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Our Federalism-The Limitation of Younger-Samuels and Their Progeny on Federal Intervention in State Court Proceedings

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COMMENTS

"OUR FEDERALISM"—THE LIMITATION OF *YOUNGER-SAMUELS* AND THEIR PROGENY ON FEDERAL INTERVENTION IN STATE COURT PROCEEDINGS

I. INTRODUCTION

In 1971, the United States Supreme Court handed down a series of decisions[1] (hereinafter referred to as the *Younger-Samuels* decisions) addressing the propriety of federal injunctive and declaratory relief against pending state criminal proceedings. In the course of his opinion in *Younger v. Harris*,[2] Justice Hugo Black discussed the general policy of restraint with regard to federal interference in state court proceedings and called it "Our Federalism."[3] This "longstanding public policy,"[4] derived from principles of equity, comity, and federalism, has potential impact beyond the limits of the *Younger-Samuels* decisions. The principle is applicable to all federal court interference in state civil proceedings and criminal justice systems.

The subject of this comment is the effect that the doctrine of "Our Federalism" and the decisions in *Younger-Samuels* and their progeny have had on the relationship between the state and federal courts; more specifically, how the doctrine has affected the availability of federal injunctive and declaratory relief against state court proceedings.[5] The application of "Our Federalism" to pending criminal proceedings, threatened criminal proceedings, pending and threatened civil proceedings, and its potential application to administrative proceedings will be examined. It will be apparent that the Federal Anti-Injunction Statute has been substantially curtailed as a limitation in this area. In order to fully understand the applicable princi-

1. Younger v. Harris, 401 U.S. 37 (1971); 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).

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

3. *Id.* at 44.

4. *Id.* at 43.

5. Federal courts have expanded the scope of *Younger-Samuels* beyond intervention in state court proceedings. *See* Wallace v. Kern, 520 F.2d 400 (2d Cir. 1975), *cert. denied*, 424 U.S. 912 (1976); Rizzo v. Goode, 423 U.S. 362 (1976) (dictum). *See generally* Zeigler, *An Accomodation of the Younger Doctrine and the Duty of the Federal Courts to Enforce Constitutional Safeguards in the State Criminal Process*, 125 U. PA. L. REV. 266 (1976).

ples, it is necessary first to trace the history of federal injunctive and declaratory relief against state court proceedings. The impact of the *Younger-Samuels* decisions and their progeny on the propriety of federal interference may then be analyzed.

The doctrine of "Our Federalism" and the *Younger-Samuels* decisions are primarily a symbol of judicial restraint toward federal interference in the functions and responsibilities of the states. It will be shown that rather than establish new standards governing the availability of injunctive and declaratory relief, the Supreme Court has stringently applied traditional equitable principles that it has flexibly applied for the last one hundred years. The Court has retained the discretionary power to adjust the availability of federal relief in accordance with its perception of the need for federal intervention. Today, the federal injunction and declaratory judgment directed against a state proceeding remains a discretionary remedy, albeit with a considerably limited availability due to *Younger-Samuels* and their progeny.

II. History of Federal Injunctive Relief Against State Court Proceedings

Federal equity jurisdiction was conferred by Congress upon lower federal courts in 1789.[6] The forms of process were to be in accord with the "principles, rules and usages which belong to courts of equity . . . as contradistinguished from courts of common law,"[7] subject to a rulemaking power in the Supreme Court. Equitable jurisdiction of the federal courts was considered to be the same as that of the High Court of Chancery of England in 1789,[8] including all the traditional obstacles to injunctive relief.[9]

The Supreme Court recognized the power of a lower federal court to enjoin state officials from enforcing an unconstitutional state law in 1824.[10] Few such injunctions were issued prior to the 1875 expansion to general federal question jurisdiction in federal courts.[11] In 1888 the Supreme

6. Act of Sept. 24, 1789, ch. 20, § 11, 1 Stat. 78.

7. Act of May 8, 1792, ch. 36, § 2, 1 Stat. 93-94. This formula lasted until law and equity were merged in 1938 by the Federal Rules of Civil Procedure. *See* H. Hart & H. Wechsler, The Federal Courts and the Federal System, 664-65 (2d ed. 1973).

8. Thompson v. Railroad Cos., 73 U.S. (6 Wall.) 134, 137 (1867); Robinson v. Campbell, 16 U.S. (3 Wheat.) 212, 223 (1818).

9. The three most significant obstacles were: 1) equity will not enjoin a criminal prosecution 2) plaintiff must show the threat of irreparable injury 3) remedy at law must be inadequate. *See* Whitten, *Federal Declaratory and Injunctive Interference with State Court Proceedings: The Supreme Court and the Limits of Judicial Discretion*, 53 N. Car. L. Rev. 591, 597-616 (1975).

10. Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 841-60 (1824). *See* Lockwood, Maw & Rosenbery, *The Use of Federal Injunction in Constitutional Litigation*, 43 Harv. L. Rev. 426, 431 (1930).

11. Act of March 3, 1875, ch. 137, § 1, 18 Stat. 470. *See* Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345 (1930).

Court considered the availability of federal court interference with a state criminal proceeding in *In re Sawyer*.[12] It held that the federal courts were without jurisdiction to enjoin a pending state criminal proceeding.[13] Immediately thereafter, the United States moved into a period of great economic expansion. State legislatures responded by enacting criminal laws regulating interstate commerce. Industry turned to the federal courts seeking to enjoin the enforcement of these laws and convinced the Supreme Court to assume an activist posture based on a substantive due process theory.[14]

In a series of cases the railroads challenged the constitutionality of state criminal maximum rate statutes. The Court found the statutes to be violative of due process and enjoined threatened enforcement by state officials.[15] The culmination of this series was *Ex parte Young*.[16] It established two essential foundations for federal injunctive relief against state criminal proceedings. The Court held that a suit in federal court to enjoin state officials did not violate the eleventh amendment's prohibition of suits against states because acts by state officials under an unconstitutional statute stripped them of official authority.[17] The Court also held that federal courts had equity jurisdiction to enjoin threatened state criminal proceedings under an unconstitutional statute.[18] The Court discussed the inadequacy of the legal remedy (raising a defense to the criminal charges in the state proceeding)[19] indicating two underlying principles favoring federal intervention which remain persuasive today: that a party should not be forced to violate a criminal statute to obtain a determination of his legal rights, and that the federal courts should be available to make that determination.[20]

After *Young*, the Court continued to rule on the constitutionality of criminal statutes based on substantive economic due process.[21] There was

12. 124 U.S. 200 (1888).

13. *Id.* at 221.

14. *See* Cook, *History of Rate Determination Under the Process Clauses*, 11 U. CHI. L. REV. 297 (1944).

15. Prout v. Starr, 188 U.S. 537 (1903); Smyth v. Ames, 169 U.S. 466, *modified*, 171 U.S. 361 (1898); Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362 (1894); Chicago, M. & St. P. Ry. v. Minnesota, 134 U.S. 418 (1890).

16. 209 U.S. 123 (1908).

17. *Id.* at 156.

18. *Id.* at 161-62.

19. *Id.* at 165.

20. The decision in *Ex parte Young*, along with the Civil Rights Act of 1871 and federal jurisdiction expansion in 1875, "established the modern framework for federal protection of constitutional rights from state interference." Perez v. Ledesma, 401 U.S. 82, 107 (1971) (Brennan, J., concurring in part and dissenting in part). The immediate congressional response to *Ex parte Young* was not favorable. Congress created three-judge district courts to hear suits for injunctions against state statutes. *See* 28 U.S.C. §§ 1253, 2281, 2284 (1970); Hutcheson, *A Case for Three Judges*, 47 HARV. L. REV. 795 (1934); Note, *The Three-Judge District Court: Scope and Procedure Under Section 2281*, 77 HARV. L. REV. 299 (1963).

21. Hygrade Provision Co. v. Sherman, 266 U.S. 497 (1925); Terrace v.

never a rejection of traditional equitable obstacles to injunctive relief, but the equitable obstacles were either loosely applied or ignored when the Court wished to exercise jurisdiction.

One traditional obstacle is the principle that equity will not enjoin a criminal prosecution. This originated with the English High Court of Chancery's renunciation of its criminal jurisdiction[22] and subsequently was accepted by American courts of equity.[23] The principle often was cited in cases during this period, but exceptions were found for prior subject matter jurisdiction in equity court[24] and protection of plaintiffs' property interests.[25] These cases emasculated the principle's prohibition. The principle is frequently cited in modern opinions, but exceptions are found when courts wish to grant equitable relief.

Other traditional obstacles to injunctive relief are the requirements of irreparable injury and inadequate legal remedy. The decisions of this period discussed these standards, usually combining them in a single requirement of irreparable injury. They were the basis of both denial[26] and exercise of equitable jurisdiction.[27] Both irreparable injury and inadequate legal remedy are highly discretionary standards shaped by the courts' desire to grant equitable relief. The Supreme Court's flexibility in the application of traditional equitable obstacles reflected a desire to protect federal constitutional rights during the period of due process activism and the Court's dissatisfaction with the remedy of raising a defense in the state criminal proceeding. More importantly, however, the Court retained the discretionary power to control the availability of federal intervention in state criminal proceedings. If the Court stringently applied traditional equitable principles, it still could effectively limit the availability of federal relief.

Thompson, 263 U.S. 197 (1923);Hall v. Geiger-Jones Co., 242 U.S. 539 (1917); Truax v. Raich, 239 U.S. 33 (1915); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

22. Whitten, *supra* note 9, at 598.

23. *In re* Sawyer, 124 U.S. 200 (1888). *See* Note, *Injunctions Against Criminal Proceedings*, 14 HARV. L. REV. 293 (1900); *Developments in the Law—Injunctions*, 78 HARV. L. REV. 994, 1024 (1965).

24. *Ex parte* Young, 209 U.S. 123 (1908); Prout v. Starr, 188 U.S. 537 (1903).

25. Hygrade Provision Co. v. Sherman, 266 U.S. 497 (1925); Packard v. Banton, 264 U.S. 140 (1924); Terrace v. Thompson, 263 U.S. 197 (1923); Cavanaugh v. Looney, 248 U.S. 453 (1919).

26. Cavanaugh v. Looney, 248 U.S. 453 (1919); Davis & Farnum Mfg. Co. v. Los Angeles, 189 U.S. 207 (1903). *Compare* Dobbins v. Los Angeles, 195 U.S. 223 (1904). *See also* Fitts v. McGhee, 172 U.S. 516 (1899).

27. Terrace v. Thompson, 263 U.S. 197 (1923); Truax v. Raich, 239 U.S. 33 (1915); *Ex parte* Young, 209 U.S. 123 (1908). In a number of cases the Court assumed jurisdiction without discussion of irreparable injury. Hygrade Provision Co. v. Sherman, 266 U.S. 497 (1925); Packard v. Bunton, 264 U.S. 140 (1924); Hall v. Geiger-Jones Co., 242 U.S. 539 (1917); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911). *See* Note, *Federal Relief Against Threatened State Prosecutions: The Implications of Younger, Lake Carriers and Roe*, 48 N.Y.U.L. REV. 965, 975-79 (1973); Note, *Irreparable Injury in Constitutional Cases*, 46 YALE L.J. 255, 269-72 (1936).

