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Extending the Younger Abstention Doctrine to State Administrative Proceedings: Williams v. Red Bank Board of Education

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COMMENTS

EXTENDING THE *YOUNGER* ABSTENTION DOCTRINE TO STATE ADMINISTRATIVE PROCEEDINGS: *WILLIAMS v. RED BANK BOARD OF EDUCATION*

The abstention doctrine enables a federal court, under certain circumstances, to decline the exercise of jurisdiction notwithstanding that a case is properly before it.[1] In *Younger v. Harris*,[2] the Supreme Court, relying upon the tenet that comity commands re-

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[1] County of Allegheny v. Frank Mashudo Co., 360 U.S. 185, 188 (1959). The abstention doctrine may be invoked only when significant interests exist which countervail a court's duty to adjudicate a case that is properly before it. *Id.* at 188-89. Because of the diversity of these interests, the federal abstention doctrine appears in a variety of forms and is employed after consideration of a number of factors, including "the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions." Martin v. Creasy, 360 U.S. 219, 224 (1959). One type of abstention had its genesis in the case of Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941). *Pullman* abstention is invoked when a claim that particular state action is unconstitutional turns upon unsettled questions of state law. *Id.* at 500-01. This type of abstention is premised upon the reluctance of federal courts to decide issues which could be displaced by subsequent state adjudications. *Id.* A federal court should refrain from passing upon a constitutional issue when resolution of such issue would be rendered unnecessary by a state court's construction of a particular state law. *See* Clay v. Sun Ins. Office, Ltd., 363 U.S. 207, 212 (1960). It does not follow, however, that *Pullman* abstention should be applied simply because there is a "doubtful issue of state law," Baggett v. Bullitt, 377 U.S. 360, 375 (1964), for application of the doctrine is in the wise discretion of the court and should be resolved on a case-by-case basis, *id.*

A second type of abstention was recognized by the Supreme Court in Burford v. Sun Oil Corp., 319 U.S. 315 (1943). Pursuant to the *Burford* doctrine, abstention will be deemed proper when a case is generated by the order of a state administrative agency, the case concerns important and factually complex state policies, and a state court has demonstrated particular expertise in the area at issue. *Id.* at 318-25, 331; Alabama Pub. Serv. Comm'n v. Southern Ry., 341 U.S. 341, 345-51 (1951). For further discussion of the different abstention doctrines, see Field, *The Abstention Doctrine Today*, 125 U. PA. L. REV. 590 (1977); Comment, *The Abstention Doctrine: Is* Pullman *Dead in Federal Question Cases?*, 30 BAYLOR L. REV. 279 (1978); Comment, *The Abstention Doctrine: Closing the Federal Forum:* Juidice v. Vail, 29 U. FLA. L. REV. 1029, 1031-38 (1977).

[2] 401 U.S. 37 (1971).

spect for state functions,[3] held that a federal court may abstain from deciding a case where such adjudication would interfere with pending state criminal proceedings.[4] Subsequently, the *Younger*

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[3] Comity is defined as one nation's respect, within its own territory, for the legislative, executive, and judicial mandates of another nation. Hilton v. Guyot, 159 U.S. 113, 163-64 (1895); McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Protections, Part I*, 60 VA. L. REV. 1, 45 (1974). Pursuant to this principle, the laws of a foreign country and the rights flowing therefrom will be enforced by a United States court, Bostrom v. Seguros Tepeyac, S.A., 225 F. Supp. 222, 228 (N.D. Tex. 1963), *aff'd in part, rev'd in part*, 347 F.2d 168 (5th Cir. 1965), provided that the public policy of the United States is not violated, Fleeger v. Clarkson Co., 86 F.R.D. 388, 392 (N.D. Tex. 1980); Sumitomo Corp. v. Parakopi Compania Maritima, S.A., 477 F. Supp. 737, 742 (S.D.N.Y. 1979), *aff'd*, 620 F.2d 286 (2d Cir. 1980). Additionally, comity principles are implicated when one state is asked to give effect to the laws of a sister state. *See* Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319, 321 (S.D. Ga. 1976). The comity doctrine assumes a different posture, however, when it is applied in the area of federal-state relations. In this context, the doctrine is invoked out of "a proper respect for state functions," thereby enabling each state to operate free of federal interference. Younger v. Harris, 401 U.S. 37, 44 (1971). Furthermore, principles of comity are invoked in the area of federal-state relations to determine "the availability and scope of equitable relief." Rizzo v. Goode, 423 U.S. 362, 379 (1976).

[4] 401 U.S. at 43-54. An examination of the history of *Younger* abstention must begin with the maxim that a court of equity will not interfere with the enforcement of even an unconstitutional state criminal statute. *See In re* Sawyer, 124 U.S. 200, 210 (1888). An exception to this rule developed, however, where "the circumstances are exceptional and the danger of irreparable loss is both great and immediate." Cline v. Frink Dairy Co., 274 U.S. 445, 452 (1927). In *Ex parte* Young, 209 U.S. 123 (1908), for example, the Supreme Court indicated that federal equitable relief was available when a criminal proceeding under an unconstitutional state statute was threatened rather than pending. *Id.* at 161-62. The next major development in the evolution of *Younger* abstention occurred at the height of the civil rights movement, when the Supreme Court decided the case of Dombrowski v. Pfister, 380 U.S. 479 (1965). In *Dombrowski*, the plaintiffs sought federal injunctive relief against enforcement of state criminal laws regulating Communists and subversive activities. *Id.* at 482. The Supreme Court, in granting the requested relief, reasoned that the threatened prosecution not only was designed to harass plaintiffs and to discourage the exercise of constitutionally protected rights, *id.* at 489-90, but also was to be brought under a statute which was an overbroad limitation on first amendment activity, *id.* at 490-92. Subsequently, the Supreme Court seemed to reaffirm the *Dombrowski* principle that a facially unconstitutional statute is an appropriate justification for federal equitable relief. *See* Cameron v. Johnson, 390 U.S. 611, 615 (1968).

It is interesting to note that these various developments do not appear to create a precedential basis for *Younger* abstention. What they do reflect, however, is the evolution of federal law on the subject of federal court interference with state prosecutions. For a more detailed discussion of the historical developments leading to *Younger*, see Maraist, *Federal Intervention in State Criminal Proceedings*: Dombrowski, Younger *and Beyond*, 50 TEX. L. REV. 1324, 1325-32 (1972); Note, *Implications of the* Younger *Cases For the Availability of Federal Equitable Relief When No State Prosecution is Pending*, 72 COLUM. L. REV. 874, 876-85 (1972); Comment, *Federal Injunctive Relief: What Remains After* Younger v. Harris?, 60 KY. L.J. 216, 218-20 (1971).

