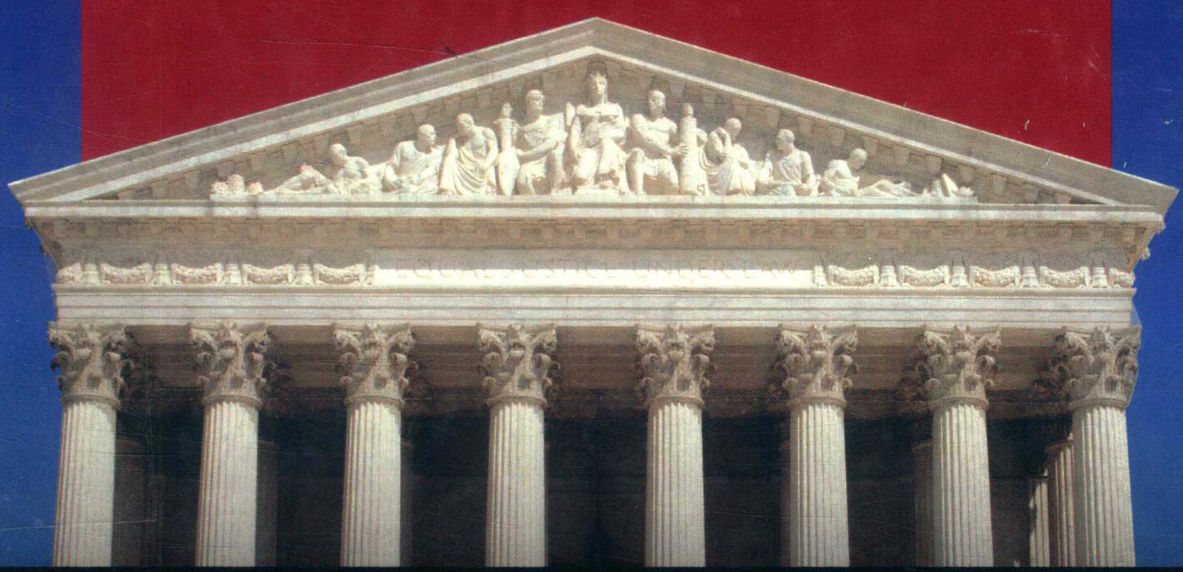
THE STATE AND FEDERAL COURTS

A COMPLETE GUIDE TO HISTORY, POWERS, AND CONTROVERSY

CHRISTOPHER P. BANKS, EDITOR



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THE STATE AND FEDERAL COURTS

Introduction

The State and Federal Courts: A Complete Guide to History, Powers, and Controversy stands as a comprehensive, one-stop resource for understanding the inner workings of the judicial branch of government, as well as the tremendous political and cultural impact of courts and judges in this hyper-partisan political era.

Many political observers believe that we live today in an era of spiraling political gridlock between the executive and congressional branches of government. This gridlock, which has sometimes given rise to conditions of virtual paralysis, has been most visible at the federal level. However, similar struggles have played out at the state level in numerous regions of the country. As a result, the judicial branch has assumed new prominence in our political system, with the power to make sweeping changes to the legal and political systems of the United States. And in this age of judicial activism at both the state and federal levels, courts have shown a willingness to exert that power like never before.

This volume will explain the foundations of the U.S. judicial system, discuss the impact of the courts on American society from the colonial era to today, and explore the many ways in which political calculations and considerations shape the allegedly nonpartisan world of the judicial branch.

Chapter 1 of *The State and Federal Courts: A Complete Guide to History, Powers, and Controversy* provides a detailed history of the American judiciary system at both the state and federal levels. It explains not only how the courts came to have the powers they possess but also how those powers are exercised.

Chapter 2 examines and explains the specific roles, functions, and powers of the state and federal judiciary branches, from the smallest circuit and district courts to the U.S. Supreme Court. The contents of this chapter encompass everything from the authority, responsibilities, and hierarchy of various courts to the selection, compensation, terms of service, and responsibilities of different kinds of judges.

Chapter 3 provides an overview of the processes of the judicial branch. Coverage includes the constitutional foundations of courts, the roles played by judges and juries, differences between original and appellate jurisdictions, types of courts (appeals, superior, family, probate, criminal, civil, etc.), and explanations of civil and criminal proceedings.

