

I.

Chapter 10

Courts

laws central to any political society
laws are hoe of who gets what and how

Laws and U.S. legal system:

Laws limits and restricts of behaviors
“assumed God-given
“make life more convenient

Role of Law in Dem.: five functions

- 1.) Provide security
- 2.) provide predictability
- 3.) conflict resolution by 3rd parties courts
- 4.) reflect and enfance to society values
- 5.) distributes benefits and rewards society offers, allocate costs of good things

American Legal Trade

- 1.) have system founded on civil law trad.
- 2.) common law-judges made law rely on precedent=stare decisis
US not pure common law system
- 3.) US is adversarial system, get to truth in combat of legal persons
judges-passive
- 4.) Inquisitorial system-discover “who did it”
- 5.) American courts today-theater media shows

US-litigious-American citizens sue each other a lot, more lawyers than anywhere else

Kinds of Law

Substantive-actual content on substance defines what we can and cannot legally do

Procedural-established the procedures used to conduct the law-how law is used or applied and enforced

Criminal-prohibits specific behaviors that govts. aren't good for public peace

pay debt to society
violate civil law= tort not crime
compensatory and punitive damages
OJ-beyond reasonable doubt preponderance of evidence

Constitution laws- laws that are in the constitution

Statutory, Adm, Exec Orders:

Stat- made by Congress and Sts Legs, bur under
Long=national and state levels

Bur-established by bur on behalf of long
=admin laws

Exec-orders-made by Pres.
'48' Truman ended mil segregation

Const. Prov and Development of Jur Rev (JR)

jur power vested in the S.C. and inferiors courts

SC-specifies which cases come directly to SC (ambos, minst, and counsels sts)

rest in appeals

Judicial Act-1789-sec 13

Founder-create in-depth jud-headed by SC-New Ideas

Ham Fedno 78-jud least dangerous
branch of govt.

at first meeting in basement of senate

John Marsh and JR

John Marsh-3rd c justice-court created power of JR-power review acts of other
branches if run counts to prin of Const.

Ham Fed No. 78-clear will of people

Marbury vs. Madison

JR engineered power of Marbury and case, said dept. of govt. say what Const.
says

1803-JR again 1857-SC struct divisons

Missouri Compromise-since then fewer than 150 times

Struct and org of Dual Courts system

2 separate court systems

50 sts and 1 nation

most work done here

4 basic factors determine where case goes:

1.) involve NAT Gov-treaties, not laws, Const

2.) sts involved, where case arose; how serious offense is it

Cases come Nat and Sts-by org and appeal jur.

AJ and OJ-bear on appeals

II.

Cha. 10 Legal Systems

Sts 3 Tiers sys:

1) trial

2) county and municipal, minor and major levels

3) 50 sts supreme courts- panel 5 to 9 justices hear these

Fed 3 tiers sys:

1) Dist. C – at least 1/st

2) appeals – 12 circuits sole function to hear cases NC in 4 circuit

3) judges rotate and her cases, 60% of judges appoint by Reagan and Bush 41

‘Sr’. courtesy- fed Dist. judge in Party of Sr.

SC- judges chosen for their pol ideology
lib- cons- continuum.

Merit- Ginsburg- smoked mary jo- withdrew his name
- Thomas- Hill- sexual harassment- court ethics

Ike- biggest damn fool mistakes I've ever made Warren and a strict constructionist-
amend done only by amend not jur interp

vs B judicial interpretivism (opposite)

½ people nomin to SC- known by Pres personally

peps of groups- jews, blacks, women, catholics
no Hispanics, am Indians, asian-am
women- O'Conner and Ginsburg

3points in dm process where pol appears
1st – selecting what cases to hear
SC get about 7,000 petitions to reduce to 90-120
most come from appeals (not OJ)
by writ of certiorari
filling fee \$200- if hear it goes to \$300

if poor- file “informa pauperis”

for SC hear a case- must be a real controversy & courts jur must be a judicial issue not a
pol quest

Role of law clerks-
responsible for reviewing certiorari petitions
30 pages long and appendixes and summaries 2 to 5 pages
include recommendation to judge
only John Paul Stevens in a cert pol

Case make it to “discuss list” takes a vote of 4 justices to agree to grant certiorari
less than 5% of cases get to be heard by SC

other influences

- 1) is case against US govt – if so Solicitor reps US gov
- 2) judges- influenced by amicus curiae briefs- friend of court documents

Deciding case- both sides get 30 mins, judges have diff views of how to interp the const:

- 1) jud activism- ok to over turn precedents
- 2) jud restraint- use stare decisis reject active lawmaking by SC- see this as unconst

Pres & Senate- select all fed judges

Jud- influenced by external factors

- reflect maj po of Ams, what shapes po seems to also shape courts decisions
- exec branches desires solicitor gen wins 70-80% of time
- IG- friend of courts rights, nomination and conformation
- need 4 other justices to decide case (5 total)

writing opinions

Chief Justice- assign writing if he si in maj, if not Sr. member assigns opinion

concurring- agree with maj but for different reason

dissenting opinion- disagree with maj

(eg Plessy v Ferguson 1896, sep but = ok)

Brown v Board of Education 1953 (sep but = unconstitutional) end public school seg

Pol effects of jud decisions

policymaking role of courts in Nat History

Marshall- JR; implied powers, &; Nat regulates interest commerce

Courts- central to keeping soc order and conflict resolution, fundamental component of Am pol

Equal treatment by CRJ sys-

OJ- AA- not guilty

OJ- White guilty as SIN

66% AA- see CRJ as racist

37% white- see CRJ as racist

½ felons- have court appoint attorneys

- get pro bono publics for public good

\$ is defining element of Am CRJ sys

defense lawyers tricks- casting ____? and coaching witnesses

if you're poor- you are at mercy of the prosecutorial sys

Equal Access to Civil Just

the issue with respect to criminal justice is = treatment the issue for civil just sys is equal access

Legal Service Corp created by Cong in 1974 is non profit org that provides resources to over 260 legal aid programs, LSC helps citizens with legal problems – housing, employment, family issues, finance, immigration

