

are not judicial, yet they may satisfy the Due Process Clause.⁷¹³ Moreover, the Due Process Clause does not require *de novo* judicial review of the factual conclusions of state regulatory agencies,⁷¹⁴ and may not require judicial review at all.⁷¹⁵ Nor does the Fourteenth Amendment prohibit a state from conferring judicial functions upon non-judicial bodies, or from delegating powers to a court that are legislative in nature.⁷¹⁶ Further, it is up to a state to determine to what extent its legislative, executive, and judicial powers should be kept distinct and separate.⁷¹⁷

The Requirements of Due Process.—Although due process tolerates variances in procedure “appropriate to the nature of the case,”⁷¹⁸ it is nonetheless possible to identify its core goals and requirements. First, “[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”⁷¹⁹ Thus, the required elements of due process are those that “minimize substantively unfair or mistaken deprivations” by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests.⁷²⁰ The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discov-

⁷¹³ For instance, proceedings to raise revenue by levying and collecting taxes are not necessarily judicial proceedings, yet their validity is not thereby impaired. *McMillen v. Anderson*, 95 U.S. 37, 41 (1877).

⁷¹⁴ *Railroad Comm’n v. Rowan & Nichols Oil Co.*, 311 U.S. 570 (1941) (oil field proration order). *See also* *Railroad Comm’n v. Rowan & Nichols Oil Co.*, 310 U.S. 573 (1940) (courts should not second-guess regulatory commissions in evaluating expert testimony).

⁷¹⁵ *See, e.g.*, *Moore v. Johnson*, 582 F.2d 1228, 1232 (9th Cir. 1978) (upholding the preclusion of judicial review of decisions of the Veterans Administration regarding veterans’ benefits).

⁷¹⁶ State statutes vesting in a parole board certain judicial functions, *Dreyer v. Illinois*, 187 U.S. 71, 83–84 (1902), or conferring discretionary power upon administrative boards to grant or withhold permission to carry on a trade, *New York ex rel. Lieberman v. Van De Carr*, 199 U.S. 552, 562 (1905), or vesting in a probate court authority to appoint park commissioners and establish park districts, *Ohio v. Akron Park Dist.*, 281 U.S. 74, 79 (1930), are not in conflict with the Due Process Clause and present no federal question.

⁷¹⁷ *Carfer v. Caldwell*, 200 U.S. 293, 297 (1906).

⁷¹⁸ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

⁷¹⁹ *Carey v. Phipus*, 435 U.S. 247, 259 (1978). “[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases.” *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).

⁷²⁰ *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one’s interests even if one cannot change the result. *Carey v. Phipus*, 435 U.S. 247, 266–67 (1978); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Nelson v. Adams*, 529 U.S. 460 (2000) (amendment of judgment to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity to dispute).