

## Common Law S4 Ep 5: Aditya Bamzai Transcript

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**Risa Goluboff:** Today on Common Law, UVA Law professor Aditya Bamzai on the historic Supreme Court case that continues to affect how we think about federal power and injunctions today.

**Aditya Bamzai:** The court says, well, a sovereign entity has the right to apply to its own courts for any proper assistance wherever there's an injury to the general welfare. And that sounds awfully broad.

[THEME MUSIC UP, THEN UNDER AND OUT]

**Risa Goluboff:** Welcome back to Common Law, a podcast of the University of Virginia School of Law. I'm Risa Goluboff, the dean. If you've been listening this season, you know we're working with four co-hosts to help guide us through topics they're interested in. For this episode, we are welcoming back UVA Law professor John Harrison.

**John Harrison:** Thank you Risa. It's great to be here.

**Risa Goluboff:** So we have a great guest today, John.

**John Harrison:** Yes, our guest is also on the UVA faculty. It's professor Aditya Bamzai. Aditya has been at the Justice Department. He worked in the Office of Legal Counsel. He worked for the National Security Division at Justice. And a few years ago, he did something which is extremely unusual. He was given argument time in a Supreme Court case where he was not representing a party but was himself an amicus curiae. Aditya had filed a brief that was on such an important topic and took a position that neither of the parties had taken that, at his request, the court gave him time for oral argument. It's about a case that the Supreme Court is pretty strongly committed to – it's Marbury against Madison and how the court's appellate jurisdiction works. So that's not something that happens all the time, but Aditya did it.

**Risa Goluboff:** It happens incredibly rarely for the court to grant an amicus writer oral argument time.

**John Harrison:** It is virtually unheard of.

**Risa Goluboff:** Really fascinating.

**John Harrison:** Yeah.

**Risa Goluboff:** And what are we talking about today?

**John Harrison:** Risa, Aditya has been doing some work on the famous late 19th century case *In re Debs*, which turns out to be one of the foundational cases for the litigation the Supreme Court recently had, *United States against Texas*.

**Risa Goluboff:** So that's the case where the federal government was suing the state of Texas for its law that essentially prohibits abortions after six weeks of pregnancy. And one of the big questions in the case was whether the federal government could even bring suit in federal court to obtain injunctive or declaratory relief against the state of Texas and to prohibit others from enforcing the law. The Supreme Court ultimately dismissed the case as improvidently granted, or "DIG'd it," as we like to say.

**John Harrison:** At the oral argument in *United States against Texas*, there was considerable discussion, not surprisingly, about *In re Debs*, which is the case that Aditya has taken as the foundation for the work that we're going to be talking about today.

**Risa Goluboff:** Terrific. We will be right back with UVA Law professor Aditya Bamzai.

[THEME MUSIC UP, THEN UNDER AND OUT]

**John Harrison:** Hi, Aditya. Welcome to the podcast. Good to have you here.

**Aditya Bamzai:** Thanks so much. It's great to be here.

**Risa Goluboff:** Great to have you, Aditya.

**John Harrison:** Why don't we start with the story of that still epochal 1895 case *In re Debs*, and the tumultuous surrounding circumstances.

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**Aditya Bamzai:** The backdrop is a series of depressions in 1873 and 1893 which we tend to forget about. And according to economists, the latter was comparable in some ways to the Great Depression, meaning that there was about a 30% unemployment rate – perhaps as high as 50% in certain industries like manufacturing and construction. And the immediate backdrop is about the Pullman Palace Car Company that manufactured sleeping cars, cars that accommodated something in the order of 26 million people a year, which meant that it effectively operated what was known as the largest hotel in the world because there were people sleeping in these cars while being transported on railway lines across the United States. In 1894, the Pullman company announces a number of austerity measures. It reduces wages by 17 to 40% or thereabouts. It doesn't at the same time, lower rents at company-owned housing.

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**Risa Goluboff:** Pullman, Ohio was actually a literal company town, right?

