

# Slogan or Substance Understanding Our Federalism and Younger Abstention

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## SLOGAN OR SUBSTANCE? UNDERSTANDING “OUR FEDERALISM” AND *YOUNGER* ABSTENTION

*Younger v. Harris*<sup>1</sup> abstention is one of the Burger Court’s most significant legacies. First articulated in 1971, *Younger* called for a federal court to refrain from adjudicating requests for injunctive relief arising from an ongoing state criminal prosecution. Over the past sixteen years *Younger*’s scope has grown explosively and now encompasses all state judicial proceedings—criminal or civil—that implicate an important state interest. Recently, in *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*,<sup>2</sup> the Supreme Court has taken the *Younger* doctrine one step further, and ruled that *Younger* also applies to some state administrative proceedings.<sup>3</sup>

The *Younger* doctrine arose from concerns of comity, equity, and federalism. Yet *Younger*’s vigorous growth shows that the driving force behind the doctrine is federalism, or more specifically, the vision of federalism that the *Younger* Court called “Our Federalism.”<sup>4</sup> Although visions of federalism differ, a majority of the Court has held fast to Our Federalism’s view that “the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.”<sup>5</sup> Thus, *Younger* abstention simply stands as the application of Our Federalism—theory in practice.

This Note examines the development of the *Younger* doctrine in light of Our Federalism, with a more sympathetic eye towards Our Federalism than is usually found in the vast commentary on *Younger* and its progeny.<sup>6</sup> Section 1 briefly presents the tension among the federal courts’ general obligation to exercise its jurisdiction, the

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<sup>1</sup> 401 U.S. 37 (1971). The Court decided five companion cases the same day, making up the “*Younger* sextet:” *Samuels v. Mackell*, 401 U.S. 66 (1971); *Boyle v. Landry*, 401 U.S. 77 (1971); *Perez v. Ledesma*, 401 U.S. 82 (1971); *Dyson v. Stein*, 401 U.S. 200 (1971); and *Byrne v. Karalexis*, 401 U.S. 216 (1971).

<sup>2</sup> 106 S. Ct. 2718 (1986).

<sup>3</sup> The rule the Court announced in *Dayton* appears to call for abstention when the state administrative proceeding involved is “judicial in nature.” See *infra* notes 123-26 and accompanying text.

<sup>4</sup> *Younger*, 401 U.S. at 44.

<sup>5</sup> *Id.*

<sup>6</sup> *Younger* has generated considerable heat in the legal community; fortunately, it has generated considerable light as well. For a frequently updated list of useful discussions of the *Younger* doctrine, see 17 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4252, at 193 n.1 (1988). Much of the commentary on *Younger* has been critical, in part suggesting a weakness in Our Federalism as an underlying rationale. See, e.g., C. WRIGHT, THE LAW OF FEDERAL COURTS § 52A, at 330 (4th ed. 1983)

prudential and constitutional concerns that counsel abstention, and some of the statutory and common law means by which a federal court obtains the power to enjoin state proceedings. Section II discusses the *Younger* decision itself, contrasting *Younger* with the vision of federalism Justice Brennan put forth earlier in *Dombrowski v. Pfister*.<sup>7</sup> Section III then reviews the development of the *Younger* doctrine, finding in the Court's decisions a consistent and coherent, although at times timid, amplification of Our Federalism. Section IV applies the understanding of Our Federalism gleaned in Sections II and III and suggests two areas where the *Younger* doctrine might develop still further: first, that *Younger* should apply to claims for money damages as well as to claims for injunctive relief, and second, that the proper inquiry for a federal court considering *Younger* abstention in the context of a state administrative proceeding should depend not on whether that proceeding is judicial in nature, but whether the state proceeding can provide an adequate remedy for the federal claimant.

## I

### BACKGROUND

#### A. Jurisdiction and Abstention: An Overview

"Abstention from the exercise of federal jurisdiction is the exception, not the rule."<sup>8</sup> Indeed, Chief Justice Marshall suggested that for a federal court to decline to exercise jurisdiction was as unconstitutional as to usurp jurisdiction.<sup>9</sup> Nevertheless, over the past half-century the Court has ruled that even though a plaintiff is properly before the court, in certain situations a federal court should refrain from exercising its jurisdiction.

The situations calling for abstention fall into three general categories,<sup>10</sup> although these categories are not exhaustive:<sup>11</sup> (1) *Pullman*

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("the difficulty in turning a slogan into workable and understandable legal rules"); Fiss, *Dombrowski*, 86 YALE 1103, 1118 (1977) ("merely . . . a new shibboleth").

<sup>7</sup> 380 U.S. 479 (1965).

<sup>8</sup> *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976).

<sup>9</sup> Chief Justice Marshall said in dictum:

It is most true that this Court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction if it should. . . . With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.

*Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821).

<sup>10</sup> Some uncertainty exists as to whether there are several abstention doctrines, or one doctrine with several distinct applications. Compare *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959) ("the doctrine of abstention") with *Colorado*

abstention to permit state court resolution of state law issues that might make it unnecessary for the federal court to determine constitutional issues;<sup>12</sup> (2) *Burford* abstention to avoid disrupting a complex and coherent state administrative scheme to regulate a local matter of substantial public concern;<sup>13</sup> and (3) *Younger* abstention to avoid unduly interfering with the legitimate activities of the state.<sup>14</sup>

*Pullman* abstention permits the court to "avoid both unnecessary adjudication of federal questions and 'needless friction with state policies . . .'"<sup>15</sup> In *Railroad Commission v. Pullman Co.*, Pullman had challenged an order of the Texas Railroad Commission as both unauthorized by Texas law, and in violation of the fourteenth amendment. A unanimous Supreme Court ordered the district court to abstain from deciding the case until the parties had received a definitive interpretation of the Texas law from a state court. Thus, federal courts should abstain " 'in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law.'"<sup>16</sup> In this way the state court could interpret state law with finality, and the federal court might avoid deciding a constitutional question.

A federal court should not exercise *Pullman* abstention when the meaning of the state law is certain from either unambiguous statutory language or a prior definitive construction by the state courts. Because of the prudent desire to avoid premature and unnecessary decisions of constitutional questions, *Pullman* requires abstention whenever the "state statute is susceptible of a construction

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*River*, 424 U.S. at 814 ("three general categories") with *Ohio Bureau of Employment Servs. v. Hodory*, 431 U.S. 471, 477 (1977) ("two primary types of federal abstention") with *Sederquist v. City of Tiburon*, 590 F.2d 278, 280 (9th Cir. 1978) ("Analyzing the abstention doctrine is reminiscent of a voyage on uncharted seas. Indeed, it can be concluded that there is not one abstention doctrine, but several."). Yet, "[t]he number of categories into which the abstention cases are divided is of little significance." 17 C. WRIGHT, A. MILLER & E. COOPER, *supra* note 6, § 4241, at 28.

<sup>11</sup> In *Colorado River*, although the Court found that the facts did not fall within any of the three defined categories of abstention, it ordered abstention due to considerations of " '[w]ise judicial administration.'" 424 U.S. at 817 (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952)). Thus, the Court has called for abstention outside of *Pullman*, *Burford*, and *Younger*. See also, 17 C. WRIGHT, A. MILLER & E. COOPER, *supra* note 6, at §§ 4241-55 (classifying, in addition to *Pullman*, *Burford*, and *Younger*, abstention to allow states to resolve unsettled questions of state law and abstention to avoid duplicative litigation).

<sup>12</sup> *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941).

<sup>13</sup> *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

<sup>14</sup> *Younger v. Harris*, 401 U.S. 37 (1971).

<sup>15</sup> *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984) (quoting *Pullman*, 312 U.S. at 500).

<sup>16</sup> *Colorado River*, 424 U.S. at 814 (quoting *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 189 (1959)).

by the state judiciary" that might obviate the constitutional issue.<sup>17</sup>

If a court abstains under *Pullman*, it retains jurisdiction while the parties secure a determination of the state law question.<sup>18</sup> Thus, *Pullman* "does not . . . involve the abdication of federal jurisdiction, but only the postponement of its exercise."<sup>19</sup> Moreover, because the court retains jurisdiction, it can give interim relief to protect the parties while they seek the state determination.<sup>20</sup> *Pullman* abstention, therefore, is a matter of timing: when will the federal court hear a case, not will it hear the case at all.

*Burford* abstention is less precise than *Pullman* abstention. In *Burford*, Sun Oil challenged an order of the Texas Railroad Commission granting Burford an exemption from a well-spacing rule.<sup>21</sup> The district court enjoined the exemption, but the Supreme Court ruled that the district court should have abstained. The Court first noted that Texas's "over-all plan of regulation, as well as each of its case by case manifestations, is of vital interest to the general public."<sup>22</sup> The Court also ruled that Texas had established a central and unified system for judicial review of the commission's actions. The Supreme Court found abstention proper arguing that piecemeal challenges in federal courts to individual orders would effectively undermine the state's important regulatory system.<sup>23</sup>

*Burford* calls for abstention when exercise of federal jurisdiction will "be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."<sup>24</sup> Unlike *Pullman*, *Burford* requires the district court to dismiss the action outright,

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<sup>17</sup> *Bellotti v. Baird*, 428 U.S. 132, 147 (1976); see also *Midkiff*, 467 U.S. at 236 ("federal courts need not abstain on *Pullman* grounds when a state statute is not 'fairly subject to an interpretation which will render unnecessary' adjudication of the federal constitutional question" (quoting *Harman v. Forssenius*, 380 U.S. 528, 535 (1965))).

<sup>18</sup> *Allen v. McCurry*, 449 U.S. 90, 101-02 n.17 (1980). Because Texas courts cannot give certain relief while a federal court retains jurisdiction over a federal claim, *Pullman* abstention in Texas results in dismissal without prejudice. *Harris County Comm'rs Court v. Moore*, 420 U.S. 77, 88 n.14 (1975).

<sup>19</sup> *Harrison v. NAACP*, 360 U.S. 167, 177 (1959).

