

The Constitutional Principle of Proportional Escalation

A Constitutional Framework for Determining the Appropriate Forum for Administrative Justice

Why the Legitimacy of Administrative Decision-Making Depends Not Only Upon How Public Power Is Exercised, but Upon Where It Is Exercised

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June 2026

Abstract

Modern constitutional states employ an increasingly diverse network of institutions exercising adjudicative functions outside the ordinary courts. Regulators, statutory ombudsmen, specialist tribunals, professional disciplinary bodies, internal review mechanisms and alternative dispute resolution schemes now determine millions of disputes each year. Considerable constitutional attention has been devoted to the fairness, independence and accountability of these institutions. Far less attention has been directed towards a more fundamental constitutional question: **by what constitutional principle should disputes be allocated between them?**

This paper argues that the legitimacy of administrative justice depends not only upon the fairness of individual institutions, but also upon ensuring that disputes are determined by the institution whose procedural safeguards are proportionate to their complexity, legal significance, evidential demands and practical consequences.

The paper develops what is described as the **Constitutional Principle of Proportional Escalation**. The principle proceeds from the proposition that procedural safeguards should increase progressively as disputes become more complex, involve greater financial or public consequences, depend increasingly upon contested evidence or raise novel questions of

law. Administrative justice should therefore not be understood as a collection of independent institutions operating in isolation, but as an integrated constitutional system through which disputes move between decision-making forums according to constitutional principle rather than administrative convenience.

The paper distinguishes between jurisdiction and suitability. Parliament may lawfully confer jurisdiction upon an institution to determine a particular category of dispute. It does not necessarily follow that every dispute falling within that jurisdiction remains constitutionally suitable for determination through the same procedural model. As complexity, consequence and evidential uncertainty increase, the constitutional justification for progressively stronger procedural safeguards becomes correspondingly more compelling. The constitutional question is therefore not simply whether an institution possesses legal authority to determine a dispute, but whether the procedural framework available remains proportionate to the dispute being determined.

Drawing upon principles of constitutional and administrative law, the paper proposes a general framework through which proportional escalation may be evaluated across the administrative state. It identifies constitutional indicators suggesting when disputes may require progression between different adjudicative forums, including increasing evidential complexity, substantial financial consequences, competing expert evidence, allegations of dishonesty, novel legal questions, broader public importance and the need for authoritative legal precedent. These indicators are not presented as rigid jurisdictional rules but as constitutional considerations informing the appropriate allocation of public decision-making.

The framework is then applied across a range of administrative contexts, including statutory ombudsmen, tribunals, regulatory decision-making and professional disciplinary proceedings, demonstrating that the constitutional principle of proportional escalation extends beyond any individual institution and instead concerns the architecture of administrative justice itself.

The paper concludes that modern constitutional systems have devoted considerable attention to ensuring that institutions exercise public authority fairly, independently and accountably. They have devoted significantly less attention to ensuring that disputes are allocated to the constitutionally appropriate forum. It is suggested that the future legitimacy of administrative justice depends not only upon improving individual institutions, but upon developing constitutional principles governing the movement of disputes between them. Properly understood, proportional escalation is not merely a procedural mechanism. It is a constitutional safeguard designed to ensure that the procedural protections afforded to those affected by public decision-making remain proportionate to the seriousness of the disputes being resolved.

Keywords

Constitutional Law • Administrative Law • Public Law • Administrative Justice • Proportionality • Escalation • Statutory Adjudication • Tribunals • Ombudsmen • Regulators • Procedural Fairness • Rule of Law • Constitutional Legitimacy • Access to Justice • Due Process • Administrative Decision-Making

About This Paper

Modern administrative justice is often examined institution by institution. Courts are analysed separately from tribunals. Tribunals are considered separately from ombudsmen. Regulators, professional disciplinary bodies and alternative dispute resolution schemes are likewise examined within their own legal frameworks.

This paper adopts a different constitutional perspective.

Rather than asking whether individual institutions operate fairly, it asks the more fundamental constitutional question of **how disputes should be allocated between institutions in the first place.**

It argues that every adjudicative forum embodies a particular balance between accessibility, efficiency, expertise and procedural protection. Those balances are constitutionally justified only if they remain proportionate to the disputes the institution is asked to determine. As disputes become more legally complex, evidentially contested or financially significant, the constitutional justification for stronger procedural safeguards becomes progressively more compelling.

The paper introduces the concept of the **Constitutional Principle of Proportional Escalation** as a framework through which the movement of disputes between different forums of administrative justice may be understood. It suggests that constitutional legitimacy depends not only upon the fairness of individual institutions, but also upon ensuring that disputes are determined by institutions whose procedural characteristics remain proportionate to their complexity, significance and consequences.

Rather than proposing institutional reform, the paper seeks to develop a constitutional framework capable of informing future debate concerning the design of administrative justice across the modern state.

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Introduction

Every constitutional system establishes institutions for the resolution of disputes. Courts, tribunals, statutory ombudsmen, regulators, professional disciplinary bodies, internal review mechanisms and alternative dispute resolution schemes each exercise adjudicative functions within defined areas of public and private life. Collectively, they constitute the architecture of modern administrative justice. Constitutional scholarship has devoted considerable attention to the powers, procedures, accountability and legitimacy of these individual institutions. Comparatively little attention, however, has been directed towards a prior constitutional question: **what determines the appropriate institution to decide a particular dispute?**

This omission is striking. Constitutional legitimacy depends not only upon the fairness with which public authority is exercised, but also upon ensuring that authority is exercised by institutions possessing procedures proportionate to the nature of the disputes they are required to determine. An adjudicative process cannot be evaluated solely by reference to its internal fairness. Its constitutional legitimacy also depends upon whether it is the appropriate forum in which the dispute should have been determined in the first place.

Modern administrative justice has evolved incrementally rather than systematically. Parliament has, over many decades, established specialist institutions to address particular constitutional and practical problems. Tribunals were created to provide expertise and accessibility within defined statutory jurisdictions. Statutory ombudsmen were established to offer independent and informal alternatives to litigation. Regulators were entrusted with specialised supervisory and enforcement responsibilities. Professional disciplinary bodies developed to maintain standards within particular professions. Each institution performs an important constitutional function. Each was designed to achieve a different balance between accessibility, expertise, efficiency, procedural protection and legal certainty.

These differences are neither accidental nor merely administrative. They are constitutional.

