

The Appellate Courts' Role in the Federal Judicial System

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A. INTRODUCTION

The United States is a constitutional, federal democratic republic. This means three things. First, our government is a constitutional republic—a constitution both grants and limits the government’s power. Second, our government is a federal republic—a federation of states is united by a centralized federal government. The states retain some constitutionally protected autonomy, which cannot be revoked unilaterally by the federal government.¹ Third, our government is a democratic republic—the people elect government officials to represent them. This is, as Abraham Lincoln called it, “government of the people, by the people, and for the people.”² A democratic republic is distinct from a direct democracy. In a democratic republic, especially a constitutional democratic republic, the actions of government officials are subject to judicial review and judged in accordance with the rule of law. In contrast, a direct democracy is characterized by majority rule through the direct participation of all citizens.

The political power of the United States federal government is divided among three branches—legislative, executive, and judicial.³ Although each branch is separate and distinct from the other two (separation of powers), the branches remain interrelated. Together these branches form a system of “checks and balances,” under which each branch has the duty to both monitor (check) and limit (balance) the powers of the other two branches.⁴ The doctrines of separation of powers and checks and balances are reflected in the structure of the Constitution. Under American-style checks and balances, Congress passes federal laws that the executive branch enforces. The federal courts that constitute the judicial branch resolve disputes involving federal laws, including disputes

1. U.S. CONST. amend. X: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

2. Abraham Lincoln, President, Gettysburg Address (Nov. 19, 1863) (transcript available at the Library of Congress).

3. U.S. CONST. arts. I, II & III, respectively.

4. The terms “separation of powers” and “checks and balances” were originally coined by the French political philosopher Charles de Secondat, Baron de Montesquieu (1689–1755) in *THE SPIRIT OF LAWS* (1748) to denote a system of government distinct from the French monarchy.

over the constitutionality of such laws.⁵ The executive branch enforces those courts' decisions.

B. FEDERAL JUDICIAL SYSTEM

1. An independent judiciary

Article III of the United States Constitution establishes the judicial branch of the federal government by “vest[ing]” the “judicial Power of the United States . . . in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”⁶ To preserve the separation of powers and system of checks and balances, the Constitution ensures that the federal judiciary remains independent of the other two branches, and free from political influence, in two significant ways. First, federal judges, who are appointed for life, “shall hold their offices during good behaviour,”⁷ and can be removed from office only through impeachment.⁸ Second, the compensation of federal judges “shall not be diminished during their Continuance in Office,” meaning that neither the President nor Congress can reduce the salary of a federal judge.⁹

2. Role of appellate courts: to correct errors, develop legal precedent, and do justice

The judiciary's role is often described as fulfilling three functions: (1) correcting errors, (2) developing legal precedent, and (3) doing justice. Error correction is perhaps the most mundane judicial function. As Roscoe

5. The federal courts also resolve disputes involving diversity of citizenship even where the underlying dispute itself does not involve federal law. *See infra* Chapter 7, Jurisdiction. *See generally* U.S. CONST. art. III, § 2.

6. U.S. CONST. art. III, § 1.

7. *Id.*

8. As former Chief Justice William Rehnquist pointed out, the principle of judicial impeachment is not set forth in the Constitution. Rather, that principle was established in the presidential impeachment and Senate trial of Supreme Court Justice Samuel B. Chase. *See* William H. Rehnquist, Remarks to the Federal Judges Association Board of Directors Meeting (May 5, 2003), *available at* http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html. Justice Chase was ultimately not convicted and therefore not removed from office.

9. U.S. CONST. art. III, § 1.

Pound once opined, “Appeals are needful because they correct the unfairness or unskillfulness of those who adjudicate.”¹⁰ The tribunal of first instance can make several types of errors. For example, the court might apply the wrong legal rule. Or the court might apply the right legal rule but make an error in its application. The court might even make a mistake in its fact-finding role. Although a reviewing court generally subjects questions of law to rigorous standards of review, the question whether the lower court has made a mistake of fact is subject to a fairly deferential standard of appellate review.¹¹

The error-correcting function of appellate courts can be viewed as a judicial duty that affects individual rights. In other words, the individuals directly affected by the appellate court’s correction of error are the litigating parties. Indeed, in a judicial system guided by common law, the litigating parties are often the only individuals affected by the appellate court’s decision because such decisions are often limited to the particular facts of the case or controversy.

Appellate courts can also develop legal precedent, a function that should not be confused with the legislative role of enacting laws or the executive role of enforcing laws. Congress, not the federal courts, makes the laws. The executive branch departments and agencies enforce those laws—a power the judicial branch does not generally possess. Rather, the federal courts interpret and apply the law to resolve disputes.¹²

Notwithstanding the judicial branch’s limited role, appellate courts in the American common law tradition play a significant role in developing legal precedent. When reviewing lower court decisions, appellate courts are often asked to fill statutory, regulatory, and common-law gaps in the law. In doing so, the appellate court may end up articulating a new legal rule. In a common-law system, where cases are decided by rules of law often developed by the appellate courts, the judiciary’s role of determining whether the correct legal rule was applied and whether it was applied correctly often merges with its more expansive role of develop-

10. ROSCOE POUND, *APPELLATE PROCEDURE IN CIVIL CASES* 3 (1941), *reprinted in* ROBERT J. MARTINEAU ET AL., *APPELLATE PRACTICE AND PROCEDURE: CASES AND MATERIALS* (American Casebook Series, Thomson West 1987).

