
PREFACE

Most people go to court either to create change in their lives or prevent something from changing. We have written this casebook with this basic fact about adjudication, and these people, in mind. “The life of the law,” Oliver Wendell Holmes famously insisted, is human “experience.” Understanding why people come to court and how adjudication affects them (the practical objectives they set, the obstacles they face, the suffering they endure or inflict) is essential to understanding the development of the rules and principles of jurisdiction, judicial review, federalism, and separation of powers – the architecture, if you will, of the rule of law in America.

Placing federal courts doctrine in context has advantages beyond enhancing understanding of the rules and principles that animate the subject. Firstly, the doctrines covered in this course are powerful – delimiting the boundaries not only of judicial review and the enforcement of rights, but also the powers of the other branches of the federal government, Native nations, the states, and their courts. Revealing the circumstances that have tested these boundaries and the consequences of observing or breaching them exposes the gravity of decisions made in court and competing positions on structural constitutional law. The social and moral costs of exertions of judicial power become visible and must be reckoned with. Most fundamentally, attending to context teaches us whether rights actually get enforced and what follows from enforcement or failure to enforce for the people involved.

Secondly, contextualizing the human experience of federal courts and the federal system of adjudication brings voices into the conversation about doctrine and first principles that have all too often been left out of traditional treatments of the subject. We are, for example, a nation of three sovereign governments, not two. States and the federal government share governance with Native nations, and doctrines such as sovereign immunity have emerged from contests among these three sovereigns, not just two. Federalism cannot, in the American context, be disaggregated from the protection of slavery, its role in the dismantling of Reconstruction and the rise of Jim Crow segregation, or modern resistance to the legal achievements of the Civil Rights Movement, a second reconstruction. The rise of regulation by agencies and adjudication in non-Article III courts, with all this entails for traditional understandings of separation of powers, is intimately connected with the nineteenth and twentieth century labor movement. Standing doctrine has been profoundly influenced by contests over reproductive rights, religious liberty, and anti-discrimination law. Modern habeas jurisdiction has developed in the context of an unprecedented expansion of the carceral state. And so on. Inclusive pedagogy and intellectually rigorous immersion in the course are served by ensuring that these voices are heard.

Thirdly, *Federal Courts* deservedly has the reputation of being a difficult course. The doctrines often are complex and rarely are intuitive. A wide body of research shows that deep learning is promoted by arranging cases and materials to spark multimodal intellectual engagement. We have therefore followed the principles of contextualization and accessibility in form as well as content. Chapters are organized around the practical questions that arise when people go to court, working from basic principles and canonical cases to their modern application and elaboration. Brief contextual introductions lead into and/or follow canonical cases. And rather than long, obtuse notes designed more for experts than students, or extended series of questions without answers, we endeavor to answer the concrete questions we pose and concisely summarize the principal take-aways from the cases. The book also dovetails with Erwin Chemerinsky's treatise, *Federal Jurisdiction*, to promote engagement with broader questions, clear analysis, and further inquiry.

Lastly, as we enter what appears to be a period of doctrinal innovation on the part of the Supreme Court,¹ being clear-eyed about the various settings in which judicial restraint and activism have emerged provides an important benchmark against which to measure the Court's new exercises of judicial power. Ultimately, this book challenges students to consider what the role of the federal courts in American society should be and whether the doctrines developed by the Court fulfill this mission.

1. See Mark Lemley, *The Imperial Supreme Court*, 136 HARV. L. REV. F. 97 (2022).