<sup>20</sup> *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 312 n.18 (1979).

<sup>21</sup> *Burford v. Sun Oil Co.*, 319 U.S. 315, 316-17 (1943). This essentially permitted Burford to take a larger amount of oil from the East Texas Oil Field.

<sup>22</sup> *Id.* at 324.

<sup>23</sup> *Id.* at 327.

<sup>24</sup> *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976) (Brennan, J.).

The Court has never articulated a concise definition of *Burford* abstention. In a case prior to *Colorado River*, Justice Brennan cited *Burford* as an example of "abstention on grounds of comity with the States when the exercise of jurisdiction by the federal court would dispute a state administrative process." *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 189 (1959). Later, Justice Brennan classified *Burford* as an illustration of a broader type of abstention that is "appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import

leaving the would-be federal plaintiff to follow "the state procedure . . . from the Commission to the State Supreme Court."<sup>25</sup> She may then appeal to the United States Supreme Court for review of the federal question.

Although *Burford* and *Pullman* remain relatively narrow, having never moved far from their original definitions, *Younger* abstention has emerged as one of the most formidable, and most maligned, doctrines today.<sup>26</sup> Abstention may still be the exception generally, but for cases considered under *Younger*, it has become the rule: "the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions."<sup>27</sup>

#### B. *Younger* Abstention in Context: The Anti-Injunction Act and Section 1983

In its simplest terms, the holding of *Younger* merely prohibits a federal court from issuing an injunction to stay state criminal proceedings. This holding may seem unremarkable because, since 1793; a statute of one form or another has prohibited federal courts from enjoining state court proceedings. The Second Congress passed what is now known as the Anti-Injunction Act,<sup>28</sup> which provided in part: "nor shall a writ of injunction be granted to stay proceedings in any court of a state."<sup>29</sup> The Act's present-day successor, 28 U.S.C. section 2283, contemplates express statutory exceptions, but otherwise remains essentially the same.<sup>30</sup> The *Younger* doctrine comes into play when a federal plaintiff brings an action under one

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whose importance transcends the result in the case then at bar." *Colorado River*, 424 U.S. at 814.

For a general discussion of *Burford* abstention, see 17 C. WRIGHT, A. MILLER & E. COOPER, *supra* note 6, at §§ 4244-45.

Because the *Younger* doctrine now reaches state administrative proceedings in general, the independent significance of *Burford* abstention is unclear. See *infra* note 153 and accompanying text.

<sup>25</sup> *Burford*, 319 U.S. at 334.

<sup>26</sup> "There is no more controversial, or more quickly changing, doctrine in the federal courts today than the doctrine of 'Our Federalism,' . . ." 17 C. WRIGHT, A. MILLER & E. COOPER, *supra* note 6, § 4251, at 180. Other authors have commented less generously. See, e.g., Theis, *Younger v. Harris: Federalism in Context*, 33 HASTINGS L.J. 103, 105 (1981) ("The general allusions to 'Our Federalism' are a poor substitute for a reasoned and explicit consideration . . .").

<sup>27</sup> *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 106 S. Ct. 2718, 2723 (1986) (quoting *Younger*, 401 U.S. at 45 (emphasis added by *Dayton* Court)).

<sup>28</sup> Act of March 2, 1793, ch. 22, § 5, 1 Stat. 333, 335 (current version at 28 U.S.C. § 2283 (1982)).

<sup>29</sup> *Id.* The Anti-Injunction Act, which the Court views as an important expression of congressional will, was only one of many provisions in the statute.

<sup>30</sup> "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 (1982).

of these express exceptions.<sup>31</sup> After *Dayton*, however, the *Younger* doctrine applies even when section 2283 technically does not apply at all, such as in the context of administrative proceedings.

C. Section 1983 and *Younger* Abstention:  
An Empirical Excursus

Although *Younger* abstention is certainly important on a doctrinal level, its practical significance requires an examination of whether *Younger* leads federal courts to abstain from a large number of cases. Fortunately, some data is available to begin assessing *Younger's* practical effect. Building on an earlier study of section 1983 actions conducted by Professor Eisenberg,<sup>32</sup> Professors Eisenberg and Schwab have conducted an empirical study of constitutional tort actions<sup>33</sup>—actions brought under section 1983 and its federal counterpart *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*.<sup>34</sup> Using the data from these studies, it is possible to gauge the role *Younger* is playing in civil rights litigation.

The Eisenberg and Schwab data include actions under section 1983 or *Bivens* commenced in 1975 and 1976 in the Central District

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<sup>31</sup> Federal habeas corpus represents an important statutory exceptions to section 2283 because "[a] justice or judge of the United States before whom a habeas corpus proceeding is pending, may . . . stay any proceeding against the person detained in any State court." *Id.* § 2251.

The constitutional tort action available under 42 U.S.C. section 1983, however, is the most important exception to section 2283. Section 1983 reads in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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. . . .

42 U.S.C. § 1983 (1982). *Mitchum v. Foster*, 407 U.S. 225 (1972), ruled that section 1983 was an express exception to the Anti-Injunction Act. Both acts permit federal courts to enjoin state judicial proceedings.

Federal courts can also enjoin unconstitutional state executive action under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which holds that the eleventh amendment does not bar federal courts from enjoining state officials' unconstitutional acts.

The doctrine of *Ex parte Young* and the exceptions to the Anti-Injunction Act permit a federal court to reach into almost any corner of a state's operations. Although *Ex parte Young* only permits a court to enjoin future actions, i.e., to act prospectively, the eleventh amendment bars a federal court from ordering retroactive payments from the state fisc. *Edelman v. Jordan*, 415 U.S. 651 (1974).

<sup>32</sup> Eisenberg, *Section 1983: Doctrinal Foundations and an Empirical Study*, 67 CORNELL L. REV. 482 (1982).

<sup>33</sup> Eisenberg & Schwab, *The Reality of Constitutional Tort Litigation*, 72 CORNELL L. REV. 641 (1987); Schwab & Eisenberg, *Explaining Constitutional Tort Litigation: The Influence of the Attorney Fees Statute and the Government as Defendant*, 73 CORNELL L. REV. 719 (1988).

<sup>34</sup> 403 U.S. 388 (1971).

of California, and actions commenced from October 1, 1980 to September 30, 1981 (1980 Fiscal Year) in the Central District of California, the Eastern District of Pennsylvania, and the Northern District of Georgia.<sup>35</sup> The data do not distinguish whether the defendants pleaded abstention under *Younger*, *Pullman*, or *Burford*. Thus, treating all abstention requests as if they were *Younger* may overstate *Younger*'s impact. For the limited purpose of this discussion, however, this distortion is not significant.

Table 1 shows the number of times the defendants pleaded abstention. In absolute terms, the data suggest that requests for abstention occur in only a small number of cases.<sup>36</sup> The incidence of an abstention defense hovers below—usually well below—ten percent.

TABLE I  
PLEADING OF ABSTENTION DEFENSE—ALL CASES

	Central District of California (1980FY)	Eastern District of Pennsylvania (1980FY)	Northern District of Georgia (1980FY)	Central District of California (1975)	Central District of California (1976)
Abstention Pleaded	18 (7%)	40 (9%)	1 (.2%)	7 (3%)	11 (5%)
Abstention Not Pleaded	251 (93%)	384 (91%)	416 (99%+)	226 (89%)	193 (88%)
No Data on Immunities & Defenses				22 (9%)	15 (7%)
Total	269 (100%)	424 (100%)	417 (100%)	255 (100%)	219 (100%)

When claims brought by prisoners are excluded from the data, the relative incidence of defendants asserting an abstention defense increases somewhat.<sup>37</sup> As Table II shows, absent prisoner claims, the incidence of abstention defense pleading rises to as much as 13% of the cases (Eastern District of Pennsylvania). Nevertheless, the results do not suggest that defendants view abstention as a defense that they should plead as a matter of course.

<sup>35</sup> For a description of the methodology of these studies, see sources cited *supra* notes 32-33.

<sup>36</sup> The author thanks Professors Theodore Eisenberg and Stewart Schwab for providing the data on the incidence of abstention pleading as a defense and the disposition of constitutional tort actions. The views expressed remain this author's alone. See also Eisenberg, *supra* note 32, at 539-44 (discussing abstention in light of results of 1975-76 study).

<sup>37</sup> The popular perception is that prisoner claims are often frivolous. See, e.g., *Peewee's Big Adventure* (Warner Bros. 1985) ("Prison's not all that bad. You work out, write appeals . . ."). Thus, nonprisoner cases may represent the most important category of cases. However, the Eisenberg and Schwab data "suggest that if a lawyer is willing to take a case, prisoner claims are as successful as nonprisoner claims." Eisenberg & Schwab, *supra* note 33, at 692.

TABLE II  
 PLEADING OF ABSTENTION DEFENSE—NONPRISONER  
 CASES ONLY

	Central District of California (1980FY)	Eastern District of Pennsylvania (1980FY)	Northern District of Georgia (1980FY)	Central District of California (1975)	Central District of California (1976)
Abstention Pleaded	18 (9%)	23 (13%)	1 (1%)	7 (6%)	11 (8%)
Abstention Not Pleaded	180 (91%)	156 (87%)	123 (99%)	95 (77%)	110 (81%)
No Data on Immunities & Defenses				22 (18%)	15 (11%)
Total	198 (100%)	179 (100%)	124 (100%)	124 (100%)	136 (100%)

Thus, a preliminary view suggests that *Younger* and the other abstention doctrines are not foreclosing federal courts from hearing significant numbers of section 1983 or *Bivens* actions. Furthermore, the abstention defense rarely succeeds. Table III presents the disposition of all cases, and Table IV for all nonprisoner cases. The results show that courts abstain in only a handful of cases. In nonprisoner cases the court abstained in 4, 5, and 6 cases in the Central District of California during the fiscal year 1980 and the calendar years 1975 and 1976 respectively. During the period studied, the Eastern District of Pennsylvania and the Northern District of Georgia abstained in no case.