The first indication of a shift in judicial attitude towards limiting the availability of federal intervention came in *Fenner v. Boykin*.[28] Affirming a three judge district court denial of injunctive relief against a state prosecution, the Court stated that federal intervention was barred except when "absolutely necessary for protection of constitutional rights" and "extraordinary circumstances where the danger of irreparable loss is both great and imminent."[29] This language was much more restrictive than that used just three years earlier in *Terrace v. Thompson*[30] where the Court required a "plain, adequate and complete remedy at law . . . as complete, practical and efficient as equity"[31] to bar federal intervention. After the language in *Fenner*, the Court continued to rule on the constitutionality of state statutes either without discussing jurisdiction[32] or by applying pre-*Fenner* standards.[33]

The 1930's brought the Depression and with it the demise of judicial activism based on substantive due process.[34] In suits to enjoin threatened enforcement of allegedly unconstitutional state statutes, the issue became whether the plaintiff established a cause of action within federal equity jurisdiction.[35] A policy of non-interference with threatened state criminal proceedings was established by application of a *Fenner*-type standard for federal intervention. In *Beal v. Missouri Pacific Railroad Corp.*[36] the Court stated that interference with the process of criminal law in state court and the determination of questions of criminal law by courts of federal equity can be justified "only in most exceptional circumstances, and upon clear showing that an injunction is necessary in order to prevent irreparable injury."[37] Thus, the Court continued to use traditional equitable principles, but applied the requirement of irreparable injury so stringently as to preclude federal equity jurisdiction over substantive due process challenges to state criminal statutes regulating business.

During this period, the Court also considered the availability of federal injunctions against the enforcement of state statutes alleged to be unconstitutional restrictions on first amendment rights. It granted injunctive

28. 271 U.S. 240 (1926).

29. *Id.* at 243. *See also* Cline v. Frink Dairy Co., 274 U.S. 445 (1927).

30. 263 U.S. 197 (1923).

31. *Id.* at 214.

32. Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511 (1935); Magnano Co. v. Hamilton, 292 U.S. 40 (1934); State Bd. of Tax Comm'rs v. Jackson, 283 U.S. 527 (1931); Carley & Hamilton, Inc. v. Snook, 281 U.S. 66 (1930); Cudahy Packing Co. v. Hinkle, 278 U.S. 460 (1929); Gulf Fisheries Co. v. MacInerney, 276 U.S. 124 (1928); Interstate Buses Corp. v. Holyoke St. Ry. Co., 273 U.S. 45 (1927).

33. Williams v. Standard Oil, 278 U.S. 235 (1929); Tyson & Brother v. Banton, 273 U.S. 418 (1927).

34. *See* Corwin, *The Passing of Dual Federalism*, 36 VA. L. REV. 1 (1950).

35. Douglas v. City of Jeannette, 319 U.S. 157 (1943). Beal v. Missouri P.R.R., 312 U.S. 45 (1941); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935). *See also* Watson v. Buck, 313 U.S. 387 (1941).

36. 312 U.S. 45 (1941).

37. *Id.* at 50.

relief in a number of challenges,[38] but later seemed to apply *Fenner*-type standards in *Douglas v. City of Jeanette*.[39] The Court stated that federal courts should refuse

> to interfere with or embarass threatened proceedings in state courts save for those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent.[40]

The clear impression was that the protection of first amendment rights did not merit greater availability of federal injunctive relief.[41]

The next forum for the use of the federal injunction against threatened state criminal proceedings came in the desegregation of educational facilities and public accommodations in the South.[42] Although the Court often affirmed the granting of injunctive relief,[43] it seldom discussed the propriety of federal intervention in state proceedings.[44] This illustrates that the Court retained the discretion to apply or to ignore traditional equitable principles according to the strength of its desire to exercise equitable jurisdiction.

It was not until 1966 in *Dombrowski v. Pfister*[45] that the Court again addressed the issue of the availability of federal injunctive relief against state criminal proceedings. The case involved a challenge to a Louisiana "subversive activities" statute on the ground that it was an unconstitutionally overbroad and vague restriction on freedom of speech. The Court held, for the first time, that a federal injunction was available against a pending state criminal prosecution[46] and broadened the availability of injunctions

38. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943). Hague v. C.I.O., 307 U.S. 496 (1939); Grosjean v. American Press Co., 297 U.S. 233 (1936). *See also* Hines v. Davidowitz, 312 U.S. 52 (1941).

39. 319 U.S. 157 (1943).

40. *Id.* at 163.

41. It should be noted that the Court reversed the convictions of the plaintiffs in *Douglas* in another decision issued the same day. Murdock v. Penn., 319 U.S. 105 (1943).

42. One of the consolidated suits in the famous *Brown v. Board of Education* case was to enjoin enforcement of South Carolina constitutional and statutory provisions. 347 U.S. at 486. *See generally* Maraist, *Federal Injunctive Relief Against State Court Proceedings: The Significance of Dombrowski*, 48 TEX. L. REV. 535, 548-52 (1970).

43. Faubus v. United States, 254 F.2d 797 (8th Cir. 1958), *aff'd mem.*, 361 U.S. 197 (1959); Morrison v. Davis, 252 F.2d 102 (5th Cir. 1958), *cert. denied*, 356 U.S. 968 (1958); Bush v. Orleans Parish School Dist., 194 F. Supp. 182 (E.D. La. 1961) (three-judge court), *aff'd mem. sub. nom.*, Gremillion v. United States, 368 U.S. 11 (1961); Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala. 1956) (three-judge court), *aff'd mem.*, 352 U.S. 903 (1956).

44. In a case involving an alleged illegal search and seizure, the Court did discuss the issue and essentially reaffirmed the *Douglas* standards. Steffanelli v. Minard, 343 U.S. 117 (1951).

45. 380 U.S. 479 (1965).

46. The Court maintained that there was no "pending" prosecution because the indictments were not obtained until after the filing of the federal petition. *Id.* at 484 n.2.

against threatened criminal prosecutions. It rejected the assumption that a defense in state court would provide ample protection of first amendment rights because of the "chilling effect" of an overbroad restriction on freedom of speech.[47] The Court apparently determined that sufficient irreparable injury existed to enjoin a pending or threatened criminal prosecution when that prosecution either was based on an overbroad statute or was carried out in bad faith.

The decision in *Dombrowski* was significant in three respects. It directed that an injunction be issued to restrain a pending state criminal proceeding. It afforded the first amendment freedom of expression special protection in federal courts. It also suggested that state courts would "not be as prone as federal courts to vindicate constitutional rights promptly and effectively."[48]

Dombrowski reflected the activist posture of the Court and a willingness to interfere with state criminal law enforcement. The later *Younger-Samuels* decisions and their progeny were the response of a Court with a considerably more restrained philosophy on the prudence of federal interference. Before discussing those decisions, an exploration of the history of federal declaratory relief against state court proceedings is appropriate.

III. History of Federal Declaratory Relief Against State Court Proceedings

The declaratory judgment is a judicial determination, without coercive effect, of the rights and liabilities of the parties to a controversy.[49] Congress granted federal courts the authority to render declaratory judgments in 1934.[50] It was intended to be a mechanism to settle disputes before disruption of the status quo and was based on the assumption that in a civilized society coercion was unnecessary to secure obedience to court decrees.[51] It was also intended to be a discretionary remedy[52] available to challenge criminal statutes.[53] Early cases clearly held that its availability as a remedy was not to be governed by traditional equitable principles.[54] Instead, its

47. *Id.* at 486-89.

48. *Id.* at 499 (Harlan J., dissenting).

49. *See Developments in the Law—Declaratory Judgments 1941-1949*, 62 HARV. L. REV. 787 (1949).

50. Act of June 14, 1934, ch. 512, 48 Stat. 955; 28 U.S.C. §§ 2201-02 (1970). *See generally* Borchard, *The Federal Declaratory Judgment Act*, 21 VA. L. REV. 35 (1934).

51. *See* S. REP. NO. 1005, 73d Cong., 2d Sess. 2-6 (1934); H.R. REP. NO. 1264, 73d Cong., 2d Sess. 2 (1934); *Hearings on H.R. 5623 Before a Subcomm. of the Senate Comm. on the Judiciary*, 70th Cong. 1st Sess. 21, 38-40 (1928); Whitten, *supra* note 9, at 642.

52. *See* S. REP. NO. 1005, *supra* note 51 at 2; Borchard, *supra* note 50, at 49.

53. *See* S. REP. NO. 1005, *supra* note 51 at 3, 6; *Hearings on H.R. 5623, supra* note 51 at 18-19.

54. Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 241 (1937); Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 264 (1933). *Compare* Great Lakes Dredge &

availability is governed by the amorphous standard of sound judicial discretion.[55]

The exercise of judicial discretion has resulted in dismissal of suits seeking declaratory judgments on the constitutionality of non-criminal statutes for a variety of reasons. The Court has denied relief citing restraint in interference with state policies and responsibilities[56] and deference to a pending state proceeding.[57] Where no state proceedings were pending, the Court has sometimes required a specific threat of enforcement to constitute a ripe controversy.[58] It has often repeated the standard in *Maryland Casualty Co. v. Pacific Coal & Oil Co.*[59] for determining the existence of a ripe controversy:

> whether the facts alleged, under all the circumstances, show there is a substantial controversy, between parties having adverse legal interest, of sufficient immediacy and reality to warrant the issuance of declaratory judgment.[60]

The broad discretion afforded federal courts in granting declaratory relief has precluded the development of specific standards governing its availability.

The use of the declaratory judgment independent of an injunction to challenge state criminal statutes was a form of relief apparently seldom sought by federal plaintiffs or discussed by the Supreme Court until recently.[61] In 1968 the Court addressed the issue in two decisions dealing with a challenge to a New York election pamphlet control statute. In *Zwickler v. Koota*[62] the Court established two principles. One was that federal courts have jurisdiction to issue declaratory relief when the plaintiff claims a state statute is an unconstitutionally overbroad restriction on

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Dock Co. v. Huffman, 319 U.S. 293 (1943); Brillhart v. Excess Ins. Co. of America, 316 U.S. 491 (1942).

55. *See* Borchard, *Discretion to Refuse Jurisdiction of Actions for Declaratory Judgments*, 26 MINN. L. REV. 677 (1942). The standard of the Uniform Declaratory Judgment Act provides:

> [t]he court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or issued, would not terminate the uncertainty or controversy giving rise to the proceeding.

UNIFORM DECLARATORY JUDGMENT ACT § 6.

56. Public Serv. Comm'n v. Wycoff Co., 344 U.S. 237, 247 (1952); Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943).

57. Brillhart v. Excess Ins. Co. of America, 316 U.S. 491, 495 (1942). *See Developments in the Law*, *supra* note 49, at 814-15.

58. Poe v. Ullman, 367 U.S. 497 (1961); United Public Workers of America v. Mitchell, 330 U.S. 75 (1947); *Ex parte* La Prade, 289 U.S. 444 (1933). The requirement has been loosened in recent years. Epperson v. Arkansas, 393 U.S. 97 (1968); Gardner v. Toilet Goods Ass'n, 387 U.S. 167 (1967); Abbott Laboratories v. Gardner, 387 U.S. 136 (1967).

59. 312 U.S. 270 (1941).

60. *Id.* at 273.

61. *But see* Borchard, *Challenging "Penal" Statutes by Declaratory Action*, 52 YALE L.J. 445 (1943).

