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Limiting the Younger Doctrine: A Critique and Proposal

Charles R. Rice

Limiting the *Younger* Doctrine: A Critique and Proposal

In *Younger v. Harris*[1] and subsequent cases, the United States Supreme Court has fashioned a rule of "equitable restraint"[2] which limits federal court interference with state judicial proceedings.[3] A federal court, except in extraordinary circumstances, is barred from granting injunctive or declaratory relief from an alleged deprivation of constitutional rights under "color of State law,"[4] if the constitutional

1. 401 U.S. 37 (1971).

2. No consensus has developed on a label for the doctrine emanating from Younger v. Harris. Recent Supreme Court opinions have merely referred generally to the "principles of *Younger*." *See* Trainor v. Hernandez, 431 U.S. 434, 444 (1977); Juidice v. Vail, 430 U.S. 327, 334 (1977). This Comment adopts the term "equitable restraint." *See* Kugler v. Helfant, 421 U.S. 117, 124 (1975); O'Shea v. Littleton, 414 U.S. 488, 502 (1974). Although even this term is a misnomer to the extent that it implies that equitable, rather than federalist, values are the primary bases for restraint, it is preferable to characterization as "abstention," *see* Colorado River Water Conserv. Dist. v. United States, 424 U.S. 800, 816 (1976), since to use the latter term would create a risk of confusion with the doctrine of *Pullman* abstention. *See* Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941). This doctrine is applied when state action is challenged in federal court under both state and federal law. If the federal court finds that the state law is unclear and subject to a construction which would dispose of the case entirely, it retains jurisdiction, directs the plaintiff to initiate suit in state court, and postpones its decision to avoid premature adjudication of a constitutional issue. *Id.* at 501. *See also* England v. Louisiana State Bd. of Med. Examiners, 375 U.S. 411, 421-22 (1964). *Pullman* abstention is invoked only when state law is ambiguous. Equitable restraint, by contrast, is invoked when the federal plaintiff is already a party to certain types of state proceedings, regardless of the ambiguity of state law. The federal court dismisses rather than postpones the case, and the federal claims are left to decision by the state court. *See, e.g., Trainor*, 431 U.S. at 441.

3. The doctrine has received much commentary. Particularly helpful guides to the history and policy of equitable restraint are Fiss, Dombrowski, 86 YALE L.J. 1103 (1977); Whitten, *Federal Declaratory and Injunctive Interference with State Court Proceedings: The Supreme Court and the Limits of Judicial Discretion*, 53 N.C.L. REV. 591 (1975); *Developments in the Law—Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1274-1330 (1977) [hereinafter cited as *Developments*]; Comment, *Post*-Younger *Excesses in the Doctrine of Equitable Restraint: A Critical Analysis*, 1976 DUKE L.J. 523 [hereinafter cited as *Post*-Younger *Excesses*].

4. To date, every case applying the *Younger* doctrine has been brought under 42 U.S.C. § 1983 (1976), the recodification of a portion of the Civil Rights Act of 1871 (Act of Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13). It provides:

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

The jurisdictional counterpart of § 1983, also originally part of § 1 of the Civil Rights Act of 1871, is now codified at 28 U.S.C § 1343(3) (1976). § 1343 provides:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . . 3) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity

claim can be presented in the pending state proceeding.[5]

Critics have charged that such deference to the state courts undermines the duty of the federal courts to act as the "primary and powerful reliances"[6] for the protection of constitutional rights.[7] Fearing that the state courts may often fail to vindicate these rights, these critics have sought to limit the *Younger* doctrine. Since the Supreme Court has not yet extended the doctrine to all state court proceedings,[8] limitations based on the type of state proceeding have been suggested.[9] The most popular current idea is that equitable restraint should not be required unless the state initiated the state proceeding.[10]

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secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States . . . .

Despite the slightly different wording of the two sections, § 1343(3) provides federal jurisdiction for any claim brought under § 1983 alleging constitutional violations. *See* Lynch v. Household Fin. Corp., 405 U.S. 538, 543 n.7 (1972).

5. The *Younger* doctrine has also been suggested as an alternate holding even where no state proceeding was pending against the federal plaintiff. Rizzo v. Goode, 423 U.S. 362, 380 (1976); O'Shea v. Littleton, 414 U.S. 488, 499-504 (1974). These cases represent a significant departure from the usual *Younger* analysis. *See, e.g.*, Wooley v. Maynard, 430 U.S. 705, 711 (1977); Doran v. Salem Inn, Inc., 422 U.S. 922, 930-31 (1975); Steffel v. Thompson, 415 U.S. 452, 462 (1974).

6. The oft-quoted term was used to describe the effect of the Judiciary Act of 1875, conferring general federal question jurisdiction on the federal courts: "[they thereby] ceased to be restricted tribunals of fair dealing between citizens of different states and became the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States." F. FRANKFURTER & J. LANDIS, THE BUSINESS OF THE SUPREME COURT 65 (1928). *See* Steffel v. Thompson, 415 U.S. 452, 464 (1974); Zwickler v. Koota, 389 U.S. 241, 247 (1967).

7. *See, e.g.*, Trainor v. Hernandez, 431 U.S. 434, 456 (1977) (Brennan, J., dissenting); Fiss, *supra* note 3; McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Claims*, 60 VA. L. REV. 250 (1974); McMillan, *Abstention—The Judiciary's Self-Inflicted Wound*, 56 N.C.L. REV. 527 (1978); Redish, *The Doctrine of* Younger v. Harris*: Deference in Search of a Rationale*, 63 CORNELL L. REV. 463 (1978); Shaman & Turkington, Huffman v. Pursue, Ltd.*: The Federal Courthouse Door Closes Further*, 56 B.U.L. REV. 907 (1976); Soifer & Macgill, *The* Younger *Doctrine: Reconstructing Reconstruction*, 55 TEXAS L. REV. 1141 (1977); *Developments*, *supra* note 3, at 1274-1330; *Post-*Younger *Excesses*, *supra* note 3; Note, *The New Federal Comity; Pursuit of* Younger *in a Civil Context*, 61 IOWA L. REV. 784 (1976) [hereinafter cited as *Federal Comity*]; Note, Younger *Grows Older: Equitable Abstention in Civil Proceedings*, 50 N.Y.U.L. REV. 870 (1975) [hereinafter cited as Younger *Grows Older*].

8. *See* note 47 and accompanying text *infra*.

9. The earliest suggestion—that equitable restraint was required toward criminal but not civil proceedings, *see Younger*, 401 U.S. at 55-56 (Stewart, J., concurring)—was soon rejected by the Court in Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975) (requiring restraint toward civil "public nuisance" action by state against adult movie theater).

10. This proposal was most recently articulated in Johnson v. Kelly, 583 F.2d 1242 (3d Cir. 1978) (Seitz, C.J.). Pennsylvania homeowners petitioned the United States District Court for declaratory and injunctive relief from pending state quiet title actions brought by private parties who had bought their homes at county tax sales. *Id.* at 1244-45. They claimed that the tax sales were unconstitutional as repugnant to the due process clause of the fourteenth amendment. *Id.* at 1245. The district court dismissed the complaint on *Younger* grounds. *Id.* The Third Circuit reversed, finding that the district court's action was "fundamentally inconsistent with Congress' decision to create in 42 U.S.C. § 1983 a federal forum for the adjudication of constitutional claims such as

This Comment will argue that the analyses of both the Court and its critics are misguided and inconsistent. Although the excesses of equitable restraint must be curbed, the proposed limitation based on state initiation, even if not foreclosed by Court decisions,[11] should be rejected. The proposal fails to afford adequate protection to either the state or federal interests implicated by federal interference with pending state proceedings to protect constitutional rights. Neither the state interest in the regular operation of its courts nor the federal interest in the full and fair adjudication of constitutional claims depends on whether the state initiated the pending state proceeding.

This Comment suggests a new approach for balancing these competing interests, one that focuses on the adequacy of the state proceeding. The *Younger* doctrine now requires such an inquiry, but it has been so deferentially conducted that the constitutional claimant is often relegated to dubious state remedies.[12] A new mode of inquiry for eval-

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this one." *Id.* at 1252. The circuit court then held that "outside the special context of a challenge to civil contempt proceedings, the *Younger* doctrine should not be extended to cases in which the state proceedings have not been initiated by the state itself." *Id.* at 1249. *See also* Puerto Rico Int'l Airlines v. Recio, 520 F.2d 1342, 1345 (1st Cir. 1975); Shaman & Turkington, *supra* note 7; *Post*-Younger *Excesses*, *supra* note 3, at 557-58; *Federal Comity*, *supra* note 7, at 812; Younger *Grows Older*, *supra* note 7, at 883 n.62.

11. *See* Juidice v. Vail, 430 U.S. 327 (1977), which applied *Younger* to interference with a state court contempt proceeding arising from a suit in which the state was not a party. The lower federal courts have repeatedly held that equitable restraint precludes federal court interference with state proceedings between purely private litigants. Lamb Enterprises, Inc. v. Kiroff, 549 F.2d 1052, 1056 (6th Cir.) (private suit for attorney's fees), *cert. denied*, 431 U.S. 968 (1977); Louisville Area Inter-Faith Comm. v. Nottingham Liquors, 542 F.2d 652, 654 (6th Cir. 1976) (suit by storeowner to enjoin farmworker picketing); Williams v. Williams, 532 F.2d 120, 122 (8th Cir. 1976) (adoption proceedings); Littleton v. Fisher, 530 F.2d 691, 693 (6th Cir. 1976) (child custody hearings in state divorce court); American Radio Ass'n v. Mobile S.S. Ass'n, 483 F.2d 1, 6 (5th Cir. 1973) (suit by marine unions to overturn state injunction against picketing); Cousins v. Wigoda, 463 F.2d 603, 606 (7th Cir.) (state suit by Democratic Party officials to enjoin delegate challenge by insurgent group at the 1972 Convention), *stay denied*, 409 U.S. 1201 (1972) (Rehnquist, Circuit Justice); Gras v. Stevens, 415 F. Supp. 1148, 1154 (S.D.N.Y. 1976) (divorce proceedings); Fisher v. Federal Nat'l Mortgage Ass'n, 360 F. Supp. 207, 210 (D. Md. 1973) (state proceedings to foreclose deed of trust securing promissory notes).

Only two lower federal courts have refused to apply equitable restraint to state civil proceedings between private litigants: Johnson v. Kelly, 583 F.2d 1242, 1249 (3d Cir. 1978); Puerto Rico Int'l Airlines v. Recio, 520 F.2d at 1345. Chief Judge Seitz in *Johnson* cited other decisions as supporting the proposed limitation, but these are of doubtful value. Two cases involved requests for federal injunctive relief from future, not pending, prosecutions: Ealy v. Littlejohn, 569 F.2d 219, 224 (5th Cir. 1978); Morial v. Judiciary Comm., 565 F.2d 295, 297 (5th Cir. 1977), *cert. denied*, 435 U.S. 1013 (1978). Two other cases cited by Chief Judge Seitz also did not involve pending state proceedings: D'Iorio v. County of Delaware, 447 F. Supp. 229, 233 (E.D. Pa. 1978); Santiago v. City of Philadelphia, 435 F. Supp. 136, 145 (E.D. Pa. 1977). Finally, the injunction of state proceedings in the fifth case cited, Marshall v. Chase Manhattan Bank, 558 F.2d 680 (2d Cir. 1977), was based on a federal statute which, unlike § 1983, conferred exclusive jurisdiction on the federal courts. *Id.* at 684.

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

uating the "adequacy" of the state proceedings is necessary to ensure the vindication of federal rights. This Comment therefore proposes that equitable restraint should be required only towards state court proceedings that provide a "plain, speedy and efficient remedy" for the federal wrong.[13]

The Supreme Court now seems unreceptive to limitations on *Younger*. Yet, the principles articulated in its own decisions require the fundamental reformulation of equitable restraint doctrine proposed here. The argument for a reformulation is also directed at Congress, which may reassert that federal courts have primary responsibility for vindicating constitutional rights. New legislation should be drafted to bar equitable restraint when the pending state proceeding fails to afford a "plain, speedy and efficient remedy" for the federal wrong.