The *Younger* Court recognized that federal court abstention avoids duplicative proceedings on the federal and state levels. 401 U.S. at 44. Such a proposition, the Court indicated,

abstention rule was extended to include civil judicial proceedings[5] involving important state interests.[6] It has been unclear, however,

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necessarily is premised upon a belief that state courts are adequate tribunals in which to vindicate federal claims. *Id.*; *accord*, Morial v. Judiciary Comm'n, 565 F.2d 295 (5th Cir. 1977), *cert. denied*, 435 U.S. 1013 (1978). Notably, however, the Supreme Court has recognized that federal injunctive relief may be granted despite pending state prosecutions, but only in certain exceptional circumstances. 401 U.S. at 46-54. One exigent circumstance is when there exists a showing of irreparable injury which is "both great and immediate." *Id.* at 46 (quoting Fenner v. Boykin, 271 U.S. 240, 246 (1926)). Another exigency occurs when a statute is "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." 401 U.S. at 53-54 (quoting Watson v. Buck, 313 U.S. 387, 402 (1941)). Finally, a "showing of bad faith, harassment, or any other unusual circumstance" may justify such federal interference. 401 U.S. at 54. The same reasoning underlying the imposition of federal injunctive relief has been applied to determine the propriety of a federal declaratory judgment during the pendency of state criminal proceedings. *See* Samuels v. Mackell, 401 U.S. 66, 68-74 (1971); *accord*, Rosko v. Pagano, 466 F. Supp. 1364, 1371 (D.N.J. 1979).

[5] Trainor v. Hernandez, 431 U.S. 434, 443-44 (1977); Juidice v. Vail, 430 U.S. 327, 333-36 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 594 (1975). *See generally* Note, *Federal Intervention In State Court Proceedings: Expansion of the* Younger *Doctrine by* Huffman v. Pursue, Ltd., 29 Sw. L.J. 636, 641-44 (1975) (implicating the expansion of *Younger* to all civil proceedings). The *Younger* abstention doctrine initially was extended to pending state civil proceedings in Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). In *Huffman*, the state brought a nuisance action to close a theatre showing obscene films. *Id.* at 598. Finding abstention applicable, the Court reasoned that "the proceeding is both in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials." *Id.* at 604. Consequently, interference with the state proceedings, observed the Court, would have prevented the state from implementing its policies. *Id.* at 604-05.

The *Younger* abstention doctrine was extended further in Juidice v. Vail, 430 U.S. 327 (1977), in which the Supreme Court held that the doctrine was applicable to a civil contempt proceeding. *Id.* at 335. *Juidice* was significant in that it extended application of the abstention principle beyond the criminal or quasi-criminal context. *Id.* Finally, the Court applied abstention in Trainor v. Hernandez, 431 U.S. 434 (1977), wherein the Illinois Department of Public Aid instituted a statutory attachment proceeding against a welfare recipient who fraudulently concealed assets while receiving public assistance. *Id.* at 435-39. Over claims that the statutory proceeding was unconstitutional, the Court held that abstention was proper because there was a strong state interest in protecting the fiscal integrity of public-assistance programs. *Id.* at 444.

[6] Moore v. Sims, 442 U.S. 415, 423 (1979); *see* Kenner v. Morris, 600 F.2d 22, 24 (6th Cir. 1979). In *Moore*, the Supreme Court noted that *Younger* abstention was "fully applicable" to state proceedings implicating important state interests. 442 U.S. at 423. While the *Younger* doctrine was undergoing expansion into the civil setting, the Supreme Court was emphatic in retaining the requirement that there be an important state interest. The *Younger* decision itself presumably was premised upon a recognition that all criminal prosecutions were inherently significant state functions. *See* 401 U.S. at 43-44. The *Huffman* Court applied the abstention doctrine to a civil proceeding which was in aid of and closely related to the state's criminal laws, 420 U.S. at 604, and, therefore, premised the extension upon the desire to protect the important interests which underlie those laws, *id.* at 604-05. As the doctrine progressed further into the realm of civil proceedings, the Court reemphasized the requirement of an important state interest. 442 U.S. at 423; Trainor v. Hernandez,

whether a federal court may abstain from deciding a matter when its determination would impact upon a pending state administrative proceeding. Recently, in *Williams v. Red Bank Board of Education*,[7] the Third Circuit Court of Appeals, further extending the abstention doctrine, held that abstention properly may be applied to prevent federal interference with pending state administrative proceedings.[8]

In *Williams*, charges of professional misconduct were filed against a tenured New Jersey schoolteacher.[9] Although the charges initially were instituted with the Red Bank Board of Education, the case ultimately was referred to the New Jersey Office of Administrative Law.[10] During the pendency of the administrative proceeding, the now suspended schoolteacher commenced an action in federal district court alleging that the dismissal proceeding was a response to her exercise of first amendment rights.[11] Accordingly, she sought an injunction against further prosecution in the state proceeding, as well as damages and attorney's fees.[12] The district

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431 U.S. 434, 444 (1977). It should be observed that this abstention principle applies only if the state is a party to the proceedings, Cassidy v. Virginia Carolina Veneer Corp., 652 F.2d 380, 383 (4th Cir. 1981); Johnson v. Kelly, 583 F.2d 1242, 1249 (3d Cir. 1978), and the proceedings are not instituted by the state in bad faith or for purposes of harassment, 442 U.S. at 432.

[7] 662 F.2d 1008 (3d Cir. 1981).

[8] *Id.* at 1013. Although cases other than *Williams* have applied *Younger* abstention to state administrative proceedings, the *Williams* court was the first to render a detailed and independent analysis of the issue. *See* note 39 and accompanying text *infra*.

