THE EXTENSION OF YOUNGER v. HARRIS TO NON-CRIMINAL CASES

In 1971, the United States Supreme Court held, in Younger v. Harris,1 that except in rare circumstances, a federal court may not enjoin an ongoing state criminal proceeding.

This extension of the abstention doctrine has raised more questions than it has answered. The attention of this comment is directed to one of these unanswered questions: Do the Younger abstention standards apply to a request for injunctive relief against the continuance of a pending state court proceeding which is non-criminal rather than criminal in nature? This question is of some importance, for the United States Supreme Court has recently decided to hear oral argument in the case of MTM, Inc. v. Baxley,2 in which this question is raised. Furthermore, the Supreme Court had already heard oral argument in another case presenting this question, Speight v. Slaton,3 but unfortunately could not render an opinion on the issue because of an intervening state court decision.4

This comment discusses the above two decisions as well as other federal court decisions which have considered whether Younger extends to non-criminal cases. The lower federal courts have enunciated various reasons for this extension of Younger. These reasons will be analyzed, followed by some conclusions and predictions as to how the United States Supreme Court will ultimately resolve the issue.

It is first necessary, of course, that one have at least a basic understanding of Younger v. Harris and its place within the development of the total abstention area.5 The comment there-

4. Sanders v. State, 231 Ga. 608, 203 S.E.2d 153 (1974). In Sanders the Georgia Supreme Court held the statute in question unconstitutional, obviating any need for decision by the United States Supreme Court.
5. The author considers the Younger doctrine to be one of a number of abstention doctrines, though it is based on principles different from Railroad Comm'n of Tex. v. Pullman Co., 312 U.S. 496 (1941), which is considered by some to be the only abstention doctrine. On the various types of abstention, see C. Wright, LAW OF FEDERAL COURTS § 52 (2d ed. 1970), and text accompanying notes 8-16 infra.
fore begins with a brief history of the abstention doctrine in general, followed by an analysis of Younger type abstention, discussed in terms of what Younger held, its tone, and its application by the inferior federal courts.

ABSTENTION: FROM PULLMAN TO YOUNGER

Throughout the history of the United States there has been concern over federal interference with state judicial proceedings. In an attempt to avoid needless friction between the two judicial systems, Congress passed the anti-injunction statute, which forbids a federal court from enjoining a pending state court proceeding. There have been very few exceptions to this prohibition.

There are also judically created restrictions on federal interference with state court proceedings, generally termed "abstention" doctrines. Ever since Justice Frankfurter enunciated abstention in Railroad Commission of Texas v. Pullman Co., federal courts have generally given state courts the first opportunity to determine the constitutionality of state statutes. In Pullman, the Pullman company and its porters sought to restrain the enforcement of an order made by the Railroad Commission of Texas which stated that no sleeping car could be operated on any railroad in Texas, unless such a car was in the charge of a conductor. The Commission order was attacked as violative of the United States Constitution. The Supreme Court abstained from decision, because, in addition to the constitutional issue, there was a question whether the Railroad Commission had the authority under Texas law to issue the order. Thus, if a Texas court found that the Commission did not have such power, the constitutional issue would be avoided. Pullman abstention requires federal courts to refrain from determining the constitutionality of state statutes if a state court's construction of a collateral state issue would obviate the need to construe the constitutional issue.

6. See generally C. Wright, LAW OF FEDERAL COURTS §§ 47-52 (2d ed. 970).

7. 28 U.S.C. § 2283 (1964) (providing that a federal court may not enjoin state proceedings except as expressly authorized by Congress, where necessary to aid its jurisdiction, or to protect or effectuate its judgments).

8. For an example of an express congressional exception, see legislation governing federal habeas corpus proceedings. There also exist implied exceptions to the anti-injunction statute, such as the in rem exception, which permits a federal court to enjoin a state court proceeding to protect its jurisdiction over a res. Mitchum v. Foster, 407 U.S. 225 (1972).

9. 312 U.S. 496 (1941).