Every adjudicative institution embodies an implicit judgment by Parliament concerning the procedural safeguards appropriate to the disputes entrusted to it. Courts provide comprehensive evidential procedures, public hearings, appellate structures and authoritative legal precedent. Tribunals combine judicial safeguards with specialist expertise and greater procedural flexibility. Ombudsmen favour accessibility, informality and inquisitorial investigation. Internal review mechanisms prioritise speed, efficiency and administrative correction. The constitutional legitimacy of each institution derives not from superiority over the others, but from its suitability for the functions Parliament intended it to perform.

The constitutional difficulty arises because disputes are not static.

A complaint initially appearing straightforward may develop into a dispute involving extensive documentary evidence, conflicting expert opinion, allegations of dishonesty, difficult questions of statutory interpretation or financial consequences of exceptional significance. Regulatory investigations may uncover issues extending far beyond the scope originally anticipated. Professional disciplinary proceedings may evolve into matters of substantial public importance. In each case, the nature of the dispute changes. Whether the constitutional suitability of the forum should change with it is the central question examined throughout this paper.

Surprisingly, there exists no generally articulated constitutional principle governing that progression.

Jurisdiction determines which institution possesses the legal authority to determine a dispute. It does not necessarily determine whether every dispute falling within that jurisdiction remains constitutionally suitable for resolution through the same procedural model. The distinction between **jurisdiction** and **constitutional suitability** forms the foundation of the present analysis. Parliament may lawfully confer jurisdiction upon an institution whilst constitutional principle nevertheless suggests that certain disputes should, because of their complexity, consequence or evidential demands, proceed within a forum offering different procedural safeguards.

This paper argues that modern administrative justice requires recognition of a broader constitutional organising principle. That principle is described as the **Constitutional Principle of Proportional Escalation**.

The principle proceeds from a straightforward proposition. As disputes become more legally complex, factually contested, financially significant or publicly important, the constitutional justification for increasingly robust procedural safeguards correspondingly strengthens. Escalation should therefore not be understood simply as an administrative decision or a matter of statutory jurisdiction. It should be understood as a constitutional safeguard

ensuring that the procedural characteristics of the decision-making forum remain proportionate to the dispute being determined.

Importantly, the principle advanced in this paper does not suggest that every difficult dispute should be transferred to the courts, nor that informal or specialist adjudication is constitutionally inferior to judicial determination. Such propositions would misunderstand both the diversity and the constitutional value of administrative justice. Accessibility, proportionality, expertise and efficiency remain fundamental constitutional objectives. The argument is instead that no single procedural model can be assumed to remain equally appropriate across every dispute capable of arising within an expanding statutory jurisdiction. Constitutional legitimacy requires continual assessment of whether institutional design remains aligned with institutional function.

Nor is the paper concerned with criticism of any particular institution. The constitutional principle developed herein applies equally to statutory ombudsmen, tribunals, regulators, professional disciplinary bodies and other forms of administrative adjudication. Each occupies a legitimate constitutional position. The question is not whether those institutions should exist, but how constitutional systems should determine when disputes ought to remain within one forum and when they should properly progress to another.

The analysis proceeds in four Parts. Part I examines the constitutional architecture of administrative justice and explains why different adjudicative forums exist. Part II develops the Constitutional Principle of Proportional Escalation, distinguishing legal jurisdiction from constitutional suitability and examining the relationship between procedural safeguards, complexity and proportionality. Part III identifies constitutional indicators that may justify escalation between adjudicative forums whilst considering the need to preserve accessibility alongside procedural fairness. Finally, Part IV applies the proposed framework across a range of administrative contexts, demonstrating that proportional escalation provides a unifying constitutional principle capable of informing the future development of administrative justice.

The ambition of this paper is intentionally broader than institutional analysis alone. It seeks to identify a constitutional principle governing the allocation of disputes across the administrative state itself. If successful, the Constitutional Principle of Proportional Escalation provides a framework through which existing institutions may continue to evolve whilst preserving the constitutional values of accessibility, fairness, accountability and the rule of law. Ultimately, the legitimacy of administrative justice depends not only upon ensuring that disputes are decided fairly, but upon ensuring that they are decided in the constitutionally appropriate forum.

Part I – The Constitutional Architecture of Administrative Justice

Chapter 1

Why Different Adjudicative Forums Exist

Every constitutional system is required to answer a question that is at once practical and constitutional: **who should decide?** Before any dispute can be resolved, before any procedural rule can be applied and before any question of law can be determined, the constitution must first identify the institution that will exercise the authority to decide it. This allocation of decision-making authority is so familiar that it is rarely examined. Yet it represents one of the most fundamental choices within constitutional design. Justice depends not only upon the fairness of decision-making, but upon ensuring that decisions are entrusted to institutions whose constitutional characteristics are appropriate to the disputes they are asked to resolve.

This observation reflects a simple constitutional reality. No institution is capable of performing every adjudicative function equally well. The ordinary courts possess unparalleled procedural safeguards, constitutional independence and authority to determine questions of law, but those strengths are accompanied by greater formality, expense and procedural complexity. Tribunals combine judicial independence with specialist expertise and greater accessibility. Statutory ombudsmen provide informal, inquisitorial mechanisms capable of resolving disputes that might otherwise never reach a court. Regulators exercise specialist supervisory functions requiring technical knowledge of highly regulated sectors. Professional disciplinary bodies protect public confidence within individual professions through procedures reflecting the distinctive characteristics of those professions. Internal review mechanisms permit administrative correction without the need for external adjudication. Each institution performs a different constitutional function because each addresses a different constitutional need.

The diversity of modern administrative justice is therefore neither accidental nor inefficient. It is the product of constitutional specialisation. Parliament has not created multiple decision-making institutions because it doubts the competence of the courts. Nor has it established specialist bodies merely as a matter of administrative convenience. Rather, constitutional government has recognised that justice assumes different forms according to the nature of the dispute requiring determination. A disagreement concerning a planning permission, a consumer complaint, allegations of professional misconduct, a dispute

concerning social security entitlement and a complex commercial claim each raise different combinations of legal, factual and public interest considerations. Constitutional design responds to those differences by creating institutions possessing procedures appropriate to their respective jurisdictions.

It follows that institutional diversity is itself a constitutional safeguard.

By allocating disputes to specialist forums, Parliament seeks to ensure that adjudication is proportionate to the issues being determined. Accessibility is enhanced where disputes do not require the procedural complexity of the High Court. Expertise is strengthened where recurring categories of dispute are determined by institutions possessing specialist knowledge. Efficiency improves where simpler matters are resolved without unnecessary procedural formality. Public confidence is reinforced where institutions are designed around the particular characteristics of the jurisdiction they exercise. The constitutional architecture of administrative justice is therefore founded upon differentiation rather than uniformity.

