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Judicial Abstention in the Federal Courts--Its Origin, Purposes and Application

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STUDENT NOTES

Judicial Abstention in the Federal Courts—Its Origin, Purposes and Application

In the early years of the twentieth century, two major constitutional decisions by the Supreme Court threw into sharp focus the problem of federal equitable interference with state legislative and administrative action. In *Ex pare Young*,[1] the Court established as a general rule that a suit to enjoin a state official from acting in a matter alleged to violate the federal constitution is not a suit "against one of the United States" and therefore is not excluded from federal judicial power. In *Home Tel. & Tel. Co. v. City of Los Angeles*,[2] the Court held that acts of state officials under color of their office constitute state action within the coverage of the fourteenth amendmen even though the acts are contrary to state law. These two

[1] 209 U.S. 123 (1908).
[2] 227 U.S. 278 (1913).

decisions increased the likelihood of interference by federal courts with the conduct of state governments. The pattern of increased state regulation of economic and social life has created conflicts and occasioned the need for self-imposed restraint by the federal courts in order to preserve a balanced system.[3]

The most recent in a series of legislative and judicial efforts to minimize these conflicts has been the Supreme Court's development of the doctrine of equitable abstention, which requires the federal courts to defer to the state courts certain classes of cases wherein exercise of original federal jurisdiction might result in a type of federal-state conflict thought to be particularly undesirable. Although several recent decisions by the Supreme Court have dealt with various aspects of the doctrine,[4] its scope, purpose, and effect remain unclear.

After the *Young* decision a series of federal statutes imposed restraints on the power of the district courts to issue injunctions against state action. The two most important enactments, the Johnson Act of 1934,[5] and the Tax Injunction Act of 1937,[6] prohibit the district courts from enjoining the enforcement of state public utility rate orders and the collection of state taxes if certain conditions are met, the most important being the availability of a plain, speedy, and efficient remedy. Another reactionary step was the enactment of the three-judge district court statute,[7] which requires a three-judge court for hearing suits for interlocutory injunctions against the enforcement of allegedly unconstitutional state statutes. The latest step is the abstention doctrine, which stems from the rule that granting of equitable relief has always been characterized as a matter of discretion,[8] and it is this rule which the Supreme Court cites as its authority to develop the doctrine.[9]

In 1941, the abstention doctrine was born in *Railroad Comm'n v. Pullman Co.*[10] In this case the Pullman Company and certain

[3] Note, 108 U. PA. L. REV. 226 (1959).
[4] E.g., City of Meridan v. Southern Bell Tel. & Tel. Co., 358 U.S. 639 (1959); County of Allegheny v. Frank Mashuda Co., 360 U.S. 185 (1959); Harrison v. NAACP, 360 U.S. 167 (1959); Lassiter v. Northampton County Bd. of Education, 360 U.S. 45 (1959); Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25 (1959); Martin v. Creasy, 360 U.S. 219 (1959); NAACP v. Bennett, 360 U.S. 471 (1959).
[5] 28 U.S.C. § 1342 (1952).
[6] 28 U.S.C. § 1341 (1952).
[7] 28 U.S.C. §§ 1253, 2284 (1952).
[8] MCCLINTOCK, EQUITY § 23 (2d ed. 1948).
[9] See Alabama Pub. Serv. Comm'n v. Southern Ry., 341 U.S. 341, 350-51 (1951); Railroad Comm'n v. Pullman Co., 312 U.S. 496, 500-01 (1941).
[10] 312 U.S. 496 (1941).

railroads operating in Texas had brought an action in a federal district court to enjoin the enforcement of an order of the Railroad Commission of Texas prohibiting the operation of any sleeping car on any line in Texas unless such car were continuously in the charge of a Pullman conductor. Prior to that time, if a train in Texas carried only one sleeping car, the car had been in the charge of a Pullman porter. The complainants attacked the order as unauthorized by the Texas statute defining the Commission's authority and as violating the equal protection, due process, and commerce clauses of the Constitution.

The Supreme Court reasoned that the state issue of statutory authority should be decided first, because resolution of that issue might end the litigation and thus avoid the necessity of determining the substantial constitutional issue of discrimination, which touched a sensitive area of social policy. Turning to the state issue, the Court found state law to be uncertain, and concluded that any federal determination of the issue would be "tentative" and that an authoritative determination by a state court would be preferable. Since state law offered easy and ample means for obtaining a decision of the state issue, the Court reversed the decree of the three-judge court granting an injunction and remanded the case with directions to retain the bill pending a determination of proceedings to be brought in the state courts.