Chapter 4 shines a spotlight on political issues and controversies of the judicial branch. Essays in this chapter explore specific areas in which politics have

influenced the actions, character, and effectiveness of the judiciary. Readers will thus find authoritative and objective overviews of such topics as blue slips, filibusters of presidential nominations to the federal bench, partisan judicial elections, judicial review, judicial federalism, U.S. Supreme Court nominations and hearings, judicial activism, mandatory sentencing, impeachment/removal of federal judges, cameras in the courtroom, judicial specialization, public access to courts, and judicial independence. Other entries, meanwhile, will survey trends in federal and state rulings on such hot-button issues as abortion restrictions, gay marriage, gerrymandering, voting rights, the Affordable Care Act, property rights, privacy rights, defendants' rights, free speech, capital punishment, campaign finance, and gun ownership rights and restrictions.

The State and Federal Courts: A Complete Guide to History, Powers, and Controversy closes with three valuable supplemental features:

- A comprehensive glossary of legal and court terms
- An annotated bibliography of sources useful to readers interested in learning more about the history and workings of state and federal courts in the United States
- A detailed subject index

Together, these chapters and supplemental features constitute a unique and important resource for the study of the American judicial branch and the role it plays in shaping U.S. laws, politics, and society.

Contents

CHAPTER ONE

HISTORY OF THE JUDICIARY: FEDERAL AND STATE

Most of us know something about the basic structure of the federal and state governments in the United States. At the very least, we can name the three branches—executive, legislative, and judicial—and discuss the differences between them. At an early age, we are taught in school about the president of the United States and the different roles and responsibilities of the person who occupies the White House; we learn about Congress and the courts and their place in our government. In civics classes, we often get a skeletal picture of how the nation's government works; we are told that Congress writes the laws, the president executes them, and the Supreme Court acts as the interpreter of the U.S. Constitution. News reports, blogs, and editorials we read add to this knowledge. Many of us can go further and explain some of the basic interactions among the branches or how our local governments work. We know that the laws Congress passes are subject to the president's veto power and the Supreme Court's powers of judicial review; we understand that the president names the members of his cabinet and nominates justices to the Supreme Court and that the Senate has to confirm these nominations. We can discuss how the Supreme Court, as the "caretaker" of the Constitution, can declare laws unconstitutional, but that it is up to the legislative and executive branches to enforce these rulings—at both the state and federal levels. We discuss the relationships between the branches using such terms as *checks and balances* and *separation of powers*.

For most of us, though, this is about as far as our knowledge goes. According to media accounts that span decades, most Americans have trouble naming members of the Supreme Court, key figures in the congressional leadership, state legislators, or members of the president's cabinet. Still fewer of us can explain in detail how a bill becomes a law, the president's authority in foreign affairs, or how the Supreme Court decides a case. If we ask about the historical development of these institutions and officials or their powers, the numbers of those who understand how our federal and state governments work declines even further.

The ensuing chapters seek to explore and explain the workings and impact of the federal and state courts. The approach used here is both historical and

topical. Both of these institutions have evolved over time, so only by placing the current powers and effects of the courts into this evolving history can we fully understand the true nature of the third branch of government. In the process, we will more fully understand the constitutional role of the federal and state courts and the proper application of the judicial function by the judges who operate them.

At the heart of our constitutional system is a vital principle—that the government has enough power to vindicate national interests while being limited enough to be subject to sufficient checks and balances. The operation of checks and balances helps to protect individual rights and preserve the legitimacy of competing institutions of government.

The principle of checks and balances takes several forms in the U.S. constitutional system. One is separation of powers. In some cases, some authority is assigned to a given institution. For example, courts have the authority to make formal decisions, or judgments (adjudications), about legitimate cases and controversies before them, without interference from the other branches of government. In other cases, such as with the exercise of war powers, the constitutional text presents what the political scientist Edward S. Corwin called an "invitation to struggle" between Congress and the president. In still other cases, the concept of federalism sorts out spheres of authority between the federal and state governments. In some realms, the federal government is supreme, and the states may not interfere; in others, the states are supreme, and the federal government has little or no power to interfere; in still others, the federal government and the states share concurrent powers over the same spheres of activity. The result is an ongoing tension and balance between the different levels of government as well as between institutions at the same level of government.

