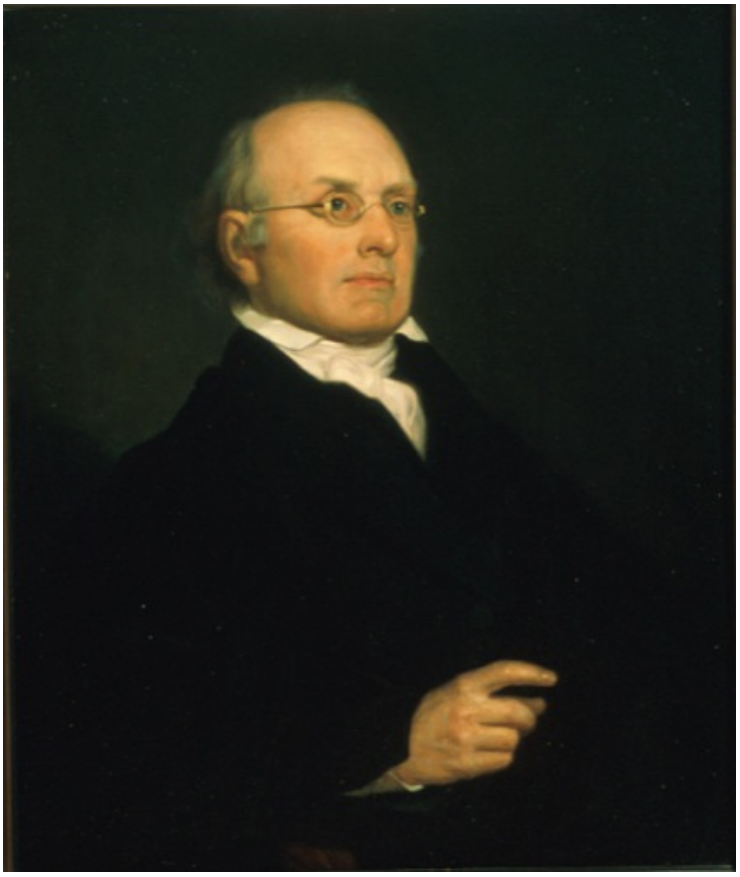
Resources for Public Speaking

Legal Interactions Between State and Federal Courts



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Federal Judicial Center
2026

As a product of the federalist structure established by the Constitution, the United States has a national judiciary as well as a separate judicial system for each state. Although the federal and state courts are distinct entities, there is overlap in the kinds of cases they hear, the laws they apply, and the geographical areas over which they have jurisdiction. These separate judicial systems work simultaneously, which brings them into contact in several ways. This resource provides suggested talking points, in outline form, for those wishing to speak about the most important ways in which federal and state courts interact in the course of performing their duties.

In addition to the outline, the resource contains Topic at a Glance, a brief summary in PDF format; a gallery of downloadable images for use in a PowerPoint presentation; links to related resources on the FJC's History of the Federal Judiciary website; a further reading list; and excerpts of historical documents that could be handed out to audience members or incorporated into a presentation. The entire resource is available in PDF format as well.

Topic at a Glance

Introduction. As a product of the federalist structure established by the Constitution, the United States has a national judiciary as well as a separate judicial system for each state. Although the federal and state courts are distinct entities, there is overlap in the kinds of cases they hear, the laws they apply, and the geographical areas over which they have jurisdiction. These separate judicial systems work simultaneously, which brings them into contact in several ways. This discussion covers the most important ways in which federal and state courts interact in the course of performing their duties.

Appeals from State Courts to the Supreme Court of the United States. Section 25 of the Judiciary Act of 1789 permitted appeals from the highest court of a state to the Supreme Court of the United States when a decision was made against a federal law, against a claim under federal law, or in favor of a state law against a claim that it violated the Constitution, a federal law, or a treaty. The Supreme Court rejected two early challenges from state courts to its authority in *Martin v. Hunter's Lessee* (1816) and *Cohens v. Virginia* (1821). In 1914, Congress permitted review by writ of certiorari in the converse of the situations identified in the 1789 Act. In 1988, Congress eliminated all appeals as of right from state courts, leaving certiorari as the exclusive method of review.

Federal Court Application of State Court Precedent. Since the establishment of the federal judiciary, federal courts have been called upon to apply state law, most frequently in diversity of citizenship cases. Section 34 of the Judiciary Act of 1789, known as the Rules of Decision Act, provided for "the laws of the several states" to be "rules of decision in trials at common law . . . in cases where they apply." The Supreme Court's decision in *Swift v. Tyson* (1842) that only state statutes, and not the decisions of state courts, constituted "state law" for purposes of section 34, led federal courts to apply general commercial law principles (sometimes called "federal common law") in diversity cases until *Swift* was overturned by *Erie Railroad v. Tompkins* (1938). By preventing application of federal common law principles often favorable to large business interests, *Erie* weakened somewhat the advantage such entities gained by removing cases from state to federal courts.

