

FEDERALISM AND THE U.S. JUDICIAL BRANCH

CSG Civics Education eCademy Series



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Federalism and the US Judicial Branch

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To Learn More...

- American Legal Systems: A Resource and Reference Guide
- By: Toni M. Fine
- Chapter 1 is available free online!

Running Scenario

- *City of Los Angeles v. Contreras*

Federal and State Court System

- Our dual court system is one of the best examples of federalism
- U.S. Constitution=federal power
- Everything else=state power

Pull Out Your Pocket Constitution...

- Article III of the Constitution describes the power of the federal courts

What do Federal Courts Decide?

- Federal constitutional issues
- Federal statutory issues
- Diversity (parties from different states; \$75K+)
- US party
- Special topics: (admiralty, antitrust, maritime)
- Removal

What do State Courts Decide?

- Any other case (including those where federal courts have jurisdiction) with a few exceptions

Can Our Case be Heard in Federal Court?

- Yes, it involves the US Constitution—Fourth Amendment

Court Structure

- Federal and state courts
 - Lower court—trial/fact finding court
 - Intermediate court—appeals from the lower court
 - High court—appeals from the intermediate court

Federal Court Structure

- Lower court—district court
 - 94 in the US
 - 2 in Wisconsin
- Intermediate court—Court of Appeals
 - 13 in the US
 - WI, IL, and IN are in the 7th Circuit
- High court—Supreme Court

State Court Structure

- Wisconsin
 - Lower court—circuit courts—organized by county
 - Intermediate court—Wisconsin Court of Appeals—4 courts organized by district
 - High court—Wisconsin Supreme Court
- Specialized courts at the trial court level
 - Family
 - Probate
 - Juvenile

How Did Our Case Proceed?

- District court for the Central District of California (one judge presiding) held a trial
 - Contreras won—jury awarded \$5.725 million
- City appealed to the US Court of Appeals for the Ninth Circuit (three-judge panel)
 - Contreras won again
- City appealed to the United States Supreme Court
 - Appeal is pending!

What do Courts Decide?

- May seem obvious
- Decide live cases or controversies

What do Courts Not Decide?

- Standing
 - *Newdow v. US*
- Exhaustion
 - EEOC
- Finality
 - EEOC
- Ripeness
- Mootness
 - *Fisher v. UT-Austin*
- No political questions
 - *Nixon v. United States*

Any “Controversy” Problems in Our
Case?

What Do Courts Do?

- Other than resolve controversies?
- Issue **opinions**

Have You Ever Wanted to Read an Opinion?

- *Riley v. California* (2014)
- Justice Roberts opinion
- Issue: whether police need a warrant to search a cell phone of someone arrested?

How Do Courts Decide Cases?

- Precedent—previous opinions

How Do Courts Decide Cases?

- Common law

- Relies on past opinions (precedent)
- Judge-made law
- English roots

- Civil law

- Relies on codes
- Exceed the code—case is not binding
- French roots

As Legislators...

- Are you surprised we have a common law system in the US?

Types of Case Law

- Pure case law—torts, property
 - Can you sue a police officer for emotional distress if he or she shoots your dog?
 - Who gets an engagement ring if the wedding is called off?
- Case law based on statutory provisions
 - Are disparate impact cases allowed under the Fair Housing Act?
- Case law based on constitutional provisions
 - Is there a constitutional “liberty” interest in same-sex marriage?

What Case Law Applies to Our Case?

- Pure constitutional case
- Supreme Court's most recent excessive force decision is *Mullenix v. Luna* decided yesterday!

What is “the Law”?

- In order of importance...
 - Constitution
 - Statutes
 - Rules and regulations
 - Executive orders
 - Case law/common law

Where Does it Come From?

- Constitution
- Statutes—legislatures
- Rules and regulations—administrative agencies
- Executive orders—President/Governor
- Case law/common law—judges

What Law Applies in Our Case?

- Constitution—4th Amendment
- Fourth Amendment case law

How Does the Law Develop?

- Through an expanding body of case law (precedent)
- Precedent has rules
 - Rules of law established by the same or higher level courts in the same jurisdiction must be followed
- Called *stare decisis* (let it stand)

Why *Stare Decisis*?

- Judicial economy
- Fairness to parties
- Predictability
- Check on arbitrary behavior

When Does it Apply?