The existence of multiple adjudicative forums also reflects a broader constitutional principle. Justice is not a single procedural model capable of universal application. Different disputes require different balances between competing constitutional values. Some disputes demand the extensive evidential safeguards associated with judicial determination. Others benefit from specialist expertise, inquisitorial investigation or administrative flexibility. Constitutional legitimacy does not require identical procedures across every forum. It requires that the procedural characteristics of each institution remain proportionate to the functions Parliament has entrusted to it.

The distinction between **jurisdiction** and **institutional function** is therefore of central importance. Jurisdiction answers the legal question of whether an institution possesses authority to determine a dispute. Institutional function answers the constitutional question of why that institution exists and what constitutional purpose its procedural model is intended to serve. These inquiries frequently coincide, but they are conceptually distinct. Parliament may lawfully confer jurisdiction upon an institution for reasons extending beyond the immediate procedural characteristics of that institution. Equally, the constitutional purpose for which an institution was established may illuminate how its jurisdiction ought to be understood as administrative justice evolves.

This constitutional perspective reveals an important characteristic of institutional design that is frequently overlooked. Every adjudicative body embodies an implicit assessment of procedural proportionality. Courts embody Parliament's judgment that certain disputes justify comprehensive procedural safeguards notwithstanding the accompanying cost and complexity. Tribunals represent a different balance, combining judicial standards with accessibility and specialist expertise. Ombudsmen reflect Parliament's judgment that informality, proportionality and inquisitorial investigation provide appropriate means of

resolving particular categories of complaint. Regulators exercise powers requiring a further balance between technical expertise, public protection and administrative efficiency. None of these institutional choices is arbitrary. Each represents a constitutional judgment concerning the procedural model best suited to the responsibilities being exercised.

Once this is recognised, a further constitutional question inevitably arises.

If institutions derive their legitimacy from the relationship between their procedural design and their constitutional function, what occurs when the disputes determined within those institutions change significantly over time? Modern administrative justice is not static. Statutory jurisdictions expand. Regulatory frameworks become more sophisticated. Commercial relationships increase in complexity. Financial consequences grow. Evidential disputes become more technically demanding. The practical responsibilities of institutions evolve continuously. It cannot simply be assumed that procedural models designed for one constitutional context remain equally appropriate in another.

This is not to suggest that institutional evolution is constitutionally problematic. On the contrary, constitutional systems must adapt to changing social, economic and legal conditions. The expansion of specialist adjudication has itself been one of the defining constitutional developments of the modern administrative state. The question is not whether institutions should evolve. The question is whether constitutional principles governing the allocation of disputes should evolve alongside them.

Remarkably, constitutional scholarship has devoted relatively little sustained attention to this issue. Considerable analysis exists concerning the powers, procedures and accountability of individual institutions. Less attention has been directed towards the constitutional principles determining whether disputes should remain within one forum or progress to another as their characteristics change. Yet that question concerns the architecture of administrative justice itself. It is not merely an issue of institutional management. It is an issue of constitutional design.

The chapters that follow seek to develop a framework through which that design may be understood. They proceed from the proposition that institutional legitimacy depends not solely upon the fairness of individual decision-making, but upon maintaining an appropriate relationship between the procedural characteristics of adjudicative forums and the disputes they are required to determine. Before that framework can be developed, however, it is necessary to examine more closely the relationship between institutional design and constitutional function. It is to that relationship that the analysis now turns.

Chapter 2

Institutional Design and Constitutional Function

The existence of multiple adjudicative institutions within the modern administrative state is neither accidental nor merely historical. It reflects a series of constitutional choices concerning the manner in which public authority should be exercised. Parliament does not simply create institutions because disputes require decision-makers. It creates institutions because different categories of dispute require different procedural models. Institutional design is therefore an expression of constitutional purpose.

This proposition is frequently overlooked.

Constitutional analysis often begins by examining the legal powers conferred upon a particular institution. Questions are asked concerning jurisdiction, statutory interpretation, accountability and procedural fairness. These inquiries are indispensable. They nevertheless begin at a point subsequent to a more fundamental constitutional decision. Before Parliament determines what powers an institution should possess, it must first determine **what constitutional function the institution is intended to perform**. Institutional design is therefore not merely an administrative exercise. It is the practical expression of constitutional priorities.

Every adjudicative institution embodies a distinct constitutional philosophy.

The ordinary courts proceed upon the premise that justice is best achieved through comprehensive procedural safeguards, judicial independence, public hearings, adversarial participation, established rules of evidence and authoritative legal reasoning. Their constitutional role extends beyond the resolution of individual disputes. Courts declare and develop the law, ensure the legality of executive action, protect fundamental rights and provide precedential guidance for future cases. Their procedures are therefore designed not merely to resolve disagreement but to uphold the wider constitutional order.

Tribunals reflect a different constitutional balance.

They retain many of the characteristics associated with judicial determination whilst introducing greater procedural flexibility and specialist expertise. Parliament recognised that certain statutory jurisdictions require decision-makers possessing detailed knowledge of particular legislative schemes whilst preserving the constitutional protections associated

with independent adjudication. Tribunals therefore occupy an intermediate constitutional position, combining accessibility with judicial discipline.

Statutory ombudsmen represent a further constitutional philosophy.

Rather than emphasising adversarial procedure, the ombudsman model is founded upon accessibility, proportionality and inquisitorial investigation. Parliament accepted that many disputes would be more effectively resolved through specialist investigation than formal litigation. Informality was therefore not viewed as a reduction in justice but as a different means of achieving it. The constitutional objective was to widen access to independent adjudication whilst avoiding the expense and complexity that frequently prevent individuals from enforcing their legal rights through the courts.

Regulators perform yet another constitutional function.

Their primary responsibility is not ordinarily the determination of private disputes but the protection of wider public interests within specialised sectors of economic and social activity. Their adjudicative powers exist alongside supervisory, investigative and enforcement responsibilities. The procedural framework governing regulatory decision-making therefore reflects constitutional priorities extending beyond dispute resolution alone. Technical expertise, market integrity, consumer protection and public confidence all influence institutional design.

Professional disciplinary bodies similarly illustrate that institutional design follows constitutional purpose.

They exist to maintain professional standards, protect the public and preserve confidence in regulated professions. Their procedures therefore combine elements of judicial adjudication with the practical requirements of professional self-regulation. They are neither courts nor regulators in the conventional sense. They are institutions designed around a distinct constitutional function.

These examples reveal an important constitutional principle.

