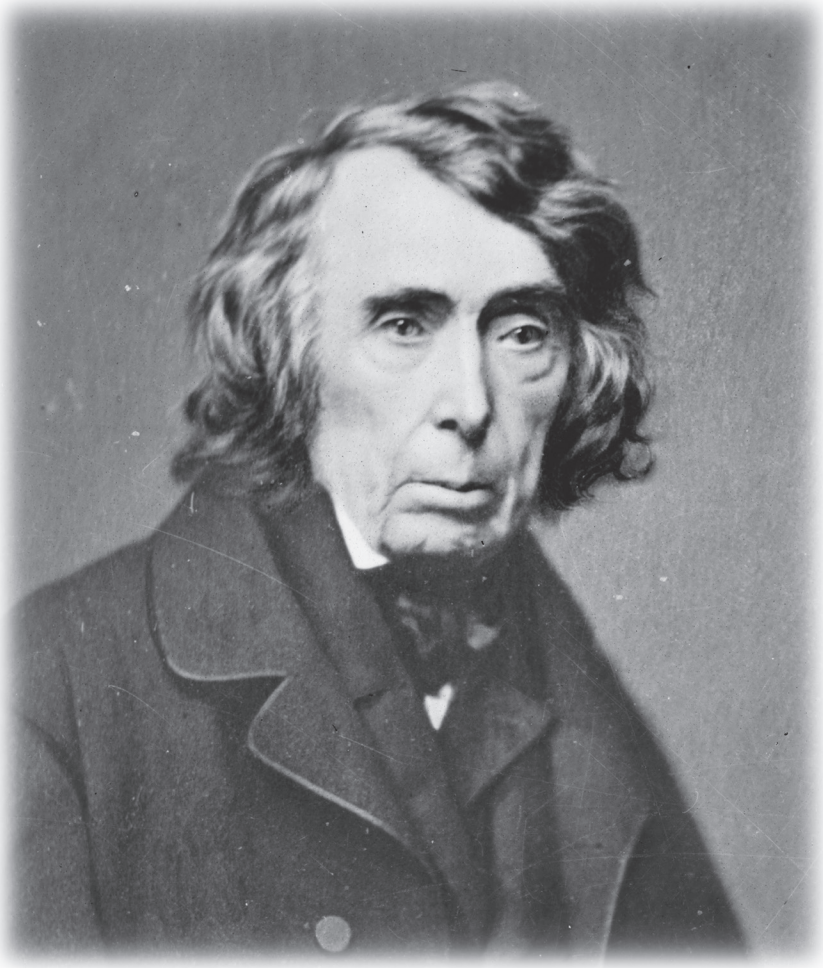
Cases that Shaped the Federal Courts

Ableman v. Booth

1859



Chief Justice Roger B. Taney

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Central Question

Could state courts issue writs of habeas corpus against federal authorities?

Historical Context

Congress passed the Fugitive Slave Act in 1850 as one of several political compromises over slavery. This law was designed to enforce a provision in Article IV, Section 2 of the Constitution that commanded that fugitive slaves be "delivered up" to their masters. Some states had refused to participate in this process after *Prigg v. Pennsylvania* (1842), a Supreme Court decision that upheld Congress's power to regulate fugitive slaves, but limited Congress's power to force state officers to return fugitives to their supposed masters.

The Act imposed stiff penalties for individuals aiding fugitive slaves and implemented a controversial system for delivering up escapees—one which required very little evidence from slaveholders. Rather than using conventional trials before a judge and jury, the Act required federal commissioners (who were paid more for cases decided against alleged slaves) to hear cases. Putative slaves were prohibited from testifying on their own behalf, which meant that there was often little hope of rebutting false or mistaken claims made under the Act. Many African Americans, abolitionists, and free-soilers believed this system unjust. They argued that it improperly undermined the power of states to abolish slavery within their borders.

Ableman v. Booth raised questions about the power of northern state courts to resist this unpopular law using the writ of habeas corpus. This writ is a legal instrument by which courts can order authorities holding a prisoner to bring him or her before the court and defend the legal basis for the detention. In *Ableman* the Supreme Court overturned a state court's attempt to use this power to force federal authorities to release a prisoner arrested under the Fugitive Slave Act.

Legal Debates Before *Ableman*

The relationship between state and federal courts was not always clear in the period before the Civil War. Early Supreme Court precedents had established that the justices had the power to hear appeals from state supreme courts, but federal courts did not have the authority to issue writs of habeas corpus for state prisoners under existing statutes (an 1867 law ultimately gave federal judges this power). The Court had yet to rule on the reverse question of state courts' authority to issue writs for federal prisoners. Some reasoned that dozens of different state courts issuing conflicting rulings could impair the authority and uniformity of the federal judicial system. It is important to note, however, that state courts

could hear federal civil suits (and, indeed, these courts decided the majority of federal-law cases before 1875). Given their role in federal adjudication, some claimed that state courts had to be empowered to issue the full range of legal remedies, including habeas corpus, to litigants making federal constitutional claims.

