# The Delegation Doctrine

## Readings

### Text: Chapter 2 Sections I and II

## Learning Objectives – Delegation Doctrine

### Learn why agencies are seen as hybrids of all three branches of government.

### Learn what the Delegation/Nondelegation Doctrine fight was about.

### Learn the standard that the Court adopted to analyze Delegation Doctrine questions.

### Learn how the court now analyzes the delegation question and handling statutes that do not properly delegate authority.

### Learn how much judicial power can be delegated to agencies

## Agencies as Hybrids

### What are the hybrid functions

#### Agencies can make law – the legislative function

#### Agencies can enforce the law – the executive function

#### Agencies can adjudicate disputes – the judicial function

### How can this be seen as conflicting with the founder’s notion of separation of powers?

### Historically, the United States Supreme Court generally rejected challenged based on this notion that delegation of rulemaking or adjudication powers to federal agencies violated the constitution.

### This was more of a concern in the state courts, which is evident in the LA case, Wooley.

## How Does the United States Supreme Court handle the Delegation Doctrine question?

### Proponents of the (Non)Delegation Doctrine believed that delegating legislative or adjudicative powers to an agency resulted in an unconstitutional law, thus leaving the agency no room work around the problem.

### The Court articulated the "intelligible principle" test in Hampton (1928).

#### This accepts that Congress can delegate legislative and adjudicative powers to agencies.

#### The question then becomes: Has Congress provided sufficient direction to the agency to limit the agency’s actions to those that would not violate separation of powers?

#### The Court looks at the statute to see if it has enough guidance to the agency that courts can decide if the delegation is properly limited to protect separation of powers.

### The Court terms this direction to the agency an Intelligible Principle

#### Specific guidance is best

##### Congress will provide very specific guidance if it wants to limit agency discretion - the Americans with Disabilities Act (ADA)

##### This leaves little room for agency discretion.

#### General/ambiguous guidance is also usually OK

##### ‘‘in the public interest"

##### Depends on whether context can provide meaning

###### For example, there might be established business practices that agency operates with.

#### If there is no intelligible principle, the court will find that the agency has no power to act.

### Delegation questions are now resolved as questions of agency discretion under the statute. This will be considered in detail later in the course.

## How much judicial power can be delegated to an agency?

### Commodity Futures Trading Commn. v. Schor, 478 U.S. 833 (1986)

#### [1] “the extent to which the ‘essential attributes of judicial power’ are reserved to Article III courts, and

#### [2] conversely, the extent to which the non-Article III forum exercises the range of jurisdiction and powers normally vested only in Article III courts,

#### [3] the origins and importance of the right to be adjudicated, and

#### [4] the concerns that drove Congress to depart from the requirements of Article III.

### The core question is whether the administrative law judge (ALJ) is acting in an area reserved to an Article III.

#### The court is very unwilling to find adjudications exceed constitutional authority under this test.

##### This may be because Congress has not passed laws which test the outer limits of agency authority, outside of bankruptcy law.

##### There are state law fights over this – We will read the LA SC Wooley case later in the course.

#### There are limits on the transformation of criminal matters into agency adjudications

##### Criminal due process rights cannot be limited, but they only apply for punishment.

##### Traffic court can be civil, but only if there is no jail time

##### Large civil fines push the edge, especially if there are also criminal penalties for the same act

#### Administrative detentions are OK, but not for punishment

##### Tuberculosis, denial of bail, mental health commitments

##### Guantanamo Bay detentions are administrative

### These cases are now fights over what the statute means and, if ambiguous, who gets to decide what it means – the court or the agency?

# Evaluation Questions

## Why didn’t the drafters of U. S. Constitution feel the need to lay out clear guidelines for large federal governmental system?

### Where did government happen in the early constitutional period?

### When did the federal government become a major source of regulation?

## What is the modern test for whether the delegation of power to an agency has been properly done?

### How is this test applied by the courts?

### How would you apply this test to a rulemaking?

### How would you apply this test to an adjudication?

### (You will not be able to fully answer these questions until you know more about both processes.)

### If the statute delegating the power to the agency is general - “protect us from dangerous diseases” - what can the court look to in deciding if there is enough background to review the agency’s actions?

### If the court cannot find enough evidence of congressional intent, does the court treat it as an unconstitutional delegation or is there now another solution?

## May Congress delegate the power to adjudicate criminal penalties to agencies?

### Why are criminal penalties limited to Article III courts?

### If a city wants to have traffic tickets adjudicated by an ALJ, rather than a municipal judge, how must the city change the penalties?

### What rights will the defendant lose when a criminal matter is transformed to an administrative review?

#### (You will need to know more about adjudications to answer this question.)