Procedural design is never neutral.

Every procedural rule reflects an underlying judgment concerning the balance between competing constitutional values. Greater procedural formality generally enhances opportunities to test disputed evidence, but often increases cost and delay. Simpler procedures improve accessibility and efficiency but necessarily reduce the range of procedural safeguards available to decision-makers. Specialist expertise improves consistency within particular sectors but may reduce the breadth of perspective associated

with generalist courts. There is no universally superior procedural model. Each represents a constitutional compromise between values that cannot simultaneously be maximised.

Institutional design should therefore be understood as an exercise in constitutional proportionality.

Parliament continually balances competing objectives when creating adjudicative bodies. It asks how much procedural protection is necessary, how much accessibility should be achieved, how much expertise is required and how much institutional flexibility is desirable. The resulting institution represents Parliament's assessment of the procedural characteristics proportionate to the functions entrusted to it.

That assessment, however, is made at a particular point in constitutional time.

The statutory framework establishing an institution reflects Parliament's understanding of the disputes likely to arise within its jurisdiction at the time of enactment. Over subsequent decades, legal systems evolve. Markets become more sophisticated. Technology alters commercial relationships. Regulatory obligations expand. Financial products become increasingly complex. Public expectations develop. Institutions acquire broader responsibilities than originally anticipated. The constitutional environment within which an institution operates may therefore change substantially whilst the procedural assumptions embedded within its design remain comparatively stable.

This distinction between **institutional design** and **institutional evolution** is central to the argument advanced in this paper.

Constitutional legitimacy cannot be assessed solely by reference to whether an institution continues to exercise its statutory powers lawfully. It must also consider whether the procedural model through which those powers are exercised remains proportionate to the responsibilities the institution has gradually assumed. The question is not whether Parliament acted correctly when establishing the institution. The question is whether constitutional evolution requires periodic reconsideration of the relationship between institutional function and procedural design.

This observation leads directly to the central proposition developed in the following chapters.

The allocation of disputes cannot be understood solely as a matter of jurisdiction. Jurisdiction identifies the institution possessing legal authority to determine a dispute. Constitutional suitability asks whether the procedural characteristics of that institution remain proportionate to the dispute actually requiring determination. Those inquiries frequently coincide, but they are not identical. As administrative justice evolves, the distinction between them becomes increasingly important.

The paper now turns to that distinction. It argues that constitutional systems should recognise a principle extending beyond jurisdiction alone: a principle requiring continuing assessment of whether disputes remain within forums possessing procedural safeguards proportionate to their complexity, significance and consequences. It is this principle—the **Constitutional Principle of Proportional Escalation**—that forms the central contribution of the chapters that follow.

Part II – The Constitutional Principle of Proportional Escalation

Chapter 3

From Jurisdiction to Constitutional Suitability

The preceding chapters have argued that the constitutional architecture of administrative justice is founded upon institutional diversity rather than institutional uniformity. Courts, tribunals, statutory ombudsmen, regulators and other adjudicative bodies exist because Parliament has concluded that different categories of dispute require different procedural models. Institutional design is therefore an expression of constitutional purpose. That conclusion, however, gives rise to a further question of considerable constitutional importance.

How should constitutional systems determine whether a dispute remains suitable for the forum in which it began?

Surprisingly, this question has received comparatively limited attention. Administrative law has traditionally focused upon jurisdiction. If Parliament has conferred legal authority upon a decision-maker to determine a dispute, constitutional analysis has generally proceeded upon the basis that the principal question concerns the lawful exercise of that jurisdiction. Whether the institution has acted fairly, rationally and within the limits of its statutory powers has rightly occupied the attention of courts and scholars alike.

Jurisdiction, however, answers only part of the constitutional inquiry.

Jurisdiction determines **whether** an institution possesses legal authority to determine a dispute. It does not necessarily determine **whether that institution remains the constitutionally appropriate forum** as the nature of the dispute develops. Those are distinct

questions. The first concerns legal competence. The second concerns constitutional suitability.

This distinction is fundamental.

It is entirely possible for Parliament to confer lawful jurisdiction upon an institution whilst the practical characteristics of a particular dispute increasingly resemble those for which a different procedural model was designed. A dispute may begin as a relatively straightforward complaint capable of fair determination through an informal process, yet gradually develop into a matter characterised by extensive documentary evidence, competing expert opinion, contested factual narratives, significant financial consequences or novel questions of law. Throughout that evolution the institution may retain full legal jurisdiction. The constitutional question is whether the procedural characteristics of the forum remain proportionate to the dispute it is being asked to resolve.

The argument advanced in this paper is that constitutional systems should recognise a distinction between **legal jurisdiction** and **constitutional suitability**.

Legal jurisdiction is binary. Either Parliament has conferred authority upon an institution or it has not. Constitutional suitability is evaluative. It requires consideration of whether the procedural safeguards, institutional expertise and constitutional function of the decision-making forum remain appropriately aligned with the dispute before it. Jurisdiction is determined by statute. Suitability is informed by constitutional principle.

This distinction does not diminish parliamentary sovereignty.

Parliament remains free to define the jurisdiction of any adjudicative institution as it considers appropriate. The Constitutional Principle of Proportional Escalation does not question that legislative authority. Rather, it offers a framework through which Parliament, policymakers and constitutional designers may evaluate whether existing institutional arrangements continue to achieve the constitutional objectives for which they were originally established. It is therefore a principle of constitutional design rather than judicial intervention.

The need for such a principle becomes apparent once administrative justice is viewed as an integrated constitutional system rather than a collection of separate institutions.

Disputes rarely exist in isolation. They develop. New evidence emerges. Allegations broaden. Financial implications increase. Questions initially thought to be straightforward become legally or factually complex. In many areas of public administration, a dispute may pass through several stages before reaching final determination. Internal review may be followed by specialist adjudication. Regulatory investigation may precede disciplinary proceedings. Administrative determination may ultimately give rise to judicial review or

appellate litigation. The movement of disputes between institutions is therefore a familiar feature of administrative justice. What is less clear is the constitutional principle governing that movement.

The Constitutional Principle of Proportional Escalation seeks to provide that missing framework.

The principle proceeds from a simple proposition. As the demands placed upon a decision-making process increase, the procedural protections available within that process should remain proportionate to those demands. Escalation is therefore not justified merely because a dispute has become difficult or because one party disagrees with an earlier decision. It is justified where the characteristics of the dispute have evolved to such an extent that the constitutional balance originally underpinning the procedural model no longer reflects the realities of the adjudication required.

