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Ronald L. Nieto

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THE ABSTENTION DOCTRINE

By RONALD L. NIETO*

I. INTRODUCTION

In the last twenty-five years the federal courts have developed a doctrine by which, in appropriate cases, they may decline to exercise jurisdiction even though their jurisdiction has been properly invoked. This doctrine has been aptly termed the "abstention doctrine." The occasions that call for the application of abstention are those where the federal court is called upon to decide an issue of state law under circumstances which require it to defer its decision in favor of an adjudication by courts of the state concerned. The circumstances that would require such action by the federal courts are exceptional ones, and where abstention is employed it must serve some countervailing interest that overrides the duty of a federal court to decide a case properly before it. The purpose of this paper will be to examine the abstention doctrine and the circumstances that require its use.

II. DEVELOPMENT OF THE DOCTRINE

A. Federal Jurisdiction Could Not Be Declined

The idea that federal courts were under an imperative duty to exercise their jurisdiction in every case that properly came before them was one which the courts adhered to for many years. It probably sprang from dictum uttered by Chief Justice Marshall in an early case:[1]

> It is most true that this court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do, is to exercise our best judgment, and conscientiously to perform our duty.[2]

While this dictum may not have been followed uniformly,[3] it had sufficient vitality to preclude serious challenge to the scope of the federal courts' jurisdiction for a century. Not only did the courts consider it an absolute duty to exercise their jurisdiction, they gave short shrift to contentions that they should postpone such exercise until a court of another jurisdiction could decide the same issues.[4] *McClellan v. Carland*[5] well illustrates this point. The

* Senior student, University of Denver College of Law.
1 Wright, *The Abstention Doctrine Reconsidered*, 37 Texas L. Rev. 815 (1959).
2 Cohens v. Virginia, 19 U.S. (6 Wheat.) 257, 291 (1821).
3 See note 1 *supra*.
4 Chicot County v. Sherwood, 148 U.S. 529 (1893); Hyde v. Stone, 61 U.S. (20 How.) 170 (1857).
5 217 U.S. 268 (1910).

circuit court ordered a stay of the federal proceedings while the state of South Dakota instituted an action in the state court to determine an escheat to it of the estate in controversy. If the state would begin the action within a time limit set by the court, the court announced that it would extend the stay until determination of the state court action. A decision by the state court would have been res judicata in the federal proceedings. The Supreme Court reversed, saying that the circuit court had virtually abandoned its jurisdiction and turned the matter over to the state court. "This, it has been steadily held, a Federal court may not do."[6]

B. *Awareness of Conflict between Sovereignties*

Perhaps this idea persisted for so long because, until the early part of the twentieth century, conflict between the federal and state jurisdictions was not so apparent as it later became. The federal courts, under the ruling of *Swift v. Tyson*,[7] were considered to be the state courts' equals as authoritative interpreters of the state law. This sometimes resulted in two distinct lines of authority on the same point of state law,[8] and could not have been very pleasing to state authorities. In such a situation, it is easy to visualize a state policy being thwarted on occasion by a party resorting to a federal court which had a different rule of law from the state court's. This was not a direct interference with state authority and did not create the friction that could result from direct interference.

Then the Supreme Court handed down the case of *Ex parte Young*.[9] This established that the eleventh amendment[10] did not bar injunctions by a federal court against state officers acting in violation of the Constitution. Accordingly, a federal judge could restrain state activities as unconstitutional, and incident to this, he could issue an ex parte interlocutory stay pending determination of the constitutional question.[11] Subsequently, it was held that acts of state officials, though contrary to but under color of state law, did constitute state action under the fourteenth amendment.[12] These decisions greatly increased the sensitive area of federal-state conflict.

Congress was not long in reacting to these decisions. In 1910, it put into effect the statute requiring a three judge federal court to hear petitions for injunctions restraining the action of a state official.[13] This same statute provided for direct appeal from such three judge courts to the Supreme Court. Thus, by this and other enactments,[14] it can be seen that Congress did not approve of too

