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The Abstention Doctrine: Closing the Federal Forum

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traceptives. *Bellotti* should not be determinative in the context of contraceptives regulation. The differences between a minor's consideration of abortion and purchase of contraceptives significantly weaken the effectiveness of a statutory prior parental consultation clause in contraception cases. The recognition of these differences and the constitutional safeguards that protect a minor's fundamental right to privacy should defeat renewed legislative efforts to restrict access to contraceptives.

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THE ABSTENTION DOCTRINE: CLOSING THE FEDERAL FORUM
Juidice v. Vail, 97 S. Ct. 1211 (1977)

Judgment debtors brought a section 1983[1] class action in a federal district court seeking to enjoin enforcement of a New York state court's contempt proceeding leading to imprisonment. A three-judge district court permanently enjoined enforcement of the contempt provisions of the New York Judiciary Law because the provisions did not meet the due process requirements of the fourteenth amendment.[2] The state court judges[3] appealed to the United States Supreme Court, challenging the district court's failure to adhere to the abstention doctrine of *Younger v. Harris*.[4] The Supreme Court reversed the district court decision and HELD, a state's interest in its contempt process,

1. The Civil Rights Act of 1871, 42 U.S.C. §1983 (1970): "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Except for the restrictions of the abstention doctrine, see note 9 *infra*, §1983 allows a plaintiff with a claim based on any federal right to have direct access to the federal courts. Steffel v. Thompson, 415 U.S. 452, 464 (1974).

2. The contempt orders were issued when the judgment debtors disobeyed subpoenas to appear in supplemental procedures brought by their respective creditors in an attempt to collect default judgments. 97 S. Ct. 1211, 1213 (1977). The alleged constitutional violations included inadequate notice, imposition of punitive fines, and incarceration without assigned counsel. Vail v. Quinlan, 406 F. Supp. 951, 954 (1976). The district court granted partial summary judgment to the appellees in an opinion declaring "that Sections 756-757, 770, 772, 773, 774, and 775 of the Judiciary Law of the State of New York are *unconstitutional on their face*." 97 S. Ct. at 1215 (emphasis added). See text accompanying note 17 *infra*.

3. The judges and the county sheriff had been named as defendants in accordance with 42 U.S.C. §1983 (1970), which is directed primarily against incursions by the state or its officials. Mitchum v. Foster, 407 U.S. 225, 239 (1972). The district court dismissed the counts of the complaint that sought damages from the judges for their alleged past violations of appellees' constitutional rights, and the availability of such relief was not at issue on appeal. 97 S. Ct. at 1219 n.16.

4. 401 U.S. 37 (1971). The district court interpreted *Younger* abstention to apply "to civil proceedings only when intervention would disrupt the very interests which would underlie a state's criminal laws." Vail v. Quinlan, 406 F. Supp. 951, 958 (1976).

whether that process was labeled civil, criminal, or quasi-criminal, was a sufficiently important interest to invoke the principle of comity,[5] thereby precluding federal injunctive relief unless *Younger* standards were met.[6]

Federal interference with a state judicial system threatens the peaceful continuity of the federal form of government based on the concept of dual sovereignties.[7] To minimize friction between state and federal judiciaries, Congress and the federal courts have limited the power of the federal judiciary to intervene in state court proceedings. Congress at an early date enacted the Anti-Injunction Statute,[8] prohibiting federal courts from enjoining pending state court proceedings. Meanwhile the federal courts independently developed a policy of self-restraint known as the abstention doctrine.[9]

As first enunciated in *Railroad Commission v. Pullman Co.*[10] and expanded in subsequent decisions, the abstention doctrine demanded that a federal plaintiff challenging the constitutionality of a state statute secure an interpretation of the statute from the highest state court before bringing his claim in federal court.[11] If while securing the state court statutory interpretation

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5. The Court's concept of comity embraces "a proper respect for state functions, . . . 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 . . . [and] a system in which there is sensitivity to the legitimate interests of both State and National Governments. . . ." Younger v. Harris, 401 U.S. at 44.

6. 97 S. Ct. at 1217, 1218-19.

7. *See* Railroad Comm'n v. Pullman Co., 312 U.S. 496, 501 (1941). *See generally* C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS §52 (2d ed. 1970); Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345 (1930).

