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The Federal Abstention Doctrine: An Analysis of Its Present Function and Future Application

James G. Gowan

The Federal Abstention Doctrine: An Analysis of Its Present Function and Future Application

IN THE LANDMARK CASE of *Erie v. Tompkins*,[1] the Supreme Court directed the United States District Courts to refer to the substantive law of the forum state in the exercise of their diversity jurisdiction.[2] This decision necessarily assumed that district courts were fully competent to determine the meaning of local law. Shortly thereafter, however, the Court questioned the propriety of a district court ruling on a previously undetermined question of state law in exercise of its federal jurisdiction.[3] For example, in *Pullman Co. v. Railroad Comm'n*,[4] the district court enjoined the enforcement of an order of the Texas Railroad Commission.[5] According to the order, train conductors were to be assigned to segregated cars according to race. The petitioner claimed that the order violated the fourteenth amendment and the commerce clause. The district court, however, passed over the constitutional issues and held that the railroad commission had exceeded the regulatory powers granted to it by the Texas statutes.[6] On appeal, Justice Frankfurter, speaking for a unanimous Court, reasoned that only the Supreme Court of Texas could authoritatively decide the meaning of the Texas statutes. In this respect, therefore, the district court's ruling was a forecast of state law which might be displaced by a Texas court in a subsequent case.[7] The district court was ordered to remit the parties to the state courts for an interpretation of the statutes, but to retain jurisdiction to ultimately decide the constitutional question.[8] Thus, the Supreme Court created what has become known as the abstention doctrine, requiring the federal and state courts to act jointly on a single cause.

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1. 304 U.S. 64 (1938).

2. *Id.* at 78.

3. Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941).

4. 33 F. Supp. 675 (W.D. Tex. 1940).

5. A three judge district court, under 28 U.S.C. § 2281 (1958), has jurisdiction to enjoin the enforcement of a state statute or administrative order violative of the federal constitution. See generally, Alabama Pub. Serv. Comm'n v. Southern Ry., 341 U.S. 341 (1951).

6. Pullman Co. v. Railroad Comm'n, 33 F. Supp. 675, 678 (W.D. Tex. 1940).

7. Railroad Comm'n v. Pullman Co., 312 U.S. 496, 499 (1941).

8. *Id.* at 501-02.

I. FUNCTION OF THE DOCTRINE

A. Underlying Philosophy

The abstention doctrine purports to remedy two main evils: (1) friction between federal and state courts over local issues;[9] and (2) a premature adjudication of constitutional issues.[10] Some of the cases appear to justify the doctrine on the premise that state courts are more competent to handle complex issues of state law than are federal district courts.[11] Even if it be admitted that federal courts do not have the power to render decisions on state law which will be binding on the highest court of a state, it is quite another thing to question the competency of the federal courts to resolve a previously undecided issue of state law. If the underlying philosophy of the doctrine is lack of competence in the federal court to decide questions involving state law, the rule could be logically extended without restriction to include all cases requiring a construction of doubtful state law. Such an extension would of course drastically restrict the usefulness of federal diversity jurisdiction. While it would be presumptuous to ascribe to the *Pullman* case an intention on the part of the Court to curtail federal diversity jurisdiction, at least two of the Justices who decided that case have, in the process of discussing abstention elsewhere, indicated their antipathy toward diversity jurisdiction.[12]

Abstention may be viewed as a hasty compromise, fashioned to maintain state sovereignty in the face of an increased grant of injunctive power to the district courts by Congress. As such, it is only one of several judicial[13] and legislative[14] restrictions placed upon that power. However, if this was to be the function of the doctrine, it has far outstripped its potential. Whatever the metaphysic behind the doctrine may have been, the Court today appears to be more concerned with the effect of abstention on the immediate liti-

9. Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941); East Coast Lumber Terminal, Inc. v. Town of Babylon, 174 F.2d 106 (2d Cir. 1949); see AFL v. Watson, 327 U.S. 582 (1946).

10. Clay v. Sun Ins. Office Ltd., 363 U.S. 207 (1960); Rescue Army v. Municipal Court, 331 U.S. 549 (1947); Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168 (1942).

11. Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941).