In the American court system, the concepts of limited government, separation of powers, checks and balances, and federalism are directly linked to the power of judicial review. Judicial review is the courts' power to review actions of other branches of government or other levels of government to determine whether they have complied with or violated the commands of the Constitution, and to set aside the actions challenged if they violate the Constitution.

Many people say that the courts, with their powers of judicial review, have the final say as to the meaning and proper reach of the Constitution. This is not entirely correct. It is always possible, for example, through a process sometimes called "jurisdiction stripping," for Congress to enact laws limiting the powers of federal courts to hear certain kinds of cases. In addition, per Article V of the U.S. Constitution, the original Constitution can be amended by the people. Congress rarely uses this power, however.

It is more likely, but still an exception, that Congress may propose a constitutional amendment, and the states may ratify it to overrule an unpopular Supreme Court decision. Further, because the modern court's decisions are the

focus of rigorous study within the legal academic community and the legal profession, and because they are scrutinized in the news media, the resulting academic, professional, and public debate may shape the justices' views and even coerce them to change their minds.

Viewed over time, much of the doctrinal history of the federal courts can be largely seen as the center of an ongoing debate on the extent of these principles and their role in directing the governance of the United States in relation to state governments. In fact, for much of our nation's history, the federal courts have determined the evolving meanings of these principles—sometimes grabbing this power for themselves, sometimes distributing it to the other branches or the states. Without understanding this cluster of principles, we cannot understand the work and powers of the federal courts.

Americans have always lived under a complex and complicated court system, one with a difficult and ever-changing purpose. Hemmed in by rules and structures, and usually involved in a constant tug-of-war for power and impact with the other branches of government (at both state and federal levels), the courts nonetheless have had a clear and significant impact on American policymaking and social or political development. Political scientists Robert A. Carp and Ronald Stidham note the following in their book *The Federal Courts* (2010, 3):

> The decisions of federal judges and justices affect all our lives. Whether it is the upholding of laws already in place or broader policymaking decisions, the output of federal courts permeates the . . . body politic in the United States. No one can have a full and accurate understanding of the American political system without being cognizant of the work of the men and women who wear the black robe.

What follows is a detailed discussion of both the federal and state courts.

HISTORICAL DEVELOPMENT OF FEDERAL COURTS

From its small, contested, and somewhat inauspicious beginnings to today, the federal judiciary has grown steadily in size, resources, and prestige. It has also grown in the scope of its jurisdiction, the authority of its mandate, and the impact of its rulings. Originally hearing mostly private law matters and enforcing federal statutes, over the course of the 19th century, the federal courts developed into a major force in establishing and articulating national policy and values through cases posing vital issues of private and public law. From its early influence as a nationalizing force that helped shape a national economy, its identification with "big business" in the decades around the turn of the 20th century, its administrative responsibilities in the first half of the 20th century, and then to its growing focus on individual rights after the New Deal "constitutional

revolution," the federal judiciary has experienced a constant increase in both the number and complexity of the cases it hears. Today, the federal courts hear fewer cases than the state courts, and while the numbers of filings rise and fall in response to changes within society and the law, it is unlikely that the federal courts' workloads will decline significantly in the future.

Today's federal court system traces its history back to the Constitutional Convention of 1787. Both the Virginia Plan and the New Jersey Plan, the two main proposals for forming a national government, provided for trial courts and appellate courts. The plan that was ultimately adopted by the convention delegates called for the establishment in the Constitution of a supreme court, leaving the creation of other courts to Congress. Specifically, Article III, Section 1 of the U.S. Constitution provides that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

The District and Circuit Courts

In the meeting of the First Congress in 1789, the outline of the nation's judicial system took shape. Members of Congress reflected upon their prior experiences in practical governance (with the Articles of Confederation and the state systems of courts created during and after the Revolution, but before the Convention) in framing the new federal judicial system. They thought about the nature of the British court system, the state court systems that operated under the Articles of Confederation, and the power that would be handed to the new government. At the same time that they were debating the need for a written Bill of Rights, they were also creating the courts that would decide disputes over those rights. The Judiciary Act of 1789, signed into law by President George Washington on September 24, 1789, outlined the organization and jurisdiction of the federal courts.

