Cases that Shaped the Federal Courts

Ex parte Young

1908

Federal Judicial Center
2020

Central Question

Could a federal court stop a state official from enforcing an allegedly unconstitutional state law?

Historical Context

The Progressive Era in the United States lasted roughly from 1890 to 1920 and was characterized by social, political, and economic reform movements in a wide variety of contexts. Although the goals of Progressive reformers varied and were sometimes contradictory, many activists sought changes that would lessen the influence of the wealthy and powerful and give ordinary people—such as middle-class professionals, farmers, and workers in the rapidly industrializing cities—more control over their lives. Examples included "trust busting" to break up large and powerful corporate monopolies; labor reforms to give workers improved hours, wages, and working conditions; and efforts to increase democracy, such as the direct election of U.S. senators and referenda by which citizens could vote on proposed legislation.

Many Progressives focused their efforts on America's railroad companies, which were then some of the largest and most powerful corporate interests in the nation. Railroad rates for transporting farm products, manufactured goods, and passengers had been the subject of heated controversy for decades. State legislatures began to set maximum limits on rates in the 1870s, a practice the Supreme Court upheld in *Munn v. Illinois* (1877). In 1886, the Court sharply narrowed the scope of state railroad regulation, holding that states could not interfere with rates for interstate transportation (a decision that led to Congress's creation of the Interstate Commerce Commission a year later). The states continued into the twentieth century to regulate intrastate rates, however, often doing so through legislatively created commissions.

Railroads and their shareholders, believing the rates set by state commissions to be unfair, brought lawsuits in federal court challenging their validity. Commonly, the railroads claimed that rates were so low as to be confiscatory, depriving them of property without due process of law in violation of the Fourteenth Amendment. Beginning in the 1890s and continuing into the early twentieth century, the Supreme Court upheld the ability of the lower federal courts to issue injunctions forbidding the enforcement of unreasonably low railroad rates.

The railroad rate decisions were part of a larger pattern that caused many Progressives to view the federal courts as enemies of reform. The Supreme Court was accused of overstepping its authority and displaying excessive deference to corporate interests in frequently striking down state economic legislation as unconstitutional. The most widely criticized such case was *Lochner v. New York* (1905), in which the Court invalidated

a state maximum-hours law for bakers on the grounds that it interfered with liberty of contract. Progressives were hostile to federal court injunctions as well. In the 1890s and beyond, the federal courts expanded the use of their equitable powers, with a particular focus on enjoining labor strikes and boycotts. Critics described the practice, embodied by the injunction against the Pullman strikers upheld in *In re Debs* (1895), as "government by injunction."

Ex parte Young came before the Supreme Court, therefore, at a time in which state railroad rate regulation, the federal judiciary's invalidation of Progressive legislation, and the federal courts' use of the injunction power were all nationwide topics of controversy.

Legal Debates Before *Young*

The general debate over whether states could be sued by individual plaintiffs in federal court stretched back to 1793, when the Supreme Court decided *Chisholm v. Georgia*. In ruling that states did not possess sovereign immunity from federal lawsuits, the Court relied on language in Article III of the Constitution extending the judicial power to cases between a state and citizens of another state. In response to an outcry from state officials worried that a flood of suits over alleged Revolutionary War debts would deplete state treasuries, Congress passed and the states ratified the Eleventh Amendment, which excluded such suits from the federal judicial power. While the Supreme Court broadened its interpretation of the amendment over the course of the nineteenth century, it was eventually called upon to determine the extent, if any, to which sovereign immunity applied to federal lawsuits against state officials.

The Supreme Court issued several decisions during the nineteenth century allowing lawsuits to proceed against state officials despite defendants' claims that the state was actually the party being sued in violation of the Eleventh Amendment. In the 1890s, the Court began to hear appeals from injunctions against state officials in railroad rate cases. In *Smyth v. Ames* (1898), a suit to enjoin the enforcement of a Nebraska rate law, the Court noted, "It is the settled doctrine of this court that a suit against individuals for the purpose of preventing them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of [the Eleventh] Amendment." A year later, in *Fitts v. McGhee*, the Court qualified *Smyth* and earlier cases when it dissolved an injunction against enforcement of an Alabama law regarding railroad bridge tolls. In that case, no particular state official had any duty to enforce the act in question, making the defendants parties in name only. There had to be at least some connection, the Court held, between the enforcement of a statute and the particular state official a plaintiff sought to enjoin.

