

COMMENT

CLOSING THE COURTHOUSE DOOR: THE EXPANDING RATIONALE OF *YOUNGER* ABSTENTION

The lower federal courts traditionally have been viewed as the primary and powerful instruments "for vindicating every right given by the Constitution, the laws and treaties of the United States."¹ In recent years, however, the Supreme Court, under the judicially-created *Younger* doctrine, has required lower federal courts to close their doors on constitutional claims stemming from the enforcement of state statutes and procedures in pending state court proceedings.² The *Younger* doctrine has mandated this result despite the existence of an independent federal cause of action, contained in 42 U.S.C. § 1983, which permits federal injunctive relief to prevent deprivation of federal rights by state action.³

As originally enunciated in *Younger v. Harris*,⁴ the *Younger* abstention doctrine commanded federal court deference to state courts only in face of pending state criminal proceedings which were deemed to provide an adequate opportunity to present constitutional challenges and not to subject the state defendant to great, immediate and irreparable injury.⁵ In its 1976 Term, however, the Supreme Court extended *Younger* abstention to state civil contempt proceedings in *Juidice v. Vail*⁶ and to civil attachment proceedings employed by the state to secure a civil judgment in *Trainor v. Hernandez*.⁷ Under *Juidice* and *Trainor*, federal courts will be required to refrain from interfering with an expanded range of state proceedings, thereby leaving to state courts the adjudication of claims that the enforcement of a state law or procedure deprives an individual of rights guaranteed by the Constitution and federal laws. As a result, state rather than federal courts may be responsible for vindicating federal constitutional rights endangered by pending state proceedings.

There are four significant aspects to the Court's expansion of the *Younger* doctrine in *Juidice* and *Trainor*. First, although the Court expressly

¹ F. FRANKFURTER & J. LANDIS, *THE BUSINESS OF THE SUPREME COURT* 65 (1927).

² The Court recently has evinced an increasing solicitude for the interests and prerogatives of states in a number of contexts. See, e.g., *Ohio Bureau of Employment Servs. v. Hodory*, 431 U.S. 471, 479-80 (1977) (state may choose to continue litigation in federal court despite applicability of *Younger* abstention); *Stone v. Powell*, 428 U.S. 465, 493-94, 493 n.35 (1976) (opportunity for full and fair litigation of fourth amendment claims at state level bars federal habeas corpus relief); *National League of Cities v. Usery*, 426 U.S. 833, 851-52 (1976) (intrusion upon states' performance of essential governmental functions not within congressional commerce clause powers); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 808-09 (1976) (state purchasing activities held not subject to commerce clause review); *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976) (federal courts may not intrude into discretionary authority of state and local officials even in § 1983 suits).

³ Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, *suit in equity*, or other proper proceeding for redress.

42 U.S.C. § 1983 (1970) (emphasis added).

⁴ 401 U.S. 37 (1971).

⁵ *Id.* at 46-49.

⁶ 430 U.S. 327 (1977).

⁷ 431 U.S. 434 (1977).

reserved for the future the question of extending *Younger* to all civil litigation pending in state courts,⁸ it nevertheless completely eliminated the prior restrictive application of the doctrine only to pending criminal or quasicriminal state proceedings. While *Juidice* and *Trainor* may be read narrowly to limit the operation of *Younger* in the civil context solely to proceedings where the state either has an exclusive right of action or appears in its "sovereign" capacity as a moving party, the two cases also may be interpreted broadly to foreshadow an eventual extension of *Younger* to all pending state civil proceedings, including those involving two private parties. Second, the equitable considerations—the failure of a state court to provide an adequate remedy and exposure to great immediate, and irreparable injury—that will mandate an exception to the *Younger* abstention doctrine have been severely limited by the Court's decisions in *Juidice* and *Trainor*. Third, the combination in *Juidice* and *Trainor* both of extending *Younger* to certain pending civil proceedings and of concomitantly denigrating the equitable principles arresting the operation of the doctrine may reach the same result as would the operation of the anti-injunction statute:⁹ a flat denial of federal injunctive relief in the face of any pending state proceedings. In particular, the *Younger* doctrine may sanction this result in section 1983 suits, despite the Court's previous exception of section 1983 from the commands of the anti-injunction statute.¹⁰ Fourth, the Court in *Juidice* and *Trainor* appears to defer to state courts by invoking principles of comity and federalism rather than by seeking to accommodate the competing federal and state interests involved in state judicial proceedings where issues of federal and constitutional law are raised. As a result, federal claims which support causes of action in federal court under section 1983 will be heard in state courts. Such an outcome may contravene congressional intent in enacting that statute.

This comment will first present a brief overview of the doctrinal underpinnings of federal anti-injunction policy. In addition to tracing the judicial development of the *Younger* doctrine up to and including *Juidice* and *Trainor*, special emphasis will be given to the relationships between this doctrine, the anti-injunction statute and causes of action for state deprivation of federal rights under section 1983. The next section of the comment will explore the change which the Court's expansion of the *Younger* doctrine to civil state proceedings has made in the rationale of federal abstention, and logical extensions of this new rationale. To this end, the section will present an analysis of the types of state proceedings which will merit *Younger* abstention after *Juidice* and *Trainor*, and of the equitable considerations that will allow an exception to the doctrine. It will be submitted that *Juidice* and *Trainor* foreshadow a requirement that federal courts apply *Younger* abstention in the face of all pending state court proceedings. The final section of the comment will discuss the implications of the revised *Younger* doctrine for the viability of suits for injunctive relief under section 1983. It will be

⁸ *Trainor*, 431 U.S. at 444-45 n.8; *Juidice*, 430 U.S. at 336 n.13.

⁹ 28 U.S.C. § 2283 (1970) (formerly 28 U.S.C. § 379, Act of March 3, 1911, ch. 231, § 265, 35 Stat. 1162). The full text of the present statute states:

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.

¹⁰ *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). See text at notes 59-69 *infra*.

argued that as a result of the Supreme Court's pronouncements in *Juidice* and *Trainor*, access to federal courts for plaintiffs already involved—or threatened with involvement—in state judicial proceedings will be extremely difficult, and that this denial of access is contrary to the congressional intent in enacting section 1983. Lastly, the comment will discuss alternatives to the Court's approach in *Juidice* and *Trainor*, including Senate Bill 35,¹¹ an amendment to section 1983 currently being considered by the Senate Judiciary Committee. It will be proposed that the amendment, which, in part,¹² would return federal abstention to parameters similar to those originally enunciated in *Younger v. Harris*,¹³ represents a proper and viable alternative to the Court's current interpretation of the abstention doctrine.

I. FEDERAL ANTI-INJUNCTION POLICY

A. Doctrinal Premises

1. Origins of the *Younger* Doctrine

The *Younger* doctrine was enunciated in the 1971 decision of *Younger v. Harris*¹⁴ and five companion cases.¹⁵ In *Younger*, the Supreme Court reversed a federal district court's grant of injunctive relief¹⁶ to a state criminal defendant who had requested the district court, under the authority of section 1983, to enjoin his pending state criminal prosecution.¹⁷ The

¹¹ S. 35, 95th Cong., 1st Sess. (1977).

¹² In addition to amending § 1983 to respond to the Court's extension of the *Younger* doctrine, S. 35, in part, is designed to respond to *Monroe v. Pape*, 365 U.S. 167, 187-92 (1961) (municipalities not liable under § 1983 because Congress did not intend to bring municipal corporations within the ambit of that section) by amending § 1983 to provide that states, municipalities, and agencies or units of government may be sued under the statute, and by establishing rules of liability with respect to such governmental entities. S. 35, 95th Cong., 1st Sess., § 2 (1),(2)(b)(c)(d). In addition, S. 35 would amend § 1983 to allow liability for damages to be imposed upon prosecuting attorneys and elected officials under certain circumstances, contrary to the Court's holding in *Imbler v. Pachtman*, 424 U.S. 409 (1976) (absolute immunity for prosecutors from suit under § 1983 for acts in course of official duties). S. 35, § 2 (2)(e)(f).

¹³ The bill does differ from the Court's decision in *Younger v. Harris* with respect to the extraordinary circumstances which would allow federal injunctive relief despite the applicability of *Younger* abstention. See text at notes 364-66 *infra*.

¹⁴ 401 U.S. 37 (1971).

¹⁵ *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); *Byrne v. Karalexis*, 401 U.S. 216 (1971).

¹⁶ *Harris v. Younger*, 281 F.Supp. 507, 517 (C.D. Cal. 1968).

¹⁷ 401 U.S. at 54. The state defendant, John Harris, had been indicted for distributing leaflets that allegedly violated the California Criminal Syndicalism Act. CAL. PENAL CODE §§11400, 11401 (Deering 1953). Section 11400 of that Act defines criminal syndicalism as any doctrine or precept which advocates unlawful acts of violence or terrorism to effectuate changes in industrial ownership or political structures. Under § 11401, advocacy of such doctrines or precepts, including printing, publishing and circulating pamphlets, constitutes a felony punishable by not less than one or more than fourteen years in prison. Harris alleged that California's enforcement of the Act would infringe upon rights guaranteed by the first and fourteenth amendments. 401 U.S. at 39. On the basis of these federal rights, Harris filed a § 1983 complaint in the federal district court, requesting that court to enjoin *Younger*, the District Attorney of Los Angeles County, from continuing the criminal prosecution pending against him. 281 F.Supp. at 509.

Younger Court held that federal courts must refuse to entertain suits seeking injunctions against state criminal proceedings when brought by defendants who otherwise have an opportunity to have their federal challenges to the state criminal proceeding adjudicated in state court.¹⁸

The *Younger* Court grounded its decision on three separate considerations: equity, comity and federalism.¹⁹ The Court observed that the traditional doctrine that courts of equity should not interfere with criminal prosecutions²⁰ particularly mandated federal restraint in the context of ongoing state criminal proceedings.²¹ In addition, injunctive relief would be unwarranted when the petitioning party has available an adequate remedy at law in the state proceeding and will not suffer irreparable injury absent injunctive relief.²² Even more vital to the disposition of the case than the principles of equity, in the Court's view, were those of comity.²³ The Court reasoned that comity—the notion that a federal government fares best in an atmosphere of proper respect for the separate functioning of the states²⁴—precludes federal court interference with ongoing state court proceedings such as were present in *Younger*.²⁵ Finally, the public policy against federal court interference with state court proceedings was based, according to the *Younger* Court, upon the concept of federalism: Federalism requires federal court abstention because a "National Government, anxious

¹⁸ 401 U.S. at 43-54.

¹⁹ *Id.* at 43-47. As a general rule, however, federal courts previously had exercised restraint before interfering with state proceedings. *See, e.g.,* *Dombrowski v. Pfister*, 380 U.S. 479, 487-89, 497-98 (1965) (request for injunctive relief granted against enforcement of state criminal laws which inhibited exercise of first amendment rights). *See generally* Whitten, *Federal Declaratory and Injunctive Interference with State Court Proceedings: The Supreme Court and the Limits of Judicial Discretion*, 53 N.C.L. REV. 591 (1975); *Developments in the Law—Injunctions*, 78 HARV. L. REV. 994 (1965).

²⁰ 401 U.S. at 43-44. Equity's traditional reluctance stemmed from a number of intersecting factors. Among them: the historic absence in criminal proceedings of property interests of the kind generally protected by equity; the dominance in criminal cases of issues of fact within the province of the jury; and equity's dependence—for its efficacy and at times its political survival—upon remaining a supplemental forum. Whitten, *supra* note 19, at 597-600. *See also* *Developments in the Law—Injunctions*, *supra* note 19, at 1024.

²¹ 401 U.S. at 43-44. *See generally* Hill v. Martin, 296 U.S. 393, 403 (1935) (definition of when a state proceeding is ongoing).

²² 401 U.S. at 43-44. Under traditional equity, a grant of injunctive relief by an equity court against the enforcement of a statute or order would be permissible only where the complainant could show that he had no adequate remedy at law and that he would suffer irreparable injury should the subject litigation go forward. When combined with the general concern for harmonious relations between state and federal courts, the circumstances in which equitable remedies might be granted by federal courts against state activities were correspondingly stiffened to require extreme and immediate irreparable injury. Thus, in *Ex Parte Young*, 209 U.S. 123 (1908), a decision which allowed a federal court to circumvent a general rule against federal equitable interference, the Court used such equity principles, colored by the concern for federal-state relations, to sustain an injunction against a threatened state prosecution. The irreparable injury to be incurred by the plaintiffs in *Ex Parte Young* was an inability to determine their rights under a state statute without risking multiple prosecutions or harassment by state officials. *Id.* at 166. The *Younger* Court relied heavily on cases like *Ex Parte Young*, which, while allowing injunctive relief against state proceedings, emphasized the necessity of the presence of "great and immediate" irreparable injury to be sustained in the state proceeding by the party requesting such relief. 401 U.S. at 43-47. *See* *Watson v. Buck*, 313 U.S. 387 (1941); *Beal v. Missouri Pac. R.R. Co.*, 312 U.S. 45 (1941); *Fenner v. Boykin*, 271 U.S. 240 (1926).

²³ *Younger*, 401 U.S. at 44.

²⁴ *Id.*

²⁵ *Id.*

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."²⁶

While setting forth federal abstention as the general rule in such circumstances, the *Younger* Court noted that exceptions to this rule might be required in certain "extraordinary circumstances."²⁷ These circumstances would include bad faith or harassment on the part of prosecuting officials in bringing the action, the attempted enforcement of a state statute so "patently and flagrantly" unconstitutional as to require immediate relief, and other unspecified "unusual circumstances"²⁸ which would place a burden on the defendant greater than the weight of a single criminal prosecution.²⁹ The Court noted, however, that a state defendant, subjected to a single prosecution, did not face extraordinary circumstances warranting federal interference.³⁰

The *Younger* abstention doctrine in its original form, then, was limited to a requirement that federal courts show proper respect for one particular state interest—the enforcement of criminal laws. Only state criminal defendants were denied access to federal court to adjudicate federal claims arising in state court proceedings, absent the presence of extraordinary circumstances.³¹

2. The *Younger* Doctrine, the Anti-Injunction Statute, and Section 1983

The judicial policy³² of prohibition and caution in granting federal injunctions against state proceedings,³³ enunciated by the Supreme Court in

²⁶ *Id.*

²⁷ *Id.* at 53-54.

²⁸ *Id.*

²⁹ *Id.* at 46. This standard of irreparable injury is derived from *Douglas v. City of Jeannette*, 319 U.S. 157 (1943), in which the pattern of equitable principles which counseled federal restraint and yet would allow injunctive relief against the future enforcement of state statutes was initially articulated. In *Douglas*, the Court maintained that the imminence of a criminal prosecution, even though potentially involving the deprivation of constitutional rights, would be insufficient injury to justify federal equitable relief. The standard of harm required to be shown would be injury greater than that to be suffered in the threatened prosecution. *Id.* at 163-66.

³⁰ 401 U.S. at 49.

³¹ *Id.*

³² C. WRIGHT, *LAW OF FEDERAL COURTS* 218 (3d ed. 1976). Professor Wright suggests four reasons for the use of abstention doctrines by the federal courts:

(1) to avoid decision of federal constitutional questions where the case may be disposed of on questions of state law; (2) to avoid needless conflict with the administration by a state of its own affairs; (3) to leave to the states the resolution of unsettled questions of state law; (4) to ease the congestion of the federal court docket.

Id. at 218.

³³ See generally WRIGHT, *supra* note 32, at 218-36. A second judicial abstention theory is the *Pullman* abstention doctrine, which was developed prior to the *Younger* doctrine. The *Pullman* doctrine requires a federal district court to refrain from deciding controversies involving unsettled questions of state law combined with federal constitutional claims that may be mooted or changed by state court interpretation of state law. The doctrine was first clearly articulated in *Railroad Comm. of Texas v. Pullman Co.*, 312 U.S. 496 (1941), and was based upon two notions. First, if at all possible, federal courts should avoid deciding questions of constitutionality unless such decisions are absolutely before the court. Second, where questions of undecided state law are intermeshed with federal questions, the state court's interpretation of its own statutes might obviate any need for a federal court to consider the validity of the

Younger v. Harris, paralleled a statutory policy contained in the anti-injunction statute, 28 U.S.C. § 2283.³⁴ This statute requires that pending state civil or criminal proceedings be absolutely free from federal injunctive interference even when such proceedings present federal claims³⁵ over which a federal court might properly exercise jurisdiction.³⁶ The original prohibition against injunctive interference with state courts, contained in the Judiciary Act of 1793,³⁷ had been unqualified.³⁸ However, exceptions

state statute under the Federal Constitution. Ostensibly, *Pullman* abstention operates only to postpone a federal court's decision of federal constitutional questions until state court resolution of uncertain issues of its own laws. The federal plaintiff, whose case is sent to state court, may preserve his federal forum for any federal question not voluntarily litigated in state court. *England v. Louisiana Board of Medical Examiners*, 375 U.S. 411, 421-22 (1966) (federal plaintiff formally required to reserve federal forum in order to return there following state court adjudication of issues of state law). As a result, unlike the *Younger* doctrine which would foreclose access to federal courts until a case reached the Supreme Court level, *Pullman* abstention would allow litigation to straddle the lower state and federal courts.

The use of *Pullman* abstention has been criticised on a number of grounds. First, state court adjudication of state issues followed by federal court adjudication of federal issues can be an extremely expensive and time consuming process, as well as a substantial burden on both judicial systems. See, e.g., *England v. Louisiana State Board of Medical Examiners*, 384 U.S. 885 (1966) (six years); *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602 (1951) (seven years). A second criticism of *Pullman* abstention is that litigants temporarily foreclosed from federal court may well waive their right to return to that court by submitting all questions to the state court. Such waivers may lead to an erosion of federal jurisdiction over federal questions. See, e.g., *NAACP v. Button*, 371 U.S. 415 (1963) (direct review of state supreme court finding of constitutionality of state law sought and obtained following prior federal court abstention in *Harrison v. NAACP*, 360 U.S. 167). Third, critics argue, to the extent federal constitutional law becomes relevant to the state court's construction of its own laws, *Pullman* abstention is of diminishing usefulness in allocating decisionmaking between federal and state courts. *Developments in the Law—Section 1983 and Federalism*, *supra* note 19, at 1254, 1257. See *Government & Civic Employees Organizing Comm. v. Windsor*, 353 U.S. 364, 366 (1957) (where a federal court abstains under *Pullman*, the state court must be made aware of the constitutional challenge to state law being construed). A fourth criticism is that requiring federal judges to abstain from cases involving questions of state law under *Pullman* abstention is inconsistent with the requirement that local law be applied in cases arising under federal diversity jurisdiction. See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). For critiques of the *Pullman* abstention doctrine see *England*, 375 U.S. 411, 423-37 (Douglas, J., concurring); *Developments in the Law—Section 1983 and Federalism*, *supra* note 19, at 1250-64 (1977); Field, *The Abstention Doctrine Today*, 125 U. PA. L. REV. 590 (1977).

³⁴ 28 U.S.C. § 2283 (1970).

³⁵ *Atlantic Coastline R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286, 294 (1970). See also *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 132 (1941); *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 8 (1940); *Hill v. Martin*, 296 U.S. 393, 403 (1935).

³⁶ In general, federal question jurisdiction is conferred upon federal courts by virtue of 28 U.S.C. § 1331 (1970). In addition, 28 U.S.C. § 1343 (1970) confers original jurisdiction upon federal courts for civil actions, under statutes like § 1983, to redress the deprivation of rights secured by the Constitution and federal laws.

³⁷ Judiciary Act of 1793, Act of March 2, 1793, ch. 22 § 5, 1 Stat. 335. For a discussion of the history of the statute, see *Mitchum v. Foster*, 407 U.S. 225, 231-38 (1972); *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 130-33 (1941). The legislative history of § 5 of the Act of March 2, 1793 is vague, and members of the Court have differed in their interpretation of the legislative intent behind this precursor of § 2283. Justice Frankfurter, in *Toucey*, argued that the most probable explanation for its enactment was a "prevailing prejudice against equity jurisdiction," given the limited nature of the provision enacted. *Id.* He rejected the notion that the provision reflected strong feelings against unwarranted intrusion by federal courts upon state sovereignty. *Id.* at 131-32. In *Atlantic Coastline R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), Justice Black, who also wrote for the majority in *Younger*, acknowledged that the legislative motives behind the enactment of the anti-injunction provisions were unclear. However, unlike Justice Frankfurter, Justice Black placed great emphasis upon

to the statute's absolute language were carved out judicially by the Supreme Court.³⁹ In 1948, Congress, recognizing the validity of these judicial exceptions, amended the anti-injunction provisions⁴⁰ to include three exceptions⁴¹ to the statute's absolute ban on federal injunctive relief against state proceedings.⁴²

The decision whether causes of action under section 1983 fell within one of these exceptions—specifically, the exception for causes of action expressly authorized by act of Congress⁴³—ultimately produced a conflict with the evolving *Younger* doctrine. Congress had provided, in section 1983, for a federal suit in equity for the deprivation by states of rights guaranteed by the constitution and federal laws.⁴⁴ As late as 1970, the issue whether section 1983 fell within the "act of Congress" exception to the anti-injunction statute, thereby allowing federal courts to enjoin pending state proceedings in section 1983 actions, had not been resolved. In 1970, the Court began to clarify the authority of federal courts to enjoin state proceedings in three decisions—*Atlantic Coastline Railroad v. Brotherhood of Locomotive Engineers*,⁴⁵ *Younger v. Harris*,⁴⁶ and *Mitchum v. Foster*.⁴⁷

what he termed "the essentially federal nature of our national government." *Id.* at 285. In language similar to that used to describe "Our Federalism" in *Younger*, 401 U.S. at 44, Justice Black stated:

When this Nation was established by the Constitution, each State surrendered only a part of its sovereign power to the national government. But those powers that were not surrendered were retained by the States and unless a State was restrained by "the supreme Law of the Land" as expressed in the Constitution, laws, or treaties of the United States, it was free to exercise those retained powers as it saw fit. One of the reserved powers was the maintenance of state judicial systems for the decision of legal controversies. . . . Thus from the beginning we have had in this country two essentially separate legal systems. Each system proceeds independently of the other with ultimate review in this Court of the federal questions raised in either system. Understandably this dual court system was bound to lead to conflicts and frictions. . . . The 1793 anti-injunction Act was at least in part a response to these pressures.