Removal of Cases from State to Federal Court. Section 12 of the Judiciary Act of 1789 permitted a defendant in state court to remove a diversity of citizenship case to federal court if more than $500 was at issue. Removal, designed to protect out-of-state defendants from potential bias in state courts, was expanded during Reconstruction on behalf of freed African Americans and Republican officials in Southern states. Rising caseloads caused Congress to curtail removal somewhat in the late 1880s, but the device remained widely used, with the biggest beneficiaries being corporations, which frequently removed contract and tort cases to avoid alleged anticorporate bias in state courts. Since the 1950s, some lawmakers, judges, and lawyers have called for the abolition of diversity jurisdiction, which would end removal. The Federal Courts Study Committee recommended abolition in 1990, but Congress did not act.

Federal Court Grants of Habeas Corpus to State Prisoners. The Judiciary Act of 1789 granted federal courts the power to issue writs of habeas corpus to inquire into the legality of a prisoner's detention, but only for prisoners in federal custody. The Supreme Court ruled in *Ableman v. Booth* (1859) that state courts could not issue the writ to federal prisoners. In expanding the power of the federal judiciary during Reconstruction, Congress in 1867 authorized federal courts to issue writs of habeas corpus to state prisoners, making the writ a postconviction remedy for the first time. Since the late nineteenth century, there have been periods of expansion and contraction of the writ's scope with respect to state prisoners, with the greatest period of expansion occurring between the 1920s and 1960s. Since the 1970s, several Supreme Court decisions have narrowed federal court review of state court convictions.

Federal Court Injunctions Against State Court Proceedings. The Anti-Injunction Act of 1793 was a general prohibition on federal-court injunctions to stay proceedings in state courts. While historical records do not reveal the specific reason for the Act, it reflects an overall respect for state sovereignty. While the Act barred the filing of a new action for an injunction, federal courts could still stay state court proceedings in certain circumstances where no new action was required. For example, when an action first began in federal court, the federal court could protect its jurisdiction by enjoining a later filed state court action. In *Ex parte Young* (1908), the Supreme Court permitted a federal court to enjoin a state official from going to state court to enforce an allegedly unconstitutional state law. In response to a Supreme Court opinion holding the Anti-Injunction Act to be nearly absolute (*Toucey v. New York Life Ins. Co.* (1941)), Congress revised the Act in 1948 to specify that injunctions could be issued when explicitly authorized by Congress or when necessary in aid of the federal court's jurisdiction or to protect or effectuate its judgments.

Federal Court Abstention. Since the 1940s, the federal courts have applied several judge-made "abstention" doctrines in declining to exercise jurisdiction over a matter in deference to state courts. Historians have identified Justice Felix Frankfurter, a strong proponent of federalism and judicial restraint, as a key figure in the development of abstention doctrine. For example, Justice Frankfurter wrote the opinion establishing the first major type of abstention in *Railroad Commission of Texas v. Pullman Co.* (1941). *Pullman* abstention rests on the principles that federal courts should avoid deciding constitutional issues when possible and that the highest court of a state is the most appropriate forum to rule on the meaning of a state statute. Therefore, if a federal court case involving a constitutional claim also involves an unsettled issue of state law that could dispose of the case, the federal court may stay the proceeding to allow a state court to rule on the state-law issue. The Supreme Court developed other important abstention doctrines in *Burford v. Sun Oil Co.* (1943), *Younger v. Harris* (1971), and *Colorado River Water Conservation District v. United States* (1976).

Federal Court Certification of State Law Issues. Most states have laws permitting the highest court of the state to answer questions of state law certified by federal courts. Florida was the first state to establish such a procedure, in 1960. (The Florida legislature had authorized the state supreme court to do so in 1945.) Some state courts have asserted that answering questions of state law is within their inherent authority and does not require statutory authorization. Other courts, however, have questioned whether it is appropriate to issue an opinion that could be merely advisory if not adopted by the federal court. While the certification procedure is governed by state law, the decision of whether to certify a legal question rests entirely with the federal court.

Outline

I. Appeals from State Courts to the Supreme Court of the United States
   A. Section 25 of the Judiciary Act of 1789 provided for appeals to the Supreme Court from the highest court of a state. Such appeals were allowed when:
      1. A decision was made against the validity of a federal law.
      2. A decision was made in favor of the validity of a state law against a claim that it violated the constitution, treaties, or laws of the United States.
      3. A decision was made against a claim made under federal law.
   B. In two early nineteenth-century cases, the Supreme Court rejected challenges to the validity of its jurisdiction over state courts. A decision in the late nineteenth century placed a prudential limit on that jurisdiction, however.
      1. *Martin v. Hunter's Lessee* (1816): stressing the supremacy of federal law, the Supreme Court rejected a challenge by the Virginia Supreme Court to the constitutionality of section 25.
      2. *Cohens v. Virginia* (1821): in another challenge to the Supreme Court's authority by the Virginia Supreme Court, the Court held that it possessed appellate jurisdiction over state criminal cases.
      3. *Eustis v. Bolles* (1893): the Court held that it would not take jurisdiction over an appeal from a state court where the state court had decided a state-law issue sufficient to dispose of the case. A Supreme Court decision on the federal issue would be merely advisory when it would not change the outcome of the case (later called the "adequate and independent state ground" doctrine).
   C. Review under section 25 was limited to the federal issues raised, leaving state courts supreme in their interpretations of state law. Even after this limiting language was omitted from a revised version of the statute in 1867, the Supreme Court continued to confine its review to federal issues (*Murdock v. City of Memphis* (1874)).
   D. In 1914, Congress amended the statute to provide for writs of certiorari in the converse of the situations described above (e.g., a decision in favor of the validity of a federal law).
   E. In the Supreme Court Case Selections Act of 1988, Congress abolished the right of appeal from state courts to the Supreme Court and made such cases reviewable only upon a writ of certiorari.