Even without drawing a statistical inference from the results,<sup>38</sup> and allowing for a considerable margin of error and the fact that the data does not distinguish among the types of abstention, it appears that *Younger* is not a threat to the federal courts' role in hearing civil rights claims.<sup>39</sup> Two important caveats are in order. First, although the results suggest that the number of cases where abstention comes into play is not significant, this observation is quantitative and not qualitative. The cases themselves may be significant. The second important caveat is that *Younger* and its progeny may have an *ex ante* effect and discourage some plaintiffs from bringing their claims in the federal court in the first place. Yet even given these two caveats,

<sup>38</sup> Cf. L. E. VON MIES, *HUMAN ACTION* 247 (1949) ("Statistical figures referring to economic events are historical data. They tell us what happened in a nonrepeatable historical case."); S. SPENDER, *Thoughts During an Air Raid*, in *SELECTED POEMS* 40 (1964) ("Of course, the entire effort is to put oneself/ Outside the ordinary range/ Of what are called statistics.").

<sup>39</sup> It is also important to note that in absolute terms the number of section 1983 and *Bivens* claims is not enormous nor are those claims overburdening the courts, as Eisenberg and Schwab have shown. See generally sources cited *supra* notes 32-33. Thus, *Younger* should play no role as a crude means of federal docket control.

TABLE III  
CASE DISPOSITION

	Central District of California (1980FY)	Eastern District of Pennsylvania (1980FY)	Northern District of Georgia (1980FY)	Central District of California (1975)	Central District of California (1976)
Disposition					
Abstention	4 (1%)			6 (2%)	7 (3%)
Settlement	29 (11%)	53 (12%)	33 (8%)	25 (10%)	21 (10%)
Stipulated Dismissal	46 (17%)	72 (16%)	25 (6%)	20 (8%)	17 (8%)
Settlement or Stipulated Dismissal During Trial	3 (1%)	7 (2%)	1 (0%)	1 (0%)	
Dismissal By Plaintiff	17 (6%)	16 (4%)	35 (8%)	18 (7%)	12 (5%)
Dismissal for Lack of Prosecution	36 (13%)	25 (6%)	56 (13%)	21 (8%)	28 (13%)
Other Dismissal	86 (31%)	178 (40%)	190 (45%)	141 (55%)	112 (51%)
Defendant Wins					
Summary Judgment	23 (8%)	52 (12%)	34 (8%)	12 (5%)	9 (4%)
Plaintiff Wins					
Summary Judgment		2 (0%)	1 (0%)	1 (0%)	
Defendant Wins after Bench Trial	11 (4%)	10 (2%)	14 (3%)	1 (0%)	6 (3%)
Plaintiff Wins after Bench Trial	7 (3%)	5 (1%)	7 (2%)	4 (2%)	4 (2%)
Defendant Wins after Jury Trial	11 (4%)	12 (3%)	10 (2%)	5 (2%)	1 (0%)
Plaintiff Wins after Jury Trial	2 (1%)	3 (1%)	3 (1%)		2 (1%)
Default Judgment for Plaintiff		1 (0%)			
Dismissed During Trial	1 (0%)	1 (0%)	3 (1%)		
Failure to Exhaust Administrative Remedies in Habeas Cases		4 (1%)	7 (2%)		
Total	276 (100%)	441 (100%)	419 (100%)	255 (100%)	219 (100%)

it does not appear that, at least through 1981, *Younger* had *sub silentio* undercut section 1983 significantly.

TABLE IV  
CASE DISPOSITION—NONPRISONER CASES

Disposition	Central District of California (1980FY)	Eastern District of Pensylvania (1980FY)	Northern District of Georgia (1980FY)	Central District of California (1975)	Central District of California (1976)
Abstention	4 (2%)			5 (4%)	7 (5%)
Settlement	25 (12%)	40 (22%)	18 (15%)	25 (20%)	20 (15%)
Stipulated Dismissal	44 (22%)	45 (24%)	17 (14%)	20 (16%)	17 (13%)
Settlement or Stipulated Dismissal During Trial	3 (1%)	6 (3%)	1 (1%)	1 (1%)	
Dismissal By Plaintiff	13 (6%)	8 (4%)	9 (7%)	14 (11%)	11 (8%)
Dismissal for Lack of Prosecution	24 (12%)	6 (3%)	7 (6%)	12 (10%)	15 (11%)
Other Dismissal	48 (24%)	42 (23%)	31 (25%)	30 (24%)	48 (35%)
Defendant Wins					
Summary Judgment	13 (6%)	20 (11%)	14 (11%)	9 (7%)	5 (4%)
Plaintiff Wins					
Summary Judgment		2 (1%)	1 (1%)	1 (1%)	
Defendant Wins after Bench Trial	10 (5%)	3 (2%)	9 (7%)	1 (1%)	6 (4%)
Plaintiff Wins after Bench Trial	6 (3%)	2 (1%)	6 (5%)	1 (1%)	4 (3%)
Defendant Wins after Jury Trial	10 (5%)	8 (4%)	6 (5%)	5 (4%)	1 (1%)
Plaintiff Wins after Jury Trial	2 (1%)	1 (1%)	3 (2%)		2 (1%)
Default Judgment for Plaintiff		1 (1%)			
Dismissed During Trial			2 (2%)		
Total	202 (100%)	184 (100%)	124 (100%)	124 (100%)	136 (100%)

## II

### THE BIRTH OF THE *YOUNGER* DOCTRINE

#### A. The View of Federalism Prior to *Younger*:

##### *Dombrowski v. Pfister*

When the Court addressed *Younger* the slate was not clean. Indeed, *Dombrowski v. Pfister*<sup>40</sup> was writ large, and under its banner civil rights lawyers marched into federal courts for injunctive and declaratory relief against allegedly unconstitutional state actions.<sup>41</sup>

<sup>40</sup> 380 U.S. 479 (1965).

<sup>41</sup> This analysis relies shamelessly on Fiss's peerless treatment of *Dombrowski v. Pfister*, its role in civil rights litigation, and the vision of federalism that *Younger* so radically altered. See Fiss, *supra* note 6.

*Younger* responded to *Dombrowski* and the vision of federalism that Justice Brennan quietly presented in it.

In *Dombrowski*, Louisiana had charged civil rights activists under the Louisiana Subversive Activities and Communist Control Law and the Communist Propaganda Control Law.<sup>42</sup> The plaintiffs brought an action in federal court under section 1983 seeking declaratory and injunctive relief after the state threatened criminal prosecution.<sup>43</sup> The plaintiffs challenged the applicable Louisiana statute as unconstitutionally overboard and in violation of the first and fourteenth amendments. The plaintiffs also alleged that the state used threats of prosecution simply to harass civil rights activists.<sup>44</sup>

The district court abstained, allowing the state criminal process to take its course.<sup>45</sup> The court feared that enjoining the state proceedings would hinder "the state and local courts of this nation in the exercise of their sovereign rights of self-protection."<sup>46</sup>

The Supreme Court<sup>47</sup> reversed, ordering the district court to enjoin the state criminal proceedings. In an opinion by Justice Brennan, the Court carefully charted a course which led to the desired destination: ready access to federal injunctive and declaratory relief for civil rights claimants.<sup>48</sup>

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<sup>42</sup> LA. REV. STAT. ANN. §§ 14:358-:374; 14:390-:390.8 (Cum. Supp. 1962). Most of the plaintiffs were officers of the Southern Conference Educational Fund, Inc., an organization "active in fostering civil rights for Negroes in Louisiana and other States of the South." *Dombrowski*, 380 U.S. at 482.

<sup>43</sup> *Dombrowski*, 380 U.S. at 481-82.

<sup>44</sup> *Id.* at 482, 487-89.

<sup>45</sup> *Dombrowski v. Pfister*, 227 F. Supp. 556 (E.D. La. 1964), *rev'd*, 380 U.S. 479 (1965).

<sup>46</sup> *Id.* at 560.

<sup>47</sup> Chief Justice Warren, with Justices Douglas, White and Goldberg, joined in Justice Brennan's opinion for the Court. Justice Harlan dissented and was joined by Justice Clark. Justices Black and Stewart took no part. At this time "the liberal bloc on the Warren Court was its strongest, yet there were few votes to spare." Fiss, *supra* note 6, at 1105.

<sup>48</sup> Justice Brennan disposed of the Anti-Injunction Act problem quickly, relegating it to a footnote. Because the Act applied explicitly only to state proceedings actually pending, and at the time the plaintiffs commenced their federal action state criminal prosecution was only threatened, the Act posed no bar. *Dombrowski*, 380 U.S. at 484 n.2.

The problem, however, was not as facile as Justice Brennan suggested. In an earlier case, *Douglas v. City of Jeannette*, 319 U.S. 157 (1943), the Court refused to enjoin threatened prosecutions, finding a Congressional policy "of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this Court of any federal questions involved." *Id.* at 163. Rather than reading the Anti-Injunction Act to include a Congressional policy against federal court intervention, Justice Brennan construed the statute narrowly, allowing federal courts to act if the federal plaintiff were quicker to the mark.

The Court overcame Louisiana's call for *Pullman* abstention by ruling that the state courts could not simply construe the statute so as to remove its unconstitutional taint. The statute was so overbroad that it could be "justifiably attacked on [its] face as abridg-

*Dombrowski*'s greatest significance was its abolition of the traditional limits on equity jurisdiction for federal plaintiffs. A court of equity will not grant relief if the plaintiff has an adequate remedy at law—the inadequacy prerequisite.<sup>49</sup> *Dombrowski* held that raising the constitutional claim as a defense in the state criminal trial was not an adequate remedy for prosecution under an overbroad statute that also infringes on important first amendment rights.<sup>50</sup> Justice Brennan reasoned that when a plaintiff challenges a statute as overbroad, "[t]he assumption that defense of a criminal prosecution will generally assure ample vindication of constitutional rights is unfounded."<sup>51</sup>

Justice Harlan's vigorous dissent criticized "the Court's major premise that criminal enforcement of an overly broad statute affecting rights of speech and association is in itself a deterrent to [free speech]."<sup>52</sup> Harlan saw in the court's major premise an "unarticulated assumption that state courts will not be as prone as federal courts to vindicate constitutional rights promptly and effectively."<sup>53</sup>

If the *Dombrowski* majority believed that the state courts would fairly decide the federal constitutional claim raised as a defense, then it would not matter which court, federal or state, heard the claim. If a plaintiff alleges that the statute under which a state prosecutes her is unconstitutional, then the state court could give the same remedy as a federal court—void the law as repugnant to the Constitution. The remedies available from the two courts would diverge only when the plaintiff challenges the constitutionality of the prosecution itself (e.g., selective and discriminatory). A state court would acquit, while a federal court would enjoin the prosecution itself.<sup>54</sup> Justice Harlan rejected the *Dombrowski* majority's assumption that state courts would not decide the constitutional claims fairly, just as the *Younger* Court would seven years later.