Id. at 285-86.

³⁹ Section 5 of the Judiciary Act of 1793 states in pertinent part that "nor shall a writ of injunction be granted to stay proceedings in any court of a state."

⁴⁰ See *Mitchum v. Foster*, 407 U.S. 225, 233-35 (1972). The opinion in *Mitchum* outlined six broad areas in which the Court previously had found judicial exceptions to the ban of the anti-injunction statute prior to the 1948 amendment creating the present § 2283. *Id.* at 233-34. Thus, federal plaintiffs with suits commenced under federal legislation providing for (1) the removal of litigation from state to federal courts; (2) the limitation of the liability of ship-owners; (3) federal interpleader actions; (4) federal jurisdiction over farm mortgages; (5) federal habeas corpus proceeding; and (6) price controls, were able to avoid the absolute ban of the anti-injunction statute. *Id.* at 234-35 & nn. 12-17. Furthermore, the Court had recognized implied exceptions to the provisions allowing federal courts to enjoin state proceedings in order to protect federal jurisdiction and judgments. *Id.* at 235.

⁴¹ Act of June 25, 1948, ch. 646 § 1, 62 Stat. 968.

⁴² 28 U.S.C. § 2283 (1970). The three exceptions are for: (1) causes of action expressly authorized by act of Congress; (2) injunctions necessary in aid of a district court's jurisdiction; and (3) injunctions necessary to protect or effectuate judgments of federal courts.

⁴³ The only other amendment to the anti-injunction provisions took place in 1874, when the provisions were amended to permit a federal court to stay state court proceedings which interfered with the administration of federal bankruptcy proceedings. Rev. Stat. § 720 (1874); see Act of March 3, 1911, ch. 231 § 265, 36 Stat. 1162.

⁴⁴ See note 41 *supra*.

⁴⁵ See text at note 3 *supra*.

⁴⁶ 398 U.S. 281 (1970).

⁴⁷ 401 U.S. 37 (1971).

⁴⁸ 407 U.S. 225 (1972).

In the first of these cases, *Atlantic Coastline*,⁴⁸ the Supreme Court interpreted section 2283 strictly. The Court held that even when a federal injunction is proper under traditional equity principles,⁴⁹ an injunction should not be granted against a pending state proceeding unless the federal action falls squarely within one of sections 2283's three statutory exceptions.⁵⁰ Section 1983 and the exception to section 2283 for acts of Congress were not at issue in *Atlantic Coastline*.⁵¹ In determining the scope of the anti-injunction statute's prohibition against federal interference with state proceedings, however, the *Atlantic Coastline* Court indicated that "since Congress itself set forth the only exceptions to § 2283," federal courts have no inherent right to enjoin state court proceedings merely because such proceedings might interfere with rights secured by the Constitution or federal laws.⁵² Thus, the *Atlantic Coastline* Court held that any federal injunctive relief against state judicial proceedings must be based specifically upon one of the exceptions contained in the anti-injunction statute.

The issue of whether section 1983 fell within one of § 2283's exceptions, seemingly was squarely presented to the Court in *Younger v. Harris*.⁵³ In *Younger*, the defendant in the state criminal proceeding, Harris, had brought suit seeking injunctive relief under section 1983,⁵⁴ and the *Younger* Court had requested a brief from the state on the applicability of section 2283 to the action.⁵⁵ Thus, the *Younger* Court arguably could have relied on *Atlantic Coastline* to reverse the *Younger* district court's grant of federal injunctive relief by holding that section 1983 injunctive suits do not fall within an exception to the anti-injunction statute. Instead, the Court carefully avoided this question⁵⁷ and relied on judicial notions of equity, comity and federalism to enunciate a policy which—totally aside from the provi-

⁴⁸ 398 U.S. 281 (1970). In 1967, as part of a labor dispute with another railroad, the Brotherhood of Locomotive Engineers (union) began picketing a yard owned by the Atlantic Coastline Railroad (railroad). *Id.* at 283. The federal district court denied the railroad's request for an injunction against the union's picketing, at which time the railroad sought and obtained the desired injunction in state court. *Id.* Subsequent to a Supreme Court decision in the union's favor finding invalid a state court injunction against union picketing in another railroad yard, *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), the union petitioned the state court to dissolve the railroad injunction against its pickets. *Id.* at 284. Upon the state court's refusal, the union returned to the federal district court, without pursuing a state appeal, and was granted an injunction against the enforcement of the state court order. *Id.* at 284.

⁴⁹ See note 22 *supra*.

⁵⁰ 398 U.S. at 286-87.

⁵¹ On appeal to the Supreme Court, the union argued that the federal injunction was properly granted under exceptions to § 2283, as an injunction "to protect or effectuate" the 1967 district court judgment denying injunctive relief to the railroad or as an injunction "necessary in aid of" the district court's jurisdiction. *Id.* at 284. The Court found the grant of injunctive relief by the district court to be improper. *Id.* at 285.

⁵² *Id.* at 294-95.

⁵³ 401 U.S. 37 (1971).

⁵⁴ 281 F.Supp. at 509.

⁵⁵ 401 U.S. at 40.

⁵⁶ *Id.* at 54. The *Younger* Court concluded that "[b]ecause our holding rests on the absence of the factors necessary under equitable principles to justify federal intervention, we have no occasion to consider whether 28 U.S.C. § 2283, which prohibits an injunction against state court proceedings 'except as expressly authorized by Act of Congress' would in and of itself be controlling under the circumstances of this case." *Id.*

⁵⁷ *Id.*

sions of the anti-injunction statute—forbade “federal courts to stay or enjoin pending state proceedings . . .”⁵⁸

Finally, in 1972 in *Mitchum v. Foster*,⁵⁹ the Supreme Court squarely faced the issue whether section 1983 comes within the “act of Congress” exception to section 2283.⁶⁰ Relying on legislative history, the *Mitchum* Court held that section 1983 was intended by Congress to be excepted from the injunction ban of section 2283.⁶¹ The Court characterized section 1983 as a “vast transformation” of concepts of federalism⁶² whose purpose was to interpose federal courts between the states and the people.⁶³ On this basis, the Court concluded, Congress expressly had authorized injunctions to carry out that purpose by its use of the “suit in equity” language in section 1983.⁶⁴

In reaching this conclusion, the *Mitchum* Court noted that if section 1983 were not an express exception to the anti-injunction statute, the decision in *Younger* and its companion cases would be incorrect.⁶⁵ The Court reasoned that since the *Younger* cases were section 1983 actions, the absolute ban imposed by section 2283, as interpreted in *Atlantic Coastline*, would require *Younger* to be overturned to the extent that it allowed any special circumstances to sanction injunctive relief against pending state proceedings.⁶⁶ In construing 1983 as an exception to section 2283, the Court’s ruling in *Mitchum* avoided disturbing⁶⁷ the emergent *Younger* doctrine and indeed buttressed that doctrine with the caveat that the *Mitchum* decision in no way questioned or qualified “the principles of equity, comity and federalism that must restrain a federal court when asked to enjoin a state court proceeding.”⁶⁸

The Court’s decision in *Mitchum* clarified the relationship between the anti-injunction statute, the judicial abstention doctrine enunciated in *Younger*, and the federal cause of action provided by section 1983. By holding that section 1983 injunctive suits fall within an exception to the absolute

⁵⁸ *Id.* at 45.

⁵⁹ 407 U.S. 225 (1972). In *Mitchum*, the prosecuting attorney of Bay County, Florida obtained a preliminary state court order to close Mitchum’s bookstore as a public nuisance under Florida law. *Id.* at 227. After inconclusive proceedings in state court, Mitchum sought injunctive and declaratory relief in district court under § 1983 against the state court proceedings. *Id.* A temporary restraining order, granted by a single federal district judge, was dissolved by the three judge federal district court subsequently convened under 28 U.S.C. §§ 2281, 2284 (1970) to hear Mitchum’s federal challenge to the state court proceedings. *Id.* The district court relied upon the Supreme Court’s decision in *Atlantic Coastline* to deny the requested injunction against the Florida proceedings on the grounds that the injunctive relief sought did not come under any of the exceptions set forth in 28 U.S.C. § 2283. 315 F. Supp. 1387, 1389 (N.D.Fla. 1970) (per curiam).

⁶⁰ 407 U.S. at 238-43.

⁶¹ *Id.* at 242-43.

⁶² *Id.* at 238-39, 242.

⁶³ *Id.* at 242-43.

⁶⁴ *Id.* at 242.

⁶⁵ *Id.* at 230-31.

⁶⁶ *Id.*

⁶⁷ *Id.* at 243. The *Mitchum* Court emphasized its intent not to disturb the holding in *Younger* with the statement that “[t]oday we decide only that the District Court in this case was in error in holding that, because of the anti-injunction statute, it was absolutely without power in this § 1983 action to enjoin a proceeding pending in a state court under any circumstances whatsoever.” *Id.*

⁶⁸ *Id.*

bar to injunctions posed by the anti-injunction statute, the *Mitchum* Court made clear that plaintiffs seeking an injunction under section 1983 are not forbidden to do so by virtue of the anti-injunction statute. However, by indicating that *Younger* abstention would be triggered after a suit for injunctive relief against pending state criminal proceedings had cleared the hurdle of the anti-injunction statute, the *Mitchum* Court made clear that *Younger* principles could prevent a grant of injunctive relief in a section 1983 suit even though the anti-injunction statute would allow it. Thus, *Atlantic Coastline*, *Younger*, and *Mitchum*, read together, indicate that a suit for a federal injunction initially must qualify as an exception to the anti-injunction statute, and subsequently must overcome the hurdle erected by the *Younger* doctrine to obtain injunctive relief.⁶⁹

B. Extensions of the Younger Doctrine

The *Younger* doctrine originally was thought to compel restraint in the grant of federal injunctive relief only in the face of pending state criminal proceedings.⁷⁰ Immediately following the Court's decision in *Mitchum*, however, several circuit courts extended the *Younger* doctrine to protect pending state civil proceedings from section 1983 injunctive suits.⁷¹ Within three years of *Mitchum*, the Supreme Court, in *Huffman v. Pursue Ltd.*,⁷² extended the *Younger* doctrine to encompass pending state civil proceedings linked to or operating in aid of a state's criminal laws.⁷³

⁶⁹ This analysis is confirmed in subsequent *Younger* doctrine cases. In *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), the Court noted that § 2283 did not apply since the federal cause of action was brought under § 1983, stating that "while the statute [§ 2283] does express the general congressional attitude which was recognized in *Younger*, it does not control the case before us today." *Id.* at 600 n. 15. The requested injunctive relief was nevertheless denied on the second threshold of *Younger* principles. *Id.* at 607. *Accord*, *Rizzo v. Goode*, 423 U.S. 362, 379 (1976). *See also* *Lynch v. Snapp*, 472 F.2d 769 (4th Cir. 1973), *cert. denied*, 415 U.S. 983 (1974); *Cousins v. Wigoda*, 463 F.2d 603 (7th Cir.), *application to stay state proceedings denied*, 409 U.S. 1201 (1972). In *Lynch*, the circuit court ruled that although granting an injunction in a § 1983 action is unhindered by § 2283, the propriety of an injunction must also satisfy the principles of equity, comity and federalism. *Id.* at 771, *citing Mitchum*, 407 U.S. at 243. The decisions in *Lynch* and *Cousins* were cited with approval by Justice Rehnquist in the majority opinions in *Huffman*, 420 U.S. at 607 and in *Judice*, 430 U.S. 327, 334 (1977).

⁷⁰ 401 U.S. at 55 & n. 2 (Stewart, J., concurring). Justice Stewart contended that "since [*Younger* and its companion cases] involve state criminal prosecutions, we do not deal with the considerations that should govern a federal court when it is asked to intervene in state civil proceedings . . ." *Id.* at 55.

⁷¹ *See, e.g., Lynch v. Snapp*, 472 F.2d. 769 (4th Cir. 1973), *cert. denied*, 415 U.S. 983 (1974). Contending that *Mitchum* determined only that there was no absolute bar to federal injunctive relief in § 1983 suits, the circuit court in *Lynch* sustained a denial of injunctive relief in a civil suit on the ground that although the state's interest in unfettered civil proceedings might be less compelling than in criminal proceedings, the applicability of the principles of equity, comity and federalism should not be "made to turn upon such labels as 'civil' or 'criminal' but rather upon an analysis of the competing interests in each case." *Id.* at 772-73.

⁷² 420 U.S. 592 (1975).

⁷³ *Id.* at 604-05. The factors the *Huffman* Court seemed to find controlling in aligning the otherwise civil nuisance proceedings before it with the state's criminal laws included: (1) the presence of the state as the moving party; (2) the close relation of the civil proceedings to statutes proscribing criminal activities; and, (3) the possibility of disruption by federal injunction of the legitimate efforts of the state to obtain compliance with state policies similar to those embodied in its criminal laws. *Id.*

YOUNGER ABSTENTION

In *Huffman*, the Court vacated a federal district court's grant of injunctive relief⁷⁴ in a section 1983 suit against the enforcement of a state civil nuisance statute which the district court found to be an unconstitutional infringement on first amendment rights.⁷⁵ While acknowledging that the traditional reluctance of equity courts to interfere with criminal proceedings was not as strong in civil proceedings,⁷⁶ the *Huffman* Court held that the *Younger* principles of comity and federalism⁷⁷ require federal restraint in civil proceedings if such proceedings protect the state's interest in the enforcement of criminal laws and facilitate compliance with standards similar to those embodied in criminal laws.⁷⁸ Furthermore, the Court expanded the *Younger* definition of pending state proceedings to include all state appellate remedies. Thus, after *Huffman*, once state proceedings have begun, a state defendant is required to adjudicate any federal claims arising in a state criminal or quasicriminal proceeding without access to a federal forum under section 1983 until all possible state appeals are exhausted.⁷⁹ State proceedings can not be interrupted at any stage unless the defendant can show the existence of extraordinary circumstances qualifying as an exception to the doctrine.⁸⁰ However, unlike the *Younger* Court which suggested that certain unspecified situations might constitute extraordinary circumstances,⁸¹ the Court in *Huffman* limited the definition of extraordi-

⁷⁴ *Id.* at 611-12.

⁷⁵ *Id.* at 598-99. In *Huffman*, appellants, an Ohio county sheriff and county prosecutor, sought to close a theater operated by Pursue, Ltd., which screened allegedly pornographic films. *Id.* at 595. These officials brought an action in the county court against the theater owner under Ohio's public nuisance statute. OHIO REV. CODE ANN. §§ 3767.01 *et seq.* (Page 1971). Section 3767.01(c) of that statute provided for a determination that a place of business showing obscene films constitutes a public nuisance. The penalty for engaging in such activity required closure for any purpose for one year with the possibility of the sale of all personal property used in conducting the nuisance. OHIO REV. CODE ANN. § 3767.06. 420 U.S. at 595-97.

Rather than appealing the subsequent county court order under the statute which closed its theater, Pursue, Ltd. sought and obtained an injunction in the federal district court under § 1983 on the ground that the enforcement of the Ohio nuisance provisions abridged the exercise of first amendment rights, by allowing a temporary or permanent injunction against the showing of films that had not previously been determined to be obscene in an adversarial hearing. *Id.* at 598-99.

⁷⁶ *Id.* at 604.

⁷⁷ *Id.* at 600-01. The *Huffman* Court placed heavy emphasis on the notion of comity as opposed to equity and federalism as that component of *Younger* which required a "proper respect for state functions, a recognition 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." *Id.* at 601, quoting *Younger*, 401 U.S. at 44. Comity counseled against any federal interference which prevented states from providing competent forums to vindicate their statutory policies against constitutional challenges. *Id.* at 604. In support of this position, the Court cited to a statement by Justice Black in *Younger* to the effect that "it has been perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Id.* at 600, quoting *Younger*, 401 U.S. at 45.

⁷⁸ *Id.* at 604-05.

⁷⁹ *Id.* at 609-11. Although the *Huffman* Court contended that a state appeal was available to Pursue, Ltd., it did not examine the nature or adequacy of that appeal process. *Id.* at 610. But see *Wooley v. Maynard*, 430 U.S. 705, 710-11 (1977) (when injunctive relief sought is wholly prospective and not disruptive of ongoing state proceedings, *Huffman* exhaustion rule is inapplicable).

⁸⁰ 420 U.S. at 611-12.

⁸¹ 401 U.S. at 53-54.

nary circumstances to either a bad faith or harrasing prosecution by state officials⁸² or the enforcement of a "patently and flagrantly" unconstitutional statute.⁸³

The *Huffman* Court's rejection of the *Younger* doctrine's limitation to state criminal proceedings represented a significant departure from the original *Younger v. Harris* parameters for judicially imposed abstention. In the wake of *Huffman*, the *Younger* doctrine apparently would: (1) require federal courts to defer to state proceedings protecting interests other than the enforcement of purely criminal laws; (2) preclude a section 1983 action, once state criminal or quasi-criminal proceedings have begun, until state appellate processes are complete; and (3) sharply limit the availability of equitable exceptions to the doctrine's operation. By extending the *Younger* doctrine beyond strictly criminal state proceedings and by limiting the equitable exceptions to the doctrine, the *Huffman* decision foreshadowed the Supreme Court's consideration of the *Younger* doctrine in *Juidice v. Vail*⁸⁴ and *Trainor v. Hernandez*.⁸⁵

C. *Juidice and Trainor*

1. *Juidice v. Vail*

Juidice originated in a New York County court as contempt proceedings instituted by judgment creditors to collect default money judgments.⁸⁶ Vail and other individual debtor defendants had failed to answer subpoenas for the disclosure of assets issued by their creditors' attorneys.⁸⁷ Under New York statutes,⁸⁸ the creditors were then allowed to institute contempt proceedings⁸⁹ which required the debtors to appear in state court and show cause why they should not be held in contempt.⁹⁰ Vail and other debtors, after failing to respond to such show cause orders,⁹¹ were fined⁹² and upon failing to pay such fines,⁹³ were incarcerated or threatened with incarceration until the fines were paid.⁹⁴ In federal district court⁹⁵ the debtors instituted a class action suit on fourteenth amendment due process

⁸² 420 U.S. at 602, 611.

⁸³ *Id.* Although a state statute might conceivably meet a standard of "flagrant" unconstitutionality, the *Huffman* Court emphasized that the facial invalidity of a statute would not be an extraordinary circumstance under the *Younger* definition. *Id.* at 602. The Court further implied that any exception for extraordinary circumstances should be construed narrowly. *Id.* at 611.

⁸⁴ 430 U.S. 327 (1977).

⁸⁵ 431 U.S. 434 (1977).

⁸⁶ *Vail v. Quinlan*, 406 F. Supp. 951 (S.D.N.Y. 1976).

⁸⁷ *Id.* at 956-57. The disclosure subpoenas were issued by their creditors' attorneys acting as officers of the court. The subpoenas required the debtors' presence at deposition to determine their ability to satisfy a previously obtained judgment. N.Y. CIV. PRAC. LAW §§ 5223, 5224 (McKinney 1977).

⁸⁸ N.Y. JUD. LAW §§ 756, 757, 767, 769, 770-75 (McKinney 1968).

⁸⁹ N.Y. JUD. LAW §§ 770, 772-773 (McKinney 1968).

⁹⁰ *Id.* § 757.

⁹¹ The show cause orders were issued by county judges, *Juidice* and *Aldrich*, in accordance with N.Y. JUD. LAW § 757. 406 F. Supp. at 957.

⁹² 406 F. Supp. at 957.

⁹³ *Id.*

⁹⁴ *Id.* at 965-67.

⁹⁵ *Vail v. Quinlan*, 387 F. Supp. 630 (S.D.N.Y. 1975) (decision to convene three judge court to consider the merits).