10. Id. at 501.
Other types of abstention have arisen subsequent to Pullman. For example, federal courts defer to the continuation of state proceedings when comprehensive state regulatory schemes, including areas such as oil\textsuperscript{11} and eminent domain,\textsuperscript{12} are involved. Abstention may also occur when judicial and administrative remedies have not been exhausted.\textsuperscript{13} The most recent type of abstention is the Younger type, based upon notions of comity and federalism, applicable where a state's enforcement of its criminal laws is involved and a criminal proceeding is pending.\textsuperscript{14}

THE YOUNGER STANDARDS

The strict holding of Younger is that no federal court may reach the merits of a request for injunctive relief from a pending state criminal action unless: 1) there is evidence of bad faith and harassment toward the plaintiff on the part of the state's law enforcement officials; and 2) the state statute on which the prosecution is based is unconstitutional on its face.\textsuperscript{15} If both of these elements are not present, the district court must abstain unless "special circumstances" exist which would cause the plaintiff great and immediate irreparable harm if he were forced to raise his federal claim in the state proceeding.\textsuperscript{16} Younger defined "special circumstances" only to the extent that such circumstances exist if the threat to the plaintiff's federally protected right is one that cannot be eliminated by his defense against a single state criminal prosecution.\textsuperscript{17}

\textsuperscript{11} Burford v. Sun Oil Co., 319 U.S. 315 (1943).
\textsuperscript{13} Prentis v. Atlantic Coast Line Co., 211 U.S. 210 (1908).
\textsuperscript{15} 401 U.S. at 54; Cameron v. Johnson, 390 U.S. 611 (1968). For a discussion of bad faith enforcement warranting federal intervention, see \textit{Note}, \textit{The Supreme Court, 1970 Term, Foreword: Even When a Nation is at War}, 85 Harv. L. Rev. 3, 314 (1971).
\textsuperscript{16} 401 U.S. 37, 43 (1971).
\textsuperscript{17} Two of the cases which have found special circumstances to justify federal intervention in a state criminal proceeding are Shaw v. Garrison, 467 F.2d 113 (5th Cir. 1972) (bad faith equals irreparable harm) and Krahm v. Graham, 461 F.2d 703 (9th Cir. 1972).
THE YOUNGER TONE

Younger v. Harris and its companion cases are filled with references to federalism and the need for comity between federal and state courts. The backdrop of these decisions is understandable because, in part, Younger abstention was a reaction to an earlier Supreme Court case, Dombrowski v. Pfister. On the authority of Dombrowski, federal courts enjoined numerous state criminal proceedings on the basis of first amendment claims. However, confined to their holdings, both Younger and Dombrowski require the same elements to warrant federal intervention.

In Dombrowski, plaintiffs brought suit under 42 U.S.C. § 1983 seeking injunctive and declaratory relief restraining certain state officials from prosecuting or threatening to prosecute them for alleged violation of the Louisiana Subversive Activities and Communist Control Law, attacking the statute as unconstitutional on its face. At the time the request for federal relief was filed, no prosecution was then pending against plaintiffs in a state court, but such prosecutions had previously been brought with no convictions and were threatened to be brought again. The Supreme Court found bad faith on the part of state

Id.

19. 401 U.S. at 44. An example of such language is as follows: This underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, the notion of “comity,” that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This is referred to by many as “Our Federalism,” and one familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of “Our Federalism.”

Id.

22. 380 U.S. at 481-82. Section 1983 permits a suit in equity by any person who is deprived of any constitutional rights by one acting under color of state law.
prosecutors and determined that the state statute was unconstitutional on its face. The court held that, in these circumstances, a federal injunction against threatened criminal proceedings based on the state statute was warranted.

In Younger, the plaintiff sought an injunction to restrain the defendant state official from prosecuting him under the California Criminal Syndicalism Act, alleging that the statute was unconstitutional on its face. At the time the plaintiff's request for injunctive relief was filed in federal district court, a criminal proceeding was then pending against the plaintiff in a state court, and plaintiff sought to have this, and future prosecutions under the act, enjoined. The Supreme Court stated that the plaintiff had not shown bad faith on the part of the state prosecutors, and held that the district court should have abstained from adjudicating the plaintiff's constitutional claims, as he could raise them in the state criminal prosecution pending against him.