The Case

In 1906 and 1907, the state of Minnesota passed three laws regulating the maximum rates railroads would be permitted to charge for the transportation of merchandise, commodities, and passengers within the state. The statutes provided harsh penalties for disobedience, including fines as high as $10,000 in some instances, and the possibility of imprisonment for up to five years. In May 1907, stockholders of several of the affected railroad companies brought suits in equity in the U.S. Circuit Court for the District of Minnesota. The plaintiffs sought injunctions to prohibit the railroad companies from complying with the new laws and to bar the state Railroad and Warehouse Commission and the state Attorney General, Edward Young, from attempting to enforce them.

The lawsuits were founded on the assertion that the railroad laws violated the Fourteenth Amendment by depriving the railroads of their property without due process of law as well as depriving them of the equal protection of the laws. The state had set railroad rates so low, the plaintiffs alleged, that they amounted to confiscation. Moreover, the fines for noncompliance were so severe that the railroads could not afford to break the laws in order to test them in court, and no individual railroad employee would be willing to risk imprisonment to do so.

The circuit court issued a restraining order prohibiting Young from enforcing the most recent statute, which had not yet gone into effect. Young appeared before the federal court to challenge the order, claiming that the suit against him as Attorney General was actually a suit against the state of Minnesota and was therefore barred by the Eleventh Amendment. The federal court overruled Young's objection to the restraining order, and after hearing evidence it entered a preliminary injunction, barring enforcement of the statute until the case had reached a final resolution.

The following day, Young petitioned a Minnesota state court for a writ of mandamus (a court order that a party perform a specific action) directing the Northern Pacific Railway to comply with the statute in question by publishing and adopting the rates specified by the law. The court issued the writ, which was then served on the railroad. For having violated the preliminary injunction entered the previous day, the U.S. circuit court held Young in contempt of court and ordered that he remain in the custody of the U.S. marshal (he was required to check in with the marshal once a day) until he paid a fine of $100 and dismissed the state court proceedings. Young then petitioned the Supreme Court of the United States for a writ of habeas corpus, alleging that his detention by the federal court was unconstitutional.

The Supreme Court's Ruling

By a vote of 8–1, the Supreme Court ruled against Young, denying his petition for a writ of habeas corpus. In his opinion for the Court, Justice Rufus W. Peckham first dispensed with Young's claim that the U.S. circuit court lacked jurisdiction over the case because no federal question had been presented. The Court ruled that there were at least two federal questions in the case: (1) whether the railroad rates were so low as to deprive the railroads of their property without due process of law, and (2) whether the penalties for noncompliance were so severe as to prevent testing the laws in court, depriving the railroads of the equal protection of the laws. While not making a finding on the first question, the Court held the railroad statutes unconstitutional on the basis of the second.

Peckham next turned to Young's claim that the suit brought against him in the U.S. circuit court was in fact a suit against the state of Minnesota and was therefore barred by the Eleventh Amendment's grant to the states of sovereign immunity. An attempt by an official to enforce an unconstitutional law, Peckham asserted, was an action taken "without the authority" of the state behind it and did not affect the state "in its sovereign or governmental capacity." Instead, it was "simply an illegal act upon the part of a state official … to enforce a legislative enactment which is void." The Court's ruling rested in part on the supremacy of federal law. By engaging in conduct that violated the U.S. Constitution, Young was "stripped of his official or representative character and … subjected in his person to the consequences of his individual conduct." "The State has no power," wrote Peckham, to provide Young with "any immunity from responsibility to the supreme authority of the United States."

Young also argued that the injunction should be ruled invalid under *Fitts v. McGhee* because he was not specifically charged with enforcing the rate statute. The Court rejected this assertion, taking a more expansive view than it had in *Fitts* regarding the connection between a state official and a challenged statute. It did not matter that Young's enforcement duty was not found in the rate statute itself, Peckham concluded. His duty as Attorney General to enforce the state's laws gave him a sufficient connection with the statute to make him the proper object of an injunction.