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grounds under section 1983 seeking declaratory and injunctive relief against the operation of the New York contempt procedures.⁹⁶

The three judge district court,⁹⁷ interpreting *Huffman* as extending the *Younger* doctrine beyond criminal proceedings only insofar as the desired federal injunction would result in disrupting quasicriminal proceedings,⁹⁸ concluded that the *Younger* doctrine was inapplicable because the instant civil contempt proceedings were related neither to New York's criminal laws nor to the effectuation of such laws.⁹⁹ In addition, the district court found that *Huffman* required that a federal court refuse to hear a request for injunctive relief only when the prospective federal plaintiff has a meaningful opportunity to be heard by a competent state tribunal.¹⁰⁰ The district court determined that the New York contempt procedures did not provide judgment debtors with adequate notice that failure to appear at show cause hearings would result in imprisonment and that the statutory scheme allowed for *ex parte* commitment to jail.¹⁰¹ Maintaining that "a finding of contempt can be properly made only upon a hearing with both parties present,"¹⁰² the district court determined that the New York statutory scheme did not include the requisite meaningful opportunity for the adjudication of constitutional claims.¹⁰³ Thus, the district court concluded that *Younger* abstention did not prevent issuance of an injunction against the present and future enforcement of the New York civil contempt statutes.¹⁰⁴

⁹⁶ *Vail v. Quinlan*, 406 F. Supp. 951, 953, 959 (S.D.N.Y. 1976) (three judge panel decision on merits). Suit in federal district court was brought against the county sheriff, Quinlan, who incarcerated plaintiffs or had the power to do so, and county judges, Juidice and Aldrich, who issued the *ex parte* commitment orders against the federal plaintiffs. At the district court level, the individual creditors were also defendants. *Id.* at 956-57.

⁹⁷ 406 F. Supp. 951. The convening of a three judge court for the hearing of suits requesting injunctive relief against the enforcement of state laws formerly was required under 28 U.S.C. § 2281. This section also allowed for a direct appeal to the United States Supreme Court upon the decision of the three judge panel, as was the case in both *Juidice* and *Trainor*. Section 2281 and its companion section dealing with actions seeking to enjoin the enforcement of federal laws, § 2282, were repealed by Act of August 12, 1976, P.L. 94-381 §§ 1, 1a, 90 Stat. 1119. Section 7 of the repealing Act provided that the Act would not apply to any action commenced on or before August 12, 1976.

⁹⁸ 406 F. Supp. at 958. The district court in *Vail* also referred to *Anonymous v. Association of the Bar of N.Y. City*, 515 F.2d 427 (2nd Cir. 1975), in which state disbarment proceedings were found to be comparable to those in *Huffman* as quasicriminal and part of a state's special interest in regulating the bar. *Id.*

⁹⁹ *Id.* at 958.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 959-60. The district court also sustained due process challenges grounded on the failure of the New York statutory scheme to inform judgment debtors of their right to counsel and on the punitive nature of the fines imposed. *Id.*

¹⁰² *Id.* at 959.

¹⁰³ *Id.* at 959-60. In this connection, the district court analogized the case before it to *Gerstein v. Pugh*, 420 U.S. 103 (1975). In *Gerstein*, the state defendants in a criminal proceeding were held for trial on the information of the prosecutor alone, without any judicial hearing as to probable cause. *Id.* at 105-06. Under the Florida statutes challenged in *Gerstein*, a person could be arrested on information without a warrant and jailed or otherwise restricted pending trial. *Id.* at 116. The Court found that the prosecutor's responsibility in the enforcement of the state's laws was inconsistent with the role of a neutral and detached magistrate making an assessment of probable cause to restrain an accused party's liberty pending trial as required by the fourth amendment. *Id.* at 117-19. The *Gerstein* Court upheld the issuance of an injunction against the continued enforcement of the challenged statutes. *Id.* at 126.

¹⁰⁴ 406 F. Supp. at 960. All the challenged sections were declared unconstitutional with the exception of those which dealt with the issuance of habeas corpus writs, the execution

On direct appeal, the Supreme Court,¹⁰⁵ in a six to three decision, reversed the district court's grant of injunctive relief¹⁰⁶ and held that the principles of federalism and comity enunciated in *Younger* and *Huffman* are applicable to state civil contempt proceedings,¹⁰⁷ and that therefore federal injunctive relief in this context is improper.¹⁰⁸ Moreover, with regard to equitable exceptions to the *Younger* doctrine, the Court held that a mere opportunity to be heard rather than an actual hearing in state court is sufficient to invoke *Younger* principles of federal noninterference.¹⁰⁹ Writing for the majority,¹¹⁰ Justice Rehnquist conceded that the district court's reading of *Huffman* was not an "implausible" one.¹¹¹ *Huffman*, the *Judice* Court admitted, had limited the applicability of principles counseling federal restraint to the quasicriminal proceedings sought to be enjoined in that case¹¹² and explicitly had made no pronouncements on the applicability of such principles to all civil litigation.¹¹³ The *Judice* Court observed, however, that the "more vital consideration" underlying the *Younger* doctrine was the principle of comity which required a proper respect for independent state functions.¹¹⁴ In evaluating the strength of the state interest served by precluding federal injunctive interference with civil contempt proceedings, the Court observed that the contempt power was essential to the administration of a state's judicial system.¹¹⁵ As such, while contempt proceedings were "[p]erhaps . . . not quite as important as is the State's interest in the enforcement of its criminal laws, or even its interest in the maintenance of a quasi-criminal proceeding such as was involved in *Huffman*," the principles of comity and federalism nonetheless mandate that district courts refuse to grant injunctive relief when such relief is sought against state civil contempt proceedings.¹¹⁶ To do otherwise, the majority reasoned, would unduly interfere with legitimate state activities—which the Court failed to identify

warrants in the absence of an undertaking and the filing of interrogatories and proofs. N.Y. JUD. LAW §§ 765, 767, 769, 771 (McKinney 1968). *Id.* at 960.

¹⁰⁵ 430 U.S. 327 (1977).

¹⁰⁶ 406 F. Supp. at 960.

¹⁰⁷ 430 U.S. at 334-36.

¹⁰⁸ *Id.* at 338-39.

¹⁰⁹ *Id.* at 336-37.

¹¹⁰ Justice Rehnquist maintained initially that the Court was obliged to examine the standing of plaintiffs to seek injunctive relief in the district court under the case or controversy requirement of art. III, U.S. CONST., art. III. The Court maintained that the named plaintiffs who had already been jailed and released no longer had a live controversy in which injunctive relief could be granted. Thus, the standing of parties subject to the New York contempt proceedings lasted only as long as the order imposing fines and requiring imprisonment. *Id.* During this period, however, the state contempt proceedings were pending, which brought *Younger* principles into play. *Id.* at 333.

¹¹¹ *Id.* at 334.

¹¹² *Id.* The proceedings in *Huffman* involved the enforcement of a public nuisance statute. See discussion in text at notes 77-78 *supra*.

¹¹³ 430 U.S. at 333-34, quoting *Huffman*, 420 U.S. at 607. In *Huffman*, the Court maintained that its decision made "no general pronouncements upon the applicability of *Younger* to all civil litigation." 420 U.S. at 607. At the same time, however, the *Huffman* Court described that case as *Younger*'s "civil counterpart." *Id.* at 611.

¹¹⁴ 430 U.S. at 334. The source of this language is Justice Black's opinion in *Younger*, 401 U.S. at 44, where he states that comity is the underlying reason for counseling restraint of federal equitable interference. *Id.*

¹¹⁵ 430 U.S. at 335.

¹¹⁶ *Id.*

specifically—and, simultaneously, would reflect negatively upon the state court's ability to enforce constitutional principles.¹¹⁷

The Court then addressed the equitable conditions which allow a federal court to interfere with a pending state proceeding even when *Younger* abstention is otherwise applicable. The Court found that the measure of an adequate state proceeding is not an actual hearing of the federal claims in state court, but rather the mere opportunity to raise such claims in the state proceeding.¹¹⁸ The plaintiffs' failure to appear and present their federal claims in the state contempt proceedings therefore did not render the proceedings inadequate to entertain federal claims. Finally, the Court rejected the contention that the contempt proceedings fell within either of the two extraordinary circumstances meriting injunctive relief—a bad faith prosecution or the enforcement of a “flagrantly and patently” unconstitutional state statute¹¹⁹—since no allegation of bad faith had been made in the original complaint or proven,¹²⁰ and since the contempt statutes were not “patently and flagrantly violative of express constitutional prohibitions in every clause . . . and in whatever manner and against whomever an effort might be made to apply [them].”¹²¹ The majority consequently determined that the district court's grant of injunctive relief was in error.¹²²

Justice Stevens, concurring in the Court's judgment,¹²³ contended that the major premise underlying the *Younger* doctrine is that injunctive relief is unavailable in the presence of an adequate remedy at law.¹²⁴ Accordingly, the critical question for Justice Stevens was not the nature or importance of the state's interest in continuing the proceedings, but whether the contempt proceedings in *Judice* provided a constitutionally adequate remedy.¹²⁵ Finding that the Court's recitation of the facts showed that the New York procedure provides for adequate notice and opportunities to be heard, Justice Stevens summarily concluded that the New York contempt procedures did not violate principles of due process and thus that the Court had applied *Younger* properly.¹²⁶

¹¹⁷ *Id.* at 336.

¹¹⁸ *Id.* at 336-37. The *Judice* Court distinguished *Gerstein v. Pugh*, 420 U.S. 103 (1975), see note 103 *supra*, from the case before it on the grounds that the *Gerstein* injunction was granted because the issue of the legality of the pre-trial detention could not be raised in the defense of a criminal prosecution, not because there was no hearing before the detention. *Id.* at 108 n.9. This is the same language relied upon by the district court in *Vail v. Quinlan*, 406 F. Supp. at 958-59.

¹¹⁹ *Id.* at 338, quoting *Huffman*, 420 U.S. at 611, citing *Younger*, 401 U.S. at 53-54.

¹²⁰ *Id.* at 338. With regard to the bad faith exception, the Court stated:

While some paragraphs of the complaint could be construed to make such allegations as to the creditors, there are no comparable allegations with respect to appellant justices who issued the contempt orders. This exception may not be utilized unless it is alleged and proved that they are enforcing the contempt procedures in bad faith or are motivated by a desire to harass.

Id.

¹²¹ 430 U.S. at 338, quoting *Huffman*, 420 U.S. at 611.

¹²² 430 U.S. at 336-39.

¹²³ *Id.* at 339-41.

¹²⁴ *Id.* at 339.

¹²⁵ *Id.* at 340. Justice Stevens maintained that even ultimate success in an unconstitutional judicial proceeding would not provide a substitute for due process protections. Only an adequate remedy for the alleged federal wrong would do. *Id.* at 340-41.

¹²⁶ *Id.* at 341.

In dissent,¹²⁷ Justice Brennan, joined by Justice Marshall, strongly disagreed with the Court's extension of *Younger* to state civil proceedings, particularly in an action brought under section 1983. Justice Brennan contended that such an extension of *Younger* crippled the congressional scheme embodied in section 1983 by denying plaintiffs access to federal court for vindication of federal claims.¹²⁸ In his view, no state interests are equal in importance to a state's interest in enforcing its criminal laws, and thus no other state interests are sufficient to override the congressional mandate in section 1983 to adjudicate federal claims in federal court.¹²⁹ Moreover, Justice Brennan suggested that requiring a section 1983 plaintiff to present constitutional claims in state courts may run counter to the state's own interest in supporting the constitutionality of state statutes.¹³⁰ If *Younger* applies to state civil proceedings between purely private parties, Justice Brennan noted, the state would not be present to protect the constitutionality of its own statutes. By contrast, a section 1983 suit in federal court names the state or its officials as defendants, and the litigation focuses squarely on the issue of the validity of the statute, with the state defending its own interest directly.¹³¹ Finally, Justice Brennan questioned whether the Court's decision¹³² "properly reflected the nature of our federalism" and whether by

[a]dopting the premises that state courts can be trusted to safeguard individual rights, the Court has gone on to limit the protective role of the federal judiciary . . . [and] in so doing it has forgotten that one of the strengths of the federal system is that it provides a double source of protection for the rights of our citizens. Federalism is not served when the federal half of that protection is crippled.¹³³

Accordingly, Justice Brennan concluded that the Court's refusal to allow access to federal courts under section 1983—on the basis of comity and federalism—constituted "federal abdication" in the face of express congressional intent that federal courts protect and vindicate federal civil rights.¹³⁴

¹²⁷ *Id.* at 341-47 (Brennan, J., dissenting). Justice Stewart also dissented, basing his opinion on *Pullman* abstention principles. *Id.* at 347-48. See discussion of *Pullman* abstention at note 33 *supra*. Under *Pullman*, Justice Stewart maintained that the district court opinion should have been set aside and its determination on the merits stayed until a New York court had reached its own resolution of the proper interpretation of the New York contempt statutes. *Id.* at 348 (Stewart, J., dissenting).

¹²⁸ *Id.* at 341-43. Justice Brennan argued that by relegating would-be § 1983 plaintiffs to state court to litigate federal claims, the *Younger* civil extension abrogated the congressional intent in that statutory scheme to interpose the federal court between the state and the people to protect federally secured rights regardless of the pendency of state proceedings. *Id.* at 342. See generally *Mitchum v. Foster*, 407 U.S. 225, 238-43 (1972).

¹²⁹ 430 U.S. at 344-45.

¹³⁰ *Id.* at 345-46.

¹³¹ *Id.*

¹³² *Id.* at 346-47. Justice Brennan suggested that the majority's curtailment of § 1983 was not surprising in light of a recent series of Supreme Court decisions made in the name of federalism. See *Stone v. Powell*, 428 U.S. 465 (1976); *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Francis v. Henderson*, 425 U.S. 536 (1976); *Paul v. Davis*, 424 U.S. 693 (1976); *Rizzo v. Goode*, 423 U.S. 362 (1976); *Warth v. Seldin*, 422 U.S. 490 (1975); *Hicks v. Miranda*, 422 U.S. 322 (1975); *O'Shea v. Littleton*, 414 U.S. 488 (1974).

¹³³ 430 U.S. at 446-47, quoting Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 502-03 (1977).

¹³⁴ 430 U.S. at 343-44.

2. *Trainor v. Hernandez*

In *Trainor v. Hernandez*,¹³⁵ decided two months after *Juidice*, the Supreme Court again applied the *Younger* doctrine in a civil context. *Trainor* began as an attachment proceeding¹³⁶ instituted by the Illinois Department of Public Aid (IDPA) to satisfy a money judgment for the recovery of welfare funds alleged to have been fraudulently obtained.¹³⁷ Hernandez brought a section 1983 action in federal district court seeking declaratory and injunctive relief against the attachment proceedings on fourteenth amendment due process grounds.¹³⁸ Hernandez alleged that the Illinois attachment procedures¹³⁹ violated due process by allowing a creditor, without hearing, to obtain automatically a writ of attachment from a clerk of courts, predicated merely on conclusory allegations and certain procedural information.¹⁴⁰ The section 1983 action sought to enjoin both the present and future enforcement of the challenged sections against Hernandez and members of the class he represented.¹⁴¹

A three judge district court specifically considered and rejected the applicability of *Huffman* to prevent federal court interference with the state attachment proceedings on the grounds that the proceedings were civil in nature¹⁴² and provided a cause of action for private as well as public parties.¹⁴³ Moreover, the district court ruled that even if the *Younger* doctrine were applicable federal injunctive relief was nonetheless proper since the statutes in question were "patently and flagrantly violative of the constitution." Consequently the case fell within an express exception to the *Younger* doctrine.¹⁴⁴

In a five to four decision on direct appeal,¹⁴⁵ the Supreme Court reversed the district court's decision and remanded the case for further proceedings to determine the adequacy of the state proceeding for entertaining the federal claims.¹⁴⁶ Finding that the injunction interfered with a suit

¹³⁵ 431 U.S. 434 (1977). The Court which decided *Juidice* and *Trainor* was composed of the same Justices.

¹³⁶ *Hernandez v. Danaher*, 405 F. Supp. 757, 759 (N.D. Ill. 1975).

¹³⁷ *Id.* at 758-59. The IDPA attached funds of the plaintiffs, which they held in a credit union, to secure a possible judgment in a separately filed state suit, under ILL. REV. STAT. ch. 11, §§ 1, 2, 2a, 6, 8, 10, 14 (1973 & Supp. 1974). The separate state action sought the return of public assistance funds allegedly fraudulently received by plaintiffs' concealment of assets in applying for welfare. *Id.*

¹³⁸ 405 F. Supp. at 757. The defendants in the federal district court were the County Clerk of Cooks County, Danaher, individually and in his official capacity and a class of all other persons similarly situated, along with officials of the IDPA, Trainor and O'Malley. Plaintiffs Juan and Maria Hernandez represented themselves and all members of a similarly situated class. *Trainor v. Hernandez*, 431 U.S. 434, 435-39 (1977).

¹³⁹ ILL. REV. STAT. ch. 11, §§ 1, 2, 2a, 6, 8, 10, 14 (1973 & Supp. 1974). The plaintiffs claimed these sections of the Attachment Act were unconstitutional on their face and as applied, in violation of the due process clause of the fourteenth amendment. 405 F. Supp. at 759.

¹⁴⁰ 405 F. Supp. at 762.

¹⁴¹ *Id.*

¹⁴² *Id.* at 759.

¹⁴³ *Id.* at 760. The district court contended that it was mere happenstance that the State of Illinois was a party to the present action. *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ 431 U.S. 434 (1977). See note 97 *supra*.

¹⁴⁶ *Id.* at 447-48.

brought by a state in its sovereign capacity,¹⁴⁷ the Court held that *Younger-Huffman* principles of comity and federalism require federal noninterference with civil enforcement proceedings brought by a state in vindication of its sovereign activities.¹⁴⁸ Writing for the majority, Justice White posed the issue before the Court as the proper role for a federal court in a case pending before it, and otherwise properly within its jurisdiction, when litigation between the same parties over the same issues is pending in a state court.¹⁴⁹ The Court approached this issue by reviewing prior *Younger* doctrine cases.

Beginning with *Younger v. Harris*, the *Trainor* Court noted that the proper role for the federal court in that case had been to dismiss the section 1983 action so long as the federal claims raised could be heard in the state court.¹⁵⁰ The *Trainor* Court, while acknowledging that the first justification for federal abstention in *Younger* had been equitable considerations,¹⁵¹ determined that comity and federalism were "more vital consideration[s]" for the *Younger* Court than equity. The *Trainor* Court observed that comity and federalism counseled both federal noninterference with legitimate state functions, particularly the operation of state courts, and respect for the independence of state governments.¹⁵² The equitable considerations relied upon in *Younger v. Harris*, the *Trainor* Court maintained, required only that two conditions be met before injunctive relief could be denied: the existence of an adequate remedy in state court¹⁵³ and the absence of extraordinary circumstances amounting to great, immediate and irreparable injury.¹⁵⁴ Thus, according to the *Trainor* Court, federal judicial restraint in *Younger v. Harris* was premised on an assumption that the pending state proceeding will provide an adequate forum for the full adjudication of federal constitutional claims.¹⁵⁵ Given this presumption of adequacy, a grant of federal injunctive relief, absent the potential for great and immediate irreparable injury to the prospective federal plaintiff would reflect negatively on the states' ability to protect federal rights and would interfere with the implementation of substantive state policies.¹⁵⁶

The *Trainor* Court continued its historical analysis of the *Younger* doctrine by examining the decision in *Huffman*. The Court initially observed that the equitable principle of non interference with criminal proceedings did not apply strictly to counsel restraint in *Huffman*. The more important justification for the refusal of federal injunctive relief in that case, the *Trainor* Court maintained, had been the considerations of comity. Comity, noted the *Trainor* Court, "counseled restraint as strongly in the context of the pending state civil enforcement action as in the context of a pending criminal proceeding."¹⁵⁷ The *Trainor* Court completed its review of *Younger*

¹⁴⁷ *Id.* at 444.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 440.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 441.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 442 & n.7.

¹⁵⁵ *Id.* See *Kugler v. Helfant*, 421 U.S. 117, 124 (1975); *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973).

¹⁵⁶ *Trainor v. Hernandez*, 431 U.S. at 443.

¹⁵⁷ *Id.* at 443.

doctrine cases by declaring that *Judice* had held that the state interest in vindicating the regular operation of its judicial system through the contempt process—whether that process was labeled civil, criminal or quasi-criminal—was sufficiently important to preclude federal injunctive relief unless *Younger* standards were met.¹⁵⁸

Turning to the case before it, the Court characterized Illinois' use of the attachment proceedings as a means of vindicating an important state interest; in this instance, the fiscal integrity of a state welfare system.¹⁵⁹ In this way, the Court shifted its focus from the plaintiffs' opportunity for presenting his federal claims in the state proceedings to an examination of the state's interest in continuing its own proceedings. The strength of Illinois' interest was evidenced by the pendency of the state's underlying suit for the welfare funds and of the attachment proceeding,¹⁶⁰ its presence as a party in its role of administering its public-assistance programs,¹⁶¹ and its option to protect the fiscal integrity of its programs in a criminal action.¹⁶² The Court concluded that although Illinois' interest might not be as great as an interest in the continuance of a state criminal or quasicriminal proceeding, considerations of comity and federalism enunciated in *Younger*, *Huffman* and *Judice* required federal noninterference with Illinois' decision to employ the attachment process.¹⁶³ Thus, the Court took the position that *Younger* applies when a state, acting in its sovereign capacity, utilizes a civil enforcement proceeding to vindicate one of its interests.¹⁶⁴ The Court maintained in a footnote, however, that the occasion to decide the applicability of *Younger* to all civil litigation had not yet arisen.¹⁶⁵

Having thus determined that *Younger* principles counseled federal restraint, the remaining question before the Court was whether the equitable conditions which allow a denial of injunctive relief had been met. In assessing the possibility for irreparable injury from the continuance of the state proceedings, the Court applied only two categories of "extraordinary circumstances" to the facts of *Trainor*—whether the state suit was brought in bad faith or with the intent to harass the defendants,¹⁶⁶ and whether the

¹⁵⁸ *Id.* at 443-44.