I

THE *YOUNGER* DOCTRINE

A. Sources of the Doctrine

Equitable restraint, as originally formulated by Justice Black in *Younger*, is based on "the national policy forbidding federal courts to stay or enjoin pending state proceedings except under special circumstances."[14] This policy is derived from the Anti-Injunction Act, first passed in 1793.[15] Rather than relying on the statute itself, which forbids federal injunctions of state proceedings unless, *inter alia*, they are "expressly authorized" by another federal statute, Justice Black based his decision on the statute's "primary sources."[16] First, he noted that courts of equity traditionally denied relief when the moving party had

13. The language is borrowed from 28 U.S.C. § 1341 (1976): "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

14. 401 U.S. at 41.

15. The Act, now codified at 28 U.S.C. § 2283 (1976), 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." The present Act is the successor to § 5 of the Judiciary Act of 1793, ch. 22, § 5, 1 Stat. 334 (1861); *see Younger*, 401 U.S. at 43. The Act also bars indirect stays of state proceedings by injunctions directed at the parties rather than the court itself. Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 309 U.S. 4, 9 (1940).

16. 401 U.S. at 43-44. Justice Black thus avoided a decision as to whether suits brought under 42 U.S.C. § 1983, *see* note 4 *supra*, were an "expressly authorized" exception to the Anti-Injunction Act. This issue had been mentioned but not resolved in previous decisions. *See* Cameron v. Johnson, 390 U.S. 611, 613 n.3 (1968); Dombrowski v. Pfister, 380 U.S. 479, 484 n.2 (1965).

The Supreme Court has found that a number of statutes permit federal court injunctions of state proceedings as "expressly authorized" exceptions to 28 U.S.C. § 2283. These include: (1) the Bankruptcy Act, 11 U.S.C. §§ 1 to 1103 (1976); (2) the Interpleader Act of 1936, 28 U.S.C. § 2361 (1976); *see* Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939); (3) the Federal Habeas Corpus Act, 28 U.S.C § 2251 (1976); *see Ex parte* Royall, 117 U.S. 241 (1886); (4) the Removal Act, 28

an adequate remedy at law and would not suffer irreparable injury.[17] The "more vital consideration," however, was the notion of "comity" or "Our Federalism,"[18] a commitment to

> 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.[19]

Under this system, federal relief from a pending state criminal prosecution should be denied, absent a showing of irreparable injury which is "both great and immediate."[20] Irreparable injury can be shown only if the federal right cannot be protected by a "defense against a single criminal prosecution."[21] The state prosecution itself, which will presumably vindicate federal rights, eliminates any justification for federal relief in all but "extraordinary circumstances."[22]

The policy of equitable restraint has been applied only to cases brought under 42 U.S.C. section 1983.[23] This limitation, which the Court has not explicitly acknowledged, seems anomalous since *Mitchum v. Foster*,[24] decided one year after *Younger*, established that section

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U.S.C. § 1446(c) (1976); *see* French v. Hay, 89 U.S. (22 Wall.) 250 (1875). *See also* Porter v. Dicken, 328 U.S. 252 (1946).

17. 401 U.S. at 43.

18. *Id.* at 43-44.

Justice Black apparently regarded "comity" and "Our Federalism" as synonymous. *Id.* at 44. Other commentators have chosen to distinguish "comity" as the respect and deference due other courts, even in a unitary system. *See* Bartels, *Avoiding a Comity of Errors: A Model for Adjudicating Federal Civil Rights Suits That "Interfere" with State Civil Proceedings*, 29 STAN. L. REV. 27, 43 (1976); *Post*-Younger *Excesses*, *supra* note 3, at 530. This Comment uses a similar distinction, with different terms, to describe the harm to state interests posed by federal interference with pending state proceedings. "Procedural federalism" refers to the state's interest in the integrity and continuity of its judicial processes. "Substantive federalism" refers to the state's interest in the substantive state policies underlying the laws enforced in such state proceedings. *See* Younger *Grows Older*, *supra* note 7, at 878.

19. 401 U.S. at 44.

20. *Id.* at 46. This standard had been established by a long line of cases involving federal relief from pending state criminal prosecutions. Douglas v. City of Jeanette, 319 U.S. 157, 163-64 (1943); Williams v. Miller, 317 U.S. 599, 600 (1942) (per curiam); Watson v. Buck, 313 U.S. 387, 401 (1941); Beal v. Missouri & Pac. R.R., 312 U.S. 45, 50 (1941). *But see* Truax v. Raich, 239 U.S. 33, 38-39 (1915) (Holmes, J.) (affirming federal court injunction of state criminal prosecution).

21. *Younger*, 401 U.S. at 46. *Younger* began as a suit filed under § 1983 in federal court for declaratory and injunctive relief from a pending state prosecution under the California Criminal Syndicalism Statute. *Id.* at 38-39. A three-judge panel of the United States District Court found the statute unconstitutionally vague and overbroad and enjoined the pending prosecution. *Id.* at 40. The Supreme Court reversed, rejecting the notion suggested by Dombrowski v. Pfister, 380 U.S. 479, 485-86 (1965), that prosecution under a state statute which is unconstitutional on its face may constitute irreparable injury justifying federal relief. 401 U.S. at 53. For a critique of the *Younger* treatment of *Dombrowski*, see Fiss, *supra* note 3, at 1112.

22. 401 U.S. at 53.

23. *See* note 4 *supra*.

24. 407 U.S. 225 (1972).

1983 is an "expressly authorized" exception to the Anti-Injunction Act.[25]

While the *Mitchum* Court cautioned that its decision did not qualify in any way "the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state proceeding,"[26] this facile harmonization of *Younger* and *Mitchum* cannot withstand analysis. Under the *Younger* doctrine, the treatment of claims brought under section 1983 for federal relief from pending state proceedings differs markedly from the treatment of similar claims brought under other "expressly authorized" exceptions to the Anti-Injunction Act. In the latter cases, the Court has not derived a judicial doctrine of restraint from the Act when the Act is by its own terms inapplicable.[27] Rather, the Court has deferred to the congressional decision that the need for an injunction of state proceedings outweighs the attendant harms. Yet the Court has never explicitly considered why such deference should not also be accorded to the similar congressional mandate of section 1983. In the absence of an articulated distinction, this unique treatment of section 1983 is most easily attributed to a basic hostility to the federal courts' statutorily mandated duty to act as the primary guarantors of constitutional rights.[28]

The propriety of equitable restraint depends on a balance of the policy, required by section 1983, of ensuring full and fair adjudication of constitutional claims and the policy, derived from the Anti-Injunction Act, of avoiding undue interference with state interests. Such a balance requires a further examination of the intent of Congress, the past decisions of the Supreme Court, and the practical effects of forum-allocation decisions.

B. The Basic Rule

The so-called "February Sextet"—*Younger* and five other cases decided the same day[29]—held that equitable restraint is required when

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25. *Id.* at 243.

26. *Id.*

27. *See* cases cited at note 16 *supra*.

28. *See, e.g.*, Huffman v. Pursue, Ltd., 420 U.S. 592, 606 (1975). Justice Brennan has noted:

> Perhaps the process of eviscerating § 1983 should not come as a surprise. This Court . . . has shaped the doctrines of jurisdiction, justiciability, and remedy so as increasingly to bar the federal courthouse door to litigants with substantial federal claims. . . . Under the banner of vague, undefined notions of equity, comity, and federalism, the Court has embarked upon the dangerous course of condoning both isolated . . . and systematic . . . violations of civil liberties.

Juidice v. Vail, 430 U.S. 327, 346 (1977) (Brennan, J., dissenting).

29. In addition to *Younger*, four of the "sextet" involved pending or completed state criminal prosecutions: Byrne v. Karalexis, 401 U.S. 216, 220 (1971); Dyson v. Stein, 401 U.S. 200, 201-02 (1971); Perez v. Ledesma, 401 U.S. 82, 84 (1971); Samuels v. Mackell, 401 U.S. 66, 67 (1971). The sixth case involved a suit to enjoin future criminal prosecutions only. Boyle v. Landry, 401

a federal court is petitioned for relief from a pending state criminal prosecution. Except in extraordinary circumstances, according to the "Sextet," the federal court may not enjoin[30] nor otherwise interfere[31] with the state proceeding. Nor may it entertain a suit for a declaratory judgment as to the constitutionality of a state law or procedure which can be challenged in the pending state proceeding.[32] Moreover, cases following *Younger* require that federal relief from a state court *judgment* must also be denied if state appellate remedies have not been exhausted.[33]

Although the doctrine of equitable restraint was originally applied only to cases where state proceedings were pending when the federal complaint was filed, the availability of federal relief, absent a pending state proceeding, was not immediately resolved.[34] Before *Younger*, the federal courts had allowed a section 1983 claimant access to the federal courts without first exhausting available state remedies when no state

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U.S. 77, 80 (1971). The Supreme Court reversed the district court injunction on the ground that such future prosecutions were too speculative to constitute a threat of irreparable injury. *Id.* at 81.

30. *Younger*, 401 U.S. at 45, 53.

31. An injunction which does not actually stay a state prosecution, but instead effectively stifles it—by suppressing evidence, for example—is also impermissible. Perez v. Ledesma, 401 U.S. 82, 85 (1971). *See* Stefanelli v. Minard, 342 U.S. 117, 123 (1951).

32. Samuels v. Mackell, 401 U.S. 66, 72-73 (1971). The Court reasoned that a declaratory judgment "will result in precisely the same interference with and disruption of state proceedings" as would an injunction. *Id.* at 72. This is true either because a declaratory judgment would be considered "res judicata" in the state court, or because a declaratory judgment could serve as a basis for a subsequent injunction to "protect or effectuate" it, as allowed by the Anti-Injunction Act. *Id.* The Court's conclusion is by no means compelled, however. The collateral estoppel effect of a federal declaratory judgment on state proceedings has not been authoritatively resolved. *Compare* Steffel v. Thompson, 415 U.S. 452, 470-71 (1974), *with id.* at 477 (White, J., concurring) *and id.* at 479, 482 n.3 (Rehnquist, J., concurring). Moreover, the *Younger* doctrine itself makes clear that a determination that an injunction is permitted by the Anti-Injunction Act does not end the inquiry. Indeed, the policy of equitable restraint is invoked only when the Anti-Injunction Act is not itself applicable. *See* Mitchum v. Foster, 407 U.S. 225, 243 (1972). Thus the Court could have held that declaratory judgments are permitted by the *Younger* doctrine, but that preliminary or final injunctions to "protect or effectuate" these judgments are not. *See Post*-Younger *Excesses*, *supra* note 3, at 545 n.99. This approach was rejected by the Court in *Samuels* and subsequent cases. *See* Wooley v. Maynard, 430 U.S. 705, 712 (1977); Doran v. Salem Inn, Inc., 422 U.S. 922, 930-31 (1975).

33. Huffman v. Pursue, Ltd., 420 U.S. 592, 608 (1975). For an example of the divergent views of current justices on the subject, compare Byrne v. Karalexis, 401 U.S. 216, 220 (1971), with *id.* at 221 (Brennan, J., dissenting). The right of access to a federal court for collateral attack on a state judgment after exhaustion of state appellate remedies and the "estoppel" effects of the prior state court judgment have not been authoritatively resolved. *Huffman*, 420 U.S. at 606 n.18. *See* Theis, *Res Judicata in Civil Rights Act Cases: An Introduction to the Problem*, 70 NW. U.L. REV. 858 (1976); Note, *The Preclusive Effect of State Judgments on Subsequent 1983 Actions*, 78 COLUM. L. REV. 610 (1978).

34. Samuels v. Mackell, 401 U.S. 66, 73-74 (1971); *Younger*, 401 U.S. at 41. *See also* O'Shea v. Littleton, 414 U.S. 488 (1974), where the *Younger* doctrine was invoked as an alternative ground for denying federal relief although no state prosecutions were pending against the federal plaintiff. *Id.* at 499-504.

action was pending.[35] However, this rule, based on *Monroe v. Pape*,[36] had not been tested against the values of "equity, comity, and federalism" asserted by *Younger*.

The Court eventually "reconciled" *Monroe* and *Younger* by adopting the "pending prosecution rule." When no state prosecution is pending and the federal plaintiff establishes an actual "case or controversy"[37]—usually by showing a credible threat of prosecution[38]—federal relief is not barred. The federal court may, if the other conditions for federal relief are established, grant a declaratory judgment[39] or a preliminary[40] or final injunction.[41]

By contrast, where state criminal proceedings are initiated against a federal plaintiff after the federal complaint has been filed but before any substantial proceedings on the merits have taken place in the federal court, the Supreme Court has ruled that federal relief may not be granted.[42] This decision gave state prosecutors, in effect, a "reverse removal power"[43] to defeat federal jurisdiction by answering federal complaints with state indictments.[44]

Federal relief from allegedly unconstitutional state criminal statutes or procedures has thus been confined to an exceedingly narrow sphere. The federal plaintiff must establish a credible threat of state prosecution but must avoid prosecution until "substantial proceedings

35. Zwickler v. Koota, 389 U.S. 241, 248 (1967); Monroe v. Pape, 365 U.S. 167, 183 (1961); Lane v. Wilson, 307 U.S. 268, 274 (1939). *Monroe* has been overruled insofar as it held local governments wholly immune from suits under § 1983, an issue which is irrelevant to this analysis. Monell v. Department of Social Services, 436 U.S. 658, 663 (1978).

