Supplementary Material

Chapter 9: Liberalism Divided—Foundations/Scope/State Action

Jackson v. Metropolitan Edison, 419 U.S. 345 (1974)

Catherine Jackson, a resident of York, Pennsylvania, received her electricity from the Metropolitan Edison Co., a privately owned utility authorized by the Pennsylvania Public Utility Commission (PPUC) to provide power to the citizens of York. The agreement between Metropolitan Edison and the PPUC permitted the utility company to terminate service for nonpayment after giving reasonable notice to the resident. On October 11, 1971, Metropolitan Edison terminated service to Ms. Jackson, claiming that she had failed to pay her bills and had tampered with the meter that measured power use. Jackson sued the utility company in the local federal district court. She claimed that her service was terminated in a way that violated her rights under the due process clause of the Fourteenth Amendment to adequate notice, a hearing, and an opportunity to pay whatever sums she may have owed. Metropolitan Edison responded that they were a private company that had no obligation to act consistently with constitutional norms. The federal district court agreed with Metropolitan Edison's claim that Jackson had failed to demonstrate state action. After that denial was affirmed by the Court of Appeals for the Third Circuit, Jackson appealed to the Supreme Court of the United States.

The Supreme Court by a 6-3 vote declared that no state action existed. Justice Rehnquist's majority opinion insisted that state action could be found only when a private actor was performing a function exclusively performed by the state or acted with significant state encouragement. The justices in this case all claim to be following precedent. Do you believe that each opinion is a reasonable interpretation of the existing precedents or did past precedents provide more support for one party than the other? Consider Justice Marshall's claim that the standard for state action ought to be different in cases concerning claims of race discrimination. What is the basis of that claim? Do you believe that claim is correct?

JUSTICE REHNQUIST delivered the opinion of the Court.

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[T]he action complained of was taken by a utility company which is privately owned and operated, but which, in many particulars of its business, is subject to extensive state regulation. The mere fact that a business is subject to state regulation does not, by itself, convert its action into that of the State for purposes of the Fourteenth Amendment. . . . Nor does the fact that the regulation is extensive and detailed, as in the case of most public utilities, do so. . . . It may well be that acts of a heavily regulated utility with at least something of a governmentally protected monopoly will more readily be found to be "state" acts than will the acts of an entity lacking these characteristics. But the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself. . . .

Petitioner first argues that "state action" is present because of the monopoly status allegedly conferred upon Metropolitan by the State of Pennsylvania. . . . [T]his fact is not determinative in considering whether Metropolitan's termination of service to petitioner was "state action" for purposes of the Fourteenth Amendment. In *Public Utilities Comm'n v. Pollak* (1952), where the Court dealt with the activities of the District of Columbia Transit Co., a congressionally established monopoly, we expressly disclaimed reliance on the monopoly status of the transit authority. . . . Similarly, although certain monopoly aspects were presented in *Moose Lodge No. 107* (1972), we found that the Lodge's action was

not subject to the provisions of the Fourteenth Amendment. In each of those cases, there was insufficient relationship between the challenged actions of the entities involved and their monopoly status. There is no indication of any greater connection here.

Petitioner next urges that state action is present because respondent provides an essential public service required to be supplied on a reasonably continuous basis by [Pennsylvania law], and hence performs a "public function." We have, of course, found state action present in the exercise by a private entity of powers traditionally exclusively reserved to the State. See, e.g., *Nixon v. Condon* (1932) . . . (election); . . . *Marsh v. Alabama* (1946) . . . (company town); *Evans v. Newton* (1966) . . . (municipal park). If we were dealing with the exercise by Metropolitan of some power delegated to it by the State which is traditionally associated with sovereignty, such as eminent domain, our case would be quite a different one. But while the Pennsylvania statute imposes an obligation to furnish service on regulated utilities, it imposes no such obligation on the State. The Pennsylvania courts have rejected the contention that the furnishing of utility services is either a state function or a municipal duty. . . .

Perhaps in recognition of the fact that the supplying of utility service is not traditionally the exclusive prerogative of the State, petitioner invites the expansion of the doctrine of this limited line of cases into a broad principle that all businesses "affected with the public interest" are state actors in all their actions.