¹⁵⁹ *Id.* at 444.

¹⁶⁰ *Id.* The Court considered the proceedings for a writ of attachment to be part of Illinois' civil suit to recover the welfare payments, rather than as a separate pending action in the state court. *Id.*

¹⁶¹ *Id.* The Court dismissed the district court's finding that *Younger* policies were irrelevant since the presence of the state as a party to the proceedings was a coincidence at best. *Hernandez v. Danaher*, 405 F. Supp. at 760.

¹⁶² 431 U.S. at 444. In analyzing Illinois' use of the attachment proceedings, the Court particularly noted that the federal plaintiffs could have been charged with a criminal violation under ILL. REV. STAT. ch. 23, §§ 11-21 (1973 & Supp. 1974), for fraudulently obtaining welfare funds. Instead, Illinois chose to bring a civil suit. 431 U.S. at 435.

¹⁶³ *Id.* at 444.

¹⁶⁴ *Id.* The opinion does not define sovereign capacity or cite authorities for this proposition. Rather, in a footnote, the Court observed that 28 U.S.C. § 2283, the anti-injunction statute, which did not apply in this instance because the action was brought under § 1983, does not distinguish between civil and criminal actions in prohibiting federal injunctive relief. *Id.* at 444-45 n.8.

¹⁶⁵ *Id.* at 444-45 n.8. In addition to the concern for the integrity of state courts and the independence of states in carrying out their substantive policies, the Court also determined that a grant of injunctive relief may force states to engage in "duplicative" litigation, foreclose state opportunity to construe their own statutes, and reflect negatively on a state court's ability to adjudicate constitutional claims. *Id.* at 445.

¹⁶⁶ *Id.* at 446.

state statute enforced was "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph and in whatever manner and against whomever an effort might be made to apply it."¹⁶⁷ The Court concluded that no extraordinary circumstances warranting equitable relief were present.¹⁶⁸ Additionally, the Court concluded, without explanation, that even if the district court had found the challenged statute to be within the "patently and flagrantly" violative exception,¹⁶⁹ such a determination would be unwarranted in light of other Supreme Court cases dealing with attachment proceedings.¹⁷⁰ As to the adequacy of the state proceedings to entertain the plaintiffs' due process challenges, the Court found the issue "too laden with local law" to be ruled on in the first instance in the Supreme Court. Accordingly, the Court reversed the judgment of the district court and remanded the case for a determination of the adequacy of the state proceedings.¹⁷¹

Justice Blackmun, concurring with the majority, maintained that the application of the *Younger* doctrine hinges on the substantiality of the state's interest in continuing its own proceedings free from federal interference.¹⁷² This state interest, Justice Blackmun suggested, is then balanced against the competing federal interest in exercising otherwise proper federal jurisdiction.¹⁷³ He also contended that in applying this balancing test, federal courts should focus upon the importance of the state interest involved in the proceeding rather than the type—civil or criminal—of the proceeding, in determining whether federal injunctive relief is permissible.¹⁷⁴ Applying these considerations to the facts presented in *Trainor*, Justice Blackmun pinpointed the presence of Illinois as a party acting in its sovereign capacity, the state's option to proceed civilly or criminally against the federal plaintiffs, and the importance to the state of maintaining the fiscal integrity of its welfare program as requiring the conclusion that *Younger* abstention was proper.¹⁷⁵

¹⁶⁷ *Id.* at 447 (emphasis added).

¹⁶⁸ *Id.* at 446-47.

¹⁶⁹ See text at note 144 *supra*.

¹⁷⁰ 431 U.S. at 447. In support of this conclusion the Court posited, in a citation, a comparison between *North Georgia Finishing Inc. v. Di-Chem Inc.*, 419 U.S. 601 (1975) (garnishment statute permitting issuance of writ of garnishment by court clerk solely on basis of conclusory allegations and without provisions for early hearing to determine validity of creditor's allegations, struck down), and *Mitchell v. W.T. Grant*, 416 U.S. 600 (1974) (sequestration statute upheld which allowed issuance of writ of sequestration upon showing of specific facts to a judge with provision for full hearing on issue of possession immediately following execution of the writ).

¹⁷¹ 431 U.S. at 447-48.

¹⁷² *Id.* at 448. Although he found Illinois' option here to pursue its interest either civilly or criminally demonstrative of a substantive interest similar to that embodied in the criminal and quasicriminal proceedings of *Younger* and *Huffman*, Justice Blackmun contended that the criterion for a grant of injunctive relief had consistently been the strength of the state's interest at stake. As such, when the interest is slight as in *Steffel v. Thompson*, 415 U.S. 452 (1974) (no pending state proceedings), the injunction will be granted, and when strong, as in *Huffman v. Pursue Ltd.*, 420 U.S. 592 (1975) (pending state proceedings to enforce statutes related to the state's criminal law), the injunction will be denied. 431 U.S. at 448-49.

¹⁷³ 431 U.S. at 448.

¹⁷⁴ *Id.* at 449-50. In concluding, Justice Blackmun argued that since that State's recoupment of mispaid welfare funds accrued to the benefit of all taxpayers, there was a valid distinction between the State and private parties as creditors. *Id.* at 450.

¹⁷⁵ *Id.* at 449-50.

Justice Brennan, joined by Justice Marshall, vigorously dissented¹⁷⁶ on grounds similar to those in their dissents in *Huffman* and *Juidice*.¹⁷⁷ Justice Brennan maintained that section 1983 had the effect of radically altering the allocation of federal and state responsibility for vindicating federal civil rights. This reallocation, Justice Brennan contended, shifted the primary responsibility for adjudicating claims under the Constitution and federal laws to the federal courts and away from the state courts.¹⁷⁸ Denying injunctive relief against pending state civil proceedings in section 1983 suits, Justice Brennan maintained, patently violated Congress' purpose in enacting section 1983.¹⁷⁹

Justice Brennan listed several reasons why it was inappropriate to apply *Younger* principles to any state civil proceedings, including those in *Trainor*. First, Justice Brennan noted that the state's interest in protecting the fiscal integrity of its welfare system was not significantly impeded by a grant of injunctive relief, since the injunction merely prevented the state from using an unconstitutional mechanism to obtain payment of an unsecured judgment. Moreover, the state's interest in securing such a judgment was not worthy of the deference due state criminal prosecutions.¹⁸⁰ Second, Justice Brennan observed that the presence of a state as a plaintiff in the suit did not merit the solicitude due a state in the criminal context, since the challenged attachment statute was available to private parties as well as the state. There was consequently no reason to conclude that the state was entitled to greater deference than that owed a private party.¹⁸¹ Third, Justice Brennan suggested that the primary justification for *Younger* was founded in equity principles, which, because of a less compelling state interest in continuing state proceedings, did not require a comparably rigid rule against injunctive relief in the civil context.¹⁸² Finally, he argued that the majority had taken the "patently and flagrantly unconstitutional" language, cited in *Younger*, merely as an illustration of extraordinary circumstances justifying federal injunctive intervention, and "elevate[d] [it] to a literalistic definitional status" which no conceivable statute could meet.¹⁸³

¹⁷⁶ *Id.* at 450.

¹⁷⁷ *Juidice*, 430 U.S. at 341-47 (Brennan, J., joined by Marshall, J., dissenting); *Huffman*, 420 U.S. 613-18 (Brennan, J., joined by Marshall, J., dissenting).

¹⁷⁸ 431 U.S. at 456.

¹⁷⁹ *Id.* at 450-56. Justice Brennan viewed the Court's present limitation of the applicability of *Younger* to state civil enforcement proceedings, on the basis of federalism and comity, merely as a signal for a complete extension to all civil litigation. *Id.* at 459-60.

¹⁸⁰ *Id.* at 454. Justice Brennan argued that this was particularly true given the Court's decision in *Fuentes v. Shevin*, 407 U.S. 67 (1972), and *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972). *Fuentes* involved a § 1983 suit challenging a state prejudgment replevin statute. The Court concluded that *Younger* principles did not bar federal injunctive relief since the injunction was not sought against "any pending or future court proceeding as such . . . [but] only the summary extra-judicial process of prejudgment seizure of property to which [the plaintiffs] had already been subjected." 407 U.S. at 71 n.3. *Lynch* involved a § 1983 challenge to a summary pre-judgment garnishment statute. The Court in *Lynch* found unpersuasive an argument, based on § 2283, that injunctive relief should be denied on the ground that interruption of the garnishment proceedings would substantially interfere with underlying civil suits. 405 U.S. at 554-55.

¹⁸¹ 431 U.S. at 455.

¹⁸² *Id.* at 455-56.

¹⁸³ *Id.* at 457.

Justice Stevens dissented, in a separate opinion,¹⁸⁴ contending initially that the majority's opinion added unwarranted complexity to the *Younger* doctrine.¹⁸⁵ Justice Stevens, as had Justice Brennan, took issue with the Court's strict interpretation of the "patently and flagrantly unconstitutional" exception language, arguing that the Court's construction requiring unconstitutionality in "every clause" had the practical effect of eliminating the exception.¹⁸⁶ Next, Justice Stevens maintained that the majority's holding hinged on the fact that Illinois was a party to the challenged proceedings, with the unjustified result that the majority paid greater deference to a state's status as creditor than to its interest in the integrity of its judicial proceedings. This result, Justice Stevens suggested, was contrary to notions of federalism.¹⁸⁷ In the same vein, Justice Stevens observed that the Court had fashioned a nonstatutory doctrine of abstention which granted greater deference to the state as a judgment creditor than Congress had granted to the state as a collector of taxes.¹⁸⁸ Although he agreed that unwarranted interference with state litigation is uncalled for, Justice Stevens argued that the standard of federal court deference to a state acting as a judgment creditor should be no higher than that afforded by Congress to a state collecting taxes.¹⁸⁹ Finally, Justice Stevens maintained that the plaintiffs clearly did not have an adequate forum for vindicating their federal rights in state court since the Illinois statute allowed a challenge to the proceedings only through a motion testing the sufficiency of the facts alleged in securing the attachment.¹⁹⁰ Justice Stevens thus concluded that *Younger* abstention was patently inappropriate in *Trainor* because the availability of an adequate remedy at law in the state forum was nonexistent or, at best, uncertain.¹⁹¹

II. THE CHANGING RATIONALE FOR *YOUNGER* ABSTENTION

The majority opinions in *Juidice* and *Trainor* have implications both for the type of state proceedings which merit *Younger* abstention and for the range of equitable circumstances which stay the operation of the doctrine. The conclusion that the label on a state proceeding, whether civil, criminal or quasicriminal, no longer should be determinative of the application of *Younger* abstention¹⁹² implies that *Younger* protection is potentially available for a wide variety of state proceedings, despite the *Juidice-Trainor* Court's express reservation of the question of extending *Younger* to all pending state civil litigation.¹⁹³ Moreover, although the Court consistently

¹⁸⁴ Justice Stewart also dissented with the statement that he was in substantial agreement with the dissenting opinions of both Justice Brennan and Justice Stevens. *Id.* at 448.

¹⁸⁵ *Id.* at 460.

¹⁸⁶ *Id.* at 461-63.

¹⁸⁷ *Id.* at 464.

¹⁸⁸ See 28 U.S.C. § 1341 (1970).

¹⁸⁹ 431 U.S. at 464-66.

¹⁹⁰ *Id.* at 466-69, 467-69 nn.12-15.

¹⁹¹ *Id.* at 469-70, 469 n.15. Justice Stevens suggested that when the constitutionality of a state procedure was challenged, the procedure for determining the validity of such claims must be clearly independent of that challenged, to be considered an adequate remedy precluding federal jurisdiction. *Id.* at 469 n.15. See text at notes 271-75 *infra*.

¹⁹² *Trainor*, 431 U.S. 434, 444; *Juidice*, 430 U.S. 327, 335-36.

¹⁹³ 431 U.S. at 444-45 n.8; 430 U.S. at 336 n.13.

has maintained that *Younger*, even where otherwise applicable, will not apply in the absence of an adequate remedy for the protection of federal claims in state court or in the presence of "extraordinary circumstances" leading to great, immediate and irreparable injury to the potential federal plaintiff,¹⁹⁴ the *Juidice-Trainor* Court's cursory examination of the adequacy of state proceedings¹⁹⁵ and strict interpretation of "extraordinary circumstances" implies that the scope of these exceptions is being contracted.¹⁹⁶

Both the previous limitation of the *Younger* doctrine to state criminal proceedings and the exceptions to the operation of the doctrine had their roots in equitable principles.¹⁹⁷ The expansion beyond criminal proceedings and the contraction of *Younger* exceptions together signal a shift in the Court's rationale for *Younger* abstention. Increasingly, the *Younger* rationale is based not on considerations of equity, comity and federalism, but upon comity and federalism alone. The result of this shift may well be an extension of the *Younger* doctrine, without exception, to all pending state proceedings.

A. The Pre-Juidice & Trainor *Younger* Rationale

The Supreme Court decisions in *Juidice* and *Trainor* have removed the barrier which restricted the application of the *Younger* abstention doctrine to a state's interest in pending criminal¹⁹⁸ or criminally-related¹⁹⁹ state proceedings.²⁰⁰ The dispositive factor for the application of *Younger*, according to the *Juidice-Trainor* Court, is whether the requested federal injunctive interference with a pending state proceeding manifests "an offense to the State's interest . . . likely to be every bit as great as it would be were [the proceeding] a criminal proceeding."²⁰¹ Unfortunately, the Court's explication of this dispositive factor is obscure, indicating only that the state interests involved in the proceedings in *Juidice* and *Trainor* are "perhaps . . . not quite as important as is the State's interest in the enforcement of its criminal laws . . . or even its interest in the maintenance of a quasi-criminal proceeding . . .," but nonetheless important enough to prohibit federal interference.²⁰² The Court failed, however, to indicate any other standard by

¹⁹⁴ See, e.g., *Trainor*, 431 U.S. at 441-43.

¹⁹⁵ *Trainor*, 431 U.S. at 447; *Juidice*, 430 U.S. at 336-37.

¹⁹⁶ *Trainor*, 431 U.S. at 446-47; *Juidice*, 430 U.S. at 338.

¹⁹⁷ See text and notes 20-22 *supra*.

¹⁹⁸ *Younger v. Harris*, 401 U.S. 37.

¹⁹⁹ *Huffman v. Pursue, Ltd.*, 420 U.S. 592.

²⁰⁰ The decisions in *Juidice* and *Trainor* are by no means the first signal that a move towards extending the *Younger* doctrine to civil proceedings was being contemplated by members of the Court. In *Mitchum v. Foster*, 407 U.S. 225 (1972), the Court found that § 1983 was a specific exception to the anti-injunction statute, the effect of which was to remove that statute's complete bar to injunctive relief in the presence of pending criminal or civil proceedings. *Id.* at 242-43. See text and notes 59-68 *supra*. In his concurring opinion in *Mitchum*, Chief Justice Burger remarked that "[w]e have not reached or decided exactly how great a restraint is imposed by these principles on a federal court asked to enjoin state civil proceedings." *Id.* at 244 (emphasis in original). See also *Sosna v. Iowa*, 419 U.S. 393 (1975) (effect of *Sosna*'s failure to appeal denial of suit for divorce in state court unresolved since *Sosna* and the state urged the Court to proceed to the merits); *Speight v. Slaton*, 415 U.S. 333 (1974) (probable jurisdiction noted to consider applicability of *Younger* to non-criminal cases unexercised when case was remanded for consideration in light of subsequent state supreme court decision striking down challenged statute on similar facts).

²⁰¹ *Trainor*, 431 U.S. at 443; *Juidice*, 430 U.S. at 336, quoting *Huffman*, 420 U.S. at 604.

²⁰² *Trainor*, 431 U.S. at 444, quoting *Juidice*, 430 U.S. at 335.

which to ascertain whether a state interest is "important enough" to merit *Younger* abstention treatment.²⁰³

Since the Court failed to elucidate the standards to be used in evaluating *Younger* abstention claims, an independent analysis is required to determine which state proceedings involve state interests important enough to require a denial of federal injunctive relief under *Judice* and *Trainor*. An examination of the considerations which the Court found controlling in *Younger* doctrine cases prior to *Judice* and *Trainor* provides a starting point for such an analysis. This examination reveals that four considerations have been deemed dispositive in denying injunctive relief in earlier *Younger* doctrine cases,²⁰⁴ in addition to the traditional equity doctrine that criminal proceedings should not be enjoined. First, in all *Younger* cases before *Judice* and *Trainor*, the state was present as a moving party with an exclusive right of action.²⁰⁵ Second, the pre-*Judice* and *Trainor* Court was particularly concerned with avoiding undue interference, by federal injunction, with proceedings involving the legitimate efforts of a state to obtain compliance with state policies.²⁰⁶ Prior to *Judice* and *Trainor*, this concern was limited to the state's interest in enforcing its criminal statutes or statutes related to its criminal laws.²⁰⁷ However, the Court emphasized as a basis for this concern that injunctive relief could cause undue interference with state activities if the injunction resulted in extended delays in the enforcement of state policies; in costly, duplicative litigation in state and federal courts; in the inability of a state to regulate "socially dangerous or constitutionally unprotected conduct;" or in the disruption of a state's legislative process.²⁰⁸ Implicitly, an injunction against a state's sole or most effective means of enforcing important policies would constitute undue interference with state activities.

A third consideration in determining whether federal injunctive relief against a state proceeding could be granted prior to *Judice* and *Trainor* was

²⁰³ *Trainor*, 431 U.S. at 443-44; *Judice*, 430 U.S. at 335-36.

²⁰⁴ *Younger*, 401 U.S. at 43-44. But see *Huffman*, 420 U.S. at 604, where the Court states:

The component of *Younger* which rests upon the threat to our federal system is . . . applicable to a civil proceeding such as this quite as much as it is to a criminal proceeding. *Younger*, however, also rests upon the traditional reluctance of courts of equity, even within a unitary system, to interfere with a criminal prosecution. Strictly speaking, this element of *Younger* is not available to mandate federal restraint in civil cases. But whatever may be the weight attached to this factor in civil litigation involving private parties, we deal here with a state proceeding which in important respects is more akin to a criminal prosecution than are most civil cases.

Id. at 604.

²⁰⁵ In state criminal proceedings, the state would commence the action as prosecutor. See, e.g., *Younger*, 401 U.S. 37 (1971). In *Huffman*, the state had an exclusive cause of action under the public nuisance statute. OHIO REV. CODE ANN. § 3767.03 (Page 1971). Section 3767.03 provides in pertinent part that "[w]henver a nuisance exists, the attorney general, the prosecuting attorney of the county in which such nuisance exists, or any person who is a citizen of such county may bring an action in equity in the name of the state . . ." See also *Hernandez v. Danaher*, 405 F. Supp. 757, 760 (N.D. Ill. 1975).

²⁰⁶ *Younger*, 401 U.S. at 44; *Huffman*, 420 U.S. at 604.

²⁰⁷ *Huffman*, 420 U.S. at 604.

²⁰⁸ *Younger*, 401 U.S. at 44, 51-53. The Court feared that injunctive relief might strip the states "of all power to prosecute even the socially dangerous and constitutionally unprotected conduct that had been covered by the statute, until a new statute could be passed by the state legislature and approved by the federal courts in potentially lengthy trial and appellate proceedings." *Id.* at 51.

whether the injunction would reflect negatively upon the state's ability to provide a judicial forum competent to adjudicate constitutional objections to the state's statutes and procedures.²⁰⁹ And fourth, pre-*Judice* and *Trainor*, *Younger* abstention applied when continuation of the state proceedings resulted in a benefit to the public welfare which outweighed the individual defendant's desire for a federal forum.²¹⁰ For example, if a federal injunction against the enforcement of a state law stripped the state of all power to prosecute a crime until a new law could be passed, and the state enforcement proceeding provided an adequate forum for the defendant's constitutional claims, *Younger* abstention would operate to protect the public interest in preventing that crime by preventing federal disruption of the state proceedings.²¹¹ Consequently, a determination whether continuing the state proceedings produces a public benefit great enough to outweigh an individual's right to a federal forum has been implicit in the Court's prior determinations of the type of state proceedings which merit *Younger* abstention.

The considerations suggesting the need for abstention in previous *Younger* cases coexisted with certain equitable circumstances which would cut off the operation of the abstention doctrine. Under the *Younger* rationale prior to *Judice* and *Trainor*, the absence in a state criminal enforcement proceeding of an opportunity for the state defendant to raise constitutional objections would allow a federal court properly to enjoin the state proceeding.²¹² In addition to this equitable exception for failure to provide an adequate forum for the defendant's constitutional claims, the pre-*Judice* and *Trainor* rationale provided that the presence of "extraordinary circumstances" leading to great, immediate and irreparable injury to the state defendant would allow the federal court to enjoin state proceedings otherwise meriting *Younger* abstention.²¹³ In *Younger*, the Court offered as examples of extraordinary circumstances: bad faith or harassment by state prosecuting officials in bringing actions with no expectation of obtaining convictions,²¹⁴ a "patently and flagrantly unconstitutional state statute"²¹⁵ or other unusual circumstances which the Court declined to specify.²¹⁶ To amount to "extraordinary," circumstances had to expose the state defen-

²⁰⁹ *Huffman*, 420 U.S. at 604; *Steffel v. Thompson*, 415 U.S. 452, 460-61 (1974).