The scope of state power over federal officers also played into the vital debate over states' rights and federal supremacy in the years preceding the Civil War. States' rights advocates emphasized that the states were sovereign entities before the Constitution's creation and that the document depended on their acceptance for its legitimacy. As such, they claimed the states had the authority to decide the Constitution's meaning and could "nullify" federal laws that violated the Constitution, particularly where those laws impaired state sovereignty. This view is typically associated with Southern states, but some Northerners adopted the position to combat pro-slavery legislation and judicial decisions in the 1850s.

The Case

Ableman arose out of an attempt to free a fugitive slave in Wisconsin. Joshua Glover was captured in 1854 by federal officers operating at the behest of his former master. Glover's violent arrest and subsequent detention aroused the anger of a group of antislavery advocates who stormed the local jail and freed him. Glover made his way to Canada and was never recaptured. Federal authorities then arrested several of Glover's liberators, including Sherman Booth, a Milwaukee newspaper editor. Booth petitioned a justice of the Wisconsin Supreme Court for a writ of habeas corpus. The justice issued the writ and ordered U.S. Marshal Stephen Ableman to release Booth. Ableman then petitioned the full Wisconsin Supreme Court to overturn the justice's decision.

The state court upheld the justice's decision, basing its ruling on the unconstitutionality of the Fugitive Slave Act. This opinion arguably conflicted with *Prigg*, though the court attempted to distinguish that case because of the new commissioner system. Despite the court issuing this writ, Booth was tried and convicted in federal district court. Booth again petitioned the Wisconsin Supreme Court for a writ of habeas corpus and the court issued writs against Ableman and the local sheriff, ordering Booth's release.

In an unusually defiant assertion of states' rights, the Wisconsin court refused to transmit the record of the case to the Supreme Court of the United States in an attempt to insulate its decision from further review. Nevertheless, Ableman and the United States government appealed the state court's decision to issue both the original and the postconviction writ. The Supreme Court eventually heard the two cases as a single matter.

The Supreme Court's Ruling

Against the backdrop of sectional tensions over slavery, Chief Justice Roger B. Taney's

opinion for a unanimous Court was remarkably forceful. Taking the different phases of the state proceedings collectively, Taney reasoned that the Wisconsin court had improperly asserted "the supremacy of the State courts over the courts of the United States." Taney rejected this assertion, emphasizing that the Constitution was founded by the people of the United States, rather than by a compact of the states acting as sovereigns. The states, indeed, had to cede a part of their sovereignty to form a unified federal government. Article IV, Section 2's Supremacy Clause made it clear that "judges in every State shall be bound" by federal law, and the Supreme Court was the last word on the meaning of that law. As a practical matter, Taney suggested that chaos would ensue if each state claimed for itself the right to reverse or disregard federal rulings within their jurisdictions. One of the primary purposes of his own court, Taney noted, was to avoid a situation in which the "[g]overnment of the United States [becomes] one thing in one State and another thing in another."

Taney reasoned that this structure of judicial power prohibited the state courts from issuing writs of habeas corpus for federal prisoners. Once a federal officer informed the state court that the prisoner was in the custody of the United States, the court could "proceed no further" and federal judges and officers were to resist any further orders issued by state courts. Taney reasoned that the federal government was a separate sovereign power from the states, and the state courts could no more authorize the release of a federal prisoner than they could one of a foreign government beyond their jurisdiction.

In passing, Taney also stressed that the Fugitive Slave Act was "fully authorized by the Constitution." While this language was dictum (a statement unnecessary to the case's disposition that did not carry the full weight of a Supreme Court precedent), it confirmed for many of the Taney Court's critics the fear that the Court strongly favored the legal preservation of slavery.

Aftermath and Legacy

Shortly after the Supreme Court of the United States decided *Ableman*, Booth filed for yet another writ of habeas corpus. The Wisconsin court split evenly as to whether to grant this writ, even though Taney's opinion appeared to foreclose any such possibility. Booth served his thirty-day jail term and remained in custody after that time when he refused to pay a fine that was part of his sentence. A group of armed men took the law into their own hands and broke Booth out of his jail in the U.S. Custom House. Federal authorities later recaptured Booth, though President James Buchanan eventually pardoned him.