II. Federal Court Application of State Court Precedent
   A. Article III included suits between citizens of different states within the federal judicial power. Section 11 of the Judiciary Act of 1789 vested the U.S. circuit courts with jurisdiction over a suit between a citizen of the state in which suit was brought and a citizen of another state.
   B. Such jurisdiction—referred to as "diversity of citizenship" or simply "diversity" jurisdiction— was predicated on the notion that a federal court might be a more neutral forum than a state court for an out-of-state defendant.
   C. Federal courts were called upon to apply state law most commonly in diversity cases.
   D. Section 34 of the Judiciary Act of 1789, also known as the Rules of Decision Act, provided that "[t]he laws of the several states . . . shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply."

E. In *Swift v. Tyson* (1842), the Supreme Court ruled that section 34 required federal courts to apply state statutory law, but that the decisions of state courts did not constitute "law" for this purpose and did not bind the federal courts.
F. Under the *Swift* holding, federal courts applied general commercial law (sometimes referred to as "federal common law" and often favorable to business interests) in most diversity cases where no statute applied until 1938, when the Supreme Court overturned *Swift* in *Erie Railroad Co. v. Tompkins*.
G. In *Erie,* the Court noted that there was no such thing as "federal common law" and that no distinction should be drawn between state law as expressed in a statute and as expressed in a judicial decision. The guiding principle behind *Erie* was that the outcome of litigation should not depend on whether it is heard in state or federal court.
H. By preventing application of federal common law principles often favorable to large business interests, *Erie* weakened somewhat the advantage such entities gained by removing cases from state to federal courts.
I. *Erie* proved to be doctrinally complicated, and the Supreme Court issued many decisions in the years that followed to establish the doctrine's parameters and guide the lower federal courts in applying it.

III. Removal of Cases from State to Federal Court

A. Section 12 of the 1789 act allowed a state-court defendant in a diversity suit to remove the case from state to federal court as long as more than $500 was at stake.
B. During Reconstruction, Congress used several pieces of legislation to expand the right of removal to protect freedpeople and Republican officials from bias in southern state courts.
    1. Separable Controversy Act of 1866: an out-of-state defendant sued by a resident plaintiff could remove a portion of the suit if it could be resolved without the participation of other defendants. (The act countered "joinder," i.e., the addition of an in-state defendant for the purpose of defeating diversity jurisdiction.)
    2. Local Prejudice Act of 1867: any out-of-state party could remove a case to federal court upon asserting a fear of local prejudice in the state court.
    3. Jurisdiction and Removal Act of 1875: expanded the Separable Controversy Act by providing that any party to a separable controversy could remove the entire suit to federal court.
C. A rise in caseloads caused Congress to curtail diversity jurisdiction and removal somewhat in 1887–1888—by, for example, raising the amount in controversy requirement for diversity jurisdiction from $500 to $2,000 and rescinding the right of plaintiffs to remove suits—but these changes had little effect on the Supreme Court's heavy caseload burden. (The Evarts Act of 1891, which created the U.S. circuit courts of appeals, was far more effective in this regard.)
D. In the decades after Reconstruction, corporations were the biggest beneficiaries of removal, seeking to remove contract and tort cases to federal court to avoid alleged anticorporate prejudice in state courts.
E. The Supreme Court's decision in *Erie Railroad v. Tompkins* (1938)—eliminating reliance on "federal common law"—removed some of the incentive for removal, but corporations continued to remove many suits.

F. Congress further narrowed diversity jurisdiction in 1958. Since then, some have called for its abolition, citing its burden on the federal courts and diminished importance after *Erie*. The congressionally appointed Federal Courts Study Committee recommended abolition in 1990, but Congress did not act on the recommendation.

IV. Federal Court Grants of Habeas Corpus to State Prisoners

A. The Judiciary Act of 1789 granted the federal courts the power to issue writs of habeas corpus to inquire into the legality of a prisoner's detention, but only for prisoners in federal custody.

B. In *Ableman v. Booth* (1859), the Supreme Court ruled that state courts could not issue the writ of habeas corpus to prisoners in federal custody.

C. During Reconstruction (1867), Congress guarded against state-court prejudice against freedpeople and Republicans in southern states by extending the federal writ of habeas corpus to state prisoners whose detention violated a federal right. This turned habeas corpus into a postconviction remedy for the first time, as federal courts could free those who had been convicted in state courts.

D. Over the century following Reconstruction, the Supreme Court and Congress both expanded and contracted the availability of the writ for state prisoners. While the law did not proceed in a linear fashion, the period between 1879 and 1915 was generally one of contraction with more deference to state courts.
   1. *Ex parte Siebold* (1879): the writ would be granted only when the state court lacked jurisdiction.
   2. *Ex parte Royall* (1886): state prisoners were required to exhaust all state remedies before seeking habeas corpus in a federal court.
   3. A 1908 statute restricted appeals of habeas denials under the 1867 act by requiring a federal judge to certify that there existed probable cause for an appeal.
   4. *Frank v. Magnum* (1915): habeas corpus would be denied where the state had an adequate corrective process for the denial of constitutional rights.

