The Three Most Important Features of My Country's Legal System that Others Should Understand

By

Judith Areen, Paul Regis Dean Professor of Law, Georgetown University

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From the very beginning of our nation, law has had an important role in establishing and in limiting the powers of the government, and in protecting the rights of citizens. In 1776, Thomas Paine wrote: "But where, says some, is the king of America?. . . In America the law is king."

I. Judicial Independence

The first important feature of the legal system in the United States I want to highlight is the independence of the judiciary, which is grounded in the Constitution itself. The judiciary is one of three branches of government established by our Constitution: executive, legislative and judicial. The governing theory of the framers of the Constitution was to divide power in order to prevent too much power in any one branch or person in order to avoid the establishment of monarchy or dictatorship. They established a system of checks and balances to maintain the system. Thus the President has power to execute the laws, but only Congress can make laws. The judiciary has the authority to interpret laws, including challenges brought by citizens that a particular law violates the provisions of the Constitution, but it can only decide cases over which it has jurisdiction.

The Constitution provides that there will be one supreme court, but says little more. It does not, for example, specify the size of the court. Although its size changed in the early years, for nearly two centuries the Supreme Court has had nine justices. Each one is appointed by the President, but must be confirmed by the Senate.

The Constitution also provides that the judges shall "hold their Offices during good Behaviour" which has been interpreted to mean hold office for life unless impeached by the Congress—an extreme sanction that has only occurred seven times in the history of our nation, and then only lower federal court judges were removed. No justice of the Supreme Court of the United States has ever been removed from office by impeachment.

The provisions governing judicial appointments and impeachment were included in the Constitution in order to encourage judges to decide cases on their merits, without fear of reprisals from anyone, including the President.

Congress was given the power in the Constitution to establish lower federal courts and today there are eleven sections of the country that have a federal appeals court, plus one for the District of Columbia, and one for the federal circuit that

specializes in patent law and in cases involving monetary claims against the national government. There are also 94 federal district courts, with at least one in every state. All of lower federal court judges are appointed by the same process used for appointments to the Supreme Court and they also have life tenure, again to encourage judicial independence.

The structure of courts and the degree of judicial independence is somewhat different at the state level, as will be discussed in the next section.

II. Federalism

The second important characteristic of our legal system, federalism, was also established by the Constitution. The country had been founded by thirteen former colonies, which denominated themselves States. The initial agreement of the thirteen, the Article of Confederation, was signed in 1781. That agreement provided for such a weak national executive that it became necessary to restructure the government. The states had learned that they needed to grant more authority to the national government than before, but they continued to fear granting too much. The Constitution of 1789 is the compromise that resulted.

The most important limitation on the national government embedded in the Constitution is that it is a government of enumerated powers only. Thus if there is no clause in the Constitution authorizing the national government to act in a particular area, then the power to act on that topic is reserved to the states. The boundary between the national and state governments has been the source of many legal disputes over the years. The Constitution does provide in the so-called Supremacy Clause that in the event that both the state and national government have power to act, then the national law trumps. But even in the twenty-first century, there have been several decisions by the Supreme Court holding that the Congress exceeded its constitutional powers in passing a particular law.

Federalism thus works in part because there is an independent judiciary to referee disputes between the national and state governments. Federalism also has the benefit of allowing most laws and their enforcement to be handled at the state and local level, thereby giving citizens more of a voice in shaping the laws that most affect their lives.

Citizens can also challenge state or local laws that they believe violate the rights provided to citizens in the national Constitution, including, for example, rights to free speech, press, religion, due process and equal protection of the laws. An independent judiciary ensures that a citizen can effectively challenge actions of either states or the national government.

In contrast to the procedure for selecting federal judges, there is no single pattern for the selection of state court judges. In some states they are picked by a process that resembles the national one. In other states, they are elected. In some states they have life tenure. In other states, they serve for a term of years and then must be either reappointed or reelected.

On matters involving state law, the decision by the highest court in a state is

definitive unless there is a claim that the state law violates the Constitution. Then the matter is properly heard by the federal courts.

There is continuing discussion of whether the practice of electing judges adopted in some states diminishes judicial independence. There is also concern that the fund-raising that accompanies some campaigns for judicial office risks limiting the impartiality of the bench.

III. Legal Education

The third and final feature of our legal system that I will discuss is the education of lawyers and judges. In the United States, lawyers and judges attend the same law schools. (Once someone is appointed as a judge, there are programs and courses available to provide additional education.)

All law schools require students to complete a college degree before they enroll. The theory is that given the many different positions lawyers hold in our nation and the broad range of problems they will face, students should complete a broad, liberal arts education before narrowing their focus to the more technical requirements of the legal system.

For the same reasons, the curriculum in law schools emphasizes problem solving rather than wrote memorization. In class, students are asked questions to encourage them to questions their own assumptions and those of others—including even decisions of the highest court. On examinations, students are typically given a problem they have never before encountered and ask to justify an appropriate solution based on other decisions and problems they have studied.

From its beginning, education has been as essential as judicial independence and federalism to the development of the United States. At the time of the revolution in 1776, there were already nine colleges granting degrees in the American colonies, compared to only two (Oxford and Cambridge) in England. For most of our history, we have educated a larger proportion of our population than any other country.

One of the most important court decisions governing higher education in the United States was the Dartmouth College case in 1819 where the Supreme Court held that the State of New Hampshire could not take over Dartmouth College, a private college with its own governing board. The decision provided vital protection for the development of strong private colleges and universities. In turn, these private institutions of higher education have provided healthy competition with public ones, and vice versa. That tradition of competition in higher education has been a significant factor in the development of a strong higher education sector in the United States.

To encourage innovation and variety in higher education, and to avoid the problem of too much central control, a system of private accreditation of schools was developed. Law schools in the United States, for example, are accredited by the American Bar Association, the professional association of all lawyers. Today there are 197 ABA approved law schools, some private, some public, some large, some small. Competition among them for both faculty and students is intense, and helps to

improve quality over all.

There is also a strong tradition of academic freedom in our colleges and universities, including law schools. Faculty can earn life tenure that is analogous to that provided to federal judges. Again, the purpose is to encourage independence. In the academy, that means independence in scholarly writings, in the classroom, and in speaking outside the university.

Law faculty, for example, regularly criticize actions of public officials and decisions by the courts, including the Supreme Court. This tradition of academic review and comment in turn encourages judicial impendence. Faculty are also encouraged to propose new approaches to national problems, and to suggest better legal standards, some of which are adopted by lawyers bringing cases, or legislatures drafting new laws. Law faculty admire someone who is willing to "speak truth to power" and encourage their students to carry on that same tradition of both excellence and independence in their careers as lawyers, legislators, and judges.