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Doctors, optometrists, lawyers, Metropolitan, and Nebbia's upstate New York grocery selling a quart of milk are all in regulated businesses, providing arguably essential goods and services, "affected with a public interest." We do not believe that such a status converts their every action, absent more, into that of the State. We also reject the notion that Metropolitan's termination is state action because the State "has specifically authorized and approved" the termination practice. In the instant case, Metropolitan filed with the Public Utility Commission a general tariff—a provision of which states Metropolitan's right to terminate service for nonpayment. . . . Although the Commission did hold hearings on portions of Metropolitan's general tariff relating to a general rate increase, it never even considered the reinsertion of this provision in the newly filed general tariff. . . .

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. . . [T]here was no . . . imprimatur placed on the practice of Metropolitan about which petitioner complains. The nature of governmental regulation of private utilities is such that a utility may frequently be required by the state regulatory scheme to obtain approval for practices a business regulated in less detail would be free to institute without any approval from a regulatory body. Approval by a state utility commission of such a request from a regulated utility, where the commission has not put its own weight on the side of the proposed practice by ordering it, does not transmute a practice initiated by the utility and approved by the commission into "state action." At most, the Commission's failure to overturn this practice amounted to no more than a determination that a Pennsylvania utility was authorized to employ such a practice if it so desired. Respondent's exercise of the choice allowed by state law where the initiative comes from it and not from the State does not make its action in doing so "state action" for purposes of the Fourteenth Amendment.

We also find absent in the instant case the symbiotic relationship presented in *Burton v. Wilmington Parking Authority* (1961). There, where a private lessee, who practiced racial discrimination, leased space for a restaurant from a state parking authority in a publicly owned building, the Court held that the State had so far insinuated itself into a position of interdependence with the restaurant that it was a joint participant in the enterprise. . . .

Metropolitan is a privately owned corporation, and it does not lease its facilities from the State of Pennsylvania. It alone is responsible for the provision of power to its customers. In common with all corporations of the State, it pays taxes to the State, and it is subject to a form of extensive regulation by the State in a way that most other business enterprises are not. But this was likewise true of the appellant club in *Moose Lodge No. 107. . .*

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We conclude that the State of Pennsylvania is not sufficiently connected with respondent's action in terminating petitioner's service so as to make respondent's conduct in so doing attributable to the State for purposes of the Fourteenth Amendment.

JUSTICE DOUGLAS, dissenting.

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It is not enough to examine *seriatim* each of the factors upon which a claimant relies and to dismiss each individually as being insufficient to support a finding of state action. It is the aggregate that is controlling.

It is said that the mere fact of respondent's monopoly status, assuming *arguendo* that that status is state conferred or state protected, is not determinative in considering whether Metropolitan's termination of service to petitioner was "state action" for purposes of the Fourteenth Amendment. . . . Even so, a state-protected monopoly status is highly relevant in assessing the aggregate weight of a private entity's ties to the State.

It is said that the fact that respondent's services are "affected with a public interest" is not determinative. I agree that doctors, lawyers, and grocers are not transformed into state actors simply because they provide arguably essential goods and services and are regulated by the State. In the present case, however, respondent is not just one person among many; it is the only public utility furnishing electric power to the city. When power is denied a householder, the home, under modern conditions, is likely to become unlivable.

. . . [T]he State is heavily involved in respondent's termination procedures, getting into the approved tariff a requirement of "reasonable notice." Pennsylvania has undertaken to regulate numerous aspects of respondent's operations in some detail, and a "hands-off" attitude of permissiveness or neutrality toward the operations in this case is at war with the state agency's functions of supervision over respondent's conduct in the area of servicing householders, particularly where (as here) the State would presumably lend its weight and authority to facilitate the enforcement of respondent's published procedures. . . .

In the aggregate, these factors depict a monopolist providing essential public services as a licensee of the State and within a framework of extensive state supervision and control. The particular regulations at issue, promulgated by the monopolist, were authorized by state law and were made enforceable by the weight and authority of the State. Moreover, the State retains the power of oversight to review and amend the regulations if the public interest so requires. Respondent's actions are sufficiently intertwined with those of the State, and its termination of service provisions are sufficiently buttressed by state law to warrant a holding that respondent's actions in terminating this householder's service were "state action." . . . Though the Court pays lip service to the need for assessing the totality of the State's involvement in this enterprise, its underlying analysis is fundamentally sequential, rather than cumulative. In that perspective, what the Court does today is to make a significant departure from our previous treatment of state action issues.