In numerous cases since *Pullman,* federal courts have abstained from exercising their jurisdiction in cases involving uncertain state law where the resolution of a state issue might avoid adjudication of a federal constitutional issue, without regard to whether the latter issue touched "a sensitive area of social policy."[11] Typically in such cases the plaintiff has urged, in the alternative, state grounds and federal constitutional grounds for invalidating state action, and resolution of the state issue adversely to the state official would avoid the need for considering federal constitutional issues in any form.[12] It seems fairly clear, however, that abstention is also required where resolution of a state issue could avoid federal constitutional adjudication only in part or where it could materially change the nature of

[11] See Martin v. Creasy, 360 U.S. 219 (1959); Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101 (1944); Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168 (1942).

[12] See, e.g., City of Meridan v. Southern Bell Tel. & Tel. Co., 358 U.S. 639 (1959) (validity of state statute under state constitution); Government & Civic Employees Organizing Comm., CIO v. Windsor, 353 U.S. 364 (1957) (applicability of state statute to plaintiff).

the constitutional problem.[13] The Court has, in all but a very few cases, treated uncertainty in state law as insufficient to justify abstention unless a possibility of avoiding unnecessary constitutional adjudication exists.[14]

An underlying principle of the *Pullman* case is that abstention will prevent federal courts from misinterpreting state law.[15] In *Harrison v. NAACP*,[16] the Supreme Court seemed to assume that state courts may be less inhibited than federal courts in construing state statutes so as to realize "the possibility of limiting interpretation, characteristic of constitutional adjudication."[17] This opinion also seems to emphasize a belief that one of the policies underlying the *Pullman* rule is to avoid decision by a federal court that a state statute is unconstitutional before the state courts have had an opportunity to interpret it in the light of constitutional objections.[18] If there is substantially greater likelihood that state courts will construe state statutes so as to eliminate constitutional infirmities, then either the more traditional policy of avoiding unnecessary constitutional adjudication or the policy emphasized in the *Harrison* decision would be served by abstention. *Harrison* and other opinions suggest that the *Pullman* rule is designed also to avoid unnecessary federal interference with lawful state action based on a misinterpretation of state law.[19]

It is clear that the *Pullman* rule is applicable only where relevant state law is uncertain.[20] Speaking on the question of uncertainty, the Supreme Court stated that "federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable

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[13] See Harrison v. NAACP, 360 U.S. 167, 177-78 (1959) (alternative holding); CIO v. Windsor, 353 U.S. 364, 366 (1957) (dictum).

[14] See Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101 (1944) (abstention ordered); Meredith v. Winter Haven, 320 U.S. 228 (1943) (abstention refused); cf. Propper v. Clark, 337 U.S. 472 (1949) (abstention refused on ground that no constitutional issue could be avoided thereby, but case possibly distinguishable since no state action involved).

[15] Note, 59 COLUM. L. REV. 749, 754 (1959).

[16] 360 U.S. 167 (1959).

[17] *Id.* at 177.

[18] *Id.* at 178; cf. CIO v. Windsor, 353 U.S. 364 (1957).

[19] See Harrison v. NAACP, 360 U.S. 167, 176 (1959); cf. County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 190 (1959); Martin v. Creasy, 360 U.S. 219, 224 (1959).

[20] See, e.g., City of Meridan v. Southern Bell Tel. & Tel. Co., 358 U.S. 639 (1959); Harrison v. NAACP, 360 U.S. 167 (1959); NAACP v. Bennett, 360 U.S. 471 (1959).

opportunity to pass on them."[21] The decisions thus far have not formulated, and do not suggest, a more precise standard as to the degree of uncertainty sufficient to require abstention.