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6 *Id.* at 281.
7 41 U.S. (16 Peters) 1 (1842).
8 Kurland, *Toward a Co-Operative Judicial Federalism*, 24 F.R.D. 481 (1960).
9 209 U.S. 123 (1908).
10 U.S. Const. amend. XI.
11 See Note, *The Pullman Case: A Limitation on the Business of the Federal Courts*, 54 Harv. L. Rev. 1379, 1381 (1941).
12 Home Tel. & Tel. Co. v. City of Los Angeles, 227 U.S. 278 (1913).
13 Act of June 18, 1910 § 17, 36 Stat. 557 (1910), as amended 28 U.S.C. §§ 2281, 2284 (1958). Other legislative limitations on federal court jurisdiction are prohibitions against: injunctions to stay state court proceedings except where authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments, 28 U.S.C. § 2283 (1958); enjoining assessment, levy or collection of a state tax under state law where plain, speedy and efficient remedy may be had in the courts of such state, 28 U.S.C. § 1341 (1958); enjoining operation of or compliance with an order affecting a public utility's rates made by a state administrative or rate-making body of a state where jurisdiction is based solely on diversity of citizenship or repugnance to the Constitution, and the order does not interfere with interstate commerce, and after reasonable notice and hearing, and a plain, speedy and efficient remedy may be had in state courts, 28 U.S.C. § 1342 (1958).
14 See note 13 *supra*.

great an intereference by federal courts in the affairs of the states. But the congressional scheme was far from comprehensive. It did not, and perhaps could not, cover every area of potential conflict.

The federal courts were not unaware of this problem. "Caution and reluctance" attended the consideration of cases involving local controversies where there was threat of opposition between state and federal courts.[15] This was especially true where the relief asked would be in the form of an injunction interfering with the activities of state officials.[16] It was recognized that there were some issues which should be adjudicated in the state courts, even though the federal courts had jurisdiction of the cause.[17] However, the Supreme Court still retained and exercised its power to construe state constitutions and statutes even when it expressly stated its reluctance to do so,[18] although it also recognized that the ultimate determination of the application, construction and interpretation of a state constitution[19] or statute[20] rested with the highest state court. The Supreme Court expressed its guide to be "the scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts . . . ."[21]

C. *The Erie Case*

In *Erie v. Tompkins*,[22] the Supreme Court finally repudiated the *Swift v. Tyson*[23] doctrine. Thereafter, the substantive law of the state would be controlling on state issues when decided in federal courts where jurisdiction is obtained by virtue of diversity of citizenship. Consequently, the federal courts were bound by the determinations of the state courts on state law issues. But it must be noted that this is all that the *Erie* case held. Federal courts still had the power to adjudicate issues of state law; however, they could no longer formulate their own rules of decision independently of state court rulings. The problem presented by *Erie* was the dilemma of the federal courts when the state law was not clear, either because there was no authoritative decision by the state court or because there was a conflict in state authorities.[24] In such a situation the federal court was embarrassed by the necessity of deciding the state law question by a ruling that would be the law of the case only and that might be proved wrong by a subsequent state court decision.[25] The problem can be put into focus by considering the alternatives faced by a federal court in a case where it had jurisdiction by virtue of diversity and where there are present state law issues and federal constitutional questions. Assuming a case where the state law authorities on the point at issue are unclear, the federal court is then faced on the one hand with the well known reluctance to decide a case on constitutional grounds where other grounds for decision are available, and on the other hand with a reluctance to decide the

15 Hawks v. Hamil, 288 U.S. 52, 60 (1933).
16 *Ibid.*
17 See Gilchrist v. Interborough Rapid Transit Co., 279 U.S. 159 (1929); Cavanaugh v. Looney, 248 U.S. 453 (1919).
18 Porter v. Investors Syndicate, 287 U.S. 346 (1932).
19 Glenn v. Field Packing Co., 290 U.S. 177 (1933).
20 Lee v. Bickell, 292 U.S. 415 (1934).
21 Matthews v. Rodgers, 284 U.S. 521, 525 (1932).
22 304 U.S. 64 (1938).
23 See note 7 *supra*.
24 Kurland, *supra* note 8.
25 Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941).

case by a declaration of state law that may subsequently prove to be wrong because of a contrary determination by the state court.

The policy of the *Erie* case seems clear. It was a recognition of the independence of the states in their own sphere of the federal-state relationship. This policy hit a barrier in those situations mentioned, due to the inferior capacity—power, not ability—of the federal courts.[26] No legislation covered this area. It remained for the courts to find their own judicial solution.

D. The Doctrine of the Pullman Case

A partial answer has come in the form of the abstention doctrine as enunciated by the Court in the *Pullman*[27] case. *Pullman* was not the first case in which the device of abstention was employed,[28] but it was in this case that it was crystallized and identified as a doctrine.