**Aditya Bamzai:** Yes.

**Risa Goluboff:** So this wasn't just any housing. It was the housing that the Pullman company itself provided for its workers. So the company could have chosen to lower housing prices at the same time that it lowered wages, but they didn't do that. So these two things are linked.

**Aditya Bamzai:** That's correct. The upshot is that the Railway Union votes to authorize a strike in 1894.

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**Aditya Bamzai:** And initially the strike is a strike about the Pullman company itself, but later on, the ARU authorizes a strike for all union members that work on railways in the United States. And at the time, the union had about 150,000 people in 465 or so locations across the United States. What happens in the immediate aftermath of the authorization of the strike is that railroad traffic – it's paralyzed across the United States.

**Risa Goluboff:** And we're talking about a period of time when there was no interstate highway system.

**Aditya Bamzai:** Yes.

**Risa Goluboff:** The railroad was the principle means of transportation for everything – of food and fuel and livestock across the entire country. So this was a really big deal.

**Aditya Bamzai:** That's correct.

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**John Harrison:** And Aditya am I remembering right that there was enough violence associated with the strike that it caused President Cleveland literally to read the riot act, that is to issue a proclamation that everybody involved in the violence was to return peaceably to their homes and stop publicly assembling?

**Aditya Bamzai:** Yes! The attorney general, a gentleman named Richard Olney, he goes to court and he obtains an injunction against the continuation of the strike. And the order prohibits the members of the ARU, the American Railway Union, from interfering with the operations of the railway system. And that's the genesis of the court proceedings that ultimately result in the Debs case at the Supreme Court.

**Risa Goluboff:** For listeners who may not know, who was Eugene Debs?

**Aditya Bamzai:** The head of the American Railway Union who goes on to become this five-time presidential candidate.

**Risa Goluboff:** For the Socialist Party, right?

**Aditya Bamzai:** That's right. And that allows us to, to just have a little side note on Debs' counsel.

**John Harrison:** That's a good part of this story.

**Aditya Bamzai:** The first is the famous attorney Clarence Darrow who then, of course, goes on to litigate famous cases like the Leopold and

Loeb murder trial, and the Scopes monkey trial and becomes a famous civil libertarian lawyer.

### **BIOGRAPHY - CLARENCE DARROW**

**Mike Wallace:** ... and he became a giant. His name was Clarence Darrow, and this is his biography.

**Risa Goluboff:** And who was he working for?

**Aditya Bamzai:** He was working for Debs.

**Risa Goluboff:** Okay.

**Aditya Bamzai:** And the second lawyer that's worth flagging for everybody is Lyman Trumbull, who had served as a senator from the Republican Party during the Civil War and famously co-writes the 13th Amendment to the Constitution. And Trumbull would have been 81 at the time. Darrow would have been about 37 years old. This is obviously something that is happening at the start of Darrow's career and at the tail end of Trumbull's career. Two incredibly titanic figures in American law who were working on this case.

**Risa Goluboff:** Now we're a legal audience, but this isn't only about something going on in the courts. It's about President Cleveland sending troops to deal with the strikers. Tell us a little bit more about that.

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**Aditya Bamzai:** Ultimately thousands of troops are deployed to Pullman, Illinois. There was a significant risk mentioned by Debs. He calls this almost the start of a new Civil War. And the crowds in Pullman upon seeing the troops, they respond by stoning, tipping over, looting, burning railway cars. And ultimately 2,000 cars are destroyed, somewhere in the order of 20 people died.

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**Risa Goluboff:** So talk to us about how the federal government gets into court.

**Aditya Bamzai:** The federal government has a narrower and a broader theory and the narrower theory prevails in the lower courts. And that's because the strike is occurring in 1894 and it's in the immediate

aftermath of the passage of the famous Sherman Antitrust Act of 1890. And the federal government initially styles its action to, uh, enjoin the Pullman labor strike as an enforcement action of the Sherman Antitrust Act. And the idea is that the Sherman Antitrust Act prohibits participating in a conspiracy to restrain trade. This is one of the first enforcement actions under the Sherman Antitrust Act, something that we think of nowadays as dealing with different topics altogether.

