Cases that Shaped the Federal Courts

Railroad Commission of Texas v. Pullman Co.

1941

Pullman Porter
(J.W. Mays)

Federal Judicial Center
2020

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Central Question

When should a federal court abstain from deciding a legal issue in order to allow a state court to resolve it?

Historical Context

The *Pullman* case was rooted in concerns about judicial federalism—concerns which were first addressed at the Constitutional Convention of 1787. As part of the complicated task of determining the appropriate balance of power between the new national government and the states, delegates debated the plan for the federal judiciary to be laid out in Article III of the Constitution. Many of the framers wanted to establish a nationwide system of lower federal courts in order to enforce federal law. Others feared that such a system would strip the state courts of their significance and undermine the states as independent political units.

The "Madisonian Compromise" embodied in Article III left to Congress the decision of whether and how to create lower federal courts. When Congress did so in the Judiciary Act of 1789, it struck a balance aimed at limiting the federal judiciary's encroachment upon the principles of federalism. The U.S. circuit and district courts were not vested with jurisdiction over all cases arising under the Constitution and federal law, otherwise known as general federal-question jurisdiction, leaving most issues of federal law to be resolved in the courts of the states.

Other than for a brief period from 1801 to 1802, this compromise persisted, with the federal courts hearing mainly cases pursuant to diversity of citizenship or a specific grant of jurisdiction by Congress. It was not until 1875 that Congress granted the federal courts general federal-question jurisdiction. The subsequent increase in federal-question cases meant that federal judges would be hearing many more state law claims as well when those claims arose from the same set of facts as a federal law claim.

Pullman was such a case—a suit against state officials in which the plaintiffs asserted both constitutional and state law claims. Cases like this raised significant federalism concerns, as federal courts were called upon to determine whether state officials had violated the laws of their own state.

Legal Debates Before *Pullman*

Although the Eleventh Amendment immunized states from being sued in federal court, Supreme Court case law established that suits against state officials could be brought under certain circumstances. In *Ex parte Young* (1908), the Court upheld a federal court injunction against a state attorney general who had attempted to enforce an allegedly unconstitutional statute. A year later, in *Siler v. Louisville & Nashville Railroad Co.*, the Court ruled

that once its jurisdiction had been established by a federal constitutional claim, a federal court could decide the case based solely on a related state law claim. In fact, resolving a case on state law grounds whenever possible was preferable in light of the Court's practice of avoiding unnecessary constitutional rulings. When the *Pullman* case came before the Supreme Court, therefore, it was recognized that federal courts could hear suits to prevent state officials from enforcing certain laws, hear related state law claims at the same time, and, when possible, resolve the case solely on state law grounds. *Pullman* posed a new question: whether federal courts should, under certain circumstances, voluntarily abstain from deciding those state law claims. The case caused the Court to consider the interaction between two established principles: avoiding constitutional rulings when possible, and respect for state courts' interpretations of state law.

The Case

From the 1860s until it went out of business in the late 1960s, the Pullman Company had a virtual monopoly on the manufacture of railroad sleeping cars. The company also employed thousands of conductors and porters to serve sleeping-car passengers. For most of this time, conductors, occupying a higher status position, were exclusively white, while porters were always African American (the first Pullman porters had been former slaves).

While most trains had two or more Pullman cars, trains in some less-populous parts of Texas, where there were fewer rail passengers, ran with only one. Pullman did not assign a conductor in these instances, leaving a porter in charge of the car. In response to this practice, the Texas Railroad Commission issued a regulation stating that no sleeping car without a Pullman conductor could be operated on any railroad within the state. The commission believed it had the authority to issue the regulation under a Texas statute empowering it to "prevent unjust discrimination … and to prevent any and all other abuses."