36. 365 U.S. 167 (1961).

37. U.S. CONST. art. III, § 2, ¶ 1.

38. Federal plaintiffs who have failed to establish a credible threat of prosecution have been consistently dismissed. *See, e.g.*, O'Shea v. Littleton, 414 U.S. 488, 493-97 (1974); Boyle v. Landrey, 401 U.S. 77, 81 (1971); *Younger*, 401 U.S. at 41-42.

39. Steffel v. Thompson, 415 U.S. 452, 474 (1974). The pending prosecution rule was foreshadowed by the earlier decisions in Lake Carriers Ass'n v. MacMullan, 406 U.S. 498, 509 (1972) (dicta concerning the underlying *Younger* doctrine "have little force in the absence of a pending state proceeding"), and Roe v. Wade, 410 U.S. 113, 124-27, 166 (1973) (reversing federal declaratory judgment for doctor facing pending state abortion prosecution on *Younger* grounds, but affirming declaratory relief for Roe, who apparently faced no such prosecution, without mentioning *Younger*).

40. Doran v. Salem Inn, Inc., 422 U.S. 922, 930-31 (1975).

41. Wooley v. Maynard, 430 U.S. 705, 709, 711-12, 717 (1974). Both *Wooley* and *Doran* involved "personalized" injunctions which restrained only state prosecutions of the named federal plaintiffs. *Wooley, id.* at 709; *Doran*, 422 U.S. at 930. *See* Fiss, *supra* note 3, at 1147-48. This limitation of injunctive relief should not be significant in practice, since a federal plaintiff facing state prosecution should normally be satisfied with only "personalized" relief.

42. Hicks v. Miranda, 422 U.S. 332, 349 (1975).

43. Fiss, *supra* note 3, at 1134-36.

44. *Hicks*, 422 U.S. at 357 (Stewart, J., dissenting). The *Hicks* majority explicitly rejected the argument that the prosecutor's actions showed "bad faith" (an exception to the rule of equitable restraint). *Id.* at 351. *See* notes 68-71 and accompanying text *infra*.

on the merits" have taken place in the federal court. To meet these requirements, the plaintiff must not only file his federal complaint before state prosecution but must also obtain preliminary federal relief against such prosecution.[45] Issuance of such an injunction, even when permitted by the *Younger* doctrine, is limited by additional requirements, including proof of a reasonable likelihood of success on the merits.[46]

C. *Extension of the* Younger *Doctrine*

Although the *Younger* sextet involved only state criminal prosecutions, the Supreme Court has gradually extended the doctrine to other types of state court actions. The Court has specifically refrained, however, from applying the doctrine to *all* pending state civil proceedings.[47]

The first step toward restraint in noncriminal cases was taken in *Huffman v. Pursue, Ltd.*,[48] in which the Court held that *Younger* barred federal injunctive relief from a public nuisance proceeding, initiated by the county prosecutor, to close appellee's movie theater.[49] Justice Rehnquist, writing for the Court, set the pattern for subsequent extensions of equitable restraint. *Younger*, he reasoned, had sought to prevent certain harms to state interests.[50] The regular operation of the state judicial system is inevitably disrupted by federal relief from any type of pending state proceeding,[51] but the state interest in effectuating the substantive state policies enforced in state proceedings is much greater in the context of criminal prosecutions.[52] The *Younger* principles therefore should apply in full force, according to Justice Rehn-

45. *Doran*, 422 U.S. at 930. *See* Redish, *supra* note 7, at 475 n.76.

46. Quite apart from the policy of equitable restraint, the federal court contemplating a preliminary injunction must consider: (1) the significance of the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the state of the balance between this harm and the injury that granting the injunction would inflict on defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest. 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2948, at 431-32 (1973).

47. Trainor v. Hernandez, 431 U.S. 434, 444 n. 8 (1977); Juidice v. Vail, 430 U.S. 327, 336 n.13 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 607 (1975). Justice Brennan has derided these disclaimers as "tongue in cheek," suspecting that "merely the formal announcement is being postponed." *Juidice*, 430 U.S. at 345 n.* (Brennan, J., dissenting).

48. 420 U.S. 592 (1975).

49. The state court ordered the closure of appellee's movie theatre after finding certain movies displayed in it to be obscene. *Id.* at 598. Appellee then obtained an injunction from the United States District Court restraining the execution of the state court order insofar as it closed the theater to the display of films not judged obscene. *Id.* The Supreme Court vacated the district court's judgment and remanded for further consideration. *Id.* at 612.

50. *Id.* at 604. The four harms posited by Justice Rehnquist are listed and discussed at notes 135-56 and accompanying text *infra*.

51. 420 U.S. at 604.

52. *Id.*

quist, only if the state interest in the substantive policies enforced in the state civil proceeding is "every bit as great as" its interest in criminal prosecutions.[53] Emphasizing that the state had initiated the public nuisance proceeding which was "both in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials,"[54] Justice Rehnquist concluded that the state's interest in the nuisance proceeding was sufficiently great to require equitable restraint.[55]

A second extension occurred in *Juidice v. Vail*,[56] which barred federal relief from a statutory contempt proceeding arising in a suit between private litigants.[57] Although such contempt proceedings primarily serve the "private interests of competing litigants," they also protect the "authority of the judicial system."[58] The Court thus concluded that the state interest in vindicating "the regular operation of its judicial system" was sufficient to bar federal relief.[59]

Finally, *Trainor v. Hernandez*[60] barred federal relief from a pending state attachment proceeding initiated by the Illinois Department of Public Aid against welfare recipients who allegedly had fraudulently concealed their assets.[61] The Court stressed that the suit was "brought by the State in its sovereign capacity" to protect its substantial interest in the fiscal integrity of its public assistance programs, and that welfare fraud was a crime under Illinois law.[62] The state interest in the pending proceeding was thus sufficient to require equitable restraint.[63]

Rather than require equitable restraint toward all pending state civil proceedings the Court has invoked the doctrine on a case-by-case

53. *Id.* at 604-05.

54. *Id.* at 604.

55. *Id.* at 607.

56. 430 U.S. 327 (1977).

57. Appellee had suffered a default judgment in a suit brought by a private creditor. When the appellee failed to appear for a subsequent deposition to give information relevant to the satisfaction of the judgment, he was cited for contempt. *Id.* at 329. Vail was arrested and jailed for one day when he failed to pay his fine. *Id.* at 330. Appellee then filed a class action, under § 1983, in federal court claiming that New York's statutory contempt procedures violated the due process clause of the fourteenth amendment. *Id.* The district court found portions of the challenged statutes unconstitutional and permanently enjoined their enforcement against the appellee and members of his class. *Id.* at 331. The Supreme Court reversed. *Id.* at 339.

58. *Id.* at 336 n.12.

59. *Id.* at 335.

60. 431 U.S. 434 (1977).

61. The Illinois Department of Public Aid had sued welfare recipients in state court for fraudulently concealing assets and had simultaneously instituted a state attachment proceeding against the recipients' credit union account. *Id.* at 435-36. The recipients then filed a federal suit under § 1983, claiming that the state attachment act was unconstitutional. *Id.* at 438. The district court granted the requested declaratory and injunctive relief. *Id.* at 439. The Supreme Court reversed and remanded for further consideration. *Id.* at 447-48.

62. *Id.* at 435, 444.

63. *Id.* at 446. Justice Blackmun concurred separately to stress the "substantiality of the State's interest," mentioning the same factors discussed above. *Id.* at 448-50.

basis whenever the state interest in the substantive policies involved is of sufficient magnitude. This approach has led critics of the doctrine to suggest limitations based on factors which arguably indicate the magnitude of the state interest,[64] such as whether the state initiated the proceeding.[65] This Comment will demonstrate, however, that the state's substantive interest in the policy furthered by the challenged statute is simply irrelevant to the need for equitable restraint. The effect on substantive state policies will be the same whether the state or federal court, both bound by the same law, adjudicates the constitutional claim.[66]

D. Exceptions to the Younger *Doctrine*

Younger indicated that "extraordinary circumstances" may justify federal relief from a pending state proceeding.[67] Although these exceptions have since been defined in greater detail, they have rarely been invoked to justify federal relief.

1. Bad Faith

In theory, federal relief is available to a constitutional claimant who has been the victim of bad faith or harassment,[68] that is, the target of a criminal prosecution "brought without a reasonable expectation of obtaining a conviction."[69] Since *Younger*, however, the Court has never allowed federal interference with a pending state proceeding on these grounds.[70]

This exception seems inconsistent with the principles underlying the *Younger* doctrine—*i.e.*, that the state courts will normally protect federal rights, removing any threat of "irreparable injury" that might justify federal injunctive relief. Unless the state court cannot be relied upon for full and fair adjudication of constitutional claims (an in-

64. *See* note 10 *supra*.

65. Johnson v. Kelly, 583 F.2d 1242, 1249 (3d Cir. 1978).

66. *See* notes 137-42 and accompanying text *infra*.

67. 401 U.S. at 53.

68. *Id.*

69. Kugler v. Helfant, 421 U.S. 117, 126 n.6 (1975).

70. *See* Hicks v. Miranda, 422 U.S. 332, 351 (1975); *Kugler*, 421 U.S. at 126 n.6; Anonymous v. Association of the Bar, 515 F.2d 427, 434-35 (2d Cir.), *cert. denied*, 423 U.S. 863 (1975). Harassment or bad faith was found in Allee v. Medrano, 416 U.S. 802, 815 (1974), and in Dombrowski v. Pfister, 380 U.S. 479, 488 (1965), but neither of these cases granted relief from *pending* state proceedings. 416 U.S. at 819; 380 U.S. at 484 n.2.

Dombrowski appeared to justify federal relief by stressing primarily the chilling effect on first amendment rights of the threatened state prosecution. *Id.* at 486-87. *Younger*, however, limited *Dombrowski* by finding that the relief there had been justified by the fact that the prosecutions were threatened without "any expectation of securing valid convictions." *Younger*, 401 U.S. at 47-48. The Court expressly rejected the lower federal court's interpretation of *Dombrowski* as allowing federal intervention solely to prevent a chilling effect on first amendment rights.

dependent exception to the *Younger* doctrine), prosecutorial bad faith presents no threat of irreparable injury.[71]

2. *A Flagrantly Unconstitutional Statute*

Younger also suggested that federal relief may be justified when the challenged state statute is "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence, and paragraph, and in whatever manner and against whomever an effort might be made to apply it."[72] The Court has not clarified this standard, except to suggest that it is to be strictly applied.[73] Like the "bad faith" exception, the "flagrantly unconstitutional statute" exception has never been successfully invoked. And, like the "bad faith" exception, this exception seems inconsistent with the principles underlying equitable restraint. If the Supreme Court's confidence in the state courts is justified, those courts can surely be trusted with "easy" cases of flagrant unconstitutionality.

3. *Inadequate State Proceedings*

The policy of equitable restraint is premised on the assumption that "ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights. . . . Only . . . 'extraordinary circumstances' [warrant] any relaxation of the deference to be accorded to the state criminal process."[74] The Court has indicated only two such exceptional circumstances which render state courts incapable of vindicating constitutional rights: bias and inability to present the constitutional claims.

Even these exceptions are limited. The federal plaintiff must bear a heavy burden of proof to overcome the presumed adequacy of the state courts.[75] Moreover, the deference of the Court's inquiry has approached neglect.[76]

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71. For example, the state court in *Dombrowski*, 380 U.S. at 487-88, quashed arrest warrants, obtained in bad faith by the prosecutors, as being "not based on probable cause."

72. 401 U.S. at 53-54 (quoting Watson v. Buck, 313 U.S. 387, 402 (1941)).

73. *See* Trainor v. Hernandez, 431 U.S. 434 (1977), where the Court curtly reversed a district court decision that the Illinois Attachment Act was "flagrantly unconstitutional" as "not warranted in light of our cases." *Id.* at 446-47.

74. *Kugler*, 421 U.S. at 124.