**Risa Goluboff:** So the lower courts relied on the Sherman Antitrust Act. We know that's not what happened in the Supreme Court, so why not? What happens in the Supreme Court?

**Aditya Bamzai:** It expressly disavows reliance on the Sherman Antitrust Act and instead rests on what it believed to be a broader principle. And exactly what that broader principle is is disputed.

**Risa Goluboff:** That's the big question, right?

**Aditya Bamzai:** That is in fact the big question.

[Laughing]

**Aditya Bamzai:** The reason why it's a big question is because, um, the federal government arguably was hemmed in, in the sense that it had to establish that it had an interest in property before it could obtain an injunction.

**Risa Goluboff:** Right, so the federal government needed to show that it had a real interest in this case, and the question obviously is what kind of an interest was it required to show before it would be allowed to sue?

**Aditya Bamzai:** That was the argument that Debs' lawyers made: the injunction was improper and the federal government lacked a property interest.

**John Harrison:** Aditya, if you could tell us a little bit about sort of, both the narrower and the broader kinds of property type interests that the United States tried to rely on in *In re Debs*, given that it was dealing with this longstanding equity requirement that the plaintiff had some kind of property interest and not just any kind of legal interest.

**Aditya Bamzai:** Right. So even with respect to property interests, there is what might be thought of as a narrower and a broader reading of the government's theory. Because there was a part of the government's theory that said what's being enjoined here is disturbing the railway system and the railway system distributes the government's mails. That is the property that we have and we're supposed to protect as the federal government.

**John Harrison:** Which you might say is kind of like sending Al Capone to jail for tax evasion.

**Aditya Bamzai:** That's certainly true. I hadn't thought of that as an analogy. It does make some sense.

[Laughing]

**Aditya Bamzai:** The court could have rested its authority on this ground alone. Could have said, well, it's the mail system and the interest of the United States government has in protecting the mails that authorizes this equitable lawsuit. But the court doesn't do that. It says we acknowledge this interest, but we don't care to place our decision upon this ground alone. And instead then goes on to speak more broadly about the types of interests that a sovereign entity has. And here is where it's quite disputed exactly what the court is saying and has been disputed for over a hundred years. And if we just look at the court's opinion, court says, well, a sovereign entity has the right to apply to its own courts for any proper assistance, wherever there's an injury to the general welfare. And that sounds awfully broad.

**Risa Goluboff:** It's broad.

**Aditya Bamzai:** It sounds as though the government can bring a lawsuit anytime that it identifies an injury to the general welfare. And then there are other parts of the opinion that seem to suggest that even though the government doesn't have to identify an interest in its own property, as such, what it has to identify is something akin to a proprietary style interest that affects the public. And here the court draws an analogy to cases to abate a public nuisance. Uh, and it views the Pullman strike as a public nuisance, where the striking members of the union are standing in the ways, public ways. And the court says, that's what we mean when we speak of the type of interest that the federal government can vindicate in equity.

**John Harrison:** Aditya on this broader-than-just-the-mails, but still somewhat narrow view, what the court was thinking is that for certain purposes, the federal government is something like the owner of both navigable waterways, and by the end of the 19th century, the railroads. That the public has a sort of proprietary interest in the free flow of interstate commerce, as they later would say. And that the government stands for the public, but it remains a proprietary type interest. Is that the theory?

**Aditya Bamzai:** That is at least a plausible reading of this part of the court's opinion. The court cites a number of cases related to navigable waters in reaching this conclusion. I think the court is effectively saying, you know, by the end of the 20th century, the federal government has a comparable interest in the railway system, even though they don't own the railways. Those railways are owned by others.

**John Harrison:** How close did *In re Debs* come to saying – because this is a very important question today – that that pure sovereign interest is the kind of proprietary interest that an equitable remedy can protect?

**Aditya Bamzai:** It all turns on the following language, which is whether when the court says that the federal government has a right to apply to its own courts for assistance in order to stop injury to the general welfare, whether that was the principle that the court was embracing. And if in fact that was the principle the court was embracing, then that does seem to cut out some of the more traditional limits that might've been placed on this type of equitable action in the past.