62. 389 U.S. 241 (1967).

freedom of speech. The other was that a request for declaratory relief should be considered independently of the propriety of injunctive relief.

The Court's sanction of independent consideration of declaratory relief established the declaratory judgment as a remedy against unconstitutional state statutes that is distinct from and more available than the injunction. However, it should be noted that the Court denied declaratory relief in the second *Zwickler* decision[63] upon finding the lack of a ripe controversy. The Court cited the standard of *Maryland Casualty*,[64] but failed to establish further guidelines for determining the existence of a ripe controversy. The Court thus retained the discretionary power to deny declaratory relief while indicating an activist policy towards its availability.

In the *Zwickler* cases a foundation was laid by the Court for expansion of the use of the declaratory judgment against the enforcement of state criminal statutes. The *Younger-Samuels* decisions, by a later Court with a more restrained view toward its judicial function, will be the next subject of discussion.

IV. "OUR FEDERALISM"—THE *YOUNGER-SAMUELS* DECISIONS

In 1971, the Supreme Court handed down a series of decisions[65] indicating a retreat from the activist philosophy of *Dombrowski* in regard to federal interference with state criminal proceedings. Although the cases left numerous issues unresolved, they established a policy of reliance on and respect for the state in protection of individual constitutional rights.

In *Younger v. Harris*[66] four plaintiffs sought to enjoin the pending prosecution of one for violation of the California Criminal Syndicalism Act[67] on the ground that it was an unconstitutionally overbroad and vague restriction on freedom of expression. The Supreme Court dismissed three plaintiffs who failed to allege either threatened or pending prosecution for lack of a live controversy with the state.[68] It then reversed the district court's grant of injunctive relief and held that federal courts should not enjoin pending state criminal proceedings absent a showing of irreparable injury.[69] It based the decision on "Our Federalism," a "longstanding public policy against federal court interference with state court proceedings"[70] derived from principles of equity,[71] comity,[72] and federalism.[73]

63. Golden v. Zwickler, 394 U.S. 103 (1969).

64. 312 U.S. 270 (1941). *See* note 60 and accompanying text *supra*.

65. Younger v. Harris, 401 U.S. 37 (1971); 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).

66. 401 U.S. 37 (1971).

67. CAL. PENAL CODE §§ 11400, 11401 (West 1970).

68. 401 U.S. 37, 41-42 (1971).

69. *Id.* at 53-54.

70. *Id.* at 43.

71. [T]he basic doctrine of equity jurisprudence [is] that courts of equity should not act to restrain a criminal prosecution, when the moving

Younger was significant in several respects. First, it set standards for determining the existence of the necessary irreparable injury for federal injunctive relief against pending state criminal proceedings, *i.e.*, prosecutions brought in bad faith and harassment, prosecutions brought on state law that is "flagrantly and patently violative of express constitutional prohibitions," and other unspecified unusual circumstances.[74] The standards are highly discretionary, but the Court clearly established a restrained approach to federal intervention. Second, it approved the holding in *Dombrowski* as an example of bad faith prosecution. However, the Court expressly rejected the contention that *Dombrowski* provided authority for injunctive relief against a good faith attempt to enforce a state statute upon a showing that the statute was an unconstitutionally overbroad or vague restriction on the freedom of speech.[75] This effectively limited *Dombrowski* as a vehicle for expansion of federal intervention in pending criminal proceedings. Third, it implicitly abandoned the rule of *In re Sawyer*[76] which absolutely banned federal injunctive relief against pending state proceedings. Although the *Dombrowski* decision did in fact enjoin a pending proceeding, the Court maintained that because the original federal complaint preceded state indictments, there was no interference with a pending proceeding. The *Younger* standards recognized the possibility of circumstances in which federal interference in pending state criminal proceedings would be proper.

In *Samuels v. Mackell*[77] the Court considered the availability of a declaratory judgment on the constitutionality of a state statute being enforced in a pending criminal proceeding. It held that the *Younger* standards for

party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief.

Id. at 43-44. *See* notes 22-25 and accompanying text *supra*.

72. Comity in general terms is the respect of one judicial system for the function of another judicial system. In the context of *Younger-Samuels*, it is the respect of federal courts for the proper jurisdiction of state courts and a recognition that state courts are obligated and entrusted to protect federal constitutional rights.

73. Federalism is our structure of independent national and state governments. In *Younger* the Court recognized

> [the] fact that the entire country is made up of a Union of separate State governments, 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.... [Federalism] is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

401 U.S. at 44.

74. 401 U.S. at 53-54.

75. *Id.* at 53.

76. 124 U.S. 200 (1888). *See* notes 12-13 and accompanying text *supra*.

77. 401 U.S. 66 (1971).

injunctive relief were equally applicable to declaratory relief.[78] The holding was based on the Court's finding that "ordinarily a declaratory judgment will result in precisely the same interference with and disruption of state proceedings that the long standing policy limiting injunctions was designed to avoid."[79] That interference would result either from the federal court's enforcement of the declaratory judgment by granting an injunction as further relief to "protect and effectuate" the judgment[80] or from the state court's acceptance of the *res judicata* effect of the federal judgment.[81]

The *Samuels* approach contravenes legislative intent and judicial interpretation establishing the declaratory judgment as a unique statutory remedy not governed by traditional equitable principles.[82] However, the consideration of the practical effect of the relief granted is persuasive. The theory of the declaratory judgment is that it provides a milder remedy than the injunction. If its effect is the same, there is no justification for greater availability of declaratory relief. The premise of *Younger* that federal courts should exercise restraint in this area dictated the extension of the *Younger* standards to declaratory judgments.

The Court in *Samuels* did recognize the possibility of "unusual circumstances" where a strong claim for federal relief could be better served by a declaratory judgment than by an injunction which might be "particularly intrusive or offensive."[83] This recognition should not increase the availability of declaratory relief beyond the standards of *Younger-Samuels*. It only suggests that when federal intervention is appropriate under *Younger-Samuels*, a declaratory judgment might be a less offensive remedy than an injunction while accomplishing the same result. Nevertheless, the Court's language provides some basis for arguing that declaratory relief should be more available than injunctive relief against pending state criminal proceedings.

The *Younger-Samuels* decisions provide a general rule that injunctive and declaratory relief is not available against pending state criminal proceedings absent a showing of irreparable injury. Both opinions were phrased in prohibitory terms and offer little guidance for determining when the necessary irreparable injury is present. As discussed above,

78. *Id.* at 73.
79. *Id.* at 53-54.
80. 28 U.S.C. § 2202 (1970).
81. The *res judicata* effect of a federal judgment extends only to the parties to it. United States *ex rel.* Lawrence v. Woods, 432 F.2d 1072, 1075-76 (7th Cir. 1970), *cert. denied*, 402 U.S. 983 (1971). However it would probably be futile for a state to continue prosecution. Commonwealth v. Masskow, 362 Mass. 662, 290 N.E.2d 154, 157 (1972). *But see* People v. Glass, 353 N.E.2d 214 (1976). A convicted party could, after exhausting state remedies, sue for a writ of habeas corpus in federal court. Vuitch v. Hardy, 473 F.2d 1370 (4th Cir. 1973), *cert. denied*, 414 U.S. 824 (1973); Harling v. Dept. of Health and Social Services, 323 F. Supp. 899 (E.D. Wis. 1971).
82. *See* notes 49-55 and accompanying text *supra*.
83. 401 U.S. 66, 73 (1971).

Younger attempted to set standards in recognizing three exceptions when federal intervention would be appropriate.

The first exception was upon a showing of bad faith and harassment in the state prosecution. In *Perez v. Ledesma*[84] the Court's example of bad faith and harassment was "prosecutions undertaken by state officials in bad faith without hope of obtaining valid convictions . . . ." Two federal courts have used this exception to enjoin pending state criminal proceedings. In *Krahm v. Graham*[85] the Ninth Circuit found bad faith in multiple prosecutions under an anti-obscenity statute. The defendant had successfully defended in a similar prosecution but the state persisted in filing additional charges. The court held that the case fit within *Younger's* strictly construed version of *Dombrowski*. In contrast, the Seventh Circuit in *Grandco Corp. v. Rochford*[86] refused to find bad faith in multiple prosecutions when previous prosecutions resulted in successful convictions. The distinction was that the previous convictions in *Grandco* gave the prosecutors reason to expect successful future convictions.

Another example of bad faith prosecutions within the *Younger-Samuels* exception is *International Society for Krishna Consciousness, Inc. v. Conlisk*.[87] An Illinois federal district court found bad faith and harassment in police misconduct and multiple prosecutions under a municipal ordinance constitutionally inapplicable to the plaintiffs' religious activities. These cases indicate that multiple prosecutions under circumstances in which authorities cannot reasonably expect valid convictions constitute bad faith and justify federal intervention.

The question remains whether a single prosecution brought in bad faith justifies federal intervention. The basis of the *Younger* decision was that a defense raised against a single criminal prosecution in state court adequately protected federal constitutional rights, and that the prosecution did not constitute irreparable injury. Therefore, it could be argued that *Younger* requires multiple prosecutions as a prerequisite to federal intervention. However, it is doubtful that the Court intended such an interpretation. Implicit in its finding that the *Younger* plaintiff did not show bad faith in his single state prosecution is the belief that if he had, federal intervention would have been appropriate. It is likely that federal relief against a single bad faith prosecution is available, but without multiple prosecutions the element of bad faith is more difficult to demonstrate.

In attempting to prove bad faith, plaintiffs commonly allege police and

84. 401 U.S. 82, 85 (1971). The Court reversed a district court judgment ordering the suppression and return of seized material being held as evidence in a pending state criminal proceeding. Using the *Samuels* practical effect approach and finding that such an order would halt the state proceedings, the Court applied the *Younger* standards for federal intervention.

85. 461 F.2d 703 (9th Cir. 1972).

86. 536 F.2d 197 (7th Cir. 1976).

87. 374 F. Supp. 1010 (N.D. Ill. 1973).

prosecutorial misconduct. The illegal search and seizures and the resulting threats of the prosecutor in *Dombrowski* were accepted in *Younger* as an example of bad faith. It appears, however, that the Court has since directed federal courts to look with restraint upon allegations of bad faith based upon such misconduct. In *Hicks v. Miranda*[88] the Court rejected a district court finding of bad faith in police seizures as "vague and conclusory." The Seventh Circuit cited *Hicks* in *Grandco Corp. v. Rochford*[89] and found illegal searches and seizures to be isolated and remediable in state court. Thus, in order to establish police or prosecutorial misconduct, it may be necessary that the activity either rise to the level of that in *Dombrowski*,[90] or take place in conjunction with multiple prosecutions.

The second exception recognized in *Younger* was that federal injunctive relief would be appropriate if the state prosecution was based on a statute that was "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever any effort might be made to apply it."[91] It is difficult to imagine a prosecution under such a statute that would not also constitute bad faith and harassment, *i.e.*, prosecution without hope of obtaining a valid conviction. This language from an earlier case[92] may have been quoted to reinforce the history behind the Court's holding. However, this exception could be independently significant in a suit to enjoin a single prosecution by overcoming the inference that multiple prosecutions are necessary to show bad faith. No federal court has specifically applied this exception. In *Callahan v. Sanders*[93] an Alabama federal district court enjoined the pending prosecution of traffic cases under a statutory procedure previously held to be unconstitutional. The court issued the injunction without discussion of *Younger* principles, but the previous judgment of unconstitutionality could be considered to have made the statutory procedure "flagrantly and patently violative of express constitutional provisions." This case is an unusual example of the exception because the unconstitutional statute provided the *procedure* for prosecution and not the substantive basis for prosecution.