Both the Pullman Company and the railroads affected by the commission's order brought suit in the U.S. District Court for the Western District of Texas seeking an injunction against its enforcement. The Pullman porters and conductors also joined the lawsuit in opposition to and support of the order, respectively. The plaintiffs claimed that the commission's order was not authorized by Texas law and that it violated the Equal Protection, Due Process, and Commerce Clauses of the Constitution.

The case was heard by a three-judge panel of the district court pursuant to a 1910 federal statute governing suits to enjoin the enforcement of state laws. The panel issued an injunction against enforcement of the order, and the commission appealed directly to the Supreme Court of the United States as provided for by statute in three-judge panel cases.

The Supreme Court's Ruling

The Supreme Court voted 8–0 (with Justice Owen Roberts not participating in the case) to remand the case to the U.S. district court with instructions not to take further action until the parties could seek a resolution of the issue in the Texas state courts. In his opinion for the Court, Justice Felix Frankfurter noted that the complaint of the porters that the commission's order was racially discriminatory in violation of the Fourteenth Amendment raised a substantial constitutional issue. The federal courts should not decide the case on constitutional grounds, he wrote, unless there were no other way to resolve the matter. A finding that the commission had exceeded its authority under Texas law would end the case. State law, therefore, should be the starting point of the Court's analysis.

In looking at the relevant state law, the Court found it "far from clear" whether the order regarding Pullman cars was within the scope of the Texas statute setting forth the authority of the commission. "Reading the Texas statutes and the Texas decisions as outsiders without special competence in Texas law," Frankfurter wrote, "we would have little confidence in our independent judgment regarding the application of that law to the present situation." Although the judges of the U.S. district court were more familiar with Texas law than were the justices of the Supreme Court, the final determination of the state statute's meaning would lie with the Supreme Court of Texas. It would be a mistake, in Frankfurter's view, for the Supreme Court of the United States to issue an opinion which might soon be contradicted by the state court.

Frankfurter concluded by asserting that the Court should abide by "a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion,' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary." As a result, the Court ruled, the matter should be brought before the Texas courts to determine whether their interpretation of state law would resolve the case.

Aftermath and Legacy

The doctrine of "*Pullman* abstention" was grounded in judicial federalism, as it acknowledged the state courts to be most capable of resolving previously unsettled questions of state law. Proponents of abstention believed that deciding murky issues of state law in determining the legal duties of state officials would have especially serious implications for federalism. In cases where state law was clear, federal courts could still resolve claims on those grounds, whether or not a decision on the accompanying federal constitutional claim was warranted. The most significant objection to abstention was the delay it imposed upon litigants whose claims the federal courts declined to resolve. Although those litigants had the option to return to federal court to litigate their federal claims, the delay imposed

could make the federal forum practically inaccessible.

The discretionary aspect of *Pullman* abstention was significantly curtailed by the Supreme Court in *Pennhurst State School & Hospital v. Halderman* (1984) (*Pennhurst II*). In that case, the Court ruled that the Eleventh Amendment barred federal courts from issuing injunctions against state officials based on state law. "[I]t is difficult to think of a greater intrusion on state sovereignty," wrote Justice Lewis Powell in Pennhurst II, "than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment." Whereas under *Pullman*, federal courts had flexibility in deciding whether state law was clear enough to justify issuing an injunction against state officials, the courts lacked the necessary jurisdiction to do so after *Pennhurst II*.

There were some cases to which *Pullman* abstention could still be applied, however. Federal courts could decline to rule on constitutional claims against state officials when doing so would require the interpretation of a state law that was intertwined with the federal claim. Also, federal courts could abstain from deciding issues of state law in cases against local officials.

In the decades after *Pullman* was decided, the Supreme Court developed several additional abstention doctrines, most of which were based on principles of judicial federalism. In *Younger v. Harris* (1971), for example, the Court held that federal courts should not enjoin criminal proceedings in state courts absent extraordinary circumstances.