Having found the inadequacy prerequisite satisfied, the *Dombrowski* Court turned to whether the plaintiff satisfied the irreparable injury prerequisite to injunctive relief. The Court ruled that even if the state probably could not convict the accused, the prosecution

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ing free expression." *Dombrowski*, 380 U.S. at 489-90. Because no open question of state law existed, *Pullman* did not require abstention.

<sup>49</sup> *Dombrowski*, 380 U.S. at 485-88.

<sup>50</sup> *Id.* There was some precedent to the contrary. See *Douglas v. City of Jeannette*, 319 U.S. 157 (district court should not exercise equity jurisdiction where Supreme Court could review state court's decision and plaintiff unable to show imminent irreparable injury).

<sup>51</sup> *Dombrowski*, 380 U.S. at 486.

<sup>52</sup> *Id.* at 499 (Harlan, J., dissenting).

<sup>53</sup> *Id.*

<sup>54</sup> See Wingate, *The Bad Faith-Harassment Exception to the Younger Doctrine: Exploring the Empty Universe*, 5 REV. LITIGATION 123, 141-42 (1986).

would have such a chilling effect on free speech rights that the district court should enjoin the state prosecution.<sup>55</sup>

After *Dombrowski*, "[c]hilling effect' and 'overbreadth' became the slogans of civil rights litigators."<sup>56</sup> Once a plaintiff alleged overbreadth, the federal court could determine that no adequate remedy at law existed, and could therefore entertain the request for relief. An overbreadth claim also permitted the court to enjoin the state proceedings because, under *Dombrowski*, the prosecution's chilling effect justified a finding of irreparable injury. Civil rights activists threatened with criminal prosecution, therefore, could readily obtain federal equitable relief.<sup>57</sup>

Yet, as Professor Fiss observed, "*Dombrowski* was of course not a struggle about remedies but about judges."<sup>58</sup> *Dombrowski*'s vision of federalism stresses choice and duplication in having access to both federal and state courts to protect individual liberties. *Dombrowski* puts great weight on the role of the national government, not to displace the states, but to overlap them. The Court apparently felt that too much of a good thing is not bad when the good sought is judicial protection of individual rights. Yet, under the slogan of "Our Federalism," the Supreme Court adopted a profoundly different vision of federalism only seven years after *Dombrowski*.

#### B. *Younger v. Harris*: "Our Federalism" Triumphant

California was prosecuting Harris, a teacher and advocate of Marxism, under its Criminal Syndicalism Act.<sup>59</sup> Claiming that the Act violated the first amendment, Harris brought an action in federal court under section 1983 to have the Act declared unconstitutional and to enjoin his prosecution.<sup>60</sup>

The district court agreed with Harris, declaring the Act unconstitutional on its face as overbroad and vague<sup>61</sup> and enjoined further

<sup>55</sup> *Dombrowski*, 380 U.S. at 486-87.

<sup>56</sup> Fiss, *supra* note 6, at 1116.

<sup>57</sup> See Maraist, *Federal Injunctive Relief Against State Court Proceedings: The Significance of Dombrowski*, 48 TEX. L. REV. 535, 580-85 & nn.200-47 (1970).

<sup>58</sup> Fiss, *supra* note 6, at 1116.

<sup>59</sup> CAL. PENAL CODE §§ 11400, 11401 (West 1972). The text of the Act is set forth in *Younger*, 401 U.S. at 38-39 n.1. The Supreme Court had previously found the Act constitutional. *Whitney v. California*, 274 U.S. 357 (1927). By the time *Younger* had reached the Supreme Court, however, the Court had invalidated a similar act in *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

<sup>60</sup> The Supreme Court had not yet determined whether section 1983 was an exception to the Anti-Injunction Act, and thus whether that Act would bar federal intervention. Additional plaintiffs, therefore, joined the case and appropriately recited the *Dombrowski* formula of "overbreadth" and "chilling effect." *Younger*, 401 U.S. at 39-40. Either way the plaintiffs seemed assured of a federal forum.

<sup>61</sup> *Harris v. Younger*, 281 F. Supp. 507, 516 (C.D. Cal. 1968), *rev'd*, 401 U.S. 37 (1971).

prosecution of Harris.<sup>62</sup> Younger, the District Attorney of Los Angeles County, appealed.

*Younger* came to the Supreme Court after changes in the Court's personnel,<sup>63</sup> and perhaps in its mood as well.<sup>64</sup> The Court, speaking through Justice Black, rejected plaintiff's mere incantation of *Dombrowski*, and denied relief.<sup>65</sup> Without deciding if section 1983 was an exception to the Anti-Injunction Act, the Court held that even if the district court could issue an injunction,<sup>66</sup> it should not have done so because of "the absence of the factors necessary under equitable principles to justify federal intervention."<sup>67</sup>

Rather than overrule *Dombrowski*, the Court construed *Dombrowski* narrowly and focused on the allegations of prosecutorial bad faith.<sup>68</sup> The Court admitted that "there are some statements in the *Dombrowski* opinion that would seem to support [the] argument"<sup>69</sup> that *Dombrowski* had "substantially broadened the availability of injunctions against state criminal prosecutions."<sup>70</sup> However, the *Younger* Court repudiated those statements.

The majority rejected *Dombrowski*'s finding that the chilling effect of a single criminal prosecution can justify federal intervention.<sup>71</sup> The *Younger* Court was confident in the adequacy of the remedy available to Younger—raising his constitutional claims as a defense in the criminal prosecution.<sup>72</sup> Thus, the *Younger* Court rejected *Dombrowski*'s underlying assumption that state courts will not be as solicitous of constitutional claims as federal courts.<sup>73</sup> The Court

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<sup>62</sup> *Id.* at 517.

<sup>63</sup> Of the original *Dombrowski* majority, only Justices Brennan, Douglas and White remained. Justice Harlan, dissenting in *Dombrowski*, remained on the Court, as did Justices Black and Stewart, who had not participated in *Dombrowski*. Chief Justice Burger had come to the Court that year, and Justices Marshall and Blackmun had joined the Court earlier.

<sup>64</sup> Professor Fiss suggests that in the interim period before *Younger*, the maturing of the civil rights movement and its increasingly national focus, the Watts riots, and other traumatic events such as the assassinations of President Kennedy, Senator Kennedy, and Martin Luther King "affected the Justices' perception of those [civil rights] protest activities. The Justices were less inclined to intervene on behalf of the movement, less inclined to guarantee it a federal forum." Fiss, *supra* note 6, at 1117.

<sup>65</sup> The Court also found that the plaintiffs who faced only potential prosecution lacked standing. *Younger*, 401 U.S. at 42.

<sup>66</sup> One of *Younger*'s companion cases ruled that *Younger*'s analysis also barred declaratory judgment. *Samuels v. Mackell*, 401 U.S. 66 (1971).

<sup>67</sup> *Younger*, 401 U.S. at 54.

<sup>68</sup> *Id.* at 47-49.

<sup>69</sup> *Id.* at 50.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 50-52.

<sup>72</sup> *Id.* at 49 ("Here a proceeding was already pending in the state court, affording Harris an opportunity to raise his constitutional claims.").

<sup>73</sup> The Court recently reaffirmed its confidence in the ability and desire of state courts to vindicate constitutional rights. *See Pennzoil Co. v. Texaco, Inc.*, 107 S. Ct.

also rejected *Dombrowski*'s rule that the chilling effect on first amendment rights produced by a prosecution under an overbroad statute justified injunctive relief.<sup>74</sup>

*Dombrowski* had weakened the inadequacy prerequisite, but after *Younger* "the inadequacy prerequisite once again emerged . . . as a vital limitation on injunctions."<sup>75</sup> Justice Black shifted the framework of analysis from *Dombrowski*'s traditional notions of equity jurisdiction, to one in which equity, comity, and federalism combined to restrict the availability of federal injunctive or declaratory relief.

Justice Black reasoned that courts of equity should exercise their jurisdiction with restraint "to prevent erosion of the role of the jury and avoid a duplication of legal proceedings and legal sanctions where a single suit would be adequate to protect the rights asserted."<sup>76</sup> This reasoning, however, seems less compelling when a plaintiff asserts important constitutional rights. Consequently, Justice Black also discussed the additional, uniquely American, reasons for constraining federal equity jurisdiction.<sup>77</sup> In a famous passage,<sup>78</sup> Justice Black argued that comity and federalism considerations combined to call for limiting equity jurisdiction:

[The reasons for restraining courts of equity are reinforced by] the notion of "comity," that is, 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.<sup>79</sup>

Justice Black called his vision of the proper relationship between the federal courts and the states "Our Federalism."<sup>80</sup> Extending beyond state criminal proceedings, Our Federalism holds as

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1519, 1528 (1987) ("Article VI of the United States Constitution declares that 'the Judges in every State shall be bound' by the Federal Constitution, laws, and treaties. We cannot assume that state judges will interpret ambiguities in state procedural law to bar presentation of federal claims.").

<sup>74</sup> *Younger*, 401 U.S. at 50-52.

<sup>75</sup> O. FISS & D. RENDLEMAN, *INJUNCTIONS* 79 (2d ed. 1984).