[9] 662 F.2d at 1010. Three charges were filed against Portia Williams, a New Jersey teacher. *Id.* at 1010-11. The first charge alleged that Williams struck students with a ruler, thereby violating a New Jersey statute forbidding corporal punishment of pupils. *Id.* at 1010. The second charge alleged that Williams acted unprofessionally by questioning in front of the entire class the cleanliness and health habits of a student. *Id.* Finally, the third and most significant charge accused Williams of making anti-Semitic remarks at a Board of Education public meeting. *Id.* Her behavior allegedly constituted conduct unbecoming an employee of the Board. *Id.*

[10] *Id.* After the charges were filed with the Red Bank Board of Education, the matter was referred to the New Jersey State Commissioner of Education who, in turn, referred the charges to the New Jersey Office of Administrative Law. *Id.*

[11] *Id.* at 1010-11. Williams brought the federal action against the Board of Education and the State Commissioner of Education pursuant to section 1983, which provides that anyone who causes damages to another person while acting under color of state law shall be liable in a civil suit for damages or other proper relief. 42 U.S.C. § 1983 (1976 & Supp. III 1979). Based upon her claim that the disciplinary proceedings were retaliatory, Williams sought a declaration that her right of free speech had been violated, an injunction against further administrative proceedings, an order that her personnel file be expunged of any record of the charges, and an award of constitutional damages and attorney's fees. 662 F.2d at 1011.

[12] 662 F.2d at 1011. Section 1983 allows a court, in its discretion, to award reasonable

court, applying the *Younger* doctrine, dismissed the action,[13] finding that the state's interest in disciplining teachers was important enough to permit abstention.[14]

The United States Court of Appeals for the Third Circuit agreed that abstention was warranted,[15] but vacated and remanded the district court's order on other grounds.[16] Writing for an undivided panel, Judge Garth stated that the abstention inquiry should focus upon the importance of the state interest involved, rather than upon the nature, judicial or administrative, of the state proceeding.[17] Recognizing that states often implement important poli-

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attorney's fees to the prevailing party, other than the United States, in a section 1983 suit. 42 U.S.C. § 1983 (1976 & Supp. III 1979).

[13] 502 F. Supp. 1366, 1371 (D.N.J. 1980), *vacated and remanded*, 662 F.2d 1008 (3d Cir. 1981).

[14] 502 F. Supp. at 1369-70. The district court determined the propriety of abstention by recognizing a state's strong interest in regulating its public school system. *Id.* at 1369. The procedural safeguards afforded a New Jersey schoolteacher against whom charges are brought were noted by the court as demonstrating the importance of the interest involved. *Id.* Indeed, the court believed that a refusal to abstain presented a dangerous potential for interfering with the state's legitimate right to discipline teachers. *Id.* at 1370. Significantly, the absence of pending state judicial proceedings was not found to be a factor militating against the invocation of the *Younger* abstention doctrine. *Id.* Accordingly, the district court summarily treated the fact that the pending state proceedings were administrative by noting that Williams could appeal, as of right, to the New Jersey courts from an adverse administrative determination. *Id.*

[15] 662 F.2d at 1013.

[16] *Id.* at 1023-24. Although the Third Circuit determined that the district court properly abstained, it nevertheless vacated the lower court's order of dismissal and reinstated part of Williams' complaint. *Id.* The reinstatement related to the claims that Williams could not assert in the state administrative proceeding, namely, the claims for constitutional damages and attorney's fees. *Id.* at 1024. Since this relief could not be granted in the state administrative proceeding, the court was unable to justify dismissal of that portion of the complaint. *Id.* at 1023. The proper course of action, therefore, was held to be retention of jurisdiction over the claims that could not be resolved in the administrative forum. *Id.* All federal proceedings on these issues, however, were to be stayed until there was a final administrative determination. *Id.* at 1023-24.

[17] *Id.* at 1015-17. In Rizzo v. Goode, 423 U.S. 362 (1976), the concepts of federalism and comity were invoked to deny federal equitable relief against a state executive department practice. *Id.* at 379-80. Following an alleged pattern of unconstitutional treatment by police officers, the respondents sought equitable relief in federal district court under section 1983. *Id.* at 370. The district court observed that police department procedures tended to discourage the filing of civilian complaints, and thus, provided inadequate discipline for police misconduct. *Id.* at 368-69. This finding resulted in the district court directing the Police Commissioner and the City Manager to draft a comprehensive program for dealing adequately with civilian complaints. *Id.* at 369-70. On appeal from the Third Circuit's affirmance of the lower court's decision, the Supreme Court reversed, focusing upon the relationship between the federal judiciary and state governments. The Court reasoned that the concept of federalism was applicable notwithstanding that equitable relief was being sought against a practice of the executive branch of a state government. *Id.* at 379-81. The *Rizzo* case appears to

cies through administrative regulation,[18] the court reasoned that the comity considerations underlying the *Younger* doctrine precluded an outright refusal to abstain.[19] Although the court favored federal abstention when "strong and compelling state interests" are at stake,[20] it nevertheless noted that abstention will be proper only if the state administrative proceeding provides an adequate forum in which to raise federal claims.[21] Furthermore, in holding that the district court properly abstained, Judge Garth determined that because a "substantial portion" of the relief being sought in the federal court could be granted in the state proceeding, the latter was an adequate forum in which to vindicate federal claims.[22] The court vacated the lower court's order of dismissal, however, with respect to the claims for constitutional damages and attorney's fees since such relief could not be awarded in the state administrative action.[23] Accordingly, the district court was ordered to retain jurisdiction, and merely stay the federal proceeding until

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provide a proper perspective on the role of federalism in our dual system of government. Clearly, federalism is a concept that mandates a respect not merely for state courts but also for state governments themselves. Just as the *Rizzo* Court was not overly concerned with the executive-judicial distinction, the *Williams* court did not focus upon the distinction between administrative and judicial proceedings. Indeed, *Rizzo* applied federalism to prevent federal judicial interference with the state executive branch, *see id.*, while the Third Circuit in *Williams* used federalism to avoid a federal injunction against a state administrative proceeding, *see* 662 F.2d at 1017. It is submitted, therefore, that the *Williams* court simply has adhered to the federalistic respect for state government mandated by the Supreme Court in *Rizzo*.

[18] 662 F.2d at 1016.

[19] *Id.* at 1016-17.

[20] *Id.* at 1017. The court determined that the state's interest in education was sufficiently compelling to warrant application of the *Younger* abstention doctrine. *Id.* at 1018-19. Indeed, states often implement important interests through administrative bodies. New York, for example, supervises and disciplines medical practitioners through the New York State Board for Professional Medical Conduct. *See* Schachter v. Whalen, 581 F.2d 35, 36 (2d Cir. 1978). Similarly, Alabama regulates the licensing of optometrists through the Alabama Board of Optometry. *See* Gibson v. Berryhill, 411 U.S. 564, 566 (1973).

