precedent

2) Concurring opinions: within majority, justices who emphasize other points of law

3) Dissenting opinions: establishes contentions for future arguments

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Justices and Court Decisions (Ho and Quinn)

Justices on the court: how do they behave?

Two models:

1) Attitudinal model
   - Legislators in robes
   - Segal and Cover (1989): justices have ideal policies they want to implement
   - Then vote in order to enact those policies

   → everything we’ve talked about with Congress/President carries over

2) Jurisprudence model
   - Precedent and legal reasoning tightly binds justices
   - Misleading or dangerous to describe justices as legislators in robes
   - “Constitutional Nihilism: Political Science and the Deconstruction of the Judiciary”
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- Both are right
  - Ho and Quinn: use roll call votes to show stability in votes
  - Judicial votes are low dimensional
  - Place justices on line \rightarrow predict how vote

- What is this dimension?
  - Ideology
  - Jurisprudence

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