The Judiciary

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ch. 9
For Discussion...

- Do you view our courts as non-political institutions?
- Should judges be appointed or elected?
- Does the position favor the legal profession?
Court cases proceed under 2 broad categories

• Criminal Laws
  ➢ Gov brings charges against individual for violating laws
  ➢ Gov acts as plaintiff (the one that brings the charges)
  ➢ Charges are brought against a defendant
Civil Laws

• Civil Laws
  ➢ Cases involving disputes between individuals, groups, corporations & other private entities
  ➢ No criminal penalties involved
• 2 kinds:
• Contracts: involves disputes in agreements between individuals or corporations.
• Torts: disputes involving negligence that led to injuries of another. Example; medical practices cases.
Structure of the Courts

- Courts were established by both Federal & State gov
- Each has several levels

At state level:
- trial courts
- appeals court
- state supreme court
Appellate Court

- State Supreme Court - the highest appellate court at state level.
- Appellate courts do not entertain juries & witnesses
- Mainly lawyers for or against
- These courts do not assess guilt or innocence
- Evaluate the legal arguments
• Second only to the U.S. Supreme Court
• Ultimate interpreters of their states’ constitutions
Appeals Process

- Prejudicial error: Error that affects case outcome
- Discretionary: Jurisdiction of the court whether to grant review of the case
  vs.
- Mandatory jurisdiction: Court must hear every case being presented to it
Appeals cont.

*En banc Session*: Case is heard by all judges in the same sessions

vs.

- Panels: Usually 3 judges would hear the case
Federal & State Court System

Supreme Court of the US

Circuit Court of Appeals
12
Briefs, Oral Arguments

District Courts
95
Jury
Trial courts

State Supreme court. Brief & Oral Arguments

State Court of Appeal
Intermediate. In 20 states

State Trial Courts, aka Superior or Circuit Court. Jury
Jurisdiction at state court level

- Authority over most criminal cases given that states pass most criminal laws
- No always clear cut
- Sometimes some cases move from state courts to fed courts
- When state & fed statues are involved, constitutional rights
- Eg. search & seizures
Differences between states

- Criminal cases: murder, theft, etc. are illegal across the nation
- But prostitution is not
- Some issue death penalty; others don’t

- More similarities exist with respect to civil laws across the states
Judicial Appointments

- Falls into:
  - i) Pure appointive systems: Used by Federal system
  - ii) Merit selection systems (the Missouri Plan): relies on nominating committee
    - Avoids political intrusion
  - Retention elections judge runs uncontested
  - Judicial independence
Judicial Activism v Non-Activism / Restraint

- Difference in judicial philosophy from the bench
- Activists believe that judges should go beyond the words of the Constitution, sort of advocates
- Judicial restraints: do not interpret beyond the words of the Constitution, aka “Constructionists”
- Current SC would fall under the activist label
- Activist judges lead to attempts to reverse previous decisions – civil rights & abortion
Terms of office

- Life term – Rhode Island
- Until age 70 – Massachusetts and New Hampshire
- Fixed terms – length varies
Florida: Nominating Commission

- Screens potential candidates
- Finalizes a list of 3 to 6 nominees to the governor
- Governor obligated to appoint a judge from the list
- 26 Nominating Commissions in FL.
• Includes 7 State Supreme Justices
• 60 District Court justices
• New appointees serve for 1 year
• Their names are then submitted to next general election for yes or no vote
• If they receive a yes vote they will serve for a 6 year term
Qualifications

Conditions:

• Reside in Florida
• A qualified elector;
• Practicing law in Fl. for 10 years prior to be selected to the bench
• Be under the age of 70
• All justices must retire at 70 years
Fl. Chief Justices

- Chief Justices for appeals courts are selected by peer vote
- Serve for two years
Interim vacancies

• Judicial nominating commission prepares short list for 3 - 6 candidates
• Governor selects successor from that list
• The appointee serves one year after which he/she submits to the next general election
Circuit & County Judges

• Also selected through a nonpartisan election
• Serve 6 year term & must run for re-election
• 597 Circuit Court Judges
• County may use merit system but first to be approved by voters
Judicial Nominating Commissions

• Since 2001
• 9 members, all appointed by the governor

Must consider;

• Racial, ethnic & gender diversity, & geographical distribution when making his or her appointments.
Other Judicial Actors

• Prosecutors
• Defense attorneys
• Public defenders
• Juries
Sentencing guidelines

• Indeterminate Sentencing: min & max time in prison but parole board determines release;

  vs.

• Determinate sentencing: Prison duration set by sentencing judge
• Mandatory minimum sentencing; shortest time court can sentence an offender
• Habitual offender laws: Harsh sentencing time fore repeated offender
• Truth-in-sentencing laws: Laws that restrict Parole board’s ability to reduce sentencing time
• https://www.youtube.com/watch?v=ibpapm0zG4w
• https://www.msnbc.com/am-joy/watch/gun-control-arguments-florida-congressman-on-nra-gop-1176523331840
• https://www.youtube.com/watch?v=w4U0GPaijZg
Key Terms

- Plaintiff
- Defendant
- *En Banc*
- Plea bargain
- Amicus curiae
- Habeas corpus
- Indictment: formal criminal charge
- Recidivism
- Grand Jury: Group of 16-23 citizens who determine if a case goes to trial
- Judicial activism & restraint
- Stare Decisis