The *Pullman* rule represents one area in which abstention applies; the other area in which abstention applies is state administrative actions. This phase of the doctrine was propounded in two leading cases, *Burford v. Sun Oil Co.*[22] and *Alabama Pub. Serv. Comm'n v. Southern Ry.*[23] In *Burford,* a federal district court had enjoined the enforcement of an order of the Texas Railroad Commission issued as part of the state's program to regulate the production of oil and gas. The Court, in reversing and ordering abstention, said nothing of avoiding a constitutional decision, and placed only minimal reliance on the uncertainty of the issues of state law. Emphasis was placed instead on the history of disruption of the state's regulatory scheme caused by federal equitable interference, the non-legal complexities of a technical nature involved, and the fact that state judicial review procedures had been concentrated in one state court to avoid confusion. The Court concluded that intervention of the lower federal courts in such circumstances would result in conflicts in the interpretation of state law which would endanger the success of state policies.[24]

In *Alabama Pub. Serv. Comm'n v. Southern Ry.,*[25] the Commission had denied the plaintiff railroad permission to discontinue the running of two local passenger trains. The railroad brought an action in the federal district court alleging that the Commission's order amounted to confiscation of the railroad's property in violation of the fourteenth amendment. The district court held the Commission's order void and enjoined its enforcement. The Supreme Court reversed and ordered dismissal of the complaint.

As the case presented no problem concerning the proper construction of a state statute, the *Pullman* decision was found inapposite.[26] Nevertheless, the Court stated that when "adequate state court review of an administrative order based upon predominantly local factors" is available to the plaintiff, the intervention of a federal court is not necessary for the protection of federal rights. In the absence of state issues, abstention could not effectuate the resolution

[21] Harrison v. NAACP, 360 U.S. 167, 176 (1959).
[22] 319 U.S. 315 (1943).
[23] 341 U.S. 341 (1951).
[24] 319 U.S. 315, 334 (1943).
[25] 341 U.S. 341 (1951).
[26] *Id.* at 344.

of uncertainties in state law or the avoidance of federal constitutional issues, but could only cause the federal constitutional issue to be presented in the state court. Therefore, the Court must be considered to have ordered abstention in *Alabama* solely for the purpose of avoiding federal-state friction. Subsequent decisions indicate that the *Alabama* rule is limited to suits challenging state administrative action, typically the action of a regulatory commission.[27]

The *Alabama* rule seems appropriate in cases attacking the formulation of state policy pursuant to broad legislative standards, without regard to whether the agency is a regulatory commission or the official is an administrator.[28] Although cases applying the *Alabama* rule have usually involved federal constitutional issues, the purpose of avoiding federal interference with state policy calls for abstention regardless of whether a federal constitutional issue is or is not present.

A third area in which the abstention doctrine has been applied is in civil rights litigation.[29] In *Harrison v. NAACP,*[30] the court below had enjoined the enforcement of several registration statutes, which were allegedly designed to inhibit fund raising, lobbying, and legal operations of the NAACP, finding that no reasonable interpretation could render such statutes valid under the federal constitution. The Supreme Court, applying the *Pullman* rule, reversed and ordered abstention on the ground that the state courts might construe the statutes in a way that would avoid federal constitutional adjudication in whole or in part or that would materially change the nature of the problem. The Court's opinion did not suggest that it was relying on any factors that would distinguish *Harrison* from the usual case that is brought under the Civil Rights Laws. The three dissenters in *Harrision*[31] found in the specific jurisdictional grant of the Civil Rights Laws a congressional policy of making available a federal forum for the protection of certain federal rights. However, the majority gave no indication that the civil rights jurisdiction presents a different problem than does federal question or diversity jurisdiction. It is possible that *Harrison* will be limited to cases of the

[27] See, e.g., City of Meridan v. Southern Bell Tel. & Tel Co., 358 U.S. 639 (1959); Harrison v. NAACP, 360 U.S. 167 (1959); City of Chicago v. Atchinson, T. & S.F.R.R., 357 U.S. 77 (1958).

[28] Cf. Pennsylvania v. Williams, 294 U.S. 176 (1935).

[29] See, e.g., Harrison v. NAACP, 360 U.S. 167 (1959); NAACP v. Bennett, 360 U.S. 471 (1959).

[30] 360 U.S. 167 (1959).

[31] *Id.* at 179-84.