²¹⁰ *Younger*, 401 U.S. at 43-46. This process has always included the requirement that the state defendant have an adequate opportunity to present his federal claims in the state proceedings and that he be exposed to no greater burden than that imposed by the defense of a single prosecution. *Id.*

²¹¹ *Id.* at 51.

²¹² *Id.* at 47.

²¹³ *Id.* at 46, 53-54.

²¹⁴ *Id.* at 53. The *Younger* Court pointed to *Dombrowski v. Pfister*, 380 U.S. 479 (1965), as a case whose record sustained a finding of bad faith or harassment on the part of state officials. *Younger*, 401 U.S. at 47-49. In *Dombrowski*, the federal plaintiffs, a civil rights organization and its officers, were threatened with criminal prosecution by state officials; their offices were raided and records seized. Despite a state order quashing search and arrest warrants, the prosecutor continued to threaten to prosecute. 380 U.S. at 487-89.

²¹⁵ 401 U.S. at 53. The Court in *Younger* made it clear that the enforcement of a facially invalid statute would be insufficient injury to sustain a grant of injunctive relief, overruling the district court's interpretation of its ruling in *Dombrowski*. *Id.* at 50-53. See generally Fiss, *Dombrowski*, 86 YALE L. J. 1103 (1977).

²¹⁶ *Younger*, 401 U.S. at 54. See generally *Byrne v. Karalexis*, 401 U.S. 216 (1971); *Dyson v. Stein*, 401 U.S. 200 (1971).

dant to great and immediate irreparable injury beyond that imposed by the ordinary burden of defending in the pending state proceedings.²¹⁷

Federal court deference to state court proceedings pre-*Juidice* and *Trainor* thus operated to protect the limited state interest in enforcing criminal law and policies. In this limited context, the Court appeared concerned with avoiding undue federal interference with a legitimate state activity and unnecessary negative reflections upon the ability of state courts to adjudicate federal constitutional claims. These concerns, along with the presence of the state as the moving party with an exclusive right to act in the state proceedings sought to be enjoined and the public benefit to be derived from the continuation of the state proceedings, supported the Court's previous applications of *Younger* abstention. The limited equitable exceptions, allowing a federal court to interfere with criminal enforcement proceedings in previous *Younger* cases, reflected the importance of the states' interest in the uninterrupted maintenance of these proceedings.

B. *The Juidice and Trainor Rationale for Abstention*

In *Juidice* and *Trainor*, the Supreme Court refined both the considerations providing a basis for abstention and the equitable exceptions to those considerations to encompass a broader range of state interests. The change is apparent in the short shrift which the *Juidice-Trainor* Court gave to the *Younger* doctrine's distinction between civil and criminal proceedings. The application to *Juidice* and *Trainor* of the four considerations which historically provided a basis for abstention will illustrate the thrust of the present extension of the *Younger* doctrine. Likewise, the *Juidice-Trainor* Court's handling of equitable exceptions to the abstention doctrine will highlight the possibilities for the doctrine's operation. It will be argued, however, that the *Juidice-Trainor* Court's treatment of the basis for *Younger* abstention and of the equitable exceptions to the doctrine is vulnerable to criticism in failing to provide a viable standard for the invocation of abstention and in limiting the availability of exceptions to the doctrine once invoked.

1. The Basis for *Younger* Abstention

The Court in both *Juidice* and *Trainor* rejected the notion that application of the *Younger* doctrine hinges on whether the state proceeding is civil or criminal in nature.²¹⁸ In *Juidice*, injunctive relief was sought against the continuation of civil contempt proceedings. In determining whether these state proceedings required *Younger* abstention, the Court found no connection between the state's contempt statutes and its criminal law.²¹⁹ Similarly, in *Trainor*, injunctive relief was sought against civil attachment proceedings utilized by the state to assure the availability of funds to pay a future civil judgment. In both cases, the Court dismissed, without discussion, any contention that a dispositive factor in the application of *Younger* was an attempt

²¹⁷ See text and note 29 *supra*.

²¹⁸ *Trainor*, 431 U.S. at 444; *Juidice*, 430 U.S. at 334-35.

²¹⁹ *Vail v. Quinlan*, 406 F. Supp. 951, 958. The Supreme Court did not take issue with this finding by the district court. *Juidice*, 430 U.S. at 333-34.

by the state to enforce criminal or criminally-related statutes.²²⁰ The "more vital consideration" for the *Judice-Trainor* Court was comity, "that is a proper respect for state functions. . . [and] 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."²²¹ However, the *Trainor* majority carefully pointed out that the state in that case had the option to vindicate the policies implicated in the attachment proceedings through a criminal prosecution.²²² Thus, while a criminal or quasicriminal proceeding no longer is necessary to invoke *Younger* abstention, the possibility of enforcing a state policy through a criminal proceeding may be one indication of the importance of the state's interest in continuing its own proceedings without federal interference.

The application to *Judice* and *Trainor* of the four considerations deemed dispositive in earlier *Younger* cases also demonstrates the change in the Court's rationale for invoking *Younger* abstention. First, in pre-*Judice* and *Trainor* cases, the state was present as a moving party with an exclusive right of action. In *Judice*, unlike previous *Younger* cases, the contempt process was invoked by private creditors seeking to enforce judgment debts. However, only the state through its courts could exercise contempt powers over the defendant debtors.²²³ As such, the state in *Judice* may be seen as having an exclusive right of action in the contempt process similar to that held by the states in previous *Younger* cases.²²⁴ In contrast, the state attachment proceedings in *Trainor* could be used by any party, state or private, to reach the funds of civil state defendants,²²⁵ a situation unlike previous abstention cases where the state was the moving party with an exclusive right of action in the state proceedings, and unlike the state's exclusive power to impose contempt sanctions in *Judice*. However, the state initiated the attachment proceedings in *Trainor*. The presence of the state in its "sovereign capacity" as a moving party apparently led the *Trainor* Court to determine that *Younger* abstention was warranted.²²⁶ Viewed together, *Judice* and *Trainor* represent a shift from previous abstention cases in that either an exclusive state right of action in the state proceedings or the presence in the proceedings of the state in its sovereign capacity as a moving party will require federal court deference to those proceedings.²²⁷ The

²²⁰ *Trainor*, 431 U.S. at 444; *Judice*, 430 U.S. at 335-36. This summary dismissal of a distinction between the enforcement of criminal and non-criminal statutes ignored the emphasis placed upon equity's traditional noninterference with criminal proceedings as a reason for denying injunctive relief in *Younger*, 401 U.S. at 43-44. However, such treatment was foreshadowed by the *Huffman* Court's emphasis on comity and federalism over and above equity, as the controlling principles counseling restraint in the grant of injunctive relief. 420 U.S. at 600-05.

²²¹ *Trainor*, 431 U.S. at 443; *Judice*, 430 U.S. at 334, quoting *Huffman*, 420 U.S. at 601, quoting *Younger*, 401 U.S. at 44.

²²² *Trainor*, 431 U.S. at 435-36, 444. Justice Blackmun, in concurrence with the majority opinion in *Trainor*, maintained that the state's option of proceeding civilly or criminally effectively demonstrated that the state's interest in continuing the attachment proceedings was "of the same order of importance as the interests in *Younger* and *Huffman*." *Id.* at 449.

²²³ *Judice*, 430 U.S. at 335-36, 336 n.12.

²²⁴ See note 205 *supra*.

²²⁵ *Id.* at 439, quoting *Hernandez v. Danaher*, 405 F. Supp. 757, 760.

²²⁶ 431 U.S. at 444.

²²⁷ See text at note 205 *supra*.

pre-*Juidice* and *Trainor*, *Younger* rationale would have required the presence of both elements before invoking the *Younger* doctrine. Under the rationale in *Juidice* and *Trainor*, proceedings initiated by private parties, but leaving the state an exclusive right of action, and proceedings available to public and private parties, but initiated by the state in its sovereign capacity, will merit *Younger* abstention.

The second consideration in determining the need for federal abstention in previous *Younger* cases was the necessity of avoiding undue interference with legitimate state activities and with the enforcement of substantive state policies. In this vein, the *Juidice* Court observed that enjoining the contempt proceedings would cut to the core of a state's power to administer its court system.²²⁸ This in turn would jeopardize the state's interest "in maintaining respect for the action of courts, and of orderly jurisprudence," and in protecting state court orders and judgments from nullification.²²⁹ Thus, a federal injunction against the *Juidice* contempt proceedings could have resulted in delay in effectuating state court judgments and in the elimination of the state's only means of punishing recalcitrant or disrespectful state litigants.²³⁰ Consequently, under *Juidice* the second element of the rationale for *Younger* abstention remains essentially the same as in previous *Younger* cases.

The *Trainor* Court similarly found that enjoining the attachment proceedings would interrupt the vindication of "an important State interest;" the interest in administering and safeguarding the fiscal integrity of its public assistance programs.²³¹ In doing so, the *Trainor* Court reasoned that it was proper to accord the state's decision to punish alleged welfare fraud through a civil suit for recoupment of funds and an attachment of assets to secure judgment in that suit, the same federal deference accorded a state decision to institute a criminal prosecution for such an offense.²³² The Court reached this conclusion even though the injunctive relief in *Trainor* would have interrupted only the attachment proceedings and not the state's underlying civil suit.²³³ The Court maintained, however, that an injunction would "confront the State with a choice of engaging in duplicative litigation . . . or of interrupting its enforcement proceedings pending decision of the federal court at some unknown time in the future,"²³⁴ and implied that the federal action already had caused great delay in the state's enforcement action.²³⁵ Nevertheless, in sharp contrast to the decisions in *Juidice* and in other previous *Younger* cases, the *Trainor* decision failed to suggest that the

²²⁸ 430 U.S. at 335-36.

²²⁹ *Id.* at 336 n.12, quoting *Ketchum v. Edwards*, 153 N.Y. 534, 539, 47 N.E. 918, 920 (1897).

²³⁰ The reality of New York's inability to punish such state defendants is illustrated by the New York City Sheriffs' Office refusal to serve show cause orders on husbands who failed to make alimony payments following the federal district court's injunction against the enforcement of the New York contempt procedures. Affidavit in Support of Order to Show Cause Staying Order Entered by United States District Court for Southern District of New York at 4, *Juidice*, 430 U.S. 327 (1977). See note 353 *infra*.

²³¹ 431 U.S. at 444.

²³² *Id.* Justice Blackmun, in his concurring opinion, maintained that "[t]he propriety of abstention should not depend on the State's choice to vindicate its interests by a less drastic, and perhaps more lenient, route." *Id.* at 449-50.

²³³ *Id.* at 454 (Brennan, J., joined by Marshall, J., dissenting).

²³⁴ *Id.* at 445.

²³⁵ *Id.* at 438-39.

application of the *Younger* doctrine would cut off a state's only or most effective means of vindicating an important state policy.

As to the third consideration, an attitude of respect for the competence of state courts, the *Juidice* Court maintained, as the Court had in prior *Younger* cases, that an injunction against the contempt proceedings would reflect "negatively upon the state court's ability to enforce constitutional principles."²³⁶ Similarly, the *Trainor* Court asserted, without explanation, that an injunction against the attachment proceedings would reflect negatively upon the state's ability to entertain constitutional challenges to its policies.²³⁷ Thus, this element of the rationale for *Younger* abstention remains unchanged from previous abstention cases.

The fourth consideration in pre-*Juidice* and *Trainor* cases leading to denial of federal injunctive relief was whether the continuation of the state proceedings would result in a substantial benefit to the public welfare despite the individual defendant's desire for a federal forum. The *Juidice* Court contended, without mention of the state defendants' attempt to maintain a section 1983 federal suit, that the continuation of the contempt proceedings would serve the overall public good.²³⁸ However, unlike previous *Younger* cases, the most immediate beneficiaries were the judgment creditors, not the general public. In *Juidice*, the contempt sanctions were imposed by the state, at the request of creditors, to protect purely private judgments.²³⁹ The private parties in the proceedings therefore could derive immediate and substantial benefits, the collection of judgments, by the continuation of such proceedings in state court. In contrast, the benefit of continuing the attachment proceedings in *Trainor* would accrue solely to the state as a whole by protecting the integrity of the public welfare system.²⁴⁰ Accordingly, although the derivation of a public benefit from continuing state proceedings sufficient to overcome a state defendant's request for access to federal court remains an element in the *Juidice* and *Trainor* rationale for *Younger* abstention, it appears that the benefits of a continued state proceeding no longer need flow exclusively to the public; rather, they may inure to private parties.²⁴¹

Reconciliation of *Juidice* and *Trainor* indicates when a federal district court is required, under *Younger* principles, to abstain from enjoining a pending state proceeding. Under the *Juidice-Trainor* rationale for federal abstention, criminal, quasicriminal and civil state proceedings may activate *Younger* abstention in three different situations. First, federal abstention is warranted when the state has the exclusive right to initiate and to act in the

²³⁶ 430 U.S. at 336, quoting *Huffman*, 420 U.S. at 604.

²³⁷ 431 U.S. at 446. The Court did acknowledge that this is the result whenever a federal court enjoins a pending state court proceeding. However, it was the combination of this negative reflection and the possibility of disrupting state proceedings brought by a state in its sovereign capacity that required *Younger* abstention. *Id.*

²³⁸ 430 U.S. at 336 n.12.

²³⁹ Under N.Y. JUD. LAW. § 773 (McKinney 1968), any fines collected under the contempt procedures were applied primarily against such private judgments.

²⁴⁰ 431 U.S. at 444. Justice Blackmun, in his concurring opinion, suggested that since the recovery of welfare funds through the state's use of the attachment proceedings produces a benefit to all state taxpayers, the continuation of the state proceedings may be viewed as immediately beneficial to the public interest. *Id.* at 450.

²⁴¹ See text at notes 210-11 *supra*.

state proceedings sought to be enjoined. This is the case in a criminal proceeding and certain criminally related proceedings. Second, *Younger* abstention is applicable when the state has the exclusive right to act in a proceeding originated by private parties, as in a contempt proceeding. Third, abstention is proper when the state has used proceedings available to any private litigant to vindicate an important state policy. If the state appears in such a proceeding,²⁴² the federal court must ascertain whether enjoining the proceeding would interfere with an important state interest approaching the importance of the state's interest in enforcing criminal laws.

This apparent extension of the *Younger* doctrine to protect a broad range of state interests from federal injunctive interference is one of the most significant aspects of the *Juidice-Trainor* rationale. After this extension, the basis for *Younger* abstention includes state proceedings enforcing criminal and quasicriminal statutes, proceedings requiring respect for state judicial systems, and proceedings involving important state interests, of which the fiscal administration of public welfare systems appears to be only one. Furthermore, a federal court must consider whether an injunction will delay the enforcement of state policies, involve the state in duplicative litigation, prevent the state from regulating proscribed behavior, or reflect negatively upon the state's ability to adjudicate constitutional claims. Finally, for the *Younger* doctrine to apply, it appears that the primary beneficiary of the continuation of state proceedings still must be the state itself, although a direct benefit to private parties will not prevent a denial of injunctive relief.

Juidice and *Trainor* thus have changed the circumstances in which the *Younger* doctrine may be invoked successfully by a state in terms of the capacity in which the state must appear in the proceedings sought to be enjoined; the extent to which interests other than the enforcement of criminal laws merit federal deference; and the extent to which continuing state proceedings may directly benefit parties other than the state. As a result, *Younger* abstention will no longer be limited to the state's interest in the enforcement of criminal laws and policies. Instead, state proceedings vindicating a variety of state interests will warrant *Younger* abstention in the future.

The *Juidice* and *Trainor* rationale for federal abstention is vulnerable to criticism, however, in failing to provide discernable criteria by which to judge which state proceedings vindicate an interest "important enough" to trigger federal deference to state proceedings. While criminal or quasicriminal labels previously applied may have been too limited in protecting legitimate state functions, they did have the virtue of providing an objective standard for the federal district courts to apply when confronted with a request for injunctive relief. *Juidice* and *Trainor* have eliminated this standard. Instead, *Juidice*, in focusing on the integrity of state judicial systems, suggests that when traditional independent state functions²⁴³ are being vin-

²⁴² But see Fiss, *Dombrowski*, 86 YALE L. J. 1103, 1138 (1977) ("*Juidice* made clear that the presence of the state is not a necessary condition for triggering the *Younger* bar.").

²⁴³ See, e.g., *New York v. United States*, 326 U.S. 572, 582 (1946) (unique state functions include the raising of income through taxation and owning a statehouse); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 297-99 (1943) (power of state to tax shall not be interfered with so long as an adequate remedy for illegal assessment exists); *Coyle v. Oklahoma*, 221 U.S. 559, 565 (1911) (establishment of a state capital cannot be interfered with by Congress).

licated in a state proceeding, a federal court should not interfere unless the state proceedings are inadequate to adjudicate federal claims or unless "extraordinary circumstances" are present in the state proceedings. *Trainor* suggests a need for federal abstention from any proceedings in which a state effectuates its policies for protecting and delivering governmental services.²⁴⁴ Both cases imply that the states' conduct, through litigation, of activities particularly reserved to states will merit *Younger* abstention. Thus, the preservation of a state's ability to carry on traditional governmental activities—the protection of its sovereignty—appears to be the essential criterion for invoking *Younger*.²⁴⁵

The concept of unfettered state independence in dealing with matters particularly reserved to the states or "state sovereignty" has been invoked most often against federal interference with state functions when Congress has attempted to exercise its constitutionally delegated powers to tax and regulate interstate commerce²⁴⁶ to the alleged derogation of the states.²⁴⁷ In the most recent Supreme Court pronouncement on the nature of state sovereignty, *National League of Cities v. Usery*,²⁴⁸ the Court struck down certain congressional amendments²⁴⁹ to the Fair Labor Standards Act²⁵⁰ which imposed minimum wage and maximum hour requirements for all state and local government employees.²⁵¹ The *National League of Cities* Court premised that Congress, even in the exercise of its commerce clause powers,

²⁴⁴ *National League of Cities v. Usery*, 426 U.S. 833, 851-52 (1976).

²⁴⁵ Without specifically terming it state sovereignty, Justice Black, in *Younger*, recognized the necessity for unfettered state independence when dealing with activities particularly reserved to the states. 401 U.S. at 44. In *Younger*, the state activity was the enforcement of criminal laws, and in his discussion of "Our Federalism," Justice Black stated:

The concept [of 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 What the concept does represent is a system in which there is a 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.

Id. at 44.

²⁴⁶ U.S. CONST. art. I, § 8, cl. 1, 3.

²⁴⁷ See, e.g., *National League of Cities v. Usery*, 426 U.S. 833, 851-52 (1976) (Congress may not exercise its commerce clause power so as to interfere with essential state decisions regarding the conduct of integral governmental functions); *Fry v. United States*, 421 U.S. 542, 547-48 (1975) (federal regulation under commerce clause will be upheld when such regulation does not infringe appreciably on state sovereignty and particularly where the effectiveness of federal action would be seriously impaired without regulation); *New York v. United States*, 326 U.S. 572, 583-84 (1946) (states are not immune from federal tax exacted equally from private persons upon the same subject matter); *Coyle v. Oklahoma*, 221 U.S. 559, 565 (1911) (power to locate seat of state government, to change that location and to appropriate funds to do so are state powers beyond congressional control).

²⁴⁸ 426 U.S. 833 (1976).

²⁴⁹ Fair Labor Standards Amendments of 1974, Pub.L. No. 93-259, 88 Stat. 55 (1974).

²⁵⁰ 29 U.S.C. §§ 201 *et seq.* (1970).

²⁵¹ 426 U.S. at 851-52. The Court struck down the amendments on the grounds that by interfering with the state's ability to structure employee-employer relationships, the amendments would impair the state's ability to function effectively and independently within the federal system. *Id.*

cannot interfere²⁵² with what the Court termed the states' sovereign power to pursue, unfettered by federal interference,²⁵³ the traditional and essential functions which "are typical of those performed by State and local governments in discharging their dual functions of administering public law and furnishing public services."²⁵⁴

This view of state sovereignty was echoed in the rationale of the recent *Younger* cases. In *Trainor*, a federal injunction against the state's pending suit to recover welfare funds would have interfered with the state's right to protect the fiscal integrity of its public assistance programs.²⁵⁵ An injunction against the civil contempt proceedings in *Juidice* would have interfered with the state's right to insure the integrity of its judicial system.²⁵⁶ This approach is consistent with a state sovereignty rationale insofar as it bars the federal courts from disrupting a state's furnishing of public services—the administration of a welfare system—or a state's administration of public law—the integrity of a judicial system. Thus, the *Juidice-Trainor* rationale for abstention is related to the Court's concept of state sovereignty. If a pending proceeding in a state court legitimately protects a state's functioning as a separate and independent government,²⁵⁷ *Younger* seemingly will apply to protect that proceeding from federal interference.

Although the Court has stressed this concept of state sovereignty in recent decisions, it has done little to define its parameters.²⁵⁸ The Court in *Juidice* and *Trainor* similarly neglected to set forth any standard which distinguishes between those state activities which are essential or important and those which are nonessential or unimportant. The *Juidice-Trainor* Court required only that the state activity vindicated in continued state proceedings be of "sufficiently great import" to merit abstention; not that the state activity vindicated be as important as the state's interest in enforcing criminal laws or maintaining quasicriminal proceedings.²⁵⁹ That part of *Juidice* and *Trainor* which is predicated on the desire to avoid disruption of legitimate state activities and disparagement of a state's ability to adjudicate constitutional challenges²⁶⁰ fails to elucidate this requirement. Every federal injunction against any state proceeding necessarily will be disruptive and tend to reflect negatively upon state courts.²⁶¹ The only standard provided by the *Juidice-Trainor* Court apparently is that a state must show that continuation of pending litigation in its own court system is necessary to protect the

²⁵² The majority opinion, in a footnote, ominously stated:

We express no view as to whether different results might obtain if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution such as the Spending Power, Art. I, § 8, cl. 1, or § 5 of the Fourteenth Amendment.