Peckham took note of the general rule that a court of equity lacked jurisdiction to enjoin criminal proceedings, but explained that an exception existed when such proceedings were brought under an unconstitutional statute. If a federal court had, prior to the commencement of state court proceedings, exercised jurisdiction over a constitutional challenge to the law, it was entitled to "hold and maintain such jurisdiction, to the exclusion of all other courts" until the matter was settled.

In a lengthy dissenting opinion, Justice John Marshall Harlan asserted that the Eleventh Amendment should have barred the federal lawsuit against Young. Young had been

named as a defendant, Harlan pointed out, "*as, and only because he was,* Attorney General of Minnesota." The aim of the plaintiffs was not to restrain him individually, but only "*to tie the hands of the State*," so that it could not review the railroad statutes in its own courts. "It would therefore seem clear," Harlan concluded, "that … the suit brought in the Federal court was one, in legal effect, against the State—as much so as if the State had been formally named on the record as a party."

Aftermath and Legacy

The *Young* case represented, and was a part of, the general expansion of federal judicial power that arguably characterized its era. Coming only three years after the Court's controversial ruling in *Lochner*, the decision was denounced by Progressives, who saw it as opening the door even wider for unwarranted federal interference with state legislative reforms. The fact that the *Young* ruling had restrained the regulation of railroad rates—an issue of widespread concern—made it particularly susceptible to criticism.

By giving federal courts greater latitude to enjoin the enforcement of state laws, *Young* had significant implications for federalism. A prominent legacy of the case was its weakening of state sovereign immunity under the Eleventh Amendment. By declaring that state officials were stripped of their representative character and acted only as individuals when violating the Constitution, the Court made it more difficult for states to avoid federal court challenges to legislation. As a consequence, the supremacy of federal over state law was reinforced. While the *Young* opinion's strong language did not depart significantly from the Court's previous Eleventh Amendment jurisprudence, the fact that a state Attorney General was held in contempt by a federal court in the course of performing his official duties was highly controversial.

As part of the backlash to *Young*, Congress passed a statute in 1910 requiring that suits to enjoin the enforcement of state legislation on constitutional grounds be heard by a three-judge panel of the U.S. district court, rather than a single judge. The measure was quite limited in comparison to unsuccessful proposals for federal legislation that would have eliminated the *Young* doctrine.

Despite its initial unpopularity among reformers, the case gained new resonance during the height of the African American civil rights movement in the 1950s and 1960s. Many challenges to allegedly discriminatory state regulatory practices were litigated before three-judge courts, from which a direct appeal to the Supreme Court was available. Plaintiffs believed in many instances that having their case heard by a panel reduced the likelihood of having their suit derailed by a single unsympathetic judge, particularly in the Deep South. In 1976, Congress severely restricted the use of such three-judge courts, limiting them to cases involving legislative reapportionment.

Although the basic holding of *Young* remains valid law, the Supreme Court has restricted its scope and application significantly in recent decades. In *Seminole Tribe of Florida v. Florida* (1996), the Court found that Congress had established a detailed remedial scheme in a federal statute, thereby precluding the plaintiffs from bringing a suit under *Young* to enjoin state officials from violating that law. In the wake of *Seminole Tribe* and subsequent decisions, the availability of federal court suits for prospective injunctive relief against state officials acting in their individual capacity has become less certain.

Discussion Questions

- What is sovereign immunity, and what is the reasoning behind it?
- Under what circumstances, if any, do you think it is fair for a state official to be sued in federal court for actions or potential actions related to their official duties?
- Should a federal court have the power to order a state official not to bring a state court proceeding? Why or why not?
- What do you see as the most positive and negative consequences of the *Young* doctrine?

Documents

"Young Defies U.S. Court," *The New York Times*, July 11, 1907

Attorney General Young's disobedience of the federal court's injunction came as no surprise, having been planned in advance, as this New York Times *article revealed. Although the article predicted that Young would be sent to jail, his detention required only that he check in daily with a federal marshal.*

Attorney General Edward T. Young has decided to defy the mandate of Judge William Lochren of the United States Court in the pending railroad litigation, and face sentence to jail. He will take this course in order to maintain his position that, in his official capacity as Attorney General of Minnesota, he cannot be enjoined from performing his discretionary duties.