8. Originally enacted as part of the Judiciary Act of 1793, the current statute is 28 U.S.C. §2283 (1970). For a history of §2283 until 1941, see Toucey v. N.Y. Life Ins. Co., 314 U.S. 118 (1941). *See generally* Note, *The Anti-Injunction Statute: A Damoclean Sword Blunted, Sharpened, Broken, and . . .!*, 22 J. PUB. L. 407 (1973).

Mitchum v. Foster, 407 U.S. 225, 243 (1972), held that suits brought under §1983 of the Civil Rights Acts were not subject to the operation of the Anti-Injunction Statute. For a discussion of the history of federal intervention in state enforcement of criminal laws, see Kennedy & Schoonover, *Federal Declaratory and Injunctive Relief Under the Burger Court*, 26 SW. L.J. 282, 283-335 (1972).

9. The abstention doctrine is supported by four recognized policies: (1) avoidance of decisions involving sensitive constitutional questions, Harrison v. NAACP, 360 U.S. 167, 177 (1959); Railroad Comm'n v. Pullman Co., 312 U.S. 496, 498 (1941); (2) avoidance of needless conflict with the states, Younger v. Harris, 401 U.S. at 43-44; Railroad Comm'n v. Pullman Co., 312 U.S. 496, 501-02 (1941); (3) allowance of state resolution of unsettled questions of state law, Trainor v. Hernandez, 45 U.S.L.W. 4535, 4538 (1977); Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25, 29 (1959); and (4) promotion of judicial efficiency to ease the crowded federal court dockets, Wisconsin v. Constantineau, 400 U.S. 433, 433 (1971) (Burger, C.J., dissenting); *see* Address by Chief Justice Warren E. Burger, Report on Problems of the Judiciary Before the American Bar Association, in San Francisco (Aug. 14, 1972), *reprinted in* 58 A.B.A.J. 1049, 1049 (1972).

10. 312 U.S. 496, 501 (1941).

11. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 415 (1964).

The state's interpretation may be procured by litigating the action while reserving the federal questions or by utilizing state certification procedures when available. The certification process, by which the highest state court renders an interpretation of a state statute on request, is seen by many as an important tool of cooperation between state and federal courts. *See, e.g.*, Kaplan, *Certification of Questions from Federal Appellate Courts to the*

the plaintiff voluntarily argued his federal claim in state court, the doctrine of res judicata applied to the federal question, precluding consideration by a federal court except on writ of certiorari to the Supreme Court.[12]

The abstention doctrine was somewhat relaxed in *Dombrowski v. Pfister*.[13] The *Dombrowski* plaintiff argued that bad faith enforcement of a Louisiana statute regulating subversive activities exerted a chilling effect on his civil rights activities. The Court reasoned that under those conditions immediate federal relief under section 1983 was warranted.[14] Noting that in the absence of a pending state prosecution the federal plaintiff had no alternative forum, the Court found that a federal declaratory judgment[15] was appropriate because the affront to the state judiciary and state police power was minimal and because no duplicative litigation threatened judicial efficiency.

The *Dombrowski* decision launched a series of decisions enjoining state criminal proceedings in which constitutional violations were alleged.[16] Many lower courts, however, failed to recognize that the *Dombrowski* Court had emphasized bad faith application of a state's criminal statute rather than unconstitutionally broad construction of the statute.[17]

In *Younger v. Harris*[18] the Supreme Court substantially narrowed the

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Florida Supreme Court and Its Impact on the Abstention Doctrine, 16 U. MIAMI L. REV. 413, 433 (1962); Kurland, *Toward a Cooperative Judicial Federalism: The Federal Court Abstention Doctrine*, 24 F.R.D. 481, 489-90 (1960); McKusick, *Certification: A Procedure for Cooperation Between State and Federal Courts*, 16 U. ME. L. REV. 33, 38-40 (1964). *But see* Mattis, *Certification of Questions of State Law: An Impractical Tool in the Hands of the Federal Courts*, 23 U. MIAMI L. REV. 717, 725-35 (1969).

12. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 416, 419 (1964). Res judicata would preclude a new finding of fact. There are recognized reasons that plaintiffs may prefer a federal fact finding in claims that involve constitutional issues. For instance, a plaintiff may wish to avoid the possibility of state court bias or may feel that the federal court will exhibit greater sympathy and familiarity with his constitutional claim. *Id.* at 416. Many commentators have argued that a state hearing with the possibility of Supreme Court review is an inadequate substitute for federal fact finding. *See, e.g.*, Gilbert, *Questions Left Unanswered by the February Sextet*, 1972 UTAH L. REV. 14, 20; Hufstedler, *Comity and the Constitution: The Changing Role of the Federal Judiciary*, 47 N.Y.U.L. REV. 841, 866 (1972); Note, Younger *Grows Older: Equitable Abstention in Civil Proceedings*, 50 N.Y.U. L. REV. 870, 906-07 (1975). These ideas are traceable to the Marshall Court. Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 348 (1816) (Story, J.).

13. 380 U.S. 479 (1965).

14. *Id.* at 487.

15. *Id.* The *Dombrowski* plaintiffs sought both injunctive relief against prosecution in the future and a declaratory judgment that the legislation was unconstitutional on its face. *Id.* at 482.

16. *See, e.g.*, Honey v. Goodman, 432 F.2d 333 (6th Cir. 1970); Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969); Cambist Films, Inc. v. Illinois, 292 F. Supp. 185 (N.D. Ill. 1968). *See generally* Maraist, *Federal Injunctive Relief Against State Court Proceedings: The Significance of* Dombrowski, 48 TEX. L. REV. 535 (1970); Sedler, *The* Dombrowski*-Type Suit as an Effective Weapon for Social Change: Reflections from Without and Within*, (pts. 1 & 2), 18 KAN. L. REV. 237, 629 (1970).

17. Dombrowski v. Pfister, 380 U.S. at 490. *See* Younger v. Harris, 401 U.S. at 48 n.4, 50; Perez v. Ledesma, 401 U.S. 82, 120 (1971) (Brennan, J., concurring in part and dissenting in part).

18. 401 U.S. 37, 48 n.4, 50 (1971). *Younger* and its five companion cases are often referred to as the "February Sextet." The other cases are: Byrne v. Karalexis, 401 U.S.

permissible scope of federal jurisdiction. A federal district court had enjoined a state prosecution under the California Criminal Syndicalism Act, holding the statute unconstitutionally vague and overbroad.[19] The Supreme Court reversed, declaring that federal abstention was appropriate since the plaintiff had failed to show bad faith prosecution and since the federal claim could have been adjudicated in the pending state prosecution.[20] The Court's opinion shifted emphasis from the threat to individual rights, which had controlled in *Dombrowski*, to the importance of the state's interest in enforcing its criminal laws. The *Younger* Court determined that absent "extraordinary circumstances," which would exist only if the statute were incompatible with any constitutional application[21] or if the plaintiff could prove bad faith and harassment,[22] principles of comity, federalism, and judicial efficiency precluded injunctive relief.[23] Consequently, the action was dismissed, and

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216 (1971); Dyson v. Stein, 401 U.S. 200 (1971); Perez v. Ledesma, 401 U.S. 82 (1971); Boyle v. Landry, 401 U.S. 77 (1971); and Samuels v. Mackell, 401 U.S. 66 (1971).

19. Harris v. Younger, 281 F. Supp. 507, 516 (C.D. Cal. 1968), *rev'd*, 401 U.S. 37 (1971).

20. Younger v. Harris, 401 U.S. at 49.

21. The Court's rigid definition of facial invalidity requires that the statute be flagrantly unconstitutional "in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." Watson v. Buck, 313 U.S. 387, 402 (1941). The view has been expressed that this exception merely "preserves an illusion of flexibility in the application of a *Younger*-type abstention, but it actually eliminates one of the exceptions from the doctrine." Trainor v. Hernandez, 45 U.S.L.W. 4535, 4542 (1977) (Stevens, J., dissenting).

22. Under these circumstances "the reasons of policy for deferring to state adjudication are outweighed by the injury flowing from the very bringing of the state proceedings, by the perversion of the very process that is supposed to provide vindication." Younger v. Harris, 401 U.S. at 56 (Stewart, J., concurring). The burden of proof is on the plaintiff. Perez v. Ledesma, 401 U.S. 82, 85 (1971).