Despite the fact that the holdings of these two cases may be seen as consistent, the tone in the dicta of the decisions strikes a radical difference. Dombrowski emphasized the importance of protecting individual rights. It reacted to the "chilling effect" that bad faith prosecutions and statutes repugnant to the first amendment have upon individuals. The Younger tone is quite different, emphasizing the importance of avoiding needless friction between federal and state courts. This need for comity, the Younger court said, is required by the very nature of federalism. This tone is the key to predicting how the Court will decide the questions that Younger left unanswered and to analyzing district court decisions on abstention questions.

LOWER FEDERAL COURTS' APPLICATION OF YOUNGER v. HARRIS

Consistent with Younger, the lower federal courts have unanimously abstained from decision absent a showing of bad faith and harassment or "special circumstances," when a pending state criminal proceeding is involved, regardless of whether or not the

24. 380 U.S. at 490, 497-98.
25. Id. at 490.
27. 401 U.S. at 38-39.
28. Id. at 54. The court stated that neither the existence of a statute unconstitutional on its face, nor the chilling effect on first amendment rights, without more, justifies federal intervention. Id. at 50.
29. 380 U.S. at 487.
30. Id. at 44.
statute attacked is unconstitutional on its face.\textsuperscript{31} The federalism language of \textit{Younger} is the heart of their rationale.

However, the federal courts have been confronted with a number of questions which were not answered in \textit{Younger}.\textsuperscript{32} Chief among these questions is whether \textit{Younger} applies to a pending non-criminal case. A discussion of that question follows.

\textbf{Younger's Application to Non-Criminal Cases}

The question of whether to apply \textit{Younger} to pending non-criminal cases has been dealt with by a number of federal courts. In those cases various reasons for so extending \textit{Younger} have been enunciated, which are summarized below. First, a state civil statute which is used for the enforcement of the state's criminal laws can be as effective a tool of regulation or prohibition as the sanctions imposed by criminal statutes.\textsuperscript{33} Second, since the state is usually a party, the proceeding is of paramount interest to the state's judicial process; abstention is thus required to avoid needless friction between the two systems.\textsuperscript{34} Third, going to the merits of a plaintiff's federal constitutional claims often results in duplication of effort and cost.\textsuperscript{35} Fourth, federal interven-
tion in any pending state proceeding implies that the state courts are incapable of vindicating federal rights. Finally, if denominated civil, a proceeding is less serious to the individual, with less reason for federal intervention.

An analysis of these reasons is perhaps more cogent if it is expressed with reference to the cases themselves. The cases have been divided into three areas, differentiated by the state statute or state proceeding involved, though they all come under the broad heading of non-criminal. It is important to note that all the cases below involved pending, non-criminal proceedings; all were brought under 42 U.S.C. § 1983; and all involved a state statute or state order which was attacked as violating the first amendment.

**Civil as Criminal**

The first area covers the situation where a state statute, though labeled civil in the state code, is used to enforce, or is substituted for the state's criminal laws. In this type of case, the federal courts have unanimously applied *Younger*. The most frequently cited case in this area is *Palaio v. McAuliffe*. In that case, the plaintiff filed suit in federal district court under Section 1983, seeking declaratory and injunctive relief against certain state officials prosecuting a pending state court civil proceeding to have certain of plaintiff's motion pictures declared obscene and subject to seizure. The district court dismissed the action. The Fifth Circuit affirmed, and held that abstention was warranted because the plaintiff had not met the *Younger* burden of proving bad faith or special circumstances. On the issue of extending *Younger* to a non-criminal case, the court stated:

> Application of the principles of *Younger* should not depend upon such labels as "civil" or "criminal," . . . . We

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38. There have been a few cases that have found bad faith or special circumstances, however. Smith v. Cherry, 489 F.2d 1098 (7th Cir. 1973); Brown v. O'Brien, 469 F.2d 563 (D.C. Cir. 1972), appl'n for stay granted *per curiam*, 409 U.S. 1 (1972); Newton v. Burgin, 363 F. Supp. 782 (W.D.N.C. 1973).