**Risa Goluboff:** All right, so in *Debs* itself, the court enjoins the strike, and it's a huge, massive controversy.

**Aditya Bamzai:** That's certainly an understatement. It is a massive, massive controversy.

**Risa Goluboff:** Huge, massive is understated.

[Laughing]

**Risa Goluboff:** What does the court do and what is the response to what the court does?

**Aditya Bamzai:** What the court had done at the trial level was to issue an injunction that prohibited members of the ARU from interfering with the railway system. The federal government then pursued a criminal case against Debs. And Debs is criminally charged by a federal grand jury for being in contempt of the injunction. He's imprisoned, and the case that ultimately makes it to the Supreme Court is the result of his petition for habeas corpus. The upshot is that it appears as though actually the indictment and the imprisonment and, and all of the effects of that ultimately really tamped down the strike, which dissipates in the immediate aftermath of the initial proceedings.

**John Harrison:** And In re Debs is In RE Debs because it's a habeas proceeding, just like Ex Parte Young is Ex Parte Young because it's a habeas proceeding.

**Aditya Bamzai:** That's exactly right. The aftermath of Debs beyond the dissipation of the strike is interesting in several respects. We celebrate Labor Day every year.

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**Aditya Bamzai:** Labor Day as a federal holiday has its origins in legislation that's enacted in the immediate aftermath of the Pullman railway strike.

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**Aditya Bamzai:** President Grover Cleveland signs into law a statute that recognizes Labor Day as a holiday.

**Risa Goluboff:** And that's an effort to mollify labor given the losses that they had just experienced?

**Aditya Bamzai:** Yes. In the moment, members of Congress are looking for ways to ensure that things don't spiral out of control.

[BRING MUSIC UP, THEN OUT]

**John Harrison:** Should we move to the labor injunction and sort of the long and bitter struggle over labor injunction to some extent growing out of Debs?

**Aditya Bamzai:** The other aspects of the aftermath here are the reactions to the type of injunction that the court in Debs blesses, which becomes a really important, effective tool that the government and industry has to stop workers from striking during this era. And I think that the best way that I can illustrate just how important this is to the time period is that Debs was decided in 1895, and when we look at the platform of the Democratic Party in 1896, we see there's a provision that says that "we denounce government by injunction as a new and highly dangerous form of oppression by which federal judges, in contempt of the laws of the states and rights of citizens, become at once legislators, judges, and executioners." Obviously referring to the Debs case and other like cases that arise at around the same time period.

**Risa Goluboff:** It's pretty unusual for something like that to make a political party platform, I would guess.

**Aditya Bamzai:** Not only that Risa, but if you look a few decades to the state of the union speech that's given by then-president William Howard Taft in 1909, he proposes that Congress enact a statute forbidding the issuing of any injunction or restraining order by a federal court without previous notice and a reasonable opportunity to be heard on behalf of the parties to be enjoined. Something again, that seems to be a response to the Debs case, and it's one of the rare, perhaps only instances where a president has spoken about the scope of equity in a state of the union address. But there's this other aspect to Debs, which is one that every civil procedure student can understand and reflect on. And that is that the injunction that is issued in Debs purports to enjoin everybody who has notice of it. Those are people who never had a chance to step into court and vindicate and litigate their own interests and perhaps their own objections to the injunction.

**John Harrison:** Right.

**Aditya Bamzai:** This whole question of whether a party who is going to be bound by a judgment in federal court must receive notice and an opportunity to be heard is an issue that the court confronts again in a variety of cases some decades later, and I think that's in fact, an important part of the Debs litigation.

**Risa Goluboff:** Hey Common Law listeners, I have to interject here and confess that we recorded this part of the conversation BEFORE the Supreme Court dismissed United States versus Texas as improvidently granted, so you might notice that our verb tenses are a little outdated. OK, back to the episode.