Importantly, proportional escalation should not be understood as criticism of the institution from which escalation occurs.

A tribunal does not fail because an appeal lies to a higher court. A regulator does not fail because judicial scrutiny is available. An ombudsman does not fail because certain disputes may ultimately require judicial determination. Escalation is a constitutional feature of legal systems, not evidence of institutional inadequacy. Indeed, the availability of appropriate escalation often strengthens confidence in the legitimacy of the institutions operating at earlier stages because it demonstrates that constitutional design recognises the differing procedural requirements of different categories of dispute.

Nor should escalation be viewed as an inevitable progression towards the courts.

The ordinary courts possess many constitutional strengths, but they also involve greater expense, delay and procedural complexity. A constitutional principle favouring automatic judicialisation would undermine the accessibility and proportionality that justify much of the administrative state. The objective is not to maximise procedural formality. It is to ensure that procedural safeguards remain proportionate to the dispute actually requiring determination. In many cases, that objective will be fully achieved within specialist administrative institutions. In others, constitutional considerations may point towards a forum possessing different procedural characteristics.

This approach reflects a broader understanding of constitutional legitimacy.

Legitimacy is not secured simply because every institution performs its own functions competently. It also depends upon the coherence of the administrative system as a whole. A constitution should not merely create fair institutions. It should create a fair relationship between those institutions, ensuring that disputes are capable of moving to the forum most

constitutionally suited to their evolving character. Administrative justice is therefore not simply a series of isolated jurisdictions. It is an interconnected constitutional structure whose legitimacy depends upon the continuing alignment between institutional design and institutional function.

The Constitutional Principle of Proportional Escalation is offered in that spirit. It is not presented as a rigid doctrine, a statutory rule or a substitute for legislative judgment. It is a constitutional framework through which the allocation of disputes may be evaluated. It recognises that jurisdiction alone cannot answer every question concerning institutional legitimacy. Constitutional suitability must also be considered. Once that distinction is recognised, the question becomes not whether escalation is possible, but how constitutional systems should identify the circumstances in which escalation becomes appropriate.

That question forms the subject of the next chapter, which considers the constitutional indicators capable of demonstrating when procedural proportionality may require movement between different forums of administrative justice.

Chapter 4

Complexity, Consequence and Procedural Proportionality

The Constitutional Principle of Proportional Escalation developed in the preceding chapter is intentionally framed as a principle rather than a rule. Constitutional systems rarely operate through rigid formulae. Questions concerning fairness, proportionality and institutional legitimacy inevitably require evaluative judgment informed by context rather than mechanical application. It follows that no single characteristic of a dispute can determine whether escalation is constitutionally appropriate. The issue is not whether one threshold has been crossed. It is whether the cumulative demands of the dispute remain proportionate to the procedural characteristics of the forum in which it is being determined.

This emphasis upon proportionality reflects a broader feature of constitutional adjudication. Courts routinely evaluate competing constitutional values by considering the practical consequences of particular decisions rather than applying inflexible classifications. Administrative law similarly recognises that procedural fairness depends upon context. The Constitutional Principle of Proportional Escalation proceeds from the same understanding.

Escalation should be informed by constitutional indicators that illuminate whether the relationship between institutional design and institutional function remains appropriately balanced.

The first indicator is **evidential complexity**.

Many disputes are capable of fair determination upon relatively straightforward documentary material. Others require detailed analysis of extensive records accumulated over prolonged periods, conflicting witness accounts, specialist reports and technical documentation. As evidential complexity increases, so too does the importance of procedural mechanisms capable of testing reliability, resolving inconsistency and evaluating competing factual narratives. This does not mean that every evidentially complex dispute requires judicial determination. It does, however, suggest that increasing evidential complexity strengthens the constitutional case for considering whether the existing procedural model remains proportionate.

A second indicator concerns **the nature of the factual dispute itself**.

There is an important distinction between disputes in which the relevant facts are substantially agreed and those in which the outcome depends upon sharply contested accounts of what occurred. Where the central issue is the interpretation of established facts, simplified procedures may often remain entirely appropriate. Where the dispute turns upon credibility, disputed conversations, alleged representations or competing accounts of events occurring many years earlier, different procedural considerations arise. Constitutional systems have historically developed oral evidence, structured examination and judicial fact-finding precisely because disputes of this character present particular challenges for adjudication.

The third indicator concerns **expert evidence**.

Modern administrative disputes increasingly involve engineering, medicine, actuarial science, financial modelling, insurance causation, cyber security, environmental assessment and numerous other forms of technical expertise. Expert evidence frequently extends beyond the simple presentation of specialist opinion. Experts may disagree fundamentally concerning methodology, assumptions, causation or professional standards. The constitutional issue is not whether specialist institutions are capable of understanding technical evidence. Many plainly are. The question is whether the procedural framework provides appropriate means of evaluating competing expert analysis where the outcome of the dispute depends substantially upon that evaluation.

A fourth consideration is **the practical consequences of the decision**.

Constitutional systems have long recognised that procedural protection should ordinarily increase as the consequences of decision-making become more significant. Decisions affecting liberty attract more extensive procedural safeguards than routine administrative determinations. The same constitutional logic has broader application across administrative justice. Substantial financial consequences, significant professional implications, reputational damage or enduring commercial effects may each strengthen the constitutional justification for procedures capable of providing greater evidential assurance. This is not because high-value disputes are inherently more deserving of fairness than low-value disputes. It is because the constitutional consequences of error increase alongside the consequences of the decision itself.

A fifth indicator concerns **legal novelty and public importance**.

Many administrative disputes involve the routine application of well-established legal principles. Others raise questions of statutory interpretation, regulatory interaction or constitutional significance extending beyond the interests of the immediate parties. Such disputes frequently require authoritative legal reasoning capable of providing guidance for future decision-making. Institutions whose constitutional function includes the development and clarification of legal principle may therefore become increasingly appropriate where broader legal uncertainty forms part of the dispute itself. The issue is not simply the resolution of an individual disagreement but the clarification of the law governing future cases.

These indicators should not be understood in isolation.

Administrative disputes rarely become constitutionally significant because of one characteristic alone. More commonly, constitutional concern arises through the interaction of multiple factors. A dispute involving contested factual accounts, conflicting expert evidence, substantial financial consequences and novel legal issues presents qualitatively different procedural demands from a complaint involving only one of those characteristics. The Constitutional Principle of Proportional Escalation is therefore cumulative rather than categorical. It is the overall constitutional profile of the dispute, rather than any individual feature, that should inform judgments concerning procedural suitability.