23. Younger v. Harris, 401 U.S. at 44. In a companion case, Samuels v. Mackell, 401 U.S. 66, 73 (1971), the Court held that if a state criminal prosecution is pending against a federal plaintiff seeking declaratory relief, the same principles applied. But when no state suit was pending, the Court held in Steffel v. Thompson, 415 U.S. 452, 475 (1974), that a declaratory judgment was appropriate if the plaintiff could demonstrate a genuine threat of prosecution. *See The Supreme Court, 1973 Term*, 88 HARV. L. REV. 203, 203 n.5 (1974); Comment, *Federal Declaratory Relief and the Non-pending State Criminal Suit*, 34 MD. L. REV. 87, 113 (1974). *See generally* Note, *Federal Declaratory Relief from Unconstitutional State Statutes: The Implications of* Steffel v. Thompson, 9 HARV. CIV. RIGHTS L. REV. 520 (1974).

In Hicks v. Miranda, 422 U.S. 332, 349 (1975), the Court greatly limited *Steffel* by holding that *Younger* principles applied with full force to a state case that had been instituted against a plaintiff following the plaintiff's filing of a complaint requesting federal declaratory relief and before any proceedings of substance on the merits of the federal claim had begun. The dissent vigorously objected to the new rule as "an open invitation to state officials to institute state proceedings in order to defeat federal jurisdiction." *Id.* at 357 (Stewart, J., dissenting). The rule may discourage plaintiffs from filing suit for fear of being prosecuted by the state. Note, *supra* at 534.

The extent to which a federal declaratory judgment binds the state is unclear. Language characterizing the relief as "persuasive, not coercive" seems to indicate that a declaratory judgment would not have res judicata effect. Perez v. Ledesma, 401 U.S. 82, 122 (1971) (Brennan, J., concurring). *But see* McCormack, *Developments in the Availability of Federal Remedies Against State Activities*, 16 WM. & MARY L. REV. 1, 12 (1974); *The Supreme Court, 1973 Term, supra* at 207; Note, *supra* at 541-59.

Younger abstention came to be regarded as a denial of federal jurisdiction, in contrast to *Pullman*'s postponement of jurisdiction pending state determination of the claim.[24]

One of the questions remaining after *Younger* was whether the abstention doctrine applied to a state civil proceeding instituted against a section 1983 plaintiff.[25] That question was presented in *Huffman v. Pursue, Ltd.*,[26] in which a theatre owner invoked the first amendment in a suit to enjoin enforcement of an Ohio obscenity-nuisance statute.[27] Applying the abstention doctrine, the Supreme Court focused on the quasi-criminal character of the pending civil action; the state was a party, the offense incorporated the criminal definition of obscenity, and penal sanctions were available.[28] Exhaustion of state remedies was required because the case did not fall within the *Younger* "extraordinary circumstances" and because the potential harm to

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It has been suggested that the Court's preference for declaratory relief over injunctive is "mainly a question of style and grace, not ultimate impact." Wechsler, *Federal Courts, State Criminal Law and the First Amendment*, 49 N.Y.U. L. REV. 740, 841 (1974). But it seems clear that valid differences exist depending on whether a state action is pending, and the Court continues to distinguish the two situations. *See The Supreme Court, 1973 Term, supra* at 207; Note, *Implications of the* Younger *Cases on the Availability of Federal Equitable Relief When No State Prosecution is Pending*, 72 COLUM. L. REV. 874, 876 (1972); Note, *supra* note 12, at 878-81.

24. The *Pullman* Court remanded the case to the district court "with directions to retain the bill pending a determination of proceedings, to be brought with reasonable promptness, in the state court. . . ." Railroad Comm'n v. Pullman Co., 312 U.S. at 501-02. Abstention as dismissal rather than retention of jurisdiction was previously articulated in Burford v. Sun Oil Co., 319 U.S. 315, 334 (1943). Comment, *Abstention: A Case Against Forum Shutting*, 22 J. PUB. L. 439, 440 (1973). However, this form of abstention is now commonly referred to as *Younger* abstention. *See, e.g.*, 97 S. Ct. at 1213.