Discussion Questions

- Why might it be problematic for a federal court to decide a state law claim against a state official? Did *Pullman* provide an adequate solution?
- Should state officials be subject to suit in federal court at all? Why or why not?
- Why do you think the Supreme Court avoids making constitutional rulings when narrower grounds for deciding a case are available?

Documents

Appellees' Brief, *Railroad Commission of Texas v. Pullman Company*, Supreme Court of the United States, January 17, 1941

The Pullman Company, the railroads, and the porters filed a brief asking the Supreme Court to uphold the U.S. district court's injunction against enforcement of the order of the Texas Railroad Commission. The district court's findings of fact, they argued, indicated that the order had no rational basis. If that were true, the order could not withstand Fourteenth Amendment scrutiny. In support of this argument, the appellees recited the racially discriminatory conclusions the Railroad Commission had reached and the district court's findings to the contrary.

In addition to those quoted in appellants' brief, the order [of the Railroad Commission] contains the following findings not mentioned by appellants:

"(16) The Commission further finds from the evidence that the porters on Pullman cars are negro men. (R. 46.)

"(17) The Commission further finds that if negro porters are placed in charge of the Pullman cars when the service of a conductor is dispensed with that there is imminent danger of insults to the lady passengers on the Pullman cars and that such condition exists in the seventeen operations by the Pullman Company where they do not use conductors, as hereinabove referred to, and that the same constitutes an abuse and an undue and unjust disadvantage and discrimination; that from the evidence of the lady passengers who testified before this Commission, the womanhood of Texas entertains a fear of serious bodily injury or personal attack from a negro man and that to subject them as passengers in Pullman cars to the service where there is only a negro porter in charge would be to such passengers, as well as all other passengers, an undue and unjust discrimination, prejudice and abuse. (R. 46.)

"(18) The Commission further finds that the disorderly conduct among passengers which sometimes occurs on Pullman cars in Texas can not properly be met or handled by a Pullman porter; that every Texan, both man and woman, resents any interference or instructions from a negro man or from a negro porter, and the Commission finds that a negro porter would not attempt to and could not discipline a passenger on a car nor would he attempt to prevent any misconduct in such car and if the same should be indulged in to the humiliation of the other passengers on such car, that the same could not be prevented nor quieted by a Pullman porter, while the same could be properly handled and quieted by a Pullman conductor and therefore the same would be an abuse and an undue and unjust prejudice, discrimination and disadvantage. (R. 46-47.)

"(22) (c) The Commission finds that the experience of such passengers with the por-

ter in charge has been unsatisfactory; that the construction of the Pullman cars is such that only little curtains protect the passengers one from another, and that there is a long aisle down the center of the Pullman cars, and the seats and berths are constructed alongside of the aisle, and each berth is separated from the other berths only by these small curtains, and that the lady passengers who occupy such expect and are entitled to the protection, care and service of a Pullman conductor while they are thus traveling, and that to deny them such protection, care and service is an unjust discrimination on the part of the railroads and the Pullman Company.

"(d) The Commission further finds that women prefer not to ride in Pullman cars unless there is a Pullman conductor in charge; that they are unwilling to subject themselves to the supervision of a negro porter and that the practice on the part of the railroad companies and that of the Pullman companies in having the porter in charge is unfair, unjust and unreasonable, so far as these women passengers are concerned.

"(e) The Commission further finds from the testimony that the mothers of small children in Texas are unwilling to permit their children to ride in Pullman cars where only negro porters are in charge; that they entertain a fear that the children would not be cared for nor protected; that the children of Texas are entitled to the comfort, convenience and service of Pullman cars and that to deny them of this service by failing to provide the necessary employees over and above that of a porter would be an unjust discrimination. (R. 49-50.)

"(27) The Commission further finds from the testimony offered that on different occasions Pullman porters while on duty proceeded to drink excessively and become intoxicated, thereby rendering themselves unable to perform the janitor work required of a Pullman porter, and certainly unable to perform the duties of a Pullman conductor. (R. 51.)