[21] 662 F.2d at 1020. The requirement that the state proceeding be adequate to vindicate federal claims is a fundamental element of *Younger* and its progeny. *See* 401 U.S. at 49. Indeed, the Supreme Court, in the *Juidice* decision, reiterated the necessity of adequate state proceedings. 430 U.S. at 337. Thus, when the *Williams* panel extended the *Younger* doctrine to state administrative proceedings, it maintained the requirement that the state proceedings be adequate. 662 F.2d at 1020.

[22] 662 F.2d at 1022. Williams sought various forms of relief from the federal court. *See* note 11 *supra*. Assuming that the disciplinary action was in retaliation to the exercise of Williams' first amendment rights, the only relief that she could not be granted in the state proceeding would be constitutional damages and attorney's fees. *Id.* at 1023.

[23] 662 F.2d at 1023-24; *see* note 22 *supra*.

completion of the state action.[24]

The question of whether *Younger* abstention should be extended to prevent federal interference with state administrative proceedings has resulted in a body of inconsistent case law.[25] Two Supreme Court decisions have contributed to the uncertainty in this area. In *Geiger v. Jenkins*,[26] for example, a physician attempted to enjoin the enforcement of a state statutory licensing procedure.[27] The federal district court, relying upon the federal anti-injunction statute,[28] rather than upon the *Younger* doctrine, denied relief because state judicial and administrative proceedings were pending.[29] The Supreme Court, citing *Younger*, summarily af-

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[24] 662 F.2d at 1023. Because abstention usually has the effect of denying all federal relief, the *Williams* court noted that dismissal typically is the proper course for the federal court to follow. *Id.* at 1022. As an illustration, the court posited a situation where the federal plaintiff seeks an injunction against state criminal prosecutions. *Id.* In such a circumstance, if the federal court abstains, the state trial will proceed. *Id.* at 1022-23. After the state proceeding has terminated, however, an injunction against prosecution of the state action is meaningless. *Id.* at 1023. Therefore, dismissal is proper at the time of abstention because it is at that stage that the federal court's role has come to an end. *Id.* at 1023.

[25] *See* notes 37-43 and accompanying text *infra*.

[26] 316 F. Supp. 370 (N.D. Ga. 1970), *aff'd mem.*, 401 U.S. 985 (1971).

[27] 316 F. Supp. at 371. Charges against the doctor seeking revocation of his license were filed with the State Board of Medical Examiners of Georgia. *Id.* The doctor subsequently brought an action in federal district court seeking an injunction against enforcement of the state licensing statute on the ground that it was unconstitutionally vague and overbroad. *Id.* at 372.

[28] *Id.* at 372; *see* 28 U.S.C. § 2283 (1976). Section 2283 provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1976). For a discussion of the "expressly authorized" exception to the anti-injunction rule, see Mitchum v. Foster, 407 U.S. 225, 228-43 (1972). Section 2283 manifests the public policy, relied upon by *Younger*, that state adjudications should proceed free from federal court interference. *See* 401 U.S. at 43. The *Younger* abstention doctrine, however, is a consideration, separate and apart, from the applicability of section 2283. Henry v. First Nat'l Bank, 595 F.2d 291, 300 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980). Thus, there appears to be a two-level inquiry when a federal court injunction is sought against a state proceeding. The first level deals with section 2283, while the second level deals with the *Younger* abstention considerations. *See* Mitchum v. Foster, 407 U.S. at 229-30.

[29] 316 F. Supp. at 374. The federal district court denied the injunction because state proceedings were pending before the state courts and the Board of Medical Examiners of Georgia. *Id.* at 372. The court based its refusal to grant injunctive relief upon the anti-injunction statute. *Id.* at 372-73; *see* note 28 and accompanying text *supra*. At the time the district court decided *Geiger*, the Supreme Court had not yet rendered the *Younger* decision. *Younger* was decided, however, by the time *Geiger* reached the Supreme Court. Hence, the timing of these two cases explains why the district court in *Geiger* did not rely upon *Younger* in denying the injunction.

firmed.[30] Thus, although the *Geiger* affirmance may be based upon the quasi-criminal nature of the proceedings,[31] the precise rationale for the Court's determination has remained "somewhat opaque."[32]

Subsequently, in *Gibson v. Berryhill*,[33] a group of optometrists sought a federal injunction against a state license revocation proceeding.[34] The Supreme Court held that since institutional bias rendered the administrative proceeding inadequate, the district court's refusal to abstain was proper.[35] Implicit in this reliance upon the inadequacy of the particular state proceeding is the notion that it is proper to abstain in favor of adequate administrative proceedings.[36]

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[30] Geiger v. Jenkins, 401 U.S. 985 (1971).

[31] The Supreme Court's summary affirmance in *Geiger* is problematic in that it does not explain why *Younger* was controlling. As has been noted, the *Geiger* case involved state proceedings which were pending at both the judicial and administrative levels. *See* note 29 *supra*. It appears unclear, therefore, how much weight the *Geiger* court attached to the fact that proceedings were pending in the state courts. Certainly, there was no indication that the Supreme Court would have affirmed by mere citation to *Younger* had the state proceedings merely been administrative. *See* 401 U.S. at 985. It is submitted that the affirmance may have been based solely upon the fact that the pending state proceedings were quasi-criminal. *See* 316 F. Supp. at 372. This explanation is supported by the fact that the early extensions of the *Younger* doctrine into the civil area were premised upon the criminal nature of the state civil proceedings. *See* Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975).

[32] *See* Gibson v. Berryhill, 411 U.S. 564, 576 (1973). In *Gibson*, the Supreme Court characterized the *Geiger* holding as "somewhat opaque," indicating that such uncertain status resulted from the Court's summary affirmance of that case. *Id.* Thus, whatever import *Geiger* may have had at the time of the summary affirmance, the Court clearly was according it little weight at the time of the *Gibson* decision. This may be inferred from the language in *Gibson* stating that the applicability of *Younger* to state civil proceedings was an open question. *Id.* at 575-76. In the interests of clarity, it should be observed that *Gibson* was decided prior to *Huffman, Trainor*, and the other cases extending *Younger* into the realm of civil proceedings. *See* note 5 *supra*.

[33] 411 U.S. 564 (1973).