Even the milder *Pullman* abstention had declined under the Warren Court, which had shown an increased willingness to respond to the constitutional issues raised by a growing civil rights movement. With Chief Justice Warren's retirement in 1969, the Court altered its conception of the scope of federal jurisdiction under 42 U.S.C. §1983 (1970). Thus the Burger Court has shifted the balance between state and federal courts with regard to civil rights, curtailing the availability of the federal courts amidst a deluge of civil rights claims. *See* 123 CONG. REC. S201, S204, S205 (daily ed. Jan. 10, 1977) (statement of Senator Mathias); Wechsler, *supra* note 23, at 831; Comment, *supra* at 444; *see generally* McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Claims* (pts. 1 & 2), 60 VA. L. REV. 1, 250 (1974).

25. *See* Younger v. Harris, 401 U.S. at 55 n.2 (Stewart, J., concurring) (citations omitted): "The offense to state interests is likely to be less in a civil proceeding. A State's decision to classify conduct as criminal provides some indication of the importance it has ascribed to prompt and unencumbered enforcement of its law. By contrast, the State might not even be a party in a proceeding under a civil suit.

"These considerations would not, to be sure, support any distinction between civil and criminal proceedings should the ban of 28 U.S.C. §2283, which makes no such distinction, be held unaffected by 42 U.S.C. §1983."

26. 420 U.S. 592 (1975).

27. *Id.* at 598.

28. *Id.* at 604. When the state brings an action in its *parens patriae* capacity, it is in essense an action on behalf of all the residents of the state, indicating a public interest in the enforcement of the law, whether civil or criminal. When the state is not a party to a civil proceeding, the statute may provide merely a vehicle for the enforcement of private rights. Note, *supra* note 12, at 883.

the plaintiff was outweighed by the duplication and disruption caused by pre-appellate interference.[29] Despite *Huffman*'s significant extension of *Younger* principles to the civil context, the "criminal nexus" test still restricted broad application of the expanding abstention doctrine.[30]

The majority opinion in the instant case abandoned *Huffman*'s criminal nexus test and firmly reiterated the *Younger* rationale that federal interference would offend state interests whether the proceeding was labeled civil, criminal, or quasi-criminal.[31] The majority emphasized that the section 1983 plaintiffs "clearly had an *opportunity* to present their claims in the state proceeding, and no more is required to invoke *Younger* abstention."[32]

Protection of the state's contempt power, deemed central to the administration of the state judicial system, was of controlling importance to the majority.[33] The Court also sought to avoid the implication that federal interference indicated a negative reflection on the state court's ability to protect constitutional rights.[34] Finally, the Court noted that the federal plaintiffs not only had failed to present their claims in the state action but also could have avoided imprisonment altogether merely by making an appearance in the action when subpoenaed.[35]

Two of the three dissenting Justices attacked the majority's position as a deliberate usurpation of the congressional power to create the section 1983 remedy.[36] Arguing that the principles of comity and federalism had been undercut rather than bolstered by the decision,[37] the dissent accused the majority of using those principles as "covers for the ultimate goal of denying the §1983 plaintiffs the federal forum in any case, civil or criminal, when a pending state proceeding may hear the plaintiff's federal claim."[38]

The dissent was less concerned with the majority's balancing of interests under the facts of the instant case than with the impact of the ever-expanding abstention doctrine on the section 1983 forum. As the dissent suggested, the legitimate role of the federal courts in protecting individual rights has been

29. Huffman v. Pursue, Ltd., 420 U.S. at 608.

30. Note, *supra* note 12, at 885.

31. 97 S. Ct. at 1213.

32. *Id.* (emphasis in original).

33. *Id.* at 1217. *See* Trainor v. Hernandez, 45 U.S.L.W. 4535, 4538-39 (1977) (Blackmun, J., concurring).

34. 97 S. Ct. at 1217-18 (citing Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1974)).

35. 97 S. Ct. at 1214. See note 2 *supra*.

36. *Id.* at 1221 (Brennan, J., joined by Marshall, J., dissenting) (emphasis in original): "It stands the §1983 remedy on its head to deny the §1983 plaintiff access to the federal forum *because* of the pendency of state civil proceedings where Congress intended that the District Court should entertain his suit *without regard* to the pendency of the state suit."

Justice Stewart dissented separately on the grounds that the instant case was a proper case for *Pullman* abstention. *Id.* at 1223 (Stewart, J., dissenting). See note 24 *supra*.