Over light passenger runs in Texas, the railroads customarily carried but one Pullman car. The one car was in charge of a porter, who was a Negro. The Railroad Commission ordered that no sleeping car was to be operated in Texas unless such car was continuously in charge of a Pullman conductor. The Pullman Company attacked the order as beyond the power of the Railroad Commission under the Texas statutes. The Pullman porters intervened as complainants alleging unconstitutionality because of discrimination against Negroes. The three judge district court found that the Texas statutes did not uphold the Railroad Commission's exercise of power and enjoined enforcement of the order. On appeal, the Supreme Court remanded the cause with directions to retain the bill pending a prompt determination of the applicability of the Texas statute by the Texas courts.

The Court found the authority for its action in the traditional discretion of a court of equity. "An appeal to the chancellor . . . is an appeal to the 'exercise of the sound discretion, which guides the determination of courts of equity.' . . . The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction."[29]

The Court found that the constitutional question presented a sensitive area of state policy that should not be entered into unless no alternative to its adjudication was open. Thus, a consideration of the state law issue was necessitated. On this subject the Court commented that a ruling by the federal court would be merely a forecast of the law, because the final authority, the Supreme Court of Texas, had not spoken on the scope of the statute. "The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court. The resources of equity are equal to an adjustment that will avoid the waste of a tentative decision as well as the friction of a premature constitutional adjudication."[30]

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26 Kurland, *Mr. Justice Frankfurter, the Supreme Court and the Erie Doctrine in Diversity Cases*, 67 Yale L. J. 187 (1957).

27 Railroad Comm'n of Texas v. Pullman Co., *supra* note 25.

28 Railroad Comm'n of Texas v. Rowan & Nichols Oil Co., 310 U.S. 573 (1940); Thomason v. Magnolia Pet. Co., 309 U.S. 478 (1940); Pennsylvania v. Williams, 294 U.S. 176 (1935); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); Matthews v. Rodgers, 284 U.S. 521 (1932); Langres v. Green, 282 U.S. 531 (1931); Gilchrist v. Interborough Rapid Transit Co., 279 U.S. 159 (1929).

29 See note 25 *supra* at 500.

30 *Ibid.*

This avoidance of friction was termed by the Court as one of the public interests having the highest claim on the discretion of the chancellor. The "contribution of the courts"[31] based on "important considerations of policy,"[32] thus emerged as the abstention doctrine. It is the Court's attempt to further harmonious relations between state and federal authority.

III. Application of The Doctrine

A. *Interwoven Federal Constitutional and State Law Issues*

The application of the abstention doctrine is most clear in those cases where state action is being challenged as contrary to the federal constitution and state law questions are present in the case.[33] An early example of this type of case is *Gilchrist v. Interborough Rapid Transit Co.*,[34] where the state question was basic to the controversy. The leading case in this area is the *Pullman* case, discussed previously.

In *Pullman* the court found that the constitutional issue touched "a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open."[35] In subsequent cases the sensitivity of the state issue has not been given as great weight as the principle of avoiding an unnecessary constitutional decision.[36] What is most basic in these cases, although principles of comity are inherent in them, is that by abstaining the federal courts avoid the unnecessary adjudication of a constitutional issue. Mr. Justice Frankfurter has classified the application of the abstention doctrine in this area as a phase of the basic constitutional doctrine that federal courts will determine a constitutional issue only when no alternative is available.[37] By submitting at least the state issues to the state court, the federal courts give effect to this salutary principle. It is possible that state courts could give underlying state issues a construction that would avoid the constitutional issue altogether, or in part,[38] or the state court decision might make determination of the constitutional issue patently necessary. In any event, the constitutional doctrine will be served. The Court has indicated that the state courts may be more likely to give a statute a limiting interpretation than a federal court would.[39]

Another policy recently stated by the Court to be served by abstention is that by allowing the state courts to first consider the state issues, the federal court judgment on the constitutional issues