75. *See Kugler*, 421 U.S. at 125 ("an extraordinarily pressing need for immediate federal equitable relief"); *Younger*, 401 U.S. at 45 (quoting Fenner v. Boykin, 271 U.S. 240, 243-44 (1926)) (inadequacy must "plainly appear").

76. *See, e.g.*, O'Shea v. Littleton, 414 U.S. 488 (1974), which involved a class action by black residents of Cairo, Illinois, seeking injunctive relief from the allegedly discriminatory sentencing and bond-setting practices of two county judges. *Id.* at 490-92. Justice White, speaking for the Court, held that the named plaintiffs, none of whom were facing pending criminal charges or serving allegedly illegal sentences, failed to present an "actual case or controversy," *id.* at 493, 496, and that federal relief was also independently barred by the doctrine of equitable restraint, *id.* at

a. Bias

Federal relief is not barred when the state tribunal is "incompetent by reason of bias to adjudicate the issues pending before it."[77] State judicial review, *de novo* or otherwise, of the biased tribunal is irrelevant.[78]

This exception has hitherto allowed federal relief only when the state forum had a pecuniary interest in the outcome of the proceedings.[79] The Court has suggested that allegations of "bias" will not justify federal relief if there is a state procedure for the disqualification of biased judges, even though that procedure leaves disqualification to the discretion of the allegedly biased judge.[80]

b. Inability to Present a Federal Claim

Federal relief is not barred when the federal plaintiff can prove that presentation of his constitutional claim in the state proceeding is impossible.[81] This exception, however, has *never* been invoked by the Supreme Court to justify federal relief from a *pending* state proceeding.[82]

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504. A number of state and federal procedures were "available" for "relief from the wrongful conduct alleged": (a) substitution of judges; (b) change of venue; (c) state disciplinary procedures; (d) appellate review; (e) federal habeas corpus; and (f) criminal prosecutions under 18 U.S.C. § 242 (the criminal counterpart of 42 U.S.C. § 1983). *Id.* at 502-03.

Justice White did not examine the practical availability or efficacy of these procedures. "The adequacy of these alternative remedies was evidently to be presumed from the very fact that Justice White was able to think of them." Fiss, *supra* note 3, at 1154. To take the most extreme example, there is no modern reported case of a state judge or prosecutor being convicted for violations of 18 U.S.C. § 242. *Developments*, *supra* note 3, at 1202 n.82.

The application of *Younger* principles in *O'Shea* can perhaps be dismissed in light of the primary holding that there was no "case or controversy." 414 U.S. at 504 (Blackmun, J., concurring in part). The decision nevertheless indicates a disturbing tendency to examine the adequacy of state courts most deferentially.

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

78. *Id.*

79. *Gibson* is the only case in which the Supreme Court has found bias sufficient to justify federal relief from a pending state proceeding. The federal plaintiffs, optometrists employed by Lee Optical Company, were charged with "unprofessional conduct" before the Alabama Board of Optometry, on the ground that such "corporate" practice violated a recent amendment to the state optometry law. *Id.* at 567-68. The Supreme Court held that the *Younger* doctrine did not preclude federal relief in these circumstances since the Board, which was composed solely of self-employed optometrists, had a "pecuniary interest" in the outcome of the controversy. *Id.* at 579. *See also* Kugler v. Helfant, 421 U.S. 117, 125 n.4 (1975) (extension of bias exception to state court proceedings).

80. 421 U.S. at 127-28; *O'Shea*, 414 U.S. at 502.

81. *See, e.g.*, Trainor v. Hernandez, 431 U.S. 434, 447 n.10 (1977); *O'Shea*, 414 U.S. at 504.

82. Gerstein v. Pugh, 420 U.S. 103, 108 n.9 (1975); Lynch v. Household Fin. Corp., 405 U.S. 538, 555-56 (1972).

c. Other Considerations

The inquiry into the adequacy of the state proceedings has thus been narrowly restricted. The Court has been unwilling to consider other procedural obstacles to "full and fair" adjudication of the constitutional issue.[83] Due process challenges to the state proceeding have not justified relaxation of the rule of equitable restraint, even though such charges, if proved, would certainly cast doubt on the state court's capacity to protect federal rights.[84] Moreover, the Court has required equitable restraint even when presentation of the constitutional claim in the state proceeding would be "futile" in light of adverse state court precedent.[85]

II

THE FEDERAL INTEREST

"Our Federalism" is "a system in which there is sensitivity to the legitimate interests of both the State and National Governments."[86] Equitable restraint avoids unnecessary interference with the state interest in the regular operation of its courts. The federal interest in ensuring full and fair adjudication of constitutional claims, however, may be unduly jeopardized. Both the congressional mandate of section 1983 and a realistic appraisal of the adequacy of the state courts to adjudicate important federal claims require that the federal courts afford greater protection to this federal interest.

A. Federalism, the Reconstruction Era, and Section 1983

The *Younger* doctrine is based on a policy of federalism derived from the Judiciary Act of 1793.[87] As the Court itself has recognized, however, the intervening years have seen a "vast transformation" in the concepts of federalism,[88] particularly due to the adoption of the thirteenth, fourteenth, and fifteenth amendments during the Reconstruc-

83. *See Trainor*, 431 U.S. at 466-72 (Stevens, J., dissenting). Justice Stevens argued that the Illinois attachment procedure features "a set of rules which effectively foreclose any challenge to its constitutionality in the Illinois courts." *Id.* at 467. Two lower court decisions examined more closely the procedural inadequacies of state courts. *See* Lessard v. Schmidt, 413 F. Supp. 1318 (E.D. Wis. 1976) (equitable restraint unnecessary because availability of appeal from pending state civil commitment proceeding unclear); Owens v. Housing Auth., 394 F. Supp. 1267 (D. Conn. 1975) (equitable restraint not required because, *inter alia*, bond required of indigent claimants for appeal from state proceeding).

84. *Juidice*, 430 U.S. at 337 n.15.

85. Hicks v. Miranda, 422 U.S. 332, 350 n.18 (1975). The Court reasoned that state courts were capable of changing their minds and were, in any event, subject to ultimate review by the Supreme Court. *Id. See also* Huffman v. Pursue, Ltd., 420 U.S. 592, 606 (1975).

86. *Younger*, 401 U.S. at 44.

87. *Id.* at 43-44.

88. Mitchum v. Foster, 407 U.S. 225, 242 (1972).

tion era. In conjunction with these amendments, Congress enactcd a series of statutes that expanded the power of the fcderal courts to protect the new constitutional rights.[89]

By the Civil Rights Act of 1871, Congress granted the federal courts jurisdiction over suits at law or in equity against "every person . . . [who] subjects or causes to be subjected" another to the deprivation of any federal right.[90] Congress empowered the federal courts to enforce the fourteenth amendment against state action because it feared that the state courts were incapable of doing or unwilling to do so.[91] The Act thus reflected the fundamental transformation in federalism since 1793; the states were no longer considered the protectors of individual rights from a tyrannical central government, but were instead feared as posing the primary threat to such rights.[92]

The federal courts have regarded the Civil Rights Act, now codified in part as section 1983, as making them the "primary and powerful reliances" for vindicating every federal right.[93] When no state proceedings are pending, federal relief may be granted although the claimant has not proved that available state remedies are inadequate.[94] By contrast, when there are pending state proceedings, the Court has consistently rejected the constitutional claimant's choice of forum on the ground that the state court has the "solemn responsibility" to protect federal rights.[95] This distinction is unjustified. True, the state has a legitimate interest in avoiding disruption of its courts. But if federal courts blindly defer to the state, they ignore the "intcnded scope" of section 1983[96] and thereby shirk their duty to protect constitutional rights. Rather, the federal court must satisfy itself that the state court will fully and fairly adjudicate constitutional claims.

Instead of making this inquiry, current practice under the *Younger* doctrine defines a narrow set of "extraordinary circumstances" that justify federal relief, and thereby excludes from equitable relief situations where state court capacity to vindicate constitutional rights may be legitimately doubted. This displaces the federal courts' traditional deference to the claimant's choice of forum with a deference to state courts

89. This legislation included the Removal Act of 1863, the Habeas Corpus Act of 1867, the Civil Rights Act of 1871, and the Judiciary Act of 1875 (confcrring federal question jurisdiction on the federal courts). *See Developments*, *supra* note 3, at 1142, 1147-49.

90. 42 U.S.C. § 1983 (1976). *See* note 4 *supra*.

91. Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 633 (1977) (Rehnquist, J.); Mitchum v. Foster, 407 U.S. 225, 242 (1972); Monroe v. Pape, 365 U.S. 167, 180 (1961). *But see* Wilkinson, *Anticipatory Vindication of Federal Constitutional Rights*, 41 ALB. L. REV. 459, 471 (1977).

92. *Developments*, *supra* note 3, at 1135.

93. *See* note 6 *supra*; note 154 and accompanying text *infra*.

94. *See* note 35 and accompanying text *supra*.

95. *See, e.g.*, Younger, 401 U.S. at 45-46.

96. *Mitchum*, 407 U.S. at 238.

which vitiates the necessary inquiry. A more rigorous analysis of the adequacy of the state courts is required under section 1983.

Opponents of an active federal judiciary argue that the Civil Rights Act of 1871 was a response to a historically unique situation.[97] They argue that state courts are no longer hostile to federal rights, and that the federal courts should not base the general relationship of the two court systems on a "specific enactment passed to remedy a specific problem."[98]

There are at least three objections to this argument. First, in contending that the federal courts, on an assumption of changed conditions, may simply ignore an act of Congress, the defenders of *Younger* expand federal court power far more than do *Younger*'s critics.[99] Second, Congress has the responsibility for repealing anachronistic legislation; yet in this case, despite ample opportunity, it has not done so.[100] Finally, the argument presumes that section 1983 was directed only at outright hostility of state courts to federal claims. The Court, however, has concluded that the Act provides a federal remedy when the state courts would fail to protect constitutional rights "by reason of prejudice, passion, neglect, intolerance, or otherwise."[101]

B. The Adequacy of State Remedies

In fashioning the policy of equitable restraint, the Supreme Court has presumed the parity of state and federal courts as guardians of federal rights.[102] The Court's confidence in the state courts, however, is shared by neither private litigants nor most commentators. Throughout this century, constitutional claimants have consistently and assiduously sought access to the federal courts.[103]

1. Institutional Characteristics of State Courts

Critics of the *Younger* doctrine concede that there is no concrete evidence that state judges have been less sympathetic than federal

97. Wilkinson, *supra* note 91, at 471.

98. *Id.*

99. *See* Soifer & Macgill, *supra* note 7, at 1215: " 'Our Federalism' has taken on many of the attributes of substantive due process. It is a creature of pure judicial will, superior to statute and to constitutional and political philosophy developed over a century . . . ."

100. Redish, *The Anti-Injunction Statute Reconsidered*, 44 U. CHI. L. REV. 717, 738 n.100 (1977).

101. Monroe v. Pape, 365 U.S. 167, 180 (1961).

102. Trainor v. Hernandez, 431 U.S. 434, 443 (1977); Kugler v. Helfant, 421 U.S. 117, 124 (1975); Huffman v. Pursue, Ltd., 420 U.S. 592, 611 (1975). *Cf.* Stone v. Powell, 428 U.S. 465, 493 n.35 (1976) (justifying restriction of federal habeas relief for fourth amendment claims by the presumed parity of state and federal courts).

103. Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1106 (1977).

judges to constitutional claims.[104] They have, however, sought to explain constitutional claimants' historical preference for a federal forum by isolating institutional factors that tend to make the state courts less competent or vigorous in protecting federal rights.

These critics argue that the federal bench, with life tenure and a salary significantly higher than that of most state benches,[105] attracts better candidates. The federal selection process involves a more rigorous inquiry into the nominee's professional abilities than does the process in most states. Moreover, state judges will usually have less experience with constitutional adjudication,[106] fewer and less select law clerks,[107] and higher caseloads[108] than their federal colleagues.

Some commentators believe the federal courts are unusually responsive to "the influence as well as the command of the Supreme Court,"[109] while state courts may recognize only an obligation to obey the narrow holdings of its decisions.[110] More importantly, state judges face majoritarian pressures that may affect constitutional adjudication. Federal judges are appointed for life tenure. By contrast, forty-two states require judges to face retention elections at intervals of from one to fourteen years.[111]

These factors inherently evade objective analysis. A broad and standardless inquiry by a federal judge into the competence or integrity of a state judge would offend the sensibilities of judges at both levels. Nevertheless, these intangible factors do indicate that state courts may often be less capable of protecting constitutional rights. This possibility requires the federal courts to be especially rigorous in testing the adequacy of state courts by factors, as proposed below,[112] which *are* susceptible to objective analysis.

