Chapter 16: The Federal Courts

1. The Nature of the Judicial System
   1. Types of Cases
      1. Criminal case
         1. The government charges the individual with violating specific laws
      2. Civil case
         1. There is a dispute between two parties which is resolved in court
   2. Participants in the Judicial System
      1. Litigants
         1. Plaintiff
         2. Defendant
         3. Jury
            1. Group of citizens that are responsible n determining the outcome of a lawsuit.
         4. Standing to sue
            1. The requirement that plaintiffs have a serious interest in a case, which depends of whether they have sustained or are likely to sustain a direct and substantial injury from another party or form an action of the government.
         5. Class action suits
            1. Lawsuits in which a small number number of people sue on behalf of all people in similar circumstances.
         6. Justiciable disputes
            1. Issues capable of being settled as a matter of law.
      2. Attorneys
         1. Law is one of the nations largest professions
         2. Over 1 million Attorneys in the US
         3. The rich are no longer the only ones with attorneys, however poor people are often left with attorneys that are overworked with few resources to devote to a case.
      3. Groups
         1. Interest groups recognize the courts ability to set laws and precedents, that is why they have tremendous interest in the action of the the court.
         2. Organizations like the NAACP will often provide legal counsel to help turn the case in their favor.
         3. *Amicus curiae* briefs
            1. Legal briefs submitted by a “friend of the court” for the purpose of influencing a court’s decision by raising additional points of view and presenting information not contained in the briefs of the formal parties.
2. The Structure of the Federal Judicial System
   1. Differences between courts
      1. Original jurisdiction
         1. The jurisdiction of courts that hear a case first, usually in a trial. There are the courts that determine the facts about a case.
      2. Appellate jurisdiction
         1. The jurisdiction of courts that hear cases brought to them on appeal from lower courts. These courts do not review the factual record, only the legal issues involved.
   2. District Courts
      1. 91 District Courts – At lease 1 in each state
      2. District Courts
         1. The 91 federal courts of original jurisdiction. They are the only federal courts in which trials are held and in which juries may be impaneled.
      3. 98% of all criminal cases in the US are heard in state and local court systems and are not taken to the federal courts. Most people in federal court cases are not convicted of federal crimes because they usually plea bargain for a lesser conviction.
         1. Workload is increasing for Federal Courts
      4. Most cases are routine, and few results in policy innovations.
   3. Court of Appeal
      1. Court of Appeal
         1. Appellate courts empowered to review all final decisions of district courts, except in rare cases. In addition, they also hear appeals to orders of many federal regulatory agencies.
      2. 12 Judicial Circuits
      3. Normally hears cases in rotating panels consisting of 3 judges
      4. Correct errors of procedure and law made in original cases
      5. Decisions set precedents
   4. The Supreme Court
      1. The Supreme Court
         1. The pinnacle of the American judicial system. The court ensures uniformity in interpreting national laws, resolves conflicts among states, and maintains national supremacy in law. It has both original jurisdiction and appellate jurisdiction.
      2. Nine justices
         1. One is the chief justice
         2. This number is not set by the Constitution
         3. List of Current Justices
            1. **John Roberts**
            2. Anthony Kennedy
            3. Clarence Thomas
            4. Ruth Bader Ginsburg
            5. Stephen Breyer
            6. Samuel Alito
            7. Sonia Sotomayor
            8. Elena Kagan
            9. Neil Gorsuch
      3. Very few cases actually get head by the Supreme Court
3. The Politics of Judicial Selection
   1. The Lower Courts
      1. Senatorial courtesy
         1. An unwritten tradition whereby nominations for state-level federal judicial posts are usually not confirmed if they are opposed by a senator of the president’s party form the state in which the nominee will serve. The tradition also applies to courts of appeal when there is opposition from a senator of the president’s party who is from the nominee’s state.
      2. The White House, DOJ and FBI regularly check persons suggested for judgeships, and the president suggest one from those who pass the screening process.
      3. Senate can filibuster conformation hearings.
   2. The Supreme Court
      1. A president cannot have an impact on the court if there are not vacancies to fill.
      2. Candidates for nomination usually keep a low profile because active participation in the political process may destroy their chances of being confirmed by both parties.