This cumulative approach is particularly important because it avoids two constitutional errors.

The first would be to assume that complexity automatically requires judicialisation. Such an approach would undermine the accessibility and efficiency that justify much of administrative justice. Specialist institutions routinely determine demanding disputes with considerable expertise and fairness. The second error would be to assume that lawful jurisdiction necessarily answers every constitutional question concerning procedural

suitability. Jurisdiction determines authority. It does not exhaust constitutional analysis concerning the forum through which that authority should most appropriately be exercised.

The constitutional inquiry is therefore one of institutional fit.

Every adjudicative institution possesses procedural strengths and procedural limitations. The question is whether those characteristics remain proportionate to the dispute requiring determination. Constitutional legitimacy is strengthened where institutional design and institutional function remain aligned. It becomes more difficult to sustain where that relationship progressively weakens through the evolution of jurisdiction without corresponding consideration of procedural design.

Importantly, proportional escalation should not be viewed as a mechanism favouring any particular institution.

Its objective is not to privilege courts over tribunals, tribunals over ombudsmen or regulators over either. The principle is institutionally neutral. It seeks only to ensure that the procedural characteristics of the forum correspond appropriately with the constitutional demands of the dispute. Accessibility, expertise, efficiency and procedural protection are all constitutional goods. The principle advanced in this paper does not elevate one above another. It seeks to preserve an appropriate balance between them.

The indicators identified in this chapter are therefore not offered as statutory criteria or judicial tests. They are constitutional considerations capable of informing legislative design, institutional development and scholarly analysis. They provide a vocabulary through which the relationship between disputes and adjudicative forums may be examined with greater precision. Most importantly, they reinforce the central proposition advanced throughout this paper: constitutional legitimacy depends not only upon fair institutions, but upon ensuring that disputes are determined within institutions whose procedural characteristics remain proportionate to their evolving complexity, significance and consequences.

The next Part of the paper moves from constitutional theory to constitutional application. Having identified the principles capable of informing proportional escalation, it considers how those principles might operate across the broader landscape of administrative justice and whether they provide a coherent framework for understanding the relationship between ombudsmen, tribunals, regulators and the ordinary courts.

Part III – Constitutional Indicators for Proportional Escalation

Chapter 5

Constitutional Indicators for Proportional Escalation

The Constitutional Principle of Proportional Escalation does not seek to replace legislative judgment with constitutional prescription. Parliament remains constitutionally responsible for determining the jurisdiction of adjudicative institutions and for defining the statutory powers through which those institutions operate. The purpose of the present framework is more limited. It seeks to identify constitutional considerations that may assist Parliament, policymakers and institutional designers in evaluating whether existing arrangements continue to reflect the constitutional objectives for which they were originally established.

The distinction is significant.

Constitutional principles rarely dictate institutional outcomes. Rather, they provide a framework through which competing constitutional values may be identified, balanced and reconciled. The principle of proportional escalation is no different. It does not require that particular disputes must always proceed from one forum to another. Instead, it suggests that constitutional legitimacy is strengthened where institutional arrangements recognise that procedural requirements evolve alongside the changing character of disputes.

This chapter therefore proposes a series of constitutional indicators through which that relationship may be evaluated. These indicators should not be regarded as statutory criteria, judicial tests or mandatory thresholds. They are analytical considerations intended to assist constitutional evaluation. Their significance lies not in any individual indicator, but in the cumulative constitutional picture they reveal.

The first indicator concerns the relationship between **procedural complexity and procedural capacity**.

Every adjudicative institution possesses a procedural architecture reflecting the constitutional function Parliament intended it to perform. Some institutions possess extensive powers to compel evidence, hear oral testimony, determine preliminary issues of law and manage complex multi-party proceedings. Others are intentionally designed around

speed, accessibility and informality. Constitutional analysis should therefore ask whether the procedural capacity of the institution remains proportionate to the procedural demands generated by the dispute. The issue is not whether the institution is competent, but whether its procedural design remains appropriately aligned with the adjudicative task before it.

The second indicator concerns **institutional purpose**.

Institutions are created to fulfil defined constitutional functions. A tribunal established to determine specialist statutory appeals serves a different constitutional purpose from a regulator responsible for protecting the integrity of financial markets. An ombudsman established to provide accessible consumer redress performs a different role from a court charged with declaring the law. Escalation should therefore not be understood simply as movement towards more formal procedures. It should be understood as movement towards the institution whose constitutional purpose most closely corresponds with the dispute requiring determination.

The third indicator concerns **the constitutional consequences of error**.

Every adjudicative process accepts that error can never be eliminated entirely. Constitutional systems instead seek to reduce the likelihood and consequences of error through procedures proportionate to the significance of the decision being made. As the potential consequences of an incorrect determination increase, so too does the constitutional importance of procedural safeguards capable of improving the reliability of fact-finding and legal analysis. This principle is already reflected throughout public law. Decisions affecting liberty, professional status or fundamental rights ordinarily attract more extensive procedural protection than routine administrative determinations. The same constitutional logic has wider application across administrative justice.

A fourth indicator concerns **the public interest extending beyond the immediate dispute**.

Many administrative disputes affect only the parties before the decision-maker. Others possess broader constitutional significance. A dispute may expose uncertainty within a statutory scheme, reveal inconsistent regulatory practice or raise issues likely to affect large numbers of future cases. In such circumstances, the constitutional importance of authoritative reasoning extends beyond the immediate resolution of the complaint itself. Institutions capable of producing decisions with wider legal or constitutional value may therefore become increasingly appropriate where the public interest extends beyond the individual dispute.

A fifth indicator concerns **institutional confidence**.

Public confidence in administrative justice depends not merely upon confidence in individual decision-makers but upon confidence that disputes are being resolved within constitutionally appropriate forums. Confidence is strengthened where members of the public can understand why a dispute is being determined by a particular institution and why the procedures available are proportionate to the issues involved. Conversely, confidence may be weakened where there appears to be a growing disconnect between the complexity of disputes and the procedural characteristics of the institutions responsible for resolving them. Constitutional legitimacy therefore depends not only upon fairness in fact, but upon the continuing coherence of institutional design.

These indicators demonstrate that proportional escalation is fundamentally different from institutional criticism.

The framework developed throughout this paper proceeds upon the assumption that every adjudicative institution possesses genuine constitutional strengths. Courts provide authority and procedural rigour. Tribunals combine expertise with judicial safeguards. Ombudsmen promote accessibility and proportionality. Regulators contribute technical knowledge and public protection. Internal review mechanisms permit efficient correction of administrative error. The constitutional question is never whether one institution is universally preferable to another. It is whether the institutional characteristics available remain proportionate to the dispute requiring determination.