[31] See note 25 *supra* at 501.
[32] *Ibid.*
[33] It may be noted here that the Court has not extended abstention to cover cases involving interwoven state law and non-constitutional federal questions. No case has been found where abstention has been applied in such a situation. In at least one case, Propper v. Clark, 337 U.S. 472 (1949), the Court has refused to allow abstention where a question of non-constitutional federal law was intertwined with a state law question. The rationale behind such a result is not entirely clear. There is evidently no rule requiring a federal court to avoid a decision based on non-constitutional federal grounds where other grounds are available, but it is conceivable that considerations of comity between state and federal authority could be very strong. Perhaps abstention will be applied in this class of case in the future. The principle of comity seems as applicable here as in other situations.
[34] See note 28 *supra*.
[35] See note 25 *supra* at 498.
[36] E.g., City of Meridian v. So. Bell Tel. & Tel. Co., 358 U.S. 639 (1959); Shipman v. DuPre, 339 U.S. 321 (1950); Spector Motor Serv. Inc. v. McLaughlin, 323 U.S. 101 (1944).
[37] Burford v. Sun Oil Co., 319 U.S. 315, 336 (1943) (dissenting opinion).
[38] Spector Motor Serv. Inc. v. McLaughlin, *supra* note 36.
[39] Harrison v. NAACP, 360 U.S. 167 (1959).

will be based on "a complete product of the State."[40] Evidently, it is believed that having a state court interpretation will shed greater light on the constitutional problem.

The state law issues must be unsettled ones in this area. If there is no reasonable doubt about the construction, interpretation or application of the state law in question,[41] the federal court will not abstain from deciding the issues.[42] There may be no reasonable doubt either because the state issue has already been settled by the state court or because there is no ambiguity that calls for an interpretation.[43] Abstention is not, however, proper simply because there are unsettled issues of state law.[44] If a state court ruling could not possibly aid in the constitutional adjudication, the federal court cannot require a prior state court determination.[45] The Supreme Court recently made this point very clear in a case where the district court had made a finding only that the state law was unclear.[46] The Court stated that reference to the state courts should not "automatically" be made.[47]

In cases involving a constitutional determination the method of disposition has generally been to retain the case on the federal court docket and refer the parties to the state courts for an adjudication of the state issues. The earliest abstention cases were disposed of by dismissing the action, thereby causing the entire controversy to be tried in the state courts.[48] For a period of time the Court struck upon a compromise between retention and dismissal. The federal court would decide the state issue but would provide for a further decree on order in case of a change in circumstances or a decision of the state court contrary to that of the federal court on the state issue.[49] It was in the *Pullman* case that the Court first employed the device of retention[50] and it has continued to do so in constitutional cases with great regularity. In one case since *Pullman* the Court has directed a dismissal in a constitutional case but no distinguish-

40 *Id.* at 178; *accord*, Metlakatla Indian Community v. Egan, 363 U.S. 555 (1960).
41 Harrison v. NAACP, *supra* note 39 at 177.
42 Turner v. City of Memphis, 369 U.S. 350 (1962); Toomer v. Witsell, 334 U.S. 385 (1948).
43 Chicago v. Atchison, T. & S. F. R.R., 357 U.S. 77 (1958).
44 Doud v. Hodge, 350 U.S. 485 (1956).
45 Public Util. Comm. of Ohio v. United Fuel Gas Co., 317 U.S. 456 (1943).
46 See NAACP v. Bennett, 178 F. Supp. 188 (E.D. Ark. 1959).
47 NAACP v. Bennett, 360 U.S. 471 (1959).
48 Cavanaugh v. Looney, 248 U.S. 453 (1919); Gilchrist v. Interborough Rapid Transit Co., *supra* note 28.
49 Lee v. Bickell, 292 U.S. 415 (1934); Glenn v. Field Packing Co., 290 U.S. 177 (1933); Wald Transfer & Storage Co. v. Smith, 290 U.S. 602 (1933).
50 See note 25 *supra* at 501.

ing reason for its disposition of the case in this manner is apparent.[51] Retaining the case seems to imply that the parties are to present only the state questions to the state courts and return to the federal courts for a determination of the federal questions. This is the logical, if time consuming, method of procedure. But this procedure has been placed in doubt by the Court's decision in *Government & Civic Employees Organizing Comm. v. Windsor*.[52] There the parties had, at the direction of the federal district court, obtained a state supreme court determination that the questioned state act did apply to the plaintiffs, but the parties did not present the constitutional objections to the state court. The litigants returned to the federal courts where they adjudicated the constitutional issue. On appeal the Supreme Court, *sua sponte*, held that abstention should have again been employed as the parties had not given the state court the opportunity to consider the act in the light of the constitutional objections, which might have made a difference in the state court's decision. If the parties had done this, they probably could not have had the constitutional questions decided by the lower federal courts.[53] They would have recourse to the Supreme Court, but that is no more than they would have had if they had applied to the state courts originally. It is not clear just how much of the controversy should be presented to the state court, but in light of the *Windsor* case, it would appear to be risky not to present the constitutional questions.