Notwithstanding Judge Lochren's decision that the Attorney General may be subject to injunction by "dummy" plaintiffs of railroads who are trying to kill low rates established by the Legislature, Young is actively preparing to bring suits against roads in State courts should they neglect to comply with the new rate law.

Next Tuesday opposing counsel will argue the question of whether a permanent injunction should be issued against Young as Attorney General; the State Railroad Commission, and Minnesota railroads to prevent enforcement of low passenger and freight rates. Should Young be enjoined he will disregard the injunction and bring proceedings against the railroads.

He will thus be in contempt of Judge Lochren's order, and the Federal jurist will probably issue a contempt warrant against the Attorney General. The latter will appeal to the United States Circuit Court of Appeals, and is quoted as saying that if necessary he will carry the question to the Supreme Court of the United States.

Document Source: "Young Defies U.S. Court: Minnesota Attorney General Faces Jail Sentence in Railroad Litigation," *New York Times*, July 11, 1907, p. 1.

"Would Curb Power of Federal Courts," *The New York Times*, October 1, 1907

Another Times *article, covering a convention of state Attorneys General, illustrated that the legal battle over the regulation of railroad rates was an issue of nationwide controversy. Attorney General Young, a participant at the conference, expected to be arrested on charges of contempt of court upon his return to Minnesota.*

A strong desire to do away with the conflict of jurisdiction between State and Federal courts, and, as one of the phases of that, to restrict the power of Federal courts in their dealings with affairs pertaining wholly to a State, seemed to prevail at a convention of Attorneys General or assistants from thirteen States at the Southern Hotel to-day.

Most of the trouble was traced to the Fourteenth Amendment to the Constitution by Attorney General R. V. Fletcher of Mississippi, who said he did not see why it should not be repealed, as it did no good for the negroes, for whom it was originally passed, and succeeded only in embarrassing State courts.…

Attorney General Hadley of Missouri said, in part:…

"Men who associate themselves together to operate railroads have neither a legal nor a moral right to receive more than a reasonable return on their investment.

"The amount of such return is a question that has not yet been thoroughly settled by the decisions of courts of last resort. No definite division of passenger and freight expenses can be made. And yet for years, upon the basis of affidavits of interested parties, with such a manifest lack of definite information concerning the earnings and expenses of the different classes of railroad traffic, United States District and Circuit Judges have exercised a veto power on the acts of State Legislatures and the decisions of duly authorized administrative boards." …

Peculiar interest was given the paper on "Conflict Between State and Federal Courts," by Attorney General Young of Minnesota, by the fact that he expects to be arrested on his return to Minnesota in connection with a contempt case arising out of conflict between courts. Chairman Hadley announced that Attorney General Young had received a special dispensation to come to St. Louis.

Murmurs of approval greeted Young's statement that the most trouble arose from the exercise by Federal Courts of powers which the founders of the Government never intended they should have, and that it was plain these powers must be limited.

Mr. Young also said that many Federal Judges seem to misunderstand the relations between State and National Governments, and the extent of their own powers.

Document Source: "Would Curb Power of Federal Courts: Attorneys General of Thirteen States Consider Means of Ending State Conflicts," *New York Times*, October 1, 1907, p. 9.

"Clank!," *The Minneapolis Sunday Tribune*, October 27, 1907

As the Minnesota press reported, Young's detention by the federal marshal, with whom he maintained a friendly relationship, was more metaphorical than real, as he was required to check in

with the marshal once per day and was not incarcerated. Nevertheless, the Tribune *noted, the federalism issues underlying Young's detention were serious ones.*

The attorney-general of the state in chains!

This is the spectacle which Minnesota is presenting to the world today.

Of course the chains are metaphorical. The gyves which bind Attorney General Edward T. Young are imaginary.…

Back of it all the real meaning of the almost grotesque situation which has made of Attorney General Young a prisoner, with orders to report daily to United States Marshal W. H. Grimshaw, is a contest between state and federal government. It is a show down for the dual system of government at which European writers on politics have pointed the finger of warning and suspicion since the inauguration of the constitution.