Pullman type because the desirability of making available a federal forum for the vindication of civil rights is paramount.[32]

The general rule was well-stated in *Meredith v. Winter Haven*[33] that uncertainty in state law is not in itself sufficient to justify abstention. However, the recent case of *Louisiana Power and Light Co. v. Thibodaux* stands out as being contra to the well-established rule.[34] On the same day that the *Thibodaux* decision was handed down, the Court reached an opposite result in an almost identical case.[35] In *Thibodaux,* the question involved the city's authority to condemn certain land, buildings, and equipment of the power company. The Supreme Court stated that the federal district judge's decision to abstain was justified by the special and peculiar nature of an eminent domain proceeding and by the quandry in which he had been placed by an apparently irreconcilable conflict between the language of the state statute and an opinion of the state attorney general. There were no federal constitutional issues raised in the case. The Court distinguished this case from *Meredith* on the ground that *Thibodaux* involved discretion to stay disposition of a case over which he retained jurisdiction until controlling guidance could be obtained from the state court, whereas *Meredith* dealt with whether the district judge should be compelled to surrender jurisdiction over an entire case.

It is unclear whether uncertainty in state law would be sufficient to justify abstention in a case not involving the procedural features noted by the Court in distinguishing *Thibodaux* from *Meredith,* especially since none of the features presents a convincing ground for distinction. To distinguish *Meredith* on the ground that it dealt only with whether a district judge was under compulsion to abstain disregards both the language and rationale of *Meredith.*[36] Conceivably, the district courts might be permitted to abstain merely because of the presence of uncertain state law, at least in suits challenging state action. The dissenters in *Thibodaux* characterized the majority opinion as an opening wedge for abstention in even the routine diversity negligence action when an issue of state law is involved.[37] To extend the case in this way, however, would be to disregard the Court's careful attempts to limit *Thibodaux.* At most, *Thibodaux* should be

[32] Note, 59 COLUM. L. REV. 749, 768-69 (1959).
[33] 320 U.S. 228 (1943).
[34] 360 U.S. 25 (1959).
[35] County of Allegheny v. Frank Mashuda Co., 360 U.S. 185 (1959).
[36] 320 U.S. 228, 234 (1943).
[37] 360 U.S. 25, 44 (1959).

limited to its peculiar facts and circumstances. In the three years since *Thibodaux,* no cases have cited it as authority for utilizing abstention in solely uncertain state law situations.

An even more far-reaching ramification has evolved from *Thibodaux* in that the Court, for the first time, applied the abstention doctrine to an action at law, rather than to a suit seeking equitable relief. It would be far-fetched to interpret the Court as saying that eminent domain proceedings are included within a broad definition of suits in equity. The apparent implication of *Thibodaux* is that abstention is appropriate in an action at law whenever the action presents the same hazards of "serious disruption by federal courts of state government or needless friction between state and federal authorities" present in suits in which abstention had previously been ordered.[38]

Once the Court has ordered abstention, it generally prescribes the techniques of disposition to be used upon remand of the case. The techniques thus prescribed fall into three general categories: (1) dismissal of the complaint, (2) retention of jurisdiction over the case by the district court while a suit embracing all issues is brought in the state courts, and (3) excission of a single issue of uncertain state law from the suit in the federal court to be submitted to the state courts for determination in a proceeding limited to that issue while the federal suit is held in abeyance. The technique generally is used in cases where the *Pullman* rule is applied, which constitute the bulk of the cases in which abstention is ordered.[39]

The Court has never laid down any principles determining when retention, as opposed to dismissal, is appropriate, and the facts of the decided cases suggest no such principles. The obvious purpose of retention is to make a federal forum available in the event there is unreasonable delay in obtaining a state adjudication. However, as a practical matter, the suit would never again reach the federal district court since most state courts will adjudicate federal constitutional issues, and any appeal therefrom would be directly to the Supreme Court of the United States. Therefore, retention is no better in reality than dismissal. Excission has been used only sparingly. In fact, in remanding with instructions to use excission, the Court in *Thibodaux* used this as a basis for distinguishing it

[38] *Id.* at 28.
[39] See, e.g., Harrison v. NAACP, 360 U.S. 167 (1959); CIO v. Windsor, 353 U.S. 364 (1957); Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101 (1944).

from *Meredith.* Following this reasoning, excission may be limited to cases of the *Thibodaux* variety.

A recent case, *Clay v. Sun Ins. Office Ltd.*,[40] has suggested that yet another approach to the same problem, another type of abstention, may be for the federal courts of appeals to certify pertinent questions of state law to the state supreme courts.

