AN INTRODUCTION to the Legal System of the United States

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FOUR

The Judicial System

A salient characteristic of the American judicial establishment is its cleavage into parallel systems of state and federal courts. How are these systems organized and what are the limits of their jurisdiction?

A Dual System of Courts

For the most part, law in the United States can be conveniently classified, according to its sources, as decisional law or as legislation.[1] The judicial system is the best starting point for an inquiry into the sources of law for, though decisional law stands below legislation in the hierarchy of authorities, and case law is subject to change by statute, the judiciary has been the traditional fountainhead of law in America as in other common-law countries.

[1] Custom, a third possibility, is usually thought to be relatively insignificant as a source of law in the United States. It may be used, for example, in interpreting a contract or in determining whether a prescribed standard of conduct has been met, but rarely has it given rise to a new legal rule. *But see* Chapter 1, *supra*, for an example of the use of custom as a source of water and mining law.

One of the results of the particular form of federalism that has grown up in the United States is a judicial structure in which a nationwide system of federal courts functions alongside the state courts.

State Courts

The great bulk of all litigation comes before the state courts. Each state by constitution and statute has established its own system, and the lack of uniformity from state to state makes it impossible to give a detailed description to fit all states. Too often, the state courts bear the stamp of conditions and concepts belonging to the time of their origins, which are now changed or outmoded. In the late eighteenth century, when the first court systems were established, travel was difficult, and communication was slow. The response was to create a number of courts of general jurisdiction to bring justice close to the people, who soon came to regard the state court in their locality as their own particular possession. This policy of multiplication of courts and decentralization of the court system has persisted until modern times. In recent years, however, considerable progress has been made in the simplification of state court systems and in the improvement of judicial administration. This is perhaps best illustrated with the growth of electronic records of the courts, allowing litigants, lawyers, and others to observe the work of the state courts without travelling to each courthouse.

In each state, there are trial courts of general jurisdiction, which are called by such names as the superior courts, circuit courts, or courts of common pleas.[2] A single judge presides, whether there is a jury or not, and is generally competent to hear all cases, civil and criminal, that are not restricted to special courts or divisions. Such special courts or divisions with limited jurisdiction may include criminal courts, domestic relations or family courts, juvenile or children's courts, and probate or surrogates' courts for decedents' estates. In addition, there are courts of inferior jurisdiction that handle petty matters. These were traditionally the justice of the peace courts, which are now often called justice courts, but they have often been

[2] Circuit courts are so called because at one time judges traveled about "on circuit" to hold court. In New York, the court of general jurisdiction is known as the Supreme Court, Trial Term.

supplanted by county, municipal, small claims, police, and traffic courts. Neither at the state nor the federal level are there special commercial courts like those in some countries.

At the top of the state judicial system is the highest appellate court of that state. In most states, it is called the supreme court; in some it is known by another name, such as the New York Court of Appeals or the Massachusetts Supreme Judicial Court. The number of judges ranges from five to nine, with seven the most common number, including a chief justice and associate justices. In most states, there are intermediate appellate courts, usually called courts of appeal or appellate courts,[3] which are between the courts of general jurisdiction and the highest court and which are sometimes divided into specialized courts, such as a court specially tasked to hear criminal appeals.

Federal Courts

The decision of the framers of the Constitution to leave to Congress the power to create the lower federal courts, if it chooses to do so, has given flexibility and the opportunity for experiment within the federal judicial system. This system has three principal levels: the district courts, the courts of appeals, and the Supreme Court. There are also such special courts of limited jurisdiction as the U.S. Court of Federal Claims, the U.S. Court of International Trade, and the U.S. Tax Court.[4] Although there is no special system of administrative courts, there are many federal administrative tribunals that have adjudicatory functions within the various departments and agencies but that are not properly courts.[5]

The United States District Courts are the federal trial courts of general jurisdiction for both civil and criminal matters, including admiralty (or maritime) cases. They also review the decisions of some federal administrative agencies. There are some ninety-four district courts located throughout

3 In New York, where the Court of Appeals is the highest court, the intermediate appellate court is called the Appellate Division of the Supreme Court.

4 The Court of Federal Claims hears certain claims against the United States. Appeals from the Court of Federal Claims and from the Court of International Trade go to a special court of appeals, the Court of Appeals for the Federal Circuit.