**John Harrison:** Aditya, why is the question of equity that's at issue in United States against Texas so connected to In re Debs? Why is that old question back again today?

**Aditya Bamzai:** United States versus Texas is a case that was brought by the United States, invoking its authority to bring lawsuits in equity.

### UNITED STATES v. TEXAS

**Justice John G. Roberts, Jr.:** We'll hear argument next in Case 21-588, United States versus Texas.

**Aditya Bamzai:** And the primary authority that the federal government relies on in its brief is in fact, In re Debs.

### UNITED STATES v. TEXAS

**Amy Coney Barrett:** You're asking just for the same injunction in your suit but just acknowledging that the United States has the ability to bring this kind of In re Debs suit?

**Elizabeth B. Prelogar:** Well, I think that it's important to separate out the question of authority to sue with what kind of relief might be appropriate.

**Risa Goluboff:** Why is it that the United States is the one suing as opposed to, you know, some person in Texas who would be covered by the law?

**Aditya Bamzai:** Right. So a clinic has in fact also sued, but there are various limitations on the rights of private parties to bring lawsuits that the state of Texas can raise.

**Risa Goluboff:** As part of the statute itself.

**Aditya Bamzai:** There are various limits as part of jurisdictional doctrines state of Texas might be able to raise against private parties.

**John Harrison:** Like sovereign immunity.

**Aditya Bamzai:** Sovereign immunity, for example.

**John Harrison:** Texas doesn't have immunity against the United States.

**Aditya Bamzai:** So the federal government would not be subject to some of those limits. And the federal government in parallel with private parties has brought this action to vindicate what we might describe as its sovereign interest or what the state of Texas describes as, hey, that's simply the interest of the private parties who should be bringing their own lawsuit.

**John Harrison:** So what reading of *In re Debs* did the United States want in the case against Texas?

**Aditya Bamzai:** So the United States in the case wants the broader reading. And the United States argues that it has the ability to bring a lawsuit to vindicate interferences with the general welfare. So the United States in its brief says that Debs endorsed the principle that the United States may sue to protect its own interests.

**John Harrison:** And how is the government understanding its own interests there?

**Aditya Bamzai:** The federal government is saying that the interest that the Debs court blessed was not connected to that proprietary interest in mail nor to a proprietary interest, more broadly understood, but rather just sovereign interest generally for the protection of the general welfare.

**John Harrison:** So the question whether equitable relief is limited to protecting some kind of property type interest is very much still with us.

**Aditya Bamzai:** That's right. That seems to be at least one of the potential limiting principles that the Supreme Court will grapple with to the extent that it addresses this question, which is about whether, and when the federal government can bring these claims in equity.

**Risa Goluboff:** So Aditya, we've been talking all about, you know, what happens in the Supreme Court as if it's something that happens somewhere else to other people. But in fact, YOU have argued in front of the Supreme Court. Can you tell us a little bit about that?

**Aditya Bamzai:** I was a new professor and I was learning how to prep for various courses. And I had this idea with respect to a particular issue that was pending before the Supreme Court. Specifically, I had a jurisdictional objection to a certain category of cases that the court had been hearing. And it had just been in my mind for some years, but I thought there's no way that I should raise this to the court. I'm a nobody. I'm a, you know, first-year professor sitting here.

**Risa Goluboff:** Professor at UVA Law, not a nobody.

[Laughing]

**Aditya Bamzai:** Well, um, it may surprise some of our students to think that we ever felt that way, but it is how I felt at that moment.

[Laughing]

**Aditya Bamzai:** I ended up sitting next to Dan Ortiz, who is the director of our Supreme Court clinic at a particular luncheon at some point that semester. I said, look, there's this case that's pending, and I've had this idea for a couple of years. What do you think about it? And he looked over to me at the end of the lunch and he said, you should file that brief. You should do it. That conversation gave me the confidence to put it together. I went back to my office that evening and I started writing it out, file it, and the solicitor general spends many pages discussing the issue that I had raised that hadn't been raised in the litigation up to that point. And as a result, I file an additional motion telling the court that, look, I should get some oral argument time here, because this is an issue that is obviously at stake in this litigation, and it's not something that the parties had briefed until I raised the question.