The final exception recognized in *Younger* was that "other unusual circumstances calling for federal intervention might also arise, but there is no point in our attempting now to specify what they might be."[94] This exception enabled the Court to retain discretionary power to increase the

88. 422 U.S. 332, 350 (1975).

89. 536 F.2d 197 (7th Cir. 1976). *See* Eagle Books, Inc. v. Reinhard, 418 F. Supp. 345 (N.D. Ill. 1976).

90. 380 U.S. 479, 487-88 (1965). *See* Younger v. Harris, 401 U.S. 37, 48 (1971).

91. 401 U.S. at 53-54 (1971).

92. Watson v. Buck, 313 U.S. 387, 402 (1941).

93. 339 F. Supp. 814 (M.D. Ala. 1971); Bennett v. Cottingham, 290 F. Supp. 759 (N.D. Ala. 1968) (three judge court), *aff'd*, 393 U.S. 317 (1969). *See also* Hulett v. Julian, 250 F. Supp. 208 (M.D. Ala. 1966) (three judge court).

94. 401 U.S. at 54 (1971).

availability of relief in the future by finding additional "unusual circumstances." In *Kugler v. Helfant*[95] a plaintiff sought to enjoin pending state criminal proceedings based on the "unusual circumstances" exception. A former New Jersey municipal court judge claimed he could not receive a fair trial in a state court system administered by the New Jersey Supreme Court because members of that court had coerced his previous grand jury testimony. The Supreme Court denied relief after examination of the facts, but reaffirmed the "unusual circumstances" exception and suggested that bias in the state tribunal would fit within the exception.[96]

At present, the three exceptions recognized in *Younger* do not make federal relief against pending state criminal proceedings readily available. However, the exceptions are broad enough to provide a vehicle for expansion of future availability. The initiative for such an expansion of federal relief will have to come from the Supreme Court. Lower federal courts have strictly followed *Younger* and seldom issue injunctive or declaratory relief based on one of the exceptions. Aside from the cases discussed above, there has been only one instance of federal intervention. In *Gilliard v. Carson*[97] a Florida federal district court enjoined pending municipal court prosecutions in which indigent defendants facing possible prison terms were denied the right to counsel. The court stated that the threat of deprivation of liberty was sufficient irreparable injury to enjoin a pending state criminal proceeding. As most criminal defendants are threatened with deprivation of liberty, the court's view seems to conflict with the *Younger* principle that a single defense against criminal charges is not irreparable injury. Two factors, however, distinguish *Gilliard* from *Younger*. First, *Gilliard* involved the protection of the procedural due process right to counsel while *Younger* involved a substantive constitutional attack on a criminal statute. Second, the purpose of the *Gilliard* injunction was not to stop a pending state proceeding, but to force the prosecutor to respect the indigent defendants' right to counsel in those proceedings.

Considering these differences, it is unlikely that *Gilliard* will establish the threat of deprivation of liberty as an additional exception to *Younger*. It could be argued, however, that in view of *Gilliard* and *Callahan*[98] injunctive relief is available without application of a *Younger* exception when the complaint is that a procedural defect in the state judicial system makes the pending proceeding unconstitutional. In such circumstances, federal interference with the independent function of the state courts is less offensive than in a substantive attack on a state criminal statute. The effect of the injunction is not to terminate the state proceeding, but to insure that the proceeding is conducted in a manner which protects the defendant's right to procedural due process.

95. 421 U.S. 117 (1975).
96. *Id.* at 124-25 n.4.
97. 348 F. Supp. 757 (M.D. Fla. 1972).
98. 339 F. Supp 814 (M.D. Ala. 1971).

One other vehicle for possible expansion of the availability of federal relief is the use of the class action. The plaintiffs in the class action, who would be subjected to multiple prosecutions in state courts, could argue that the collective burden of multiple defenses constitutes irreparable injury under the *Younger* "unusual circumstances" exception. In the famous abortion case of *Roe v. Wade*[99] the Court noted that a class action might effect the application of *Younger-Samuels* principles, but found that the plaintiff's complaint failed to assert representation of a class. Since *Roe* no federal court has ruled on the effect of a class action suit. It is doubtful that a class action to enjoin pending criminal prosecutions will become an additional exception to the *Younger-Samuels* rule of nonintervention. The Court's commitment to the principles of *Younger-Samuels* is too strong to be overcome by a plaintiff simply seeking relief on behalf of all persons subject to similar prosecutions. The existence of a class action could, however, be one factor weighing in favor of federal intervention in specific cases which might otherwise present a strong claim for federal relief.

The *Younger-Samuels* decisions[100] were an expression of policy on the subject of federal interference with state court proceedings by a Supreme Court more inclined toward judicial restraint than its predecessor. It specifically set standards applicable only to federal intervention in pending state criminal proceedings, but in so doing established a policy, "Our Federalism," with the potential for a broad impact on the relationship between state and federal courts. The decisions left a number of questions unresolved: the application of the Anti-Injunction Statute, the availability of relief against *threatened* criminal proceedings, the availability of relief against pending and threatened civil proceedings, and the availability of relief against administrative proceedings. The efforts of the Court to answer these questions and the implications of "Our Federalism" on those answers will be discussed in the following sections.

V. THE FEDERAL ANTI-INJUNCTION STATUTE

The Federal Anti-Injunction Statute has existed, in some form, since 1793.[101] Its original legislative history is unclear, but the Court has construed it to represent a policy of "preventing needless friction between state and federal courts."[102] In *Younger* it was cited as a source of the "Our

99. 410 U.S. 113, 127 n.7 (1973).

100. The Court remanded two of the cases with similar factual patterns as *Younger* for consideration in light of *Younger*. Dyson v. Stein, 401 U.S. 200 (1971); Byrne v. Karalexis, 401 U.S. 216 (1971). In the remaining case, the Court reversed the district court's grant of injunctive relief for lack of irreparable injury. Boyle v. Landry, 401 U.S. 77 (1971).

101. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334.

102. Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 309 U.S. 4, 9 (1940). *See* Durfee & Sloss, *Federal Injunctions Against Proceedings in State Courts: The Life History of a Statute*, 30 MICH. L. REV. 1145 (1932). *Compare* Note, *Federal Court Stays of State Court Proceedings: A Reexamination of Original Congressional Intent*, 38 U. CHI. L. REV. 612 (1971).

Federalism" doctrine.[103] The statute's actual effectiveness as a bar to injunctive relief has been continually diminished by legislative and judicial exceptions.[104] An attempt by the Court to strengthen the statute in *Toucey v. New York Life Insurance Co.*[105] was rejected when Congress tried to restore the statute to its pre-*Toucey* status in the 1948 revision of the Judicial Code.[106] That version remains with us today and provides:

> 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.[107]

The statute prohibits a federal court from enjoining pending state court proceedings,[108] subject to exceptions. By its express terms, the statute does not apply to forms of relief other than injunctions or to injunctions against *threatened* state proceedings.[109]

In *Mitchum v. Foster*[110] the Court held that suits for injunctive relief under the Civil Rights Acts of 1871[111] (hereinafter referred to as "section 1983 suits") were "expressly authorized by Act of Congress" and therefore within the exception to the Anti-Injunction Statute. Almost all suits for injunctive relief against pending state criminal proceedings are section 1983 suits. Thus, the decision effectively eliminated the statute as a barrier to injunctive relief against pending state criminal proceedings.

In *Mitchum* the Court refused to apply the Anti-Injunction Statute to section 1983 suits and thereby place a near absolute prohibition on federal injunctions against pending state criminal proceedings. That refusal implicitly recognized that there are circumstances when federal intervention is appropriate. The Court thus retained the power to grant injunctive relief upon a finding of irreparable injury in accordance with the *Younger* standards. This was a departure from the absolute ban on federal intervention imposed from *In re Sawyer*[112] until *Dombrowski*[113] and reflected in the policy of the Anti-Injunction Statute. Although the present Court shows no

103. In a peculiar display of judicial reasoning, Justice Black cited the Anti-Injunction Statute as a basis of the policy of "Our Federalism", then reserved consideration of whether the statute was applicable to the case. Younger v. Harris, 401 U.S. 37, 54 (1971).

104. *See* Durfee & Sloss, *supra*, note 102 at 1145; Mitchum v. Foster, 407 U.S. 225, 233-36 (1972). *See* note 180 *infra*.

105. 314 U.S. 118 (1941).

106. 28 U.S.C. § 2283 (1970) (reviser's note).

107. 28 U.S.C. § 2283 (1970).

108. Mitchum v. Foster, 407 U.S. 225, 228-29 (1972).

109. *See* Whitten, *Federal Declaratory and Injunctive Interference with State Court Proceedings: The Supreme Court and the Limits of Judicial Discretion*, 53 N. CAR. L. REV. 591, 639-42, 672-75 (1975).

110. 407 U.S. 225 (1972).

111. Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13 (codified at 42 U.S.C. § 1983 (1970)). See note 152, *infra*.

112. 124 U.S. 200 (1888).

113. 380 U.S. 479 (1965).

inclination to look favorably upon federal injunctions against pending state criminal proceedings and continually emphasizes respect for the functions of the state courts, *Younger* and *Mitchum* have established a discretionary power in the federal courts to grant such injunctive relief.

The Anti-Injunction Statute remains a potential obstacle to federal injunctive relief against pending state *civil* proceedings. *Mitchum* exempted only section 1983 suits from the prohibition of the statute. A suit for federal intervention not based on section 1983[114] is still prohibited unless it falls within one of the express exceptions in that statute or within one of the numerous other statutory or judicially recognized exceptions.[115] Thus, the Anti-Injunction Statute maintains some measure of vitality in regard to injunctive relief against pending state civil proceedings.

VI. Federal Injunctive Relief Against Threatened State Criminal Proceedings

As discussed earlier, the Court in the *Younger-Samuels* decisions expressed "no view about the circumstances under which federal courts may act when there is no prosecution pending in state courts at the time the federal proceeding is begun."[116] This was surprising in view of the fact that cases cited by the Court as the foundation of "Our Federalism" involved threatened criminal proceedings.[117] Historically, relief against pending criminal proceedings had been absolutely barred.[118] Nevertheless, the Court clearly left open the issue of availability of injunctive and declaratory relief against threatened criminal prosecutions.

The first indication of the Court's resolution of this issue came in *Lake Carriers' Association v. MacMullan*.[119] The Court withheld declaratory relief against threatened proceedings on the grounds of abstention,[120] but expressed the view that the *Younger-Samuels* decisions were

114. The basis of such a suit for injunctive relief would presumably be either a combination of the equity and federal question jurisdiction of federal courts or some arguable statutory authority not yet recognized by the Court. Regardless of the basis for the suit, injunctive relief would be barred by the Anti-Injunction Statute unless it was within a statutory or judicially recognized exception to the statute.

115. *See* note 180 *infra*.

116. Younger v. Harris, 401 U.S. 37, 41 (1971).

117. Douglas v. City of Jeannette, 319 U.S. 157 (1943); Watson v. Buck, 313 U.S. 387 (1941); Beal v. Missouri P.R.R. Co., 312 U.S. 45 (1941); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); Fenner v. Boykin, 271 U.S. 240 (1926); *Ex parte* Young, 209 U.S. 123 (1908).