2. *Availability of Appellate Review*

The Supreme Court has justified equitable restraint toward even an erroneous state trial court decision on the ground that redress is available by appeal through the state court network and, if necessary,

104. *Id.* at 1116 n.46.

105. In 1977, a federal district judge earned $54,500 per year. *See* Neuborne, *supra* note 103, at 1121 n.61. By contrast, the average salary of state trial judges in 1976 was $33,823 per year. *Id.* (citing NATIONAL CENTER FOR STATE COURTS, A SURVEY OF JUDICIAL SALARIES IN THE STATE COURT SYSTEMS 4 (1976)).

106. McCormack, *supra* note 7, at 264; Soifer & Macgill, *supra* note 7, at 1190.

107. Neuborne, *supra* note 103, at 1122.

108. *Id. See also* Stolz, *Federal Review of State Court Decisions of Federal Questions: The Need for Additional Appellate Capacity*, 64 CALIF. L. REV 943, 962 (1976).

109. *Id.* at 959.

110. Neuborne, *supra* note 103, at 1125.

111. *Id.* at 1127-28.

112. *See* notes 181-204 and accompanying text *infra*.

to the United States Supreme Court.[113] The presumption that such appeals adequately protect federal rights is, however, even less well founded than the presumption of state court parity.

First, the findings of fact of the trial court are insulated from effective appellate review. Yet, these findings will often be determinative of the constitutional claim.[114]

Second, eventual review by the Supreme Court is by no means guaranteed. Although the Court must review on appeal state court decisions upholding a state statute against a federal claim,[115] almost ninety percent of these cases are disposed of without plenary consideration,[116] and this percentage is increasing.[117] Although summary dispositions are technically on the merits,[118] the rigor and care devoted by the Court to review of such cases may well be doubted.

Furthermore, only discretionary review by certiorari is available if the state proceeding itself is attacked on due process grounds.[119] Only a small portion of petitions for certiorari are granted, and this percentage has markedly declined over the last twenty-five years, in large part because of the Court's burgeoning workload.[120]

In this general narrowing of available Supreme Court review, appeals of state court decisions have especially suffered. Both as a percentage of the Court's docketed cases[121] and of its full opinions,[122] state

113. Huffman v. Pursue, Ltd., 420 U.S. 592, 605 (1975).

114. Neuborne, *supra* note 103, at 1119; Shaman & Turkington, *supra* note 7, at 929; Stolz, *supra* note 108, at 963. The Supreme Court has itself noted the problem: "Limiting the litigant to review here would deny him the benefit of a federal trial court's role in constructing a record and making fact findings. . . . It is the typical, not the rare, case in which constitutional claims turn upon the resolution of factual issues." England v. Louisiana State Bd. of Med. Examiners, 375 U.S. 411, 416 (1964). *See also* note 2 *supra*. These words are even more true today as a result of the Supreme Court's increasing emphasis on motivation and intent in constitutional adjudication. *See, e.g.*, Mount Healthy Bd. of Educ. v. Doyle, 429 U.S. 274 (1977); Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976).

115. 28 U.S.C. § 1257 (1976).

116. The Court now summarily disposes of more than 87% of the appeals from state courts. FEDERAL JUDICIAL CENTER, REPORT OF THE STUDY GROUP ON THE CASELOAD OF THE SUPREME COURT (1972), *reprinted in* 57 F.R.D. 573, 605 (1972) [hereinafter cited as FREUND REPORT].

117. The percentage of cases on the Court's appellate docket accepted for oral argument has declined from 13.2% in 1957-1958 to 7.2% in 1971-1972. Casper & Posner, *A Study of the Supreme Court's Caseload*, 3 J. LEGAL STUD. 339, 367 (1974).

118. *See* Hicks v. Miranda, 422 U.S. 322, 344-45 (1975).

119. Note, *supra* note 33, at 615 n.23. Review of unsuccessful constitutional challenges to an official's particular exercise of his statutory powers is also only discretionary. *See, e.g.*, Hanson v. Denckla, 357 U.S. 235, 244 (1958).

120. *See* Brown Transp. Corp. v. Atcon, Inc., 439 U.S. 1014, 1023-24 (1978) (White, J., dissenting from denial of writ of certiorari). The percentage of petitions for writs of certiorari granted has dropped sharply from 17.5% in 1941 to 5.8% in 1971. FREUND REPORT, *supra* note 116, at 580.

121. Stolz, *supra* note 108, at 959, 978, noting that the percentage of state court cases (including *in forma pauperis* cases) on the Supreme Court docket dropped from more than 40% in the

cases have dropped significantly in recent years. The theoretical availability of review by the Supreme Court thus provides no assurance that an erroneous state trial court will eventually be corrected.[123]

Even if meaningful appellate review is available, the Court's analysis ignores the fact that requiring such review to vindicate constitutional rights may itself cause "irreparable injury" to both the claimant and the federal interest.[124] The expense, time, and stress of an appeal can never be fully recovered by the wronged citizen. Since such costs undoubtedly deter the appeal of even meritorious claims, the federal interest in vindicating constitutional rights is also harmed.

The Court itself seems to recognize that appellate review may be an unreliable remedy for inadequate state courts; otherwise even exceptional circumstances would not warrant federal relief from pending state proceedings. Bad faith, flagrantly unconstitutional statutes, and even grossly biased or incompetent state trial judges would all be eventually corrected by appellate review. Yet the Court has held that the availability of such review is irrelevant when these conditions are proved.[125]

3. The Need for Federal Relief

Congress made the federal courts the "primary guardians" of constitutional rights because it believed the state courts were inadequate to protect these rights. Moreover, the nature of the state courts, in many cases, still justifies that concern, and their deficiencies cannot be fully corrected by appellate review. The Court's current formulation of the *Younger* doctrine gives insufficient weight to this reality. Hence, in considering the propriety of federal relief from pending state proceedings, the Court has neglected the federal interest in the full and fair

1950's and early 1960's to only 26% in 1972. *Cf.* Casper & Posner, *supra* note 117, at 349, 351 (showing a less drastic decline, at least in part because of failure to include unpaid cases in their statistics).

122. Stolz, *supra* note 108, at 951, noting that the percentage of full court opinions including per curiam opinions (but not summary dispositions) devoted to state cases declined from over 30% in the mid-1960's to less than 17% in 1972. The Supreme Court summarily disposes of more than 87% of the appeals from state courts. FREUND REPORT, *supra* note 116, at 605.

123. Relief by writ of federal habeas corpus may also be available if the constitutional claim arises from a state criminal prosecution. Although its speed aud efficacy is subject to question, the possibility of habeas relief in criminal cases may still be considered under the proposal advanced by this Comment. If, in a particular criminal proceeding, habeas relief provides a "plain, speedy and efficient" remedy for state court inadequacies, restraint may be required. Such an approach will of course make federal injunctive relief from state criminal prosecutions less likely than from other types of state proceedings.

124. *See* Maraist, *Federal Intervention in State Criminal Proceedings:* Dombrowski, Younger *and Beyond*, 50 TEXAS L. REV. 1324, 1334 (1972); Neuborne, *supra* note 103, at 1119; Stolz, *supra* note 108, at 963.

125. *See, e.g.*, Gibson v. Berryhill, 411 U.S. 564, 577 (1972).

adjudication of constitutional claims which is manifested in section 1983.

III

THE PRIMARY BASES OF EQUITABLE RESTRAINT

The *Younger* doctrine's balance of competing federal and state interests is skewed not only by the insufficient weight accorded to the federal interest, but also by the Court's overemphasis on harms to state interests. Harms to these interests are not of sufficient magnitude to require the present inflexible bar to federal relief.

A. Equity

The policy of equitable restraint is based on the values of "equity, comity, and federalism."[126] The traditional doctrines of equity, however, were not formulated to protect state interests from undue federal court interference with pending state proceedings. Indeed, these doctrines merely confuse what is essentially an issue of federalism.[127]

Normally, a plaintiff seeking equitable relief must show that he (1) lacks an adequate remedy at law and (2) is threatened with irreparable injury if relief is denied.[128] In practice, the two tests merge since "irreparable injury" connotes no more than the inadequacy of the plaintiff's legal remedy.[129] Since these standards are viewed as a restraint on equitable power to grant relief, but not on federal power per se, federal courts have usually examined only the adequacy of the plaintiff's legal remedies at the *federal* level.[130]

The *Younger* doctrine has altered this traditional analysis. In *Younger*, the Court held that a state criminal defendant could not show irreparable injury unless the remedy for his alleged federal wrong in the pending *state* proceeding was inadequate.[131] In *O'Shea v. Littleton*,[132] Justice White suggested that the availability of federal injunctive relief depended on the inadequacy of all other remedies, whether state or federal, civil or criminal, affirmative or defensive, pending or anticipated. This extension of *Younger*'s focus on the adequacy of state remedies will significantly undermine current federal practice, since eq-

126. Steffel v. Thompson, 415 U.S. 452, 462 (1975). *See* note 18 *supra*.

127. *See* Fiss, *supra* note 3, at 1107; Whitten, *supra* note 3, at 637.

128. *Younger*, 401 U.S. at 43-44.

129. *See* 1 T. SPELLING, A TREATISE ON INJUNCTIONS AND OTHER EXTRAORDINARY REMEDIES § 13, at 19-20 (2d ed. 1901); Whitten, *supra* note 3, at 601; *Post*-Younger *Excesses*, *supra* note 3, at 529 n.25.

130. *See* DiGiovanni v. Camden Fire Ins. Ass'n, 296 U S. 64, 69 (1935); Smyth v. Ames, 169 U.S. 466, 516 (1898). *But see* Matthews v. Rodgers, 284 U.S. 521, 526 (1932).

131. 401 U.S. at 46.

132. 414 U.S. 488, 502 (1974).

uitable relief has been traditionally granted under section 1983 when no state proceeding is pending, without proof that all other possible remedies are inadequate.[133]

This confusion over what remedies must be examined stems from the broad language of the equitable doctrines. The real concern in the *Younger* context is the structure of the federal system, not the preference for legal rather than equitable remedies.[134] The inquiry should be reformulated to reflect the dominant federalist concerns.

B. Federalism

The primary motivation for the policy of equitable restraint is the desire to avoid undue injury to legitimate state interests. The Court has found that federal interference with pending state proceedings:

(1) prevents the state from effectuating its substantive policies;
(2) prevents the state from providing a judicial forum competent to vindicate any constitutional objections to the state's substantive policies;
(3) disparages the state courts' ability to enforce constitutional rights; and
(4) causes duplicative legal proceedings.[135]

The first harm, arising from the state's interest in effectuating its substantive policies, implicates the values of "substantive federalism."[136] The remaining harms involve the values of "procedural federalism," the only concern that is properly relevant to a determination of the need for equitable restraint.

1. Substantive Federalism

A federal court called upon to adjudicate the constitutionality of a state statute or procedure can show deference to the state interest in enforcement in two different ways.[137] Procedural deference would require the federal court to abstain entirely from deciding the merits of the constitutional claim. Substantive deference, on the other hand, would allow the federal court to adjudicate the claim but would require that it apply a more deferential constitutional standard to the merits of

133. Wooley v. Maynard, 430 U.S. 705, 711 (1977); Doran v. Salem Inn, Inc., 422 U.S. 922, 930-31 (1975); Steffel v. Thompson, 415 U.S. 452, 475 (1974); Monroe v. Pape, 365 U.S. 167, 183 (1961).

134. Fiss, *supra* note 3, at 1107. For example, the equitable doctrines suggest that restraint is not required when the pending state proceeding is equitable in nature. Yet such an exception fails to address federalist concerns, since the state and federal interests are unchanged.

135. Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975).

136. *See* note 18 *supra*.

137. The distinction is drawn from Redish, *supra* note 7, at 478.

that claim. The *Younger* doctrine requires procedural deference, that is, dismissal of the section 1983 complaint.