[34] *Id.* at 568. The unprofessional conduct charges against the optometrists, which stemmed from the acceptance of employment in a corporation, were filed by the Alabama Optometric Association. *Id.* at 567. The proceedings were to be held before the Alabama Board of Optometry, an agency with the authority to revoke licenses. *Id.* While the charges were pending, however, the optometrists filed suit in federal district court seeking an injunction against the proceedings on the ground that they were violative of due process. *Id.* at 568-69.

[35] *Id.* at 578-79. The Court determined that a possibility of bias existed because the Board, before whom the administrative proceedings were pending, had a financial stake in the outcome of the controversy. *Id.* Specifically, the members of the Board, who were optometrists themselves, would experience an increase in business if the optometrists charged with unprofessional conduct had their licenses revoked. *Id.* at 578.

[36] *Cf.* Grandco Corp. v. Rochford, 536 F.2d 197, 206 (7th Cir. 1976) (abstention is inappropriate when the administrative proceeding is not pending before an established adjudica-

The confusion engendered by the Supreme Court's failure to address definitively the issue of whether abstention should ever be extended to administrative proceedings is apparent from several lower federal court decisions.[37] Courts in the Second Circuit, for example, have determined that abstention in favor of state administrative proceedings is proper.[38] These courts have not developed an independent basis of analysis, but rather, have adopted the dubious *Geiger/Gibson* rationales.[39] In contrast, there is authority for the proposition that federal courts should not abstain when the

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tory body and state court review is a limited examination on the record).

[37] *Compare* McCune v. Frank, 521 F.2d 1152, 1158 (2d Cir. 1975) (*Younger* could be applied to administrative proceedings) *with* Jamestown School Comm. v. Schmidt, 427 F. Supp. 1338, 1344 (D.R.I. 1977) (*Younger* applies to state judicial proceedings only) *and* Pollard v. Panora, 411 F. Supp. 580, 589 (D. Mass. 1976) (*Younger* is inapplicable to a statutory administrative proceeding).

[38] *See* McCune v. Frank, 521 F.2d 1152, 1158 (2d Cir. 1975); Schachter v. Whalen, 445 F. Supp. 1376, 1380-81 (S.D.N.Y.), *aff'd per curiam on other grounds*, 581 F.2d 35 (2d Cir. 1978); Lang v. Berger, 427 F. Supp. 204, 214-15 (S.D.N.Y. 1977).

[39] *See* McCune v. Frank, 521 F.2d 1152, 1158 (2d Cir. 1975). In *McCune*, disciplinary charges were brought against a police officer for violating a departmental grooming regulation. *Id.* at 1153. Based upon his claim that the regulation was unconstitutional, the officer commenced an action in federal district court. *Id.* The district court temporarily restrained the state proceeding and ultimately enjoined enforcement of the regulation. *Id.* at 1154. Remanding the case, the Second Circuit instructed the district court to consider the applicability of *Younger* to the disciplinary proceeding. *Id.* at 1157. Clearly, the Second Circuit did not determine the applicability of *Younger* to the proceedings in *McCune* because, at the time of the district court's decision, *Huffman* had not yet been decided. The *McCune* court noted, however, that *Geiger* established that administrative proceedings could present a proper case for abstention since a judicial forum was not a "pre-requisite" for application of *Younger*. *Id.* at 1158.

In Lang v. Berger, 427 F. Supp. 204, 214-15 (S.D.N.Y. 1977), the court relied upon *McCune* to reach a similar conclusion. In *Lang*, the plaintiff was a physician who was disqualified from New York's Medicaid program for allegedly submitting undocumented invoices and giving improper prescriptions. *Id.* at 207-08. During the pendency of the state hearing the physician commenced an action in federal district court alleging violations of his constitutional rights. *Id.* at 207-09. The district court, relying on *McCune*, denied equitable relief on the ground that federal courts must respect state administrative proceedings as well as state judicial proceedings. *Id.* at 214-15.

Finally, in Schachter v. Whalen, 445 F. Supp. 1376, 1380-81 (S.D.N.Y.), *aff'd per curiam on other grounds*, 581 F.2d 35 (2d Cir. 1978), the court cited *Gibson* and *Geiger* as authority for abstaining during the pendency of state administrative proceedings. 445 F. Supp. at 1380. In *Schachter*, a doctor sought to enjoin professional misconduct proceedings pending before the New York State Board for Professional Medical Conduct. *Id.* at 1378. This administrative body served the doctor with a subpoena duces tecum directing him to furnish the medical records of people whom he treated with laetrile. *Id.* at 1379. The court held that "the state interests at issue . . . [were] substantial and certainly sufficient to entitle the medical disciplinary proceedings to the deference afforded by the doctrine of abstention." *Id.* at 1381.

pending state proceeding is administrative.[40] Like the authorities that favor abstention in this context, however, the analytical bases for these pronouncements are unpersuasive. For instance, some courts have relied blindly upon the assertion that *Younger* and its progeny apply only to judicial proceedings.[41] Notably, one tribunal even refused to abstain upon the ground that the administrative proceeding was unrelated to the state's criminal laws.[42] It is suggested that reliance upon this rationale fails to consider that *Younger* abstention has been applied to state judicial proceedings where important state interests, other than criminal, were involved.[43]

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[40] *E.g.*, Jamestown School Comm. v. Schmidt, 427 F. Supp. 1338, 1344 (D.R.I. 1977); Clark v. Weeks, 414 F. Supp. 703, 707 (N.D. Ill. 1976); Pollard v. Panora, 411 F. Supp. 580, 588-89 (D. Mass. 1976); Hodory v. Ohio Bureau of Employment Servs., 408 F. Supp. 1016, 1020 (N.D. Ohio 1976), *rev'd on other grounds*, 431 U.S. 471 (1977); *see* Rite Aid Corp. v. Board of Pharmacy, 421 F. Supp. 1161, 1167 (D.N.J. 1976), *appeal dismissed*, 430 U.S. 951 (1977).