The resolution of some of the broader issues in the case took an even more violent course. The U.S. Civil War (1861–1865) ultimately settled many of the questions surrounding both slavery and judicial federalism. In the postwar *Tarble's Case* (1871), the Supreme Court reiterated that state courts could not order the release of federal prisoners.

Because it is not burdened with Taney's defense of the infamous Fugitive Slave Act, modern federal courts often cite *Tarble's Case* instead of *Ableman* for this principle.

Discussion Questions

- Several of the opinions and other primary sources related to the case allude to the possibility of a civil war. What aspects of the case raised that possibility? Did the outcome of the case make such a war more or less likely?
- Many critics of states' rights and nullification have argued that these doctrines were "cover" for racist or proslavery policies. Does *Ableman* complicate that argument? Would your view of the legal ideas advanced by the state and federal courts change if the federal statute were antislavery instead of proslavery?
- Many scholars have suggested that the Supreme Court was divided on major issues related to slavery before the Civil War. *Ableman*, however, was a unanimous decision. What might this suggest about the principles of federalism the case announces?

Documents

Supreme Court of Wisconsin, Opinion Granting a Writ of Habeas Corpus in *In re Booth*, June 1854

The following excerpted opinion was the first in the state-court phase of the Ableman *litigation. State Supreme Court Justice Abram Smith granted Booth a writ of habeas corpus and ordered his release from federal detention. The portion of Smith's opinion below articulates a strong vision of state judicial power and emphasizes the limitations of federal authority.*

I cannot shrink from the discharge of the duty now devolved upon me. I know well its consequences, and appreciate fully the criticism to which I may be subjected. But I believe most sincerely and solemnly that the last hope of free, representative and responsible government rests upon the state sovereignties and fidelity of state officers to their double allegiance, to the state and federal government; and so believing, I cannot hesitate in performing a clear, an indispensable duty. Seeking and enjoying the quiet and calm, so peculiar to the position in which I am placed, I desire to mingle no farther in the political discussions of the times, than the clear suggestions of official obligation require. But he who takes a solemn oath to support the constitution of the United States, as well as the state of Wisconsin, is bound by a double tie to the nation and his state. Our system of government is two fold, and so is our allegiance. Federal officers feel less of this, because their oath binds them only to the constitution of the United States; but State officers have the weight of both resting upon them. To the latter is peculiarly the duty assigned, or rather upon the latter, of necessity does the obligation rest, of ascertaining clearly, and of asserting firmly the peculiar powers of both governments, as circumscribed by the fundamental law of each. To yield a cheerful acquiescence in, and support to every power constitutionally exercised by the federal government, is the sworn duty of every state officer; but it is equally his duty to interpose a resistance, to the extent of his power, to every assumption of power on the part of the general government, which is not expressly granted or necessarily implied in the federal constitution.

Nor can I yield to the doctrine early broached, but as early repudiated, that any one department of the government is constituted the final and exclusive judge of its own delegated powers. No such tribunal has been erected by the fundamental law. The judicial department of the federal government is the creature by compact of the several states, as sovereignties, and their respective people. That department can exercise no power not delegated to it. All power not delegated and not prohibited to the states, the states have expressly reserved to themselves and the people. To admit that the federal judiciary is the sole and exclusive judge of its own powers, and the extent of the authority delegated, is vir-

tually to admit that the same unlimited power may be exercised by every other department of the general government, both legislative and executive, because each is independent of and coordinate with the other. Neither has any power but such as the states and their respective people have delegated, and all power not delegated remains with the states and the people thereof. In view of the vastly increasing power of the federal government, and the relatively diminishing importance of the state sovereignties respectively, the duty of the latter to watch closely and resist firmly every encroachment of the former, becomes every day more and more imperative, and the official oath of the functionaries of the states becomes more and more significant. As the power of the federal government depends solely upon what the states have granted, expressly or by implication, and as no common judge has been provided for, to determine when the one or the other shall be proved unfaithful to the compact, the solemn pledge of faith exacted from both has been deemed an effectual guaranty; and a frequent recurrence to the fundamental principles on which our government is organized, a sufficient stimulus to every public officer and to the people at large, both to yield and exact a perfect conformity. But I solemnly believe that the last hope of free representative and federative government rests with the states. Increase of influence and patronage on the part of the federal government naturally leads to consolidation, consolidation to despotism and ultimate anarchy, dissolution and all its attendant evils.…

What, then, is to be done? Let the free states return to their duty, if they have departed from it, and be faithful to the compact, in the true spirit in which it was conceived and adopted. Let the slave states be content with such an execution of the compact as the framers of it contemplated. Let the federal government return to the exercise of the just powers conferred by the constitution, and few, very few, will be found to disturb the tranquility of the nation, or to oppose, by word or deed, the due execution of the laws. But until this is done, I solemnly believe that there will be no peace for the state or the nation, but that agitation, acrimony and hostility will mark our progress, even if we escape a more dread calamity, which I will not even mention.