Federal procedural deference results in adjudication of the constitutional issue in the pending state proceeding. Hence, the *Younger* doctrine should have little or no effect on substantive state policies. The Supreme Court's development of the *Younger* doctrine has always presumed that state courts will protect constitutional rights with the same competence and vigor as the federal courts.[138] The logical implication of this presumption is that the state and federal courts will reach similar results in considering constitutional claims; substantive state policies cannot be affected by the forum chosen to adjudicate those claims. A substantive state policy, if repugnant to the federal constitution, is illegitimate and should be struck down by whichever court hears the claim. The state court may legitimately reach a different result than would a federal court only if the state statute is susceptible to a restrictive construction to avoid unconstitutionality.[139] Yet, in these cases, federal court abstention is independently required by the *Pullman* doctrine.[140]

If the *Younger* doctrine springs from a desire to reduce judicial interference with the state's substantive policies,[141] it is meaningful only if the state courts will uphold state policies when a federal court would not. The Court has never endorsed this illegitimate goal. If the state courts may reach different results than the federal courts, the *Younger* doctrine will yield varying standards in the several states for

138. *See* Trainor v. Hernandez, 431 U.S. 434, 443 (1977); Kugler v. Helfant, 421 U.S. 117, 124 (1975); Huffman v. Pursue, Ltd., 420 U.S. 592, 611 (1975). *See also* Stone v. Powell, 428 U.S. 465, 493 n.35 (1976).

139. *See Trainor*, 431 U.S. at 445; Whitten, *supra* note 3, at 679-80. In *Pullman* abstention cases, *see* note 2 *supra*, the federal court declines to construe ambiguous state laws challenged on federal constitutional grounds, leaving this task to the state courts. In diversity cases which do not involve constitutional issues, the federal courts have been far more willing to construe state law. 17 C. WRIGHT, A. MILLER, & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4246, at 500 (1978). *See, e.g.*, McNeese v. Board of Educ., 373 U.S. 668, 673 n.5 (1963); Meredith v. City of Winter Haven, 320 U.S. 228, 235-37 (1943).

140. *See* note 2 *supra*. The state's interest in having ambiguities of its laws resolved in its own courts has not been thought to require state court adjudication of the federal claim. A federal plaintiff whose case is postponed under the *Pullman* doctrine can reserve his federal claims from decision in the subsequently initiated state proceeding and present these claims again to the federal court upon conclusion of the state suit. *See* England v. Louisiana State Bd. of Med. Examiners, 375 U.S. 411, 421-22 (1964). The continued vitality of the *England* rule may be in doubt given the present Court's overemphasis on affront to the state courts. *See, e.g., Trainor*, 431 U.S. at 443.

141. This has been the conclusion of a number of critics. *See* Juidice v. Vail, 430 U.S. 327, 346 (1977) (Brennan, J., dissenting), *quoted in* note 28 *supra*; Soifer & Macgill, *supra* note 7, at 1215. Professor Fiss has discerned in the present Court "a desire to insulate the status quo from judicial interference, regardless of whether the protected institution is a judicial system, legislature, or administrative agency. I suspect that the overarching spirit of the Burger Court is a hostility toward the activism of judges." Fiss, *supra* note 3, at 1159-60.

the protection of constitutional rights. Such a result is contrary to the fourteenth amendment's guarantee of a minimum national standard. The enactment of section 1983 itself, granting federal courts jurisdiction over claims of deprivation of constitutional rights, indicates Congress' intent to prevent the dilution of these rights by state court application of lax or inconsistent standards.[142] Since, therefore, the state court should not reach a different result than would the federal court, equitable restraint should not affect the state's ability to carry out its substantive policies. Indeed, federal relief should be mandated when the state court would impermissibly reach a different result on the constitutional claim. Because it bars federal relief in a number of cases in which federal and state courts *must* reach the same result, the *Younger* doctrine is unnecessary and overbroad.

The development of the "pending prosecution rule"[143] also suggests that "substantive federalism" cannot be the primary basis for equitable restraint. When no state proceeding is pending, *Younger* does not bar federal relief from unconstitutional state laws or procedures. Such relief, however, may obstruct substantive state policies as much as in a case where state prosecution is pending. Indeed, in such circumstances, federal relief may involve a greater obstruction since it could interfere with the discretion of state prosecutors not to apply state law to this situation.[144] The "pending prosecution rule" thus suggests that the real concern underlying equitable restraint is not the state interest in effectuation of substantive policies, but rather the state interest in the continuity and integrity of its judicial system.

2. *Procedural Federalism*

Neither "equity" nor "substantive federalism" is a proper basis for the doctrine of equitable relief. Rather, the real purpose of the doctrine is to prevent harms to the legitimate state interest in the continuity and integrity of its courts, harms that implicate the values of "procedural federalism."

Perhaps the most serious harm from federal interference with pending state proceedings is delay and duplication.[145] This waste of

142. Mitchum v. Foster, 407 U.S. 225, 242 (1972); Monroe v. Pape, 365 U.S. 167, 180 (1961).

143. *See* notes 37-41 and accompanying text *supra*.

144. However, the federal plaintiff must ordinarily prove a credible threat of prosecution in order to satisfy the "case or controversy" requirement for anticipatory relief. *See* notes 37-38 *supra*. If this can be shown, a state court prosecution is probably imminent, in which case the constitutional claim will eventually be adjudicated even if federal restraint is exercised.

145. Although the waste of judicial resources may well be the most serious harm prevented by equitable restraint, the Court has subordinated it to other values in developing the contours of the *Younger* doctrine. For example, a federal court must dismiss a complaint on which it has begun proceedings if, before it reaches the merits, a state action is instituted, even though such dismissal wastes *federal* judicial resources. Hicks v. Miranda, 422 U.S. 332, 349 (1975).

judicial resources accompanies the disruption of any type of proceeding and should normally be avoided. It must be remembered, however, that section 1983 is an "expressly authorized" exception to the Anti-Injunction Act.[146] The Supreme Court has never before considered the waste of judicial resources as relevant to the propriety of an "expressly authorized" injunction of state proceedings.[147] It has instead deferred to the congressional decision that the need for such injunctions outweighs this waste. Moreover, if the state court proves inadequate to vindicate constitutional rights, equitable restraint will result in a greater waste of judicial resources than would federal relief, since the resultant appeals and retrial will consume more of the state judiciary's time and resources.[148]

A second harm feared by the Court is the deleterious effect of affronts to state courts arising from federal interference with pending state court proceedings.[149] Possible affronts to state courts have never been thought relevant to the propriety of injunctions based on other "expressly authorized" exceptions to the Anti-Injunction Act,[150] yet such injunctions would likewise seem to disparage state courts. When an expressly authorized exception confers concurrent jurisdiction on the state and federal courts, a federal injunction of the state proceedings implies that the state court is less competent to adjudicate the un-

146. *Mitchum*, 407 U.S. at 243.

147. *See* cases cited at note 16 *supra*.

148. In a broader sense, federal relief may also conserve state judicial resources by making unnecessary an unknown number of pending or future state proceedings. *See* Owens v. Housing Auth., 394 F. Supp. 1267, 1271 (D. Conn. 1975) (future eviction proceedings). *But see* Doran v. Salem Inn, Inc., 422 U.S. 922, 928 (1975), where the Court rejected a similar argument.

149. It might be argued that federal relief from pending state proceedings may be counterproductive in the long run, since such relief will somewhat impede state judges' acquisition of experience in constitutional adjudication and may make them hostile to federal power. Thus, state courts may become less likely to vindicate constitutional rights. This argument is not only truly an affront to the state courts, but assumes that the federal courts should ignore the existence of present state court violations in order to decrease future violations of constitutional rights. The better view is that if the state court is inadequate, the federal court should intervene. The threat of federal intervention should deter future state court erosions of constitutional rights.

Federal relief, it is also argued, may create a climate conducive to state officials' abdication of controversial issues to the federal courts. Aldisert, *Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thoughts on Section 1983, Comity and the Federal Caseload*, 1973 L. & SOC. ORD. 557, 562. Leaving such decisions to the state courts, however, would only promote abdication of such issues by these officials to the state courts. The *Younger* doctrine does not bar judicial activism at the state level.

Finally, the local populace may be more willing to accept constitutional interpretations emanating from state rather than federal courts. *Developments*, *supra* note 3, at 1284. This argument assumes that public hostility to the restraint of the popular will inherent in constitutional adjudication stems from the "source" rather than the fact of such restraint. The reformulation of the *Younger* doctrine proposed here, however, acknowledges this argument by limiting federal relief to cases in which the vindication of constitutional rights by the state courts is doubtful.

150. *See* cases cited at note 16 *supra*.

derlying issues.[151] Even when the statute confers exclusive jurisdiction on the federal courts, an injunction implies that the state court cannot recognize its lack of jurisdiction.[152] The Court, nonetheless, in deference to the congressional judgment that the need for an injunction is controlling, ignores any affront to the state courts.[153]

The modern development of section 1983, at least before *Younger*, also suggests that the affront to state courts is not relevant to the propriety of federal relief under that statute. The Court's statement that Reconstruction legislation made the federal courts the "primary" guardians[154] of federal rights necessarily implies that the state courts are only "secondary" guardians of such rights. Congress, not the Court, decided that state remedies may be inadequate, and subordinated a concern for affront to state courts.[155] The Court's concern for this affront cannot excuse its duty to obey the congressional mandate.

Nevertheless, affront to state courts from federal interference with state proceedings is a legitimate concern. Accordingly, the revision of the *Younger* doctrine proposed here seeks to avoid *unnecessary* affronts to the state courts. Indeed, it avoids the arbitrary affronts of the current approach since its exceptions to equitable restraint are based only on the adequacy of the state courts. When a state fails to provide a "plain, speedy and efficient remedy" for the federal wrong, any affront to its courts implicit in federal relief is deserved. The mandate of section 1983 must then override any concern for the sensibilities of state judges.[156]

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151. *See, e.g.*, Porter v. Dicken, 328 U.S. 252 (1946) (Black, J.).

152. *See, e.g.*, Kalb v. Feuerstein, 308 U.S. 433 (1940) (Black, J.); Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939).

153. Nor has "affront to state courts" been considered significant in the development of doctrines which protect federal jurisdiction over federal claims. For example, the Court has created an "implied" exception to the Anti-Injunction Act when an injunction of a state proceeding is sought by a federal agency or official. NLRB v. Nash-Finch Co., 404 U.S. 138, 145-46 (1971); Leiter Minerals, Inc. v. United States, 352 U.S. 220, 226 (1957). Since this exception is explicitly based on the fear that relegating the federal agency to the state proceeding would result in "the frustration of superior federal interests," *id.*, the affront to the state courts is obvious.

The *England* proviso to the *Pullman* doctrine provides another example. *See* note 2 *supra*. When the federal plaintiff is directed to institute state proceedings to clarify ambiguous state law, the federal court retains jurisdiction. The plaintiff may "reserve" his federal claims from decision by the state court so that the federal court may adjudicate them when the state proceeding is concluded. The doctrine implies that state courts are not to be "trusted" with federal claims.

154. Steffel v. Thompson, 415 U.S. 452, 464 (1974); Zwickler v. Koota, 389 U.S. 241, 247 (1967). *See* note 6 *supra*.

155. Mitchum v. Foster, 407 U.S. 225, 242 (1972); Monroe v. Pape, 365 U.S. 167, 180 (1961).

156. Although not explicitly advanced by the Court, two other "harms" resulting from federal relief may be thought to justify equitable restraint. Several commentators have suggested that the Court is actually motivated by a concern for the burgeoning federal docket. Fiss, *supra* note 3, at 1140; *Post*-Younger *Excesses*, *supra* note 3, at 566. Assuming the constitutionality of pruning

IV

LIMITING THE *YOUNGER* DOCTRINE TO STATE PROCEEDINGS INITIATED BY THE STATE

The balance struck by the *Younger* doctrine rests on faulty analysis. The state has a legitimate interest in the regular operation of its courts, but its interest in its substantive policies, heavily emphasized by the Court, is actually irrelevant to the propriety of equitable restraint. Yet, on this basis, the state interest has been exaggerated and the federal interest neglected. Both the congressional mandate of section 1983 and a realistic assessment of the nature of the state courts require greater efforts to ensure the full and fair adjudication of constitutional claims.