The all important and closing act of this drama will be enacted in Washington sometime this week, where Assistant Attorney-General George F. Simpson and special counsel Thos. D. O'Brien are already training the heavy legal siege guns on the chief tribunal of the land.

The imprisoned attorney-general will hasten to the same place this week to argue his own case in the habeas corpus proceedings which he has brought to rid himself of the contempt judgment which Judge Wm. H. Lochren has imposed upon him. He will probably be accompanied by his federal keeper.

In the meantime Attorney-General Young continues to clank his imaginary chains and to report daily to his kindly jailer.

"He is the most troublesome as well as the most distinguished prisoner I have ever had," said Marshal Grimshaw, with a keen twinkle of appreciation. "You see, I have to be so mighty careful, for if I don't look out, he will escape from my jurisdiction and break into the governor's office." …

It was with a view of endeavoring to learn what manner of man the attorney-general really is that the writer invaded the sanctum of the attorney-general at the capitol.

"How does it seem to be in chains?" was the question exploded at the quiet man who sat at his desk looking over some papers.

"I feel," he said in beginning, "a naturally reluctance to placing myself in this position. A lawyer naturally hates to be or to seem to be in contempt, but it seemed to me the only possible way of securing an immediate hearing on our case from the supreme court.

"In the original case before Judge Lochren, we argued the court had no right to enjoin a state officer from the performance of his discretionary duties, such as the enforcement of the two cent fare and the commodity rate laws. We contended that the suit against

the attorney-general was virtually a suit against the state, which is provided against in the eleventh amendment.

"We will take the position at Washington that the federal court has no jurisdiction—that the eleventh amendment guarantees the state against suit and that in bringing the action against the attorney-general, the state was the real party to the suit."

Document Source: "CLANK! Manacles on Attorney-General an Interesting Spectacle," *Minneapolis Sunday Tribune*, October 27, 1907, p. 15.

Supreme Court of the United States, Opinion in *Ex parte Young*, March 23, 1908

This excerpt from the majority opinion in Ex parte Young*, authored by Justice Rufus Peckham, addressed the question of whether the injunction against Attorney General Young was in fact one against the state of Minnesota. The answer rested on the fact that the act Young sought to enforce—for the regulation of railroad rates—was unconstitutional. Instituting proceedings in state court to enforce the law was therefore "simply an illegal act upon the part of a state official" for which Young could not escape liability by claiming to have acted on behalf of the state.*

The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action.…

In making an officer of the State a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the State, and thereby attempting to make the State a party.

It has not, however, been held that it was necessary that such duty should be declared in the same act which is to be enforced.… The fact that the state officer by virtue of his office has some connection with the enforcement of the act is the important and material fact, and whether it arises out of the general law, or is specially created by the act itself, is not material so long as it exists.…

The general discretion regarding the enforcement of the laws when and as he deems appropriate is not interfered with by an injunction which restrains the state officer from taking any steps towards the enforcement of an unconstitutional enactment to the injury

of complainant. In such case no affirmative action of any nature is directed, and the officer is simply prohibited from doing an act which he had no legal right to do. An injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer.…

It is contended that the complainants do not complain and they care nothing about any action which Mr. Young might take or bring as an ordinary individual, but that he was complained of as an officer, to whose discretion is confided the use of the name of the State of Minnesota so far as litigation is concerned, and that when or how he shall use it is a matter resting in his discretion and cannot be controlled by any court.

The answer to all this is the same as made in every case where an official claims to be acting under the authority of the State. The act to be enforced is alleged to be unconstitutional, and if it be so, the use of the name of the State to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of and one which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting by the use of the name of the State to enforce a legislative enactment which is void because unconstitutional. If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.

Document Source: *Ex parte Young*, 209 U.S. 123, 155–57, 159–60 (1908).

Justice John Marshall Harlan, Dissenting Opinion in *Ex parte Young*, March 23, 1908

Justice John Marshall Harlan disagreed with the majority's characterization of Young as acting in his individual capacity. In his view, Young was performing the duties of his job, and would not have been sued but for the fact that he was the state Attorney General. Justice Harlan, therefore, would have barred the suit as violating the Eleventh Amendment grant to the states of sovereign immunity.