E. The 1920s through the 1960s were generally a time of expansion of habeas corpus rights.
   1. *Moore v. Dempsey* (1923): federal district courts could hold hearings to determine the validity of state convictions where the prisoner alleged the trial was dominated by a mob.
   2. *Waley v. Johnson* (1942): the Court explicitly acknowledged that habeas relief was not limited to cases of jurisdictional error (although some had argued that earlier cases, such as *Moore*, suggested as much).
   3. *Brown v. Allen* (1953): federal courts could undertake a substantive review of state criminal convictions even where the Supreme Court had chosen not to hear an appeal and were not bound by state-court rulings on federal issues.
   4. *Fay v. Noia* (1963): federal courts could grant habeas relief even where a petitioner had failed to pursue state remedies no longer available at the time of the petition, and even where an adequate and independent state-law ground would have prevented direct review of the conviction.

5. *Townsend v. Sain* (1963): in a habeas corpus proceeding, a federal court always had the power to receive evidence and find facts and was required to do so in certain circumstances.

F. After the Warren Court expanded habeas corpus review of state convictions, developments in the 1970s and onward narrowed the scope of review somewhat.
   1. *Stone v. Powell* (1976): habeas relief could not be issued for a Fourth Amendment violation if the state court had provided the petitioner with a full and fair opportunity to litigate the claim.
   2. *Wainwright v. Sykes* (1977): the Court narrowed the holding of *Fay v. Noia*, giving more deference to state procedural rules regarding the timely raising of constitutional claims.
   3. *Teague v. Lane* (1989): new rules of criminal procedure could not be applied retroactively to attack convictions in habeas corpus proceedings.
   4. *Coleman v. Thompson* (1991): overruled *Fay v. Noia*; a federal court could not review a constitutional claim on habeas corpus if the state court's denial of the writ rested on a state procedural default independent of the federal issue.
   5. The Antiterrorism and Effective Death Penalty Act of 1996 imposed several limitations on federal habeas relief, including a one-year deadline for a habeas petition.

V. Federal Court Injunctions Against State Court Proceedings

A. The Anti-Injunction Act of 1793 was a general prohibition on federal courts issuing writs of injunction to stay proceedings in state courts. While historical records do not reveal the specific reasons behind the act, it reflects the concern at the nation's founding that the federal government should not intrude unduly on state sovereignty.

B. While the act barred original federal-court actions for such injunctions, federal courts still prevented overlapping litigation by enjoining state-court proceedings in some circumstances that did not require the filing of a new action.
   1. Where an action first began in federal court, the federal court could protect its jurisdiction by enjoining a subsequently filed state-court proceeding.
   2. Similarly, if a case had been removed to federal court, the federal court could stay further proceedings in the state court.
   3. A federal court could enjoin proceedings in state court to relitigate issues already litigated in federal court.
   4. A federal court could enjoin a state-court proceeding that would interfere with property over which the federal court had already asserted jurisdiction.

C. In 1874, Congress added to the Anti-Injunction Act an exception allowing injunctions where authorized by a bankruptcy law.

D. In *Ex parte Young* (1908), the Supreme Court allowed a federal court to enjoin a state official from going to state court to enforce an allegedly unconstitutional state law.

E. In 1948, in response to a Supreme Court opinion interpreting the Anti-Injunction Act as nearly absolute and criticizing the exceptions to it as unwarranted (*Toucey v. New York Life Ins. Co.* (1941)), Congress revised the act to specify that injunctions could be issued when explicitly authorized by Congress or where necessary in aid of the federal court's jurisdiction or to protect or effectuate its judgments.

VI. Federal Court Abstention

A. Since the 1940s, the federal courts have applied several judge-made "abstention" doctrines in declining to exercise jurisdiction over a matter in deference to state courts.

B. Historians have identified Justice Felix Frankfurter (1939-1962), a strong proponent of federalism and judicial restraint, as a key figure in the development of abstention doctrine.

C. Major types of abstention:

1. *Railroad Commission of Texas v. Pullman Co.* (1941): *Pullman* abstention rests on two principles. First, federal courts should try to avoid deciding constitutional issues when possible. Second, the highest court of a state is the most appropriate forum to rule on the meaning of a state statute. Therefore, if a federal-court case involving a constitutional issue also includes an unsettled state-law issue that could resolve the case, the federal court may stay the proceeding to allow a state court to rule on the state-law issue.
2. *Burford v. Sun Oil Co.* (1943): a federal court should abstain from deciding a case when its decision would risk disrupting a complex state regulatory scheme.
3. *Younger v. Harris* (1971): federal courts should abstain from exercising their jurisdiction when doing so would interfere with an ongoing criminal prosecution in a state court. *Younger* abstention has been invoked in deference to state criminal proceedings (as in the original case), state enforcement actions arising from private suits (e.g., contempt), and enforcement actions analogous to criminal proceedings (e.g., nuisance).
4. *Colorado River Water Conservation District v. United States* (1976): federal courts should relinquish their jurisdiction to prevent concurrent litigation in federal and state courts only in "exceptional" circumstances. This is the narrowest of all abstention doctrines. District courts have taken varying approaches in applying this doctrine.

VII. Federal Court Certification of State-Law Issues

A. Most states have laws permitting the highest court of the state to answer state-law questions certified by a federal court.