426 U.S. at 852 n.17.

²⁵³ *Id.* at 854-56.

²⁵⁴ *Id.* at 851.

²⁵⁵ *Trainor*, 431 U.S. at 444.

²⁵⁶ *Juidice*, 430 U.S. at 335-36.

²⁵⁷ *National League of Cities*, 426 U.S. at 851, 851 n.16.

²⁵⁸ Note, *Municipal Bankruptcy, the Tenth Amendment and the New Federalism*, 89 HARV. L. REV. 1871, 1881-84 (1976) (criticism of lack of standard for determining important state interests in *National League of Cities v. Usery*).

²⁵⁹ *Trainor*, 431 U.S. at 444; *Juidice*, 430 U.S. at 335-36.

²⁶⁰ See text at notes 206-09 *supra*.

²⁶¹ The Court admits as much in *Trainor*, 431 U.S. at 445-46.

state's functioning as an independent government within the federal system, despite the presence of federal claims in the litigation. If a state makes such a showing, under the *Juidice-Trainor* rationale *Younger* principles will require federal courts to defer to state courts.²⁶²

Allowing the mere demonstration of an important state interest to be sufficient to successfully invoke *Younger* abstention under the *Juidice-Trainor* rationale parallels the showing of a legitimate state interest required to sustain state economic legislation in post-1937 substantive due process cases.²⁶³ In the economic due process cases, the Court has maintained that federal courts are not in a position to make qualitative judgments about the state interests pursued in economic legislation;²⁶⁴ courts should not substitute their social and economic beliefs for the decision of states to enact and to enforce such legislation.²⁶⁵ Similarly, the *Juidice-Trainor* Court appears reluctant to impose any restrictions upon the degree of importance required for a state interest to merit *Younger* abstention. If the Court's deferential view of the states' enactment and enforcement of economic legislation is transposed onto the Court's approach to *Younger* abstention in *Juidice* and *Trainor*, the result would be that the federal district courts cannot judge the importance of the state's interest in continuing state proceedings. The federal courts would determine only whether the interest advanced in the pending state litigation is within the legitimate purview of states. The end result of the *Juidice-Trainor* rationale for abstention then would be that if the state has any legitimate interest in continuing the state proceedings, *Younger* abstention would require federal courts to defer to state courts.

Regardless of whether *Juidice* and *Trainor* will prevent all injunctive interference with proceedings involving state interests, the extension of the *Younger* doctrine to protect a variety of state interests beyond criminal proceedings will significantly increase the number of state proceedings meriting federal abstention. Accordingly, the chances of obtaining access to federal district courts once state proceedings have begun—even under section 1983—will diminish.

²⁶² 431 U.S. at 444, 444-45 n.8.

²⁶³ *Ferguson v. Skrupa*, 372 U.S. 726, 729-31 (1963); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 487-89 (1955); *Day-Brite Lighting Inc. v. Missouri*, 342 U.S. 421, 423 (1952); *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525, 536 (1949); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 398-400 (1937).

²⁶⁴ For example, in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), in which a state minimum wage requirement for women was sustained and a previous Supreme Court decision invalidating such regulations—*Adkins v. Children's Hospital*, 261 U.S. 525 (1923)—was explicitly overruled, the Court stated:

The [state] legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protection [for women]. The adoption of similar requirements by many States evidences a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious, and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the [state] legislature is entitled to its judgment.

300 U.S. at 399.

²⁶⁵ *Ferguson v. Skrupa*, 372 U.S. 726, 729-31 (1963).

2. Equitable Exceptions to *Younger* Abstention

The *Juidice-Trainor* Court's view of the equitable conditions mandating injunctive relief when the *Younger* doctrine otherwise would apply emphasizes the Court's solicitude for a state's desire to continue proceedings without federal interference. In previous abstention cases, the equitable exceptions were the absence of an adequate remedy or the presence of "extraordinary circumstances" in the state court proceeding.²⁶⁶ The *Juidice-Trainor* Court has contracted these exceptions by presuming the adequacy of state proceedings and by narrowing the range of "extraordinary circumstances."

In examining the adequacy of state proceedings to entertain constitutional and federal law challenges to state statutes and procedures, the Court, in *Juidice* and in *Trainor*, acknowledged that the dismissal of a federal suit "naturally presupposes the opportunity to raise and have timely decided by a competent State [court] the federal issues involved."²⁶⁷ The majority opinions in both cases, while finding that the federal suits should have been dismissed, addressed only cursorily the adequacy of the contempt or attachment proceedings to decide competently the federal claims sought to be presented.²⁶⁸ In *Juidice*, the Court required only that the state defendants have an opportunity to present their claims, suggesting in a footnote when that opportunity arose. The Court did not explore the adequacy of the state procedures.²⁶⁹ Likewise, the *Trainor* Court, noting that "ordinarily a pending state prosecution provides the accused with fair and sufficient opportunity for vindication of federal rights,"²⁷⁰ declined to rule upon the adequacy of the attachment proceedings and instead remanded the issue to the district court.²⁷¹

In contrast to the majority's refusal to examine or provide criteria for determining the adequacy of state proceedings, Justice Stevens concurred in the Court's judgment in *Juidice* on the grounds that the New York contempt proceedings provided an adequate remedy at law for the potential federal plaintiffs,²⁷² and dissented in part in *Trainor*²⁷³ on the ground that the attachment proceedings effectively foreclosed any challenge to their constitutionality in the state court.²⁷⁴ Both *Juidice* and *Trainor* involved challenges to state procedures themselves as opposed to the enforcement of a substantive state statute. Under Justice Stevens' analysis, a challenge to state procedures particularly requires an examination of the adequacy of the state forum to entertain constitutional claims. Justice Stevens maintained that in order to be adequate the state forum must be "sufficiently indepen-

²⁶⁶ See text and notes 20-22, 27-31 *supra*.

²⁶⁷ *Trainor*, 431 U.S. at 441. See also *Juidice*, 430 U.S. at 336-37, 337 n.14; *Kugler v. Helfant*, 421 U.S. 117, 124 (1975); *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973).

²⁶⁸ *Trainor*, 431 U.S. at 441, 447; *Juidice*, 430 U.S. at 336-37, 337 n.14.

²⁶⁹ 430 U.S. at 337, 337 n.14. Indeed, Justice Rehnquist suggested that the only "relevant datum is that the due process contentions concerning . . . counsel [assigned to the state defendants], as with other contentions, could have been presented to the New York State Courts by the same parties or their attorneys who, instead, chose to ignore the pending state court proceedings by filing this suit in federal court." *Id.* at 337-38 n.15.

²⁷⁰ 431 U.S. at 441, quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975).

²⁷¹ *Id.* at 447.

²⁷² 430 U.S. at 340-41 (Stevens, J., concurring).

²⁷³ 431 U.S. at 466-70 (Stevens, J., dissenting).

²⁷⁴ *Id.* at 467.

dent of the alleged unconstitutional procedure to judge it impartially and to provide prompt relief if the procedure is found wanting."²⁷⁵ The failure of the majority, in both *Judice* and *Trainor*, even to question the partiality of the state courts for their own procedures, both disregards that part of *Younger v. Harris* which requires the presence of a plain, speedy and adequate remedy for the federal wrong before abstention is merited, and potentially decreases the circumstances in which exceptions to the *Younger* doctrine will be found.

More significant than the Court's unwillingness to examine particular state proceedings is its attitude toward state court proceedings in general. In both *Judice* and *Trainor*, the Court held that the mere opportunity to raise constitutional issues in a state proceeding requires the dismissal of section 1983 suits²⁷⁶ when such proceedings would vindicate an important state interest.²⁷⁷ The Court's implication is that a decision in a state court with a state appeal and possible Supreme Court review²⁷⁸ provides protection equivalent to that obtained in a section 1983 suit heard and decided initially by a federal district court²⁷⁹ with review in the federal courts.²⁸⁰ This

²⁷⁵ *Id.* at 469 n.15.

²⁷⁶ Justice Rehnquist stated in *Judice*:

We must decide whether, with the existence of an available forum for raising constitutional issues in a state judicial proceeding, the United States District Court could properly entertain appellee's § 1983 action in light of our decisions in *Younger* and *Huffman*. We hold that it could not.

430 U.S. at 330.

Justice White stated in *Trainor*:

[W]hen a suit is filed in a federal court challenging the constitutionality of a state law under the Federal Constitution and seeking to have state officers enjoined from enforcing it, should the federal court proceed to judgment when it appears that the State has already instituted proceedings in the state court to enforce the challenged statute against the federal plaintiff and the latter could tender and have his federal claims decided in state court?

431 U.S. at 440.

²⁷⁷ The court found the important state interest in *Judice* to be the protection of the integrity of its court system through its contempt procedures. 430 U.S. at 335-36. In *Trainor*, the state interest was the protection of the fiscal integrity of governmental service programs. 431 U.S. at 444.

²⁷⁸ *Judice*, 430 U.S. 337 n.14. Supreme Court review of the final decisions of the highest state court is provided for in 28 U.S.C. § 1257 (1970). The statute provides

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

- (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
- (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
- (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

See generally C. WRIGHT, LAW OF FEDERAL COURTS 535-49 (3d ed. 1976)(hereinafter WRIGHT).

²⁷⁹ In addition to the Court's statement to this effect in *Huffman*, 420 U.S. 592, 610-11, see also *Stone v. Powell*, 428 U.S. 465, 493-94 n.35 (1976); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 928, 930 (1975).

²⁸⁰ Appellate review of district court decisions in the federal courts of appeals is generally by appeal following a final judgment in accordance with 28 U.S.C. § 1291 (1970). Inter-

assumption, coupled with the Court's reluctance to examine the adequacy of state proceedings, may render useless the exception to the *Younger* doctrine for failure to provide an adequate remedy for constitutional claims.

The *Juidice-Trainor* Court also took a narrow view of what constitutes "extraordinary circumstances" warranting an exception to *Younger* abstention. In *Younger*, the Court noted several examples of extraordinary circumstances.²⁸¹ In *Juidice*, the Court recognized only two types of circumstances as constituting an exception to the *Younger* doctrine. These are state proceedings conducted in bad faith or with intent to harass, and the enforcement of a statute flagrantly and patently violative of express constitutional prohibitions "in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it."²⁸² Although the Court in *Trainor* acknowledged in a footnote that other extraordinary circumstances might exist,²⁸³ the text of the opinion reviewed and rejected only the two types of extraordinary circumstances recognized by the *Juidice* Court, and determined that abstention was proper.²⁸⁴

The decisions in *Juidice* and *Trainor* clearly suggest that the Court, when faced with what it views as an important state interest, is less inclined than it was in *Younger v. Harris* to allow extraordinary circumstances, in addition to a bad faith prosecution and the enforcement of a patently and flagrantly unconstitutional state statute, to interrupt state proceedings.²⁸⁵ The *Juidice-Trainor* Court's disinclination to find extraordinary circumstances is illustrated by its treatment of the *Younger* Court's exception for the enforcement of an unconstitutional state statute. According to the Court in *Younger v. Harris*, a state statute

locutory appeals of district court orders to the courts of appeals are allowed under certain circumstances in accordance with 28 U.S.C. § 1292 (1970). See generally WRIGHT at 504-512.

Direct review of district court decisions by the Supreme Court has been extremely limited following the repeal in 1976 of the statutes requiring the convening of three judge district courts. Direct review is still allowed where specifically called for by Act of Congress. 28 U.S.C. § 1253 (1970). See generally WRIGHT at 212-15, 526-30.

Supreme Court review of the decisions of the courts of appeals is provided for in 28 U.S.C. § 1254 (1970). The statute provides

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review of writ of certiorari at the instance of such appellant, and the review of appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any questions of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

See generally WRIGHT at 530-34. See text at notes 334-59 *infra*.

²⁸¹ 401 U.S. at 53-54. See text at note 28 *supra*.

²⁸² *Trainor*, 431 U.S. at 446-47; *Juidice*, 430 U.S. at 338, quoting *Huffman*, 420 U.S. at 611.

²⁸³ 431 U.S. at 442 n.7.

²⁸⁴ *Id.* at 446-47.

²⁸⁵ *Juidice*, 430 U.S. at 338. The Court's disinclination to accept additional extraordinary circumstances seems to have initiated with the decision in *Huffman*. 420 U.S. at 611. But see *Kugler v. Helfant*, 421 U.S. at 125 n.4 (scope of exceptions to *Younger* doctrine left undefined).

"flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it," was an example of a statute, the enforcement of which would qualify a defendant for injunctive relief.²⁸⁶ Relying upon *Huffman*, the *Juidice-Trainor* Court transformed what in *Younger* was an illustration into a definition. Thus, a state statute, to be "flagrantly and patently violative" of the constitution and to permit a *Younger* exception, must meet that standard literally "in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it," or not at all.²⁸⁷ Thus, the *Juidice-Trainor* Court restricted not only the types of extraordinary circumstances which would allow federal injunctive relief, but also its interpretation of the categories of such circumstances remaining after the most recent *Younger* cases. As a result, the usefulness of the extraordinary circumstances exception for the enforcement of such a statute is dubious after *Juidice* and *Trainor*.²⁸⁸

Although the Court recognized that the state interests which required federal deference in *Juidice* and *Trainor* were less important than the state's interest in enforcing criminal or criminally-related statutes,²⁸⁹ the Court

²⁸⁶ 401 U.S. at 53-54.

²⁸⁷ The Court in *Trainor*, 431 U.S. at 444, as well as in *Juidice*, 430 U.S. at 338, cited only to the portion italicized below of a *Watson v. Buck* quotation, and without the qualifying language used by Justice Black in the *Younger* decision, 401 U.S. at 53-54. The full quotation from *Younger* is as follows:

There may, of course, be extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment.

For example, as long ago as the *Buck* case, we indicated:

'It is of course conceivable that a statute might be *flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.*' *Watson v. Buck*, 313 U.S. 387, 402 (1941).

Other unusual situations calling for federal intervention might also arise, but there is no point in our attempting now to specify what they might be.

401 U.S. at 53-54 (emphasis added).

²⁸⁸ *Trainor*, 431 U.S. at 457-58 (Brennan, J., joined by Marshall, J., dissenting); *id.* at 461-63 (Stevens, J., dissenting). It also may be argued that the bad faith prosecution exception has limited viability to provide an avenue to federal injunctive relief. Since *Dombrowski v. Pfister*, 380 U.S. 479 (1965), the Court has consistently found district court records insufficient to show the presence of bad faith or an intent to harass on the part of state officials. See *Hicks v. Miranda*, 422 U.S. 332, 350-51 (1975); *Kugler v. Helfant*, 421 U.S. 117, 123-29 (1975); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611-12 (1975); *Boyle v. Landry*, 401 U.S. 77, 80-81 (1971); *Younger v. Harris*, 401 U.S. 37, 49 (1971); *Cameron v. Johnson*, 390 U.S. 611, 617-22 (1968). But see *Wooley v. Maynard*, 430 U.S. 705, 709-12 (1977) (threat of repeated prosecution and effect of threat upon daily life sufficient to sustain a grant of injunctive relief); *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973) (federal injunction allowed against state board of optometry on grounds of bias against the federal plaintiffs). See also Fiss, *supra* note 242, at 1115, 1115 n. 36.

In addition, *Trainor* appears to be one of only three cases in which district courts have utilized the "patently and flagrantly violative of the constitution" exception to the *Younger* doctrine. The other two cases are *Nihiser v. Sendak*, 405 F. Supp. 482, 494-96 (N.D. Ind. 1974), vacated and remanded, 423 U.S. 976 (1976) (judgment granting injunctive relief vacated; case remanded for reconsideration in light of *Huffman*) and *McGuire v. Roebuck*, 347 F. Supp. 1111, 1118-21 (E.D. Tex. 1972) (municipal ordinance granting city manager excessive and unrestrained authority to grant or deny parade permits flagrantly and patently unconstitutional).

²⁸⁹ *Trainor*, 431 U.S. at 444; *Juidice*, 430 U.S. at 335.

made no concomitant adjustment in the availability of the equitable exceptions to the *Younger* doctrine to allow for less federal court deference to state courts. Thus, instead of broadening the *Younger* exceptions to correspond to the diminished state interest in continued state civil proceedings,²⁹⁰ the *Juidice-Trainor* Court narrowed the exceptions. Arguably, however, the level of federal deference to state proceedings should decrease as the importance of the state interest at stake decreases. As a result, the *Juidice* and *Trainor* Court's restriction of the equitable exception appears inconsistent with the Court's emphasis upon comity and mutual respect between federal and state courts.

The Court's treatment of the equitable exception for state remedies inadequate to deal with constitutional challenges to state law particularly appears inconsistent with the level of deference granted state interests in decisions in which the Court has acknowledged that state interests of less importance are being vindicated. Indeed, the *Juidice-Trainor* Court paid greater respect to the state's maintenance of civil proceedings than Congress requires federal courts to pay to proceedings vindicating state taxing powers.²⁹¹ Section 1341 of Title 28 requires a federal court to ascertain whether a state taxpayer has a "plain, speedy and efficient remedy" under state law before dismissing a federal action to enjoin the collection of state taxes.²⁹² By contrast, although *Trainor* was remanded for a determination of the adequacy of the state proceedings to entertain federal due process claims, the majority opinions in both *Trainor* and *Juidice* leave undefined what constitutes an adequate state remedy,²⁹³ and by their tone presume that state remedies are adequate.²⁹⁴ This disinclination to inquire into the adequacy of state proceedings comports with the comity or sovereignty rationale for abstention. It premises that an examination of state court proceedings would not promote an atmosphere of "proper respect for state functions" nor would it reflect positively "upon the state court's ability to enforce constitutional principles."²⁹⁵ The effect of this restriction of the equitable exception for inadequate state remedies, like the similar restriction of the exception for extraordinary circumstances, is to increase the likelihood that state defendants will be unable to show circumstances mandating federal injunctive relief against state proceedings. Under *Juidice* and *Trainor*, moreover, the instances in which abstention will be triggered have increased substantially. The Court's contraction of the equitable exceptions to the *Younger* doctrine indicates, as a practical matter, that the likelihood of federal injunctive relief, once *Younger* abstention is triggered, is extremely low.

C. Implications of the *Juidice-Trainor* Abstention Rationale

The *Juidice-Trainor* Court's changing rationale for *Younger* abstention suggests two potential end points for the future expansion of the *Younger* doctrine; the first more immediate than the second. First, *Juidice* and *Trainor*

²⁹⁰ See text at notes 198-203 *supra*.

²⁹¹ *Id.* at 464-66 (Stevens, J., dissenting). See 28 U.S.C. § 1341 (1970).

²⁹² See, e.g., *Tully v. Griffin*, 429 U.S. 68, 74-77 (1976).

²⁹³ *Trainor*, 431 U.S. at 447, 447, n.10; *Juidice*, 430 U.S. at 337.

²⁹⁴ *Trainor*, 431 U.S. at 441.

²⁹⁵ *Juidice*, 430 U.S. at 335, 336, quoting *Huffman*, 420 U.S. at 601, 604.

arguably represent an imminent expansion of *Younger* abstention to protect any state proceedings in which the state itself is effectuating state interests and policies. Perhaps one of the most significant aspects of *Trainor* is the Court's emphasis upon the presence of a state interest important enough to require federal abstention,²⁹⁶ while positing the issue before it as

when a suit is filed in a federal court challenging the constitutionality of a state law under the Federal Constitution and seeking to have state officers enjoined from enforcing it, should the federal court proceed to judgment when it appears that the State has already instituted proceedings in the state court to enforce the challenged statute against the federal plaintiff and the latter could tender and have his federal claims decided in the state court?²⁹⁷

There is no mention in this framework of an important state interest. Indeed, an argument that whenever a state commences litigation on its own behalf it has an important state interest to vindicate is consistent with the *Trainor* Court's holding that *Younger* principles are broad enough to apply to ongoing civil actions "brought by the State in its sovereign capacity."²⁹⁸ Therefore, as long as federal claims may be heard in the state forum, the federal courts have no right to intervene in any state-initiated litigation.

The second end point for the expansion of the *Younger* doctrine signaled in *Judice* and *Trainor* is arguably federal abstention in the face of all pending state litigation, including purely private litigation.²⁹⁹ Presently, the Court has disclaimed such expansion,³⁰⁰ and there are factors in these recent *Younger* cases which indicate that the presence of the state in the proceedings is necessary to trigger *Younger* abstention.³⁰¹ Moreover, the contempt proceedings involved in *Judice* may in fact form a poor basis for such a generalization. While not a part of the state's criminal process, they lead to penal sanctions, which are rarely imposed except to further important state interests. Although triggered by private parties, they do serve a public interest in a smoothly functioning court system and in many respects, are more akin to the public, prosecutorial, enforcement-oriented proceedings which supported previous *Younger* dismissals of federal complaints than to purely civil proceedings brought by a state.³⁰²

Nevertheless, several aspects of *Judice* and *Trainor* suggest that the extension of *Younger* to all state proceedings merely has been postponed while the seeds for such an extension are planted. An examination of the proceedings protected by the Court's holding in *Trainor* provides a stepping-off point for this analysis. The *Trainor* Court maintained that the availability of the attachment proceedings to private parties had no bearing upon its decision to apply *Younger* abstention since the state was the moving party in the proceedings sought to be enjoined.³⁰³ However, if a section 1983 suit were brought to

²⁹⁶ 431 U.S. at 444.