- Jurisdiction—same jurisdiction—federalism
- Hierarchy—same or higher court
- Binding or persuasive
- Binding
 - Holding, from a higher level court, in the same jurisdiction, in a factually similar case, applying the same law
- Supreme Court decisions apply to all federal and state courts!

Federalism Pointer

- State courts are not bound by interpretations of federal law by federal district courts or federal courts of appeals (even in the same state)

What if No Precedent is a Perfect Fit?

- Adopt reasoning of another court by analogy
 - Jurisdiction
 - Court hierarchy
 - Factual similarity
 - Attractiveness of reasoning
 - Date of analogous case

Stare Decisis Case to Watch

- Do public sector agency fee arrangements violate the First Amendment?
- *Friedrichs v. California Teachers Association*

Special Rules for Statutes

- Read statutes for plain meaning
- What if the statute is ambiguous?
 - Act as a whole
 - Context
 - Cannons of statutory interpretation
 - Legislative history

Courts and Administrative Agencies

- Fourth branch of government
- Issue rules and regulation interpreting statutes
- Courts generally defer to agency interpretations per *Chevron*
 - Statute must be unclear
 - Agency interpretation must be reasonable

Last Two Slides Collide in Recent ACA Case

- The ACA states that tax credits are available when insurance is purchased through “an Exchange established by the State”
- Technical legal question: is a Federal Exchange “an Exchange established by the State” that may offer tax credits
- Start with plain language
- These four magic words are ambiguous until you look at the statute as a whole
- Court gave no *Chevron* deference to IRS interpretation
 - Congress did not give IRS expressly the authority to interpret this statute

Other Interesting Information about the US Judicial System

How Do Judges Decide Cases?

- Rely on legal briefs written by the parties and (sometimes) *amicus* briefs
- Judicial philosophy
 - Judicial activism v. judicial restraint
 - Loose constructionist v. strict constructionist
 - Living document v. original intent
- Legal realism?

Are *Amicus* Briefs Important?

- Maybe they should not be but they (often) are
- Supreme Court cites to them regularly
- In the last year:
 - Justice Kennedy (very likely) relied on an SLLC *amicus* brief in writing a concurring opinion
 - The other side discussed an SLLC *amicus* brief at oral argument
 - Justice Scalia cited to an SLLC brief in a dissenting opinion

What Do I Need to Know about *Marbury v. Madison*?

- What is the most important Supreme Court case?
 - *Brown v. Board of Education*
 - *Roe v. Wade*
 - *Citizens United v. FEC*
- None of the above!?
 - *Marbury v. Madison* (1803)
- Why?
 - None of these cases would be possible with *Marbury v. Madison*

Marbury v. Madison

- Confirms judicial review
- Supreme Court may declare legislation unconstitutional

Why Is the Supreme Court So Powerful?

- Only 9 people
- Not elected
- Appointed for life
- Somewhat homogenous, not “average,” never young
- Decide many of the most important issues of the day
- Final say on constitutional matters (practically speaking)
- Pick and choose what they decide

When is the Supreme Court not so Supreme?

- Interpret a statute in a way Congress does not like
- Congress may simply rewrite the statute
- Americans with Disabilities Act Amendments Act
- Lily Ledbetter Fair Pay Act

Can I Be a Judge or Better Yet a Justice?

- Supreme Court Justices, federal court of appeals judges, federal district court judge
 - There are no qualifications!
 - President must nominate you; Senate must confirm you
- Practices vary significantly for state judges

How Many Cases Settle?

- Almost all of them!
- Why?
 - Expense
 - Time commitment
 - Fear of losing
 - Prevent further damaging a continuing relationship

What is the Role of An Attorney General?

- Chief legal officer of a state
 - Bring cases in areas such as child enforcement, consumer protections, and antitrust
 - Enforce federal and state environmental laws
 - Represent the state and state agencies before the state and federal courts
 - Handle criminal appeals and serious statewide criminal prosecutions
 - Institute civil suits on behalf of the state

Where Can You Find the Law?

- The law
 - Lexis, Westlaw
 - State law library
- About the law—summaries of the law
 - Treatises
 - Restatements
 - American Law Reports
 - Law review articles

Supreme Court

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Questions?

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