B. Florida was the first state to authorize such a procedure.

1. In 1945, the Florida legislature passed a statute allowing the Florida Supreme Court to make a rule regarding certified questions. The court did not act right away.
2. In 1960, the Fifth Circuit declined to rule on an unsettled issue of Florida law.
3. The Supreme Court of the United States read the 1945 statute as allowing the Florida Supreme Court to answer the state-law question.
4. In response, the Florida Supreme Court made a rule implementing the procedure.
5. Soon other states began to enact statutes allowing their courts to answer certified questions.

C. Some state courts have expressed the opinion that answering questions of state law certified by federal courts is within their inherent powers and does not depend on statutory authority.

D. Other state courts have questioned whether it is appropriate to answer such questions because an opinion could be rendered advisory—and thereby violate the state constitution—if the federal court declined to adopt it.
E. Although the certification procedure is governed by state law, the decision to certify a state-law question rests entirely with the federal court.

Related FJC Resources

Cases that Shaped the Federal Courts:

- *Ableman v. Booth* (1859)
- *Brown v. Allen* (1953)
- *Erie R.R. Co. v. Tompkins* (1938)
- *Ex parte Young* (1908)
- *Martin v. Hunter's Lessee* (1816)
- *Moore v. Dempsey* (1923)
- *Railroad Commission of Texas v. Pullman Co.* (1941)

Jurisdiction: Diversity

Jurisdiction: Habeas Corpus

Kobrick, Jake and Daniel S. Holt. *Debates on the Federal Judiciary, Vol. III (1939–2005)*. Washington, D.C.: Federal Judicial Center, 2018: 175–195.

Landmark Legislation: Judiciary Act of 1789

Landmark Legislation: Jurisdiction and Removal Act of 1875

Ragsdale, Bruce A. *Debates on the Federal Judiciary, Vol. I (1787–1875)*. Washington, D.C.: Federal Judicial Center, 2013.

Resources for Public Speaking: Differences Between Federal and State Courts

Further Reading

Calabresi, Guido. “Federal and State Courts: Restoring a Workable Balance.” *New York University Law Review* 78, no. 4 (October 2003): 1293–1308.

Pfander, James E. and Nassim Nazemi. “The Anti-Injunction Act and the Problem of Federal-State Jurisdiction Overlap.” *Texas Law Review* 92, no. 1 (November 2013): 1–74.

Pollock, Stewart G. “Adequate and Independent State Grounds as a Means of Balancing the Relationship between State and Federal Courts.” *Texas Law Review* 63, no. 6–7 (March/April 1985): 977–994.

Schwarzer, William W., Nancy E. Weiss, and Alan Hirsch. “Judicial Federalism in Action: Coordination of Litigation in State and Federal Courts.” *Virginia Law Review* 78, no. 8 (November 1992): 1689–1752.

Watson, Wendy L., McKinzie Craig, and Daniel Orion Davis. “Federal Court Certification of State-Law Questions: Active Judicial Federalism.” *The Justice System Journal* 28, no. 1 (2007): 98–103.

Weinberger, Lael. “Frankfurter, Abstention Doctrine, and the Development of Modern Federalism: A History and Three Futures.” *University of Chicago Law Review* 87, no. 7 (October 2020): 1737–1798

Historical Documents

Appeals from State Courts to the Supreme Court of the United States

Supreme Court, Opinion in *Martin v. Hunter's Lessee*, March 20, 1816

In Martin, the Virginia Supreme Court held unconstitutional section 25 of the Judiciary Act of 1789, which provided for review by the Supreme Court of the United States of state court decisions involving federal statutes and constitutional rights. The Supreme Court of the United States reversed the Virginia court's decision. Justice Joseph Story's opinion for the Court rejected the contention that the state possessed equal sovereignty with the federal government. Story also stressed that it was important for the nation to have a single, coherent interpretation of the Constitution and federal laws, rather than multiple competing interpretations from multiple different courts. Moreover, if plaintiffs could avoid any chance of federal review of cases that presented federal questions by simply suing in state courts, then defendants would have been deprived of the opportunity to have their case heard by a federal court. While Story did not suggest federal judges were inherently better than their state counterparts, he noted that both the Constitution and the Judiciary Act operated on the presumption that federal courts would be more impartial venues for some cases.

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STORY, J., delivered the opinion of the court....

The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by "the people of the United States." There can be no doubt that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be, that the people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The constitution was not, therefore, necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions, for the powers of the states depend upon their own constitutions; and the people of every state had the right to modify and restrain them, according to their own views of policy or principle. On the other hand, it is perfectly clear that the sovereign powers vested in the state governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States....

The third article of the constitution is that which must principally attract our attention. The 1st. section declares, "the judicial power of the United States shall be vested in one supreme court, and in such other inferior courts as the congress may, from time to time, ordain and establish." The 2d section declares, that "the judicial power shall extend to all cases in law or equity, arising under this constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under the grants of different states;

and between a state or the citizens thereof, and foreign states, citizens, or subjects." It then proceeds to declare, that "in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have *original jurisdiction.* In all the other cases before mentioned the supreme court shall have *appellate jurisdiction,* both as to law and fact, with such exceptions, and under such regulations, as the congress shall make." ...