Since the Court has left open only one major question—the type of state civil proceedings toward which equitable restraint is required[157]—critics of the doctrine have suggested that the doctrine should be limited to pending state proceedings which the state has initiated.[158] The United States Court of Appeals for the Third Circuit recently adopted this limitation in *Johnson v. Kelly*.[159] The court reversed the district court's denial, on *Younger* grounds, of declaratory or injunctive relief from pending state quiet title actions initiated by private tax sale purchasers.[160] The two-judge majority held that "outside the special context of a challenge to civil contempt proceedings, the *Younger* doctrine should not be extended to cases in which the state proceedings have not been initiated by the state itself."[161]

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§ 1983 to fit judicial workloads, equitable restraint reduces the federal docket only at the expense of state dockets which are even more overcrowded. Cox, *Federalism and Individual Rights under the Burger Court*, 73 NW. U.L. REV 1, 13 (1978); Fiss, *supra* note 3, at 1140. Moreover, reduction of the federal docket should properly begin with other types of cases. Diversity jurisdiction, which requires no particular expertise in federal law and which presumably "reflects negatively" on state court impartiality towards noncitizens, is the most prominent candidate for excision. Redish, *supra* note 7, at 466 n.14; *Developments, supra* note 3, at 1129 n.86.

A more sophisticated argument in favor of equitable restraint is that it is required by the policy underlying the federal removal statutes. *See* Bartels, *supra* note 18, at 80. This would, however, elevate an implied suggestion from 28 U.S.C. §§ 1441 and 1443 over the explicit mandate of § 1983. Removal, on the one hand, and federal declaratory or injunctive relief from pending state proceedings, on the other, are quite different "remedies" for potentially inadequate constitutional adjudication by state courts. It is by no means clear that Congress intended equitable relief to be unavailable when removal is barred. Moreover, Professor Bartels' argument, taken to its logical conclusion, would bar federal relief even when the Court would allow it for "extraordinary circumstances," since none of these circumstances is a ground for removal.

157. *See* note 47 and accompanying text *supra*.

158. Johnson v. Kelly, 583 F.2d 1242, 1249 (3d Cir. 1978). *See* note 10 *supra*.

159. 583 F.2d at 1249.

160. *Id.* at 1244-45.

161. *Id.* at 1249.

Utilizing the Supreme Court's approach,[162] the Third Circuit evaluated the propriety of equitable restraint by the magnitude of the state interest in the substantive policies enforced in the pending state proceeding,[163] and held that only when the state brings suit to enforce these policies is the state interest sufficiently great to require equitable restraint.[164] As previously noted, however, this analysis fails to recognize that substantive state policies are simply not affected by equitable restraint.[165] Both the federal and the state courts would allow the effectuation of these policies if they are constitutional, and block them if they are not.

Furthermore, even if the state's substantive policies were relevant to equitable restraint, state initiation of the proceeding is a poor measure of the state interest in such policies. The state can effectuate high-priority policies by providing a basis for *private* litigation. The state's interest in antitrust or civil rights may exceed its interest in suppressing obscenity or welfare fraud,[166] yet the Third Circuit would arbitrarily "rank" substantive policies according to the prosecutorial role of state agencies.

Equitable restraint does serve the legitimate state interest in the continuity and integrity of its judicial system,[167] an interest harmed whenever a federal court disrupts *any* state court proceeding. Yet the Third Circuit decision would allow federal court interference with the regular operation of the state courts even when their capacity to vindicate constitutional rights is not in doubt. The states have a right to greater protection of their interests than the Third Circuit rule affords.

Nor, for the same reason, is the federal interest in full and fair adjudication of constitutional claims served by the Third Circuit attempt to expand the power of the federal courts to vindicate constitutional rights.[168] This federal interest does not depend on the state's initiation of the pending state court proceeding. Federal relief is required only when the state courts cannot be relied upon to vindicate constitutional rights. Since the Third Circuit view leaves unchanged the present deferential inquiry into the *adequacy* of the state proceeding, the federal interest is not fully protected.

Moreover, the Third Circuit view may be foreclosed by the

162. *See* Trainor v. Hernandez, 431 U.S. 434, 444 (1977); Juidice v. Vail, 430 U.S. 327, 335 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975).

163. *Johnson*, 583 F.2d at 1251-52.

164. *Id.*

165. *See* notes 137-42 and accompanying text *supra*.

166. Whitten, *supra* note 3, at 682. *But see Trainor*, 431 U.S. at 444; *Huffman*, 420 U.S. at 604.

167. *See* notes 145-56 and accompanying text *supra*.

168. *Johnson*, 583 F.2d at 1252.

Supreme Court's analysis in *Juidice v. Vail*.[169] Reversing federal relief from contempt proceedings in a suit between private litigants, the *Juidice* Court stressed that such interference harmed the state interest in "the regular operation of its judicial system."[170] The overwhelming majority of lower federal courts have required equitable restraint when relief was requested from state civil proceedings between private litigants.[171]

The Third Circuit view must therefore be rejected. It not only fails adequately to protect either the federal or state interests involved, but is of dubious validity in light of Supreme Court and lower federal court precedent. The need remains, however, for a limitation of the *Younger* doctrine.

V

PROPOSAL

The competing state and federal interests discussed throughout this Comment can best be reconciled by a fundamental reformulation of the *Younger* doctrine. Equitable restraint should be required toward all pending state court proceedings that afford a "plain, speedy and efficient remedy" for the federal claim. Rather than arbitrarily limiting the *Younger* doctrine to certain types of state proceedings, this proposal suggests a basic revision of the inquiry into the adequacy of state courts.

The mode of inquiry for equitable restraint proposed here was first suggested by Justice Stevens in his dissent in *Trainor v. Hernandez*.[172] Yet the underlying rationales of the two proposals differ. Justice Stevens argued that the state interest in the fiscal integrity of its welfare program in *Trainor* was analogous to its interest in tax collection.[173] Hence, the state proceeding required no greater protection from federal court interference than that mandated for state tax collection by 28 U.S.C. section 1341.[174] Under this standard, equitable restraint should not be required "unless the state procedure affords a plain, speedy and

169. 430 U.S. 327 (1977).

170. *Id.* at 335. The civil contempt proceeding involved in *Juidice* can perhaps be distinguished as *sui generis*. *See Johnson*, 583 F.2d at 1252; *Developments*, *supra* note 3, at 1310-11. The state, through its judiciary, punishes the individual not for harm to the private litigant, but for disrespect to the judicial system. This distinction seems fragile, however, since the harm to the state interest in the regular operation of its courts from the disruption of contempt proceedings differs only in degree from that resulting from the disruption of any state court proceedings.

171. *See* cases cited at note 11 *supra*.

172. 431 U.S. 434, 464-70 (1977) (Stevens, J., dissenting).

173. *Id.* at 466.

174. *Id. See also id.* at 455 n.4 (Brennan, J., dissenting). 28 U.S.C. § 1341 is set out at note 13 *supra*.

efficient remedy for the federal wrong."[175]

The rationale advanced by Justice Stevens is subject to criticism. The inquiry under section 1341 includes consideration of all available state remedies, whether or not available in a pending state proceeding. This standard, applied in the *Younger* context, would actually increase equitable restraint since the present inquiry focuses only on the pending proceeding.[176] More importantly, Justice Stevens' proposal rests on the state interest in the substantive policies enforced in the state proceeding, an irrelevant factor for equitable restraint.[177] By contrast, this proposal is predicated on a reevaluation of the state and federal interests implicated by federal court disruption of state court proceedings. It covers all pending state proceedings and requires examination only of the capacity of state proceedings to vindicate constitutional rights.

A. Standards for Propriety of Equitable Restraint

The *Younger* doctrine fails to ensure the full and fair adjudication of constitutional claims required by section 1983 because the inquiry into the adequacy of state proceedings is limited in both scope and rigor. Under the current doctrine, a section 1983 claimant must prove that the state remedy is clearly inadequate;[178] if it is only doubtful, federal relief is denied.[179] This Comment suggests that the federal court consider other procedural obstacles at the state level, resolving doubts in favor of the constitutional claimant.

A better balance between state and federal interests will result from the proposed approach. While the state interest in the regular operation of its courts may require some restriction on federal relief, it does not require equitable restraint if the state proceeding will not vindicate federal rights. When the federal defendant (usually the state itself) cannot dispel legitimate doubts raised as to the state proceeding, the federal interest in full and fair adjudication of constitutional claims outweighs this state interest.

This proposal is also justified by a realistic assessment of the state courts, one which indicates that they may tend to be less vigorous or competent in adjudicating constitutional rights.[180] Although this tendency cannot normally be proved in a particular case, it nevertheless suggests that the state remedy may not be adequate even though the procedures appear fair. Since the intangible factors behind this ten-

175. *Trainor*, 431 U.S. at 469 n.15 (Stevens, J., dissenting).
176. *See* notes 35, 37-41 and accompanying text *supra*.
177. *See* notes 137-44 and accompanying text *supra*.
178. *See* note 75 and accompanying text *supra*.
179. *See* note 82 and accompanying text *supra*.
180. *See* notes 104-12 and accompanying text *supra*.

dency cannot be effectively examined, the federal courts can compensate by an especially rigorous examination of tangible procedural obstacles. A number of such procedural obstacles are discussed below.

1. Is the State Judge Incompetent by Reason of Bias to Adjudicate the Constitutional Claim?

Equitable restraint is not currently required if the section 1983 claimant can prove that the state judge is biased due to a pecuniary interest in the outcome of the controversy[181] or bad faith towards the claimant.[182]

The Court may legitimately define bias narrowly in order to avoid an inquiry on the basis of vague charges into the integrity of a state judge. Doubts, however, should still be resolved in favor of the constitutional claimant. The Court may also legitimately consider state procedures for the disqualification of biased judges. If these procedures are plain, speedy, and efficient, equitable restraint should normally be required. The Court should not refuse, however, to examine those procedures, as it does now.[183]

2. Is the Federal Plaintiff Unable to Present his Constitutional Claim in the Pending State Proceedings?

Inability to present the federal claim in state court is recognized under the current doctrine as a ground for rejecting equitable restraint.[184] However, the federal plaintiff has the burden of proving such inability.[185] Under this proposal the plaintiff must only present evidence raising doubts as to his ability to present the claim. If these doubts are not dispelled, federal relief should be allowed.

3. Are There Legitimate Doubts That the State Court Meets "Due Process" Requirements?

Equitable restraint should not be required if the federal court legitimately doubts that the pending state proceeding meets federal "due process" standards.[186] Rather, the federal court should proceed to the merits of a motion for a preliminary injunction of the state proceeding.

The Supreme Court now requires equitable restraint in the face of such "due process" attacks on the ground that such challenges can be

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

182. Juidice v. Vail, 430 U.S. 327, 338 (1977).

183. Kugler v. Helfant, 421 U.S. 117, 127-28 (1975); O'Shea v. Littleton, 414 U.S. 488, 502 (1974).

184. *See* note 81 and accompanying text *supra*.

185. *See* note 82 and accompanying text *supra*.

186. Trainor v. Hernandez, 431 U.S. 434, 469 n.15 (1977) (Stevens, J., dissenting).

made in the state court.[187] Even if such a claim may actually be presented in the state court—thus meeting test *2* above—the alleged due process defects may seriously hamper an *effective* presentation of the claim. For example, a state court challenge to a state proceeding for failure to provide an indigent with an attorney would have to be made without benefit of counsel.[188]

This test should not result in frivolous interruptions of state proceedings since it gives the federal courts discretion to examine only state proceedings about which legitimate doubts have been raised. In any event, no preliminary injunction of the state court will be issued unless the claimant establishes a "reasonable likelihood of success on the merits" of the due process claim.[189]

4. Does the State Proceeding Fail to Afford an Opportunity for Prompt Resolution of the Constitutional Claim?

The Court itself has stated in dictum that the state proceeding must allow for "timely" consideration of the constitutional issue.[190] Yet, pendency alone does not insure timely consideration. Any delay in state proceedings will prolong the deprivation of constitutional rights. Moreover, such delays increase the cost of adjudication and may deter claimants from vindicating their constitutional rights. When the underlying claim in the state court has relatively little value,[191] an invalid statute may avoid attack indefinitely if the state court is the only available forum. When the state proceeding does not provide for "speedy" resolution of the constitutional claim, equitable restraint should not be required.[192]

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187. *Juidice*, 430 U.S. at 337 n.15.

188. The Supreme Court has rejected this situation as an exception to the current doctrine of equitable restraint. *Id.*

Even if a procedural obstacle does not violate the "due process" clause, it may nevertheless cast doubt on the capacity of the state proceeding to provide a plain, speedy, and efficient remedy for violations of federal rights. *See, e.g.*, Lindsey v. Normet, 405 U.S. 56 (1972), where the Court rejected a due process challenge to Oregon summary eviction procedures that narrowly limited the defenses tenants could present. This limitation of defenses, if constitutional claims are precluded, might nevertheless render the state proceeding "inadequate" for purposes of equitable restraint.

189. *See* note 46 and accompanying text *supra*.