39. 466 F.2d 1230 (5th Cir. 1972).

40. Id. at 1232.

41. Id. at 1233. *See* text accompanying note 28 *supra*. 
believe that . . . the suit to declare the films subject to seizure was—albeit a "civil" proceeding—a part of Georgia's program of enforcing its criminal laws.\textsuperscript{42}

More recently, in \textit{Duke v. State}\textsuperscript{43} the Fifth Circuit reaffirmed the position it had taken in \textit{Palaio}. In \textit{Duke}, a Texas state court issued an order enjoining two individuals (plaintiffs) from speaking at North Texas State University.\textsuperscript{44} The plaintiffs brought a Section 1983 action in federal court seeking declaratory and injunctive relief against the state court injunction. The federal district court granted plaintiffs' request for an injunction, holding that \textit{Younger} was solely applicable to criminal cases, and even if applicable here, "special circumstances" existed because of the patent violation of plaintiffs' first amendment rights.\textsuperscript{45} Applying \textit{Younger}, the Fifth Circuit reversed, and abstained from deciding the merits of the plaintiffs' constitutional claims, holding that the plaintiffs should exercise state appellate procedures.\textsuperscript{46} The court held that \textit{Younger} applied because even though the statute involved was denominated civil, the state legislature had enacted the statute as a part of a comprehensive scheme for enforcement of its penal code.\textsuperscript{47}

A number of district courts, sitting as three judge panels pursuant to 28 U.S.C. § 2281,\textsuperscript{48} have also applied \textit{Younger} to cases involving the request for federal injunctive relief against state enforcement of a civil statute which is used for the enforcement of the state's criminal laws. Two decisions are of importance here. In \textit{General Corp. v. Sweeton}\textsuperscript{49} plaintiffs brought suit under Section 1983 seeking injunctive and declaratory relief from state court orders enjoining operations of theatres and bookstores\textsuperscript{50} un-

\textsuperscript{42} \textit{Id.} at 1232-33. In \textit{Palaio}, the Fifth Circuit distinguished its decision in \textit{Hobbs v. Thompson}, 448 F.2d 456 (5th Cir. 1971), stating: [I]n \textit{Hobbs v. Thompson}, . . . this Court held that \textit{Younger} did not bar a suit seeking relief from enforcement of a city ordinance prohibiting political activity by firemen; the Court's conclusion rested not on the view that enforcement of the ordinance . . . was "civil" in nature, but rather on the ground that federal intervention in that case could have no effect on an ongoing state proceeding, either civil or criminal. 466 F.2d at 1233.

\textsuperscript{43} 477 F.2d 244 (5th Cir. 1973).
\textsuperscript{44} \textit{Id.} at 246-47.
\textsuperscript{46} 477 F.2d at 253.
\textsuperscript{47} \textit{Id.} at 250.
\textsuperscript{48} This statute requires a three judge panel to issue any injunction restraining enforcement of a state statute by officials of the state on grounds of unconstituationality.
\textsuperscript{50} 365 F. Supp. at 1183.
under a state nuisance statute designed to deal with lewdness, assignation and prostitution. The three judge court dismissed the action because the state used this statute as a complement to its criminal laws. Therefore, it was thought that principles of federalism required federal abstention as a matter of comity.

A similar case is Speight v. Slaton. Speight was the owner of a book store which sold allegedly obscene materials. Thereafter, the State of Georgia brought an action to abate a nuisance under the applicable civil nuisance statute. Speight then filed an action under Section 1983 asking for injunctive and declaratory relief on the ground that the Georgia nuisance statute was unconstitutional both on its face and as applied.

The three judge court (one judge dissenting), having found that neither bad faith nor "special circumstances" existed, abstained from deciding the merits of plaintiff's constitutional claim. The court followed Palaio by extending Younger as a bar to federal intervention in a pending state civil proceeding that is an integral part of the state's enforcement of its criminal laws.