<sup>76</sup> *Younger*, 401 U.S. at 44.

<sup>77</sup> *Id.* ("fundamental purpose of restraining equity jurisdiction within narrow limits is equally important under our Constitution").

<sup>78</sup> Justice Stevens referred to this passage as "the majestic language in Mr. Justice Black's *Younger* opinion." *Trainor v. Hernandez*, 431 U.S. 434, 464 (1977) (Stevens, J., dissenting).

<sup>79</sup> *Younger*, 401 U.S. at 44.

<sup>80</sup> This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism."

its chief tenet that federal courts should avoid interfering with the operation of the states whenever possible. As such, Our Federalism is the ideological parent of the *Younger* doctrine, a doctrine that reaches out from the *Younger* holding to define the relationship between the federal courts and the states.

Our Federalism rests in part on the belief that states should be permitted to act independently, with only the bare minimum of federal judicial interference.<sup>81</sup> In a famous dictum discussing the benefits of such an approach, Justice Brandeis observed that "[i]t is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."<sup>82</sup> Yet Our Federalism does not simply rest on faith in the integrity of independent state action. The source of Our Federalism lies in the structure of the federal system created by the Constitution.

Justice Black did not suggest that the federal courts could never enjoin state actions, but he stressed that a federal court should only do so when truly necessary:

[Our Federalism] does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.<sup>83</sup>

Justice Black's rhetoric recognizes that federal courts have an important interest in vindicating constitutional rights. That interest must be tempered with the need to allow states to act unhampered.

Justice Black, however, did not indicate what would constitute undue interference. "Unduly" is a balancing word. At first blush,

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<sup>81</sup> "Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Id.* at 43.

<sup>82</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Justice Brandeis's statement predates *Younger* by almost fifty years, but the hope it expresses continues to be voiced today. See, e.g., Friendly, *Federalism: A Forward*, 86 *YALE L.J.* 1019, 1034 (1977) ("There is still truth in Mr. Justice Brandeis' renowned observation . . .").

<sup>83</sup> *Younger*, 401 U.S. at 44. Justice Black concluded with a lofty peroration: "It should never be forgotten that this slogan, 'Our Federalism,' born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future." *Id.* at 44-45.

one might think that Justice Black is suggesting a case-by-case balancing. Nevertheless, viewed in light of *Younger*, "unduly interfere" simply restates the inadequacy prerequisite. Once the Court determined that Harris had an adequate remedy in the state proceedings, any federal interference would have been undue. Our Federalism needs the inadequacy prerequisite to insure that states can conduct their affairs without unnecessary federal court interference.

Many critics of the *Younger* doctrine suggest that the Court gave short shrift to the federal courts' role in vindicating constitutional rights. Yet, Our Federalism rests on the belief that state courts will properly vindicate constitutional rights, as the Supremacy Clause binds them to do. From that premise it follows that the federal courts must refrain from exercising equity jurisdiction to realize the benefits of permitting states to act as freely as possible.

The Court recognized that the *Younger* doctrine is not without costs. Once the federal court abstains, the would-be federal plaintiff must suffer the injury " 'incidental to every criminal proceeding' ": time, cost, and possible embarrassment.<sup>84</sup> Moreover, if the state court decides the constitutional issue incorrectly, the individual must undergo the expense and delay of proceeding through the state appellate system and ultimately may have to seek direct review by the Supreme Court.<sup>85</sup> Our Federalism, as adopted by the *Younger* Court, asks the individual to make this sacrifice for the larger benefits the Court believes will flow to society from federal restraint.

*Younger* produced three enduring legacies. First is the Court's holding that federal courts should not enjoin ongoing state criminal proceedings. Second is Our Federalism, that requires federal courts to refrain from unduly interfering with state activities. Third is the *Younger* doctrine that applies the principles of Our Federalism to other cases. The Court could have limited *Younger* as it has limited the other abstention doctrines, but because a majority of the Court has continued to embrace Our Federalism, the *Younger* doctrine remains vital, if controversial.

### III

#### THE EVOLUTION OF THE *YOUNGER* DOCTRINE

As a threshold issue, *Younger* becomes a factor only when the defendant in a state action asks a federal court to enjoin or otherwise disrupt the state proceeding.<sup>86</sup> When later courts tried to ex-

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<sup>84</sup> *Id.* at 49 (quoting *Douglas v. City of Jeannette*, 319 U.S. 157, 164 (1943)).

<sup>85</sup> The *Burford* Court required the same sacrifice by the individual. See *supra* notes 24-25 and accompanying text.

<sup>86</sup> The *Younger* doctrine also calls for abstention when the plaintiff's action seeking money damages would disrupt a state proceeding as much as an action seeking an in-

tract rules from *Younger* about when to abstain, three elements emerged. First, the state proceedings must be ongoing when the plaintiff seeks federal injunctive or declaratory relief. Second, the state forum must be adequate to hear the constitutional claim. Third, the *Younger* holding applies only to state criminal proceedings. In the fifteen years since deciding *Younger*, the Court has expanded each of these elements.

#### A. The Ongoing State Proceedings Requirement

In *Huffman v. Pursue, Ltd.*<sup>87</sup> the Court reaffirmed the *Younger* doctrine's overarching principle of noninterference by holding that "proceeding" meant exhausting all state appellate remedies. Justice Brennan, joined by Justices Douglas and Marshall, dissented, arguing that the majority's decision undercut the Court's earlier rule in *Monroe v. Pape*.<sup>88</sup> In *Monroe* the court ruled that a section 1983 plaintiff did not have to exhaust state administrative or judicial remedies.<sup>89</sup> Justice Brennan wrote that *Huffman* led to the result that "the mere filing of a complaint against a potential § 1983 litigant forces him to exhaust state remedies."<sup>90</sup> Yet the majority rejected this view, saying that their opinion in no way impinged on the *Monroe* holding.<sup>91</sup>

*Younger* abstention applies only to ongoing state proceedings because "the relevant principles of equity, comity, and federalism 'have little force in the absence of a pending state proceeding.'"<sup>92</sup> Consequently, *Younger* does not prohibit a federal court from en-

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junction. This typically occurs when a section 1983 plaintiff brings a suit for damages, and in order to decide the case, the court essentially must review the constitutionality of the prosecution of conviction. See *McCurry v. Allen*, 606 F.2d 795 (8th Cir. 1979), *rev'd on other grounds*, 449 U.S. 90 (1980) (abstention to permit state court to review conviction); *Fulford v. Klein*, 550 F.2d 342 (5th Cir. 1977) (en banc) (per curiam) (suit challenges constitutionality of conviction); *Martin v. Merola*, 532 F.2d 191 (2d Cir. 1976) (state prosecution pending); *Guerro v. Mulhearn*, 498 F.2d 1249 (1st Cir. 1974) (review of conviction pending in state court).

<sup>87</sup> 420 U.S. 592 (1975). In *Huffman*, Ohio brought a civil action under its nuisance law against a theater owner who was showing obscene films. *Id.* at 595-97. An Ohio court granted an injunction against the theater owner. *Id.* at 598. The theater owner, rather than appealing the injunction in the Ohio courts, brought a federal action seeking to enjoin the enforcement of the injunction. *Id.* The district court declared the Ohio law unconstitutional on first amendment grounds, and enjoined execution of the injunction. *Id.* at 599. As the Court noted, "Virtually all of the evils at which *Younger* is directed would inhere in federal intervention prior to completion of state appellate proceedings, just as surely as they would if such intervention occurred at or before trial." *Id.* at 608.

<sup>88</sup> 365 U.S. 167 (1961).

<sup>89</sup> *Huffman*, 420 U.S. at 617 (Brennan, J. dissenting).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 609 n.21 (majority opinion).

<sup>92</sup> *Steffel v. Thompson*, 415 U.S. 452, 462 (1974) (quoting *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 509 (1972)).

joining threatened state proceedings. A federal plaintiff, however, must also present a significant enough threat of prosecution to satisfy standing requirements.<sup>93</sup> Thus, a potential plaintiff must institute her federal action within a brief "window of opportunity"—when the threat of prosecution suffices to give standing, but before the state commences an action that triggers *Younger*. Such a race to the courthouse is unseemly,<sup>94</sup> and given *Younger*'s broad doctrinal origins in Our Federalism, unnecessarily technical. The Supreme Court faced this problem in *Hicks v. Miranda*.<sup>95</sup>

In *Hicks* the Court held that mere 'first in time' does not determine whether *Younger* abstention is proper.<sup>96</sup> Federal courts should abstain when "state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance have taken place in the federal court."<sup>97</sup> *Younger* still requires an ongoing state proceeding, but the court determines whether the proceeding is ongoing when it addresses whether equitable relief is proper, not when the federal action commenced.<sup>98</sup>

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<sup>93</sup> Article III of the Constitution limits federal jurisdiction to situations where there is a "case or controversy." Courts have interpreted this to require that the plaintiff have standing to sue in the federal court. "[T]he plaintiff [must] 'allege[] such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 498-99 (1975) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)). The plaintiff must have a "personal stake" in the action. He must "himself [have] suffered 'some threatened or actual injury resulting from the putatively illegal action . . .'" *Id.* at 499 (quoting Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973)).

<sup>94</sup> Professor Fiss refers to it as a potential "squeeze play." Fiss, *supra* note 6, at 1133.

<sup>95</sup> 422 U.S. 332 (1975). In *Hicks* a California court ordered the police to seize copies of the film "Deep Throat" from a theater showing the film. After holding a hearing, the court found the film obscene and ordered all copies seized. The theater owner and his employees, two of whom the state had earlier charged with a misdemeanor for showing the film, did not appeal the court's judgment or order. Instead, the theater owner brought an action in federal court to enjoin enforcement of the California obscenity law and declare the law unconstitutional. While the federal court action was pending, the state amended its criminal complaint against the two theater employees to include all other employees and the theater owner. *Id.* at 336-39. Six months later, the district court declared the obscenity law unconstitutional, rejecting the state's claim that *Younger* called for abstention. *Id.* at 340. *Hicks* questioned if the *Younger* doctrine called for abstention even when the plaintiff had commenced the federal action before the state filed criminal charges.

