Political Science
Legal Studies 217

Judges

Professional and Lay Judges

- “Professional” judges
  - Formal legal qualifications
  - Full-time (with some exceptions)

- Lay judges
  - Lack formal legal training
  - Part-time (with some exceptions)

Expectation of Judges

- Conflicting goals
  - Independence
  - Responsibility to the community
  - Competence/Expertise

- Balancing the goals involves
  - How judges are selected
  - Tenure in office
  - Removal of judges
Methods of Selection

- Appointment
  - Political appointment
  - Elite appointment
  - Civil service appointment
- Election
  - Partisan
  - Nonpartisan
- Mixed: appointment with election
  - "Merit" selection
  - Bureaucratic career

Tenure of Judges

- "On good behavior"
- At the pleasure of the appointing official
- Until mandatory retirement age
- For fixed term
  - With the option of reselection
  - Without the option of reselection

Firing Judges

- Impeachment
- "Address"
- Disciplinary system
- Non-reappointment
- Electoral defeat
- Electoral recall
- Simple dismissal
Federal Judicial Selection

Constitutional Provisions

- Article 2:
The President shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law . . . but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law or in the Heads of Departments.

- Article 3:
The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour.

Federal Judicial Selection

in Practice

- Officers or “inferior” officers?
  - “Article III” courts
    - Article I: “[Congress shall have the power] To constitute Tribunals inferior to the supreme Court
  - “Article I” (section 8) courts
    - The Congress shall have power to lay and collect taxes
    - To establish ... uniform laws on ... bankruptcies
    - To make rules for the government and regulation of the land and naval forces

Politics of Federal Judicial Selection

- Three players or groups of players
  - President
  - Senate
  - Interest groups
    - Legal interest groups (ABA)
    - Policy interest groups
  - Relative power varies
    - Supreme Court
    - Court of Appeals
    - District (Trial) Court
Removing Federal Judges

- No Supreme Court justice has been removed through impeachment
  - Samuel Chase (1804)
  - Abe Fortas (1969)
  - William O. Douglas (early 1970s)
- Lower federal judges
  - After conviction for criminal offenses
- Calls for impeachment after unpopular decisions

Federal Article I Judges

- Court of Federal Claims, Court of Appeals for the Armed Forces, Tax Court
  - Presidential appointment to fixed term
- Magistrate and Bankruptcy judges
  - Judicial appointment to fixed term
- Administrative law judges
  - Agency selection through civil service examinations administered by Office of Personnel Management

State Judges: Appointment

- The federal model
  - Fixed term and/or mandatory retirement
  - Legislative confirmation
  - Legislative “appointment”
- Nominating commission model
  - Formal: “Merit” selection
  - Informal
State Judges: Elections
- Traditional election
  - Vacancy problem
  - Power of Incumbency
  - Absence of voting cues
  - Partisan vs. nonpartisan elections
  - Partisan cues
  - Name recognition
- Retention election
  - Infrequency of defeats

The Work of American Judges
- Supervise criminal process
  - Issue warrants
  - Set bail
  - Determine probable cause
  - Rule on admissibility of evidence
  - Conduct trials
    - Bench
    - Jury
  - Impose sentence
    - Sentencing guidelines

Work, continued
- Civil justice process
  - Oversee/manage pretrial process
    - Managerial judging
  - Resolve procedural disputes
  - Litigation
  - Conduct trials
- Family law
  - Divorce
  - Custody
Work, continued

■ “Ministerial” functions
■ Adoption
■ Probate
■ Guardianship
■ Adversarial model?
■ Administrative law
■ Review administrative decisions

Decision Making

■ Legal model
■ Text, precedent, intent
■ Preference models
■ Attitudes
■ Ideology
■ Strategic model
■ Collegial courts
■ Other actors
■ Process models
■ Courts as organizations

Integrated Model of Judicial Decision Making
Judges in England

- Elite selection model
  - Department of Constitutional Affairs
    - Formerly: Lord Chancellor's Department
  - Lord Chancellor's authority
- Closed process
  - Pool is very small
- Serve at the pleasure of the Crown
  - Mandatory retirement at age of 75
- Opening the judiciary to solicitors

Work of Judges in England

- Similar to the U.S.
  - Wigs, gowns, and “My Lord”
  - Lay magistrates handle minor criminal matters
  - No juries in civil cases
    - Greater role in jury trials through process of “summing up”
- Judges and inquiries
  - Inquiries as alternative to lawsuits

Training Judges in Common Law Systems

- Training the new judge
  - Special training programs
  - Learning on the job
    - From colleagues
    - From lawyers
    - From support staff
- Judicial training programs
  - National College of the Judiciary
  - Federal Judicial Center
- Continuing education for judges
Civil Law Judges

- Judge as technician
- Bureaucratic career model
  - Entrance by competitive examination
    - No lateral entry
    - Possible exception at highest courts for legal scholars
  - Judicial training institute
  - Performance evaluation by superiors
  - Advancement by performance evaluation and seniority

A Different Balance ...

- Technical expertise/competence
- Independence
- Responsiveness

Pressures on Civil Law Judges

- Need to please superiors
  - Reversal may be a greater concern
  - Anonymity is preferred
- Need to maintain the image that law is a matter of technical decision making
  - Creativity is not rewarded
- Need to maintain consistency
  - Justice is NOT local