118. Dombrowski v. Pfister, 380 U.S. 479 (1965); *Ex parte* Young, 209 U.S. 123 (1908); *In re* Sawyer, 124 U.S. 200 (1888).

119. 406 U.S. 498 (1972).

120. The abstention doctrine of Railroad Comm'n v. Pullman, 312 U.S. 496 (1941), is sometimes confused with *Younger-Samuels* standards. Abstention dictates that a federal court should delay ruling on a constitutional issue until the parties resolve a state law question in state court. It is appropriate only when: the court is faced with a constitutional issue and state law issue; the decision on state law may resolve the case; and the state law is unclear. *See* Field, *Abstention in Constitutional Cases: The Scope of the Pullman Abstention Doctrine*, 122 U. PA. L. REV. 1071 (1974).

> premised on considerations of equity practice and comity in our federal system that have little force in the absence of a pending state proceeding . . . . [The] exercise of federal court jurisdiction ordinarily is appropriate if the conditions for declaratory or injunctive relief are met.[121]

These words forecast the decisions in *Steffel v. Thompson*[122] and *Doran v. Salem Inn, Inc.*[123] In *Steffel* the Court held that the *Younger-Samuels* standards did not govern the availability of declaratory relief against threatened criminal proceedings:

> [F]ederal declaratory relief is not precluded when no state prosecution is pending and a federal plaintiff demonstrates a genuine threat of enforcement of a disputed state criminal statute, whether an attack is made on the constitutionality of the statute on its face or as applied.[124]

Although *Steffel* elaborately distinguished the declaratory judgment and injunction as distinct remedies,[125] *Doran* held that the *Younger-Samuels* standards also did not govern the availability of preliminary injunctive relief against threatened criminal proceedings.[126] In accordance with traditional equitable standards, the Court affirmed the issuance of a preliminary injunction to protect plaintiff's interest during a suit for declaratory relief. The Court did not specifically hold that the *Younger-Samuels* standards do not apply to permanent injunctive relief against threatened criminal prosecutions and did refer to the injunction as "stronger" relief than a declaratory judgment.[127] Thus the argument may be made that the *Younger-Samuels* standards should apply to permanent injunctive relief against threatened criminal prosecutions. However, the Court has continually recognized that "the practical effect of the two forms of relief would be virtually identical,"[128] and the logical conclusion, buttressed by *Doran*, is that if the principles of "Our Federalism" and standards of *Younger-Samuels* do not apply to declaratory relief against a threatened criminal prosecution, they also should not apply to injunctive relief.

In *Maynard v. Wooley*[129] the New Hampshire federal district court apparently accepted this conclusion without discussion of the issue. It cited *Steffel* and *Doran* in issuing a permanent injunction against a threatened criminal prosecution under a state statute prohibiting the covering of the words "Live Free or Die" on automobile license plates.

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121. 406 U.S. at 509.
122. 415 U.S. 452 (1974).
123. 422 U.S. 922 (1975).
124. 415 U.S. 452, 475 (1974).
125. *Id.* at 466-73.
126. 422 U.S. 922 (1975).
127. *Id.*
128. Samuels v. Mackell, 401 U.S. 66, 73 (1971). *See also* Doran v. Salem Inn, Inc., 422 U.S. 922, 931 (1975).
129. 406 F. Supp. 1381 (D.N.H. 1976) (three judge court).

The use of the threatened/pending distinction to limit the availability of federal intervention has been justified on a number of grounds. One is the belief that injunctive or declaratory relief against threatened proceedings is less of an intrusion into the authority of a state criminal justice system than such relief against pending proceedings. In *Steffel*, the Court said:

> [w]hen no state criminal proceeding is pending at the time the federal complaint is filed, federal intervention does not result in duplicative legal proceedings or the disruption of the state criminal justice system; nor can federal intervention in that circumstance be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles.[130]

Practically, it is likely that the degree of disruption to the state criminal justice system would not vary greatly merely because the process has passed from the threatened to the pending stage. In most cases, the difference between a threatened proceeding and a pending proceeding is that the prosecutor has filed charges—a significant event for the accused, but a relatively simple step in criminal procedure. It would be unusual if a federal court were asked to enjoin a pending proceeding which had progressed beyond the initial step of filing charges. Thus, the disruption would not be to a state court proceeding, but to the state law enforcement system: the police and the local prosecutors. The disruption would be the same whether the police and prosecutors are enjoined from filing charges against a particular person or taking a previously charged person to trial. In each instance, they are forbidden to enforce the state criminal law.

A second justification offered for the threatened/pending distinction is the recognition of "the paramount role Congress has assigned to the federal courts to protect constitutional rights"[131] under the Civil Rights Act. The Supreme Court is the final authority on constitutional questions, but state and federal courts are equally obligated to protect constitutional rights. If state courts provide that protection, then the availability of state injunctive and declaratory relief plus the respect for the state criminal justice system in "Our Federalism" should emphasize federal restraint in the area of threatened proceedings, not federal intervention.[132]

Implicit in the refusal to place *Younger-Samuels* standards on the availability of federal intervention against threatened proceedings is the belief that the states do not afford adequate protection of constitutional rights. Even if true, this belief should be tempered by the "Our Federalism" doctrine to provide standards requiring a demonstration of inadequate state protection before federal intervention. Instead, the standards of *Steffel* and *Doran* seem to be the traditional requirements for declaratory

130. 415 U.S. 452, 462 (1974).

131. Perez v. Ledesma, 401 U.S. 82, 104 (1971) (separate opinion of Brennan, J.).

132. Steffel v. Thompson, 415 U.S. 452, 472 (1974).

and injunctive relief.[133] These standards give federal courts a largely discretionary power to intervene in this sensitive area.

However deficient traditional equitable principles may be in determining when federal intervention should be available, they do provide the best justification for the threatened/pending distinction. The threatened party is without an adequate legal remedy because there is no legal proceeding. The party is without a forum in which to claim a violation of his constitutional rights. This calls for some form of declaratory or injunctive relief, either federal or state. The availability of federal relief should be governed by weighing the necessity for federal court protection of constitutional rights against the principles of respect for the function of state courts in "Our Federalism." In *Steffel* and *Doran* the Court placed more weight on federal protection of constitutional rights.

The application of the threatened/pending distinction raises a number of other problems. One problem is deciding when the federal court should determine if state court proceedings are pending. From *In re Sawyer*[134] through *Steffel* the point of determination seemed to be the date on which the federal complaint was filed. The first modification of this view occurred in *Hicks v. Miranda*.[135] The Court held that when state criminal proceedings are begun against the federal plaintiff after the federal complaint is filed but "before any proceedings of substance on the merits have taken place in federal courts," the principles of *Younger v. Harris* should apply.[136] This placed the point of determination sometime after the suit was filed in federal court, although the Court offered no definition of "proceedings of substance on the merits."[137]

The application of this rule imposes a major limitation on the availability of federal intervention against threatened state criminal proceedings under *Steffel* and *Doran*. The state prosecutor may change the status of the federal plaintiff from threatened with prosecution to subject to a pending prosecution by filing criminal charges in state court after he receives service of the federal complaint. The federal court would be forced to dismiss the complaint under *Younger-Samuels* principles of non-interfer-

133. *See* notes 142-49 and accompanying text *infra*.

134. 124 U.S. 200 (1888).

135. 422 U.S. 332 (1975). *See* Modern Social Educ., Inc. v. Preller, 353 F. Supp. 173 (D. Md. 1973).

136. *Id.* at 349. The actual time sequence in the case was:
Nov. 29—petition for temporary restraining order in federal court,
Dec. 28—denial of request for temporary restraining order,
Jan. 8—convening of three judge district court,
Jan. 14—service of federal complaint,
Jan. 15—charges brought in state court.

137. The Court adopted a similar view one week later in Doran v. Salem Inn, Inc., 422 U.S. 922, 929 (1975). It found a state prosecution initiated one day after service of the federal complaint to be a pending prosecution because "the federal litigation was in an embryonic stage and no contested matter had been decided."

ence with pending state criminal proceedings. The result is a de facto power in the state prosecutor to remove to state court an action brought in federal court by a threatened party.

The dissent in *Hicks*[138] argued that the rule "trivializes" *Steffel*. Actually, it gives the state prosecutor the power to deny federal jurisdiction, but insures that the threatened party will have an opportunity to raise his claim. The fact that the opportunity will be in the form of a defense to a criminal charge in state court is merely in accordance with the principles in "Our Federalism" of respect for the functions of state courts. The decision maintains the availability of federal relief if no charges are filed or the *Younger-Samuels* standards of irreparable injury are met.

Another problem arising from the threatened/pending distinction occurs when a party subject to a pending criminal prosecution joins with a threatened party to seek relief in federal court.[139] The Court faced this situation in *Doran* and stated that "each of the [individual petitioners] should be placed in the position required by [*Younger-Samuels* and *Steffel*] as if that [petitioner] stood along."[140] It dismissed the party subject to a pending prosecution on *Younger* grounds and affirmed injunctive relief for the threatened parties.

Although the rule in *Doran* seems clear, its application is subject to the power under *Hicks*[141] of the state prosecutor to change the status of the threatened party to a party facing pending prosecution. The state prosecutor could file charges against all federal plaintiffs and force the federal court to deny relief under *Younger-Samuels* standards. The originally threatened party would then have a forum in state court to litigate his constitutional claim.

Assuming *Steffel* and *Doran* effectively prevent the application of *Younger-Samuels* standards, and the state prosecutor does not respond to the federal complaint by filing criminal charges, the issue becomes what standards remain to govern the availability of injunctive and declaratory relief against threatened state proceedings. *Steffel* held that "federal declaratory relief is not precluded when . . . a federal plaintiff demonstrates a genuine threat of enforcement of a disputed state criminal statute."[142] The

138. *Id.* at 353.

139. The existence of a pending prosecution against a party not involved in the federal suit would also raise problems due to the possible effect of a federal decision on the state proceeding. However, it is likely that the interests of the federal plaintiff threatened with prosecution compel the availability of federal relief. *See* Note, *Federal Relief Against Threatened State Prosecutions: The Implications of Younger, Lake Carriers and Roe*, 48 N.Y.U.L. REV. 965, 980-82 (1973).

140. 422 U.S. 922, 929 (1975).

141. 422 U.S. 922 (1975). The rule in *Hicks*, issued just one week before *Doran*, seems to be absolute. However, the Court noted that the threatened party had a "substantial stake in the state proceeding" and the interest of the threatened parties with the state defendants were "intertwined". *Id.* at 348.

142. 415 U.S. 452, 475 (1974).