37. *Id.* at 1221 (Brennan, J., joined by Marshall, J., dissenting): "[F]orced federal abdication in this context undercuts one of the chief values of federalism — the protection and vindication of important and overriding federal civil rights, which Congress in §1983 and the Judiciary Act of 1875, ordained should be a primary responsibility of the federal courts." *See* Zwickler v. Koota, 389 U.S. 241, 248 (1967).

38. 97 S. Ct. at 1222 (Brennan, J., joined by Marshall, J., dissenting).

deemphasized in the name of comity and federalism. Those principles alone defined the *Younger* doctrine of abstention, which defies restriction and permits no predictable distinction between any two cases involving a pending state proceeding.[39]

The majority could have reached the same result while still retaining the criminal nexus test. The parallels between a criminal action and the contempt proceeding in the instant case were obvious:[40] penal sanctions were imposed, a past act was the basis of the prosecution,[41] state officials were parties to the action,[42] and the state's interest in enforcing contempt laws was arguably as great as in enforcing many criminal laws. Nonetheless, the majority reasoned that the labels attached to a lawsuit are not a valid basis for distinguishing cases, that a state's interest in policy as well as procedure demands consideration in a true balancing of interests.[43]

If the majority has left open the question whether *Younger* applies to all civil proceedings,[44] some criteria must be developed to determine which of

39. The *Younger* principles are indeed broad enough to include cases in which the challenged state action is not part of any court proceeding. There is language in Rizzo v. Goode, 96 S. Ct. 598 (1976), indicating that *Younger* may be invoked to prevent injunctions against state and local agency proceedings. Citing the underlying principles of 28 U.S.C. §2283 (1970), the Court held that a district court had no power to interfere with the internal affairs of a municipal police department if the complaint involved only the officials' failure to discipline adequately subordinates: "When a plaintiff seeks to enjoin the activity of a governmental agency, . . . his case must contend with 'the well-established rule that the government has traditionally been granted the widest latitude in the "dispatch of its own internal affairs. . . ."'

. . . .

"[T]he principles of federalism . . . likewise have applicability where injunctive relief is sought . . . against those in charge of an executive branch of an agency of state or local governments such as respondents here." *Id.* at 608 (quoting Sampson v. Murray, 415 U.S. U.S. 61, 83 (1974)).

It is difficult to reconcile this language with the express provisions and the legislative history of 42 U.S.C. §1983 (1970). See note 1 *supra* & note 45 *infra.*

40. Absent was the relation to a criminal statute pointed out in Huffman v. Pursue, Ltd., 420 U.S. at 604. When such a relation exists, the danger of overbroad extension of the statute is lessened because the legislature has usually defined the proscribed conduct with particularity. Note, *supra* note 12, at 887.

41. A state's interest is clarified when a person has voluntarily transgressed its laws. Under these circumstances, the *Younger* doctrine allows the state to further its interests in restraint and deterrence by enforcing the verdict and the legal penalties attached. Note, *supra* note 12, at 888. *See generally The Supreme Court, 1973 Term, supra* note 23, at 209; Comment, *supra* note 23.

42. In Trainor v. Hernandez, 45 U.S.L.W. 4535, 4537 (1977), the majority emphasized that the state department of welfare had instituted the attachment proceeding that was under constitutional challenge. The dissent agreed with the lower court that the "mere happenstance" that the state was involved should not control since the same attachment process was available to private creditors as well. *Id.* at 4540 (Brennan, J., joined by Marshall, J., dissenting).

43. 97 S. Ct. at 1217. This rationale was reaffirmed in Trainor v. Hernandez, 45 U.S.L.W. 4535, 4537, 4539 (1977).

44. In Lynch v. Household Fin. Corp., 405 U.S. 538, 561 (1972), three Justices expressed the view that *Younger* applied equally to state civil proceedings. Cousins v. Wigoda, 409 U.S. 1201, 1206 (1972), inferred that *Younger* might be extended to all civil proceedings on grounds of respect for state judiciaries. *See* Rizzo v. Goode, 97 S. Ct. 598, 608 (1976). In

a state's legitimate interests are important enough to warrant abstention.[45] Perhaps a clear test has not been developed because, as the dissent suggested, the underlying concern of the Court was the deluge of civil rights cases crowding the federal dockets.[46]

