Political Science
Legal Studies 217

Adjudication

Functions of Law
- Establish relations between government and the people
  - Powers of government
  - Enunciate rights of the people
- Allocate social & economic resources
- Establish and enforce standards of behavior
- Prevent and settle disputes

Function of Courts
- Enforce standards of behavior
  - Determine whether standards have been violated
  - Impose sanctions for violations
  - Determine level of compensation
- Determine whether a dispute exists
  - Probate
  - Adoption
- Resolve disputes that do exist
  - Factual disputes
  - Legal disputes
Adjudication
Dispute resolution by the courts involves “adjudication”
"The application and interpretation of a previously defined set of norms or rules, generally involving a dispute between two or more parties, by an impartial third party"
- Dispute
- Pre-existing norms
- Two or more parties
- Impartial third party

Impartial Ideal
- Adjudicator has no personal stake in the decision
- Adjudicator has not prejudged the issue
  - Judicial elections
  - Justice Scalia and “Under God”
- Ideal and reality
- Adjudicator often has a stake
  - Political/professional
  - Psychological (sympathy for a party)
  - Indirect economic status quo
  - Personal morals/ethics

Dispute
- Grievance
  - Perceived Injurious Experience
  - Blaming
- Claim
- Rejection
Developmental Theory of Dispute Processing

- Injurious Experience
- Perceived Injury
- Abandon
- Grievance
- Confrontation
- Abandon
- Claim
- Resolution
- DISPUTE

Adjudication Forums

- Courts
  - General
  - Specialized
- Quasi-courts
  - Administrative tribunals
- “Private” adjudication
  - Arbitration
  - “Rent-a-judge”

Courts as Dispute Processors

- Huge range of cases
  - Gargantuan
  - Minuscule and trivial
- Disputes over facts
  - Largely trial courts in U.S.
- Disputes over law
  - Initially at trial level
  - Primary role of appellate courts in U.S.
Purposes of Dispute Resolution and Adjudication

- Vindication
- Compensation
- Deterrence
  - Individual
  - General
- Retribution
- Restorative justice
  - Peacemaking

Types of Adjudicators

- Professional adjudicators
  - Single judge courts
  - “Collegial” courts
- Lay adjudicators
  - Juries
  - Lay judges
- Mixed tribunals
  - Lay “assessors”
- Part-time vs. Full-time adjudicators

Adjudication and Procedure

- No single type of procedure need be associated with adjudication
- Formalized systems
  - Adversarial system
  - “Inquisitorial” or “Investigatory” system
- “Informal” systems
  - Qadi system
  - Headman system
  - panchayat system in India
  - Peacemaking or Sentencing circle
Adjudication and Trial

- Adjudication need not involve a trial
  - Much adjudication takes place outside court
- In court, adjudication outside trial
  - Trial associated with resolving disputes over facts
  - Disputes over law, are resolved through briefing and argument before a judge
- The “myth” of settlement

Resolution in the Shadows

- Shadow of the Law
  - Law’s demands
  - Ambiguity: law’s fuzzy shadow
- Shadow of the judge
  - Judicial discretion
  - Judicial preferences
  - Judicial experiences
- Shadow of the jury
  - Judge vs. Jury

Litigation

- Defined: “the strategic pursuit of settlement through mobilizing the court process”
  - Marc Galanter
- Negotiation in the shadow of adjudication
  - Civil litigation
  - Guilty plea process