Court made no attempt to further specify the standards for granting declaratory relief. In so doing, it impliedly accepted the pre-*Younger-Samuels* standard of sound judicial discretion.[143]

It is likely that the *Maryland Casualty*[144] test of "substantial controversy" will continue to be cited as the basis for determining when declaratory relief is appropriate. It also appears that the Court has accepted pre-*Younger-Samuels* standards for determining when injunctive relief is available against threatened state criminal proceedings. In *Doran*, the Court held that preliminary injunctive relief was not subject to *Younger-Samuels* standards and stated that "a plaintiff may challenge the constitutionality of the state statute in federal court, assuming he can satisfy the requirements for federal jurisdiction."[145] The "requirements for federal jurisdiction" were not specified, but one may reasonably conclude that the Court was referring to the traditional equitable prerequisites for preliminary relief, *i.e.*, irreparable injury and likelihood of success on the merits.[146]

If *Doran* is extended to permanent injunctive relief, it would follow that the "requirements for federal jurisdiction" should be the same traditional equitable prerequisites.[147] Of course, the traditional equitable principle of irreparable injury is much broader and more likely to be found in the discretion of a court than the limited *Younger-Samuels* concept of irreparable injury.[148]

The decisions in *Steffel* and *Doran* appear to make declaratory and injunctive relief against threatened state criminal proceedings available under traditional discretionary standards, but it would probably be a mistake to conclude that these remedies are now readily available. The standards of *Younger-Samuels* may not apply, but the impact of "Our Federalism" should remain a restraining influence on lower federal courts. Additionally, *Steffel* and *Doran* expressly dealt only with the *Younger-Samuels* decisions. It is arguable that earlier decisions[149] requiring restraint in relief against threatened criminal proceedings may someday be resurrected to

143. *See* notes 54-60 and accompanying text *supra*. Justice Brennan summarized the standard for granting declaratory relief against threatened criminal prosecution as

> [o]rdinarily a declaratory judgment will be appropriate if the case-or-controversy requirements of Article III are met, if the narrow special factors warranting federal abstention are absent, and if the declaration will serve a useful purpose in resolving the dispute.

Perez v. Ledesma, 401 U.S. 82, 122-23 (1971) (Brennan, J., separate opinion).

144. 312 U.S. 270 (1941). *See* notes 59-60 and accompanying text *supra*.

145. 422 U.S. 922, 930 (1975).

146. *Id.* at 931.

147. *See* notes 22-27 and accompanying text *supra*.

148. *Compare* notes 26-27 and accompanying text *supra with* notes 84-99 and accompanying text *supra*.

149. Douglas v. City of Jeannette, 319 U.S. 157 (1943); Watson v. Buck, 313 U.S. 387 (1941); Beal v. Missouri P.R.R. Co., 312 U.S. 45 (1941); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); Fenner v. Boykin, 271 U.S. 240 (1926); *Ex parte* Young, 209 U.S. 123 (1908).

impose further restriction on the availability of injunctive and declaratory relief. *Younger-Samuels* clearly ushered in a new era in federal intervention, but it was built on earlier decisions which still may maintain some vitality in regard to threatened criminal proceedings. For the present, however, the Supreme Court has granted federal courts the discretionary power, subject to the application of *Hicks v. Miranda*, to grant injunctive and declaratory relief against threatened state criminal proceedings.

VII. Federal Declaratory and Injunctive Relief Against Pending and Threatened Civil Proceedings

A. *Pending Civil Proceedings*

The *Younger-Samuels* decisions did not deal with the issue of standards governing federal intervention in state civil proceedings. After those decisions, the Court continued to reserve consideration of the question,[150] until a partial answer was provided in *Huffman v. Pursue, Ltd.*[151] In a section 1983 suit[152] seeking injunctive and declaratory relief against an Ohio public nuisance statute restricting the showing of obscene films, the Court held the *Younger* standards applicable to a pending civil proceeding if the state was a party and if the proceeding was "akin to a criminal prosecution" and "both in aid of and closely related to criminal statutes."[153] The Court made no pronouncement on the application of *Younger* to other civil litigation.[154]

The limited holding in *Huffman* poses a major problem in determining what types of civil proceedings fall within the category of "akin to criminal" and "in aid of and closely related to criminal statutes." Aside from the challenged public nuisance proceeding, the decision did not indicate instances in which the *Younger* standards would be applicable. Lower federal courts have used different approaches and reached contrasting results in deciding whether intervention in civil proceedings is governed by *Huffman*.

In *Burdick v. Miech*[155] a three judge district court stated that *Huffman*

150. Sosna v. Iowa, 419 U.S. 393 (1975); Speight v. Slaton, 415 U.S. 333 (1974); Gibson v. Berryhill, 411 U.S. 564 (1973); Mitchum v. Foster, 407 U.S. 225 (1972). Three circuit courts have applied *Younger-Samuels* to pending state circuit proceedings. *See* Duke v. Texas, 477 F.2d 244 (5th Cir. 1973); Lynch v. Snepp, 472 F.2d 769 (4th Cir. 1973); Cousins v. Wigoda, 463 F.2d 603 (7th Cir. 1972).

151. 420 U.S. 592 (1975).

152. A suit under the Civil Rights Act of 1871. The act in its present form 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 any 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).

153. 420 U.S. 592, 604-05 (1975).

154. *Id.* at 607.

155. 409 F. Supp. 982 (E.D. Wis. 1975) (three judge court).

applied when "the State's interest . . . is likely to be every bit as great as it would be were [it] a criminal proceeding,"[156] and found a Wisconsin statute authorizing compulsory questioning of unwed mothers concerning the father's identity and the child's conception to be within the *Huffman* rule. However, in *Doe v. Norton*[157] another three judge district court found a similar Connecticut statute not to be "in aid of and closely related to criminal statutes,"[158] and refused to apply *Huffman*.

One area of general agreement is that state bar disciplinary proceedings fall within the *Huffman* holding.[159] Other applications of *Huffman* have resulted in the dismissal of suits in federal court to enjoin state court proceedings in false, misleading, and deceptive conduct charges,[160] a zoning action,[161] a divorce action,[162] and a regulation of yard signs case.[163] On the other hand, courts have held that *Huffman* does not bar federal intervention in suits to enjoin state court proceedings under civil commitment,[164] attachment,[165] and extradition statutes.[166]

The problem in the application of *Huffman* is the Supreme Court's failure to specify objective standards for the application of the rule. The impression is that the Court intended to limit its holding on the application of the *Younger-Samuels* standards to pending civil proceedings. However, Justice Brennan's dissent in *Huffman* expressed the fear that the decision was the first step towards application of those standards to all civil proceedings.[167] He maintained that the *Younger-Samuels* standards resulted from

156. *Id.* at 984-85.

157. 365 F. Supp. 65 (D. Conn. 1973) (three judge court), *vacated*, 422 U.S. 391 (1975), *on remand*, Doe v. Maher, 414 F. Supp. 1368 (D. Conn. 1976).

158. 414 F. Supp. at 1373.

159. Anonymous v. Ass'n of the Bar, 515 F.2d 427 (2d Cir. 1975); Erdmann v. Stevens, 458 F.2d 1205 (2d Cir. 1972), *cert. denied*, 409 U.S. 889 (1972); Mildner v. Gulotta, 405 F. Supp. 182 (E.D.N.Y. 1975) (three judge court), *aff'd*, 425 U.S. 901 (1976). *See also*, Niles v. Lowe, 407 F. Supp. 132 (D. Haw. 1976). These cases could also be considered an extension of *Huffman* to state administrative proceedings. *See* note 186 and accompanying text *infra*.

160. Hearing Aid Ass'n of Kentucky, Inc. v. Bullock, 413 F. Supp. 1032 (E.D. Ky. 1976) (three judge court).

161. Llewelyn v. Oakland County Prosecutor's Office, 402 F. Supp. 1379 (E.D. Mich. 1975).

162. Kahn v. Shainswit, 414 F. Supp. 1064 (S.D.N.Y. 1976).

163. Lerner v. Witting, 394 F. Supp. 866 (E.D. Wis. 1975).

164. Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972) (three judge court), *vacated*, 414 U.S. 473 (1974), *on remand*, 379 F. Supp. 1376 (E.D. Wis. 1974), *vacated*, 421 U.S. 957 (1975), *on remand*, 413 F. Supp. 1318 (E.D. Wis. 1976).

165. Hernandez v. Danaher, 405 F. Supp. 757 (N.D. Ill. 1975) (three judge court). *See also* Vail v. Quinlan, 406 F. Supp. 951 (S.D.N.Y. 1976) (three judge court).

166. DeGenna v. Grasso, 413 F. Supp. 427 (D. Conn. 1976). *See also* U.S. v. Brown, 535 F.2d 424 (8th Cir. 1976); Williams v. Williams, 532 F.2d 120 (8th Cir. 1976); Ahrensfeld v. Stephens, 528 F.2d 193 (7th Cir. 1975); Bohner v. Circuit Ct. of City of St. Louis, 526 F.2d 1331 (8th Cir. 1975).

167. 420 U.S. 592, 613 (1975) (Brennan, J., dissenting).

the long tradition of nonintervention in state criminal proceedings and should not be extended to state civil proceedings traditionally subject to federal intervention.[168] Justice Brennan's argument was based on long recognized exceptions to the Anti-Injunction Statute which have permitted federal intervention in state civil proceedings.[169] It seems, however, that his primary purpose was to preserve the section 1983 suit, recently recognized as an exception to the Anti-Injunction Statute,[170] as a vehicle for federal intervention in state civil proceedings.

The *Huffman* majority showed no inclination to reject the long recognized occasions for federal relief against pending state civil proceedings, but seemed more concerned with the possible use of the section 1983 suit to intervene in state civil proceedings. Thus, while the opinions in *Huffman* discussed the broad question of federal relief against pending civil proceedings, the underlying issue was whether section 1983 suits should be available to seek declaratory and injunctive relief against pending state civil proceedings. The majority's answer was in the negative, at least when the state is a party and the proceeding is closely related to criminal law.[171]

Normally, the state will have to be a party to any civil proceeding challenged in a section 1983 suit in order to satisfy the requirement of state action.[172] *Huffman* then effectively precludes section 1983 suits against civil proceedings closely related to criminal law. In addition, by reserving judgment on the application of *Younger-Samuels* standards to other types of civil proceedings, the decision provides a foundation for further limitation of section 1983 suits.

In *Juidice v. Vail*[173] the Court used the foundation in *Huffman* to extend *Younger-Samuels* standards to a section 1983 suit seeking federal intervention in pending state civil contempt proceedings. It held that *Younger* principles were not limited to the *Huffman* type proceedings closely related to criminal law and found that the state interest in contempt

168. *Id.* at 614-15.

169. *See* Mitchum v. Foster, 407 U.S. 225, 233-36 (1972); note 180 *infra*.

170. Mitchum v. Foster, 407 U.S. 225 (1972). *See* notes 110-13 and accompanying text *supra*.

171. 420 U.S. 592, 604-05 (1975). A number of federal courts have emphasized the status of the state as a party. *See* Hearing Aid Ass'n of Kentucky, Inc. v. Bullock, 413 F. Supp. 1032 (E.D. Ky. 1976) (three judge court); Burdick v. Miech, 409 F. Supp. 982 (E.D. Wis. 1975) (three judge court); Hernandez v. Danaher, 405 F. Supp. 757 (N.D. Ill. 1975) (three judge court); Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972) (three judge court) *vacated*, 414 U.S. 473 (1974), *on remand*, 379 F. Supp 1376 (E.D. Wis. 1974), *vacated*, 421 U.S. 957, *on remand*, 413 F. Supp. 1318 (E.D. Wis. 1976).

172. It is arguable that the state action requirement is met by the presence of a state court judge in a civil proceeding between two private parties. If so, then a § 1983 suit may be brought against the judge to enjoin the civil proceeding. Considering the restrained view of the Court towards federal intervention, this commentator doubts it will find sufficient state action in this situation to warrant a § 1983 suit.