<sup>96</sup> The *Hicks* Court also argued that the *Younger* doctrine called for abstention because theater owner's interests were intertwined with those of the two employees whom the state was already prosecuting. *Id.* at 348-49.

<sup>97</sup> *Id.* at 349.

<sup>98</sup> For cases in which abstention was not appropriate see, e.g., *Adultworld Bookstore v. City of Fresno*, 758 F.2d 1348 (9th Cir. 1985) (evidentiary hearing in federal court); *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir.) (hearing on motion for preliminary injunction), *cert. denied sub nom. Theatres West Inc. v. Holmes*, 455 U.S. 913 (1981). Abstention was appropriate in, e.g., *Middlesex County Ethics Comm. v.*

Justice Stewart, joined by Justices Douglas, Brennan, and Marshall, dissented in *Hicks*. Stressing that "the federal courts are 'the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States,'"<sup>99</sup> Justice Stewart argued that the rule the majority adopted would "oust" federal courts from their role as protector of federal rights<sup>100</sup> and operate as "an open invitation for state officials to institute state proceedings in order to defeat federal jurisdiction."<sup>101</sup>

Nevertheless, the majority thought that to adopt Justice Stewart's first-in-time rule would "trivialize the principles of *Younger v. Harris*."<sup>102</sup> The flexible rule given in *Hicks* recognized that *Younger* abstention rests on the broad principles of Our Federalism, not technical rules.<sup>103</sup>

## B. The Nature of the Proceeding: The Important State Interest Requirement

Although *Younger* arose in the context of state criminal proceedings, Our Federalism speaks to a wider spectrum of cases. The Court has acknowledged the principle's breadth by invoking abstention in a growing variety of circumstances. Our Federalism does not ask what type of proceeding is involved, but rather whether the federal court exercising equity jurisdiction will "unduly interfere with the legitimate activities of the states."<sup>104</sup>

### 1. Expansion to State Civil Proceedings

In *Huffman v. Pursue, Ltd.*<sup>105</sup> the Court first expanded *Younger* to a civil proceeding "akin to a criminal prosecution."<sup>106</sup> The *Huffman* Court noted that the element of *Younger* that rested "upon the traditional reluctance of courts of equity . . . to interfere with a criminal prosecution . . . is not available to mandate federal restraint in civil cases."<sup>107</sup> However, "relevant considerations of federalism [call for

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Garden State Bar Ass'n, 457 U.S. 423 (1982) (abstention issue only issue litigated); *Orazio v. Town of North Hempstead*, 426 F. Supp. 1144 (E.D.N.Y. 1977); *Nevin v. Ferdon*, 413 F. Supp. 1043, 1049 (N.D. Cal. 1976) (proceedings "confined to arguments on the Court's jurisdiction and on the issue of abstention").

<sup>99</sup> *Hicks*, 422 U.S. at 355 (Stewart, J. dissenting) (quoting F. FRANKFURTER & J. LANDIS, *THE BUSINESS OF THE SUPREME COURT: A STUDY IN THE FEDERAL JUDICIAL SYSTEM* 65 (1927)).

<sup>100</sup> *Id.* at 356.

<sup>101</sup> *Id.* at 357.

<sup>102</sup> *Id.* at 350 (majority opinion).

<sup>103</sup> See Fiss, *supra* note 6, at 1135 ("From the perspective of *Younger*, 'Our Federalism,' and the interests they seek to further, the rule of *Hicks v. Miranda* makes sense.')

<sup>104</sup> *Younger*, 401 U.S. at 44.

<sup>105</sup> 420 U.S. 592 (1975). For a discussion of the facts of *Huffman*, see *supra* note 87.

<sup>106</sup> *Id.* at 604.

<sup>107</sup> *Id.*

federal restraint] . . . since interference with a state judicial proceeding prevents the state not only from effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies."<sup>108</sup> The *Huffman* Court further reasoned that the civil nuisance proceeding "[was] in aid of and closely related to criminal statutes," and that federal interference in the nuisance proceeding would be "an offense to the State's interest . . . every bit as great" as if it were a criminal proceeding.<sup>109</sup>

Justice Brennan, joined by Justices Douglas and Marshall, vigorously dissented, rejecting the majority's view that Our Federalism applied outside criminal proceedings. Justice Brennan argued that *Younger* culminated a distinct line of cases holding that "equitable interference by federal courts with pending state prosecutions is incompatible in our federal system with the paramount role of the states in the definition of crimes and the enforcement of criminal laws."<sup>110</sup> The tradition concerning federal interference, however, did not apply to state civil proceedings. Justice Brennan argued that a consistent trend in the past showed increasing judicial and congressional exceptions to the Anti-Injunction Act's flat prohibition against injunctions.<sup>111</sup> Moreover, civil proceedings lacked the procedural safeguards present in the criminal process that might guard against "spurious prosecution—arrest, charge, information or indictment."<sup>112</sup> Despite these objections, a majority of six refused to limit the *Younger* doctrine to state criminal proceedings.

Two years later, the Supreme Court extended *Younger* even further, ruling in *Judice v. Vail*<sup>113</sup> that the *Younger* doctrine also applied to certain civil actions not intimately bound up with criminal statutes. *Vail* challenged the constitutionality of the judicial contempt procedures. The Court called for abstention, stressing that the state's "interest in the contempt process, through which it vindi-

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<sup>108</sup> *Id.* The Court went on to note that federal interference can lead to duplicative proceedings and "can readily be interpreted 'as reflecting negatively upon the state court's ability to enforce constitutional principles.'" *Id.* (citing *Steffel v. Thompson*, 415 U.S. 452, 462 (1974)).

<sup>109</sup> *Huffman*, 420 U.S. at 604.

<sup>110</sup> *Id.* at 614 (Brennan, J., dissenting).

<sup>111</sup> *Id.* at 614-15.

<sup>112</sup> *Id.* at 615.

<sup>113</sup> 430 U.S. 327 (1977). *Vail* had defaulted on a credit agreement and after the state court had entered a default judgment against *Vail*, the creditor sought discovery. *Vail* did not comply and was cited for contempt. The court fined *Vail*, and when *Vail* did not pay, had him arrested. Instead of appealing the contempt order in state court, *Vail* brought a class action under section 1983 challenging the constitutionality of the contempt procedures. A three-judge district court found the challenged statute unconstitutional. *Id.* at 329-31. The Supreme Court reversed, and held that the district court should have abstained under the *Younger* doctrine. *Id.* at 339.

cates the regular operation of its judicial system . . . is surely an important interest."<sup>114</sup> The Court concluded that the *Younger* doctrine applied to state civil contempt proceedings because of the proceedings analogous relationship to criminal proceedings.

Justice Brennan again dissented, joined by Justice Marshall. Justice Brennan repeated the objections he had made to the expansion of the *Younger* doctrine in *Huffman*. Arguing that the "very purpose of § 1983 was to interpose the federal courts between the States and the people,"<sup>115</sup> Justice Brennan stated that the majority's opinion "strip[ped] all meaningful content from 42 U.S.C. § 1983."<sup>116</sup> In his view, "[F]orced federal abdication . . . 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 [granting federal question jurisdiction], ordained should be a primary responsibility of the federal courts."<sup>117</sup>

The majority, however, rejected Justice Brennan's view, and adhered to *Our Federalism's* tenet that state courts can also protect federal rights. The Court reiterated its position that allowing the would-be federal plaintiff to raise her constitutional claim as a defense in the state proceeding satisfies the federal interest in vindicating constitutional rights.

Shortly after *Judice*, the Court continued its expansive application of the *Younger* doctrine in *Trainor v. Hernandez*.<sup>118</sup> The Supreme Court reasoned that the *Younger* doctrine required abstention from interfering with state attachment procedures through which the state tried to recover fraudulently obtained welfare payments. The Court found that "the suit and the accompanying writ of attachment were brought to vindicate important state policies."<sup>119</sup> "Important state policy" or "interest," and not the nature of the proceeding, became the test for applying the *Younger* doctrine. "The policies underlying *Younger* are fully applicable to noncriminal judicial proceedings when important state interests are involved."<sup>120</sup>

Yet the Court has provided virtually no guidance in how to determine the importance of a state interest. The Supreme Court has

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<sup>114</sup> *Id.* at 335.

<sup>115</sup> *Id.* at 342 (Brennan, J., dissenting).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 343-44.

<sup>118</sup> 431 U.S. 434 (1977). Illinois had brought a civil action to recover fraudulently obtained welfare payments. The defendants in the state action, Mr. and Mrs. Hernandez, brought a federal action challenging the constitutionality of the Illinois attachment procedures that the state invoked in the suit.

<sup>119</sup> *Id.* at 444.

<sup>120</sup> *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

never held a state interest to be "unimportant," and only a precious few lower court precedents so hold.<sup>121</sup> Our Federalism suggests that federal courts may offend the states as much by deciding when a state interest is important as by interfering with a proceeding in the first place.

## 2. *Expansion to State Administrative Proceedings*

Although the contours of *Younger* abstention have never been crystal clear,<sup>122</sup> applying *Younger* to administrative proceedings adds further complications. Yet here, as in the rest of *Younger* jurisprudence, the Court has broadly applied *Younger* principles, which may force individuals to wind their way through a state's administrative and judicial systems.