"(29) The foregoing acts and things done and performed by the railroads of Texas and the Pullman Company are unjust and unreasonable and amount to unjust and unreasonable charges for the services rendered by a colored porter alone in charge of a sleeping car. And such service is inadequate to provide for the proper comfort, safety and convenience of the passengers therein and does not meet the requirements of the traveling public and the agreement between the railroads and the Pullman Company." (R. 52.) …

District Court Findings Nos. 6 and 7:

"6. It appears without contradiction that there are seventeen routes or lines in Texas where Pullman cars, in so far as The Pullman Company is concerned, are in charge of a porter. In most cases this occurs only where the distance traversed is short, and in every instance it occurs only on those trains that, as regularly operated, carry only one Pullman car. These lines are described in Exhibit G attached to the Complaint. One of them, however, No. 3259, was discontinued prior to the trial. On trains carrying two or more Pullman cars

a Pullman conductor accompanies the train. In all instances, however, the general control of the Pullman car or cars and passengers therein is lodged in the railroad conductor. The entire train and the railroad employees and Pullman employees are subject to the jurisdiction of the train conductor.

"7. All of the Pullman porters in Texas are negroes who have been in the service of the company as porters for more than ten years, and those acting as porters-in-charge for longer terms, ranging from twenty years to thirty-four years of continuous service. The men serving as porters-in-charge on the lines in Texas described in Exhibit G have demonstrated that they are substantial, reliable men of good character and good intelligence. By training and experience they are qualified and competent to discharge the duties assigned to them as porters-in-charge; and the fact that they are negroes and are called porters-in-charge does not disqualify them or render them incompetent. The service rendered to passengers in the Pullman cars on the trains not accompanied by a Pullman conductor is in no way inferior to the service rendered on the trains accompanied by a Pullman conductor. The Pullman conductors and the porters-in-charge have had the same training, and they receive regularly the same instructions. There is no need of a Pullman conductor in addition to the porters-in-charge on the lines described in Exhibit G. In view of the Pullman Company's experience, extending over a long period of years, there is no reasonable basis for a finding contrary to the facts stated in this Finding No. 7." (R. 367-368.)

Finding No. 6 is unchallenged. Appellants have formally challenged No. 7 by saying that the Court's findings therein "are contrary to the evidence and are not supported by the testimony and the evidence in this case." (Error No. 11, Appellants' Brief, pp. 22-23.) Under Appellants' Point III (Brief, p. 70), it is apparently their contention that there was substantial evidence at the trial in conflict with some of the findings in the Court's Finding No. 7. Nowhere has the finding been assailed as being "clearly erroneous." Indeed, no attempt has been made by appellants to show, nor have they even asserted, that, giving due regard to the opportunity of the trial court to judge of the credibility of the witnesses, the Court's Finding No. 7, or any part of it, is clearly erroneous.… No attempt has been made by appellants to show that the Court's findings are not substantially supported. We take it that they will be accepted by this Court.…

The Order Is Found to Be Without Rational Basis

(d) "*In view of The Pullman Company's experience, extending over a long period of years, there is no reasonable basis for a finding contrary to the facts stated in this Finding No. 7.*" (R. 368.) The effect of this concluding sentence of the Court's findings is that there is no rational basis for the challenged order, since the findings made by the Court in Finding No. 7 conclusively negative the existence of any facts that would support the order. By this final statement the Court has said, in effect, that the facts as found in Finding No. 7 do not rest

upon a mere preponderance of the evidence. They rest upon evidence so conclusive as to leave no room for reasonable minds to differ about it. This is equivalent to saying that there is no conceivable state of facts by which the order can be supported.

