At common law, the judges will hold administrative conduct to be unlawful on any of three grounds: error of law, lack of due process, or the improper exercise of discretionary power. This chapter discusses how (and to what extent) the three grounds of judicial review are supported by constitutional principle. Each ground must be controlled by the principle of comity. The principle of comity requires judges to defer to administrative authorities on some issues, to some extent; the chapter explains the limits of deference, and the difference—and the connections—between the rule of law and the rule of judges.
2. The rule of law and the rule of judges