**Disciplinary Proceedings**

The second area of cases includes those which have dealt with disciplinary proceedings by a state court or agency. A good example of this type of case is Erdmann v. Stevens. There an attorney brought suit in federal court under Section 1983 to enjoin disbarment proceedings brought against him by New York state court judges for his writing of a magazine article allegedly derogatory to members of the New York judiciary. The Second Circuit applied Younger, abstaining on the ground that a court disbarment proceeding against a member of the bar is comparable to a criminal, rather than a civil proceeding, since for most attorneys, the license to practice law represents their livelihood, the loss of which may be a greater punishment than a monetary fine.
On the other hand, in *Polk v. State Bar of Texas*, a different result was reached. There an attorney was reprimanded by the Texas State Bar Association. He filed a civil rights action in the federal district court to enjoin publication of the reprimand. The district court dismissed the action on the authority of *Younger v. Harris*. On appeal, the Fifth Circuit concluded that the *Younger* doctrine presented no basis for dismissal of plaintiff’s action because, when the grievance committee upbraided the plaintiff, such action was not an integral part of criminal law enforcement. The circuit court distinguished *Erdmann* on two grounds: 1) *Erdmann* involved a proceeding for disbarment by a court, unlike the procedure in *Polk*, which concerned a reprimand by an administrative tribunal; and 2) in *Polk* the applicable state law deemed such a proceeding civil, whereas in *Erdmann* disbarment was labeled quasi-criminal. The *Polk* court concluded that the reprimand of the plaintiff was in no sense an enforcement of a state’s criminal laws, thus indicating that *Younger* did not extend to purely civil proceedings.

Finally, in *O’Neill v. Battisti*, a state judge was charged by the Board of Commissioners on Grievances and Discipline with a violation of the Canons of Judicial Ethics. The judge sought an injunction in federal district court under Section 1983 to enjoin the state board proceeding. The district court issued a temporary restraining order against the board proceeding. The Sixth Circuit reversed, holding that the district court should have abstained because the issue had its roots in the judicial system of the state of character and the professional competence requisite to the practice of law. *Id.* at 1213.

*61. 480 F.2d 998 (5th Cir. 1973).*

*62. Id. at 999.*

*63. Id. at 1002.*

*64. 480 F.2d at 1001-02. There is a United States Supreme Court case that may cast doubt upon *Younger*’s application to non-criminal cases. In *Gibson v. Berryhill*, 411 U.S. 564 (1973), the Court held that a district court could properly enjoin disciplinary action by a state board of optometrists. The Court distinguished *Geiger v. Jenkins*, 316 F. Supp. 370 (N.D. Ga. 1970), *aff’d*, 401 U.S. 985 (1971). In *Geiger* the district court abstained from enjoining a revocation proceeding before a board of medical examiners on the ground that the state proceedings were in the nature of criminal proceedings and the applicable statute was penal. In *Gibson*, *Geiger* was distinguished because there was no applicable state law stating that such a proceeding was quasi-criminal.

*65. 480 F.2d at 1001-02.*

*66. 472 F.2d 789 (6th Cir. 1972).*

*67. Id. at 790.*
Ohio, and the state should be the first to resolve such issues, especially once the state proceeding has commenced.68

The cases in the areas discussed above, though they involved non-criminal proceedings, did not actually consider the question of whether there is a civil-criminal distinction in applying Younger. Instead, the courts emphasized how similar such proceedings were to criminal cases and defined them as quasi-criminal. Since Younger applies to criminal cases, application of Younger is proper, when a civil statute is used to enforce state criminal laws and serves the same function as a penal statute, or when a pending disciplinary proceeding involves sanctions as serious as criminal sanctions and arises out of the state judicial system. Therefore, there was no need to discuss the principles of equity, comity and federalism, upon which Younger is based, or how these principles may or may not apply to a purely civil proceeding.69