However this may be, well knowing the cost, I feel a grateful consciousness of having discharged my duty, and full duty; of having been true to the sovereign rights of my state, which has honored me with its confidence, and to the constitution of my country, which has blessed me with its protection; and though I may stand alone, I hope I may stand approved of my God, as I know I do of my conscience.…

Document Source: Opinion of Justice Abram Smith Granting a Writ of Habeas Corpus, *In re Booth*, 3 Wis. 1, 11, 23 (1854).

Supreme Court of Wisconsin, Opinion in *In Re Booth*, June 1854

The Wisconsin Supreme Court issued several opinions at different phases of the Ableman *litigation. The following is an excerpt from the majority opinion upholding the initial grant of Booth's petition for a writ of habeas corpus on the grounds that the Fugitive Slave Act was unconstitutional.*

It will not be denied that the citizens of the state naturally and properly look to their own state tribunals for relief from all kinds of illegal restraint and imprisonment. These courts are clothed with power sufficient for their protection, and would be recreant to their duty were they to refuse to exercise it upon all proper occasions.…

It is … objected to the return of the marshal, that, admitting Glover to have been arrested as a fugitive from labor, under the act of congress approved September 18th, 1850, still his arrest was unlawful for the reason that the act is repugnant to the constitution, and therefore void. And it is contended by the relator that it can be no crime to abet or assist a person to escape from illegal imprisonment, without using force or violence. The principal reasons urged in favor of this position of the relator, are that the constitution of the United States confers no power upon congress to legislate upon the subject of the surrender of fugitives from labor; that the act in question attempts to confer judicial power upon commissioners and not upon courts; and that by virtue of the act, a person may be deprived of his liberty "without due process of law." …

We are of opinion that so much of the act of congress in question, as refers to the commissioners for decision, the questions of fact which are to be established by evidence before the alleged fugitive can be delivered up to the claimant, is repugnant to the constitution of the United States, and therefore void for two reasons: First, because it attempts to confer upon those officers judicial powers; and second, because it is a denial of the right of the alleged fugitive to have those questions tried and decided by a jury, which we think is given him by the constitution of the United States.…

We are aware that it has been said that slaves are not persons in the sense in which that term is used in the amendment to the constitution above referred to. But this, admitting it to be true, does not affect the question under consideration, as persons who are free are liable to be arrested and deprived of their liberty by virtue of this act, without having had a trial by a jury of their peers. We … propose to examine the operation of the act upon a free citizen of a free state, and to show that by it such a person may be deprived of his liberty without "due process of law." It will be observed that the claimant can go before any court of record, or any judge thereof, in vacation, and make satisfactory proof to such court or judge, in vacation, of the escape, and that the person escaping owes service or labor to such party. It then becomes the duty of the court to cause a record to be made of the matters

so proved, and also a description of the person escaping, and such record being exhibited to any judge, commissioner or other officer authorized by law to cause persons escaping from service or labor to be delivered up, shall be held and taken to be conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. This testimony is taken, and this record is made, in the absence of the person to be affected by the proceeding. He has no opportunity to cross examine the witnesses who depose to the facts which are thus conclusively proved; but without his knowledge, evidence is manufactured, which, by virtue of this act, proves beyond question that he is a slave and that he has escaped from servitude. We are at a loss to perceive how this proceeding, by virtue of which a freeman becomes a slave, can be justly called "due process of law," in the sense in which that language is used in the constitution.…

We are therefore obliged to conclude that the alleged fugitive from labor is taken back to the state from which he is said to have escaped, as a person who has been proved and adjudged to be a slave, and, as we believe, without due process of law, without having his rights passed upon and determined by a jury of his peers.

We think it essential that his right should be maintained by all courts and all tribunals, and for the reasons above given, we must affirm the order made in this case, discharging the relator.

Document Source: *In Re Booth*, 3 Wis. 1, 26, 28, 30, 32 (1854).

Supreme Court of the United States, Opinion in *Ableman v. Booth*, March 7, 1859

This excerpt from Chief Justice Taney's opinion in Ableman *focuses on issues of federalism and the judicial power.*

[A] judge of the Supreme Court of the State of Wisconsin in the first of these cases, claimed and exercised the right to supervise and annul the proceedings of a commissioner of the United States, and to discharge a prisoner, who had been committed by the commissioner for an offence against the laws of this Government, and … this exercise of power by the judge was afterwards sanctioned and affirmed by the Supreme Court of the State.