²⁹⁷ *Id.* at 440.

²⁹⁸ *Id.* at 444.

²⁹⁹ *Id.* at 453-54 (Brennan, J., dissenting); 430 U.S. at 345 n. * (Brennan, J., dissenting); Fiss, *supra* note 242, at 1138.

³⁰⁰ 431 U.S. at 444-45 n.8; 430 U.S. at 336 n.13.

³⁰¹ See text at note 228-230 *supra*.

³⁰² See text and note 205 *supra*.

³⁰³ *Trainor*, 431 U.S. at 444.

challenge an attachment, or other such proceeding to secure judgments and property initiated by a private party under state statutes,³⁰⁴ *Younger* would not have required dismissal of the federal suit.³⁰⁵ As a result, the *Trainor* Court granted greater deference to the state's utilization of the attachment proceedings by ruling that *Younger* applied, than it would have granted to a private litigant's use of the same proceedings. The Court thereby accorded greater deference to the state as a creditor than to the integrity of its judicial procedures for attachment.³⁰⁶ Given the Court's solicitude for state interests, it is arguable that a future step will be to correct this inconsistency and provide *Younger* protection to all state proceedings invoking state power to expedite attachments, garnishments and the like.

The Court's decision in *Juidice* suggests, however, that an extension of *Younger* to all state proceedings is possible. The *Juidice* Court took care to highlight the importance of the state interest in the "regular operation of its judicial system."³⁰⁷ In this light, the civil contempt proceedings in *Juidice* merited *Younger* abstention because contempt sanctions serve an important public interest—"the interest in maintaining respect for the actions of courts, and of orderly jurisprudence."³⁰⁸ The Court found this state interest important even though the contempt sanctions would never have been imposed had the

³⁰⁴ Attachment, replevin, garnishment and other such statutory proceedings to secure debts and property allow private parties to utilize state powers to reach the funds and property of other private parties. *Fuentes v. Shevin*, 407 U.S. 67, 93 (1972). Even if writs and orders arising out of such proceedings are not issued by state judges or court clerks, the service of papers by deputy sheriffs will fulfill the under color of state law requirements of § 1983. *Lynch v. Household Finance Corp.*, 318 F. Supp. 1111, 1112, 1115 (D. Conn. 1970), *reversed and remanded on other grounds*, 405 U.S. 538, 541-42 (1972) (garnishment action commenced by creditor's attorney in his capacity as a court officer). See text of § 1983 at note 3 *supra*. See, e.g., *Epps v. Cortese*, 326 F. Supp. 127, 128-29 (E.D. Penn. 1971) (issuance of replevin writs by clerks of courts sufficient action under color of state law to sustain § 1983 suit challenging replevin action between private parties).

³⁰⁵ *Fuentes v. Shevin*, 407 U.S. at 71 n.3. Cf. *Lynch v. Household Finance Corp.*, 405 U.S. at 552-56 (§ 2283 did not bar a § 1983 suit brought by private debtor to enjoin the use of garnishment proceeding by private creditors). The Court in both *Fuentes* and *Lynch* held that the replevin and garnishment actions in those cases were not pending or future court proceedings as such. *Fuentes*, 407 U.S. at 71 n.3; *Lynch*, 405 U.S. at 553-56. As a result, neither *Younger*-type abstention principles nor the anti-injunction statute required dismissal of the § 1983 actions. *Id.* See text of § 2283 at note 9 *supra*. The Court's holding in *Trainor*, implicitly to the effect that the Illinois attachment proceedings were pending proceedings within the ambit of *Younger* and § 2283, *Trainor*, 431 U.S. at 444, may have cut back on the viability of that portion of *Fuentes* and *Lynch*. See 431 U.S. at 454 (Brennan, J., joined by Marshall, J., dissenting). See also note 180 *supra*. This result would comport with the view of the dissent in *Fuentes*. 407 U.S. at 97-98 (White, J., joined by Burger, C.J., and Blackmun, J., dissenting).

³⁰⁶ 431 U.S. at 464 (Stevens, J., dissenting). Justice Stevens stated:

It would seem rather obvious to me that the amount of money involved in any particular dispute is a matter of far less concern to the sovereign than the integrity of its own procedures. Consequently, the fact that a State is a party to a pending proceeding should make it less objectionable to have the constitutional issue adjudicated in a federal forum than if only private litigants were involved. I therefore find it hard to accept the Court's contrary evaluation as a principled application of the majestic language in Mr. Justice Black's *Younger* opinion.

Id. (emphasis in original).

³⁰⁷ 430 U.S. at 335. The Court re-emphasized the importance of this interest in *Trainor* in the statement that "there are basic concerns of federalism which counsel against interference by federal courts, through injunctions or otherwise, with legitimate state functions, particularly with the operation of state courts." 431 U.S. at 441.

³⁰⁸ *Juidice*, 430 U.S. at 335-36, 336 n.12, quoting *Ketchum v. Edwards*, 153 N.Y. 534, 539, 47 N.E. 918, 920 (1897).

private parties in *Judice* not chosen to act for their own benefit.³⁰⁹ This analysis of contempt proceedings, initiated by private parties for their own benefit and resulting in sanctions that the state alone may order through its courts, provides little basis for distinguishing purely private litigation, initiated by private parties for their own benefit and resulting in judgments that the state alone may issue through its courts. The rendering of judgments in private civil litigation promotes a state interest in the "regular operation of its judicial system." If contempt proceedings are to merit *Younger* abstention and if, at bottom, the real concern is to protect the vindication of any legitimate state interests, a strong case may be made that after *Judice* and *Trainor*, the state interest in the regular and uninterrupted operation of its judicial system will swallow up all other state interests for *Younger* purposes. As a result, any state court proceedings would be protected from federal intervention regardless of whether the state is party to the proceedings.

III. THE NEW ANTI-INJUNCTION RATIONALE AND SECTION 1983

A. *The Effects of Judice and Trainor on Section 1983*

The curtailment of equitable conditions which allow federal injunctive relief and the expansion in types of state proceedings which trigger *Younger* abstention indicate that federal courts increasingly will be required to abstain from enjoining a broad range of state proceedings—and possibly all state judicial proceedings—involving federal claims otherwise properly before federal courts under section 1983. This extension is likely to have a number of deleterious effects upon the viability of suits for injunctive relief under section 1983.

Initially, it may be argued that the *Younger* doctrine's ban on injunctive relief now parallels the bar contained in the anti-injunction statute, 28 U.S.C. § 2283. Section 2283 requires federal courts to deny requests for injunctive relief against any pending state civil or criminal proceedings without regard to equitable considerations unless the request falls within one of the three limited exceptions to the statute.³¹⁰ *Judice* and *Trainor* approach section 2283's bar by extending the *Younger* doctrine to numerous civil proceedings and by limiting the equitable exceptions to the operation of the abstention doctrine. Thus, like the anti-injunction statute, the *Younger* doctrine now operates to deny requests for injunctive relief under section 1983 in the face of pending state criminal and civil proceedings, notwithstanding the Court's holding in *Mitchum v. Foster* that section 1983 suits fall within an express exception to section 2283.³¹¹ The *Judice-Trainor* extension of the *Younger* doctrine, by allowing the abstention doctrine to swallow up the exception of section 1983 from the anti-injunction statute, will close off access to federal court under section 1983 for many potential federal plaintiffs who have been caught up in state proceedings.³¹²

³⁰⁹ See text at notes 238-41 *supra*.

³¹⁰ See text and notes at 32-52 *supra*.

³¹¹ 407 U.S. 225, 242-43. See text at notes 59-69 *supra*. In both *Judice* and *Trainor*, the would-be federal plaintiffs failed to obtain federal relief under section 1983. *Trainor*, 431 U.S. at 447-48; *Judice*, 430 U.S. at 334-36.

³¹² To the extent that the *Younger* doctrine may be applied where any civil suit is pending in state court, it may close the federal courts to all such plaintiffs. As such the new rationale of *Younger* abstention may nullify the holding of *Mitchum*. *Judice*, 430 U.S. at 344-45 (Brennan, J., joined by Marshall, J., dissenting).

As the *Younger* doctrine is expanded to cover state civil proceedings, potential federal plaintiffs, seeking to challenge state statutes and procedures in section 1983 suits, also will increasingly be barred from federal courts in a squeeze between federal standing requirements and abstention principles. In *Younger v. Harris*, the Court refused to entertain a request for injunctive relief from plaintiffs who were not yet involved in a state prosecution,³¹³ stating that "[a] federal lawsuit to stop a prosecution in a state court is a serious matter. And persons having no fears of state prosecution except those that are imaginary or speculative are not to be accepted as appropriate plaintiffs in such cases."³¹⁴ While subsection to a state proceeding will satisfy standing requirements,³¹⁵ the *Judice* Court was quick to note that by such subsection the requirements for the invocation of *Younger* also are satisfied. As a result, no injunction may issue, and the federal court is required to dismiss the section 1983 action.³¹⁶ Accordingly, to challenge successfully state procedures or the enforcement of a state statute, a prospective section 1983 plaintiff must show that he is in imminent danger of sustaining some direct injury as the result of state action and that the feared state action, a state proceeding, has not yet begun.³¹⁷ Recent Supreme Court cases have indicated how difficult such a showing may be. In *O'Shea v. Littleton*,³¹⁸ the Court denied section 1983 plaintiffs standing and suggested that specific state actions must be alleged. Past exposure to allegedly illegal conduct would not establish the existence of a present case or controversy meriting injunctive relief.³¹⁹ Thus, although Vail, one of the plaintiffs in *Judice*, had failed to satisfy the underlying money judgment against him,³²⁰ and as a result potentially could be subjected continually to the contempt process until the judgment was paid in full, he was denied standing to sustain a section 1983 suit. The *Judice* Court maintained that "standing cannot be based on such speculative conjectures which are neither alleged nor proved."³²¹ The Court's construction of the requirement that state proceedings be imminent to establish standing leaves only a narrow time frame during which section 1983 suits may be brought before *Younger* abstention is triggered. The expansion of the *Younger* doctrine to state civil proceedings thus has the effect of increasing the circumstances in which potential section 1983 plaintiffs will be denied access to federal courts in a squeeze between standing and abstention principles.

³¹³ 401 U.S. 37, 41-42.

³¹⁴ *Id.* at 42.

³¹⁵ *Judice*, 430 U.S. at 333.

³¹⁶ *Id.* at 331-33. See, e.g., *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 929 (1977); *O'Shea v. Littleton*, 414 U.S. 488, 496-97 (1974). See also note 110 *supra*.

³¹⁷ See, e.g., *O'Shea v. Littleton*, 414 U.S. 488, 494-98 (1974).

³¹⁸ 414 U.S. 488 (1974).

³¹⁹ *Id.* at 495. See also *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 37-39 (1976) (unless plaintiff makes adequate showing that an injury may be redressed by a favorable decision, a federal court may not exercise its powers); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-18 (1973) (plaintiff unable to show direct injury as result of enforcement of criminal child support laws).

³²⁰ See text and notes at 86-94 *supra*.

³²¹ 430 U.S. at 433, 433 n.9. Cf. *Roe v. Wade*, 410 U.S. 113, 126-27 (1973) (doctor currently subjected to a state criminal prosecution denied standing to challenge state statutes as a potential defendant in future prosecution for violation of state abortion laws).

The application of the *Younger* doctrine in the civil area particularly restricts the ability of low income federal plaintiffs—such as those in *Juidice* and *Trainor*—to obtain redress of federal rights in federal court under section 1983. Low income people are often defendants in state garnishment, attachment and contempt proceedings of the type used in *Juidice* and *Trainor* to secure judgment debts.³²² It is unlikely that such potential federal plaintiffs would have standing to challenge the procedures in such garnishment, attachment and contempt proceedings until the proceedings have actually begun.³²³ Moreover, since these proceedings are regarded generally as continuing under state law, it is possible, under *Huffman's* requirement that state appellate remedies be pursued once state proceedings have begun,³²⁴ that low income state defendants will be unable to bring challenges to state procedures in a federal district court.³²⁵ Since the poor are often caught up in state proceedings before they are even aware of their federal rights, the *Juidice-Trainor* extension of the *Younger* doctrine arguably diminishes the availability of section 1983 suit for parties in the greatest need of aid from the federal courts.³²⁶

Finally, the effect of the *Younger* doctrine upon section 1983 suits is magnified by the Court's willingness to allow states to cut off intentionally section 1983 actions. In *Hicks v. Miranda*,³²⁷ the Court held that *Younger* abstention requires dismissal of a section 1983 complaint if state criminal proceedings are commenced against the federal plaintiff prior to the commencement of substantive proceedings³²⁸ on the merits in the district court.³²⁹ The probable result of the *Hicks* decision is that in order to secure the dismissal of a section 1983 challenge to its actions, a state need only commence proceedings in its own

³²² *The Civil Rights Improvements Act of 1977: Hearings on S. 35 Before the Subcomm. on Constitution of the Senate Comm. on Judiciary*, 92d Cong., 2d Sess. (1978) (statement of Legal Services Attorney Working Group at 6, Feb. 9, 1978) (hereinafter *Legal Services*).

³²³ *Legal Services*, *supra* note 322, at 6-8.

³²⁴ See text at notes 79-83 *supra*.

³²⁵ *Legal Services*, *supra* note 322, at 7.

³²⁶ In its testimony on Senate Bill No. 35, the Legal Services Attorney Working Group stated:

For the poor, access to federal court is not an abstract issue concerning the proper allocation of judicial power within our federal system. Access to federal court often is the only means by which the poor can assert their rights to decent housing, to a job, to adequate public assistance, to health care, and to freedom from discrimination on the basis of race, sex and national origin.

Legal Services, *supra* note 322, at 1.

³²⁷ 422 U.S. 332 (1975) (White, J., writing for five-man majority).

³²⁸ 422 U.S. at 349. While the Court was unclear as to what would constitute "substantive proceedings on the merits," it did state that in the *Hicks* case, no answer had been filed to the federal complaint. *Id.* at 349-50.

³²⁹ Prior to *Hicks*, in the decision of *Steffel v. Thompson*, 415 U.S. 452 (1974), the Court unanimously held that *Younger* principles of equity, comity and federalism did not preclude federal equitable relief when a state prosecution was threatened but not yet begun. *Id.* at 461-63.

The *Hicks* decision disrupted the holding in *Steffel* in two ways. First, when a federal plaintiff is joined as a defendant in a state prosecution before the commencement of substantive proceedings on the merits in the district court, the federal complaint is required to be dismissed. 422 U.S. at 349-50. Second, the Court seemed to indicate that even if the federal plaintiff is not a party to state proceedings, if he has a substantial interest in the state proceedings such that his federal suit would disrupt a pending proceeding, the federal complaint must be dismissed. *Id.* at 348-49.

courts.³³⁰ The viability of a section 1983 suit, thus depends upon the state's choice of forum.³³¹ If the state desires to utilize its own courts it may commence a proceeding protected from federal interference—literally upon the notice provided by the service of the federal complaint—and retain jurisdiction over all claims. As a result, the *Juidice-Trainor* Court's expansion of the *Younger* doctrine operates both to deny injunctive relief despite the provision of a suit in equity against state deprivation of constitutional rights in section 1983, and to allow the state—the party alleged to have infringed constitutional rights in a 1983 suit—to dismiss section 1983 actions by initiating its own proceedings.

B. *The Conflict Between Juidice-Trainor and Congressional Intent in Section 1983*

The *Juidice-Trainor* Court's broad interpretation of the state interests which invoke *Younger* abstention shuts off access to federal courts of many cognizable section 1983 claims. The Court's strict definition of the equitable exceptions to the *Younger* doctrine expedites this result. However, neither the *Trainor* nor the *Juidice* majority opinion discussed the impact of their holdings upon the congressional concerns embodied in the constitutional causes of action provided in section 1983.³³²

1. The Historical Intent of Section 1983

Examination of the legislative history of section 1983 indicates that the decisions in *Juidice* and *Trainor* are contrary to the congressional purpose in enacting that statute. Section 1983 has remained virtually unchanged from the original form in which it was enacted as section one of the Ku Klux Klan Act,³³³ a statute designed "to protect all persons in the United States in their civil rights and to furnish the means of their vindication."³³⁴ The Ku Klux Klan Act was particularly directed toward curbing the violence being visited upon emancipated slaves and Union sympathizers

³³⁰ *Id.* at 355-57 (Stewart, J., dissenting). The would-be federal plaintiff in *Hicks*, Miranda, owned a theater at which allegedly obscene films were being shown. Two of his employees were arrested and the films were seized. Subsequently, a prosecution was commenced against the employees. *Id.* at 334-39. Miranda was joined as a defendant in the state proceeding one day after the service of his federal complaint on state officials. Thus, even though Miranda was not a party to the state proceeding at the time of filing his federal complaint and although initially only his employees were being prosecuted, the federal district court was not allowed to entertain his request for injunctive relief under section 1983. *Id.* at 348-49.

³³¹ In contrast, in *Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471 (1977), decided the same day as *Trainor*, a unanimous Court held that a federal court must honor a state's choice to remain in the federal forum even though *Younger* principles might otherwise require that court to abstain. 431 U.S. at 479-80 (Rehnquist, J., did not take part). The *Hodory* Court stated:

If the state voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the cases back into the State's own system [U]nder these circumstances *Younger* principles of equity and comity do not require this Court to refuse [the state] the immediate adjudication it seeks.

Id. at 480. See also *Sosna v. Iowa*, 419 U.S. at 396 n.3.

³³² But see *Trainor*, 431 U.S. at 450-60; *Juidice*, 430 U.S. at 341-47; *Huffman*, 420 U.S. at 613-18 (Brennan, J., dissenting).

³³³ Act of April 20, 1871, 42d Cong., 1st Sess. ch. 22, 17 Stat. 13. The statute was enacted to aid in the enforcement of the recently adopted fourteenth amendment. See *Developments in the Law—Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1141-56 (1977).

³³⁴ Act of April 20, 1871, 42d Cong., 1st Sess., ch. 22, 17 Stat. at 13.

in the South by organizations such as the Klan.³³⁵ One congressional concern was the failure of southern courts to prosecute and obtain convictions of perpetrators of violence whose actions deprived their victims of constitutional rights.³³⁶ Although section one was one of the least controversial provisions³³⁷ of the bill, congressional opponents of the measure contended that relief for the deprivation of constitutional rights in a federal trial court was unnecessary in light of adequate state remedies.³³⁸ They argued that any state judicial enforcement of an unconstitutional state law could be declared void upon review by the Supreme Court.³³⁹ Proponents of the measure responded by emphasizing the necessity of protecting constitutional rights and pointing out the inadequacy then exhibited by state courts in dealing with violations of such rights.³⁴⁰ Significantly to the *Younger* doctrine, these arguments indicate that the supporters of section 1983 intended the provision to provide a cause of action very different from the relief available in state proceedings subject to Supreme Court review.³⁴¹

³³⁵ The Ku Klux Klan Act was enacted in part in response to a message from President Grant to the Congress on March 23, 1871 requesting legislation to deal with the rising tide of violence in the south. Cong. Globe, 42d Cong., 1st Sess. 299 (1871).

³³⁶ See, e.g., Cong. Globe, 42d Cong., 1st Sess. 653 (1871) (remarks of Sen. Osborn).

³³⁷ See, e.g., Cong. Globe, 42d Cong., 1st Sess. 501 (1871) (remarks of Sen. Frelinghuysen). See note 341 *infra*.

³³⁸ See, e.g., Cong. Globe, 42d Cong., 1st Sess. 50 (1871) (remarks of Rep. Kerr). In opposition to the bill, Mr. Kerr stated:

This section gives to any person who may have been injured in any of his rights, privileges, or immunities of person or property, a civil action for damages against the wrongdoer in the Federal courts. The offenses committed against him may be the common violations of the municipal law of his State. . . . It is a covert attempt to transfer another large portion of jurisdiction from the State tribunals, to which it of right belongs, to those of the United States.

³³⁹ Cong. Globe, 42d Cong., 1st Sess. 231 (1871) (remarks of Sen. Blair). Senator Blair stated:

This being forbidden by the Constitution of the United States, and all the judges, State and national, being sworn to support the Constitution of the United States, and the Supreme Court of the United States having power to supervise and correct the action of the State courts when they violated the Constitution of the United States, there could be no danger of the violation of the right of citizens under color of the *laws* of the States.

Id. (emphasis in the original).

³⁴⁰ See, e.g., Cong. Globe, 42d Cong., 1st Sess. 577 (1871) (remarks of Sen. Carpenter).

Senator Carpenter stated:

Under the present Constitution, however, in regard to those rights which are secured by the fourteenth amendment, they are not left as the right of the citizen in regard to laws impairing the obligation of contracts was left, to be disposed of by the courts as the cases should arise between man and man, but Congress is clothed with the affirmative power and jurisdiction to correct the evil. I think there is one of the fundamental, one of the great, the tremendous revolutions effected in our Government by that article of the Constitution. It gives Congress affirmative power to protect the rights of the citizen, whereas before no such right was given to save the citizen from the violation of his rights by State Legislatures and the only remedy was a judicial one when the case arose.