**John Harrison:** And neither party took your position, which was that the court didn't have jurisdiction, right?

**Aditya Bamzai:** That is correct, yes. Both of the parties agreed that the court had jurisdiction. So I file the motion requesting oral argument time. I can remember so clearly. It was a Friday and as I came back to my office – it just so happens I'm down the hallway from some of our PR staff – and one of them told me you're getting calls already. And I said calls for what?

[Laughing]

**Aditya Bamzai:** And they said, oh, you haven't heard. The Supreme Court granted your motion to argue — okay, come to arguments 10 days from now. And so we did a crash course on how to do this type of argument with some moot courts from law school colleagues. It was an extremely memorable experience that I will never forget.

**Risa Goluboff:** Could you tell us a little bit about the issue on which you were an amicus?

**Aditya Bamzai:** Absolutely. Well, we might be familiar with a famous Supreme Court case called Marbury versus Madison. The case had arisen because James Madison would not deliver a commission that had been signed by the outgoing president, John Adams to William Marbury. And Marbury had sued in the Supreme Court to compel Madison to deliver the commission. And as you might recall from that case, the Supreme Court has original jurisdiction over certain types of cases and appellate jurisdiction over all others. And the court in Marbury had held that the original jurisdiction is limited to the categories that are specified within the constitution. And the appellate jurisdiction could NOT be exercised over James Madison, who was the secretary of state, but rather has to be exercised over some category of cases from courts.

**John Harrison:** So if they treated Madison as if he'd been a court, they could have accepted the case, but he wasn't a court, he was an executive official.

**Aditya Bamzai:** That's correct.

**John Harrison:** And how did the Supreme Court, after you filed amicus and had oral argument as amicus, which as we've said is extremely unusual, how did the Supreme Court resolve the case?

#### **ORTIZ V. UNITED STATES OPINION ANNOUNCEMENT**

**Elena Kagan:** Professor Bamzai argued that our appellate jurisdiction doesn't cover cases coming from the CAAF. We spent quite a lot of our opinion addressing that argument.

**Aditya Bamzai:** So regrettably, the Supreme Court disagreed with me.

#### **ORTIZ V. UNITED STATES OPINION ANNOUNCEMENT**

**Elena Kagan:** We reject that argument for a number of reasons taken together.

**Aditya Bamzai:** Although there was in fact, a dissent by Justice Alito joined by Justice Gorsuch, that embraced the position that I had raised. It was encouraging to see how some of the same questions that I puzzled over were discussed. Certainly an episode that I'll never forget, and one of those issues that just keeps cropping up whenever I see a case come out of various independent adjudicatory bodies within the executive branch, or even within the military justice system. The set of issues that gets raised are deeply linked to the case that I had a role in, which is called *Ortiz versus United States*.

**John Harrison:** Well, you can't get away from *Marbury against Madison*.

**Aditya Bamzai:** No, we can't get away from it. I'll leave it at that.

**John Harrison:** Thanks, Aditya, this was great.

**Risa Goluboff:** Aditya, thank you so much for being here. This was just such a fascinating conversation. I really appreciate it.

**Aditya Bamzai:** Thanks, Risa. It's always fun to talk to both of you.

[THEME MUSIC IN AND UP, THEN UNDER AND OUT]

**Risa Goluboff:** So that was really interesting, John, and I learned a lot from Aditya and from you as I always do. So one thing I thought would be useful to highlight is why does the federal government feel the need to go into court in these kinds of cases? Right? What is it doing? What's it about? What does it think is at stake?

**John Harrison:** One very practical concern that was at stake in the 1890s in *Debs* was the national rail system. And it's important to remember railroads were the lifeblood of the American economy, and Chicago, where all this was happening, was a major rail hub. It's not like, you know, they also had O'Hare in those days. And so this was a serious issue and it was one of those issues that was federal and not just local. It was a major policy imperative.

