Public Rights

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Public Rights

The "Public Rights" Distinction

Distinction.-A major delineation of the distinction between Article I courts and Article III courts appears in Murray's Lessee v. Hoboken Land & Improvement Co.1 At issue was a summary procedure, without benefit of the courts, for the collection by the United States of moneys claimed to be due from one of its own customs collectors. It was argued that the assessment and collection was a judicial act carried out by nonjudicial officers and was thus invalid under Article III. Accepting that the acts complained of were judicial, the Court nonetheless sustained the act by distinguishing between any act, "which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty," which, in other words, is inherently judicial, and other acts that Congress may vest in courts or in other agencies. "[T]here are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." 2

Public Rights and the U.S. Constitution

In essence, the Court distinguished between those acts that historically had been determined by courts and those that had both been historically resolved by executive or legislative acts and comprehended matters that arose between the government and others. Thus, Article I courts "may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it. The mode of determining matters of this class is completely within congressional control." 3 Among the matters susceptible of judicial determination, but not requiring it, are claims against the United States,4 the disposal of public lands and claims arising therefrom,5 questions concerning membership in the Indian tribes,6 and questions arising out of the administration of the customs and internal revenue laws.7 Other courts similar to territorial courts, such as consular courts and military courts martial, may be justified on like grounds.8

Public Rights: Developments

The impact of the "public rights" distinction, however, has varied dramatically over time. In Crowell v. Benson,9 the Court approved an administrative scheme for determining, subject to judicial review, maritime employee compensation claims, although it acknowledged that the case involved "one of private right, that is, of the liability of one individual to another under the law as defined." 10 This scheme was permissible, the Court said, because in cases arising out of congressional statutes, an administrative tribunal could make findings of fact and render an initial decision on legal and constitutional questions, as long as there

is adequate review in a constitutional court.11 The "essential attributes" of decisions must remain in an Article III court, but so long as it does, Congress may use administrative decisionmakers in those private rights cases that arise in the context of a comprehensive federal statutory scheme.12 In Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., discussed infra, the Court reasserted that the distinction between "public rights" and "private rights" was still important in determining which matters could be assigned to legislative courts and administrative agencies and those that could not be, but there was much the Court plurality did not explain.13

More about Public Rights

The Court continued to waver with respect to the importance of the public rights/private rights distinction. In two cases following Marathon, it rejected the distinction as "a bright line test," and instead focused on "substance"-i.e., on the extent to which the particular grant of jurisdiction to an Article I court threatened judicial integrity and separation of powers principles.14 Nonetheless, the Court indicated that the distinction may be an appropriate starting point for analysis. Thus, the fact that private rights traditionally at the core of Article III jurisdiction are at stake leads the Court to a "searching" inquiry as to whether Congress is encroaching inordinately on judicial functions, whereas the concern is not so great where "public" rights are involved.15

Other Aspects

However, in a subsequent case, Granfinanciera, S.A. v. Nordberg, the distinction was pronounced determinative not only of the issue whether a matter could be referred to a non-Article III tribunal, but whether Congress could dispense with civil jury trials.16 In so doing, however, the Court vitiated much of the core content of "private" rights as a concept and left resolution of the central issue to a balancing test. That is, "public" rights are, strictly speaking, those in which the cause of action inheres in or lies against the Federal Government in its sovereign capacity, the understanding since Murray's Lessee. However, to accommodate Crowell v. Benson, Atlas Roofing, and similar cases, seemingly private causes of action between private parties will also be deemed "public" rights when Congress, acting for a valid legislative purpose pursuant to its Article I powers, fashions a cause of action that is analogous to a common-law claim and integrates it so closely into a public regulatory scheme that it becomes a matter appropriate for agency resolution with limited involvement by the Article III judiciary.17 Nonetheless, despite its fixing by Congress as a "core proceeding" suitable for an Article I bankruptcy court adjudication, the Court held the particular cause of action at issue (fraudulent conveyance) was a private issue as to which the parties were entitled to a civil jury trial, necessarily suggesting that Congress could not commit the action to an Article I tribunal, save perhaps through the consent of the parties.18

Resources

See Also

References

This text about Public Rights is based on "The Constitution of the United States of America: Analysis and Interpretation", published by the U.S. Government Printing Office.

Notes

[Footnote 1] 59 U.S. (18 How.) 272 (1856).

[Footnote 2] 59 U.S. at 284.

[Footnote 3] Ex parte Bakelite Corp., 279 U.S. 438, 451 (1929).

[Footnote 4] Gordon v. United States, 117 U.S. 697 (1864) (published 1885); McElrath v. United States, 102 U.S. 426 (1880); Williams v. United States, 289 U.S. 553 (1933). On the status of the then-existing Court of Claims, see Glidden Co. v. Zdanok, 370 U.S. 530 (1962).