B. *Diversity Actions*

Cases in which the jurisdiction of the federal courts is based on diversity of citizenship have presented difficulties to the Court. The leading case in this area is *Meredith v. Winter Haven*.[54] This was a diversity case which put into question state constitution and statute provisions which were unsettled. The district court's dismissal of the action without prejudice was reversed by the Supreme Court. "But we are of the opinion that the difficulties of ascertaining what the state courts may hereafter determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case which is properly brought to it for decision."[55] For abstention to be proper there must be exceptional circumstances present in any case, but this is especially true in a diversity case. The purpose of diversity jurisdiction is to allow the litigants a federal forum if they so desire, and "denial of that opportunity by the federal courts merely because the answers to the questions of state law are difficult or uncertain or have not yet been given by the highest court of the state, would thwart the purpose of the jurisdictional act."[56] *Erie* did not release federal courts from the duty of deciding uncertain state law in diversity cases, but rather placed on them a greater responsibility for determining and applying state law in all such cases.[57]

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51 Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368 (1949).
52 353 U.S. 364 (1957).
53 England v. Board of Med. Examiners, 194 F. Supp. 521 (E.D. La. 1961).
54 320 U.S. 228 (1943).
55 *Id.* at 234.
56 *Id.* at 234-235.
57 *Id.* at 237.

Meredith was followed by the federal courts very closely.[58] There was no indication that its holding was questioned until 1959 when the Court handed down its decision in *Louisiana Power & Light Co. v. City of Thibodaux*.[59] This was a diversity case where the power of a city to expropriate the property of a private company was put into question. A state statute seemed to give the city authority for its actions but a decision of the state's attorney general held otherwise. The district court stayed proceedings to allow for a state court adjudication on the interpretation of the statute. The Court of Appeals reversed. No constitutional questions were presented to the Supreme Court, but it upheld the district court's decision. The case set off speculation that it might be interpreted as warranting abstention in a diversity case simply because the state law was unsettled or unclear.[60] But the limiting factors of the case seem to preclude such a wide interpretation of the case. Eminent domain, the opinion pointed out, is "intimately involved with sovereign prerogative."[61] This "special nature" of eminent domain was apparently relied upon to justify the decision reached.[62] Thus it would seem that the case could be classified as one in which an exceptional circumstance was present—thereby making the case a proper one for the application of the doctrine of abstention.

But at the same time the *Thibodaux* case was decided the Supreme Court also passed on *County of Allegheney v. Frank Mashuda Co.*[63] This was also an eminent domain case based on diversity jurisdiction. Here the Court reversed the district court's judgment of dismissal. The mere fact that it was an eminent domain case was not sufficient to require the application of abstention. The only distinguishing characteristic of the cases is that in *Allegheney County* the state law was clear whereas in *Thibodaux* the state law was unsettled. Perhaps the holdings in these cases can be reconciled by construing them together to mean that abstention will be appropriate in an eminent domain case where the state law is unsettled. Subsequent developments do not warrant reading into the cases a holding that abstention will be applied in a diversity case simply because the state issues are uncertain. Numerous cases have been reported since *Allegheney County* and *Thibodaux* in which the federal courts have held it to be their duty to decide unsettled state law issues in diversity cases. Moreover, two recent diversity cases in which the Court has ordered abstention involved considerations of federal constitutional questions,[64] thereby demonstrating that abstention will be proper in a diversity case only if it serves some countervailing interest.

C. *Actions Involving Interference With State Affairs*

The principal consideration of the Supreme Court in applying the doctrine of abstention to a variety of cases is a reluctance to interfere with the administration by a state of its own affairs. Re-

58 *E.g.*, Lumbermen's Mut. Cas. Co. v. Elbert, 348 U.S. 48 (1954); Estate of Spiegel v. Commissioner, 335 U.S. 701 (1949).

59 360 U.S. 25 (1959).

60 Note, *Abstention: An Exercise in Federalism*, 108 U. Pa. L. Rev. 226 (1959); Note, *Judicial Abstention from the Exercise of Federal Jurisdiction*, 59 Colum. L. Rev. 749 (1959).

61 See note 59 *supra* at 28.

62 *Ibid.*

63 360 U.S. 185 (1959).