The Court understandably prefers to avoid decision of the sensitive constitutional issues frequently presented in section 1983 suits.[47] However, it was the very sensitivity of those issues that inspired creation of the federal forum that has now been denied under the abstention doctrine.[48] While Congress has taken the view that state courts are inadequate guarantors of constitutional rights, the Supreme Court has operated on the assumption that state remedies are adequate. Although the Anti-Injunction Statute has been expressly declared inapplicable to section 1983 suits,[49] the Court has consistently applied its own abstention doctrine to render the exception practically ineffectual.[50]

The Court's position, emphasizing judicial etiquette, may prove favorable to federal policy in the long run. State courts previously irritated by frequent federal interference may be more anxious to champion federal rights once they are openly regarded as equals in that role.[51] Nevertheless, the congressional intent to place the federal courts between the state and the section 1983 plaintiff cannot be disregarded, and the discrepancy between legislative and judicial views has not been overlooked by Congress.[52]

Trainor v. Hernandez, 45 U.S.L.W. 4535 (1977), the abstention doctrine was applied to preclude federal injunction of state attachment proceedings described by the dissenters as a type of "summary extra-judicial process of prejudgment seizure of property." *Id.* at 4540. However, dissenting opinions in Hicks v. Miranda, 422 U.S. 332, 353 (1975) (Stewart, J., joined by Douglas, Brennan, & Marshall, JJ., dissenting), and the instant case, 97 S. Ct. at 1222 (Brennan, J., joined by Marshall, J., dissenting), strenuously objected to the Court's apparent trend toward extending *Younger* to all civil cases.

45. The only standard that has emerged is that the state show an important interest to be vindicated in the state courts. Such an interest includes any policy interest as great as that of enforcing criminal statutes. Trainor v. Hernandez, 45 U.S.L.W. 4535, 4539 (1977) (Blackmun, J., concurring).

46. 97 S. Ct. at 1222. See note 24 *supra.*

47. *See* Railroad Comm'n v. Pullman Co., 312 U.S. at 498.

48. In Monroe v. Pape, 365 U.S. 167, 180 (1961), the Court recognized that §1983 was passed "to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies."

49. Mitchum v. Foster, 407 U.S. 225, 242-43 (1972). For an illuminating discussion of the Anti-Injunction Statute, see Note, *supra* note 8.

50. *See, e.g.*, Rizzo v. Goode, 96 S. Ct. 598, 608 (1976); Younger v. Harris, 401 U.S. at 43.

51. *See* Whitten, *Federal Declaratory and Injunctive Interference with State Court Proceedings: The Supreme Court and the Limits of Judicial Discretion*, 53 N.C. L. REV. 591, 680 (1975).

52. Currently, a proposal is before the Senate which, if enacted, would preclude application of the doctrines of abstention and exhaustion of state remedies to §1983 suits. 123 CONG. REC. S201 (daily ed., Jan. 10, 1977). The Civil Rights Improvement Act of 1977 would "insure the continued vitality of 'The Civil Rights Act of 1871,' (42 U.S.C. §1983). . . . In brief, S.35 would:

. . . .

Denial of a federal forum seems appropriate when a plaintiff can litigate his claim and receive an adequate remedy in a pending state action.[53] Since state courts are required to recognize federal rights and are not infrequently called upon to do so, it does not seem sound in practice or policy to proceed on the assumption that federal courts are the only legitimate guardians of constitutional rights.[54] The result of such an assumption would be intervention by the federal courts in a greater number of state court proceedings and a concomitant undermining of state court power and prestige.

To resolve this problem, the abstention doctrine should be applied to all pending state cases that do not raise fundamental constitutional issues of national concern. Choosing among potential federal plaintiffs, a court should consider the immediacy and severity of the claimed constitutional violation, the availability of a prompt and fair hearing in a state proceeding, and any overriding state or federal interest.[55] These considerations are traditionally related to the concepts of justiciability, standing, ripeness,[56] and equity,[57] and provide more flexible, intelligible standards for federal courts.[58]

"Fourth. Provide that the doctrines of abstention and exhaustion of State judicial remedies are inapplicable in section 1983 suits.

"Fifth. Embody within section 1983, the limited circumstances when a Federal court can intervene in a pending State criminal proceeding;

"Sixth. Prescribe the limited circumstances under which the doctrine of *res judicata* is applicable in section 1983 suits.