As, ... by the terms of the constitution, the appellate jurisdiction is not limited as to the supreme court, and as to this court it may be exercised in all other cases than those of which it has original cognizance, what is there to restrain its exercise over state tribunals in the enumerated cases? The appellate power is not limited by the terms of the third article to any particular courts. The words are, "the judicial power (which includes appellate power) shall extend *to all cases,*" &c., and "in all other cases before mentioned the supreme court shall have appellate jurisdiction." It is the *case,* then, and not *the court,* that gives the jurisdiction. If the judicial power extends to the case, it will be in vain to search in the letter of the constitution for any qualification as to the tribunal where it depends. It is incumbent, then, upon those who assert such a qualification to show its existence by necessary implication. If the text be clear and distinct, no restriction upon its plain and obvious import ought to be admitted, unless the inference be irresistible....

[I]t is plain that the framers of the constitution ... contemplate[d] that cases within the judicial cognizance of the United States not only might but would arise in the state courts, in the exercise of their ordinary jurisdiction. With this view the sixth article declares, that "this constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." It is obvious that this obligation is imperative upon the state judges in their official, and not merely in their private, capacities. From the very nature of their judicial duties they would be called upon to pronounce the law applicable to the case in judgment. They were not to decide merely according to the laws or constitution of the state, but according to the constitution, laws and treaties of the United States—"the supreme law of the land." ...

It has been argued that ... an appellate jurisdiction over state courts is inconsistent with the genius of our governments, and the spirit of the constitution. That the latter was never designed to act upon state sovereignties, but only upon the people, and that if the power exists, it will materially impair the sovereignty of the states, and the independence of their courts. We cannot yield to the force of this reasoning; it assumes principles which we cannot admit, and draws conclusions to which we do not yield our assent.

It is a mistake that the constitution was not designed to operate upon states, in their corporate capacities. It is crowded with provisions which restrain or annul the sovereignty of the states in some of the highest branches of their prerogatives. The tenth section of the first article contains a long list of disabilities and prohibitions imposed upon the states. Surely, when such essential portions of state sovereignty are taken away, or prohibited to be exercised, it cannot be correctly asserted that the constitution does not act upon the states.... The courts of the United States can, without question, revise the proceedings of the executive and legislative authorities of the states, and if they are found to be contrary to the constitution, may declare them to be of no legal validity. Surely the exercise of the same right over judicial tribunals is not a higher or more dangerous act of sovereign power.

Nor can such a right be deemed to impair the independence of state judges. It is assuming the very ground in controversy to assert that they possess an absolute independence of the United States. In respect to the powers granted to the United States, they are not independent; they are expressly bound to obedience by the letter of the constitution; and if they should unintentionally transcend their authority, or misconstrue the constitution, there is no more reason for giving their judgments an absolute and irresistible force, than for giving it to the acts of the other co-ordinate departments of state sovereignty....

A motive of another kind, perfectly compatible with the most sincere respect for state tribunals, might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity of *uniformity* of decisions throughout the whole United States, upon all subjects within the purview of the constitution. Judges of equal learning and integrity, in different states, might differently interpret a statute, or a treaty of the United States, or even the constitution itself: If there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable; and it cannot be believed that they could have escaped the enlightened convention which formed the constitution. What, indeed, might then have been only prophecy, has now become fact; and the appellate jurisdiction must continue to be the only adequate remedy for such evils.

There is an additional consideration, which is entitled to great weight. The constitution of the United States was designed for the common and equal benefit of all the people of the United States. The judicial power was granted for the same benign and salutary purposes. It was not to be exercised exclusively for the benefit of parties who might be plaintiffs, and would elect the national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their privil[e]ges, before the same forum. Yet, if the construction contended for be correct, it will follow, that as the plaintiff may always elect the state court, the defendant may be deprived of all the security which the constitution intended in aid of his rights....

On the whole, the court are of opinion, that the appellate power of the United States does extend to cases pending in the state courts; and that the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases, by a writ of error, is supported by the letter and spirit of the constitution. We find no clause in that instrument which limits this power; and we dare not interpose a limitation where the people have not been disposed to create one.

Strong as this conclusion stands upon the general language of the constitution, it may still derive support from other sources. It is an historical fact, that this exposition of the constitution, extending its appellate power to state courts, was, previous to its adoption, uniformly and publicly avowed by its friends, and admitted by its enemies, as the basis of their respective reasonings, both in and out of the state conventions. It is an historical fact, that at the time when the judiciary act was submitted to the deliberations of the first congress, composed, as it was, not only of men of great learning and ability, but of men who had acted a principal part in framing, supporting, or opposing that constitution, the same exposition was explicitly declared and admitted by the friends and by the opponents of that system. It is an historical fact, that the supreme court of the United States have, from time to time, sustained this appellate jurisdiction in a great variety of cases, brought from the tribunals of many of the most important states in the union, and that no state tribunal has ever breathed a judicial doubt on the

subject, or declined to obey the mandate of the supreme court, until the present occasion. This weight of contemporaneous exposition by all parties, this acquiescence of enlightened state courts, and these judicial decisions of the supreme court through so long a period, do, as we think, place the doctrine upon a foundation of authority which cannot be shaken, without delivering over the subject to perpetual and irremediable doubts....