³⁴¹ *Id.* at 501 (remarks of Sen. Frelinghuysen). Senator Frelinghuysen stated:

As to the civil remedies, for a violation of these privileges, we know that when the courts of a State violate the provisions of the Constitution or the law of the United States there is now relief afforded by a review in the Federal courts. And since the 14th amendment forbids any State from making or enforcing any law abridging these privileges and immunities, as you cannot reach the Legislatures, the injured party should have an original action in our Federal courts, so that by

Moreover, Congress recognized that the legislation might result in federal courts properly assuming jurisdiction over suits in which state relief might also be available.³⁴²

The legislative history of section 1983 clearly demonstrates that Congress was cognizant that ultimate review by the Supreme Court of state court decisions was available in cases where a remedy for the deprivation of constitutional rights was sought. Nevertheless, in choosing to provide a civil remedy for the deprivation of federal rights in federal court, Congress implicitly expressed the belief that federal remedies would be superior to state remedies. The Court's conclusion that a hearing in state court with the possibility of review in the United States Supreme Court is equivalent to an initial hearing in a federal district court, is simply contrary to the legislative history of section 1983.

2. Present-Day Considerations.

Several considerations suggest that the congressional conclusion that state court adjudication of constitutional issues does not provide the protection obtainable in federal courts, is still valid. Considerations which favor having federal district courts adjudicate constitutional claims may be grouped into three general categories: (1) federal procedural safeguards; (2) the expertise and tenure of federal judges; and (3) the speed and type of relief available in federal district courts. First, relegating would-be federal plaintiffs to state court hearings deprives a constitutional litigant of the benefits of federal trial procedures. These include discovery, class actions, liberal joinder rules and broad personal service;³⁴³ devices which frequently are not available or are more restricted in state courts. Moreover, these procedures are an important tool in constructing a full factual record for review on appeal, since fact findings made at trial often will dictate the decision of federal claims.³⁴⁴ The possibility of a fair or successful review of an individual litigant's constitutional claims thus may have been lost long before review in the United States Supreme Court is reached.

Another issue which contributes to the success or failure of the assertion of federal claims is the environment in which the federal claims are heard. In

injunction or by the recovery of damages he could have relief against the party who under color of such law is guilty of infringing his rights. As to the civil remedy no one, I think, can object.

See also note 339 *supra*.

³⁴² Cong. Globe, 42d Cong., 1st Sess. 366 (1871) (remarks of Rep. Arthur). Rep. Arthur contended that the bill would "absorb the entire jurisdiction of the States over their local and domestic affairs." See also note 338 *supra*. Additionally, within four years of the passage of the predecessor of section 1983, Congress enacted the Judiciary Act of 1875, which successfully granted original federal question jurisdiction to the federal courts for suits arising under the Constitution and laws of the United States. Act of March 3, 1875, 43d Cong., 2nd Sess. ch. 137, 18 Stat. 470. The vast power granted to the federal judiciary by this Act affirmed the intent of Congress to make the federal courts the primary forum for vindicating federal rights. This intent continues to be evident in the language of 28 U.S.C. §§ 1331, 1343(3), in which Congress has granted original federal question jurisdiction and jurisdiction for causes of action for the deprivation of civil rights to the federal courts. See note 31 *supra*.

³⁴³ FED. R. CIV. P. 4, 18-21, 23, 26-34.

³⁴⁴ "It is the typical, not the rare, case in which constitutional claims turn upon the resolution of contested factual issues." *England v. Board of Medical Examiners*, 375 U.S. 411, 416-17, *quoting* *Townsend v. Sain*, 372 U.S. 293, 312 (1963).

state proceedings, the enforcement of a state statute or procedure naturally will be spotlighted.³⁴⁵ As a result, the assertions of federal rights may be overshadowed.³⁴⁶ In section 1983 suits, however, federal challenges to state actions are the sole issues before the federal district court. Thus, a state court, primarily concerned with state interests, simply may not constitute a forum in which consideration of federal issues will be equivalent to that possible in a federal district court.

The conclusion that federal courts are more appropriate forums than state courts for adjudicating federal claims stems secondly from the greater expertise of district court judges in questions of constitutional and federal law.³⁴⁷ In addition, the appointment and life tenure of federal judges, as opposed to the selection of state judges most of whom are elected or appointed and may be removed,³⁴⁸ may ease the making of unpopular or controversial constitutional decisions.³⁴⁹ This may be particularly true when such a judge renders a decision striking down an existing state statute or requiring an injunction against state or local officials. A federal district court judge would be more insulated from the results of a constitutionally necessary but practically disruptive decision than would be a state court judge. The state judges in New York after the district court decision in *Juidice*, for example, would have been required to deal directly with the temporary lack of procedures for civil contempt.³⁵⁰

³⁴⁵ *Trainor*, 431 U.S. at 446; *Juidice*, 430 U.S. at 335-36.

³⁴⁶ In allowing Supreme Court review of state court decisions upholding the constitutionality of state statutes by appeal rather than by certiorari under 28 U.S.C. § 1257, Congress arguably acknowledged the premise that state courts may favor the validity of their own laws.

³⁴⁷ Other factors contributing to a better qualified federal judiciary may include:

(1) the federal bench is chosen from a smaller pool of legal personnel, making it easier to maintain high levels of competence;

(2) federal judges are paid better, which in addition to the prestige of the federal bench, may make a judgeship more appealing to highly qualified private practitioners. Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1121-24 (1977).

³⁴⁸ Three general methods for selecting state trial judges are currently used: appointment; election, either partisan or nonpartisan; and initial appointment followed by retention election. See S. ESCOVITZ, JUDICIAL SELECTION AND TENURE 11-12 (1975). In four states, Massachusetts, Rhode Island, New Hampshire, and New Jersey, trial judges are appointed with life tenure. In addition, in New Jersey, such tenure is conditioned upon reappointment after completion of a seven year term. *Id.* at 27, 31, 36. In four other states, trial judges are appointed for terms of four to twelve years followed by consideration for reappointment. *Id.* at 20, 22, 26. In the other 42 states and the District of Columbia, trial judges are either appointed or elected subject to retention elections at intervals from one to fourteen years. *Id.* at 17-42. This breakdown shows that in only four states do state judges enjoy the same insulation from political pressures as is afforded federal judges.

³⁴⁹ It also may be suggested that the federal judiciary feels the weight of tradition in the making of constitutional decisions far more strongly than state court judges. This attitude is arguably buttressed by the greater certainty of supervision and review by the Supreme Court for federal judges. Neuborne, *supra* note 347, at 1124.

³⁵⁰ Affidavit in Support of Order to Show Cause Staying Order Entered by United States District Court for the Southern District of New York on January 14, 1976 at 1-2, *Juidice*, 430 U.S. 327 (1977). In his request for an order from the Supreme Court for a stay of the order entered by the district court which invalidated sections of the New York law governing contempt proceedings, New York Assistant Attorney General A. Seth Greenwald stated:

Unless some relief from the order is provided there appears to be no way the courts of the State of New York can provide sanctions for civil contempt. While the Legislature can act this can take time and in view of the continuing fiscal crisis, the drafting of a new Judiciary Law Art. 19 is not a top priority.

A third factor favors the initial presentation of federal claims in federal court rather than requiring constitutional litigants to go through state courts. A federal trial may avoid the uncertainty, expense and delay present in the state appellate process. These circumstances may render possible ultimate success after appeal far less valuable than a speedy adjudication at the trial level. A successful appeal to the United States Supreme Court from state courts may never be achieved.³⁵¹ Moreover, even when Supreme Court review is available, it may be too costly for those litigants in greatest need of swift adjudication of constitutional claims. This was certainly the situation for the original plaintiffs who were respondents in *Juidice* and in *Trainor*. The plaintiffs in *Trainor* were welfare recipients; the plaintiff in *Juidice*, also a welfare recipient, had to borrow funds from a relative for the payment of the fine necessary to expedite his release from jail. Parties, such as these, faced with the loss of all assets and with imprisonment, may be unable to afford the pursuit of state court appeals, particularly if the chances for relief are low.³⁵² Finally, delays while in the pursuit of a state appeal may render hollow any relief ultimately obtained. In contrast, there is the possibility of a swift remedy through the alternative of federal injunctive relief.³⁵³ For example, in *Trainor*, when the plaintiffs' funds were frozen by the writ of attachment, they were required to and did appear in state court two weeks later, only to be told that their hearing had been continued for another month.³⁵⁴ Facing pending rent and car repair bills, and past due electricity, gas and telephone bills, the *Trainor* plaintiffs filed their section 1983 complaint in federal district court.³⁵⁵ That court ordered the release of one half of the attached funds at a time when relief in the state court was speculative at best.³⁵⁶

The *Juidice-Trainor* Court's assumption of the equivalence of state and federal remedies buttresses its decision to return section 1983 plaintiffs to state proceedings. According to the Court, considerations of comity and federalism require this result. The legislative history of section 1983 indicates, however, that despite the availability of state forums federal courts would be deemed the

Greenwald included as an exhibit to his affidavit an article from the New York Law Journal to the effect that following the invalidation of the contempt procedures, the New York City Sheriff's Office had begun to halt the enforcement of civil contempt orders jailing husbands who were in arrears on alimony and support payments. *Sheriff to Halt Efforts to Jail Husbands Who Owe Alimony*, New York Law Journal, Jan. 12, 1975 at 1.

³⁵¹ See text of 28 U.S.C. § 1257 (1970) at note 278 *supra*. A decision of the federal district court may also fail to be reviewed by the Supreme Court on a writ of certiorari. However, at this point the litigant has already had the advantage of a hearing in the federal district court, unlike the state defendant who is required to remain in the state court system only to be refused entrance to the Supreme Court.

³⁵² The plaintiffs in both cases were represented by legal aid groups: in *Juidice* by the Mid-Hudson Legal Service Project and the Greater Upstate Law Project; in *Trainor* by the Legal Assistance Foundation of Chicago.

³⁵³ In addition, the remedies available for the deprivation of constitutional rights in a federal district court are often different and more effective in redressing the deprivation of constitutional rights than the remedies available under state law. See, e.g., *Monroe v. Pape*, 365 U.S. 167, 196 n. 5. *But cf.* *Paul v. Davis*, 424 U.S. 693, 711-12.

³⁵⁴ 431 U.S. at 451-52, 452 n.3.

³⁵⁵ *Id.*

³⁵⁶ In fact, Justice Stevens, in his dissenting opinion in *Trainor*, contended that the present Illinois proceeding would not have allowed Mr. & Mrs. Hernandez to raise their constitutional objections at all. 431 U.S. at 468 n.14. See text at notes 272-75 *supra*.

primary vindicators of federal rights. This decision of the drafters of section 1983 continues to be supported by the present day considerations of federal procedural safeguards, federal judicial expertise, and the speed and type of relief available in federal as opposed to state courts.

C. *Alternatives to the Present Extension of the Younger Doctrine*

In light of the legislative purpose underlying the enactment of section 1983 and the present day considerations supporting that purpose, the rigid rule for the application of the *Younger* doctrine reached by the Court in *Juidice* and *Trainor* is contrary to Congress' apparent intent that federal courts exercise jurisdiction over cases involving alleged violations, through state action of federal constitutional rights. Two alternatives to the Court's approach in *Juidice* and *Trainor* may be suggested.

The first alternative exhibits the benefit of hindsight. In considering a request for injunctive relief against state civil proceedings, the Court could have adopted a more flexible balancing approach. Under this approach, both the federal court interest in exercising jurisdiction and the state court desire in vindicating state interests in a state proceeding could be balanced.³⁵⁷ An accommodation of federal and state interests in entertaining litigation would provide a middle ground between categorically placing federal claims in state courts under the rubrics of comity and federalism, as the *Juidice* and *Trainor* Court did, or ignoring the delicacy of federal-state relations by placing all federal claims in federal courts regardless of a state interest in continuing its own proceedings. Pertinent inquiries to be weighed on the side of the federal interest in hearing the cases would include the adequacy of the state proceeding to hear the federal claims, the relief available in the state court proceeding, the importance of the constitutional claim raised, and the potential irreparable injury to be suffered by the federal plaintiff if required to remain in state court. On the state's side of the balance, the consequences of delay in the enforcement of state policies stemming from a federal injunction, the availability of alternative methods of enforcing state policies and the effect of a federal injunction upon the public welfare, would be factors. An evaluation of which judicial system has the greater stake in hearing a case, as opposed to the somewhat rigid *Younger* approach, would have the advantage of responding to fluctuating federal and state interests in litigation. Given the disposition of the Court as manifested in *Juidice* and *Trainor*, however, the prospect that such an approach will be judicially adopted seems remote.

The second alternative to the *Juidice-Trainor* Court's methodology is a prospective one. In response to the Court's recent curbs on the scope of section 1983 through the extension of the *Younger* doctrine, an amendment to section 1983,³⁵⁸ called the Civil Rights Improvements Act of 1977 or Senate Bill 35, is presently being considered in the United States Senate.³⁵⁹

³⁵⁷ Such an approach is suggested by Justice Blackmun in his concurring opinion in *Trainor*, 431 U.S. at 448-50. See text and notes at 172-75 *supra*. See also National League of Cities v. Usery, 426 U.S. 833, 856 (Blackmun, J., concurring).

³⁵⁸ S. 35, 95th Cong., 1st Sess. (1977).

³⁵⁹ See text and notes at 10-12 *supra*.

S.35 would directly limit the Court's holdings in *Younger v. Harris* and its progeny.³⁶⁰

S. 35 retains the Court's position in *Younger v. Harris* to the extent that in the absence of extraordinary circumstances a pending state criminal proceedings, commenced prior to the filing of a section 1983 suit, may not be enjoined by a federal court.³⁶¹ However, the opportunity to be heard in state court would have to include the chance to present every claim which could be raised in the attempted section 1983 suit.³⁶² This requirement of a "full and fair opportunity" to be heard on federal claims before injunctive relief can be denied would overcome the present Court's reluctance to examine the adequacy of state proceedings.³⁶³ In addition, the range of circumstances requiring injunctive relief against state criminal proceedings, as delineated in the bill, differs from that in *Younger v. Harris* and subsequent abstention cases. While retaining a criminal prosecution commenced in bad faith or the enforcement of an unconstitutional state statute as examples of extraordinary circumstances,³⁶⁴ the bill would include the enforcement of state statutes which are facially unconstitutional in whole or in part among the circumstances allowing a federal court to enjoin state criminal proceedings.³⁶⁵ This inclusion would directly overrule the Court's refusal in *Younger* to allow such an exception.³⁶⁶ Finally, in response to *Hicks v. Miranda*,³⁶⁷ the bill provides that a federal court may enjoin state criminal proceedings if the latter were commenced after the filing of a section 1983 action.³⁶⁸

S. 35 explicitly rejects the applicability of *Younger* abstention principles to any civil or quasicriminal state proceedings. In so doing, the proposed amendment to section 1983 would overrule the holdings of *Huffman*, *Juidice* and *Trainor* for section 1983 injunctive suits. Section 2(g)(5) of the bill

³⁶⁰ In addition, the bill would affect *Pullman* abstention. See discussion of this doctrine at note 33 *supra*. The bill being considered retains the structure of the doctrine while requiring that a decision of state law by a state court be allowed *only* if: (1) the state has a procedure by which questions of state law may be certified to the highest state court by a federal court; (2) if the question of state law cannot be resolved by the federal court on the basis of state authorities; and (3) if the federal court makes an express finding that the certification process will not cause undue delay or prejudice to the parties. S. 35, § 2 (g)(1), 95th Cong., 1st Sess. (1977).

³⁶¹ S. 35, § 2(g)(3), (3)(A).

³⁶² S. 35, § 2(g)(3)(C). The section being considered reads:

(3) In the absence of extraordinary circumstances, no court of the United States shall enjoin a pending criminal prosecution under the law of any State, territory, subdivision of any State or territory, or the District of Columbia, if such prosecution—

(C) provides a full and fair opportunity for the presentation and resolution in the courts of such State, territory, subdivision thereof, or the District of Columbia, of every claim of deprivation presented in the action in the court of the United States.

³⁶³ See text at notes 267-275 *supra*.

³⁶⁴ S. 35, § 2(g)(3). The bill's suggestion that other unnamed extraordinary circumstances may be found in a state proceeding is unlike the Court's current position in *Trainor* and *Juidice*. See text and notes at 281-88 *supra*.

³⁶⁵ S. 35, § 2(g)(3).

³⁶⁶ 401 U.S. 37, 54.

³⁶⁷ 422 U.S. 332 (1975). See text and notes 327-31 *supra*.

³⁶⁸ S. 35 § 2(g)(4). This section also would require the issuance of a federal injunction if a finding were made that the subsequent prosecution was initiated because a § 1983 suit had been filed. A prosecution, commenced under such circumstances, could be interpreted as an example of the extraordinary circumstances that require injunctive relief. S. 35, § 2(g)(3).

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would allow a federal court to enjoin a state civil proceeding regardless of its relationship to state criminal laws and regardless of whether the state proceedings were pending at the time of filing a section 1983 complaint.³⁶⁹ As a result, *Younger* abstention would require federal court deference only to pending state criminal proceedings.³⁷⁰

Proposed Senate Bill 35 goes far in reaffirming an overriding congressional intent to provide a federal forum for the vindication of constitutional claims. The bill emphasizes that the only state interest strong enough to require federal abstention is the interest in enforcement of criminal laws. However, the bill would require even this interest to be balanced against the criminal defendant's interest in being heard fully and in avoiding irreparable injury. By allowing federal courts the discretion to issue injunctions in the face of state civil proceedings³⁷¹ regardless of the pendency of those proceedings at the time of filing the section 1983 suit, S. 35 would avoid the broad and potentially absolute rule against injunctive relief enunciated in *Judice* and *Trainor*.

CONCLUSION

The Supreme Court, in *Judice v. Vail* and *Trainor v. Hernandez* has transformed the basis of *Younger* abstention from equity, comity and federalism to a rationale of comity and state sovereignty. This change in rationale allowed the Court to extend the *Younger* doctrine to civil proceedings in which a state vindicates an important interest. In doing so, however, the Court has failed to provide a discernable standard for the future application of the *Younger* doctrine. Although an extension to all civil proceedings remains an open question,

³⁶⁹ S. 35, § 2(g)(5). The proposed provision states:

(5) In an action brought under this Act, a court of the United States may enjoin a proceeding in the courts of any State, territory, subdivision of any State or territory, or the District of Columbia, which is noncriminal in nature, even if such proceeding is in aid of and closely related to the enforcement of a criminal statute, ordinance, or regulation, irrespective of whether the proceeding was commenced prior to or subsequent to the action.

³⁷⁰ In addition, and in contrast to the Court's statement in *Huffman* and implication in *Judice* and *Trainor* that the presence of unexhausted state remedies requires dismissal of a section 1983 action, S. 35 would require that no section 1983 suit be dismissed solely on the basis of the availability of state remedies. S. 35, § 2(g)(2).

³⁷¹ The Committee on Civil Rights of the Association of the Bar of the City of New York, while supporting the provisions of S. 35 which cut back on *Huffman*, *Judice* and *Trainor*, expressed concern about the failure of S. 35 to provide any guidelines for the exercise of this discretion in granting injunctive relief. See S. 35, § 2(g)(5). The Committee suggested, however, that

[g]iven the primary role of the federal courts in enforcing and vindicating the rights and interests protected by Section 1983, . . . there should be a general presumption in favor of injunctions of state proceedings which either are commenced after a Section 1983 action has been commenced between the same parties or their privies, or which threaten to jeopardize or delay vindication of Section 1983 rights. We think this approach is intended by S. 35 and is fairly to be implied by its text when read in the context of the recent Supreme Court opinions, the impact of which it is seeking to reverse or modify.

Rep. of the Comm. on Civil Rights of the Assoc. of the Bar of the City of New York, *Imposing Liability Upon Governments for Civil Rights Violations and Imposing Limits upon Younger v. Harris: Pending Legislation to Amend 42 U.S.C. § 1983*, 13 (January, 1978), reprinted in 33 Rec. of the Assoc. of the Bar of the City of New York, issue 3 (March, 1978).

the recasting of the *Younger* rationale in *Juidice* and *Trainor* portends the extension of *Younger* to all proceedings which vindicate any state interest, if not a possible extension to all civil litigation pending in state courts.

Juidice and *Trainor* have brought the *Younger* doctrine ever closer to the absolute ban on federal injunctive relief against state proceedings contained in the anti-injunction statute. When combined with the recent decision in *Hicks v. Miranda*, the recast doctrine allows the state, rather than a potential plaintiff under section 1983, to choose the forum in which federal claims will be adjudicated. In so doing, the Court has taken an unwarranted departure from the role of the federal judiciary as the primary vindicator of rights under the Constitution and federal laws.

The importance of the state and federal interests in the confrontation between federal and state courts over the adjudication of federal rights requires continual adjustment to accommodate those interests. Given the current disposition of the Court, the possibility of such accommodation appears limited. As a consequence, any remedy forthcoming in this area must originate in Congress. The power of Congress over the federal judiciary and its decision to provide a federal forum under section 1983 suggest that a congressionally devised remedy, such as the Senate Bill 35, is both proper and necessary.

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