The combined experience of the 10 porters who testified is equivalent to an experience record of the typical porter-in-charge of more than 226 man-years. Four of the 10 have a combined service record of more than 125 man-years, (*Ante*, p. 15). By the undisputed evidence it appears that this record of the porters-in-charge is one of faithful, competent service. The railroads with whom the company is under contract to furnish the service are satisfied with it. No complaint is shown to have come from the members of the traveling public who have been served by the porters-in-charge. The Pullman Company and the porters themselves warrantably take pride in it. Only the Pullman conductors have complained, and they have furnished no evidence reflecting discredit upon the service rendered by the porters-in-charge. The rare instances of dereliction of duty by a few of the other porters (not in charge) proves nothing. It furnishes no more ground for outlawing these top-grade porters than would occasional lapses of some of the conductors constitute valid support for a penal order forbidding the operating of the cars in charge of conductors.

Document Source: Brief for the Appellees, *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496 (1941) (No. 283), 1941 WL 40310, at *5–6, *8, *21.

Supreme Court of the United States, Opinion in *Railroad Commission of Texas v. Pullman Company*, March 3, 1941

In the Pullman *case, the Supreme Court declined to rule on a Fourteenth Amendment claim, preferring that the case be resolved solely on state law grounds if possible. The question of state law—whether the Texas Railroad Commission had the statutory authority to issue the regulation at issue—was unclear, however. Reasoning that the question should be resolved by the Texas state courts, the Court abstained from deciding the case. The Court's avoidance of a state law issue governing the conduct of state officials became known as* Pullman *abstention.*

The complaint of the Pullman porters undoubtedly tendered a substantial constitutional issue. It is more than substantial. It touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open. Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy. It is therefore our duty to turn to a consideration of questions under Texas law.…

Reading the Texas statutes and the Texas decisions as outsiders without special competence in Texas law, we would have little confidence in our independent judgment regarding the application of that law to the present situation. The lower court did deny that the Texas statutes sustained the Commission's assertion of power. And this represents the view of an able and experienced circuit judge of the circuit which includes Texas and of two capable district judges trained in Texas law. Hard we or they no choice in the matter but to decide what is the law of the state, we should hesitate long before rejecting their forecast of Texas law. But no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination. The last word on the meaning of Article 6445 of the Texas Civil Statutes, and therefore the last word on the statutory authority of the Railroad Commission in this case, belongs neither to us nor to the district court but to the supreme court of Texas. In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication.…

The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction. There have been as many and as variegated applications of this supple principle as the situations that have brought it into play.…

These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, "exercising a wise discretion," restrain their authority because of "scrupulous regard for the rightful independence of the state governments" and for the smooth working of the federal judiciary.… This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers.…

Regard for these important considerations of policy in the administration of federal equity jurisdiction is decisive here. If there was no warrant in state law for the Commission's assumption of authority there is an end of the litigation; the constitutional issue does not arise. The law of Texas appears to furnish easy and ample means for determining the Commission's authority.…

We therefore remand the cause to the district court, with directions to retain the bill pending a determination of proceedings, to be brought with reasonable promptness, in the state court in conformity with this opinion.

Document Source: *Texas Railroad Commission v. Pullman Company*, 312 U.S. 496, 498–502 (1941).

Supreme Court of the United States, Opinion in *Pennhurst State School & Hospital v. Halderman*, January 23, 1984

In Pennhurst II*, the Supreme Court sharply limited the discretionary aspect of* Pullman *abstention, making it mandatory in many cases. A claim that state officials had violated state law, the Court held, was in reality a claim against the state and was barred from federal court by the Eleventh Amendment grant of state sovereign immunity. Under* Ex parte Young *and related cases, however, federal courts could still hear claims that state officials had violated federal law.*

[W]e now turn to the question whether the claim that petitioners violated *state law* in carrying out their official duties at Pennhurst is one against the State and therefore barred by the Eleventh Amendment. Respondents advance two principal arguments in support of the judgment below. First, they contend that under the doctrine of *Edelman v. Jordan*, supra, the suit is not against the State because the courts below ordered only prospective injunctive relief. Second, they assert that the state-law claim properly was decided under the doctrine of pendent jurisdiction.…

