

Lecture 8 overview

1. Preamble
2. Legislative process
3. Judicial process
4. Executive branch
5. Classification of law
6. Environmental crimes

Preamble

U.S. Constitution:

- Produced by blue government philosophy
- Remarkably orange & green (morals, values, worldcentric)
- Institutionalized higher worldcentric values (pacer of transformation)

Administrative Theory

Shaped by many factors:

- Roman & English Law, philosophy
- Conflict among early leaders
Jefferson vs. Hamilton



Jeffersonian Tradition



Source of political authority: people

View of man: perfectible

Chief threat: tyranny of centralized ruler

Institutional emphasis: grassroots
democracy

Area of chief concern: education to
promote civic involvement

Hamiltonian Tradition



Source of political authority: nation

View of man: realistic

Chief threat: weak national institutions

Institutional emphasis: Federal executive

Area of chief concern: fiscal-military issues

Jefferson vs. Hamilton

Government by the people: Jefferson

- States' rights
- Fear *tyranny*; embraced *freedom*

Government for the people: Hamilton

- Strong central government
- Fear *anarchy*; embraced *order*

Legal system: *Balance of Power*

Three branches of government:

- Legislative ⇒ creates law
- Executive ⇒ enforces law
- Judicial ⇒ interprets law

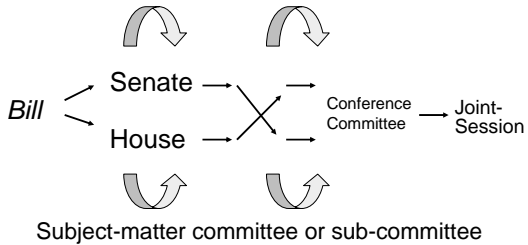
Legislative process



Bill: proposal for new law

- Drafted by legislator, staff or lobbyist
- *Lobbyists*: industry or NGOs
 - Examples: Environmental Defense, Audubon, Sierra Club, Natural Resources Defense Council

Subject-matter committee or sub-committee



Legislative process

Congressional committees:

Senate:

Commerce, Science &
Transportation

Environment & Public
Works

Energy & Natural
Resources

House:

Interior & Insular
Affairs

Merchant Marine &
Fisheries

Science & Technology

Legislative process



1. Hearings on bill:
 - Testimony from concerned parties
 - Establish Congressional Record
 - May be used later to interpret law
2. Bill is edited based on comments
3. If passed, moves out of committee for floor vote

Legislative process

If both House & Senate versions passed:

- Bills cross over & examined in committees
- Joint Conference Committee
- Bills are reconciled & redrafted
- Reported for full congressional vote

Legislative process

If approved by congress:

Forwarded to President for approval:

1. Sign it: bill codified as statute in US Code (USC) & USC Annotated
2. Veto it: requires 2/3 vote from congress to override

Judicial process



Interpretation of constitution and statutes on a case-by-case basis

Case trials recorded in reporters which create case law

Judicial process

Lawsuits:

- Two parties disagree about interpretation of a statute
- Seek clarity through court interpretation

Judicial process

Legislative laws:

- Broad and vague
- Courts “fill-in-the-gaps”
- Specific details difficult to pass:
 - Sponsors may have specifics
 - Aware of strong opposition
 - Hope courts will interpret the law with specifics
 - Read into Congressional Record

Judicial process

Role of courts: ascertain congressional intent:

1. Examine plain language of law
 2. Examine legislative history
 - Committee hearings
 - Senate-House debates
 - Use Congressional Record
- Congress can amend legislation later

Judicial Philosophy



Congressional intent:

- Strict Constructionist:
 - literal definition of the word, do not infer intent
- Original Intent:
 - legal document, look at record, infer original intent
- Modernist:
 - “living” document, free to change with society
- Instrumentalist:
 - “living” document, practical for society, intent not important