[41] Jamestown School Comm. v. Schmidt, 427 F. Supp. 1338, 1344 (D.R.I. 1977); Hodory v. Ohio Bureau of Employment Servs., 408 F. Supp. 1016, 1020 (N.D. Ohio 1976), *rev'd on other grounds*, 431 U.S. 471 (1977). In *Jamestown*, two town school committees refused to adhere to a Rhode Island statute requiring that town school committees provide transportation for students to regionalized sectarian schools within a 15 mile radius. 427 F. Supp. at 1342. The supposed justification for this refusal was that adherence to the statutory mandate would violate the establishment clause of the first amendment. *Id.* The Commissioner of Education determined, however, that the committees had a duty to transport the children. *Id.* While the Commissioner's decision was on appeal to the Board of Regents, the school committees brought an action in federal district court seeking declaratory and injunctive relief. *Id.* at 1340-43. Notwithstanding the claim that *Younger* abstention should be applied due to the pendency of the Board of Regents proceeding, the court tersely stated that "the policies which the comity doctrine seeks to vindicate are implicated only when federal courts interfere with state *judicial* proceedings." *Id.* at 1344 (emphasis in original) (citing Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975)).

The *Hodory* court was equally vague in reaching a similar conclusion. In that case, a steelworker was denied unemployment benefits pursuant to an Ohio statute. 408 F. Supp. at 1018. While his administrative appeal was pending, a suit was commenced in federal district court. *Id.* Although recognizing that the *Younger* doctrine had been extended to civil proceedings, the court nevertheless found that "the Supreme Court in *Huffman* made it clear that its holding was limited to the enjoining of ongoing state-initiated *judicial* proceedings." 408 F. Supp. at 1019-20 (emphasis in original).

[42] *See* Rite Aid Corp. v. Board of Pharmacy, 421 F. Supp. 1161, 1167 (D.N.J. 1976), *appeal dismissed*, 430 U.S. 951 (1977). The *Rite Aid* court stated that the abstention principles of *Younger* and *Huffman* do not apply to ordinary state agency proceedings "where a criminal nexus is absent." 421 F. Supp. at 1167. The precedential value of this case, however, has been diminished by subsequent decisions which have applied *Younger* in situations further removed from criminal enforcement. *See* note 43 *infra*.

[43] *See, e.g.*, Moore v. Sims, 442 U.S. 415, 434-35 (1979) (state child custody proceeding); Trainor v. Hernandez, 431 U.S. 434, 444 (1977) (state civil enforcement action brought by state in sovereign capacity); Juidice v. Vail, 430 U.S. 327, 335 (1977) (state contempt proce-

Amid the disagreement prevailing in the lower federal courts, the *Williams* panel unequivocally has proclaimed that *Younger* abstention can be applied to state administrative proceedings.[44] It is submitted that this novel application of the abstention doctrine is consistent with the concept of comity upon which the *Younger* decision itself is premised.[45] In its broadest sense, the notion of comity, as applied in the abstention area, demands that federal courts defer not merely to state *courts*, but rather to the states *themselves*.[46] Hence, if important state interests are involved in an administrative action, the concept of comity would appear to support a federal court's decision to defer to the state proceeding, provided, of course, that the state agency is an adequate forum in which to determine the federal claims that have been raised.[47]

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dures); Kenner v. Morris, 600 F.2d 22, 24 (6th Cir. 1979) (state contempt proceedings despite alleged unconstitutionality of alimony statute); Gipson v. New Jersey Supreme Court, 558 F.2d 701, 704 (3d Cir. 1977) (state attorney disciplinary proceedings); Anonymous v. Association of the Bar, 515 F.2d 427, 433-34 (2d Cir.) (state attorney disciplinary proceedings), *cert. denied*, 423 U.S. 863 (1975). *But see* Cicero v. Olgiati, 410 F. Supp. 1080, 1090 (S.D.N.Y. 1976) (refusal to abstain in favor of state parole system).

[44] 662 F.2d at 1013. The *Williams* court noted that despite indications that *Younger* should be applied to state administrative proceedings, it had never been so held. *Id.* at 1013-14. Abstention in favor of state administrative actions had been practiced prior to *Williams*, however, by the Second Circuit. *See* notes 38-39 and accompanying text *supra*. Since these Second Circuit decisions were supported rather anemically by *Gibson* and *Geiger*, *see* notes 26-36 and accompanying text *supra*, it appears that the *Williams* decision is the first case to abstain in favor of administrative proceedings after independent analysis.

[45] *See* Younger v. Harris, 401 U.S. 37, 44 (1971). Subsequent cases have also recognized the vital role that comity plays in the *Younger* abstention doctrine. *See* Trainor v. Hernandez, 431 U.S. 434, 444 (1977); Juidice v. Vail, 430 U.S. 327, 334 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 601 (1975).

[46] The *Younger* opinion defined comity as

> [a] proper respect for *state functions*, a recognition of the fact that the entire country is made up of a Union of separate *state governments*, and a continuance of the belief that the National Government will fare best if the *States and their institutions* are left free to perform their separate *functions* in their separate ways.

401 U.S. at 44 (emphasis added). This expansive view of the comity principle is supported by the Supreme Court's decision in Rizzo v. Goode, 423 U.S. 362 (1976), in which the Court held that principles of federalism which govern "the relationship between federal courts and state governments" apply when injunctive relief is sought against "an executive branch of an agency of state or local governments." *Id.* at 380.

[47] *See* Juidice v. Vail, 430 U.S. at 337. An argument premised upon the inherent differences between judicial and administrative forums, *see* note 50 *infra*, may be raised against the application of the *Younger* doctrine to state administrative proceedings. Such a position necessarily involves an assertion that the quality of adjudication in an administrative proceeding is inferior to that in a judicial proceeding. It is submitted, however, that this position is not supported by the case law. Assuming that administrative proceedings are inferior, *Younger* abstention nevertheless may be proper since invocation of the doctrine only re-

Although the *Williams* decision appears to be well reasoned, the extension of the *Younger* doctrine to the administrative area raises a procedural difficulty, namely, the collateral estoppel effect of the administrative determination.[48] Despite the uncertain collateral estoppel effect of administrative factual determinations upon subsequent civil litigation,[49] it should be observed that there is a