The practical implications of this analysis extend beyond legislative drafting.

When Parliament establishes new adjudicative bodies, expands existing jurisdictions or reforms administrative procedures, constitutional consideration should be given not only to the powers conferred upon institutions but also to the pathways through which disputes may move as their complexity evolves. Escalation should not be viewed as institutional failure. Properly understood, it is evidence that the constitutional architecture of administrative justice recognises that different disputes require different procedural responses at different stages of their development.

This perspective also provides a more coherent understanding of administrative justice as an integrated constitutional system. Too often, adjudicative institutions are analysed independently, each examined within the confines of its own statutory framework. Such an approach obscures the constitutional relationships existing between them. Administrative justice is not simply a collection of separate jurisdictions. It is an interconnected constitutional structure in which legitimacy depends upon ensuring that institutional diversity is accompanied by principled movement between institutions when constitutional considerations require it.

The Constitutional Principle of Proportional Escalation therefore offers more than an explanation of why different institutions exist. It provides a constitutional framework through which the evolution of administrative justice itself may be understood. By focusing attention upon the relationship between disputes and procedural models, rather than institutions in isolation, it invites a broader understanding of constitutional legitimacy—one concerned not only with how justice is delivered, but with ensuring that it is delivered by the constitutionally appropriate forum.

The final substantive chapter examines the practical implications of this framework across a number of administrative contexts. The objective is not to prescribe institutional reform, but to demonstrate that proportional escalation provides a coherent constitutional lens through which the architecture of modern administrative justice may be analysed as a whole.

Chapter 6

Applying the Framework: Ombudsmen, Tribunals, Regulators and the Courts

The Constitutional Principle of Proportional Escalation derives its value not from abstraction alone but from its ability to illuminate the practical organisation of administrative justice. Constitutional principles acquire legitimacy where they provide a coherent explanation of institutional design whilst offering guidance for future constitutional development. The purpose of this chapter is therefore not to advocate reform of particular institutions, but to consider whether the framework developed throughout this paper provides a persuasive account of the relationship between the principal forums through which public disputes are resolved.

The ordinary courts provide the clearest illustration of the constitutional relationship between procedural safeguards and institutional function.

Courts represent the point within the constitutional system at which procedural protection reaches its greatest intensity. Public hearings, judicial independence, structured evidential rules, appellate review, authoritative legal reasoning and the development of precedent are not merely historical characteristics of judicial determination. They reflect Parliament's and the constitution's recognition that certain categories of dispute justify the most comprehensive procedural safeguards available. The Constitutional Principle of Proportional Escalation does not elevate the courts above every other institution. Rather, it explains why

judicial procedures become constitutionally appropriate where the legal, evidential or public significance of disputes reaches a level demanding that degree of procedural protection.

Tribunals occupy a different constitutional position.

Their creation recognised that many disputes require judicial standards of fairness without requiring every characteristic of conventional litigation. Specialist expertise, procedural flexibility and accessibility are combined with independent adjudication in order to determine disputes arising within defined statutory schemes. The constitutional legitimacy of tribunals therefore lies in their ability to provide procedures proportionate to disputes that are often more complex than those suitable for informal resolution but less suited to the expense and formality associated with the ordinary courts. They illustrate that proportional escalation is not a binary choice between informal justice and judicial proceedings. Constitutional systems contain intermediate institutions precisely because proportionality itself admits of degrees.

Statutory ombudsmen demonstrate a further stage within the constitutional architecture.

Their defining constitutional contribution lies in accessibility. Parliament deliberately accepted a more informal procedural model because many consumer and administrative disputes would otherwise remain unresolved. The constitutional value of the ombudsman is therefore measured not by comparison with judicial procedure but by the practical availability of justice. Nevertheless, the framework developed throughout this paper suggests that constitutional analysis should not end with the question of jurisdiction. Where disputes evolve beyond the assumptions underpinning informal adjudication, constitutional consideration may properly be given to whether the procedural characteristics of another forum would provide a more proportionate means of resolving the issues presented. Such consideration should not be interpreted as criticism of the ombudsman model. It reflects recognition that the constitutional strengths of informality are greatest where the procedural demands of the dispute remain proportionate to the procedural capacities of the institution.

Regulators present a distinct constitutional challenge.

Many regulators exercise powers extending beyond adjudication into supervision, enforcement, market oversight and public protection. Their decisions frequently involve technical expertise, economic judgment and predictive assessment rather than the resolution of bilateral disputes alone. The Constitutional Principle of Proportional Escalation nevertheless remains relevant. As regulatory action increasingly affects fundamental commercial interests, substantial financial liabilities or questions of broader legal significance, constitutional systems commonly provide mechanisms through which more extensive procedural safeguards become available. Appeals, specialist tribunals and judicial

supervision each illustrate the constitutional recognition that different stages of regulatory decision-making may require different procedural responses. The existence of these pathways is not evidence of institutional weakness. It is evidence of constitutional design.

Professional disciplinary proceedings reveal similar constitutional characteristics.

Many begin with investigative processes intended to establish whether concerns require formal examination. If matters proceed, increasingly structured procedures become available as allegations become more serious and the potential consequences for professional status increase. The movement from investigation to formal hearing, and where appropriate to appellate review, reflects an implicit understanding that procedural protection should increase alongside the gravity of the issues to be determined. Although this progression is rarely described in constitutional terms, it is entirely consistent with the principle developed throughout this paper.

Internal review mechanisms provide perhaps the clearest demonstration that proportional escalation already exists within administrative practice.

Across government, regulation and public administration, initial decisions are frequently reconsidered internally before independent adjudication becomes available. Such arrangements recognise that many disputes can be resolved efficiently without external intervention, whilst preserving the possibility of progressively more independent forms of scrutiny where disagreement persists or complexity increases. Internal review therefore represents not merely an administrative convenience but an important component of the constitutional architecture of administrative justice.

Taken together, these examples reveal an important constitutional insight.

The administrative state already operates through successive layers of adjudication and review. Disputes routinely move between institutions as they develop. Yet the constitutional logic explaining those movements has seldom been articulated in a unified manner. The Constitutional Principle of Proportional Escalation does not seek to invent a new feature of administrative justice. Rather, it seeks to explain an existing constitutional phenomenon through a coherent analytical framework. What appears, at first sight, to be a series of disconnected statutory arrangements may instead be understood as reflecting a common constitutional objective: maintaining proportionality between the nature of disputes and the procedural safeguards available for their determination.