Let it be observed that the suit instituted by Perkins and Shepard in the Circuit Court of the United States was, as to the defendant Young, one against him *as, and only because he was*, Attorney General of Minnesota. No relief was sought against him individually

but only in his capacity *as* Attorney General. And the manifest, indeed the avowed and admitted, object of seeking such relief was *to tie the hands* of the *State* so that it could not in any manner or by any mode of proceeding, *in its own courts*, test the validity of the statutes and orders in question. It would therefore seem clear that within the true meaning of the Eleventh Amendment the suit brought in the Federal court was one, in legal effect, against the State—as much so as if the State had been formally named on the record as a party—and therefore it was a suit to which, under the Amendment, so far as the State or its Attorney General was concerned, the judicial power of the United States did not and could not extend. If this proposition be sound it will follow—indeed, it is conceded that if, so far as relief is sought against the Attorney General of Minnesota, this be a suit against the State—then the order of the Federal court enjoining that officer from taking any action, suit, step or proceeding to compel the railway company to obey the Minnesota statute was beyond the jurisdiction of that court and wholly void; in which case, that officer was at liberty to proceed in the discharge of his official duties as defined by the laws of the State, and the order adjudging him to be in contempt for bringing the mandamus proceeding in the state court was a nullity.…

The only question now before this court is whether the suit by Perkins and Shepard in the Federal court was not, upon its face, *as to the relief sought against the Attorney General of Minnesota*, a suit against the State. Stated in another form, the question is whether that court may, *by operating upon that officer in his official capacity*, by means of fine and imprisonment, prevent the State from being represented by its law officer in one of its own courts? If the Federal court could not thus put manacles upon the State so as to prevent it from being represented by its Attorney General in its own court and from having the state court pass upon the validity of the state enactment in question in the Perkins-Shepard suit, that is an end to this *habeas corpus* proceeding, and the Attorney General of Minnesota should be discharged by order of this court from custody.

Document Source: *Ex parte Young*, 209 U.S. 123, 173–74, 177–78 (1908).

Edward A. Purcell, Jr., *University of Toledo Law Review*, 2009

In a 2009 piece, legal historian Edward Purcell placed the Young *case in its historical context as part of a major expansion of federal judicial power that occurred in the late nineteenth and early twentieth centuries. A significant aspect of the federal courts' enhanced authority was their supervisory power over the states, by which they could block state regulatory actions and ensure compliance with federal law.*

More than a century after the Supreme Court's decision in *Ex parte Young*, judges and commentators still debate its meaning and significance. Writing for the *Young* majority, Justice Rufus Peckham declared that his opinion contained "no new invention" and was rooted firmly in precedents going back to the Marshall Court. In contrast, the sole dissenter, Justice John Marshall Harlan, charged that the opinion "departs" from "principles previously announced" and "would work a radical change in our governmental system." The views of subsequent commentators have ranged freely between those interpretive antipodes.

Perhaps the only conclusion that commentators have generally agreed on is that, whatever its legal standing, *Young* was highly controversial as a political matter. Progressives generally denounced it, while their adversaries praised it. Those contrasting views, not surprisingly, had less to do with *Young*'s technical reasoning than with its practical consequences. *Young* affirmed a muscular power in the federal courts to enjoin the enforcement of state laws and regulatory actions, and commentators divided for the most part according to their views about the desirability of that result. Had *Young* come down three years after *Brown v. Board of Education* rather than three years after *Lochner v. New York*, the initial battle lines would have been strikingly different. Indeed, *Young*'s legal reputation over the past century has risen and fallen, and its legal meaning has broadened and contracted, with the tides of American politics and the shifting political goals of its interpreters.…

The decision was a key component in the transformation of the federal judiciary that the Supreme Court orchestrated between approximately 1890 and the First World War. The case did not mark a radical, or perhaps even substantial, break with the past; instead, it helped extend the trendlines that the Court had begun shaping after the post-Reconstruction settlement of the 1870s and 1880s. Ratifying, solidifying, and accelerating those trendlines, *Young* helped create a newly powerful and activist federal judiciary that emerged at the turn of the twentieth century and continued to operate into the twenty-first.…