12. Burford v. Sun Oil Co., 319 U.S. 315, 334 (1943) (Douglas, J. concurring); *id.* at 337 (Frankfurter, J., dissenting).

13. Stefanelli v. Minard, 342 U.S. 117 (1951) (reluctance of courts to enjoin criminal prosecution).

14. 28 U.S.C. § 2281 (1958) (three judge court required); 28 U.S.C. § 1253 (1958) (direct appeal to the U.S. Supreme Court); 28 U.S.C. § 1342 (1958) (no injunctions on rate making).

gants than with the doctrine's impact on federal-state jurisprudence.[15]

B. Application of the Doctrine

The abstention doctrine will be useful whenever a federal district court is confronted with the necessity of interpreting a state statute which has not had an authoritative construction by a supreme court of a state. However, if no serious question exists as to the proper interpretation of a statute, utilization of the abstention doctrine constitutes an abuse of discretion.[16] Also, no matter how complex the point of state law involved is, an authoritative decision by the state's supreme court on the point must have the potential effect of obviating a decision on a federal question which is also before the district court.[17] The vast majority of abstention cases arise when a petitioner seeks an injunction against the enforcement of a state statute or the ruling of an administrative agency before a three judge district court. Invariably, the first question the district court must resolve is whether the statute applies to the petitioner or whether the administrative agency possessed the statutory authority to issue the ruling in question. A decision favorable to the petitioner on either of these questions would be dispositive of the case before the district court.

Generally, the United States Supreme Court has not sanctioned application of the doctrine unless the decision on the federal question which may be avoided involves a question under the federal constitution. In *Chicago v. Fieldcrest Dairies, Inc.*,[18] the Court stated that "avoidance of constitutional adjudications . . . is part of the wisdom . . . of the *Pullman Co.* case."[19] But a few cases have applied the abstention doctrine even in the absence of a constitutional question where there was a showing of exceptional circumstances. One rather remarkable decision in this respect is *Louisiana Power & Light Co. v. City of Thibodaux.*[20] There, the district court stayed eminent domain proceedings in a diversity suit and deferred to the state courts

15. Baggett v. Bullitt, 377 U.S. 360 (1964); England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964).

16. City of Chicago v. Atchinson, T. & S.F. Ry., 357 U.S. 77 (1958); United States v. Bureau of Revenue, 291 F.2d 677 (10th Cir. 1961).

17. Public Util. Comm'n v. United Fuel Gas Co., 317 U.S. 456 (1943); Schempp v. School Dist. 201 F. Supp. 815 (E.D. Pa. 1962), *aff'd*, 374 U.S. 203 (1963).

18. 316 U.S. 168 (1942).

19. *Id.* at 173; see also Propper v. Clark, 337 U.S. 472 (1949).

20. 360 U.S. 25 (1959).

for an interpretation of a statute authorizing the city to condemn land. The Supreme Court upheld this action, reasoning that eminent domain proceedings are "intimately involved with the sovereign prerogative."[21] However, in a companion case decided the same day, the Court found that eminent domain proceedings in a district court would not necessarily require abstention.[22]

In cases where a constitutional question has not been present, several lower courts have justified abstention on such grounds as the pendency of other proceedings on the same issues,[23] congestion of the federal docket,[24] and a promise by state officers to expedite the state proceedings.[25] The Supreme Court has, however, with the exception of the *Thibodaux* case and a case involving the scope of the jurisdiction of the bankruptcy court,[26] sanctioned the use of abstention only in cases involving constitutional questions.

(1) Discretion of the District Judge.—Initially, the postponement of a petitioner's federal remedy was justified by reference to the traditional discretion of the chancellor over his own docket.[27] The validity of this approach remained unquestioned as long as the court was involved in an equitable proceeding. More recently, however, the doctrine has been predicated on the ordinary discretion vested in a federal district court, and restriction of application of the doctrine to cases involving equitable remedies has been expressly repudiated.[28]

This reliance on the discretion of a district court to withhold exercise of its jurisdiction devolved into the persistent *dicta* that application of the abstention doctrine reposes within the sound discretion of the district judge.[29] As the doctrine developed, however, it

21. *Id.* at 28.