It is the opinion of the whole court, that the judgment of the court of appeals of Virginia, rendered on the mandate in this cause, be reversed, and the judgment of the district court, held at Winchester, be, and the same is hereby affirmed.

[Document Source: *Martin v. Hunter's Lessee*, 14 U.S. 304, 324–25, 327–28, 338–39, 340–41, 342–44, 347–49, 351–52 (1816).]

Federal Court Application of State Court Precedent

Supreme Court of the United States, Opinion in *Erie Railroad v. Tompkins*, April 25, 1938

The Supreme Court's decision in Erie*, written by Justice Louis Brandeis, overturned the nearly century-old precedent of Swift v. Tyson (1842), which had allowed federal courts to bypass state court precedents in diversity of citizenship cases and instead apply general principles of commercial law (sometimes referred to as "federal common law"). The Court held that federal courts were bound to apply state law in such cases without regard to whether that law appeared in a statute or a state court decision. The Erie decision was meant to create uniformity in the sense that the same law would apply to a case regardless of whether it was brought in federal or state court.*

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Experience in applying the doctrine of *Swift v. Tyson*, had revealed its defects, political and social; and the benefits expected to flow from the rule did not accrue. Persistence of state courts in their own opinions on questions of common law prevented uniformity; and the impossibility of discovering a satisfactory line of demarcation between the province of general law and that of local law developed a new well of uncertainties.

On the other hand, the mischievous results of the doctrine had become apparent. Diversity of citizenship jurisdiction was conferred in order to prevent apprehended discrimination in state courts against those not citizens of the state. *Swift v. Tyson* introduced grave discrimination by non-citizens against citizens. It made rights enjoyed under the unwritten "general law" vary according to whether enforcement was sought in the state or in the federal court; and the privilege of selecting the court in which the right should be determined was conferred upon the non-citizen. Thus, the doctrine rendered impossible equal protection of the law. In attempting to promote uniformity of law throughout the United States, the doctrine had prevented uniformity in the administration of the law of the State.

The discrimination resulting became in practice far-reaching. This resulted in part from the broad province accorded to the so-called "general law" as to which federal courts exercised an independent judgment….

In part the discrimination resulted from the wide range of persons held entitled to avail themselves of the federal rule by resort to the diversity of citizenship jurisdiction. Through this jurisdiction individual

citizens willing to remove from their own State and become citizens of another might avail themselves of the federal rule. And, without even change of residence, a corporate citizen of the State could avail itself of the federal rule by re-incorporating under the laws of another State, as was done in the *Taxicab* case….

Except in matters governed by the Federal Constitution or Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no general federal common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts….

Thus the doctrine of *Swift v. Tyson* is, as Mr. Justice Holmes said, "an unconstitutional assumption of powers by courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct."

[Document Source: *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 74–79 (1938).]

Habeas Corpus

Attorney General Richard G. Kleindienst, Support for Limiting Habeas Corpus, Letter to Emanuel Celler, June 21, 1972

In an effort to limit federal habeas corpus review of state criminal convictions, the Department of Justice drafted legislation under which petitions for habeas corpus would be allowed only where the prisoner could allege a constitutional violation that "involves the integrity of the factfinding process" and only if such violation had not already been raised on appeal in a state court. Attorney General Richard G. Kleindienst offered the Justice Department's endorsement of similar bills that were being considered by the House and Senate Judiciary Committees. In a June 1972 letter to U.S. Representative Emanuel Celler, Kleindienst emphasized that finality in criminal cases was indispensable to achieving justice and the rehabilitation of convicts.

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Collateral attack in the Federal courts on State and Federal criminal Judgments has become the ultimate outgrowth of the endless search for certitude in our criminal justice system. Americans, as a people, are well aware, and justly so, of the serious nature of an ultimate decision of a government, through its criminal justice system, to impose a final criminal sanction on a defendant. We hesitate, at that last instant before sending our convicted criminals to prison, and wonder if we have indeed "done justice." As a result of this laudable concern, however, we have countenanced a system of collateral attack on these final criminal judgments which literally staggers the imagination. Issues of law, issues of fact relating to people, places, and things may all be raised and relitigated time and time again through the mechanism of collateral attack. Concern for the search for ultimate justice, however, must nevertheless at some point be met with the realization that at some time, at some place, the decision of someone must be regarded as conclusive. We are hopefully not so uncomfortable with or unsure of our system of

criminal justice that we cannot bring ourselves to tell a defendant that at some point his conviction is final and not thereafter open to attack. Nearly 200 years of experience with what, for all its imperfections, is surely the most equitable system of justice ever conceived teaches us that at some point the interest in finality must be regarded as paramount.

There are two reasons why the system of collateral attack that exists today seriously impairs the operation of our system of criminal justice. A system that allows an endless inquiry into the finality of criminal judgments cannot but undermine any effort it makes to rehabilitate its criminals. In addition, that system will also be forced, in allocating available judicial time, to choose between the demands of the accused but not yet tried, and the demands of those already convicted.

Penologists seem virtually unanimous in their conclusions that speed and certainty of punishment, even more than its severity, are crucial factors in its efficacy as a deterrent to crime....

We do not, of course, advocate a complete abolition of habeas corpus relief, but we think an examination of the history and the aims of our criminal justice system strongly suggests that rational reform of existing Federal habeas corpus practice is both desirable and necessary.

