

More Stuff about Courts

How does it Percolate? Legal Reasoning!

- Adversary system: 2 sides make their best arguments.
- The cite precedent.
- Precedent: previous similar cases (esp. decisions of higher courts)

Other Widely shared ideas

- Stare decisis: "let the decision stand"
 - Court should not change a precedent unless there is a strong reason
 - Example: recent Supreme Court decision upheld Miranda warnings
- Norm of "nonpolitical" decision making
 - Lawyers hate the idea that politics enters decisions

Agree To Disagree

- Most people agree:
 - Judicial review is OK
- Most people disagree about
 - Particular decisions, especially about the "rights of criminals"

Judicial Activism

- Is "judicial activist" an insult?
- Maybe. It is certainly confusing.

I say judicial activism means

- Court willing to enter "controversial" areas and fight with Congress, president, or state legislature
- Court is willing to impose its judgment in place of the "properly elected" branches

Example of Judicial Activism

- Strike down Congressional law banning flag burning
- 2000 presidential election: Order Florida to stop recount
- Tell state police to read Miranda Warnings
- Order stop to executions

How Does the Sup. Ct. Work?

- The Choose Cases
- Court is highly selective
 - "mandatory appeals" rare
 - writ of certiorari: losers in lower courts ask Sup. Ct. to "make more certain" a decision
 - Sup. Ct. uses "rule of 4" to select cases

Deciding in the Court

- Sup. Ct.: majority rule!
- Cons./lib./mod/ "blocks" often exist
- Opinion=essay about case
- Majority opinion (for the Court)
- Dissenting (Minority) opinion
- Concurring opinion

Appointment Politics

- Federal judges serve life terms (not so: state and local judges)
- Presidential appointment: how "political" should it be?
- Senatorial courtesy: Pres. takes input from same party Senator about district judges
- Senate has typically approved appointments
- Some Notable battles for "ideological" appointments

Critique 1: quality of policy

- Courts decide specific cases
- Do these accumulate to good public policy?
--Mental health—homelessness

Critique 2: Judicial Implementation

- Lower courts must interpret and apply
- Sup. Ct. cannot "pro-actively" supervise decisions—must wait for appeals

Critique 3: Weaknesses against the bureaucracy

- Courts lack effective tax and administrative powers (desegregation counter example)