Younger and Purely Civil Proceedings

Courts have been forced to consider the policy behind Younger when considering the application of Younger abstention to purely civil proceedings. The most well known case in this area is Lynch v. Snepp.70 There a North Carolina court had enjoined non-school members from entering the grounds of a high school which had experienced violence due to racial tension. Plaintiffs filed suit in federal court under Section 1983 seeking to enjoin the state court order. The federal district court granted plaintiffs' request for an injunction.71 The Fourth Circuit reversed72 and stated that abstention was warranted because the element of bad faith, required by Younger, was not present, and because plaintiffs had not shown that any irreparable harm would occur if they presented their constitutional claims in a state court. As an explanation for its extension of the Younger test to this non-criminal case, the Fourth Circuit stated:

While the offense to a state interest may be less in a civil proceeding than in a criminal proceeding, . . . also the bur-

68. Id. at 790-91.
69. For example, in Erdmann the court stated:
   Although it is an open question whether the principles of Younger . . . apply with equal force to a civil suit, we need not face that issue here for the reason that in our view a court's disciplinary proceeding against a member of its bar is comparable to a criminal rather than to a civil proceeding.
458 F.2d at 1209.
70. 472 F.2d 769 (4th Cir. 1973).
72. 472 F.2d 769.
den on the individual if left to his state court remedies is less severe in the civil context. In requiring a federal plaintiff to defend a state civil action there is no exposure to criminal penalties which could cumulate during the pendency of the action. . . . Moreover, when coordinate courts are on collision course the disruptive effect on federalism is not likely to be dissipated by assurance that only civil jurisdiction is involved. 73

The court cited Cousins v. Wigoda 74 to support its rationale.

In Cousins, an Illinois court had enjoined plaintiffs from attempting to oust state court-determined delegates to the 1972 Democratic National Convention. Plaintiffs filed suit in federal district court under Section 1983 and sought an injunction against the state court order. The district court granted the injunction. The Seventh Circuit reversed, stating that the district court should have abstained, having found neither bad faith nor "special circumstances", and held that plaintiffs should appeal the state court order against them in the state appellate courts. On the issue of applying Younger in this civil proceeding, the court stated that "special respect for the state judicial process [is required] if federal jurisdiction is not invoked until after state litigation is commenced. 75 On appeal to the United States Supreme Court, Justice Rehnquist denied a stay, relying on the principles of comity between federal and state courts as enunciated in Younger. 76

One other case deserves mention. In Henkel v. Bradshaw, 77 an indigent father was cited for contempt for nonsupport. He brought suit under Section 1983 seeking injunctive and declaratory relief with respect to refusal by the state trial court to appoint counsel. The Ninth Circuit, admitting that failure to appoint counsel was probably unconstitutional, nevertheless abstained, and applied Younger on the grounds that: 1) the state is a party to the contempt action; and 2) there is a penal outcome to the hearing, as the plaintiff could face a jail term. 78

ANALYSIS

In addition to the reasons enunciated by the federal courts in the decisions above, some of those courts used dicta from Supreme

74. 463 F.2d 603 (7th Cir. 1972).
75. Id. at 606.
76. 409 U.S. 1201, 1205 (1972).
77. 483 F.2d 1386 (9th Cir. 1973).
78. Id. at 1389.
Court justices as support for the extension of *Younger*. For example, Speight cited a concurrence by Chief Justice Burger (joined by Justices White and Blackmun) in *Mitchum v. Foster*, as authority that *Younger* was not limited to criminal cases. The Chief Justice stated:

> We have not yet reached or decided exactly how great a restraint is imposed by these principles on a federal court asked to enjoin state civil proceedings. Therefore, on remand in this case, it seems to me the District Court, before reaching a decision on the merits of appellant's claim, should properly consider whether general notions of equity or principles of federalism, similar to those invoked in *Younger*, prevent the issuance of an injunction against the state "nuisance abatement" proceedings in the circumstances of this case.  