[T]he *Young* doctrine has been accepted as necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to "the supreme authority of the United States."… Our decisions repeatedly have emphasized that the *Young* doctrine rests on the need to promote the vindication of federal rights.…

The Court also has recognized, however, that the need to promote the supremacy of federal law must be accommodated to the constitutional immunity of the States. This is the significance of *Edelman v. Jordan*, *supra*.… [W]e declined to extend the fiction of Young to encompass retroactive relief, for to do so would effectively eliminate the constitutional immunity of the States.… In sum, *Edelman*'s distinction between prospective and retroactive relief fulfills the underlying purpose of *Ex parte Young* while at the same time preserving to an important degree the constitutional immunity of the States.

This need to reconcile competing interests is wholly absent, however, when a plaintiff alleges that a state official has violated *state* law. In such a case the entire basis for the doctrine of *Young* and *Edelman* disappears. A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supremacy of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment. We conclude that *Young* and *Edelman* are inapplicable in a suit against state officials on the basis of state law.…

As the Court of Appeals noted, in *Siler* and subsequent cases concerning pendent jurisdiction, relief was granted against state officials on the basis of state-law claims that were

pendent to federal constitutional claims. In none of these cases, however, did the Court so much as mention the Eleventh Amendment in connection with the state-law claim. Rather, the Court appears to have assumed that once jurisdiction was established over the federal-law claim, the doctrine of pendent jurisdiction would establish power to hear the state-law claims as well. The Court has not addressed whether that doctrine has a different scope when applied to suits against the State.…

This is an erroneous view and contrary to the principles established in our Eleventh Amendment decisions. "The Eleventh Amendment is an explicit limitation of the judicial power of the United States." … It deprives a federal court of power to decide certain claims against States that otherwise would be within the scope of Art. III's grant of jurisdiction.…

This constitutional bar applies to pendent claims as well.… The Eleventh Amendment should not be construed to apply with less force to this implied form of jurisdiction than it does to the explicitly granted power to hear federal claims.…

In sum … neither pendent jurisdiction nor any other basis of jurisdiction may override the Eleventh Amendment. A federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the Eleventh Amendment. We concluded above that a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment.… We now hold that this principle applies as well to state-law claims brought into federal court under pendent jurisdiction.

Document Source: *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 103–06, 118–21 (1984).

Keith Werhan, *William & Mary Law Review*, 1986

Professer Keith Werhan, then of Western New England College School of Law and later of Tulane University Law School, evaluated the doctrine of Pullman *abstention in a 1986 law review article. Acknowledging some valid criticisms of the doctrine—particularly with respect to the burdens it imposed on litigants—Werhan nevertheless concluded that abstention should be valued for allowing federal courts flexibility in dealing with difficult issues of judicial federalism.*

The Court's principal moderating response to the *Young-Siler* jurisdiction model came several decades later in *Railroad Commission v. Pullman Co.* In *Pullman*, just as in *Siler*, a private party had filed a lawsuit in federal court challenging an order issued by a state railroad commission. The complaints in both *Pullman* and *Siler* had asserted both

federal constitutional claims and pendent state claims alleging that the railroad commission's order was not authorized by the commission's enabling act. In *Siler*, the Court had forged ahead, asserting pendent jurisdiction over the state claim and invalidating the state commission's order on that basis. In *Pullman*, however, Justice Frankfurter took a more careful look at the state claim before deciding whether to resolve it. Justice Frankfurter acknowledged that the Court had jurisdiction to resolve the state claim, and he sympathized with the preference expressed in *Siler* for avoiding "sensitive" constitutional decisions by first deciding the state claims. He refused to decide the state claim in *Pullman*, however, because he felt ill-equipped to do so.…

Justice Frankfurter's proffered solution, which has come to be known as *Pullman* abstention, was for the federal district court to stay the case while the parties resorted to the state judiciary for resolution of the state law claim. As later refined by the Court, *Pullman* abstention allows a plaintiff challenging state action either to assert the federal constitutional claim in state court or to preserve the federal claim for ultimate resolution in federal court if the state ruling does not terminate the controversy.

