

Notes Test 2
Judiciary Branch

When deciding a case, Supreme Court Justices should interpret the constitution loosely (broad construction).

- Power of Prestige/Mystique - gives them legitimacy
- Judicial Review - power to overturn a law or presidential action - without this they have nothing - rules on court case after law becomes law
- Weakest branch - more powerful than they were even meant to be
- Expects President to enforce it but in reality he can ignore them
- Care about public opinion because otherwise it won't be enforced
- Marbury v Madison (1803) - established judicial review
 - "Midnight judges"
 - President Adam, federalist, lost re-election to Jefferson who was a democratic republican in 1800
 - Adam had until March to appoint new federalist judges
 - adam appointed marbury, madison was jefferson's secretary of state
 - by the time jefferson came in, marbury's paperwork hadn't been completed - so should he get the job?
 - Chief Justice during that time was John Marshall, Marbury asked him for a writ of mandamus
 - Interpreted Judiciary Act that he doesn't have the power to give him the job and actually ruling it unconstitutional
 - From now on the court had the authority to rule something unconstitutional
- Judiciary Act of 1801 elaborated on what powers supreme court has
- Precedent - "stare decisis" let the decision stand
- Case Law - court making decision is like creating new law
- All judges have life-time tenure
- Dual Court System
 - 50 state courts, when reaches state's highest court it goes to SC, has appellate jurisdiction
 - 1 Supreme Court with 9 justices, deals with Constitution, has original jurisdiction from district courts, chief Justice in center, surrounded by senior members, newest on end
 - 13 Courts of Appeal with 3 Judges deals with appeals (whether or not it will go to SC)
 - 94 District Courts, basic courts with trial
 - Federal Court System organized by Congress which is a check, controls money and jurisdiction
- Rule of 4 - if 4 justices agree to hear a case, it goes to the SC - called writ of certiorari, "make more certain" - case will go on docket - both sides submit briefs - amicus curiae briefs, "friends of the court," can submit their own briefs" - oral argument, 2 sides represented by lawyers will make argument in front of justices in 30 min but justices ask them lot of questions, more of sending their thoughts to fellow justices than actually asking questions to them - justices go privately in their chamber to discuss case - chief justice speaks first but votes last, rookie speaks last but votes first - if a majority case, and cj is in majority, he assigns the majority opinion

- Judicial Restraint/Originalism
 - Strict interpretation of the Constitution
 - Roe v. Wade 1973 - “right to privacy” means that individuals could abort their baby within the first 3 months, but the Constitution never says the words privacy, so people criticize the judge’s decision
 - If constitution is unclear, leave it to the states to decide
 - Criticized for “legislating from the bench”
 - Justice Scalia
- Judicial Activism
 - Loose interpretation of the Constitution
 - Roe v. Wade 1973 - “right to privacy” means that individuals could abort their baby within the first 3 months, right to privacy is inferred from the Constitution
 - Justice Breyer
- Politics of Supreme Court Appointments
 - Don't want to get borked - rejected confirmation
 - 1. List - sometimes they'll leak the list to see the public’s reaction
 - 2. Vetting - see if anything bad in their background
 - 3. Announcement - press conference
 - 4. Sell - senatorial courtesy - president talks to senior senator from nominee’s state for him to convince other senators but if that senator doesn't agree then it all falls through
 - 5. Prep - prep the guy and gather the questions
 - 6. Hearings - committee asks lots of questions
 - 7. Committee votes - majority vote - chair has lot of power
 - 8. Senate votes - majority votes
- Establishment Clause - government can't impose religion on you
 - No national religion
 - No favoring one religion over another
 - No promoting religion - Yes christmas trees but no 10 commandments
 - Lemon v. Kurtzman (1973) - created “lemon test”
 - Secular purpose - government funded school bus can take you to dual curriculum private school but not a solely religious place
 - Neutral toward religion - other religions can use the bus too
 - No excessive entanglement - can't see one from the other
- Free Exercise Clause - government won't interfere with your private religion
 - A law may not impose “special burdens” on religion
 - Some religious exemptions
 - Wisconsin v. Yoder ruled that the Amish people could stop school earlier than the normal age or didn't want to be part of military draft
 - Mormons can't practice polygamy
- 4th Amendment - Search and Seizure
- Liberal court cases in the 60s
 - Mapp v Ohio - evidence obtained illegally without a search warrant can't be used in trial, established the exclusionary rule

- Warren Court (1953-69) - expanded individual rights against government intrusion
- Rehnquist Court in US v Leon established Good Faith Exception to the exclusionary rule - if there's an honest mistake it could still be used
- Miranda v Arizona - 5th amendment, have to be read rights to be arrested
- Escobedo v Illinois - a confession that was threatened/intimidated/coercion can't be used in trial
- Gideon v Wainwright - right to an attorney even if you can't afford one
- 8th Amendment - death penalty - no cruel or unusual punishment shall be inflicted
 - Furman v Georgia (1972) - ruled death penalty is unconstitutional
 - Gregg v Georgia (1976) - ruled death penalty is constitutional
 - Can't execute a minor or someone mentally retarded
 - Can only be used for murder

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