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Erwin Chemerinsky



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FEDERAL JURISDICTION

Sixth Edition

ERWIN CHEMERINSKY

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Preface

Defining the role of the federal courts poses some of the most difficult and some of the most interesting issues in American law. Underlying virtually all issues are basic questions of separation of powers and federalism. What is the proper role for the federal judiciary in the scheme of divided powers? What is the appropriate allocation of responsibility between federal courts and state courts? More fundamentally, what is the proper role for an unelected federal judiciary in American society? Not surprisingly, issues of federal jurisdiction generate intense debates among justices, lower courts, scholars, and hopefully students.

In this book I attempt to describe and analyze the doctrines and policies that shape the jurisdiction of the courts of the United States. Specifically, the book has three purposes. First, and most obviously, I seek to state clearly the current law defining the jurisdiction of the federal courts. Second, I wish to identify important unresolved issues and to describe the positions of the lower courts on these questions. Third, in discussing each area of the law, I want to examine the underlying, competing policy considerations. The law of federal jurisdiction is largely derived from opinions of the U.S. Supreme Court. The doctrines and principles reflect important choices about the nature of American government and the role of the federal courts. Although I often express my own views on particular topics, I try to identify them as such and present them only after summarizing the alternative positions as fairly as possible.

The law of federal jurisdiction changes rapidly. It is now twenty-three years since the first edition of this book was written. Over this time, and over the course of several editions, there have been changes in most areas and dramatic changes in many. Some of the most important changes since the publication of the previous edition include:

- Limits on the ability of bankruptcy courts to issue final judgments in state law matters under *Stern v. Marshall* (2011).
- Clarification of aspects of federal subject matter jurisdiction (*Hertz v. Friend*) and the application of state law in diversity cases (*Shady Grove v. Allstate*).
- Major decisions concerning the ability to sue government officers and local governments under 42 U.S.C. §1983.

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- Major developments in the law of habeas corpus as a result of Supreme Court decisions interpreting the Antiterrorism and Effective Death Penalty Act and concerning the ability of noncitizens held as enemy combatants to have access to federal courts via habeas corpus.

The sixth edition incorporates these new developments, while preserving the approach, style, and organization of the earlier five editions. Some chapters, such as those dealing with non-Article III courts and habeas corpus, have been substantially rewritten. Every chapter has been revised to reflect new developments and new scholarship on the topic.

Covering a broad field in one volume of manageable size required many choices in topic selection, organization, and style. Before describing what is omitted, it is useful to summarize the contents and structure of the book.

- Chapter 1 is an introduction, considering the history of federal jurisdiction, describing the current structure of the federal judiciary, and identifying the two themes—separation of powers and federalism—that recur throughout this book.

The remainder of the book is divided into three major parts. Part I focuses on constitutional and statutory limits on the federal judicial power.

- Chapter 2 focuses on the justiciability doctrines that limit federal jurisdiction, including the prohibition against advisory opinions; the principles of standing, ripeness, and mootness; and the political question doctrine.
- Chapter 3 examines congressional power to control the jurisdiction of the Supreme Court and the lower federal courts. It also includes a new section on Congress's power to force state courts to hear federal law matters.
- Chapter 4 discusses congressional authority to create legislative courts—tribunals where the judges do not possess life tenure or protection against reduction in their salary.
- Chapter 5 considers the subject matter jurisdiction of the federal courts and examines both the constitutional and statutory provisions that define federal court authority. The chapter primarily focuses on federal question, diversity, ancillary, pendent, and removal jurisdiction. Also considered is the choice of law in diversity cases.
- Chapter 6 examines the power of the federal courts to fashion federal common law.

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Part II concerns the ability of federal courts to give relief against governments and government officers.

- Chapter 7 discusses the Eleventh Amendment, which limits federal court relief against state governments.
- Chapter 8 examines 42 U.S.C. §1983, which is the basic vehicle for federal court review of the actions of local governments and state and local officials.
- Chapter 9 considers suits against federal officers and the federal government.

Part III focuses on federal court review of state court judgments and proceedings.

- Chapter 10 discusses Supreme Court review, both of state court decisions and of lower federal court rulings.
- Chapter 11 examines statutes limiting the jurisdiction of the federal courts and specifically considers the Anti-Injunction Act, the Tax Injunction Act, the Johnson Act, and the Civil Rights Removal Act.
- Chapters 12, 13, and 14 analyze the various abstention doctrines.
- Chapter 12 discusses abstention because of unclear state law, specifically focusing on *Pullman*, *Thibodaux*, and *Burford* abstention and the procedure followed when such abstention occurs.
- Chapter 13 considers abstention to avoid interference with pending state court proceedings, sometimes referred to as *Younger v. Harris* abstention.
- Chapter 14 examines abstention to avoid duplicative federal and state court proceedings, often termed *Colorado River* abstention.
- Finally, Chapter 15 focuses on federal court habeas corpus relief for state and federal prisoners.

Several related subjects are omitted or addressed only briefly. An arbitrary distinction has been drawn between matters of federal jurisdiction and issues of civil procedure. Hence, the topics addressed by the Federal Rules of Civil Procedure—matters such as service of process, pleading, joinder, discovery, and summary judgment—are beyond the scope of this book. The subject matter jurisdiction of the federal courts—a topic common to courses in both civil procedure and federal jurisdiction—is covered in detail in Chapter 5.

Also, some specialized areas of federal jurisdiction, most notably admiralty and maritime law, are not covered. Similarly, the topic of federal court review of federal agency decisions is not directly addressed.

Preface

In attempting to organize the material in what I believe to be the most comprehensible and useful manner, I made several choices. First, the choice of law in diversity cases—commonly known as the *Erie* problem—is considered in the treatment of diversity jurisdiction in Chapter 5. The development of federal common law in other contexts is discussed in Chapter 6 and also in Chapter 9, which focuses on federal court relief against federal government officers.

Second, the federal courts' duty to accord *res judicata* and collateral estoppel effect to state court judgments is not the subject of a separate chapter. However, such preclusion is discussed especially in Chapter 8, which focuses on §1983 suits, and in Chapter 14, which examines the problem of duplicative federal and state court litigation.

Third, appellate review of federal district court decisions by the U.S. Courts of Appeals is considered in Chapter 10, which focuses primarily on U.S. Supreme Court review. The issues of appellate review are sufficiently similar to warrant treatment in a single chapter.

Stylistically, in discussing Supreme Court cases I have often chosen to quote directly from the Court's opinions. A primary objective of this book is to state the law. Thus, many cases announcing key legal principles are summarized, and I believe that the law often is best stated by using the Court's exact words. Also, I have tried to avoid the temptation to be encyclopedic in citations. Therefore, the reader should recognize that many law review articles and lower court cases are not included in the footnotes. References to statutory sources are usually undated. All such references are to compilations in force in 2011.

The book is complete through the conclusion of the Supreme Court's October 2010 Term, which ended on June 28, 2011. In light of how rapidly this area of the law changes, I expect to continue to write new editions, as needed, for many years to come. The comments and suggestions from readers on the first five editions have been most helpful, and I welcome responses to this sixth edition and ideas for future editions.

Erwin Chemerinsky

April 2012

Acknowledgments

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This book is dedicated to the memory of my father, who died in the spring of 1993 while I was working on the second edition. Remembering his pride and excitement at the publication of the first edition was an inspiration as I struggled to complete this one.

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