In the *Clay* case, suit was brought in the federal district court in Florida to recover on an insurance policy issued to the plaintiff while in Illinois. A provision in this policy, probably valid under Illinois law but clearly not so under the laws of Florida, would have prohibited recovery. The court rendered judgment for the plaintiff, on the theory that Florida law invalidated the provision in question. The Fifth Circuit Court of Appeals reversed. The questions of Florida law on which the district court had predicated its disposition of the case was discussed but were pretermitted, the court simply holding that to apply the Florida statute to this Illinois contract would do violence to the due process clause of the fourteenth amendment. The Supreme Court, on certiorari, stated that the court of appeals had erred in reaching the constitutional question, since the state law question involved in the case may have proven dispositive. In ordering abstention, the Court relied upon *Meredith*[41] and *Mashuda.*[42] The case was remanded to the court of appeals with the suggestion that a Florida statute providing for certification of unsettled questions of state law from the federal courts of appeals to the Florida Supreme Court be utilized.

From the standpoint of logic, it would seem that the appropriateness of exercising either type of abstention, the usual abstention, as announced in *Pullman* and *Alabama,* or this new inter-sovereign certification, would be determinable at the outset of the federal litigation.[43] It is believed that there are cogent reasons why certification by trial courts would prove undesirable. First, such certification would not be in accord with the general scheme of federal-state judicial relations. The intendment of the system is that the district courts perform all facets of the task of litigation in cases properly in the federal system. If certification were to be allowed from federal district courts to the highest court of the state, it would seem that the increase in docket load in the state courts might well prove pro-

[40] 363 U.S. 207 (1960).
[41] Meredith v. Winter Haven, 320 U.S. 228 (1943).
[42] County of Allegheny v. Frank Mashuda Co., 360 U.S. 185 (1959).
[43] Comment, 21 LA. L. REV. 777, 780 (1961).

hibitive. Second, the problem is presented of which tribunal is to find the facts necessary to furnish a background for determination of the certified question. If certification is requested at the beginning of the case, then either the questions would have to be answered by the state court in the absence of any factual setting, which would result in an abstract or hypothetical answer, or the state court would be required to make findings of fact, which would do violence to the theory of certification as a speedy and inexpensive method of determining the answer to isolated questions of law. Neither of the above objections is presented by the usual type of abstention, where the parties repair initially to the lower state courts which make essential findings of fact.

If inter-sovereign certification is to be exercised only by the courts of appeals, some of the objections disappear. Ordinarily, a court of appeals will have at its disposal sufficient findings of facts. However, there is a serious chance that the supreme court of a state will be certified a question of law which, had the entire case come before that court, it would have been able to avoid answering. Another problem is how much factual background must be presented. On the other hand, if a federal court abstains by retention or dismissal, the party seeking relief suffers by the consequent delay, and both parties suffer the extra expense of initiating independent proceedings in state courts.[44] The certification procedure should reduce both burdens.[45]

Through the certification technique, a state supreme court will not acquire jurisdiction ultimately to decide a controversy before the federal courts, but renders only an advisory opinion to the federal judiciary.[46] Therefore, the federal courts have placed the state courts in the role of an advisory committee.

Although the methods of applying the abstention doctrine are uncertain at the present time, the doctrine itself is now deeply entwined in our jurisprudence. The Supreme Court approves of its utilization, and by the *Thibodaux* case, appears to have extended its application to actions at law as well as to suits in equity. The doctrine does not involve the adjudication of federal jurisdiction, but only the postponement of its exercise. It serves the policy of comity inherent in its application, and spares the federal courts of unneces-

[44] See, e.g., CIO v. Windsor, 353 U.S. 364 (1957).
[45] Comment, 36 TUL. L. REV. 571, 573 (1962).
[46] Note, 16 U. MIAMI L. REV. 413, 432 (1962).

sary constitutional adjudication.[47] Case law had produced guide lines which aid the practitioner and courts in determining when and under what circumstances the doctrine is applicable and have developed it into a useful tool for the disposition of cases involving both constitutional and state law questions. However, the doctrine is certainly amenable to refinement, and as this is accomplished, it will assume a purposeful and lofty position in American jurisprudence.

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[47] Wright, *The Abstention Doctrine Reconsidered,* 37 TEXAS L. REV. 815 (1959).