5 On judicial control of administrative actions, *see* Chapter 12, *infra*.

the fifty states, the District of Columbia, and some territories. Some states contain only one judicial district, while other states are divided into as many as four. Although a judicial district may have a number of judges, depending on the volume of cases, a single judge generally presides over any given case, whether it is heard with a jury or not. The work of the district court judges is eased by magistrate judges and bankruptcy judges.

Appeals from a district court are generally heard in the United States Court of Appeals for the circuit in which the district is located.[6] In very rare instances, an appeal may be from a district court directly to the Supreme Court. There are thirteen such circuits, eleven comprising geographical divisions of the states and including a number of districts, a twelfth for the District of Columbia, and a thirteenth that reviews cases from specialized federal courts. These are the intermediary appellate courts in the federal system, but because of the limitations on review by the Supreme Court, they are, in practical matter, the courts of last resort for most federal cases. In addition to hearing appeals from the district courts, they also review decisions of certain federal administrative agencies such as the National Labor Relations Board. The number of judges in each circuit varies, but the judges ordinarily hear appeals in panels of three. In a few rare cases, all of the active judges of a court will reconsider a decision reached by a panel, in a proceeding *en banc*.

Appellate review of the decisions of the U.S. courts of appeals is in the hands of the U.S. Supreme Court, which since 1869 has consisted of nine members—one chief justice and eight associate justices—who sit as a body and not in panels. Their number has varied over time and is fixed by Congress.[7] It is the only federal court created by the Constitution; all others are creatures of congressional enactment under a grant of power in the Constitution. As will be explained shortly, it not only holds the highest appellate authority in the federal system but also has a limited power of

[6] A map of the districts and of the circuits is available at www.uscourts.gov/images/CircuitMap.pdf.

[7] The most recent attempt to change the number of judges on the Supreme Court came in 1937, when President Franklin Delano Roosevelt proposed what came to be known as his "court-packing" bill, an attempt to increase the size of the Supreme Court in response to Court decisions holding parts of his legislative program unconstitutional. That proposal was abandoned after the Court altered its philosophy regarding his program.

review over the state courts. However, the proportion of cases in which the Supreme Court reviews either federal or state courts is very small.

Federal Jurisdiction

The determination of the jurisdiction of the state and federal courts is a part of the more general problem of the distribution of state and federal power. Under the Constitution, the federal government has only those powers that are granted to it, and the residual powers are left to the states or to the people. Whatever judicial jurisdiction has not been given exclusively to the federal courts remains in the state courts, and so by determining what jurisdiction is given exclusively to the federal courts, what jurisdiction is given nonexclusively to the federal courts (which is concurrent jurisdiction), or that has not been given to the federal courts, the jurisdiction of both systems may be understood. It is therefore customary to discuss the division of judicial power in terms of federal, rather than state, jurisdiction.

Because the federal district courts were created by congressional enactment, their jurisdiction is defined not only by the constitutional grant of federal judicial power but also by the implementation of that power by federal legislation that began with the First Judiciary Act of 1789. Congress need not grant, and indeed has not granted, jurisdiction to the district courts to the full extent of the power given it by the Constitution.

The criminal jurisdiction of the district courts, which accounts for a substantial minority of all cases, includes all offenses against federal law. This includes federally recognized offenses against international law and state law.

Most of the civil business of these courts is of three kinds: first, cases in which the United States is a party; second, cases between private parties involving federal laws, under the so-called "federal question" jurisdiction; and third, cases between citizens of different states, under the so-called "diversity" jurisdiction.

The first category embraces not only criminal actions but also other actions brought "by the United States, or by an agency or officer thereof expressly authorized to sue by Act of Congress," as well as certain actions against the United States in which Congress has conferred jurisdiction upon the district courts. Its reason is evident: actions in which the

United States is a party, whether as plaintiff or defendant, are heard not in state courts but federal courts.

The second category, cases under federal question jurisdiction, consists of controversies arising under the Constitution, laws, or treaties of the United States. The reasons for this category are also apparent. The federal courts are thus charged with the vindication of federally created rights and the settlement of federally recognized causes of action.

The third category, diversity jurisdiction, includes cases in which the dispute is between citizens of different states including foreign states and the amount in controversy exceeds $75,000.[8] The reason for this category of jurisdiction is not entirely clear, but the conventional explanation is that the framers of the Constitution sought to avoid the partiality that might result if, for example, a New York creditor were obliged to try a claim against a Massachusetts debtor before a Massachusetts state court. In any event, some litigants prefer to be in federal courts today less from a fear of prejudice than from a belief that the court, the procedure, or the court calendar is more favorable to their interests. Diversity jurisdiction has been criticized from time to time and remains the most controversial ground of federal judicial power.

