Legal Reasoning Reprised

- Legal reasoning is the way a legal actor combines four elements to produce an explanation of a decision or an argument in support of a desired decision
  - Case facts as established at trial
  - The rules that bear on the case
  - Social background facts
  - Shared values

Statutes and Constitutions

- Traditional common law relies entirely on cases
- Statutes and Constitutions add “texts”
- Legal reasoning over statutes and texts involves an additional element:
  - The text itself
Legal Reasoning In Relation to Statutes and Constitutions

- Legal reasoning regarding statutes and constitutions is the way a legal actor combines five elements to produce an explanation of a decision or an argument in support of a desired decision
  - The legal text
  - Case facts as established at trial
  - The rules that bear on the case
  - Social background facts
  - Shared values

Legal Text

- One or more persons explicitly wrote the legal text
- Legal texts are the outcome of a political process
  - Debate
  - Negotiation
  - Compromise
- Legal texts contain words to which meanings are ascribed

Ambiguity of Statutes

- Statutes as controlling
  - Legislative supremacy
  - Judicial deference to legislative action
- Imprecision of language
  - Inevitability of ambiguity
- Political advantages of ambiguity
  - Politics as compromise
- Complexity of human life
  - Did your high school date violate the law?
Interpreting Statutes

- Literalism
  - "plain meaning"
- Golden Rule
  - Plain meaning of words can be ignored if result is absurd, or creates significant inconsistency
- Legislative intent
- Canons of statutory construction

Statutory Purpose

- Does this differ from "intent"?
- Whose purpose?
  - Can a statute have a purpose independent of the intent of the drafter?
- Might not there be inconsistent purposes within a given law?
  - Law limiting tobacco advertising directed at minors while at the same time denying the FDA the power to regulate tobacco advertising

Determining Purpose

- Assumption of legislative rationality
  - Is legislative process logical?
  - What is the linkage between legislation and
    - Political ambition
    - Long-term personal benefit to legislators
- Legislative purpose
  - Discernable from legislative history?
  - Discernable from legislative text?
  - Stated vs. actual purpose
Purpose ≠ Intent

- Intent deals with what is done while purpose deals with why it is done
- Intent vs. purpose of concealed carry law
- Stated vs. true purpose
- What if intent can be shown to be inconsistent with purpose?
  - Does widespread distribution of firearms reduce crime?

Precedent in Statutory Construction

- Canons of statutory construction are based on precedent
- Judges rely on precedent in construing statutes
  - Look to what others have decided
- Horizontal and vertical precedents are relatively binding
  - Reversals of precedents unusual because legislature can always rewrite the law
- Cross jurisdiction precedents are at best advisory
  - Conflicts in circuits

Constitutions

- Ordinary vs. extra-ordinary politics
- Purposes
  - Specify structure of government and relationships among parts
    - Branches of government
    - Federalism
  - Specify powers of government
  - Specify relationship between citizenry and government
    - Limit powers of government
    - (Negative) rights
  - State ambitions of government
    - (Positive) rights
Judicial Review

- Broad vs. Narrow Definition
- Constitutional Review
  - Abstract vs. Concrete
  - General courts vs. special court(s)
- Judicial Review American Style
  - Constitutional review
  - Concrete review
  - General courts

Basis of Judicial Review

- Not mentioned in Constitution
  - Article III establishes judicial branch
  - Council of Revision proposal at Constitutional Convention
  - Noted in Federalist Papers #78
  - Antecedents in powers of colonial and state judges
  - Sir Edward Coke, Dr. Bonham’s Case (1610)

Establishing Judicial Review

- Marbury v. Madison (19803)
- Judiciary Act of 1789
- Judiciary Act of 1801
- Federalists and Republicans
- Mr. Marbury’s commission
- “Original” and “appellate” jurisdiction
Dilemmas of Judicial Review

- Counter-majoritarian
- General nature of much constitutional language
- Difficulty of overriding constitutional interpretation
  - Only 3 amendments in 214 years

Legal Reasoning in Judicial Review

- Text
  - Ambiguity
  - Conflict
- Intent
  - How to discern
- Precedent
  - What if the Justices got it wrong?
  - Multiplicity of precedent

What Cases Come to the Supreme Court?

- Judicial Review vs. Statutory Construction
- Discretionary jurisdiction
- Hard cases
  - Text is ambiguous
  - Intent is unclear
  - Precedents are contradictory
How Does Law Influence Judicial Review?

- **Lower courts**
  - Analogic reasoning
  - Find cases that are close and draw parallels

- **Supreme Court**
  - Decision structures
  - "Fundamental freedoms"
  - Protection of minorities from excesses of majority
    - Footnote 4 (Caroene Products, 1938)
  - Strict vs. rational basis scrutiny
  - Tests: The *Lemon* Test