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quires that the pending proceeding be an adequate forum for the federal plaintiff to present his federal claim. *See* Moore v. Sims, 442 U.S. at 425; Juidice v. Vail, 430 U.S. at 337. This analysis apparently has been recognized by the courts. *See* Grandco Corp. v. Rochford, 536 F.2d 197, 206 (7th Cir. 1976). In *Grandco*, the pending state administrative proceeding involved a licensing determination made pursuant to a hearing before an appointee of the mayor. *Id.* State court review of his decision involved only a very limited examination of the administrative record. *Id.* In finding abstention inappropriate, the court noted that "the state proceedings [were] not before a court or *any established adjudicatory body*." *Id.* (emphasis added). Clearly, this holding was not based upon the obvious fact that the state proceeding was inferior to a federal court proceeding, but rather, upon the federal plaintiff's inability to raise his federal claims in the state proceeding. *See id.* Similarly, in Plano v. Baker, 504 F.2d 595 (2d Cir. 1974), the Second Circuit held that an administrative proceeding was inadequate where the testimony of witnesses expressly was forbidden and no procedure for the determination of factual issues was available. *Id.* at 598. Although the *Plano* case did not deal specifically with *Younger* abstention, it is helpful in that it addressed the analogous area of exhaustion of administrative remedies. *Id.* The holding, therefore, provides some insight into the meaning of the term "adequate proceedings." In any event, the language of *Younger* and its progeny, as well as the foregoing case discussions, appear to suggest that an administrative proceeding can be an adequate forum notwithstanding that in some respects it may be "inferior" to a judicial proceeding.

[48] *See* 662 F.2d at 1022. The distinctions between the discrete concepts of collateral estoppel and res judicata have generated much confusion. The doctrine of res judicata provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are barred from instituting a second suit based upon the same cause of action. Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 326 (1955); 1B J. MOORE, FEDERAL PRACTICE ¶ 0.405[1], at 622-24 (2d ed. 1982). In contrast, the doctrine of collateral estoppel bars the parties to a cause of action from relitigating, in a suit based upon a different cause of action, factual issues that were determined in the original suit. McCord v. Bailey, 636 F.2d 606, 608 (D.C. Cir. 1980), *cert. denied*, 451 U.S. 983 (1981); 1B J. MOORE, *supra* ¶ 0.405[1], at 622-24.

The *Williams* court referred to res judicata in its discussion of the potential preclusive effect of state administrative proceedings. 662 F.2d at 1022. It is submitted that the *Williams* court may have confused the concepts of collateral estoppel and res judicata. The claim for constitutional damages was the only claim that could not be raised in the administrative proceeding, and the only claim which Williams later would be allowed to raise in federal court. *Id.* at 1023-24. It would appear, then, that if a claim cannot be presented in a particular proceeding, res judicata will not bar litigation of that claim in a subsequent action. The plaintiff in *Williams* raised the possibility of being precluded from relitigating factual issues relevant to both the administrative proceeding and any subsequent federal action for constitutional damages. *Id.* at 1022. Thus, it appears that the plaintiff was referring to the collateral estoppel effect which the administrative findings of fact would have in a subsequent federal court suit.

[49] The collateral estoppel and res judicata effects of state administrative proceedings upon a subsequent civil rights action brought under section 1983 of title 42, *see* note 11

legitimate possibility that a federal plaintiff may be collaterally estopped from relitigating the factual issues of a constitutional claim in federal court, since a federal claim frequently hinges upon the identical factual questions resolved in an administrative proceeding.[50] It is suggested that any collateral estoppel effect which may attach to administrative fact findings subsequent to the exercise of *Williams* abstention can be avoided by analogy to the type of abstention practiced in *Railroad Commission v. Pullman Co.*[51] *Pullman* abstention enables a federal court to refrain from determining the constitutionality of state action if resolution of such issues

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supra, are not absolutely clear. Boykins v. Ambridge Area School Dist., 621 F.2d 75, 80 (3d Cir. 1980); *see* Doe v. Anker, 451 F. Supp. 241, 248 (S.D.N.Y. 1978), *cert. denied*, 446 U.S. 986 (1980); 17 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4253, at 568 (1978). There is some authority, however, that collateral estoppel and res judicata attach to state court determinations in a subsequent action based upon section 1983. New Jersey Educ. Ass'n v. Burke, 579 F.2d 764, 774 (3d Cir.), *cert. denied*, 439 U.S. 894 (1978); Winters v. Lavine, 574 F.2d 46, 56-57 (2d Cir. 1978); Schiavulli v. Aubin, 504 F. Supp. 483, 485 (D.R.I. 1980).

[50] Although *Younger* abstention in the face of pending state administrative proceedings is proper despite the possibility that these proceedings may be somewhat inferior to a judicial forum, *see* note 47 *supra*, it is understandable that a federal plaintiff would not want factual issues underlying his constitutional claim to be finally determined in the administrative setting. It is submitted that this is due, at least in part, to intangible considerations. The adjudication of constitutional questions traditionally has been afforded a special position in our judicial heritage. *See* Testa v. Katt, 330 U.S. 386, 390-92 (1947). Despite the proclaimed equality of competence between federal and state courts, many civil liberties litigators prefer to have constitutional claims decided before a federal tribunal. *See* Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1115-16 (1977). One of the reasons advanced for this penchant is that the relatively small number of judges on the federal bench enables that court to maintain a higher degree of technical competence than is possible in state court. *Id.* at 1121-22. If in fact state courts are less preferable than federal courts, then it would follow that state administrative tribunals are also less preferable.

Furthermore, a plaintiff would not want factual issues underlying a constitutional claim to be determined administratively because often the rules of evidence followed by state administrative agencies are more lenient than those employed by the courts. *See, e.g.*, ARK. STAT. ANN. § 5-709 (1947); CAL. GOV'T CODE § 11513 (West Supp. 1982); CONN. GEN. STAT. ANN. § 4-178 (West Supp. 1981); MASS. GEN. LAWS ANN. ch. 30A § 11 (West 1979); MINN. STAT. ANN. § 15.0419 (West Supp. 1982); MO. ANN. STAT. § 536.070 (Vernon Supp. 1982). Hence, it is submitted that federal court abstention in favor of state administrative proceedings may preclude a federal plaintiff from having the factual issues relating to his constitutional claim determined by rules of evidence that are more objective and formalistic.

Although these deficiencies would not make an administrative proceeding "inadequate" in the sense that *Younger* abstention would be inappropriate, *see* note 47 *supra*, they do raise interesting problems if preclusive effect is to be given to the administrative proceeding when the federal plaintiff returns to federal court. Given the importance of constitutional adjudication, it is proposed that the factual issues underlying such adjudication should be resolved by a federal court receptive to constitutional delicacies, rather than an administrative body concerned with achieving the objectives for which it was created.