[Footnote 5] United States v. Coe, 155 U.S. 76 (1894) (Court of Private Land Claims).

[Footnote 6] Wallace v. Adams, 204 U.S. 415 (1907); Stephens v. Cherokee Nation, 174 U.S. 445 (1899) (Choctaw and Chickasaw Citizenship Court).

[Footnote 7] Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929); Ex parte Bakelite Corp., 279 U.S. 438 (1929).

[Footnote 8] See In re Ross, 140 U.S. 453 (1891) (consular courts in foreign countries). Military courts may, on the other hand, be a separate entity of the military having no connection to Article III. Dynes v. Hoover, 61 U.S. (20 How.) 65, 79 (1858).

[Footnote 9] 285 U.S. 22 (1932).

[Footnote 10] 285 U.S. at 51. On the constitutional problems of assignment to an administrative agency, see Atlas Roofing Co. v. OSHRC, 430 U.S. 442 (1977); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48 (1937).

[Footnote 11] 301 U.S. at 51-65.

[Footnote 12] 301 U.S. at 50, 51, 58-63. Thus, Article III concerns were satisfied by a review of the agency fact finding upon the administrative record. Id. at 63-65. The plurality opinion denied the validity of this approach in Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 86 n.39 (1982), although Justice White in dissent accepted it. Id. at 115. The plurality, rather, rationalized Crowell and subsequent cases on an analysis seeking to ascertain whether agencies or Article I tribunals were "adjuncts" of Article III courts, that is, whether Article III courts were sufficiently in charge to protect constitutional values. Id. at 76-87.

[Footnote 13] 458 U.S. 50, 67-70 (1982) (plurality opinion). Thus, Justice Brennan observes that "a matter of public rights must at a minimum arise 'between the government and others,' " but "that the presence of the United States as a proper party to the proceeding is a necessary but not sufficient means of distinguishing 'private rights' from 'public rights.' " Id. at 69 & n.23. Crowell v. Benson, however, remained an embarrassing presence.

[Footnote 14] Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568 (1985); CFTC v. Schor, 478 U.S. 833 (1986). The cases also abandoned the principle that the Federal Government must be a party for the case to fall into the "public rights" category. Thomas, 473 U.S. at 586; see also id. at 596-99 (Justice Brennan concurring).

[Footnote 15] "In essence, the public rights doctrine reflects simply a pragmatic understanding that when Congress selects a quasi-judicial method of resolving matters that 'could be conclusively determined by the Executive and Legislative Branches,' the danger of encroaching on the judicial powers is reduced." Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568, 589 (1985) (quoting Northern Pipeline, 458 U.S. at 68 (plurality opinion)).

[Footnote 16] 492 U.S. 33, 51-55 (1989). A Seventh Amendment jury-trial case, the decision is critical to the Article III issue as well, because, as the Court makes clear what was implicit before, whether Congress can submit a legal issue to an Article I tribunal and whether it can dispense with a civil jury on that legal issue must be answered by the same analysis. "[T]he question whether the Seventh Amendment permits Congress to assign its adjudication to a tribunal that does not employ juries as factfinders requires the same answer as the question whether Article III allows Congress to assign adjudication of that cause of action to a non-Article III tribunal.... " Id. at 52-53.

[Footnote 17] 492 U.S. at 52-54. The Court reiterated that the government need not be a party as a prerequisite to a matter being of "public right." Id. at 54. Concurring, Justice Scalia argued that public rights historically were and should remain only those matters to which the Federal Government is a party. Id. at 65. See also Stern v. Marshall, 564 U.S. ___, No. 10-179, slip op. at 25 (2011) ("[W]hat makes a right 'public' rather than private is that the right is integrally related to particular Federal Government action").

[Footnote 18] 492 U.S. at 55-64. The Court reserved the question whether, a jury trial being required, a non-Article III bankruptcy judge could oversee such a jury trial. Id. at 64. That question remains unresolved, both as a matter, first, of whether there is statutory authorization for bankruptcy judges to conduct jury trials, and, second, if there is, whether they may constitutionally do so. E.g., In re Ben Cooper, Inc., 896 F.2d 1394 (2d Cir. 1990), cert. granted, 497 U.S. 1023, vacated and remanded for consideration of a jurisdictional issue, 498 U.S. 964 (1990), reinstated, 924 F.2d 36 (2d Cir.), cert. denied, 500 U.S. 928 (1991); In re Grabill Corp., 967 F.2d 1152 (7th Cir. 1991), pet. for reh. en banc den., 976 F.2d 1126 (7th Cir. 1992).

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