

Week 4 Lesson Plan

Administration:

Papers returned in 2 weeks

Review:

Federalist 78

Good Behavior

Legislative/Executive must not also judge, or no liberty

Makes the constitution and the people the ultimate decider

Article 3 of the Constitution

SCOTUS *does* have OJ in matters of ministers etc

Bill of Rights

Semi-permanent values *not subject to majoritarian changes*

Marbury v. Madison

Wrested power for themselves?

Bickel

Courts can keep laws relevant

Courts look at long-term values, legislatures have immediate pressures

Courts instruct the nation on values

Courts legitimate laws

Greenhouse

SCOTUS is just a branch of the ruling authority

Selected by ruling powers

Courts are weak and don't want to make waves

Waldron

SCOTUS actually focuses less on values and more on procedure, precedent, etc
(trying to appease both process and outcome is like asking someone to "buy the fastest car at the lowest price")

SCOTUS is no less sectarian than the legislature

Legislature is MORE representative of the people, not less

We can and do adjust voting processes for better outcomes (no children voting)

Framing everything in terms if the Bill of Rights actually hurts things like welfare

Why have a decision making procedure that just extends the debate? Just decide!

They are either elected or they are independent, you can't use both arguments

TotM: decisional and topical minority have *real rights* harmed: rare

W. Virginia v. Barnette

Fear of forcing dogma (1st Amendment) versus civic demands that don't discriminate

Jurisdiction of the courts versus that of the legislature

Fundamental Values

Should there be a fundamental set of rights, like the Bill of Rights, which are immune to majoritarian preferences? What should they be?

Liberty over Democracy

How important is democracy in America? Can you think of any other priorities? What would the founders say?

Process

How can the Judicial Review be reconciled to the person who wants to know why their preference isn't being counted fairly? This is one of Waldron's critiques.

Constitutional Supremacy (upholding the will of the people)

Is the SCOTUS the only institution that can uphold the will of the people? Is it necessary, as Hamilton suggests, that in order to retain liberty that we must separate the legislature and the executive from the power of judgment?

Is the court counter-majoritarian in its actions?

As we read in Greenhouse, it might be the case that the court isn't really counter-majoritarian after all. In other words, the courts generally do what the people want anyway. Does that make it less problematic to have a system with Judicial Review? If this is the case, does it obviate the need for Judicial Review in the first place?

Legitimation: Requires the ability to strike down in addition to supporting

One of the proposed roles of the court is that it is designed to legitimate legislation. Bickel says that this implies that the courts must also be able to strike laws down or this role is meaningless. Is this true? Consider what Waldron has to say about England.