During the years from 1890 to 1917 the Supreme Court transformed the federal judiciary to meet the new challenges of a tumultuous and centralizing industrial age. The changes it made ranged across the doctrinal landscape, and their cumulative impact accelerated the nationalization and centralization of American law, government, and society. The Court imposed new national and centrally enforced limitations on governmental power, tightened federal judicial control over the states, extended the reach of congressional and presidential power, expanded the authority of federal judges to make national law, reconceptualized the role of the lower federal courts, and reoriented the jurisdiction of the entire federal judiciary to ensure the more effective enforcement of national law.…

Thus, between approximately 1890 and 1917 the Court fundamentally reshaped the role and jurisdiction of the federal judiciary. It substantially widened the realm of national

law that the federal courts controlled, expanded their equity and federal-question jurisdiction, strengthened their ability to check state regulatory actions, and reoriented them away from state-law claims and toward cases presenting federal-law issues. Further, it blocked state efforts to avoid the mandates of federal law or the jurisdiction and judgments of federal courts, and it guaranteed access to a federal forum for all parties asserting federal-law claims without regard for either their citizenship or their rights under state law. In that context, *Ex parte Young*'s significance emerges more clearly as but one integral part of a complex reorientation of the federal judicial system.…

Most broadly, and as a practical matter, *Ex parte Young* was important for one simple and well-understood reason: it opened the doors of the federal courts widely to suits seeking injunctions against state and local officials brought by plaintiffs claiming injury from governmental actions that allegedly violated federal law. It ensured that federal courts, not just state courts, could hear such suits, and that in turn ensured that the federal courts would play a paramount role in construing relevant federal law and guaranteeing that state and local officials complied with its mandates. For plaintiffs, *Young* provided ready access to a highly preferred forum; for the federal courts, it provided a potentially sweeping supervisory power over the other levels and branches of government.…

Thus, *Young* carried forward the Court's transformation of the federal courts on a wide front. It clarified and solidified critical doctrines that served to expand the role of the federal courts in protecting federal rights and controlling the actions of the other levels and branches of government, especially those of the states. It was a flower of that broad transformation, and its meaning and significance are most fully and accurately understood only in that context.…

Considering *Ex parte Young* in the transformation's context suggests several conclusions. Perhaps most obvious, it shows that "Progressives" and their like were hardly the primary, let alone sole, force driving the processes of nationalization and centralization that remade American law, government, and society in the decades around the turn of the century. Rather, it was for the most part national business groups, the anti-Progressive wing of the Republican Party, and an emerging nationally oriented social and economic class that nourished the national market, structured the new centralizing corporate economy, and pressed for the efficiencies and protections they saw in uniform national law. In the process, they supported the expansion of both federal law and the enforcement capabilities of the national courts.

Recognizing the nature of the transformation also shows that the enduring achievement of the turn-of-the-century Court was not political or economic but institutional. Above all, it expanded the scope and content of federal law, strengthened the ability of the federal courts to enforce that law, and established more firmly the primacy of the federal

judiciary in authoritatively construing a supreme national law. It did not so much impose broad or severe limits on legislative power as it expanded the federal judiciary's ability to regularly supervise and, when necessary, check specific exercises of that power, especially by the states. Thus, the turn-of-the-century Court strengthened the role of the federal judiciary in American government and shifted power along both of the Constitution's structural axes: on one, from the states to the nation and, on the other, from all the levels and branches of government to the federal judiciary.

Document Source: Edward A. Purcell, Jr., "*Ex parte Young* and the Transformation of the Federal Courts, 1890-1917," *University of Toledo Law Review* 40, no. 4 (Summer 2009): 931–33, 960, 966–68 (footnotes omitted).

Cases that Shaped the Federal Courts

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

- *Hayburn's Case* (1792). Could Congress require the federal courts to perform non-judicial duties?
- *Chisholm v. Georgia* (1793). Could states be sued in federal court by individual citizens of another state?
- *Marbury v. Madison* (1803). Could federal courts invalidate laws made by Congress that violated the Constitution?
- *Fletcher v. Peck* (1810). Could federal courts strike down state laws that violated the 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?