Pullman abstention is a valuable variation on *Siler*. As distilled over the years, the *Pullman* doctrine prescribes abstention "when a federal court is faced with an unclear issue of state law whose resolution might avoid or modify a federal constitutional question." *Pullman* abstention thus reflects a more solicitous view of state autonomy because it recognizes "the role of state courts as the final expositors of state law."

This structural recognition carries a functional justification as well, because *Pullman* abstention allocates issues between state and federal courts in a way that optimizes each forum's expertise. Furthermore, although Justice Frankfurter's worry about the effect of an unconstrained *Young-Siler* model on the "reign of law" perhaps was exaggerated, it hardly was chimerical. Especially in the context of modern public law litigation, the interpretation of state governing statutes poses subtle problems for a court. The task of intuiting how the highest state court would approach these issues is not always easy for federal judges. Regardless of how a federal court decides an uncertain issue of state law, an incorrect prediction subsequently "supplanted by a controlling decision of a state court" has an unfortunate effect on the workability of the judicial federalism system. At times, these incorrect predictions are profoundly damaging.

In spite of the sound rationale that underlies *Pullman* abstention, the doctrine justifiably has engendered a great deal of criticism. Most fundamentally, critics have argued that the doctrine usurps Congress' plenary power to delineate the jurisdiction of lower federal courts. These critics challenge Justice Frankfurter for allowing judicial abstention from cases that Congress has required federal courts to hear under the general federal question statute. Some commentators also argue that even if the federal courts do have power to reg-

ulate their jurisdiction in this manner, *Pullman* abstention is not a sound mechanism for doing so. According to these commentators, Justice Frankfurter invoked abstract values of federalism that his doctrine fails to advance. The most telling criticism of *Pullman* abstention, however, is functional. Virtually all observers acknowledge that litigants pay a high price when *Pullman* abstention mandates severance of cases for partial adjudication in the state and federal judicial systems. The financial burden imposed by the delay and expense of *Pullman* abstention can be so great in some cases that it forecloses a federal forum for a litigant seeking adjudication of a constitutional right.

Although these criticisms to some extent ring true, *Pullman* abstention has endured for good reason. Justice Frankfurter's call for restraint in federal resolution of state law issues is wise counsel. More fundamentally, *Pullman* offers a solution to a problem that has haunted the Court since Chisholm because it offers a mechanism that, from both a structural and a functional standpoint, appropriately allocates public law litigation between the federal and state judicial systems. The *Pullman* doctrine avoids the polar extremes of the judicial federalism spectrum. Instead, it allows the Court to move flexibly and moderately to assess judicial federalism implications on a case-by-case basis. *Pullman* abstention is the culmination of an evolutionary process. It is also a compromise, pure and simple.

The overriding value of *Pullman* abstention to the concept of judicial federalism is that, properly applied, it keeps the federal forum operating within its capacity.… Federal judicial control of the manner in which state officials perform their official duties is sensitive business, and a federal court should hesitate to proceed if it is not confident of its resolution of a state law claim.

Document Source: Keith Werhan, "*Pullman* Abstention after *Pennhurst*: A Comment on Judicial Federalism," *William & Mary Law Review* 27, no. 3 (Spring 1986): 468–74 (footnotes omitted).

Federal Statute on Supplemental Jurisdiction, December 1, 1990

In a 1990 jurisdictional statute, Congress delineated the circumstances under which a federal court could abstain from hearing a state law claim.

§ 1367. Supplemental jurisdiction

(a) Except as otherwise provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such

original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.…

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

Document Source: Judicial Improvements Act of 1990, Pub. L. 101-60, 104 Stat. 5089, 5113 (1990).

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?