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

191. Attachment procedures provide one example. The costs of making a constitutional challenge in state court to the procedure may, as the result of delays or other obstacles, exceed the value of the attached property.

192. *Trainor*, 431 U.S. at 468 n.14 (Stevens, J., dissenting).

5. *Do State Procedures Fail to Afford an Opportunity for Prompt Appeal of an Adverse Decision on the Constitutional Claim?*

If the constitutional claimant may be unable to appeal an adverse state court judgment without undue difficulty, equitable restraint should not be required.[193] The Court presently assumes that appellate review prevents "irreparable injury" from an erroneous trial court decision.[194] If appellate review is not readily available, confidence in the state judicial system is misplaced. An appeal from the state judgment may be effectively blocked by court rules or statutes which

(1) deny immediate appeal of constitutional decisions which are interlocutory;[195]

(2) require an appeal bond;[196]

(3) allow state courts discretion to deny an appeal;[197] or

(4) bar an appeal completely.[198]

In these circumstances, equitable restraint may be inappropriate.

6. *Have the State Courts Continued to Enforce the Challenged Statute Despite a Supreme Court Decision Overruling a Substantially Identical Statute?*

This test modifies the "flagrantly unconstitutional statute" exception hypothesized in *Younger*,[199] but narrowly restricted if not abandoned in *Trainor*.[200] The original exception is illogical since these are normally claims that can confidently be entrusted to the state courts. When, however, state courts continue to enforce a statute that is substantially identical to one held unconstitutional by the United States Supreme Court,[201] the federal courts may legitimately doubt the competence or commitment of the state courts to protect federal rights. Equitable restraint is therefore not warranted.

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193. *Id.* at 467.

194. Huffman v. Pursue, Ltd., 420 U.S. 605 (1975).

195. *Trainor*, 431 U.S. at 467 (Stevens, J., dissenting).

196. Owens v. Housing Auth., 394 F. Supp. 1267, 1270-71 (D. Conn. 1975). *See* note 83 *supra*.

197. Township of Hillsborough v. Cromwell, 326 U.S. 620, 625-26 (1946).

198. Lessard v. Schmidt, 413 F. Supp. 1318, 1320 (E.D. Wis. 1976). *See* note 83 *supra*.

199. 401 U.S. at 53-54.

200. 431 U.S. at 447.

201. This is apparently the definition Justice Brennan suggested in his dissent in *Trainor*, 431 U.S. at 458. He noted that the challenged Illinois Attachment Act was indistinguishable from the Georgia garnishment statute struck down in North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975).

7. *Will Presentation of the Constitutional Claim in the State Proceeding Be Futile Because of Adverse State Precedent?*

Adverse state precedent does not necessarily indicate that the claimant is doomed to defeat in the state court system, because, as the Court has pointed out, state courts can change their minds.[202] Since, however, a state trial judge will rarely overrule established state precedent,[203] an appeal will almost always be required to vindicate the constitutional right claimed. The state remedy can hardly be characterized, therefore, as "efficient." It should be remembered that no federal relief will be granted under this exception if the adverse state precedent is in fact persuasive. Not even a preliminary injunction will issue unless the plaintiff establishes a reasonable likelihood of success on the merits.[204] Therefore, equitable restraint should not be required.

B. The Test Applied

This proposal requires equitable restraint only towards "adequate" state proceedings, regardless of the type of proceeding or identity of the parties. The traditional exceptions of "prosecutorial bad faith" and "flagrantly unconstitutional statutes" are eliminated. The suggested procedure is relatively simple. When the federal suit is filed, the federal defendant can move for dismissal on *Younger* grounds. This motion should be granted unless the federal plaintiff meets his burden of establishing doubts as to the adequacy of the pending state proceeding. If he introduces evidence of one or more procedural obstacles, so as to raise such doubts, a *prima facie* case against equitable restraint is established. The burden then shifts to the federal defendant to dispel these doubts. If the defendant fails to prove the state proceeding affords a plain, speedy, and efficient remedy for the federal wrong, equitable restraint is inappropriate[205] and the federal court may proceed to the merits of the substantive federal claim.[206]

Perhaps the chief objection to this proposal will be the increased burden placed on the already crowded federal courts. Although the hearing on the need for equitable relief might be extended and claims

202. Hicks v. Miranda, 422 U.S. 332, 350 n.18 (1975); Huffman v. Pursue, Ltd., 420 U.S. 592, 610 (1975). Both decisions, however, explicitly rejected an exception for adverse state precedent.

203. Neuborne, *supra* note 103, at 1123 n.69.

204. *See* note 46 and accompanying text *supra*.

205. The resolution of doubt in favor of federal relief proposed here is similar to judicial procedure under the Tax Interference Act, 28 U.S.C. § 1341 (1976), *quoted in* note 13 *supra*. The Court has repeatedly affirmed that federal relief under § 1341 should be allowed when the efficacy of the state remedies is doubtful. Tully v. Griffin, Inc., 429 U.S. 68, 76 (1976); Township of Hillsborough v. Cromwell, 326 U.S. 620, 626 (1946); Spector Motor Serv. v. McLaughlin, 323 U.S. 101, 105-06 (1944); Mountain State Power Co. v. Public Serv. Comm'n, 299 U.S. 163, 170 (1936).

206. *See* note 46 and accompanying text *supra*.

for federal relief could multiply,[207] full-scale constitutional adjudication in the federal courts need not increase substantially. If, as the Court now assumes, state courts are normally competent to protect federal rights, many claims for relief may be dismissed after only summary consideration.

Moreover, since the federal court examines the state proceeding generically, rejection of one section 1983 claimant should preclude similar challenges to the same type of state proceeding. For example, if a federal court once determines that the attachment procedures of a particular county or state are sufficiently adequate to require equitable restraint, future petitions for relief from such attachment procedures can be denied summarily. If, on the other hand, a particular type of state proceeding is found inadequate, the state has an option. It may acquiesce in federal court resolution of constitutional claims arising in that type of proceeding, or it may avoid further federal interference by correcting the procedural deficiencies. In the long run, therefore, this proposal may spur state court reforms which will decrease the necessity for federal intervention.

Finally, this proposal requires only relaxation, not complete suspension, of the inflexible bar of equitable restraint. The federal court retains substantial discretion, under traditional equitable principles, to deny federal relief from state proceedings but will, under this proposal, also have discretion to intervene if necessary for the vindication of constitutional claims.

C. Implementation of the Proposal

1. By the Supreme Court

The judicial philosophy of the present Court need not impede adoption of this proposal. This Comment has demonstrated that equitable restraint does not reduce constitutional claims nor limit judicial activism.[208] The end achieved by the policy of equitable restraint is reduction of the activity of *federal* judges.[209] Only if this is the Court's

207. Although this proposal will lead to some short-run increase in the workload of the federal courts, this factor should not be decisive. In the first place, since equitable restraint merely shifts the claim to another forum, federal courts lighten their dockets under the current system only at the expense of the already more seriously overcrowded state courts. *See* note 156 and accompanying text *supra*. More importantly, the federal courts are not at liberty to ignore an act of Congress in order to reduce their workload. If § 1983 requires federal relief from a state proceeding, the federal court cannot evade its duty.

208. *See* notes 137-42 and accompanying text *supra*. These goals, if in fact they motivate the Court, may be achieved more consistently and efficiently by requiring a more deferential standard in *both* the state and federal courts for the determination of constitutional claims.

209. Limitation of the role of the federal courts may be thought to serve the goal of reducing the federal docket. This justification is criticized at note 156 *supra*. Alternatively, the goal of these limitations may be a reduction of overall judicial interference with state policies by either the

true (but unarticulated) goal would acceptance of the suggested modification be inappropriate.[210]

2. By Congress

If the Court is unwilling to accept this proposal, Congress should impose it by statute. It clearly lies within congressional power to reassert and clarify its mandate that the federal courts serve as "the primary and powerful reliances" for the protection of constitutional rights. The *Younger* doctrine is a judicially created rule derived from the congressional policy manifested in the Anti-Injunction Act.[211] No constitutional basis for the doctrine has been suggested by the Court. The long history of statutory exceptions to the Anti-Injunction Act demonstrates that Congress has authority to require federal court injunctions of state proceedings despite the demands of "Our Federalism."[212] Therefore, absent Court action, Congress should enact new legislation to make explicit the duty of the federal courts to grant declaratory or injunctive relief from pending state proceedings which do not afford a "plain, speedy and efficient remedy" for the federal wrong.

CONCLUSION

The *Younger* doctrine is flawed by its inconsistent principles. It has been applied only to complaints brought under section 1983, a statute which, the Court has held, expressly authorizes federal court injunctions of pending state proceedings. Rather than defer to the congressional decision that the need for an injunction outweighs the harm to the state's interest, the Court has erected a policy of equitable restraint derived from values underlying the inapplicable Anti-Injunction Act.

The inconsistencies do not end here, however. The Court allows federal interference with state proceedings only in certain "extraordinary circumstances." Two of these exceptions—"prosecutorial bad faith" and "flagrantly unconstitutional statute"—allow federal relief which disrupts state court proceedings unnecessarily; these claims can

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federal or state courts. This justification would be inconsistent, however, with the Court's stated presumption that the state courts will vindicate constitutional rights if the federal courts exercise restraint.

210. At least four members of the Court have indicated an acceptance of the basic principles advanced in this proposal. *See* Trainor v. Hernandez, 431 U.S. 434, 448 (1977) (Stewart, J., dissenting); *id.* at 455 n.4 (Brennan and Marshall, JJ., dissenting); *id.* at 469 n.15 (Stevens, J., dissenting). In addition, Justice Blackmun shows some signs of wavering in his support of the *Younger* doctrine, although he appears to be searching for some limit based on the magnitude of the state interest in the substantive policies enforced in the state proceeding. *Id.* at 448-50 (Blackmun, J., concurring).

211. *Younger*, 401 U.S. at 43-44.

212. *See* note 16 and accompanying text *supra*.

confidently be entrusted to the state courts. The federal interest in the full and fair adjudication of constitutional claims is served only by the third exception: "an inadequate state remedy." Yet the inquiry into adequacy is so deferential that the federal complaint may be dismissed even though the vindication of constitutional rights by the state court is subject to serious doubt.

Both the Court and critics of the *Younger* doctrine have focused on the magnitude of the state interest in the substantive policies enforced in the state proceeding, but this interest is irrelevant to the decision regarding equitable restraint. If we conclude, as does the Court, that there is a parity of state and federal courts, the state court will not afford greater protection to this state interest. Moreover, federal relief is allowed when no state proceedings are pending, yet such relief has substantially the same effect on substantive state policies as the relief barred by *Younger*.

These inconsistencies may result from the Court's pursuit of an unarticulated desire to reduce judicial activism. Even if this goal is legitimate, however, the *Younger* doctrine is ill-adapted to achieve it. The doctrine may reduce federal claims or federal judicial activism; it does not reduce the number of constitutional claims nor lessen the responsibility of the state judiciary to invalidate unconstitutional state statutes.

More fundamentally, the *Younger* doctrine's balance overemphasizes state interests. An attempt to limit the doctrine to certain types of proceedings or to certain parties does not correct this imbalance; it adequately protects neither state nor federal interests. Instead, a fundamental reformulation of the balance is required.

Congress, by enacting section 1983, made the federal courts "the primary and powerful reliances" for the protection of constitutional rights. The federal courts may not shirk this duty. They should not delegate their responsibility to the state courts and reject the constitutional claimant's choice of forum unless they are confident that the state court will fully and fairly adjudicate the constitutional claim. The state's legitimate interest in the continuity and integrity of its judicial system does not override the federal interest in the vindication of constitutional rights. Indeed, by expressly authorizing federal court injunctions of pending state proceedings, Congress has already made this decision for the Court.

Equitable restraint should not therefore be required unless the pending state proceeding provides a "plain, speedy and efficient remedy" for the federal wrong. If the state remedy remains in doubt, federal relief should be allowed. If not, equitable restraint is required.

The proposal affords consistent protection to the legitimate state

interest in the regular operation of its courts since it is applied uniformly to all state proceedings. More importantly, it assures the full and fair adjudication of constitutional claims. If the state proceeding fails to provide a plain, speedy, and efficient remedy for violations of federal rights, the federal courts, as the "primary and powerful reliances" of those deprived of their constitutional rights, must intervene.

*Charles R. Rice**

* B.A. 1975, University of Chicago; third-year student, Boalt Hall School of Law. This Comment is dedicated to Laurie Gould.