Justice White made a more assertive statement on the issue in his dissent (joined by Justices Blackmun and Burger) in *Lynch v. Household Finance Corp.*:

> Appellee . . . invokes *Younger* and companion cases as a ground for affirming the judgment of the District Court. Of course, those cases involved federal injunctions against state criminal proceedings, but the relevant considerations, in my view, are equally applicable where state civil litigation is in progress, as is here the case.  

On the other hand, Justice Stewart stated in his concurrence (joined by Justice Harlan) in *Younger*:

> [W]e do not deal with the considerations which should govern a federal court when it is asked to intervene in state civil proceedings, where, for various reasons, the balance might be struck differently.

Exactly what those different considerations might be is perhaps best illustrated by an analysis of the reasons given in the above cases for the extension of *Younger*.

First, since *Younger* applies to pending criminal cases, the decisions in the "Civil as Criminal" and "Disciplinary Proceedings" areas are consistent with *Younger*. They are consistent, not because, for policy reasons, abstention is warranted, but because they are in effect criminal proceedings. The similarity is quite strong: the state (or one of its officials or agencies) was a party to the

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80. Id. at 244.
82. Id. at 561.
83. 401 U.S. at 55.
proceedings and the remedies provided by the state legislature, such as injunctive relief, are an additional means of enforcing criminal sanctions. A further argument is that the issuance of a federal injunction is offensive to the state judge and prosecutor involved, and is costly in terms of judicial efficiency. Thus the Younger basis of federalism and comity is arguably met in such cases.

Application of Younger is not so readily justified, however, when a purely civil proceeding is involved. The state is usually not a party to the proceeding in such a case and, arguably, its interest is therefore not paramount. The court in Lynch v. Snepp responded to this argument by stating: "While the offense to a state interest may be less in a civil proceeding than in a criminal proceeding, . . . also the burden on the individual if left to his state court remedies is less severe in the civil context." The error of such reasoning is that the principles of comity and federalism, upon which Younger is based, focus on the interests of the state and not on those of the individual.

The state response to this is that when a federal court snatches a case from the hands of a state tribunal, there arises the implication that state courts are not competent to handle sensitive constitutional (thus far first amendment) issues. This point touches the heart of Younger type abstention, and leads to the question of whether that doctrine is appropriate in first amendment cases, regardless of whether the proceeding is labeled criminal, quasi-criminal or civil. A forceful argument against Younger's application in first amendment cases is that one reason for passage of Section 1983 was to assure that civil rights would not be nullified by state courts. Professor Wechsler stated that:

84. Professor Wright agrees, stating:
[T]he general notion of "Our Federalism" that is at the heart of these decisions would seem to suggest that under ordinary circumstances a federal court should not interfere with actions in state courts in which the state, or an officer or agency of the state, is seeking to enforce the laws of the state.


86. 472 F.2d 769.

87. Id. at 774-75 n.5.

88. See note 36 supra.
There Congress has declared the historic judgment that within this precious area there is to be no slightest risk of nullification by state process. The danger is unhappily not past. It would be moving in the wrong direction to reduce the jurisdiction in this field — not because the interest of the state is smaller in such cases, but because its interest is outweighed by other factors of the highest national concern.  

And, as Justice Brennan has stated, "Federal court abstention is particularly inappropriate in cases brought under [Section 1983, which is] designed specifically to authorize federal protection of civil rights". Further, in *Mitchum v. Foster*, the United States Supreme Court held Section 1983 to be an exception to the anti-injunction statute, while also paying lip service to *Younger v. Harris*. Implicit in the *Mitchum* holding is a determination that state courts are not as competent as the federal courts to determine federally created rights. Thus, abstention in these cases creates what can be termed the Section 1983 paradox. The paradox occurs when federal courts abstain from adjudicating civil rights issues brought under Section 1983, holding that state courts are as competent to determine these federal issues. Abstention based on federalism is at odds with the congressional decision to create Section 1983 remedies. More aptly put:

Comity, a judicial doctrine, contemplates that federal and state courts respect each other’s opinions and problems. This minimizes conflicts. It is everyday courtesy. The United States Constitution, the supreme law of the land, values human freedom more than judicial courtesy.