In the second case, the State court has gone a step further, and claimed and exercised jurisdiction over the proceedings and judgment of a District Court of the United States, and upon a summary and collateral proceeding, by habeas corpus, has set aside and annulled its judgment, and discharged a prisoner who had been tried and found guilty of an offence against the laws of the United States, and sentenced to imprisonment by the District Court.

And it further appears that the State court have not only claimed and exercised this jurisdiction, but have also determined that their decision is final and conclusive upon all the courts of the United States, and ordered their clerk to disregard and refuse obedience to the writ of error issued by this court, pursuant to the act of Congress of 1789, to bring here for examination and revision the judgment of the State court.

These propositions are new in the jurisprudence of the United States, as well as of the States; and the supremacy of the State courts over the courts of the United States, in cases arising under the Constitution and laws of the United States, is now for the first time asserted and acted upon in the Supreme Court of a State.…

If the judicial power exercised in this instance has been reserved to the States, no offence against the laws of the United States can be punished by their own courts, without the permission and according to the judgment of the courts of the State in which the party happens to be imprisoned …. And, moreover, if the power is possessed by the Supreme Court of the State of Wisconsin, it must belong equally to every other State in the Union, when the prisoner is within its territorial limits; and it is very certain that the State courts would not always agree in opinion; and it would often happen, that an act which was admitted to be an offence, and justly punished, in one State, would be regarded as innocent, and indeed as praiseworthy, in another.

It would seem to be hardly necessary to do more than state the result to which these decisions of the State courts must inevitably lead. It is, of itself, a sufficient and conclusive answer; for no one will suppose that a Government which has now lasted nearly seventy years, enforcing its laws by its own tribunals, and preserving the union of the States, could have lasted a single year, or fulfilled the high trusts committed to it, if offences against its laws could not have been punished without the consent of the State in which the culprit was found.…

[A]lthough the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State judge or a State court, as if the line of division was traced by landmarks and monuments visible to the eye. And the State of Wisconsin had no more power to authorize these proceedings of its judges and courts, than it would have had if the prisoner had been confined in Michigan, or in any other State of the Union, for an offence against the laws of the State in which he was imprisoned.…

But the supremacy thus conferred on this Government could not peacefully be main-

tained, unless it was clothed with judicial power, equally paramount in authority to carry it into execution; for if left to the courts of justice of the several States, conflicting decisions would unavoidably take place, and the local tribunals could hardly be expected to be always free from the local influences of which we have spoken. And the Constitution and laws and treaties of the United States, and the powers granted to the Federal Government, would soon receive different interpretations in different States, and the Government of the United States would soon become one thing in one State and another thing in another. It was essential, therefore, to its very existence as a Government, that it should have the power of establishing courts of justice, altogether independent of State power, to carry into effect its own laws; and that a tribunal should be established in which all cases which might arise under the Constitution and laws and treaties of the United States, whether in a State court or a court of the United States, should be finally and conclusively decided. Without such a tribunal, it is obvious that there would be no uniformity of judicial decision; and that the supremacy, (which is but another name for independence,) so carefully provided in the clause of the Constitution above referred to, could not possibly be maintained peacefully, unless it was associated with this paramount judicial authority.…

This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, but also to guard the States from any encroachment upon their reserved rights by the General Government.… And as the final appellate power in all such questions is given to this court, controversies as to the respective powers of the United States and the States, instead of being determined by military and physical force, are heard, investigated, and finally settled, with the calmness and deliberation of judicial inquiry. And no one can fail to see, that if such an arbiter had not been provided, in our complicated system of government, internal tranquillity could not have been preserved; and if such controversies were left to arbitrament of physical force, our Government, State and National, would soon cease to be Governments of laws, and revolutions by force of arms would take the place of courts of justice and judicial decisions.…

We do not question the authority of State court, or judge, who is authorized by the laws of the State to issue the writ of habeas corpus, to issue it in any case where the party is imprisoned within its territorial limits, provided it does not appear, when the application is made, that the person imprisoned is in custody under the authority of the United States. The court or judge has a right to inquire, in this mode of proceeding, for what cause and by what authority the prisoner is confined within the territorial limits of the State sovereignty. And it is the duty of the marshal, or other person having the custody of the prisoner, to make known to the judge or court, by a proper return, the authority by which he holds him in custody. This right to inquire by process of habeas corpus, and the duty of the officer to make a return, grows, necessarily, out of the complex character of our Government,