The Judiciary Act established 13 district courts to be located in the 11 states that had, to that date, ratified the Constitution, as well as in Maine and Kentucky (which were at that time territories of the states of Massachusetts and Virginia, respectively). Each district court had one district judge. The law provided for the number of sessions of court to be held each year and the location of the sessions. It also stipulated the salaries to be paid to the judges, which varied to reflect the expected differences in caseloads between the districts. The district judge was authorized to appoint a clerk to assist him. The act also allowed the president to appoint a prosecutor and a marshal in each district.

The caseload of the early district courts was limited because each one served as the trial court principally for admiralty and maritime cases and some minor civil and criminal matters, all of which had to arise within that district. In addition, the Act created a second type of trial court, the U.S. circuit court,

which had limited appellate jurisdiction but also became the nation's principal trial court in the early years. Notably, district court judges spent more of their time on circuit court matters than district court cases.

Each of the state-located districts was also placed in a circuit. Three circuits were created: eastern, middle, and southern. The act outlined the circuit courts' meeting schedule and the location of the circuit courts' sessions, which were to be held in cities within each district. Supreme Court justices were to be assigned to each circuit, and the circuit court session would be heard by the two justices assigned to that circuit sitting with the district court judge of the district. (This requirement was soon reduced to a single justice sitting with a district judge.) The circuit courts served a dual role, as trial courts for some matters and as appeal courts for others. The Maine and Kentucky district courts performed the tasks of the circuit courts for their districts.

The circuit courts served as the trial courts for most federal matters, including cases brought by the United States, as well as diversity of citizenship cases. The circuit courts also exercised appellate jurisdiction over matters that were tried in district courts. The circuit courts met in each federal judicial district. The reality of "riding circuit" was very unpleasant for many Supreme Court justices who disliked the rigors of traveling across the nation and from state to state.

While the idea of riding circuit may seem odd, it made sense at the time. The caseload of the Supreme Court was small, and using the justices as trial judges saved the government funds that would have been otherwise required to hire separate circuit judges. Moreover, the practice was a well-known one for state courts and so was not seen as unusual at the time. Additionally, riding circuits exposed the justices to state laws and practices. It also made known to the people in the states the members of the least-visible branch of the national government.

The justices themselves, however, opposed circuit riding for various personal and professional reasons and eventually began doing it less and less. The first significant effort to do away with riding circuit was the Judiciary Act of 1801. This legislation created six circuits with separate circuit judgeships, relieving the Supreme Court justices of their circuit-riding duties. In 1802, however, a new Congress repealed the law and did away with the circuit judgeships (while keeping the circuits intact), so the Supreme Court justices rode circuit once again. The 1802 law allowed a district judge to sit by himself as a circuit judge, but it still required the presence of a Supreme Court justice in the circuit court to hear any appeals from district court proceedings. This remained the state of affairs until 1869, when Congress, mindful of steadily increasing caseloads, created separate circuit judgeships for each of the circuits. These judges were given the same authority that a Supreme Court justice had while sitting in the circuit. Now a circuit judge could sit with a district judge *or* with a justice and hear appeals.

From the time of the First Congress to the middle of the 19th century, the United States steadily grew in size and in the number of states and territories subject to U.S. law. By the beginning of the Civil War, there were more than 30 states. The implication of the Judiciary Act of 1789 seemed to be that each state should have district and circuit courts, but the existing circuit-riding burden was weighing heavily on the justices who had to travel the circuits. Congress responded to the growing need for courts and justices by creating new circuits and gradually expanding the size of the Supreme Court. In the 19th century, as well as in later years, Supreme Court appointments were affected by the politics of the time, so the process proceeded haltingly, and it was not until the Civil War that every circuit and district was served by a Supreme Court justice.

The Supreme Court's expansion in the first half of the 19th century was accomplished in a series of steps. After the Judiciary Act of 1802 and with new legislation, the Congress in 1807 created the Seventh Circuit, comprising Tennessee, Kentucky, and Ohio. A Supreme Court justice was added, and this seventh justice was assigned to the new circuit.

Over the next 30 years, nine new states were added to the United States, leading Congress to create two new circuits, the Eighth and Ninth, in 1837. Congress also added two new justices to the Supreme Court, one each for the new circuits. The nine circuits were reorganized in 1842, but no new circuit was added.