This perspective also assists in understanding constitutional legitimacy itself.

The legitimacy of administrative justice cannot be measured solely by examining whether individual institutions function effectively in isolation. A constitution may contain well-designed courts, efficient tribunals, independent ombudsmen and expert regulators, yet still

give rise to constitutional concern if disputes remain within forums whose procedural characteristics no longer correspond with their practical demands. Equally, institutions possessing different procedural models may collectively provide a highly legitimate system if clear and principled mechanisms exist through which disputes progress as their complexity and consequences evolve. Constitutional legitimacy therefore belongs not only to institutions individually but to the relationships between them.

The Constitutional Principle of Proportional Escalation ultimately invites a different way of understanding the administrative state.

Rather than viewing adjudicative bodies as isolated jurisdictions defined solely by statutory boundaries, it encourages examination of administrative justice as a constitutional ecosystem. Within that ecosystem, accessibility, expertise, procedural fairness, efficiency and judicial protection are not competing institutional ambitions but complementary constitutional values distributed across different forums. The legitimacy of the system depends upon maintaining an appropriate balance between those values through institutional design capable of adapting as disputes evolve.

The contribution of this paper is therefore intentionally modest yet potentially significant. It does not contend that existing institutions require wholesale reconstruction, nor does it advocate the creation of additional layers of adjudication. Instead, it proposes that constitutional analysis should recognise proportional escalation as an organising principle capable of explaining why different adjudicative forums exist, how they relate to one another and how future constitutional development may be approached. If accepted, the principle provides a coherent framework through which Parliament, policymakers, courts and scholars may evaluate the continuing evolution of administrative justice without sacrificing either accessibility or procedural fairness.

Conclusion

This paper has argued that the constitutional legitimacy of administrative justice depends upon more than the lawful exercise of public authority within individual institutions. It also depends upon ensuring that disputes are determined by institutions whose procedural characteristics remain proportionate to the nature, complexity and consequences of the matters entrusted to them. The question is therefore not confined to whether adjudication is conducted fairly. It extends to the more fundamental constitutional inquiry of whether adjudication is taking place within the constitutionally appropriate forum.

The modern administrative state has developed through successive responses to practical necessity. Parliament has created courts, tribunals, statutory ombudsmen, regulators, professional disciplinary bodies and internal review mechanisms because no single institution is capable of delivering every form of justice equally well. Each embodies a different constitutional balance between accessibility, expertise, procedural protection, efficiency and legal certainty. Institutional diversity is therefore not a weakness of the constitutional order. It is one of its defining strengths.

The constitutional significance of that diversity has nevertheless remained only partially understood.

Much constitutional scholarship has focused upon the powers, procedures and accountability of individual institutions. Those inquiries remain indispensable. Comparatively less attention has been directed towards the constitutional principles governing the allocation of disputes between those institutions. Yet the legitimacy of administrative justice depends not only upon how each institution functions in isolation, but upon whether the overall architecture of the system continues to allocate disputes according to constitutional principle rather than historical assumption or administrative convenience.

The central contribution of this paper has been to distinguish between **legal jurisdiction** and **constitutional suitability**.

Jurisdiction determines whether Parliament has conferred legal authority upon an institution to determine a dispute. Constitutional suitability asks a different question. It considers whether the procedural design, institutional purpose and constitutional function of that institution remain proportionate to the dispute actually requiring determination. The distinction is important because statutory jurisdiction is necessarily expressed in general terms, whereas disputes evolve in ways that legislation cannot always anticipate. Complexity increases. Financial consequences become more significant. Evidential issues multiply. Novel questions of law emerge. Constitutional legitimacy requires more than continuing statutory authority. It requires continuing procedural proportionality.

From that distinction, the paper has developed the **Constitutional Principle of Proportional Escalation**.

The principle is intentionally modest. It does not purport to establish a new rule of law, to redefine jurisdiction or to prescribe institutional reform. Nor does it suggest that difficult disputes should invariably progress towards judicial determination. Such propositions would disregard the considerable constitutional virtues of accessibility, specialist expertise and procedural flexibility that justify much of modern administrative justice. Instead, the principle offers a constitutional framework through which institutional design may be

evaluated. It proposes that as the procedural demands of disputes increase, constitutional systems should consider whether the forum responsible for their determination continues to provide safeguards proportionate to those demands.

Importantly, the principle advanced in this paper should not be understood as favouring one institution over another.

The constitutional objective is not to maximise procedural formality, nor to elevate judicial processes above every alternative form of adjudication. Accessibility is a constitutional value. Efficiency is a constitutional value. Expertise is a constitutional value. Procedural fairness is a constitutional value. The legitimacy of administrative justice lies in maintaining an appropriate balance between those values rather than allowing any one of them to dominate constitutional design. Proportional escalation is therefore concerned with institutional fit rather than institutional hierarchy.

The practical implications of this analysis extend beyond any individual statutory scheme.

As Parliament continues to create specialist adjudicative bodies and to expand the jurisdiction of existing institutions, constitutional attention should be directed not only towards the powers conferred upon those institutions but also towards the pathways through which disputes move between them. Administrative justice should be understood as a constitutional system rather than a collection of independent jurisdictions. Institutional relationships are as constitutionally significant as institutional powers.

This perspective also has implications for future constitutional scholarship.

Administrative law has traditionally examined institutions individually, asking whether regulators, tribunals, ombudsmen or courts perform their respective functions effectively and lawfully. The framework developed throughout this paper suggests that an equally important field of inquiry concerns the constitutional relationships between those institutions. Questions of allocation, procedural transition and institutional suitability deserve greater attention because they shape the practical experience of administrative justice as profoundly as the powers exercised within individual forums.

Ultimately, the Constitutional Principle of Proportional Escalation seeks to articulate a proposition that is both straightforward and fundamental. The constitution should concern itself not only with ensuring that justice is delivered fairly, but with ensuring that justice is delivered through institutions whose procedural characteristics remain proportionate to the disputes they are asked to determine. Constitutional legitimacy is therefore achieved not simply by creating fair institutions, but by maintaining a fair constitutional relationship between them.

If that proposition is accepted, the future development of administrative justice should be guided by a broader constitutional question than has often been asked to date. The issue is not merely whether existing institutions continue to perform their functions effectively. It is whether the constitutional architecture of administrative justice continues to allocate disputes in a manner that reflects the evolving relationship between accessibility, expertise, procedural fairness and the rule of law. The answer to that question will shape not only the future of individual institutions, but the constitutional legitimacy of the administrative state itself.