64 United Gas Pipe Line Co. v. Ideal Cement Co., 369 U.S. 134 (1962); Clay v. Sun Ins. Office Ltd., 363 U.S. 207 (1960).

fusal to exercise its jurisdiction in this type of case is a recognition by the federal courts that avoidance of federal-state conflict is a countervailing interest justifying abstention.

1. *Bankruptcy Proceedings*

One of the first situations in which abstention was held to be properly employed on grounds of comity was that of bankruptcy and receivership proceedings. In *Pennsylvania v. Williams*[65] the Supreme Court found that the district court did have jurisdiction to appoint a receiver for the liquidation of a state savings and loan business. The state had provided adequate liquidation procedure under a state official who had requested the district court to allow him to administer the liquidation. The Supreme Court ruled that the district court should have turned the assets of the corporation over to the state official. "The question is not the ordinary one of comity between a federal and a state court"[66] where each asserts jurisdiction over the property and no special reasons are advanced for relinquishing jurisdiction. "It is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy."[67]

Thompson v. Magnolia Petroleum Co.[68] involved a question of title to real property in a bankruptcy proceeding. The district court determined the fee title to be in the bankrupt and the court of appeals reversed. The Supreme Court ruled that the district court should not have decided the issue since the parties could have received an authoritative determination in the state court.

> A court of bankruptcy has an exclusive and non-delegable control over the administration of an estate in its possession. But the proper exercise of that control may, where the interests of the estate and the parties will best be served, lead the bankruptcy court to consent to submission to state courts of particular controversies involving unsettled questions of state property law and arising in the course of bankruptcy administration.[69]

In neither *Pennsylvania* nor in *Thompson* were there constitutional questions present. The cases were apparently based on the rationale that it is more conducive to a harmonious federal-state relationship to allow the states to handle state problems.

2. *Specialized, Complicated Regulatory Systems*

Another area in which the Court has given special emphasis to principles of comity is that involving state administrative and regulatory bodies. *Burford v. Sun Oil Co.*[70] involved a challenge to an order of the Texas Railroad Commission concerning the spacing of oil wells. The Commission's power to provide for the spacing of wells was part of the state's conservation program. Although a constitutional question was present in the case, the Court did not give much weight to that factor. Nor did it make much of an issue of the

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65 294 U.S. 176 (1935).
66 *Id.* at 183.
67 *Id.* at 185.
68 309 U.S. 478 (1940).
69 *Id.* at 483.
70 319 U.S. 315 (1943).

uncertainties in the state law. The Court did give great weight to the fact that the order attacked was part of a complicated regulatory scheme concerning state policies, and that the state legislature had provided that all orders of the Commission could be challenged in a particular district court of the state, thereby giving that court special opportunity to develop an expertness in the field. The court also noted that intervention by the federal court would increase the hazard of creating uncertainties in the state law.

The second principal case in this area is *Alabama Pub. Serv. Comm'n v. Southern Ry.*[71] The railroad desired to abandon several passenger trains between cities in the state, but before it could do so it was required to obtain a permit from the Commission. The Commission refused to allow such a permit. Instead of appealing to the state courts, the railroad brought a suit in the federal district court alleging the Commission's order amounted to confiscation of its property in violation of the fourteenth amendment. The district court held the Commission's order to be invalid and enjoined it from enforcing the order. The Supreme Court determined that the federal courts should refrain from interfering and ordered the district court to dismiss the action. Again there was a federal constitutional question present but the Court did not base its decision on it. It based its decision on the wisdom of avoiding interference in a matter "primarily the concern of the state."[72] There was an adequate state court review of the administrative orders so the intervention of the federal court was not necessary to provide protection for the federal rights asserted. No mention is made of a presence or absence of unsettled state questions. The Court apparently deemed the presence of unsettled state issues as not a necessary requirement to justify abstention. Unlike the *Burford* case, the subject matter of regulation in the *Alabama* case does not appear to require any special expertise. Consequently, a finding that the administrative body's order deals with a highly complicated area of regulation does not appear to be a sine qua non to justify abstention.

When the federal courts are dealing with an order of a state regulatory body in an area primarily of local concern, it seems to be settled that principles of comity will be decisive of the case without regard to federal constitutional questions. Whether or not there are unsettled state issues involved is immaterial.