In 1855, a 10th circuit court, known as the California Circuit, was added to handle matters in the state of California's two districts. This particular circuit court was a milestone of sorts because Congress did not add a 10th justice to the Supreme Court to lead the new court. Instead, it created a separate circuit court judgeship for the first time.

In 1861, President Abraham Lincoln pressed Congress to address the effect of the nation's growth on the judicial system, especially the circuit court system. Noting that continually adding justices to the Supreme Court to handle circuit duties would make the Court unwieldy, Lincoln recommended setting a set number of justices for the Supreme Court, without regard to the number of circuits. He also wanted the circuits to be reorganized, perhaps to be served by newly created circuit judges, with or without the presence of a Supreme Court justice. In 1863, Congress created the 10th Circuit, replacing the California Circuit and adding to it the Oregon courts. And, in 1866, Congress reduced the number of circuits to nine, redistributing the states among the circuits.

Just as the nation had expanded, so too had the workload of the national court system. As the national economy grew and business corporations increased the amount of commercial activity, more cases came to the courts. As federal legislation increased, especially in the wake of the Civil War, so did the litigation caseload of the courts. Backlogs in the district and circuit courts mounted, and the caseload of the Supreme Court also grew at a staggering rate. In 1860, the Supreme Court docket had more than 300 cases. By 1890, that had increased

600 percent. Trial court workloads also increased dramatically in the 1870s and 1880s, and the increase in the number of district and circuit judges could not begin to keep pace with the cases pending.

As mentioned previously, in 1869, Congress responded to these increased caseloads by creating separate circuit judgeships for each of the circuits, which meant a circuit judge could sit with a district judge or with a Supreme Court justice and hear appeals. Nonetheless, these changes were not sufficient to keep pace with expanding caseloads. A jurisdictional change in 1875 shifted much of the circuit court burden to the district courts, increasing their already too-heavy load. Small changes were made, and many more substantial changes were proposed, but no real solution was crafted until 1891, when a solution was adopted that would endure into the 21st century.

The Circuit Court of Appeals Act of 1891 created a new court—the circuit court of appeals. This appellate court sat above the district and circuit trial courts. One circuit court of appeals was created for each of the nine circuits. Distributed among the circuit courts of appeals were the district courts of the 44 states of the United States. Each circuit court of appeals had two circuit judges and a district judge. Circuit riding for Supreme Court justices had not been abolished, but it was left up to the justice individually. (A vestige of the old arrangement remains in that Supreme Court members are still allotted circuits to hear emergency motions.) The law funneled many district court decisions to the court of appeals for final disposition and did away with the appellate jurisdiction of the old circuit courts. These circuit courts were abolished in 1911, leaving federal district courts as the sole federal trial courts. The 1891 act allowed some direct appeals to the highest court from the district court and allowed the intermediate appellate court to certify other appeals. The effect was a dramatic reduction in Supreme Court filings.

Since the Circuit Court of Appeals Act of 1891, the three-tiered structure of the federal court system has undergone only modest changes. Trial courts are at the bottom level, appeals courts are above them at the intermediate level, and the U.S. Supreme Court is at the highest appeals court level. The number of circuits has increased to 13, including a Circuit Court of Appeals for the District of Columbia. The number of district court and circuit court of appeals judgeships has increased roughly tenfold. New positions, bankruptcy courts, and federal magistrates have been added as units to the district courts.

U.S. Courts of Appeals

The circuit court of appeals was created in 1891 to hear appeals from the trial courts, which at that time were the district court and the circuit court. (This new title, "circuit court of appeals," led to confusion between the circuit court sitting as trial court and the newly created appeals court. This was corrected in

1948 by changing the title of the appeals courts to the court of appeals for the enumerated circuit. In the Judiciary Act of 1891, Congress created nine courts of appeals. The judges on these courts were the existing circuit judges and the newly appointed appellate judges. District court judges in the circuit were permitted to sit with the circuit justices to create three-judge appellate panels. Supreme Court justices were still assigned to particular circuits, but circuit riding was no longer required of them, and few did it.