In some cases, Congress has made the jurisdiction of the federal courts exclusive. Thus, in cases under the federal criminal laws, in some admiralty (maritime) cases, in bankruptcy proceedings, and in cases under most patent doctrines and copyright laws, the matter cannot be brought before a state court. In most matters, Congress has not given the subject matter exclusively to the federal courts, and the jurisdiction of federal and state courts in these matters is concurrent, which means that the plaintiff can bring the action in either court. Cases of diversity jurisdiction and many cases of federal question jurisdiction are instances of concurrent jurisdiction. Thus, state-created rights may be enforced in the federal courts, and federally created rights may be enforced in the state courts. Where jurisdiction is concurrent and suit has been brought in the state court, however,

[8] This amount, which is a realistic assessment of the potential damages that might be paid to the plaintiff, is set by Congress and varies from time to time. *See* 28 U.S.C. § 1332 (2009). For the purpose of determining whether there is diversity, a corporation is regarded as a citizen not only of the state where it has been incorporated but also of the state where it has its principal place of business. Resident aliens are considered citizens of the state in which they are domiciled.

the defendant usually has the right to have the case removed to the federal district court. In these cases of concurrent jurisdiction, either party may select the federal courts, the plaintiff by the original choice of forum and the defendant by removal.[9]

Under the Constitution, the Supreme Court itself has original (or trial) jurisdiction over a few categories of cases, the most usual being disputes between states or between a state and the federal government. The trial is conducted by an officer of the court known as a special master, who is appointed for that case and who reports findings on the evidence to the Court for review and adjudication of the law. However, such cases are not common. The Court's jurisdiction is in the main appellate and is assigned, within constitutional limits, by Congress. The mechanism of review is designed to limit those cases that are to be decided on the merits with full consideration to a relatively small and manageable number, which are usually of some concern to the public at large as well as to the litigants.

One of the most important limitations on the work of the Supreme Court, as well as the lower federal courts, is that its jurisdiction extends only to "cases and controversies." It will decide lawsuits only between adversary litigants who have real interests at stake in a ripened controversy. Unlike some state courts, the U.S. Supreme Court will not give advisory opinions, even on constitutional questions, and even at the request of the president or Congress.[10] Another restriction is that federal questions must be "substantial" in order to confer jurisdiction on the Supreme Court. And in no event will the Court review decisions of the state courts on questions of state law that do not affect a federal law or constitutional interest. The state courts are themselves the final arbiters of state law, and their decisions are conclusive on such matters.

The principal method of review by the Supreme Court that has been provided by Congress is by writ of certiorari, a command issued from

9 There are some exceptions. A resident defendant who is sued in a state court by a nonresident plaintiff cannot remove on the ground of diversity.

10 However, the Declaratory Judgment Act authorizes federal courts, in certain circumstances including the existence of an "actual controversy," to render a judgment declaring the rights of the parties in advance of any claim for damages or other relief. The highest courts of several of the states are empowered to give advisory opinions to the state legislature or the governor.

the Supreme Court to the lower federal court or to the state court of last resort,[11] requiring it to certify and return the record of the proceedings in the case.[12] Even in a proper case, the issuance of such a writ is within the discretion of the Court.[13] It may be granted upon the petition of a party to any case before a federal court of appeals. It may also be granted to review a judgment of a state court of last resort where, for example, a state statute has been held to be invalid under the Constitution or other federal law. But certiorari will only be granted for "special and important reasons," and the fact that the decision below is erroneous is not such a reason. Circumstances that may influence the Court to grant certiorari include the existence of a conflict either between decisions among federal courts of appeals for different circuits or between a decision by a state court on a federal question and the decisions of the Supreme Court itself. While the bulk of the cases disposed of annually by the Court consists of requests for certiorari, it grants less than five percent of these and rejects the remainder as unsuitable for review. Thus, while the Court may dispose of nearly seven thousand cases a year, it decides very few on the merits and writes full opinions in only about one hundred.[14]

Law Applied in the Federal Courts

Because the federal government has only such powers as are conferred upon it by the Constitution, federal law is supreme only in limited areas. Litigation in American courts often involves complex problems of accommodation of state and federal law. In either a state or federal court, an action based on a right derived from state law may be met by a defense based on federal law, or conversely, one based on federal law may be met by a defense

11 The state court of last resort is the highest state court to which a particular case could be taken on appeal. It is usually, although not always, the highest court of the state.