173. 45 U.S.L.W. 4269 (1977).

proceedings was "of sufficiently great import as to require application of the principles of [*Younger* and *Huffman*]."[174] The decision dealt specifically only with contempt proceedings and "save[d] for another day the question of 'the applicability of *Younger* to all civil litigation.' "[175] Clearly reflected was the Court's desire to place further limits on federal intervention in pending civil proceedings, especially through the use of section 1983.

Juidice established two requirements for application of *Younger-Samuels* standards. One is that the state have an important interest in the pending state proceeding. The other is that the pending proceeding provide an opportunity for presentation of federal claims. These requirements should not be major obstacles to application of *Younger-Samuels* standards to section 1983 suits. Because the state generally will be a party to the civil proceeding challenged in a section 1983 suit,[176] it is likely that the state will be found to have an important interest in the proceeding. In addition the pending state civil proceedings normally will provide an opportunity for presentation of federal claims. The *Juidice* requirements may dictate the application of *Younger-Samuels* standards to all section 1983 suits seeking federal intervention in pending civil proceedings.[177]

The applicability of *Younger-Samuels* standards to non-section 1983 suits seeking federal intervention[178] in pending civil proceedings between private parties has not yet been determined. Considering the view of the Supreme Court towards federal intervention, it is almost certain that a policy of judicial restraint will develop in this area. The Court could apply *Younger-Samuels* standards generally to pending civil proceedings by finding the *Juidice* requirement of an important state interest in any civil proceeding pending in state court. However, this step may be unnecessary. In non-section 1983 suits seeking federal injunctive relief against pending civil proceedings, the Anti-Injunction Statute[179] still provides an absolute prohibition unless the suit falls within one of the legislative or judicial exceptions to the statute.[180] The exceptions primarily pertain to the pro-

174. *Id.* at 4271.

175. *Id.* at 4272 n.13.

176. *See* note 172 *supra*.

177. If a § 1983 suit is available against a state court judge in pending civil proceedings between private parties, *see* note 172 *supra*, then *Juidice* would not extend *Younger-Samuels* standards to all § 1983 suits unless the state is found to have an important interest in all civil proceedings, and the state civil proceeding is found to provide an opportunity for presentation of federal claims. The effect of such findings would be to extend *Younger-Samuels* standards to all civil proceedings and raise questions about federal interference under traditional exceptions to the Anti-Injunction Statute. *See* note 180 *infra*.

178. Aside from recognized occasions for federal injunctive relief, *see* note 180 *infra*, such suits would presumably be based on either equity and federal question jurisdiction in federal courts or some arguable federal statutory authority.

179. *See* notes 101-15 and accompanying text *supra*.

180. In Mitchum v. Foster, 407 U.S. 225, 233-36 (1972), the Court listed the various exceptions:

cedural relationship between federal and state courts and to areas in which Congress has preempted state court jurisdiction. Unless the Court intends to limit these exceptions, there is no reason to further extend the *Younger-Samuels* standards. Federal injunctive relief is already limited by the combination of the *Juidice* decision and the Anti-Injunction Statute.

A problem may arise from the possible use of a non-section 1983 suit to seek declaratory relief against a pending civil proceeding between private parties. The Anti-Injunction Statute does not apply to declaratory relief. In order to maintain its policy of judicial restraint, the Court would have to extend *Younger-Samuels* standards generally to federal intervention in pending civil proceedings or find another basis for denying declaratory relief.

One alternative would be to resort to the standard of sound judicial discretion for granting declaratory relief.[181] A declaratory judgment could be found improper because it would not help settle the controversy. The state court would not have to recognize the federal judgment and an injunction to enforce the judgment would probably be barred by the Anti-Injunction Statute.[182] If the Court does deny declaratory relief on such a basis, then the decision in *Juidice* combined with the Anti-Injunction Statute results in an effective limitation on both injunctive and declaratory federal intervention in pending state civil proceedings, despite the Court's reservation of the question of extension of *Younger-Samuels* standards to all pending civil proceedings. A section 1983 suit is prohibited unless it is

Express Legislative Exceptions

1. federal bankrupty proceedings.
2. legislation permitting removal of litigation from state to federal court. 28 U.S.C. § 1446(e).
3. legislation limiting the liability of shipowners. 46 U.S.C. § 185.
4. legislation providing for federal interpleader actions. 28 U.S.C. § 2361.
5. legislation conferring federal jurisdiction over farm mortgages. 11 U.S.C. § 203(s)(2).
6. legislation governing federal habeas corpus proceedings. 28 U.S.C. § 2251.
7. legislation providing for control of prices. Sec. 205 (a) of Emergency Price Control Act of 1942, 56 Stat. 33.

Implied Judicial Exceptions

1. in rem exception—allowing federal courts to enjoin a state court proceeding to protect jurisdiction over the res.
2. relitigation exception—enjoin relitigation in state court of issues already decided in federal court.
3. federal injunction of state court proceeding when the plaintiff in federal court is the U.S. or a federal agency asserting superior federal interests.

181. *See* notes 49-64 and accompanying text *supra*.

182. Such an injunction could arguably fit under the "needed to perfect or effectuate judgments" exception to the Statute. *See* note 107 and accompanying text *supra*. However, it is circular reasoning to claim that injunctive relief is proper to effectuate a declaratory judgment under circumstances where the Anti-Injunction Statute bars direct injunctive relief.

within an exception to *Younger-Samuels* and a non-section 1983 suit is prohibited unless it is within an exception to the Anti-Injunction Statute.

The application of *Younger-Samuels* standards to pending civil proceedings is an extension of the principles of "Our Federalism." The propriety of the application of these standards should be judged primarily by the strength of the doctrine of "Our Federalism" in regard to civil proceedings. The strength of the doctrine may be measured by examining its component principles of equity, comity, and federalism to determine their relevance to state civil proceedings.

The basis for the equity component is that equity courts should not act when the moving party has an adequate remedy at law and will not suffer irreparable injury.[183] Further, it has been traditionally held that equity should not interfere with criminal proceedings.[184] The general doctrine of equitable restraint applies to intervention in civil proceedings, but without the impact of the tradition in regard to criminal proceedings. When the Court in *Huffman* restricted its holding to suits closely related to criminal law, part of its motivation may have been to stay within that equitable tradition.

The comity and federalism components of "Our Federalism" are closely related.[185] Both deal with the proper relationship between the state and national governments. Comity may be narrowly considered as the mutual respect required from the state and national judicial systems. When a federal court enjoins a pending state proceeding, it matters little in comity principles whether the proceeding is criminal or civil. The disruption and discredit to the state judicial system is the same. Thus the comity component of "Our Federalism" applies equally to criminal and civil proceedings.

Federalism is a broad term describing the structure of our state and national governments. "Our Federalism" concerns the mutual respect for the functions and interests of each entity of government. The federal government has an interest in protecting federal rights, but must do so without unduly interfering with the legitimate functions of the state. In criminal proceedings, the state function is the administration of a criminal justice system, a responsibility primarily assigned to the states in our federal system. In civil proceedings, the state function is the administration of a civil justice system, in which there is concurrent jurisdiction with federal courts under federal diversity jurisdiction and on federal questions. It follows that the federalism component of "Our Federalism" is more applicable to criminal than to civil proceedings.

The "Our Federalism" doctrine, particularly its equity and federalism components, more strongly supports a policy of restraint in federal intervention in state criminal proceedings than in state civil proceedings. If the components of "Our Federalism" are given equal weight, then the application of *Younger-Samuels* standards to all civil proceedings is difficult to

183. *See* note 71 and accompanying text *supra*.
184. *See* notes 22-25 and accompanying text *supra*.
185. *See* notes 72-73 *supra*.

justify. Their application to criminal-type civil proceedings in *Huffman* arguably is justified by the stronger relationship to the equity and federalism components of "Our Federalism." Their application in *Juidice* to civil proceedings in which the state has an important interest also may be justified by the stronger relationship to the federalism component. In *Juidice* the Court stressed the comity and federalism components of "Our Federalism."[186] It expressly specified only the comity component, but described it in terms referring to both comity and federalism. The equity component was not mentioned. This implies that the Court intends to give greater weight to comity and federalism in determining the proper application of "Our Federalism." If the "more vital consideration"[187] behind the doctrine is the comity component, the application of *Younger-Samuels* standards to "important state interest" proceedings is therefore justified. The application of those standards to all civil proceedings is arguably justified.

The Supreme Court's treatment of section 1983 suits seeking federal intervention in pending state proceedings should be noted. In *Mitchum* the Court had the opportunity under the Anti-Injunction Statute to place an absolute prohibition on section 1983 suits for injunctive relief, but refused to do so. In the line of cases from *Younger* through *Juidice*, the Court has effectively limited the present availability of relief through the section 1983 suit, but has retained the discretionary power to broaden future availability in the recognition of exceptions when federal intervention could be appropriate.

B. *What Constitutes a Pending Civil Proceeding*

The application of the *Younger-Samuels* standards to federal intervention in pending civil proceedings under *Huffman* and *Juidice* raises the issue of what constitutes a pending civil proceeding. In *Huffman* the federal plaintiff claimed that because the state court proceeding had ended and because no appeal was taken there were no longer pending civil proceedings. The Supreme Court rejected his contention and held that "*Younger* standards must be met to justify federal intervention in a state judicial proceeding as to which a losing litigant has not exhausted his state appellate remedies."[188] The dissent argued[189] that the holding undercut the rule pronounced in *Monroe v. Pape*[190] that a federal plaintiff suing under section 1983 need not exhaust state administrative or judicial remedies before filing his action. A more accurate reading of *Monroe* is that a section 1983 suit is not barred by the fact that the plaintiff chose not to initiate proceedings under an available state judicial or administrative remedy. *Monroe* did not involve a situation where a state proceeding had been initiated which provided an adequate forum for the plaintiff's claims.

186. 45 U.S.L.W. 4571 (1977).
187. *Id.*
188. 420 U.S. 592, 609 (1975).
189. *Id.* at 167 (Brennan, J., dissenting).
190. 365 U.S. 167 (1961).

It would be inconsistent with the respect for the state judiciary inherent in the "Our Federalism" doctrine to permit a party to gain federal jurisdiction by simply refusing to use available state appellate procedures.

There is no doubt that this aspect of the holding in *Huffman* also applies to federal intervention in state criminal proceedings. A party convicted of state criminal charges cannot refuse to pursue his remedy of appeal in state court and seek relief in federal court on the claim that no state proceeding is pending.

An important question left open by *Huffman* and *Juidice* is the date on which the existence of a pending state civil proceeding is to be determined. The federal court must know whether to apply the date of filing of the federal petition or the *Hicks v. Miranda*[191] rule of on the date prior to proceedings of substance on the merits in federal court. If the standards of *Younger-Samuels* on criminal proceedings can be extended to civil proceedings, the *Hicks* rule on criminal proceedings also should be extended. This would give the individual with the right to bring the civil action, presumably the state prosecutor, the power to change the status of a threatened party to a party facing pending state proceedings by initiating the action in state court. The originally threatened party would then be subject to a *Huffman* or *Juidice* dismissal. The principle in "Our Federalism" of respect for the capacity of state courts to protect federal constitutional rights dictates that the federal plaintiff would not be prejudiced by having to pursue his claim in state court. If state courts are judged fully competent to protect federal rights in criminal proceedings under *Younger-Samuels*, there is no reason to believe that the same courts cannot also protect federal rights in civil proceedings. This commentator foresees application of the *Hicks* rule to civil proceedings.

