Courts

- The court system in the United States is not spelled out in the Constitution thus one of the first acts of the Congress was to establish a court system
- That system, adding in the states, has changed remarkably little over the last 200 odd years
- You can think of the system in two dimensions one is levels where level taps original jurisdiction rising to final appeals courts

Courts

- Civil and criminal courts vary greatly from state to state
  - Texas has separate Supreme Courts for civil and criminal matters
  - Other states have but one system that services both criminal and civil
- The federal system has but one set of courts which deal with both types of cases - criminal and civil

Courts

- This system varies dramatically by at least two factors
  - 1) appeals courts discretion
  - 2) civil and criminal courts
- State courts vary dramatically in regard to what they have to hear
  - The Wisconsin Supreme Court has to hear everything while the Louisiana Supreme Court has great discretion over what it hears
- The U.S. Supreme Court has great discretion over what it hears and on average takes less than 2% of appeals made to it
Courts

- The second dimension is geographic
  - The federal system in the United States means that most cases start in state courts of original jurisdiction and it is here where guilt and innocence and damage are usually assessed.
  - All fifty states have court systems and they all have courts of original jurisdiction, appellate courts and a Supreme court or courts
  - The federal judiciary is organized as follows

Courts

- The number of courts in the United States, the shared jurisdictions and the ability to move from one set to another have resulted in among other things
  - A difficulty to determine what the law of the land is as various courts have held various things
    - Example: yesterday's marijuana decision
    - discussion what are the effects of the Courts decision
  - An emphasis on local knowledge
  - A legal process that is slow and costly

Courts

- In addition to the levels of courts and the geographic distribution of courts there are a number of types of law
  - Statutory law — law from legislatures, treaties and executive orders
  - Common law — judge made law originated in England continues to grow from stare decisis or precedent
  - Equity law — law used where common law is inadequate — ex. Where money can't provide full compensation injunctive orders issued

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- Constitutional law—statements interpreting the Constitution given by Supreme Court
- Admiralty and maritime law
- Administrative law—law relating to the authority and procedures of administrative agencies as well as to rules and regulation issued by said agencies
- Criminal law—law that defines crimes against public order and provides punishment—mainly state law though federal criminal law is growing

- Original jurisdiction—the ability of a court to hear a case in the first instance
- Grand jury—a jury of 12 to 23 persons who hear governmental evidence (in private) and decides whether or not to indict
- Petit jury—a jury of 6 to 12 persons that determines guilt or innocence in a civil or criminal case
- Magistrate judge—an official who performs a variety of limited judicial duties
- Court of appeals—hears appeals from lower courts on issues of law not guilt or innocence

- Civil law—law that governs the relations between individuals and defines their legal rights
  - Again the types of law and the levels and geography of the law make figuring out what the law is a complicated and daunting task
  - I have mentioned courts of original jurisdiction and appellate courts but there are several other types of actors in the system

- If the complexity of the courts were not enough to make American law difficult to understand we need to add the dispute about the role of the law and the courts
  - This usually occurs under the activist banner where those who wish the courts to actively resolve problems regarding rights and justice
  - Critics of activism argue that legislatures and executives are elected to make these decisions and courts should stay out
- There are many variants between these extremes
courts

- Ultimately there is and has to be a connection between the people and the courts
  - The most obvious way is the electoral connection wherein presidents nominate judges to federal courts including the Supreme Court
  - Electing Clinton in 1992 assured that he would appoint judges who agreed with him on basic issues like abortion rights
    - Yet his choices were constrained after 1996 because the Senate was still Republican

courts

- The election of George W. Bush in 2000 does not guarantee the appointment of pro-life judges the Senate is narrowly Republican and has a number of pro-choice Republican senators
  - Thus Bush will be constrained as was Clinton after 1996
  - Given the closeness of the Court on major issues you can expect that the next Court nominee will be very closely monitored
    - The more extreme the candidate the greater the difficulty in confirming

courts

- The relationship between public opinion and the courts is not straightforward but it does seem to be the case that neither the courts nor public opinion can be too far ahead or behind each other
  - The most obvious remedy to the liberalness of the courts in the Warren era was the election of Republican presidents who appointed more conservative judges
  - The remedy to the conservativeness of the present courts will be more liberal judges

courts

- The debate about activism will in some sense depend upon whose ox is being gored
  - Roosevelt and the New Deal
  - Conservative activism and the 2000 election
- One way to think about the cycles of the law is to see it as leaning at times toward protecting the rights of individuals and when it tips too far that direction the law turns toward majorities and public good
  - The 4th, 5th and 6th Amendments made federal
  - The current death penalty debate