In *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*<sup>123</sup> the Supreme Court held that the *Younger* doctrine calls for abstention from ongoing administrative proceedings.<sup>124</sup> *Dayton* involved a teacher at a religious school who claimed that the school discriminated against her when it fired her because she wanted to continue working even though she was pregnant. The school claimed that because of its religious creed that mothers stay at home with their young children, it had a right to dismiss the teacher.<sup>125</sup>

The teacher brought an action before the Ohio Civil Rights Commission, alleging violation of state law against sex discrimination. The Commission instituted administrative proceedings against the School and the School in turn commenced an action in federal district court seeking an injunction against the state administrative proceedings on the grounds that "any investigation of [its] hiring process or any imposition of sanctions for Dayton's [action toward the teacher] would violate the Religion Clauses of the First Amendment."<sup>126</sup> The Commission responded on the merits, and, *inter alia*, called for abstention.<sup>127</sup>

The district court denied the injunction on the merits, and did

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<sup>121</sup> See *Texaco, Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1150 (2d Cir. 1986) (state interest in bond provision "relatively minor"), *rev'd*, 107 S. Ct. 1519 (1987); *Mobil Oil Corp. v. City of Long Beach*, 772 F.2d 534, 542 (9th Cir. 1985) (state suing in proprietary, not sovereign capacity, and seeking only money damages).

<sup>122</sup> "[A]s our cases abundantly illustrate, this area of law is in constant litigation, and it is an area through which our decisions have traced a path that may accurately be described as sinuous." *Steffel v. Thompson*, 415 U.S. 452, 479 (1974) (Rehnquist, J., concurring).

<sup>123</sup> 106 S. Ct. 2718 (1986).

<sup>124</sup> *Id.* at 2723-24.

<sup>125</sup> *Id.* at 2721.

<sup>126</sup> *Id.* at 2722.

<sup>127</sup> *Id.*

not even address the abstention claim.<sup>128</sup> The court of appeals reversed, holding that the Commission's proceedings violated both the Free Exercise and Establishment Clauses of the first amendment.<sup>129</sup>

The Supreme Court ruled that the district court should have abstained. Rather than relying on rules of equity to order abstention, the Court found that its past "concern for comity and federalism is equally applicable to [other nonjudicial] pending state proceedings."<sup>130</sup>

The *Dayton* Court inferred from two previous decisions that the principles of Our Federalism required a federal court to abstain from enjoining state administrative proceedings. *Gibson v. Berryhill*,<sup>131</sup> the first of these decisions cited by the Court, did not decide whether the *Younger* doctrine applied to administrative proceedings. The *Gibson* Court ruled that abstention was improper because the administrative board's bias made it incompetent to consider the federal issues.<sup>132</sup>

The *Dayton* Court also cited *Middlesex County Ethics Committee v. Garden State Bar Association*,<sup>133</sup> in which the Supreme Court had ordered the district court to abstain from interfering with state bar disciplinary proceedings. As in *Gibson*, the *Middlesex* Court did not decide if *Younger* applied to administrative proceedings *qua* administrative proceedings. Instead, the *Middlesex* Court stressed that the *Younger* doctrine applied because New Jersey law considers the proceedings judicial and not administrative: "It is clear beyond doubt that the New Jersey Supreme Court considers its bar disciplinary

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 2723.

<sup>131</sup> 411 U.S. 564 (1973).

The state board argued in *Gibson* that the Court, in *Geiger v. Jenkins*, 401 U.S. 985 (1971), had previously found *Younger* applicable by summarily affirming a lower court's abstention from intervening in a Georgia State Medical Board license revocation proceeding. *Gibson*, 411 U.S. at 576. The *Gibson* Court rejected this, distinguishing *Geiger* as (1) involving a pending criminal proceeding, and (2) involving revocation proceedings that were quasi-criminal under Georgia law. *Id.*

In *Gibson*, a state regulatory board composed entirely of private optometrists charged optometrists employed by a large company with unprofessional conduct. The board had the power to suspend or revoke the optometrists' licenses. The optometrists brought suit in federal court under section 1983 seeking to enjoin the administrative proceedings. *Id.* at 567-69. Over the board's call for *Younger* abstention, the district court granted the injunction. *Id.* at 570. The district court reasoned that the board's members were biased because they had a financial interest in discouraging these nonprivate optometrists. *Id.* at 571.

The *Gibson* Court agreed, and affirmed the district court's order.

<sup>132</sup> *Gibson*, 411 U.S. at 578-79.

<sup>133</sup> 457 U.S. 423 (1982).

proceedings as 'judicial in nature.'"<sup>134</sup> The *Middlesex* Court did not apply *Younger* to administrative proceedings because it characterized the administrative proceeding as judicial.

The *Dayton* Court found that "the principles enunciated in these cases [*Gibson* and *Middlesex*] govern the present one,"<sup>135</sup> and held that the *Younger* doctrine required federal courts to abstain. Although the Court's analysis differed greatly from *Middlesex*, the *Dayton* Court cited *Middlesex* for the proposition that federal courts should abstain only when the proceeding is "judicial in nature." *Middlesex* found that the state proceeding "constitute[d] an ongoing state judicial proceeding."<sup>136</sup> The *Dayton* Court, however, made no such inquiry, ordering abstention after finding that the proceeding was administrative. *Dayton* suggests that administrative proceedings trigger abstention because the principles of Our Federalism apply not only to judicial proceedings, but also to all administrative proceedings that otherwise meet the requirements of *Younger*.

The *Dayton* court did not abolish the requirement that the state proceeding, administrative or judicial, must implicate some important state interest. The Court carefully noted that "the elimination of prohibited sex discrimination is a sufficiently important state interest."<sup>137</sup> Again, the "important state interest" requirement persists,<sup>138</sup> but its parameters remain uncertain.

### C. The Requirement That the State Forum Be Adequate to Hear the Federal Claim

An essential premise of the *Younger* doctrine is that the state court will provide the would-be federal plaintiff with an adequate forum in which to raise her constitutional claim and have it heard by the state court. This promise is twofold: the state must provide the party with both the procedures to raise her claim and a competent tribunal to decide the claim fairly. The latter point remains an article of faith for a majority of the Court.<sup>139</sup>

The *Gibson* Court found abstention improper because the state board was too prejudiced to consider competently the federal

<sup>134</sup> *Id.* at 433-34.

<sup>135</sup> *Dayton*, 106 S. Ct. at 2723.

<sup>136</sup> *Middlesex*, 457 U.S. at 432 (emphasis added). The Court analyzed the case by asking three questions: "first, do state bar disciplinary hearings within the constitutionally prescribed jurisdiction of the State Supreme Court constitute an ongoing state judicial proceeding; second, do the proceedings implicate important state interests; and third, is there an adequate opportunity in the state proceedings to raise constitutional challenges." *Id.*

<sup>137</sup> *Dayton*, 106 S. Ct. at 2723.

<sup>138</sup> See *supra* note 121 and accompanying text.

<sup>139</sup> See *supra* notes 53-54 and accompanying text.

claim.<sup>140</sup> Thus, risk of agency capture or prejudice can taint the board so that the federal court cannot rely on the state board to vindicate the constitutional right thus making *Younger* abstention inappropriate.

In *Middlesex* the Court characterized the state proceedings as judicial, but when it addressed the issue of the forum's adequacy, the Court was uncertain that the plaintiff could raise his constitutional defense.<sup>141</sup> The Court found, however, that subsequent judicial review of the disciplinary hearings sufficed.<sup>142</sup> The added delay to the individual, who would have to wait until the state court reviewed his constitutional claim, did not outweigh Our Federalism's interest in permitting the state to act unhampered. *Middlesex* handles the adequate forum requirement by making *Younger* abstention inappropriate if the state administrative proceeding cannot hear the constitutional claim and no subsequent judicial review is available.<sup>143</sup>

Thus, the availability of some state judicial review that will fairly hear and decide the constitutional claim satisfies the adequacy requirement. The requirement poses no bar, then, if the would-be federal plaintiff is in a state administrative proceeding subject to judicial review.

#### IV

#### YOUNGER IN THE FUTURE: THOUGHTS ABOUT AREAS FOR FUTURE DEVELOPMENT

The preceding discussion suggests that Our Federalism is far more than the mere slogan or shibboleth that its detractors assert.<sup>144</sup> Although Justice Black's language in *Younger* may indeed sound like a "1940's radio serial,"<sup>145</sup> Our Federalism has resonated throughout many decisions over the years, and has emerged as a powerful doctrine defining the relationship between federal courts

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<sup>140</sup> *Gibson*, 411 U.S. at 578-79.

<sup>141</sup> *Middlesex*, 457 U.S. at 435-36.

<sup>142</sup> *Id.* at 436.

<sup>143</sup> *Dayton* casts some doubt on the *Middlesex* rule. The *Dayton* Court concluded that the state agency could hear the constitutional claim. Moreover, subsequent judicial review was available making the state forum adequate under *Middlesex*. Yet, Justice Rehnquist went on to note in dictum that "even if Ohio law is such that the Commission may not consider the constitutionality of the statute under which it operates, it would seem an unusual doctrine . . . to say that the Commission could not construe its own statutory mandate in the light of federal constitutional principles." *Dayton*, 106 S. Ct. at 2724. Because all state officials, as well as judges, must follow the Constitution, executive officers, such as members of an administrative agency, will protect federally secured rights.

<sup>144</sup> See *supra* note 6.

<sup>145</sup> Redish, *The Doctrine of Younger v. Harris: Deference in Search of a Rationale*, 63 CORNELL L. REV. 463, 464 (1978).

and the states. Yet even now open questions as to the scope of *Younger* exist. This Note examines two such open questions and suggests how the Court should answer them in light of Our Federalism.

#### A. *Younger* Abstention and "Nonjudicial" Proceedings

Although *Dayton* clings to *Middlesex*'s "judicial in nature" language, *Dayton*'s analysis differs so markedly that the language is inapposite. *Middlesex* characterized the proceeding as judicial, allowing it to fall within the very terms of *Younger*. *Dayton*, on the other hand, suggests that administrative proceedings as such trigger *Younger*. *Dayton* examines the abstention question from the matrix of Our Federalism's mandate that federal courts not "unduly interfere with the legitimate activities of the States"<sup>146</sup> as opposed to a narrower focus on the legitimate *judicial* activities of the states.