      3. Since 1990 only a handful of Supreme Court nominations have been unsuccessful as a result of divided parties.
      4. Presidents have failed 20% of the time to appoint the nominees of their choice to the Court.
      5. Nominations can fail if:
         1. Their party in the senate is a minority
         2. The president makes a nomination at the end of his term
         3. Views are far from those of the current Senate
         4. There are ethics or competence questions
4. The Background of Judges and Justices
   1. Almost all have had a law background, however this is not a requirement of the constitution.
   2. Almost all have been white males, recently there have been more female nominations.
   3. Justices have had high administrative or judicial positions in the past
   4. Many have worked at the Justice Department
   5. Only 13 of 112 have been nominated by a president of a different party
   6. Presidents try to pick justices that will further their agenda and share their same political ideology.
5. The Courts as Policymakers
   1. Accepting Cases
      1. Receive about 8,000 each year
      2. A little under 100 make it on to the docket each year
      3. Solicitor general
         1. A presidential appointee and the third-ranking office in the Department of Justice. The solicitor general is in charge of the appellate court litigation of the federal government.
         2. Decide what chases to appeal, review and modify the briefs, represent federal government before the Supreme Court, and submit *amicus curiae* briefs
   2. Making Decisions
      1. In most cases attorneys from each side only have a half hour to address the Court. They summarize their briefs and emphasize their most compelling points.
      2. Opinion
         1. A statement of legal reasoning behind a judicial decision. The content of an opinion may be as important as the decision itself.
         2. Majority opinion
            1. 5 judges
         3. Dissenting opinions
            1. Justices opposed to majority decision
         4. Concurring opinions
            1. Support a majority decision but stress a different constitutional or legal basis for the judgment.
         5. *Stare decisis* 
            1. A Latin phrase meaning “let the decision stand”. Most cases reaching appellate courts are settled on this principle.
         6. Precedent
            1. How similar cases have been decided in the past
            2. Lower courts are expected to follow the precedents of higher courts in their decision making
   3. Implementing Court Decisions
      1. Judicial implementation
         1. How and whether court decisions are translated into actual policy, thereby affecting the behavior of others. The courts rely on other units of government to enforce their decisions.
      2. Original intent
         1. A view that the Constitution should be interpreted according to the original intent of the Framers. Many conservatives support this view.
6. The Courts and Public Policy: An Historical Review
   1. John Marshall and the Growth of Judicial Review
      1. Marbury v. Madison (1803) was the first use of judicial review
      2. Judicial review
         1. Power of the courts to determine whether acts of Congress and President are in accord with the Constitution
      3. Increased the power of the Supreme Court
   2. The “Nine Old Men”
      1. Conservative justices during the New Deal era repealed many programs that were designed to help the economy as they were deemed unconstitutional.
      2. Roosevelt tried to nominate more justices but congress denied.
   3. The Warren Court
      1. Chief Justice Earl Warren presided over massive civil rights legislation in the 50’s and 60’s. This angered right wing folks and they began a campaign to impeach Warren.
   4. The Burger Court
      1. Era where Warren E. Burger was the chief justice. Conservative court, but made decisions on Roe v. Wade and US v. Nixon
   5. The Rehnquist and Roberts Courts
      1. Republican led court by Chief Justice William Rehnquist
      2. Decided the 2000 presidential election
      3. McDonald v. Chicago
7. Understanding the Courts
   1. The Courts and Democracy
      1. Courts are not very democratic because judges are not elected and are difficult to remove
      2. The courts often reflect popular majorities and preferences
      3. Groups are likely to use the courts when other methods fail, which promotes pluralism.
   2. The Scope of Judicial Power
      1. Judicial restraint
         1. A judicial philosophy in which judges play minimal policymaking roles, leaving that duty strictly to the legislatures.
      2. Judicial activism
         1. A judicial philosophy in which judges make bold decisions, even charting new constitutional ground. Advocates of this approach emphasize that the courts can correct pressuring needs, especially those unmet by the majoritarian political process.
      3. Political question
         1. A doctrine developed by the federal courts and used as a means to avoid deciding some cases, principally those involving conflicts between the president and Congress
      4. Statutory construction
         1. The judicial interpretation of an act of Congress. In some cases where statutory construction is an issue, Congress passes new legislation to clarify existing laws.