11. How the appellate courts review for such errors is the subject of Chapter 5, Standard of Review.

12. For a basic summary of the judiciary’s role, *see* <http://www.uscourts.gov/about.html>.

ing legal precedent to be used to resolve future cases or controversies. It is in this way that the judicial duty affects collective rights.

Whether correcting errors or developing legal precedent, courts are always fulfilling their most fundamental function of doing justice. In the case of correcting errors, the court is doing justice with respect to the individual whose rights are affected by the particular case or controversy. And when the court is developing legal precedent, the court is doing justice more broadly—for all citizens subject to its jurisdiction. For these reasons, the federal courts often are called the “guardians of the Constitution”¹³ because their rulings protect rights and liberties guaranteed by the Constitution.

3. The hierarchical appellate court structure

The federal judicial system comprises a three-tiered hierarchical court structure. At the bottom tier are the district courts.¹⁴ District courts are the trial courts for the federal judicial system. There are 94 federal district courts, with at least one district court in every state.¹⁵ Trials conducted by district court judges are governed by the Federal Rules of Civil Procedure,¹⁶ Federal Rules of Criminal Procedure,¹⁷ and the Federal Rules of Evidence.¹⁸

The middle tier comprises 13 appellate courts known as the United States Courts of Appeals or the circuit courts.¹⁹ Appeals heard by appel-

13. That phrase is taken from THE FEDERALIST NO. 78 (Alexander Hamilton), *The Judiciary Department*, originally published June 14, 1788, available at <http://www.constitution.org/fed/federa78.htm>.

14. There are other courts in the federal court system, such as the bankruptcy court, over which the district courts have review. A thorough description of the place of the bankruptcy courts in the federal court system is available at <http://www.uscourts.gov/bankruptcycourts.html>. The district court judges also appoint federal magistrate judges. A description of their role is available at <http://fedjudge.org/>.

15. An excellent chart of United States federal district courts is available at <http://www.uscourts.gov/images/CircuitMap.pdf>.

16. FED. R. CIV. P. available at <http://www.law.cornell.edu/rules/frcp/> & <http://www.uscourts.gov/rules/CV2008.pdf>.

17. FED. R. CRIM. P. available at http://www.law.cornell.edu/rules/frcrmp/#chapter_i.

18. Available at <http://www.law.cornell.edu/rules/fre/>.

19. 28 U.S.C. §§ 41, 43 (2006).

late court judges are governed by the Federal Rules of Appellate Procedure.²⁰ These courts include the United States Courts of Appeals for the First through Eleventh Circuits, the United States Court of Appeals for the District of Columbia Circuit, and the United States Court of Appeals for the Federal Circuit. Each of the 11 numbered circuit courts and the D.C. Circuit are composed of the federal judicial districts within that circuit and hear appeals from those district courts.²¹ The D.C. Circuit also hears some cases on the basis of subject matter, such as appeals (known as petitions for review) from the National Labor Relations Board.²² By contrast, the Federal Circuit has nationwide jurisdiction over appeals based on subject matter. The Federal Circuit is most famously known for hearing all patent-related appeals from the district courts, but it also has jurisdiction over other matters. In particular, Congress vested the Federal Circuit with exclusive jurisdiction over appeals from the following tribunals: U.S. Court of Federal Claims, U.S. Court of Appeals for Veterans Claims, U.S. Trademark Trial and Appeal Board, U.S. Board of Appeals and Interferences of the U.S. Patent and Trademark Office, Board of Contract Appeals, U.S. Merit Systems Protection Board, U.S. International Trade Commission, U.S. Court of International Trade, and U.S. district courts for certain patent appeals arising under 28 U.S.C. § 1338.²³

In the federal system, the United States Supreme Court is the court of last resort and thus constitutes the top of the judicial branch's three-tier structure. The Supreme Court consists of a chief justice and a number of associate justices currently fixed by Congress at eight.²⁴ Justices are nominated and appointed by the President, "by and with the advice and consent of the Senate."²⁵ The Supreme Court has original jurisdiction in a small number of cases. These include cases between the government and "Ambassadors, other public Ministers and Consuls . . ." ²⁶

20. Available at www.uscourts.gov/rules/appeal2007.pdf.

21. See 28 U.S.C. §§ 41, 1294 (2006).

22. See, e.g., 29 U.S.C. § 160(f) (2006). Appellate jurisdiction of final decisions and orders issued by administrative agencies is discussed in Chapter 18, Appeals from Agency Decisions.

23. See 28 U.S.C. § 1295 (2006). For a brief summary of the Federal Circuit's jurisdiction, see <http://www.cafc.uscourts.gov/about.html>.