and the existence of two distinct and separate sovereignties within the same territorial space, each of them restricted in its powers, and each within its sphere of action, prescribed by the Constitution of the United States, independent of the other. But, after the return is made, and the State judge or court judicially apprized that the party is in custody under the authority of the United States, they can proceed no further. They then know that the prisoner is within the dominion and jurisdiction of another Government, and that neither the writ of habeas corpus, nor any other process issued under State authority, can pass over the line of division between the two sovereignties. He is then within the dominion and exclusive jurisdiction of the United States. If he has committed an offence against their laws, their tribunals alone can punish him. If he is wrongfully imprisoned, their judicial tribunals can release him and afford him redress. And although, as we have said, it is the duty of the marshal, or other person holding him, to make known, by a proper return, the authority under which he detains him, it is at the same time imperatively his duty to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other Government. And consequently it is his duty not to take the prisoner, nor suffer him to be taken, before a State judge or court upon a habeas corpus issued under State authority. No State judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them. And if the authority of a State, in the form of judicial process or otherwise, should attempt to control the marshal or other authorized officer or agent of the United States, in any respect, in the custody of his prisoner, it would be his duty to resist it, and to call to his aid any force that might be necessary to maintain the authority of law against illegal interference. No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence.…

[A]lthough we think it unnecessary to discuss these questions, yet, as they have been decided by the State court, and are before us on the record, and we are not willing to be misunderstood, it is proper to say that, in the judgment of this court, the act of Congress commonly called the fugitive slave law is, in all of its provisions, fully authorized by the Constitution of the United States; that the commissioner had lawful authority to issue the warrant and commit the party, and that his proceedings were regular and conformable to law. We have already stated the opinion and judgment of the court as to the exclusive jurisdiction of the District Court, and the appellate powers which this court is authorized and required to exercise. And if any argument was needed to show the wisdom and necessity of this appellate power, the cases before us sufficiently prove it, and at the same time emphatically call for its exercise.…

Document Source: *Ableman v. Booth*, 62 U.S. 506, 513–15, 516, 517–18, 520–21, 523–24, 526 (1859).

Wisconsin Joint Resolution, 1859

This joint resolution, adopted by the Wisconsin legislature shortly after the Supreme Court's decision in Ableman*, demonstrates the force of opinion in the state against the Court's limitation of state power.*

Whereas, the supreme court of the United States has assumed appellate jurisdiction in the matter of the petition of Sherman M. Booth for a writ of habeas corpus, presented and prosecuted to final judgment in the supreme court of this state, and has, without process, or any of the forms recognized by law, assumed the power to reverse that judgement in a matter involving the personal liberty of the citizen, asserted by and adjusted to him by the regular course of judicial proceedings upon the great writ of liberty secured to the people of each state by the constitution of the United States:

And whereas, such assumption of power and authority by the supreme court of the united States, to become the final arbiter of the liberty of the citizen, and to override and nullify the judgments of the state courts, declaration thereof, is in direct conflict with that provision of the constitution of the United States which secures to the people the benefits of the writ of habeas corpus:

Therefore,

Resolved, the Senate concurring, That we regard the action of the supreme court of the United States, in assuming jurisdiction in the case before mentioned, as an arbitrary act of power, unauthorized by the constitution, and virtually superseding the benefit of the writ of habeas corpus, and prostrating the rights and liberties of the people at the foot of unlimited power.

Resolved, That this assumption of jurisdiction by the federal judiciary, in the said case, and without process, is an act of undelegated power, and therefore without authority, void, and of no force.

Resolved, That the government formed by the constitution of the United States was not made the exclusive or final judge of the extent of the powers delegated to itself; but that, as in all other case of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

Resolved, That the principle and construction contended for by the party which now rules in the councils of the nation, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism, since the discretion of those who administer the government, and not the constitution, would be the measure of their powers; that the several states which formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a positive

defiance of those sovereignties, of all unauthorized acts done or attempted to be done under color of that instrument, is the rightful remedy.

Document Source: Wisconsin Joint Resolution IV (1859).

"Wisconsin Nullification and Legislative Falsehoods," *Washington Union*, April 8, 1859

This editorial from a Democrat-leaning newspaper offers a critique of both the Wisconsin court's opinions in the Ableman *litigation and the Wisconsin legislature's response to the Supreme Court's decision.*

Wisconsin, since she fell into Republican hands, has secured a pre-eminence in infamy.… It is not our purpose to defend the United States Supreme Court. Their unanimous decision needs no defence.… Unless the American people approve and sustain the principles so clearly and forcibly announced in [*Ableman*], the friends of our glorious Union will have reason to despair, for it will come to an end, giving place to wild anarchy and civil war, with the different fragments of our shattered republic fighting for the ascendency.… The legislature descended to the propagation of falsehood, established of record, to screen its partisans and to divert attention from their own acts and the history of the recent corruptions in the State, which stand unparalleled in the annals of civilization and all to prevent the speedy downfall of a party which sprang into existence from the hot-bed of fanatical error, and which can only be upheld by the repetition of untruths. It threatens genuine nullification because the Supreme Court simply performed a duty which it could not avoid, and in order to make a show of a case, it wholly misrepresents the facts found in the records of the courts. But misrepresentations will not protect and preserve this crumbling party. When a legislature resorts to such means to preserve the ascendancy of a party, its downfall is at hand. The people will rise and administer a rebuke. The legislature of Wisconsin has won an infamy only equalled by the judicial exploits with which the court below attempted to shield from scrutiny. Their misrepresentations and threatened nullification, will soon nullify the republican party, and place one in power which will solely rest upon truth and justice for support and continuance.