22. County of Allegheny v. Frank Mashuda Co., 360 U.S. 185 (1959). The only practical difference between the *Mashuda* and *Thibodaux* cases appears to be that Justice Stewart felt that a district judge should be allowed to abstain in the face of complex state law, and therefore, switch sides in the *Thibodaux* case. Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25, 31 (1959).

23. General Radio Co. v. Superior Elec. Co., 293 F.2d 949 (1st Cir. 1961); Martin v. Graybar Elec. Co., 266 F.2d 202 (7th Cir. 1959).

24. P. Beiersdorf & Co. v. McGohey, 187 F.2d 14 (2d Cir. 1951).

25. Division 1287, Amalgamated Ass'n of St., Elec., Ry & Motor Coach Employees, AFL-CIO v. Dalton, 206 F. Supp. 629, 635 (W.D. Mo. 1962).

26. Thompson v. Magnolia Petroleum Co., 309 U.S. 478 (1940).

27. Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941).

28. Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25 (1959).

29. Meredith v. City of Winter Haven, 320 U.S. 228 (1943); City of Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168 (1942); East Coast Lumber Terminal, Inc. v. Town of Babylon, 174 F.2d 106 (2d Cir. 1949).

became clear that if the requirements of abstention were met there could indeed be no discretion in the district judge.[30] Thus, it might be said that the district judge had discretion to abstain from exercising jurisdiction, but not to retain it. But the attitude of the Supreme Court toward abstention appears to be changing; and with this change there has been some re-evaluation of the district court's discretion. Today, the district court may, in certain cases, be said to have discretion to refuse abstention.[31]

(2) Dismissal in Administrative Cases.—The district courts have clear jurisdiction to review certain state administrative orders.[32] However, premature interference by federal district courts with specialized state administrative proceedings can produce considerable confusion and federal-state friction.[33] In an attempt to cope with these problems, the Supreme Court quite naturally borrowed from the rationale of the abstention cases. But the resulting line of cases, all of which involve dismissal of the bill rather than retention, should not be classed with the abstention cases.

In the administrative law area, the courts have long recognized the doctrine of exhaustion of administrative remedies.[34] If the state courts form part of the state administrative network, the appropriate state judicial review may be necessary before the federal courts may hear a case.[35] In *Burford v. Sun Oil Co.*,[36] the Texas Railway Commission exercised regulatory control over the placement of new oil wells. The petitioner brought suit in a federal district court to enjoin a Commission order allowing the digging of a new well. The petitioner alleged that this order deprived him of his property rights in existing wells. The state had established a systematic procedure for review of such orders. One court had been given authority to undertake independent fact finding, and thereby exercised a supervisory function over the Commission. Since a decision regarding such controversies required a specialized knowledge of geology and engineering,[37] the Supreme Court ordered dismissal of the case in the district court, reasoning that an adequate and indeed superior

30. Shipman v. Du Pre, 339 U.S. 321 (1950).

31. Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324 (1964).

32. 28 U.S.C. § 1331 (1958).

33. Burford v. Sun Oil Co., 319 U.S. 315 (1943).

34. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938).

35. Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 230 (1908).

36. 319 U.S. 315 (1943).

37. Apparently the lack of expertise on the part of the district court had caused it to render contradictory and impractical decisions.

forum was available in the state courts. Although the Court did not rely on the abstention doctrine, the *Pullman* case and other abstention cases were cited as supporting exceptions to federal jurisdiction in cases involving thorny issues of state law.[38] In *Alabama Pub. Serv. Comm'n v. Southern Ry.*,[39] the state law involved was clear; nevertheless, the Court ordered dismissal apparently in order to avoid interfering prospectively with a state system of administrative and judicial remedy.[40] Here, however, the *Pullman* case was expressly repudiated as authority.[41]

The administrative law cases are not based on the same policy considerations as the abstention cases, nor do they result in a retention of jurisdiction and ultimate decision on the merits by the district court. Unfortunately, however, the use of the abstention rationale in these cases has served to becloud the distinctions. Accordingly, some courts have borrowed from both lines of authority. This has resulted in abstention from non-administrative cases solely because of the complexity or uncertainty of a state law.[42]

II. Ultimate Disposition of the Controversy

A. Compliance With the Doctrine

Once the district court has decided to abstain and remit the petitioner to the state court, the difficulties created by the doctrine are far from terminated. Theoretically, the petitioner will eventually return to the district court to pursue his federal remedy in a trial de novo.[43] But if the district court is to retain jurisdiction, construct a trial record, and render an ultimate decision on the merits, the litigation in the state court should result in something less than a final adjudication on the merits. Well reasoned principles of res judicata or collateral estoppel would deny the federal courts the right to adjudicate anew a controversy which had been finally determined

38. Burford v. Sun Oil Co., 319 U.S. 315, 331 (1943).

39. 341 U.S. 341 (1951).