24. 28 U.S.C. § 1 (2006).

25. U.S. CONST. art. II, § 2.

26. *Id.*

and controversies between two or more states.²⁷ Also, Congress granted the Supreme Court original, but not exclusive, jurisdiction over all private cases involving ambassadors, all controversies between the United States and a state, and all actions by a state against a citizen of another state or against aliens.²⁸

The Supreme Court hears the vast majority of its cases through appellate jurisdiction. Appellate jurisdiction is discretionary and can be invoked by “any party” that files a writ of certiorari with the Court.²⁹ The Supreme Court’s appellate jurisdiction is defined primarily by Congress. Since the Judiciary Act of 1789, Congress has provided two paths for Supreme Court appellate review: (1) judgments of specified lower federal courts³⁰ and (2) final judgments of state courts of last resort that involve the U.S. Constitution, treaties, or federal laws.³¹ The Court’s discretionary jurisdiction has been further refined by Supreme Court Rule 10.³²

Under Supreme Court Rule 10, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion,” and “will be granted only for compelling reasons.”³³ Rule 10 explains that the Supreme Court considers certain specified circumstances to be potentially “compelling” reasons for granting certiorari. The first potentially compelling reason is that a decision of a U.S. court of appeals conflicts with the decision of another U.S. court of appeals “on the same important matter,” “decide[s] an important federal question in a way that conflicts with a decision by a state court of last resort,” or “so far depart[s] from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power.”³⁴ The second is that “a state court of last resort has decided an important federal question in a way that conflicts with the decision of

27. See 28 U.S.C. § 1251 (2006).

28. *Id.*

29. 28 U.S.C. § 1254(1) (2006).

30. 28 U.S.C. § 1254 (2006).

31. 28 U.S.C. § 1257 (2006).

32. This discussion of the Supreme Court’s appellate jurisdiction is taken primarily from ROBERT L. STERN ET AL., *SUPREME COURT PRACTICE* ch. 2 (BNA Books 8th ed., 2002).

33. See SUP. CT. R. 10.

34. SUP. CT. R. 10(a).

another state court of last resort or of a U.S. court of appeals.”³⁵ Finally, the third is that “a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.”³⁶

Significantly, United States Supreme Court Rule 10 makes explicit that “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”³⁷ In other words, Rule 10 clarifies the Court’s tradition of minimizing its error-correcting function in favor of developing legal precedent by resolving conflicts only on important federal questions. As Chief Justice Rehnquist noted, Congress has transformed the Court “from an error-correcting court of general appellate jurisdiction to a court whose special concerns are constitutional interpretation and significant questions of federal law.”³⁸

C. APPELLATE REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

Appeals from administrative agencies follow a different, albeit overlapping, set of rules. Those rules, where different, are treated separately. The purpose of this section is to introduce the concept of administrative agency decision-making.

Administrative agencies are part of the executive branch, which generally enforces the laws. The constitutional authority for creating administrative agencies can be found in Article I, Section 1, which states that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States,” and the “necessary-and-proper” clause, which empowers Congress “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers . . . in any Department or Officer thereof.”³⁹

35. SUP. CT. R. 10(b).

36. SUP. CT. R. 10(c).

37. SUP. CT. R. 10.

38. William H. Rehnquist, *Seen in a Glass Darkly: The Future of the Federal Courts*, 1993 WIS. L. REV. 1, 11 (1993).

39. U.S. CONST. art. I, §§ 1, 8.

There are two main types of administrative agencies: departmental agencies and independent agencies. Executive branch departmental agencies are the 15 federal executive departments headed by a member of the President's cabinet: State, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, Veterans Affairs, and Homeland Security. Almost all other administrative agencies outside the cabinet are independent federal agencies, which are created by Congress to administer particular congressional acts. Most independent federal agencies can enforce their statutory mandates by rulemaking or through adjudication, although most rely primarily on rulemaking. For example, the Security and Exchange Commission, an independent federal agency established by Congress in 1934⁴⁰ to administer the Securities and Exchange Act,⁴¹ tends to engage in rulemaking, whereas the National Labor Relations Board (NLRB), an independent federal agency established by Congress in 1935 to administer the National Labor Relations Act (NLRA),⁴² tends to enforce the NLRA by adjudication.

Administrative agencies employ experts in the field that the agency administers. For example, the SEC consists of five commissioners, experts in securities law, appointed by the President with the advice and consent of the Senate. The NLRB comprises five labor law experts—one chairman and four board members, in addition to a general counsel, who is also a labor law expert.

D. CONCLUSION

The remaining chapters of this book guide the reader through the process of appellate advocacy. It is our goal to educate those practicing and those aspiring to practice at the appellate level in hopes that the bar will help the appellate courts to correct errors, develop legal precedent, and do justice.

40. 15 U.S.C. § 78d (2006).

41. The SEC enforces other, later enacted statutes as well.

42. 29 U.S.C. §§ 151–169 (2006).