Judicial process

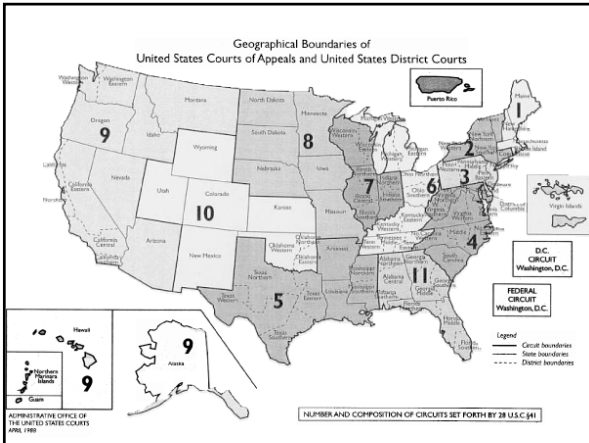
Common law: emerges from court cases

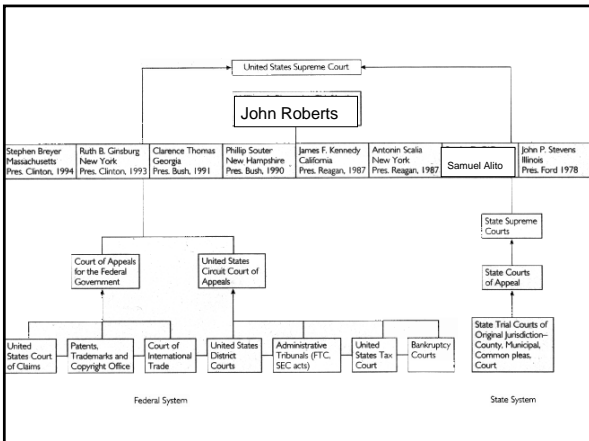
- Not specifically based on statutes or judicial interpretation

Precedent: creates a rule during interpretation or ascertaining constitutionality

Relied upon in future interpretations:

- Higher the court, more significant the ruling
- Conflicting precedents not uncommon





Executive branch

President, staff & cabinet

Cabinet:

- Heads of 14 executive departments

Can influence legislation through:

- Proposing bills
- Supporting/opposing bills
- Veto

Executive branch

Make laws directly:

1. Treaty making: binding treaties that supersede federal or state laws
2. Executive orders: laws created for specific purposes

Executive branch

Example Executive orders:

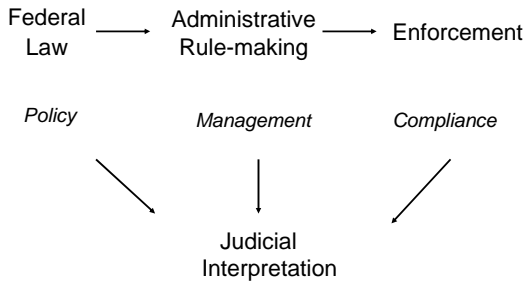
1. Obama:
 - Ethics in government
 - Lawful interrogations
2. Bush:
 - Homeland security council
 - Laws for faith-based & community organizations
3. Clinton:
 - Environmental justice
 - Coral reef protection

Administrative agencies

May make laws under their authority:

- e.g., EPA, US Fish & Wildlife
- Rule-making process
- May control individuals or businesses
- Process generally open to public
- Includes enforcement & adjudication

Administrative agencies



Classification of law

Three major types:

1. Statutory-case law
2. Public-private law
3. Criminal-civil law

Classification of law

Public law:

- provide for the public welfare
- Administered by administrative agencies
- Includes most environmental laws

Classification of law

Private law:

- Regulates conduct between two individual parties
- May be used in environmental cases (e.g., personal injury)

Classification of law

Criminal law:

- Laws that prohibit wrongs against the State or society
e.g., Arson, rape, murder, illegal pollution
- Punish offenders, deter others
– Imprisonment & fines

Criminal law

Prosecutor:

- State or federal government

Defendant:

- Individual or corporation

Criminal law

More severe crimes,
greater procedural protection:

- Felonies require indictment by grand jury
- Guilt beyond a reasonable doubt

Classification of law

Civil law:

- Laws regulating relationships between individuals, or individuals & corporations
e.g., contracts, family, property
- Seek compensation or relief (order for performance or injunction)

Civil law

Plaintiff:

- Person bringing the suit

Defendant:

- Individual or corporation

Civil law

Less severe crimes,
less procedural protection:

- Judge evaluates evidence for trial
- Guilt by a preponderance of evidence

Environmental crimes

Most criminal offenses, some criminal &
civil

Criminal:

- Willful & knowing violations
- Increasing trend of imprisonment among corporate violators

Fines ineffective; cost of 'doing business'

Environmental crimes

1982:

- *Environmental Crimes Unit* created in Dept. of Justice
- *Office of Criminal Investigations* created in EPA

Environmental crimes

1990s: record number of DOJ cases due to:

- EPA administrator, Bill Reilly
- Good budget

Environmental crimes

Example 1: criminal

- Illegal dumping of toxic waste by waste pit owner
- 1.2 million gallons into river in PA
- Sentenced 6-12 years in prison

Environmental crimes

Example 2: criminal & civil

- Exxon Valdez oil spill
- \$5.3 billion settlement; on appeal
- Hazelwood: 1,000 community service

Environmental crimes

Example 3: civil

- Erin Brockovich - Pacific Gas & Electric
- Dumping of hexavalent chromium into groundwater
- \$333 million through arbitration

Next Time. . .

- Historical framework
- Legislative History of NEPA
- Reading:
 - NEPA!