[Document Source: Congressional Record, 93rd Cong., 1st sess., 1973, 119, pt. 2: 2222–2223.]

Larry W. Yackle, Necessity of Federal Oversight of State Criminal Justice, Iowa Law Review, May 1983

In 1982, Attorney General William French Smith submitted a proposed habeas corpus bill to the House and Senate along with a letter outlining the administration's objectives to curtail habeas review. Smith asserted that federal collateral review of state court convictions lacked "a scrupulous regard for the integrity of state procedures and an appropriate recognition of the state courts as trustworthy expositors of federal law." Professor Larry W. Yackle of the University of Alabama Law School challenged Attorney General Smith's beliefs. Life-tenured federal judges had an essential responsibility, he argued, to supervise criminal convictions from state courts operating without such independence. He also pointed to the seeming reluctance of state criminal justice systems to enforce federal constitutional protections for criminal defendants under the Fourth, Fifth, and Sixth Amendments, with the result that such procedural safeguards would not be effective without federal oversight.

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I find the Reagan Administration's proposals objectionable on all counts and, frankly, consider them to reflect disappointment over battles lost in the 1940's. Fundamental, ideological hostility to the writ is plainly embraced by a new generation of critics....

It is *not* true that the present framework for federal habeas review disrespects state procedures. The federal habeas courts are at pains to recognize legitimate state interests in the efficient processing of criminal cases. When the federal habeas courts decline to give effect to state procedural grounds of decision, it is usually to reach behind the miscues of counsel. It is widely acknowledged that most procedural defaults in criminal proceedings can be ascribed to defense counsel. If prisoners are bound by what their attorneys did, or failed to do, on their behalf, any examination of federal claims must be filtered through allegations that counsel rendered ineffective assistance. Federal habeas courts are able

to cut through any confusion over counsel's mistakes and adjudicate underlying claims without simultaneously finding a sixth amendment violation. It might be preferable to address the matter forthrightly, in hopes of improving the quality of justice at the trial stage. The prospects for success on such a venture are, however, less than bright. Federal habeas corpus provides a short-fall guarantee against saddling blameless defendants with the consequences of counsel's inadequacies.

Nor is it true that federal claims may safely be left to the state courts, without federal supervision. Attorney General Smith neglects both history and present reality. Congress did not authorize the federal courts to issue the writ in behalf of state prisoners until 1867, when there was reason to doubt that state courts in the South could be trusted to enforce the post-Civil War amendments. Even so, the federal courts apparently did not begin to grant habeas relief after judgment until much later, perhaps as late as *Brown v. Allen*. By then, the Supreme Court had launched a campaign to restructure state criminal process on the federal model, as described in the Bill of Rights. Once again, there was concern that the state courts would prove recalcitrant. Accordingly, the Court recruited the federal habeas courts to ensure that the state courts complied with new, and unpopular, federal doctrines. The current system of postconviction review reflects, then, historical attempts to coerce the state courts into accepting federal doctrinal innovations to which they did not subscribe.

The need for federal habeas has not subsided. State judges, who must stand periodic election or answer to the public under some version of the Missouri Plan, cannot be as zealous in the protection of constitutional rights as life-tenured federal judges, who view federal claims in isolation from the inevitable attention in state court upon the guilt or innocence of the defendant. State judges act at their peril when they subordinate societal interests in convicting the guilty to the defendant's interest in procedural safeguards. Even if state judges were able to withstand public scrutiny and sustain meritorious constitutional claims, they would inevitably arrive at inconsistent, albeit good-faith, judgments. Because the Supreme Court is physically unable to reconcile conflicting decisions from dozens of local jurisdictions, it would still fall to the federal habeas courts to achieve some measure of regional consistency....

I suspect that if the state courts are improved, as Attorney General Smith insists they are, it is because of the continued existence of federal habeas corpus. State judges may look harder for meritorious claims if they know that the federal courts stand ready to find, and award relief on, claims that are overlooked or undervalued in the state forum. The functional merits of federal habeas are genuine and are not to be discarded in the name of maintaining psychological peace among recalcitrant state judges. Federal habeas corpus rests now, as it has for decades, on a quasi-constitutional principle ...that persons convicted of crimes in state courts are entitled to at least one opportunity to litigate their federal claims in a federal forum. Since *Brown*, if not before, the federal writ has served as an effective vehicle for guaranteeing such a forum. The Supreme Court lacks the resources necessary to treat all or even many cases on direct review, and, therefore, the federal habeas courts have long served as functional surrogates. The asserted "right to a federal forum" in this context is more than ipse dixit. It is the bedrock of American criminal justice, and it has been for thirty years. The Great Writ is now what it was historically—an instrument of governmental administration. Within the field in which it operates, the writ orchestrates the distribution of decision-making authority between and among the various courts

with subject matter jurisdiction to hear vital claims. Ultimate responsibility for the protection of individual federal claims is thus transferred from the state to the federal courts. It very much *does* matter, then, that a federal court might reach a decision different from that arrived at in state court, however "full" and "fair" the state court procedure. A genuine, serious, second look in federal court is part and parcel of the constitutional design.

[Document Source: Larry W. Yackle, "The Reagan Administration's Habeas Corpus Proposals," Iowa Law Review 68, no. 4 (May 1983): 612, 615–620.]

Abstention

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.*

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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).]