**PROJECTION**

What will the Supreme Court do in *MTM, Inc. v. Baxley*? As discussed above, Justices White, Blackmun and Burger have indicated their approval of extending *Younger* to non-criminal

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91. 407 U.S. 225.
92. The Supreme Court stated in *Mitchum* that it would not "question or qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." *Id.* at 243.
93. See note 36 supra.
95. 415 U.S. 975. See note 2 supra.
cases, and will probably hold so in Baxley, especially since the statute involved is quasi-criminal. Justice Rehnquist may join them, in light of his denial of a stay in Cousins, though he did state, "While the test to be applied may be less stringent in civil cases than in criminal, the cases cited in Mitchum make clear that the federal courts will not casually enjoin the conduct of pending state court proceedings of either type."96

On the other hand, Justice Stewart appears to favor non-extension, based on his concurrence in Younger. Justice Douglas dissented in Younger, emphasizing the importance of federal court protection of first amendment rights,97 and will most likely decide that the merits should be reached in Baxley. Justice Brennan should agree, in light of his limitation of Younger in Steffel v. Thompson.98 The same is true of Justice Marshall, for in California v. LaRue99 (dissenting), he stated that: "we have limited the applicability of Younger to cases where the plaintiff has an adequate remedy in a pending criminal prosecution."100

Based on these projections, the court is divided 4-4. What will Justice Powell do? He was not on the court when Mitchum or Younger were decided, and as yet has not indicated his views on the matter.

CONCLUSION

The abstention doctrines have been firmly rooted in the American federal court system ever since Justice Frankfurter, in Railroad Commission of Texas v. Pullman Co.,101 enunciated the need for federal courts to avoid determining constitutional issues in cases where the decision may rest on other grounds. Subsequent to Pullman, other abstention doctrines have been developed, one of which, the Younger type, is the most frequently employed.

Younger v. Harris, based upon comity and federalism, requires a federal court to refrain from intervening in a pending state criminal proceeding unless: 1) there is a showing of bad faith toward the plaintiff by state officials and 2) the statute under which the plaintiff is being prosecuted is unconstitutional on its face; or other "special circumstances" exist which require immediate federal intervention.

96. 409 U.S. at 1206.
97. 401 U.S. at 58.
100. Id. at 124 n.2.
101. 312 U.S. 496.
Younger and its companion cases, in part a reaction to Dombrowski v. Pfister, stemmed the tide of federal interference in state criminal proceedings. The critical difference in the two decisions lies in their tone. Dombrowski emphasized the need for federal protection of individual rights. Younger emphasized the need for infrequent interference with state criminal proceedings. This difference is important in analyzing Younger's extension into pending, non-criminal cases which involve 42 U.S.C. § 1983 and the first amendment.

In the "Civil as Criminal" and "Disciplinary Proceedings" areas Younger can logically be applied because the statutes involved in the cases in those two areas are quasi-criminal, that is, they either have the effect of or they implement the state's criminal laws. Since Younger applies to criminal proceedings, Younger also applies to the "Civil as Criminal" and "Disciplinary Proceedings" areas.

Younger's extension into the civil area, however, is not as logical. First, in such cases, the state is often not a party and the offense to the state's interest is arguably less than in criminal or quasi-criminal cases. It makes no difference whether the burden is less severe upon the individual involved, for Younger focuses upon the interests of the state, not the individual. Second, in light of Section 1983 the Younger abstention doctrine has proceeded far enough. That statute is a federally created remedy which is an exception to the anti-injunction statute. This, coupled with the historical treatment of the first amendment as within the zealous protection of the federal courts provides a basis for concluding that all requests for federal intervention invoking the first amendment and Section 1983 should not be smothered by the application of the Younger abstention doctrine. Steffel v. Thompson stemmed the Younger tide in cases involving threatened proceedings, and the Supreme Court should refuse to extend Younger to cases involving pending non-criminal proceedings as well. Some vestiges of immediate federal protection should remain.

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102. 380 U.S. 479.
103. 415 U.S. 452.