Document Source: "Wisconsin Nullification and Legislative Falsehoods," *Washington Union*, April 8, 1859, p. 2.

Jeffrey Schmitt, *Virginia Law Review*, 2007

This excerpt from a legal journal article about the history of Ableman *argues that, far from quelling sectional unrest as Taney had intended, the case further exacerbated the differences between the North and South.*

While the effects of *Ableman* on national politics are [hard] to determine given the outbreak of secession and civil war only a year after the decision, like *Dred Scott*, the case probably contributed to the rising sectional animosity. Northern Democrats used the Wisconsin decisions to portray Republicans as radicals engaged in "a species of South Carolina nullification" and supported *Ableman* as necessary for the supremacy and uniformity of federal laws. Republicans, however, praised the Wisconsin decisions and condemned Chief Justice Taney's opinion as "an alarming assumption of power" that threatened liberty and would do nothing to increase enforcement of the Fugitive Slave Act.

And although Southerners praised Chief Justice Taney's decision as "able, learned, and eloquent," they were still enraged over what they perceived to be nullification of the Fugitive Slave Clause by the Wisconsin court. *The Richmond Enquirer* initially called Justice Smith a traitor for his "contemptibly frivolous and insufficient" opinion in *In re Booth* and warned that if the North did not fulfill its duty to return fugitive slaves, it would be the duty of "the South to enforce its rights." This anger only intensified over time, as secessionists cited Wisconsin's violation of the Fugitive Slave Clause as a primary example of northern constitutional violations and warned that Republicans would appoint men like the Wisconsin justices to the Supreme Court to further undermine southern rights during the debates over disunion. Thus, while *Ableman* antagonized the sectional Republican Party in the north, it did little to calm southern ager over the Wisconsin court's perceived nullification.

Document Source: Jeffrey Schmitt, "Rethinking *Ableman v. Booth* and States' Rights in Wisconsin," *Virginia Law Review* 93 (2007): 1351–52 (footnotes omitted).

Jenni Parrish, *Willamette Law Review*, 1993

This excerpt from a legal journal article on the Ableman *litigation argues that historians have underappreciated in the case's significance in the buildup to the Civil War.*

The Booth cases deserve a more prominent place in America's historical consciousness of the nineteenth century than they currently hold. A part of this country eventually seceded because of the antislavery cast of the federal government, particularly after the

election of President Lincoln in 1860. But what has been forgotten is that there was an equally vehement segment of the population so offended by the perceived proslavery bias of both the federal government and the Supreme Court that it too was ready to secede, and nearly did so.

Though one cannot prove in an empirical sense just why the Booth cases remained so obscure, one can certainly speculate. Several theories might be advanced to explain their relative obscurity. First, the major part of the controversy took place on the western frontier and the state supreme court decisions were authored by justices who, while competent, do not rank among the better-known state jurists of the nineteenth century.

Second, much of the action was overshadowed by Dred Scott. Perhaps Taney wrote a shorter, less strident opinion in Booth because he could not face another national outcry such as the one that had accompanied Dred Scott. Furthermore, in Booth, the slave Glover had long since made his way to freedom and anonymity. The same could not be said of Dred Scott. Third, the Civil War was so near at the time the Booth cases came to a close that the public consciousness could no longer be shocked.

Finally, history is always written by the victors. Inevitably, all the morally correct perspectives are aligned on the victor's side and all the morally incorrect views on the side of the defeated. Preserving the Union and abolishing slavery were among the chief motivations for the northern pursuit of war. Asserting the right of states to secede and preserving slavery were Southern motives. Because the Booth story does not fit neatly in this schema, it has been forgotten….

The Wisconsin judiciary backed down and wrote a final conciliatory opinion acknowledging the supremacy of the federal government in [*Ableman*]. But what if a Southern sympathizer had been elected President in 1860? What if another Joshua Glover had been taken from Wisconsin by his former slave master? How long would the Wisconsin populace have complied with this state of affairs? The Booth story suggests both that the tensions were great by 1860 to avoid war and that the importance of who fired the first shot was negligible. Booth, with *Prigg* and *Dred Scott*, is also an indicator of what happens when a government strays too far from the moral principles of a large segment of the populace. In that, there is a lesson for all time.