C. *Threatened Civil Proceedings*

A final area not considered in *Huffman* is the application of *Younger-Samuels* standards to federal declaratory and injunctive relief against threatened civil proceedings. Reasoning by analogy from the *Steffel* and *Doran* decisions holding that the standards do not apply to relief against threatened criminal prosecutions, it is almost certain that they also do not apply to relief against threatened civil proceedings. Therefore, declaratory and injunctive relief against threatened civil proceedings apparently remain available under the traditional principles discussed earlier in regard to relief against threatened criminal proceedings.[192] That availability is subject to limitation, however, by extension of the *Hicks* rule giving to the state prosecutor a de facto power to remove the action to state court by initiating state proceedings and forcing the federal courts to apply *Younger-Samuels* standards.

191. 422 U.S. 332 (1975). *See* notes 136-41 *supra*.
192. *See* notes 140-47 and accompanying text *supra*.

VIII. ADMINISTRATIVE PROCEEDINGS

Whether *Younger-Samuels* standards will be applied to suits seeking federal injunctive or declaratory relief against state administrative proceedings has not been decided by the Supreme Court.[193] *Gibson v. Berryhill*[194] involved a section 1983 suit to enjoin the Alabama Board of Optometry from conducting scheduled hearings on charges against individual optometrists. The Court ultimately remanded the case for consideration in light of two Alabama Supreme Court decisions[195] narrowly interpreting the underlying statutory authority and freeing the plaintiffs from charges of misconduct. However, it discussed the application of *Younger-Samuels* standards to civil proceedings and implied that the issue could be raised in a suit to enjoin administrative proceedings. The Court stated that "administrative proceedings looking towards the revocation of a license to practice medicine may in proper circumstances command the respect due court proceedings."[196] The implication was that if *Younger-Samuels* were applied to civil proceedings, it would also be applied to at least certain types of administrative proceedings.

In *Huffman*, the Court seemed to link the issues of federal intervention in pending civil proceedings and federal intervention in pending administrative proceedings. It recalled that "a similar issue [whether *Younger-Samuels* bars intervention in state civil proceedings] was raised in *Gibson v. Berryhill*."[197] This raises the possibility that *Huffman* provides a foundation for extending the *Younger-Samuels* standards to pending administrative proceedings.

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193. The argument that the Court's summary affirmance of Geiger v. Jenkins, 316 F. Supp. 370 (N.D. Ga. 1970), *aff'd mem.*, 401 U.S. 985 (1971), indicated acceptance of the proposition that *Younger-Samuels* standards were applicable to state administrative proceedings was rejected in Gibson v. Berryhill, 411 U.S. 564 (1973).

The Court has extended the *Younger-Samuels* principles of nonintervention to injunctive relief against pending military court martial proceedings. Schlesinger v. Councilman, 420 U.S. 738 (1975). The decision made no attempt to "define those circumstances, if any, in which equitable intervention into pending court martial proceedings might be justified." This indicates that the availability of relief against pending court martial proceedings is even more limited than the availability of relief against pending criminal proceedings under the *Younger-Samuels* standards. The Court cited *Younger* and related cases, but the decision was based more on respect for an independent system of military justice than on the principles of "Our Federalism." The decision does not provide a foundation for extension of *Younger-Samuels* standards to federal injunctive and declaratory relief against pending state administrative proceedings.

194. 411 U.S. 564 (1973).

195. Lee Optical Co. v. State Bd. of Optometry, 288 Ala. 338, 261 So. 2d 17 (1972); House of $8.50 Eyeglasses, Inc. v. State Bd. of Optometry, 288 Ala. 349, 261 So. 2d 27 (1972).

196. 411 U.S. 564, 576-77 (1973).

197. 420 U.S. 592, 594 (1975).

In *Grandco Corp. v. Rochford*[198] the Seventh Circuit granted declaratory relief against pending state administrative proceedings, but recognized that *Younger-Samuels* standards apply to such intervention under some circumstances. As conditions for applying the *Younger-Samuels* limitations on federal intervention, the Court required a showing that the state interest in the administrative proceedings was substantial and that the proceedings provided a proper forum for the vindication of the federal plaintiff's constitutional claim.[199]

The only application of *Younger-Samuels* standards to administrative-type proceedings occurred in the series of cases involving bar disciplinary proceedings discussed in the section on relief against pending civil proceedings.[200] In each case, the court found the disciplinary proceedings to be judicial in nature rather than administrative. When combined with the unique nature of bar disciplinary proceedings, this tends to limit any broadening effect these cases might have on the application of *Younger-Samuels* standards to administrative proceedings. The cases are an example of administrative-type proceedings which provide a forum that protects federal constitutional rights.

Aside from the bar disciplinary proceeding cases, lower federal courts have uniformly refused to extend *Younger-Samuels* standards to relief against administrative proceedings. In *Hodory v. Ohio Bureau of Employment Services*[201] a three judge court rejected the argument that *Huffman* extended the *Younger-Samuels* standards to relief against pending administrative proceedings. The court enjoined an employment bureau from enforcing a benefit disqualification statute and stated that *Huffman*

> [w]as limited to the enjoining of ongoing state initiated judicial proceedings and that such prohibition did not extend to an action brought under 42 U.S.C. 1983 in which a party was challenging state administrative action in federal court.[202]

Other federal courts have refused to apply the *Younger-Samuels* limitation in suits to enjoin a county board proceeding for removal of the county treasurer,[203] to enjoin the operations of the New York State Parole Board,[204] and to enjoin a driver license suspension procedure.[205]

There are at least two problems in extending the standards of *Younger-Samuels* and the doctrine of "Our Federalism" to pending administrative proceedings. They may be analyzed by examining the doctrine's component principles. The first problem is the absence of a state court proceeding for the application of the doctrine's comity principle. A possible solu-

198. 536 F.2d 197 (7th Cir. 1976).
199. *Id.* at 206.
200. *See* note 159 *supra*.
201. 408 F. Supp. 1016 (N.D. Ohio 1976) (three judge court).
202. *Id.* at 1020.
203. Clark v. Weeks, 414 F. Supp. 703 (N.D. Ill. 1976) (three judge court).
204. Cicero v. Olgiati, 410 F. Supp. 1080 (S.D.N.Y. 1976).
205. Pollard v. Panora, 411 F. Supp. 580 (D. Mass. 1976) (three judge court).

tion would be to require that the administrative proceeding "provide the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved"[206] as a prerequisite to the imposition of *Younger-Samuels* standards. This would require the proceeding to be comparable to a state judicial proceeding and justify application of the doctrine's comity principles. The second problem is the absence in the administrative proceeding of a relationship to the enforcement of state criminal law. This lessens the application of the doctrine's equity and federalism principles. A possible solution would be a *Huffman*-type rule requiring the administrative proceeding to be closely related to criminal law. This would make both the equity and federalism principles applicable. The federalism principle alone could be made applicable by requiring the state to have an interest in the subject of the administrative proceeding so vital as to override the national government's interest in protecting federal rights. "Our Federalism" is a doctrine that developed in response to the unique features of federal intervention in state criminal proceedings. No matter which approach is used, it remains difficult to justify the extension of such a doctrine to state administrative proceedings.

A further obstacle to extending *Younger-Samuels* standards to relief against pending state administrative proceedings is the rule in *McNeese v. Board of Education*[207] that a federal plaintiff in a section 1983 suit need not exhaust state administrative remedies prior to seeking equitable relief. It is arguable that this precludes application of strict *Younger-Samuels* standards to relief against pending administrative proceedings. However, the purpose of the *McNeese* rule is to give a party the option, prior to any state proceedings on his claim, to seek relief either in federal court or in state administrative proceedings. *McNeese* did not involve a situation where the federal plaintiff was a party to a pending state administrative proceeding. An extension of *Younger-Samuels* to state administrative proceedings could be distinguished because it would necessarily involve a situation where the federal plaintiff was already a party to a pending administrative proceeding.[208]

206. Gibson v. Berryhill, 411 U.S. 564, 577 (1973).

207. 373 U.S. 668 (1963). *See also* Damico v. California, 389 U.S. 416 (1967). In *Huffman*, the Court noted two earlier cases stating that a challenge to administrative action did not require exhaustion of state *judicial* remedies. The Court did not mention exhaustion of state administrative remedies. 420 U.S. 592 n.21 (1975); City Bank Farmers Trust Co. v. Schnader, 201 U.S. 24 (1934); Bacon v. Rutland Ry. Co., 232 U.S. 134 (1914).

208. If *Younger-Samuels* standards do not apply to threatened criminal or civil proceedings, *see* parts VI, VII, then they certainly do not apply to threatened administrative proceedings. If the Court extends *Younger-Samuels* standards to administrative proceedings, the *Hicks* rule on the proper date for determining the existence of a pending proceeding also could be extended. *See* notes 135-138, 191 and accompanying text *supra*. A question may arise whether there is a "pending proceeding" after the final administrative determination but prior to state judicial review. *See* notes 188-190 and accompanying text *supra* (analogy to civil proceeding). Even if there is no "pending proceeding" after the final administrative deter-

This commentator foresees a limited application of *Younger-Samuels* standards to declaratory and injunctive relief against pending state administrative proceedings. The limitation will possibly be restricted generally to proceedings which provide a proper forum for protection of federal rights, and further restricted to certain types of proceedings, *i.e.*, a proceeding closely related to criminal law as required in *Huffman*, or a proceeding in an area in which the state has an important interest as in *Juidice*. If the *Huffman* decision eventually is expanded to cover all civil proceedings, there may also be an expansion of coverage in administrative proceedings.

IX. CONCLUSION

The *Younger-Samuels* decisions and their progeny reflect five years in the development of a policy of judicial restraint towards federal intervention in state court proceedings. The Supreme Court has used traditional equitable principles to establish discretionary standards limiting the availability of declaratory and injunctive relief. While more objective standards would seem attractive, the injunction and declaratory judgment are discretionary remedies and should be governed by discretionary standards. These standards also enable the Court to retain the power to adjust the availability of relief in accordance with its view of the need for federal intervention. A look at history tells us that the Court's perception of the necessity of federal intervention has varied with time. The discretionary standards make it possible that federal intervention will someday reemerge as an available remedy against state court proceedings in areas now restricted by *Younger-Samuels*.

More significant than the present standards for availability of federal relief is the establishment of the policy of "Our Federalism." It is a policy of respect for the function of the state courts in our federal system and has a potential impact on the entire field of federal-state relations.[209] While discretionary standards governing relief may change, it is doubtful that the Court would ever again grant federal intervention in state proceedings without consideration of the principles of "Our Federalism." *Younger-Samuels* and their progeny are a reaffirmation of the basic federalism principle to separate state and national governments following a period of judicial activism with little emphasis on that principle.

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mination, injunctive relief ordinarily would be denied without resort to *Younger-Samuels* standards because, under traditional equity principles, the state judicial review would provide an adequate remedy at law.

209. For a good discussion of the potential broader impact of *Younger-Samuels* *see* Ziegler, *An Accomodation of the Younger Doctrine and the Duty of the Federal Courts to Enforce Constitutional Safeguards in the State Criminal Process*, 125 U. PA. L. REV. 266 (1976).