40. *Id.* at 349-50.

41. *Id.* at 344.

42. Green v. American Tobacco Co., 304 F.2d 70, 86 (5th Cir. 1962); A.F.L. Motors, Inc. v. Chrysler Motors Corp., 183 F. Supp. 56, 59-60 (E.D. Wis. 1960).

43. The federal district courts possess unquestioned jurisdiction to decide the constitutionality of state statutes or administrative orders. 28 U.S.C. § 1331 (1958). Not even the Supreme Court should have the right to sweep aside this congressional grant of jurisdiction. The abstention doctrine directs, therefore, that ultimate jurisdiction be retained while the exercise of that jurisdiction is delayed. Harrison v. NAACP, 360 U.S. 167 (1959).

in state courts.[44] The Supreme Court has from time to time discussed the impact of res judicata on the operation of the abstention doctrine,[45] but no attempt has been made to clarify the problem. Rather, the more recent cases indicate that the entire abstention doctrine is to be considered as an exception to the principles of res judicata. In discussing this conflict, Justice Douglas has stated that "res judicata is not a constitutional principle."[46]

(1) The Election Concept.—In order to limit the issues presented to the state court, the Supreme Court has formulated a concept of election. Thus, if a party presents both a federal question and a state law question to the state court for a final decision, he is thereby held to have elected an exclusive state remedy.

The consequence of this election is foreclosure of the right to return to the district court.[47] The scope of the state court decree is determined not so much by the nature of the decree, but rather by the actions and intentions of the parties in the state court. But, requiring the state court to render an advisory decision on questions of state law and allowing finality of its decision on questions involving federal law to the extent that a party to the suit elects to lend finality to the state ruling are strange means of avoiding federal-state friction.

In addition, even if a decision on the issues involving state law has been segregated from other issues raised by the cause of action, it may fail to present a justiciable controversy. In *Leiter Minerals, Inc. v. California Co.*,[48] the petitioner sought a state declaratory judgment on a question of state law, but reserved the issues of federal law for resubmission to the district court. Although the state court stated that the petitioner did not present a justiciable controversy, it nevertheless rendered a decision "out of respect for and as a courtesy to" the Supreme Court of the United States.[49] Apparently, if the state court refuses to entertain the suit, the parties may return to the district court for a determination of all the issues.[50]

Ordinarily, the only vehicle for obtaining the required ruling on state law will be a declaratory judgment action. But, even the

44. Note, 73 HARV. L. REV. 1358, 1365 (1960).

45. Propper v. Clark, 337 U.S. 472, 491-92 (1949).

46. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964).

47. *Ibid.*; NAACP v. Button, 371 U.S. 415, 427 (1963).

48. 241 La. 915, 132 So. 2d 845 (1961).

49. *Id.* at 921, 132 So. 2d at 850.

50. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 421-22 n.12 (1964).

declaratory judgment statutes do not generally provide the courts with the authority to render opinions unless an actual controversy will thereby be terminated.[51] In fact, there appears to be only one state that provides a procedure for rendering purely advisory opinions on state law for the federal courts.[52] Widespread adoption of similar statutes might solve many of the problems of the abstention doctrine. However, whatever the state procedure might be, in order to fulfill the requirements of the abstention doctrine it must provide for a ruling by the highest court in the state.[53] The states may well be hesitant to burden their supreme tribunals with such a task.