3. *State's Enforcement of Criminal Law*

It is a general rule of equity that a federal court will not prevent the enforcement of a state's criminal statutes even though they may be unconstitutional.[73] This is especially true if the only action threatened is a prosecution in the state courts of an alleged violation of state law, for the disputed questions can be presented to the state court.[74] Interpretation of the state legislation is primarily the function of the authorities.[75] Consequently, interference with the processes of a state's criminal law "can be justified only in most exceptional circumstances, and upon clear showing that an

71 341 U.S. 341 (1951).
72 *Id.* at 345.
73 Spielman Motor Sales Co., Inc. v. Dodge, 295 U.S. 89 (1935).
74 Beal v. Missouri Pac. R.R., 312 U.S. 45 (1941).
75 Albertson v. Millard, 345 U.S. 242 (1953).

injunction is necessary in order to prevent irreparable injury."[76] There is always the opportunity to appeal an adverse constitutional decision by the state courts to the Supreme Court so that the federal rights of the parties will be protected.

4. *Collection of State Taxes*

In the area of state taxation the federal courts have a guide from Congress in its legislation prohibiting injunctions against the assessment, levy or collection of a state tax under specific circumstances.[77] The *Great Lakes Dredge & Dock Co. v. Huffman*[78] case did not fall within the prohibition of the statute, but the Court determined that the policy of not interfering with a state's fiscal policy was of such importance that it would not entertain a declaratory judgment action to adjudicate the tax statute's constitutionality where adequate relief could be obtained in the state courts.[79] The question of the validity of a state tax is one which the state courts are peculiarly fitted to answer and the federal courts should not attempt an adjudication unless absolutely necessary.[80]

In cases where abstention finds its jusification primarily in principles of comity, the procedure followed by the courts is to dismiss the action rather than retain it. This is in accord with the raitonale requiring abstention in these cases, for if the courts refrain from acting so as not to interfere with the administration by a state of its own affairs, there is no motive to retain the case. The reason the federal court would abstain in the first place is because it should not involve itself with the states' affairs. Whether or not the state law is settled in these cases is immaterial. The problem of interpreting uncertain state law does not present itself once the court determines it should have nothing to do with the case.

IV. Current Status of The Doctrine

The present status of the doctrine in the great majority of cases, those dealing with constitutional questions, seems to be fairly well settled. The criteria for determining whether to abstain are that obtaining a state court adjudication on the state questions will avoid an unnecessary constitutional determination and that the state questions actually be unsettled. Of course, principles of comity are implicit in these cases, but the Court places its reliance mainly on avoidance of unnecessary constitutional decisions. Whether a new criterion has been established in *Harrison v. NAACP*,[81] which would require a decision by a federal court on the constitutionality of a state enactment to be based on "a complete product of the State,"[82] remains to be seen. The decision of the Court in a later case, *Metlakatla Indian Community v. Egan*,[83] seems to rely on this principle, but the case can also be explained on the grounds of avoidance of an unnecessary constitutional decision.

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76 Beal v. Missouri Pac. R.R., *supra* note 74 at 50.
77 28 U.S.C. § 1341 (1958).
78 319 U.S. 293 (1943).
79 See Matthews v. Rodgers, 284 U.S. 521 (1932).
80 United States v. City of New York, 175 F.2d 75 (2nd Cir. 1949); *but cf.*, United States v. Bureau of Revenue of State of New Mexico, 291 F.2d 677 (10th Cir. 1961).
81 360 U.S. 167 (1959).
82 *Id.* at 178.
83 363 U.S. 555 (1960).

In the cases having avoidance of unseemly conflict between state and federal authorities as their basis, the criteria are not quite so clear. This is because the Court has taken an *ad hoc* approach to the subject, allowing abstention only in the situations of bankruptcy, taxes, criminal law, and administrative decisions. Within this area, it is apparently immaterial whether the state law is unsettled or not, since the court's main purpose in abstaining is to avoid conflict. The Supreme Court has not laid down clear guidelines for the lower courts to follow in this area. For example, what is matter of primarily local concern, and when is it proper to abstain in tax cases? Although the Court has determined that abstention in a tax case can be proper, it has not set out sufficient guides as to when it is so.