12 Appeal is another method of review, but it is of limited significance in U.S. Supreme Court practice.

13 It is the practice to grant certiorari only on the concurrence of at least four justices.

14 The calendar of cases pending before the court and the opinions of the Court that have recently been announced are both available at http://www.supremecourtus.gov/. A survey of the work of the Court during the preceding year appears annually in the *Harvard Law Review*.

based on state law. The federal courts are thus frequently called upon to apply state law, and while the problem of giving effect in one jurisdiction to the laws of another is not peculiar to American federalism, the role of state law in the federal courts has had a unique history.

In 1842, in the landmark case of *Swift v. Tyson*,[15] the Supreme Court recognized the duty of the federal courts to give effect, on questions within the law-making competence of the states, to state law that was distinctively "local" in character, meaning in most instances that state statutes would be applied, because statutes were presumed more to regulate local matters. But if the subject matter of the case was considered to be "general law" (*i.e.*, the general provisions of the common law), the federal courts were under a duty both to ascertain the relevant legal principles independently and to apply these principles regardless of what the courts of the particular state would have done. Thus, there grew up a "federal common law," binding upon the federal courts but not upon the state courts, and the outcome of litigation might depend upon which court, state or federal, heard the case. Critics deplored the resulting "forum shopping" and the frustration of state policies. Defenders of the decision maintained that it contributed toward a needed national uniformity in the law.

In 1938, when the doctrine of *Swift v. Tyson* had been in force for almost a century, it was overruled by the U.S. Supreme Court in *Erie Railroad Co. v. Tompkins*.[16] The opinion of the Court in this historic case, by Justice Brandeis,[17] rested finally upon the constitutional ground that, in the absence of applicable federal legislation, the federal courts were bound to apply state case law no less than state statutory law. This decision has in turn given rise to a host of new problems.

The Supreme Court has interpreted the principle of the *Erie* case as requiring, in cases of diversity jurisdiction, that a federal court adjudicating

15 41 U.S. (16 Pet.) (1842).

16 304 U.S. 64 (1938).

17 Louis Dembitz Brandeis (1858–1941) practiced in Boston, Massachusetts, for about forty years after graduation from Harvard Law School, during which he argued many major cases and became famous for his long written arguments, or briefs, citing social science in support of his legal claims. He was appointed an Associate Justice of the Supreme Court of the United States in 1916, although he had previously held no judicial or other public office. In part, because of his allegedly "radical" position on social and economic issues, his confirmation aroused some of the most substantial opposition to meet any successful appointee to the Court. He served with great distinction until his retirement in 1939.

claims arising under state law arrive at substantially the same statement of the law as would a court of the state in which it sits.[18] The impact of this approach on choice of law is unique. Under this approach, a court hearing a case that might be subject to the substantive laws of a different forum, departs from the general rule that a court applies the choice-of-law rules of its forum to determine what foreign law, if any, it should apply. Instead, the federal forum gives effect to state law, and the federal court must follow the choice-of-law principles of the state in which it sits, in the manner that a state court would apply them.[19] Furthermore, the extent to which federal courts may apply federal rather than state law to matters that have usually been regarded as procedural is not free from doubt.[20] The issues raised by state law in the federal courts are generally complex and still in a state of flux.[21]

Suggested Readings

There is no comprehensive treatise on both federal and state courts, but a nice summary is in D. Meador, *American Courts* (2000). H. Abraham, *The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France* (7th ed. 1998) is a helpful comparative work. On the federal system, see C. Wright & M. Kane, *Handbook of the Law of Federal Courts* (6th ed. 2002). A biennial tabulation of information on state courts is contained in Council of State Governments, *The Book of the States*, Chapter 4, State Judicial Branch. For an introductory analysis of the role of the state and federal judiciary in government, see A. Tarr, *Judicial Process & Policymaking* (2009). Although very much a study of the U.S. Supreme Court, many of the insights also apply to state courts high courts in T. Van Geel, *Understanding Supreme Court Opinions* (5th ed. 2006).

18 Guaranty Trust Co. v. York, 326 U S. 99 (1945).

19 Klaxon v. Stentor Electric Manufacturing Co., Inc., 313 U.S. 487 (1941).

20 *Compare* Hanna v. Plumer, 380 U.S. 460 (1965), *with* Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530 (1949), discussed in C. WRIGHT & M. KANE, HANDBOOK OF THE LAW OF FEDERAL COURTS, section 59 (6th ed. 2002).

21 The extent to which the federal courts are bound by decisions of inferior state courts is discussed in *id.*