. . . .

"This legislation amends section 1983 . . . [t]o insure that individuals whose rights are violated under section 1983 are not left without remedies, and, [t]o increase the deterrent effect of section 1983." *Id.* at S201-03.

53. At least one Justice holds the view that the *Younger* rationale "forecloses abstention in cases in which the federal challenge is to the constitutionality of the proceeding itself. . . . [A]n adequate forum must be one that is sufficiently independent of the alleged unconstitutional procedure to judge it impartially and to provide prompt relief. . . ." Trainor v. Hernandez, 45 U.S.L.W. 4535, 4544 & n.15 (1977).

54. *See* Huffman v. Pursue, Ltd., 420 U.S. at 611; Steffel v. Thompson, 415 U.S. 452, 460-62 (1974); Whitten, *supra* note 51, at 680.

55. Most of the legal commentary on the abstention doctrine focuses on proposals involving balancing tests. *See* Bezanson, *The Supreme Court and Allocation of Judicial Power*, 27 VAND. L. REV. 1107, 1140-50 (1974); Hufstedler, *supra* note 12, at 867; Maraist, *Federal Intervention in State Criminal Proceedings:* Dombrowski, Younger, *and Beyond*, 50 TEX. L. REV. 1324, 1338-46 (1972); Whitten, *supra* note 51, at 681.

In 1969 the American Law Institute developed a proposal including criteria for abstention, which was not adopted by Congress. While following closely the criteria established by the Supreme Court in recent cases, the proposal does place greater emphasis on speed and efficiency, and most importantly it suggests that §1983 cases be declared unaffected by the abstention doctrine. ALI, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS, §1371(c), (d) (1969).

Commentators have suggested that a true balancing of interests would ignore the pending-nonpending distinction except as it bears on other considerations such as availability of state remedy. Hufstedler, *supra* note 12, at 867; Whitten, *supra* note 51, at 681.

56. *See* Hufstedler, *supra* note 12, at 867-68; Kennedy & Schoonover, *supra* note 8, at 284.

57. *See* Younger v. Harris, 401 U.S. at 43, 50.

58. An alternative remedy involving the establishment of a civil postjudgment pro-

The proper solution to the overcrowded federal dockets may be the creation of more federal courts rather than the abolition of federal remedies. Were the resources available, the federal courts could carefully examine the costs and benefits of abstention on an ad hoc basis.[59] Unless an overriding federal interest is threatened by unsympathetic adjudication, unreasonable procedural obstacles, or otherwise inadequate state remedies, state courts should be allowed to hear and decide federal constitutional claims.

The policies behind the abstention doctrine, avoidance of duplicative litigation and antagonism between state and federal courts, are undoubtedly vital to the federal system. The doctrine, however, has been applied with unnecessary finality. By broadly basing its decisions since *Younger* on principles of comity and federalism, the Supreme Court has eliminated entire classes of litigants from the federal forum and has eroded the balancing process that should require an ad hoc consideration of competing interests.

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vision similar to the writ of habeas corpus has been suggested. Note, *supra* note 12, at 921. This remedy would exempt civil rights actions from the doctrine of res judicata, allowing federal fact finding despite a state court's prior determination. The social interest in civil rights seems analogous to the social interest in individual liberty that justifies the writ of habeas corpus, see McCormack, *supra* note 24, at 259, and the affront to a state's interest might be lessened under such an alternative because the state would have the first opportunity to dispose of the claim. Such a remedy would not, however, promote judicial efficiency, especially if federal plaintiffs were required to exhaust state remedies through appellate procedures before requesting a new finding of fact in the federal forum. Moreover, the expense and delay of such a procedure might unjustly burden and discourage the federal plaintiff, who meanwhile must bear the state's infringement.

59. The costs of abstention in a particular case would include the burdensome expense and delay to a federal plaintiff seeking relief, the potential detriment to federal rights, the erosion of the right to a federal forum, and the undermining of public confidence in the ability of the federal courts to exercise their basic powers. Benefits that often follow from abstention are avoidance of friction between state and federal judiciaries and between the two sovereign governments, conservation of judicial time, avoidance of premature decisions of constitutional issues, and increased strength and prestige for state courts. Hufstedler, *supra* note 12, at 867-70.