The 1891 law gave the courts of appeals jurisdiction over a major portion of the appeals from district and circuit courts and restricted the types of cases that had previously been commonly appealed to the Supreme Court. In 1893, Congress established the Court of Appeals of the District of Columbia. In 1911, the U.S. circuit courts—the trial courts—were abolished in a judicial reorganization. In 1925, further legislation expanded the appellate jurisdiction of the courts of appeals. In 1916, the courts of appeals were given jurisdiction over certain railroad regulatory appeals, and, in the 1930s, as the number of federal administrative agencies exploded, the courts of appeals were given jurisdiction over appeals of decisions made by the new regulatory agencies. These actions reduced the review burden of the Supreme Court. In 1948, Congress changed the title of the federal appellate courts to the U.S. Court of Appeals (for the respective numbered circuits).

The number of and membership in the courts of appeals has increased. By the 1930s, it was no longer necessary for district judges to sit on court of appeals panels, as each court of appeals had at least three judges. New circuits were established by Congress. In 1929, the 10th Circuit was created, and, in 1980, the 11th Circuit was added. In 1982, Congress established the U.S. Court of Appeals for the Federal Circuit, combining the jurisdictions of two previously existing federal court systems (the U.S. Court of Customs and Patent Appeals and the U.S. Court of Claims).

The Supreme Court of the United States

The Constitution of the United States allocates the judicial power of the nation to "one supreme Court." The Constitution gives the Supreme Court original jurisdiction in matters where a state is a party or in cases involving diplomats but leaves it to Congress to determine the composition and responsibilities of our nation's highest court. The Judiciary Act of 1789 was the first act of Congress to make these determinations. The act established the Supreme Court with one chief justice and five associate justices. It defined the appellate jurisdiction of the Court in civil cases and in cases where state courts had entered decisions on the meaning or application of federal law. As mentioned previously, the law of 1789 required Supreme Court justices to ride circuit, presiding with federal judges on the circuit courts that sat in federal districts around the

country. In part, this was done so that the justices would remain close to the state courts and the people of the nation, and they would be visibly involved with the legal processes around the country.

As noted earlier, circuit riding was time-consuming and strenuous, and justices immediately sought to have the task eliminated from their duties. After four years, Congress lightened the circuit load of the justices by reducing the number of justices from two to one that had to sit in a circuit court session. Congress tried to create separate judgeships for the circuit courts in 1801 to free the Supreme Court of circuit duty. To ease the circuit-riding burden, Congress allowed district judges to sit alone in circuit courts in some cases. In 1869, Congress created separate circuit court judge positions, further reducing the burden of circuit-riding. The Circuit Court of Appeals Act of 1891 created the circuit courts of appeals, which made circuit-riding optional for the justices. As stated previously, few continued the practice.

The Supreme Court of the United States first gathered on February 1, 1790. The justices met in New York City, the capital of the United States at that time. Some of the justices were unable to attend the meeting, so it was postponed until the next day. The Court met mainly to deal with matters of court administration and organization. The first cases to reach the Court came in 1791, and the first opinion was issued in 1792. The Court may have initially moved slower than desired, but in its first decade, the Supreme Court set a number of important precedents for the future of American law.

As the number of judicial circuits increased, so did the number of Supreme Court justices. In 1807, a seventh justice took the bench. In 1837, justices eight and nine were added to the Court. In 1863, with the creation of a 10th circuit, another justice joined the Court. Three years later, Congress reduced the membership of the Court to seven justices, ordering that no vacancies be filled until that number was reached. In 1869, when the number of justices on the bench stood at eight, Congress mandated that the Court have nine justices, one for each of the circuits then existing. This number has remained unchanged since then.

In the first hundred years of the nation, the justices asserted little control over their docket. They heard civil appeals and cases where Congress had provided for automatic appeals to the Supreme Court. The 1891 act, however, brought many changes in that regard. It created courts of appeals that heard many cases that would have previously gone to the Supreme Court and gave the high Court some discretion regarding which appeals of court of appeals rulings it would hear. The Judges Bill of 1925 expanded the Court's control over what cases it would hear, and, in 1988, Congress further restricted what cases the Court must hear on appeal. Nonetheless, the Supreme Court's docket has steadily increased since then. In 1945, there were fewer than 1,500 cases on the docket. In 1960, the number was just over 2,300. The number has continued to rise steadily, though, to more than 8,000 requests per year. The Court