Document Source: Jenni Parrish, "The *Booth* Cases: Final Step to the Civil War," *Willamette Law Review* 29 (1993): 276–77, 278 (footnotes omitted).

Cases that Shaped the Federal Courts

This series includes case summaries, discussion questions, and excerpted documents related to cases that had a major institutional impact on the federal courts. The cases address a range of political and legal issues including the types of controversies federal courts could hear, judicial independence, the scope and meaning of "the judicial power," remedies, judicial review, the relationship between federal judicial power and states' rights, and the ability of federal judges to perform work outside of the courtroom.

- *Hayburn's Case* (1792). Could Congress require the federal courts to perform non-judicial duties?
- *Chisholm v. Georgia* (1793). Could states be sued in federal court by individual citizens of another state?
- *Marbury v. Madison* (1803). Could federal courts invalidate laws made by Congress that violated the Constitution?
- *Fletcher v. Peck* (1810). Could federal courts strike down state laws that violated the U.S. Constitution?
- *United States v. Hudson and Goodwin* (1812). Did the federal courts have jurisdiction over crimes not defined by Congress?
- *Martin v. Hunter's Lessee* (1816). Were state courts bound to follow decisions issued by the Supreme Court of the United States?
- *Osborn v. Bank of the United States* (1824). Could Congress grant the Bank of the United States the right to sue and be sued in the federal courts?
- *American Insurance Co. v. Canter* (1828). Did the Constitution require Congress to give judges of territorial courts the same tenure and salary protections afforded to judges of federal courts located in the states?
- *Louisville, Cincinnati, and Charleston Rail-road Co. v. Letson* (1844). Should a corporation be considered a citizen of a state for purposes of federal jurisdiction?
- *Ableman v. Booth* (1859). Could state courts issue writs of habeas corpus against federal authorities?
- *Gordon v. United States* (1865). Could the Supreme Court hear an appeal from a federal court whose judgments were subject to revision by the executive branch?
- *Ex parte McCardle* (1869). Could Congress remove a pending appeal from the Supreme Court's jurisdiction?
- *Ex parte Young* (1908). Could a federal court stop a state official from enforcing an allegedly unconstitutional state law?
- *Moore v. Dempsey* (1923). How closely should federal courts review the fairness of state criminal trials on petitions for writs of habeas corpus?

- *Frothingham v. Mellon* (1923). Was being a taxpayer sufficient to give a plaintiff the right to challenge the constitutionality of a federal statute?
- *Crowell v. Benson* (1932). What standard should courts apply when reviewing the decisions of executive agencies?
- *Erie Railroad Co. v. Tompkins* (1938). What source of law were federal courts to use in cases where no statute applied and the parties were from different states?
- *Railroad Commission of Texas v. Pullman Co.* (1941). When should a federal court abstain from deciding a legal issue in order to allow a state court to resolve it?
- *Brown v. Allen* (1953). What procedures should federal courts use to evaluate the fairness of state trials in habeas corpus cases?
- *Monroe v. Pape* (1961). Did the Ku Klux Klan Act of 1871 permit lawsuits in federal court against police officers who violated the constitutional rights of suspects without authorization from the state?
- *Baker v. Carr* (1962). Could a federal court hear a constitutional challenge to a state's apportionment plan for the election of state legislators?
- *Glidden Co. v. Zdanok* (1962). Were the Court of Claims and the Court of Customs Appeals "constitutional courts" exercising judicial power, or "legislative courts" exercising powers of Congress?
- *United States v. Allocco* (1962). Were presidential recess appointments to the federal courts constitutional?
- *Walker v. City of Birmingham* (1967). Could civil rights protestors challenge the constitutionality of a state court injunction, having already been charged with contempt of court for violating the injunction?
- *Bivens v. Six Unknown Named Agents* (1971). Did the Fourth Amendment create an implied right to sue officials who conducted illegal searches and seizures?
- *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982). Did the Bankruptcy Reform Act of 1978 violate the Constitution by granting too much judicial power to bankruptcy judges?
- *Morrison v. Olson* (1988). Could Congress empower federal judges to appoint independent counsel investigating executive branch officials?
- *Mistretta v. United States* (1989). Could Congress create an independent judicial agency to guide courts in setting criminal sentences?
- *Lujan v. Defenders of Wildlife* (1992). Could an environmental organization sue the federal government to challenge a regulation regarding protected species?
- *City of Boerne v. Flores* (1997). Could Congress reverse the Supreme Court's interpretation of the Constitution through a statute purportedly enforcing the Fourteenth Amendment?