



EFFICIENCY AND RESOLUTION IN AN OFTEN-COMPLEX REGULATORY MAZE

Administrative Agency Decisions' Judicial Effect

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With the “right to remain silent” and “innocent until proven guilty,” the idea that everyone will “get his or her day in court” has become part of popular understanding about our judicial system. There are other bedrock principles that even someone who has never seen the inside of a courtroom would likely know and agree with. But what if I told you that you could be investigated, fined, shut down, or permanently barred from ever engaging in your chosen profession again without ever appearing in court? Short of throwing you in jail or seizing all your assets, state and federal regulators can impose almost any other punishment imaginable without judicial approval. If the Department of Taxation decides you violated tax laws, they can punish you themselves. If the body that issues and regulates your occupational or professional license believes you did something wrong, they can strip your license on their own.

How can that be? Do we not have checks and balances, due process, and judicial review? We do, but not for all things or on all issues. More and more governmental power has been given to or assumed by the so-called fourth branch of the government: the Administrative State.

Legislatures do not really have the time or expertise to fine tune all the laws they pass. They cannot account for all situations, and legislating change every time the landscape changes is inefficient and unrealistic. So, they pass that job off to the experts in the various government departments to write the rules and enforce them. The regulators and their departments adjudicate disputes, as well. Sometimes the judge is an administrative law judge who works for and within the regulating agency. Other times there is hearing officer employed by the State to decide cases. Often department boards over commissions then issue the final decisions.



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procedures, and practices of federal, state, county, or city government. They also effectively represent clients before agencies, boards, commissions, and divisions. Clients must first seek legal remedies by exhausting proceedings within the agency itself and then if need be challenge adverse decisions in court.