Originally, the Court found its authority to abstain from the exercise of its jurisdiction in the discretion of a court of equity.[84] All of the cases in which abstention had been employed were cases addressed to the federal court as a court of equity. Then in the *Thibodaux*[85] case the Court authorized abstention in a case at law.[86] "These prior cases have been cases in equity, but they did not apply a technical rule of equity procedure. They reflect a deeper policy derived from our federalism."[87] This language of the Court was somewhat diluted, however, by the emphasis placed on the special nature of eminent domain proceedings. In two subsequent cases the court has strengthened the force of its holding by applying abstention when the actions were at law and did not involve any special type of proceedings.[88] These last two cases seem to resolve any doubt left by *Thibodaux* in establishing that abstention may be employed in a case at law as well as in equity.[89]

There has been some doubt that the doctrine of abstention would be applicable in cases involving civil rights.[90] *Harrison v.*

84 Meredith v. Winter Haven, 320 U.S. 228 (1943); Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941).

85 360 U.S. 25 (1959).

86 An "eminent domain proceeding is deemed for certain purposes of legal classification a 'suit at common law.'" *Id.* at 28.

87 *Ibid.*

88 United Gas Pipe Line Co. v. Ideal Cement Co., 369 U.S. 134 (1962); Clay v. Sun Ins. Office Ltd., 363 U.S. 207 (1960).

89 See Williams v. Hot Shoppes, Inc., 293 F.2d 835 (D.C. Cir. 1961); Chicago B. & Q. R.R. v. City of North Kansas City, 276 F.2d 932 (8th Cir. 1960); Beach v. Rome Trust Co., 269 F.2d 367 (2nd Cir. 1959).

90 See Note, *Federal Jurisdiction—Doctrine of Equitable Abstention Applied to Civil Rights Cases*, 20 La. L. Rev. 614 (1960).

NAACP[91] has laid this doubt to rest, for that case involved the interpretation of a state's statutes said to infringe upon the plaintiff's civil rights. The Court ordered the lower court to abstain, indicating that the same criteria used in any other constitutional question case should be considered in a civil rights case involving the constitutional validity of a state statute.

An interesting recent use of abstention principles is found in cases dealing with apportionment of representatives to state legislatures. In several of these cases the lower federal courts have stayed the actions to allow the state legislatures a reasonable opportunity to take corrective action before the federal courts would interfere.[92]

V. Conclusion

The doctrine of abstention has a useful position in the judicial process. It has the capability, wisely used, of greatly reducing conflict between state and federal authorities. By providing a cushion in areas where state and federal authority clash, the federal courts have made a significant contribution to greater harmony between the two realms of sovereignty. In addition, abstention has presented a method whereby advantage can be taken of the respective expertise of the feedral and state courts in the dual court system that we have.[93] State courts are considered to be experts in state law, and the federal courts are considered to be the authorities on federal questions. The principal difficulty with the abstention doctrine is the problem of delay. The Court has indicated that considerations of delay, cost and inconvenience to the parties are not to be weighed heavily when the courts are "concerned with the much larger issue as to the appropriate relationship between federal and state authorities functioning as a harmonious whole."[94] That delay can become a serious problem is witnessed by the *Spector Motor Serv. Inc. v. McLaughlin*[95] and *Government and Civic Employees Organizing Comm. v. Windsor*[96] cases. The *Spector* case was kept in litigation for a decade,[97] and in the *Windsor* case, after five years in the courts, no decision was reached.[98] The *Windsor* case itself indicated some measure of solution to the problem by requiring all issues in the case to be presented to the state court. This, however, runs up against the argument that such a procedure effectively denies federal jurisdiction altogether.

A solution to this problem has been presented by the state of Florida. The Florida legislature has given the Supreme Court of Florida authority to accept and give instructions on questions of state law certified to it by any appellate court in the federal system.[99] The federal courts have apparently taken advantage of this provision only once,[100] but it seems that this is an excellent answer to the problem of delay.

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91 360 U.S. 267 (1959).
92 Toombs v. Fortson, 205 F. Supp. 248 (N.D. Ga. 1962); Sims v. Frink, 205 F. Supp. 245 (M.D. Ala. 1962); Wesberry v. Vandiver, 206 F. Supp. 276 (N.D. Ga. 1962).
93 See Kurland, *Toward a Co-Operative Judicial Federalism*, 24 F.R.D. 481 (1960).
94 Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168, 172 (1942).
95 323 U.S. 101 (1944).
96 353 U.S. 364 (1957).
97 See note 93 *supra*.
98 Wright, *The Abstention Doctrine Reconsidered*, 37 Texas L. Rev. 815 (1959).
99 Fla. Stat. Ann. § 25.031 (1959).
100 Clay v. Sun Ins. Office Ltd., 363 U.S. 207 (1960).