(2) Requisites for Returning to the State Court.—Despite all of these difficulties, the petitioner will not satisfy the requirements of the doctrine by raising only issues of state law in the state court. In *Government & Civic Employees Organizing Comm. v. Windsor*,[54] the Supreme Court reasoned that the ruling of a state court without reference to the petitioner's constitutional arguments will not serve to present constitutional issues to the district court in a concrete form.[55] The Court held that the petitioner, who had begun his litigation in the district court four years before and who had thereafter argued his cause in six courts, had to return to the state courts to raise the issues of state law "in the light of federal constitutional objections."[56] Thus, the *Windsor* case[57] requires that state courts at least be apprised of the constitutional objections to the contested application of the state law. Thus, in order to comply with the spirit of the *Windsor* case, the petitioner must at least present the federal question in his brief and argument. After thereby having been apprised of the constitutional issues, the state court must proceed to decide, at least tentatively, the federal constitutional issues before moving on to interpret the state law. This is so because a state court will naturally attempt to construe state law to avoid an unconstitutional interpretation.[58] Therefore, a conscientious court cannot interpret a statute without weighing the constitutional im-

51. Walker v. Walker, 132 Ohio St. 137, 5 N.E.2d 405 (1936).

52. FLA. STAT. ANN. § 25.031 (1961).

53. Railroad Comm'n v. Pullman Co., 312 U.S. 496, 500 (1941); United States v. Cavell, 162 F. Supp. 319 (W.D. Pa. 1958).

54. 353 U.S. 364 (1957).

55. *Id.* at 366.

56. *Id.* at 364.

57. *Ibid.*

58. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964).

plications of that interpretation. A state court also possesses the authority and indeed the duty to rule on the federal constitutionality of its own statutes.[59] After hearing all of the arguments relating to the state issues, the state court may feel compelled to rule on the constitutionality of the statute which it has been asked to interpret. Such a determination, if requested by the petitioner, is reviewable by the United States Supreme Court.[60] The state decision is final for purposes of such review, despite the fact that the district court has retained jurisdiction to decide the constitutional issues.[61] But, if the petitioner elects to proceed along these lines, he loses his right to return to the district court.[62]

A litigant in a state court has reason to be fearful that he either may not fully comply with the requirements of abstention, or may over-comply and thus lose his right to return to the district court. Thus, in *England v. Louisiana State Bd. of Medical Examiners*,[63] the Court recognized that a conscientious adherence to the *Windsor*[64] case might lead a petitioner to argue his constitutional rights in the state court. The Court further recognized that the petitioner could not prevent the state court from deciding the issues once presented. Thus, in the *England* case, the petitioner advocated his federal rights throughout the litigation and the Supreme Court of Louisiana upheld the constitutionality of the statute involved. Rather than seek review in the Supreme Court, the petitioner immediately returned to the district court. Nevertheless, the Supreme Court held that the petitioner had elected to litigate his claim in the state court.[65] But the litigants were not prevented from returning to the district court. Apparently, the Court recognized the impossibility of following the guidelines of prior cases, and the litigants were allowed to return to the district court even though they had technically elected to pursue the state remedy. However, the Court added a caveat that this liberality would not aid future liti-

59. Testa v. Katt, 330 U.S. 386 (1947).

60. NAACP v. Button, 371 U.S. 415 (1963).

61. Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959). Again it is possible to see the inevitable conflict between the abstention doctrine and the concept of finality of state adjudication. The state decision is final for purposes of Supreme Court review, but not final for purposes of res judicata.

62. NAACP v. Button, 371 U.S. 415, 427 (1963).

63. 375 U.S. 411 (1964).

64. Government & Civic Employees Organizing Comm. v. Windsor, 353 U.S. 364 (1957).

65. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964).

gants.[66] It then went on to provide a formula to guide future litigants in this respect, suggesting that the petitioner at the outset of the state litigation expressly reserve his right to return to the district court. Hence, apparently a mere reservation affixed to the petition would of its own force nullify the effect of a state court decision on a federal question.[67]

In light of the *Windsor* and *England* cases, acceptable litigation of state issues is a very difficult task. The federal issues must be presented to the state courts,[68] but not argued.[69] But presenting a constitutional issue to an appellate court is tantamount to making an argument thereon. Clearly, the petitioner should not request the state court to decide the federal issue. And absent such a request, a ruling by the state court on a federal question should not constitute an election. Yet, once the decision is handed down, how is the petitioner to prove that he did not in the heat of argument request it?