The Court laid the groundwork for abandoning this "quasi-judicial" requirement in *Rizzo v. Goode*.<sup>147</sup> The district court in *Rizzo* found sixteen instances of racially motivated police misconduct, and "evidence of departmental procedure [that] indicated a tendency to discourage the filing of civilian complaints."<sup>148</sup> The court issued a broad injunction requiring the police department to adopt civilian complaint procedures.<sup>149</sup> Using principles of Our Federalism, the Supreme Court later reversed the district court, ruling that the district court's order intruded too far into the state's activities.<sup>150</sup>

Although *Rizzo* does not expressly cite *Younger*, the Court relied on the language and the principles of Our Federalism to hold that a federal court should not "inject[] itself by injunctive decree into the internal . . . affairs of [a] state agency."<sup>151</sup> The Court, alluding to the *Younger* line of cases, noted that

the principles of federalism which play such an important part in governing the relationship between federal courts and state governments . . . [have] applicability where injunctive relief is sought, not against the judicial branch of the state government, but against those in charge of an executive branch of an agency of state or local governments.<sup>152</sup>

*Rizzo* signalled a willingness to break from the "quasi-judicial"

<sup>146</sup> *Younger*, 401 U.S. at 44.

<sup>147</sup> 423 U.S. 362 (1976); see also *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974) (rejecting injunction that would be "an ongoing federal audit" of state criminal system).

<sup>148</sup> *Rizzo*, 423 U.S. at 368.

<sup>149</sup> *Id.* at 369-70.

<sup>150</sup> *Id.* at 377-80. The Court also found that the plaintiff's standing to sue was doubtful. *Id.* at 372.

<sup>151</sup> *Id.* at 380.

<sup>152</sup> *Id.*

shackles of *Younger* and to ask only if federal injunctive relief will unduly interfere with state activities.

Thus, the *Younger* doctrine does not require abstention only when judicial or quasi-judicial proceedings are involved. By adhering to that formulation, however, the Court injects uncertainty into *Younger's* application.<sup>153</sup> Moreover, because the Court finds that subsequent judicial review satisfied under the *Younger* doctrine,<sup>154</sup> the "judicial in nature" requirement becomes irrelevant for adjudicating the constitutional claim.

## B. Claims for Money Damages

All of the preceding discussion of *Younger* and its progeny has been in the context of claims for federal injunctive relief. The Court has not yet decided whether *Younger* also applies to claims for money damages<sup>155</sup> and the circuits have split on the issue.<sup>156</sup> The principles of Our Federalism suggest that *Younger* should apply to claims for damages.

In *Deakins v. Monaghan*<sup>157</sup> the Court affirmed a Third Circuit decision that had required a district court to stay rather than dismiss claims that the state proceeding could not adjudicate—in this case claims for damages and attorney's fees arising from an unconstitutional search and seizure.<sup>158</sup> The *Deakins* plaintiffs had originally sought both injunctive and monetary relief, but the request for injunctive relief was moot by the time the Supreme Court heard the

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<sup>153</sup> If the Court abandoned the "judicial in nature" requirement it could unite *Younger* abstention with *Burford* abstention, and clarify that area of the law as well. See *supra* notes 21-25 and accompanying text. The *Burford* Court carefully noted that Texas had a system for judicial review in place, and that the Supreme Court could review properly reserved federal questions. *Burford*, 319 U.S. at 334. In this respect, *Burford* is no different from *Middlesex* and *Dayton*. After *Dayton*, the *Younger* doctrine applies to every situation where *Burford* abstention is appropriate. Courts, therefore, no longer need a separate *Burford* abstention.

<sup>154</sup> See *supra* notes 141-45 and accompanying text.

<sup>155</sup> *Deakins v. Monaghan*, 108 S. Ct. 523, 529 n.6 (1988).

<sup>156</sup> Five circuits have concluded that claims for money damages can trigger *Younger*. *Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986); *Doby v. Strength*, 758 F.2d 1405, 1406 (11th Cir. 1985); *Parkhurst v. Wyoming*, 641 F.2d 775, 777 (10th Cir. 1981); *Landrihan v. City of Warwick*, 628 F.2d 736, 743 (1st Cir. 1980); *McCurry v. Allen*, 606 F.2d 795, 799 (8th Cir. 1979), *rev'd on other grounds*, 449 U.S. 90 (1980). Two circuits have ruled that *Younger* does not apply to claims for money damages. *Thomas v. Texas State Bd. of Medical Examiners*, 807 F.2d 453, 457 (5th Cir. 1987); *Carras v. Williams*, 807 F.2d 1286, 1291-92 (6th Cir. 1986). In the face of this confusion, some circuits have tried to stake out a middle ground. See *Suggs v. Brannon*, 804 F.2d 274, 279 (4th Cir. 1986); *Crane v. Fauver*, 762 F.2d 325 (3rd Cir. 1985); *Giulini v. Blessing*, 654 F.2d 189, 193 (2d Cir. 1981).

<sup>157</sup> 108 S. Ct. 523 (1988), *aff'g in part and vacating in part* 798 F.2d 632 (3rd Cir. 1986).

<sup>158</sup> *Id.* at 530-31.

case.<sup>159</sup> The question still remained, however, of the propriety of the district court's dismissal of the claim for damages and attorney's fees when, as in most criminal proceedings, the state court could not hear those claims.<sup>160</sup>

The *Deakins* Court, relying upon the representations of plaintiffs' counsel that plaintiffs would seek a stay of the claims for damages pending a resolution of the state proceedings, found it unnecessary to decide the extent to which *Younger* applies to claims solely for money damages.<sup>161</sup> However, the Court did not fully explain why a stay was appropriate. Indeed, the Court stressed the "'virtually unflagging obligation'" of federal courts to exercise their jurisdiction.<sup>162</sup> As Justice White noted in his concurring opinion, joined by Justice O'Connor, "Why, then, stay the § 1983 damages claim asserting a violation of federal constitutional rights? Why does not the District Court's 'unflagging obligation' require it to proceed on that claim?"<sup>163</sup>

The Court could fashion a prudential rule calling for federal courts to stay actions when faced with parallel state proceedings, but it has never done so.<sup>164</sup> *Younger* abstention and the principles of Our Federalism, however, provide a simple justification for the Court's decision in *Deakins*. Moreover, applying *Younger* to claims for damages would be entirely consistent with the Court's decisions under *Younger*.

As Justice White noted in his concurring opinion in which he urged that the Court reach the question of *Younger*'s applicability, if a federal court adjudicates a claim for money damages, the potential for interference with the state court proceeding is just as great as when it adjudicates claims for injunctive relief.<sup>165</sup> A federal court

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<sup>159</sup> *Id.* at 528-29. The *Deakins* plaintiffs were the subject of a state grand jury investigation when they first brought their action in the federal court seeking injunctive and monetary relief under section 1983. The federal plaintiffs did not fall within the current scope of *Younger* with respect to their request for injunctive relief because the Court has yet to decide whether *Younger* applies to state grand jury proceedings, one of the issues on which the Court granted certiorari. *Id.* at 525. By the time of oral argument, however, the grand jury had returned indictments against three of the federal court plaintiffs and the illegally seized evidence was returned. *Id.* at 527. The Court, relying in part on the representations of the plaintiffs' counsel that plaintiffs wished to withdraw their federal claims for equitable relief, found that issue moot. *Id.* at 528-29.

<sup>160</sup> *Id.* at 529.

<sup>161</sup> *Id.* at 529 & n.6.

<sup>162</sup> *Id.* at 530 (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976)); see *supra* notes 8-9 and accompanying text.

<sup>163</sup> *Id.* at 532 (White, J., concurring).

<sup>164</sup> *Id.* The Third Circuit's rule, which the *Deakins* majority endorsed, *id.* at 530 (majority opinion), does seem to have its origins in prudential concerns, rather than *Younger* per se. See *Crane v. Fauver*, 762 F.2d 325 (3d Cir. 1985); *Williams v. Red Bank Bd. of Educ.*, 662 F.2d 1008 (3d Cir. 1981).

<sup>165</sup> *Deakins*, 108 S. Ct. at 533 (White, J., concurring) ("Why the latter action [for

determination of the damages claim would decide many questions that may be at issue in the state proceeding, and these determinations would have res judicata effect.<sup>166</sup> This result would not differ from that of an adjudication of claims for injunctive relief or declaratory relief, both of which fall within *Younger*. The federal court should stay its hand because any other course would interfere with the state action.

One twist that claims for monetary relief present is that the federal plaintiff may not be able to obtain such relief from the state proceeding. As *Deakins* itself showed, damages and attorney's fees may not be available in the state criminal proceeding. Thus it is proper for a district court to stay the claims for damages rather than dismiss them outright; the stay would protect the plaintiff from the running of the statute of limitations.<sup>167</sup> In addition, federal plaintiffs would be unable to make an end-run around *Younger* by making their claims for monetary relief rather than for injunctive relief.

Thus, where *Younger* contemplates outright dismissal of claims for injunctive relief,<sup>168</sup> Our Federalism calls for the staying of actions for monetary relief. In this way the federal court will vindicate the federal right, but will do so without "unduly interfer[ing] with the legitimate activities of the States."<sup>169</sup> The federal plaintiff will suffer some delay, but that delay will further Our Federalism's goal of permitting the states to act without undue interference.

## V

### CONCLUSION

In some ways it is appropriate that a judge-made doctrine such as *Younger* defines the relationship between the federal courts and the states. Tension and controversy will always remain a part of the *Younger* doctrine because visions of federalism will always differ. This Note suggests that there is substance to Our Federalism, not mere sloganeering, and that *Younger's* development has been, and can continue to be, coherent. Federal courts cannot and should not abandon their role as vindicators of federal rights and interests. Nevertheless, the hope of Our Federalism remains that if the federal courts pursue their role without unduly interfering with the activi-

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damages] should be considered *less* problematic for purposes of comity or 'Our Federalism' escapes me. If anything, I would have thought just the opposite would be true.").

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 531 (majority opinion).

<sup>168</sup> *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973) ("*Younger v. Harris* contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the statements.").

<sup>169</sup> *Younger*, 401 U.S. at 44.

ties of the states, our federal system can achieve its greatest potential.

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