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JUSTICE BRENNAN, dissenting.

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JUSTICE MARSHALL, dissenting.

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Our state action cases have repeatedly relied on several factors clearly presented by this case: a state-sanctioned monopoly; an extensive pattern of cooperation between the "private" entity and the State; and a service uniquely public in nature. Today the Court takes a major step in repudiating this line

of authority, and adopts a stance that is bound to lead to mischief when applied to problems beyond the narrow sphere of due process objections to utility terminations.

When the State confers a monopoly on a group or organization, this Court has held that the organization assumes many of the obligations of the State. . . . Even when the Court has not found state action based solely on the State's conferral of a monopoly, it has suggested that the monopoly factor weighs heavily in determining whether constitutional obligations can be imposed on formally private entities. . . . Indeed, in *Moose Lodge No. 107 v. Irvis* (1972) . . . , the Court was careful to point out that the Pennsylvania liquor licensing scheme "falls far short of conferring upon club licensees a monopoly in the dispensing of liquor in any given municipality or in the State as a whole."

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. . . The majority, however, accepts the relevance of the State's regulatory scheme only to the extent that it demonstrates state support for the challenged termination procedure. Moreover, after concluding that the State in this case had not approved the company's termination procedures, the majority suggests that even state authorization and approval would not be sufficient: the State would apparently have to *order* the termination practice in question to satisfy the majority's state action test. . . .

I disagree with the majority's position on three separate grounds. First, the suggestion that the State would have to "put its own weight on the side of the proposed practice by ordering it" seems to me to mark a sharp departure from our previous State-action cases. From the *Civil Rights Cases* (1883). . . to *Moose Lodge,* . . . we have consistently indicated that state authorization and approval of "private" conduct would support a finding of state action.

Second, . . . where the State has so thoroughly insinuated itself into the operations of the enterprise, it should not be fatal if the State has not affirmatively sanctioned the particular practice in question.

Finally, it seems to me, in any event, that the State has given its approval to Metropolitan Edison's termination procedures. The State Utility Commission approved a tariff provision under which the company reserved the right to discontinue its service on reasonable notice for nonpayment of bills.

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The fact that the Metropolitan Edison Co. supplies an essential public service that is in many communities supplied by the government weighs more heavily for me than for the majority. The Court concedes that state action might be present if the activity in question were "traditionally associated with sovereignty," but it then undercuts that point by suggesting that a particular service is not a public function if the State in question has not required that it be governmentally operated. This reads the "public function" argument too narrowly. The whole point of the "public function" cases is to look behind the State's decision to provide public services through private parties. . . . In my view, utility service is traditionally identified with the State through universal public regulation or ownership to a degree sufficient to render it a "public function."

I agree with the majority that it requires more than a finding that a particular business is "affected with the public interest" before constitutional burdens can be imposed on that business. But when the activity in question is of such public importance that the State invariably either provides the service itself or permits private companies to act as state surrogates in providing it, much more is involved than just a matter of public interest. In those cases, the State has determined that, if private companies wish to enter the field, they will have to surrender many of the prerogatives normally associated with private enterprise and behave in many ways like a governmental body. And when the State's regulatory scheme has gone that far, it seems entirely consistent to impose on the public utility the constitutional burdens normally reserved for the State.

Private parties performing functions affecting the public interest can often make a persuasive claim to be free of the constitutional requirements applicable to governmental institutions because of the value of preserving a private sector in which the opportunity for individual choice is maximized. . . . But it is hard to imagine any such interests that are furthered by protecting privately owned public utility companies from meeting the constitutional standards that would apply if the companies were state owned. The values of pluralism and diversity are simply not relevant when the private company is the only electric company in town.

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What is perhaps most troubling about the Court's opinion is that it would appear to apply to a broad range of claimed constitutional violations by the company. The Court has not adopted the notion, accepted elsewhere, that different standards should apply to state action analysis when different constitutional claims are presented. Thus, the majority's analysis would seemingly apply as well to a company that refused to extend service to Negroes, welfare recipients, or any other group that the company preferred, for its own reasons, not to serve. I cannot believe that this Court would hold that the State's involvement with the utility company was not sufficient to impose upon the company an obligation to meet the constitutional mandate of nondiscrimination. Yet nothing in the analysis of the majority opinion suggests otherwise.