B. Impact of Recent Civil Rights Litigation

The expense and delay occasioned by the abstention doctrine can be prohibitive for all but the most affluent. "The pursuit of justice is not an academic exercise. There are no foundations to finance the resolution of nice state law questions involved in federal court litigation."[70] The problem thus becomes exceedingly acute for an impecunious litigant in a civil rights case. Thus, the courts have traditionally been reluctant to allow abstention in such cases.[71] More recently, abstention by a district court has been recognized as an abuse of discretion where individual liberties are involved.[72] For example, the case of *Baggett v. Bullitt*[73] appeared to present a classic situation for the application of the doctrine. There, two statutory loyalty oaths for teachers in the State of Washington were attacked as being unconstitutionally vague. The district court had upheld a 1955 Act as being similar to the Smith Act.[74] However, the district

66. *Id.* at 422.

67. *Id.* at 421-22.

68. Government & Civic Employees Organizing Comm. v. Windsor, 353 U.S. 364, 366 (1957).

69. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964).

70. Clay v. Sun Ins. Office Ltd., 363 U.S. 207, 228 (1960).

71. Rescue Army v. Municipal Court, 331 U.S. 549 (1947).

72. Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324 (1964).

73. 377 U.S. 360 (1964).

74. Smith Act, as amended, 70 Stat. 623 (1956), 18 U.S.C. § 2385 (1958); upheld by the United States Supreme Court in Dennis v. United States, 341 U.S. 494 (1951).

court abstained from ruling on a 1931 Act because the state supreme court had never handed down an interpretation.[75] The United States Supreme Court found that the 1955 Act was unconstitutionally vague. The Court felt no need to allow the state courts to rule on the meaning of the act, despite the fact that the Smith Act was declared to be inapposite because its defects had been cured by federal judicial interpretation.[76] The Court went on to declare the 1931 Act unconstitutional without remanding the case to the district court for decision on the merits.[77] In so holding, the Court declared that abstention is improper absent special circumstances.[78] Traditionally, however, the presence of a federal constitutional question has been held sufficient justification for abstention.[79] But where the delay inherent in the abstention doctrine involves first amendment freedoms the Court has recognized the necessity for an exception.[80]

The recent civil rights decisions appear to have forced re-evaluation of the doctrine. At the present time, the district courts appear to have the discretion to refuse abstention even though they are thereby forced to decide the constitutionality of a state law. If the constitutional issue is substantial,[81] or the unconstitutionality of the state action is clear,[82] the obscurity of the state law has been held to be immaterial. The Court has thus apparently recognized the onerous burden that the doctrine normally imposes. But unfortunately, this apparent shift in the Court's mood is anything but clear. One thing is clear, however, and that is that a digest of all the decisions on abstention no longer provides a clear direction to the district court.

IV. Future of the Doctrine

Abstention appears to be doomed to ultimate collapse under the weight of its own unworkability. While this will be accomplished only in time, it is unfortunate that the Court does not take Justice

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However, recent cases have made substantial inroads into the *Dennis* decision. For a further discussion of this area see Note, *Recent Developments In Communist Control Act Prosecutions*, 16 W. Res. L. Rev. 206 (1964).

75. Baggett v. Bullitt, 215 F. Supp. 439 (W.D. Wash. 1963).

76. Baggett v. Bullitt, 377 U.S. 360 (1964).

77. *Id.* at 371-72.

78. *Id.* at 366.

79. Meredith v. City of Winter Haven, 320 U.S. 228 (1943).

80. Baggett v. Bullitt, 377 U.S. 360, 371-72 (1964).

81. Schempp v. School Dist., 201 F. Supp. 815 (E.D. Pa. 1962), *aff'd*, 374 U.S. 203 (1963).

82. Turner v. City of Memphis, 369 U.S. 350 (1962).

Douglas' advice and re-evaluate the entire doctrine.[83] The doctrine no longer appears to be furthering the purposes of federalism. District courts have shown themselves to be entirely competent to decide issues of state law in diversity cases. Furthermore, the present Court appears to be anything but reluctant to decide constitutional issues. The purposes for the original adoption of abstention are not being served, and neither, it seems, is justice.

JAMES G. GOWAN

83. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964).