[51] 312 U.S. 496 (1941).

turns upon unsettled questions of state law.[52] Typically, in such a situation, the federal court, by using the procedure employed by the *Williams* court,[53] will retain jurisdiction over the case and stay the federal proceedings until the parties obtain a state court determination of the unsettled question of state law.[54] The Supreme Court, resolving the collateral estoppel question in the area of *Pullman* abstention, has stated that "where . . . the primary fact determination would have been by the District Court, a litigant may not be unwillingly deprived of that determination" by application of the abstention doctrine.[55] When federal jurisdiction is in-

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[52] *Id.* at 499-501. *Pullman* involved an order of the Railroad Commission of Texas that allegedly discriminated against blacks. *Id.* at 498. The Pullman Company brought an action to enjoin enforcement of the order on the ground that it was, *inter alia*, violative of due process. *Id.* The district court determined that the commission was without authority to issue the order and, accordingly, granted the requested relief. *Id.* at 497-98. The Supreme Court, however, held that the district court should have stayed the federal proceedings until the Texas courts determined whether the commission had authority to issue the controversial order. *Id.* at 500-01. The Court stated that a federal court can avoid "[deciding] an issue by making a tentative answer which may be displaced tomorrow by a state adjudication." *Id.* at 500 (citations omitted).

The Supreme Court frequently has ordered *Pullman*-type abstention in recent years. *See, e.g.*, Bellotti v. Baird, 428 U.S. 132, 146-47 (1976); Carey v. Sugar, 425 U.S. 73, 78-79 (1976); Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970). *Bellotti* involved a Massachusetts statute that governed the type of consent required before an abortion could be performed on an unmarried minor. 428 U.S. at 133-34. The day before the statute was to go into effect, the plaintiffs commenced an action in federal district court seeking injunctive and declaratory relief on fourteenth amendment grounds. *Id.* at 136. The Court held that abstention was appropriate because the potential for statutory construction by the Massachusetts courts would eliminate or modify the need for federal constitutional adjudication. *Id.* at 146-47. In *Reetz*, the validity of certain Alaska fishing laws hinged upon an uninterpreted clause of the Alaska Constitution. 397 U.S. at 85-87. It was held that the federal district court should have abstained until the Alaska courts could give an authoritative construction to their state constitution. *Id.* at 87. The Court noted that the purpose of the *Pullman* doctrine was " 'the avoidance of needless friction' between federal pronouncements and state policies." *Id.* (quoting *Pullman*, 312 U.S. at 500). Similarly, the *Carey* decision held that abstention was mandated because the challenged New York attachment statute conceivably could be given a constitutional interpretation by the state courts. 425 U.S. at 78-79. Emphasis was placed upon New York's need for continued utilization of the attachment statute. *Id.* at 79.

[53] *See* text accompanying notes 23-24 *supra*.

[54] *See* American Trial Lawyer's Ass'n v. New Jersey Supreme Court, 409 U.S. 467, 469 (1973); Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 512-13 (1972).

[55] England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 417 (1964) (footnote omitted). The *England* Court noted that the possibility of appellate review by the Supreme Court of state court decisions was not an adequate substitute for a full federal adjudication of all the issues involved in a federal claim. *Id.* The Court held, therefore, that if a party reserves his right to return to federal court after an order of abstention, the federal court will adjudicate the issues after the state court has acted. *Id.* at 421. This reservation, however, does not have to be explicit. *Id.* In order to lose the right to return to federal court, the party must litigate fully all of his claims before the state court. *Id.*

voked properly, the Court reasoned, a litigant should not be forced to accept a state court determination of his constitutional claim.[56] It is suggested that the rationale underlying the Court's reluctance to accord collateral estoppel to the findings of a state judicial proceeding is even more persuasive when the state proceeding is administrative in nature.[57] Indeed, the proposed application of the *Pullman* decision to the *Williams* situation insures that state functions properly will be respected by abstention and that federal plaintiffs will be afforded the opportunity to litigate fully their constitutional claims in federal court.

CONCLUSION

To the extent that the *Younger* abstention doctrine is considered valid, the *Williams* court appears to have acted correctly by ruling that federal abstention in favor of state administrative proceedings is proper. Undoubtedly, the notion of comity, relied upon in *Younger*, requires more than federal court respect for state judicial proceedings. Indeed, comity is a broad concept which mandates federal noninterference with state government itself. Additionally, the tangential problem of the collateral estoppel effect which may attach to administrative factual findings subsequent to federal court abstention can be avoided simply by application of

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[56] *Id.* at 415.

[57] There has been recent authority to the effect that *England*, *see* notes 55-56 and accompanying text *supra*, does not apply when abstention is premised upon *Younger*. Olitt v. Murphy, 453 F. Supp. 354, 358 (S.D.N.Y.), *aff'd*, 591 F.2d 1331 (2d Cir. 1978), *cert. denied*, 444 U.S. 825 (1979). *Olitt* involved an attorney who was subjected to state bar disciplinary proceedings. 453 F. Supp. at 355. Three times during the pendency of the state proceedings the attorney commenced federal actions involving questions of constitutional dimension, and the federal court abstained on *Younger* grounds on all three occasions. *Id.* Each time the attorney reserved his rights under *England*. *Id.* at 357-58. The attorney ultimately was suspended, whereupon he commenced a fourth federal action raising the identical constitutional issues that he had raised in the state proceedings. *Id.* at 355-58. The federal court found that the plaintiff's reliance on *England* was misplaced and that, therefore, his constitutional claims were barred by res judicata. *Id.* at 358. The court stated that *England* was implicated only when abstention was premised upon *Pullman* grounds in a situation where a federal plaintiff was assured a return to federal court. *Id.* Thus, the court continued, when a case was dismissed pursuant to *Younger* abstention, the *England* doctrine was inapplicable. *Id.* It is submitted that the *Olitt* rationale does not preclude application of *England* to the *Williams* situation. The *Olitt* decision took the restrictive view that *Younger* abstention always contemplates dismissal. *Id.* The *Williams* court, however, retained jurisdiction over the federal action. 662 F.2d at 1023. Thus, inasmuch as *Younger* abstention necessarily does not require dismissal, it appears to resemble closely *Pullman*-type abstention. As a result, *England* should be as applicable to those *Younger* cases where dismissal is not ordered as it is to cases involving *Pullman* abstention.

the principles enunciated by the Supreme Court in the area of *Pullman* abstention. Adoption of this flexible approach will permit a broad expansion of *Younger* abstention, and, concomitantly, protect the interests of individual federal litigants.

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