**Risa Goluboff:** To go in a different direction from *Debs*, the case was so significant and in so many different ways, but one of the ways we haven't talked about yet is the kind of way federal jurisdiction more generally changes and the way federal court operations change in its wake. And

that's the kind of congressional response to what's going on in the courts.

**John Harrison:** And it's always important to remember that a lot of these issues are first raised in litigation, where some party relies on some perhaps quite general source of authority, like *In re Debs*, the government had to come up with both a right that the court could vindicate and then a theory about why equitable remedies would be available for that. And then often Congress comes along and – because these are very often, very politically controversial issues – tries to regularize, systematize what is going on. And we saw some of that in a series of statutes about the jurisdiction of the lower federal courts in the 1890s and the first decade of the 20th century.

**Risa Goluboff:** And that includes, right, the creation of three-judge district courts, when the constitutionality of statutes, of federal statutes is at issue, right?

**John Harrison:** Arising out of another landmark case involving a railroad – *Ex parte Young*.

**Risa Goluboff:** That's a big one.

**John Harrison:** That's a big one in which the Supreme Court, again, extended the court's authority to deal with regulation, protecting what we call economic rights and used an innovative method in equity to provide that protection. And then people in Congress said, well, the federal courts are now all over state statutes, and so that shouldn't be done by one federal judge, it should be done by three. And that's how we got the three-judge district court.

**Risa Goluboff:** Well, once again, we prove the relevance of history to contemporary law and legal institutions.

**John Harrison:** I think another part of the story is that hostility by some judges to labor injunctions and the diversity jurisdiction of the federal courts on, in which they were mainly issued underlies another really important case involving a railroad, which is *Erie* against *Tompkins*.

**Risa Goluboff:** Now we've got *Debs* and *Young* and *Erie*. So say more about the last one.

**John Harrison:** All of them cases involving railroads. And of course, Erie is the case in which the court substantially rethought what it had been doing in applying principles of private law in the diversity jurisdiction that weren't the same that the state courts used and that a lot of people thought the federal courts designed in large part to favor, of course, the railroads.

**Risa Goluboff:** So all of this leads one to think that – two things, right? One, wow, the railroads were just way more important in so many different ways than I think we can conceive of today. And two, in so many legal ways, right? I mean, the facts make the law. This really does seem to be an area in which federal jurisdiction and federal courts – both in the doctrinal sense and also in the, you know, statutory sense, right – they're so productive of so much law that comes out of them.

**John Harrison:** And a lot of law that is not immediately obviously about railroads, like the jurisdictional principles we've been talking about, the equitable principles we've been talking about. And Erie revolutionized judicial federalism, but in part, the revolution was caused by concerns about the railroads.

**Risa Goluboff:** There's a book in there, John. Has anyone written that book, "The Railroads and Federal Jurisdiction"?

**John Harrison:** It has been written about. I don't know if anybody has put this particular combination together.

**Risa Goluboff:** Well, I think it's ripe for the picking.

**John Harrison:** I hope nobody thinks we're railroading the listeners.

**Risa Goluboff:** Oh. This riff really went off the rails, John.

[Laughing]

[THEME MUSIC IN, THEN UP, THEN UNDER]

**John Harrison:** That does it for this episode of Common Law. If you'd like more information on Aditya Bamzai's work on *In re Debs*, please visit our website [Commonlawpodcast.com](http://Commonlawpodcast.com). There you'll also find previous episodes, links to our Twitter feed, and more.

**Risa Goluboff:** And in two weeks, UVA law professor Cathy Hwang returns to co-host, as we interview our colleague Andrew Hayashi, who's written extensively about the link between property taxes and social justice.

**Andrew Hayashi:** To find that the largest benefits of the property tax caps go to neighborhoods that are 91% white and the size of the tax savings is over \$28,000 per household – those are big numbers.

**Risa Goluboff:** We can't wait to share that with you. I'm Risa Goluboff.

**John Harrison:** And I'm John Harrison. Thanks for listening.

[THEME MUSIC UP, THEN UNDER]

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[THEME MUSIC UP THEN OUT]