Younger Abstention Reaches a Civil Maturity: Pennzoil Co. v. Texaco Inc.

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ARTICLE

YOUNGER ABSTENTION REACHES A CIVIL MATURITY: PENNZOIL CO. v. TEXACO INC.

HOWARD B. STRAVITZ*

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INTRODUCTION

The civil application of Younger v. Harris is enmeshed in a doctrinal quagmire. The seeds of this confusion were perhaps sown in Younger itself, in which Justice Stewart, concurring, observed that the Court's decision was limited to "the proper policy to be followed by a federal court when asked to intervene by injunction or declaratory judgment in a criminal prosecution which is contemporaneously pending in a state court." He cautiously added, however, that the Court might have taken a different view if federal intervention were sought in connection with a state civil proceeding. Younger and its companion cases pro-

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2. Younger, 401 U.S. at 55 (emphasis added) (Stewart, J., concurring).
3. See id. Justice Stewart noted that "since all these cases involve state criminal prosecutions, we do not deal with the considerations that should govern a federal court when it is asked to intervene in state civil proceedings, where, for various reasons, the balance might be struck differently." Id. (footnote omitted).
duced the modern doctrine of federal noninterference with an ongoing state criminal proceeding. The doctrine, referred to by Justice Black in *Younger* as “Our Federalism,” has been variously characterized as one of comity, deference, equitable restraint, or abstention. Regardless of how it has been characterized, the *Younger* doctrine has certainly been controversial, particularly in its application to civil litigation.

In the fourteen years since first applying the doctrine outside the crim-

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5. For a discussion of the historical antecedents of *Younger*, see authorities cited supra note 1.


11. See L. Tribe, supra note 10, § 3-30, at 205; 17A C. Wright, A. Miller & E. Cooper, supra note 6, § 4251, at 180; Koury, supra note 7, at 709.

12. The extension of *Younger* to civil litigation has generated substantial scholarly criticism. The principal commentaries are collected in 17A C. Wright, A. Miller & E. Cooper, supra note 6, § 4254, at 236 n.3; Comment, *Civil Rights Suits that Interfere with Ongoing State Civil Proceedings: Younger Abstention in the Wake of Pennzoil Co. v. Texaco, Inc.*, 24 Hous. L. Rev. 917, 919 n.9 (1987).
inal context, the Court has moved cautiously yet definitively toward the full civil application of Younger. Nevertheless, with each extension, the Court has repeated the caveat that Younger did not extend to all civil litigation. The Court reiterated this warning most recently in Pennzoil Co. v. Texaco Inc., writing that "[o]ur opinion does not hold that Younger abstention is always appropriate whenever a civil proceeding is pending in a state court." Despite this routine disclaimer, the Pennzoil Court applied the Younger doctrine to a civil dispute between private litigants in which there was no objectively discernible state interest at stake. Consequently, Pennzoil heralds the full civil application of Younger.

The Supreme Court has never satisfactorily explained why Younger abstention should be limited to a pending state criminal or civil enforcement proceeding. Moreover, by shifting rationales for the doctrine in subsequent cases, the Court has permitted the doctrine's theoretical foundation to support its application in civil as well as criminal litigation. Without entering the debate concerning the wisdom of Younger itself,


14. See infra Part II.

15. See, e.g., Moore v. Sims, 442 U.S. 415, 423 n.8 (1979) ("Therefore, contrary to the suggestion of the dissent, we do not remotely suggest 'that every pending proceeding between a State and a federal plaintiff justifies abstention unless one of the exceptions to Younger applies.' "); Trainor v. Hernandez, 431 U.S. 434, 445 n.8 (1977) ("we have no occasion to decide whether Younger principles apply to all civil litigation"); Judice v. Vail, 430 U.S. 327, 336 n.13 (1977) ("we save for another day the question of 'the applicability of Younger to all civil litigation' ") (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 607 (1975)); Huffman v. Pursue, Ltd., 420 U.S. 592, 607 (1975) ("For the purposes of the case before us, however, we need make no general pronouncements upon the applicability of Younger to all civil litigation.").


17. Id. at 14 n.12.

18. See infra notes 70-72 and accompanying text. These cases, particularly Judice v. Vail, 430 U.S. 327 (1977), emphasize Younger's comity and federalism underpinnings, which are implicated by civil and criminal litigation. In Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), the Court had expressly acknowledged that the equity branch of Younger was inapplicable to civil litigation: "Younger ... also rests upon the traditional reluctance of courts of equity, even within a unitary system, to interfere with a criminal prosecution. Strictly speaking, this element of Younger is not available to mandate federal restraint in civil cases." Id. at 604.

19. Cf. Field, The Abstention Doctrine Today, 125 U. Pa. L. Rev. 590 (1977) (opposing Pullman abstention because problems of delay, expense, reviewability, and misuse outweigh doctrine's benefits). Compare Fiss, Dombrowski, 86 Yale L.J. 1103, 1116-21 (1977) (criticizing Younger's impact on Dombrowski) and Redish, supra note 8, at 477-87 (questioning the validity of the Younger doctrine's theoretical rationales) and Redish, supra note 10, at 91-95 (criticizing the policy rationales of Younger abstention as judicial legislation) and Zeigler, supra note 4, at 1020-44 (criticizing Younger as contravening legislative intent in section 1983) with Bator, The State Courts and Federal Constitutional Litigation, 22 Wm. & Mary L. Rev. 605, 616-22 (1981) (supporting Younger because costs of federal interference with state proceedings are too high) and Rosenfeld, supra note 8, at 644-58 (supporting reasonable use of Younger abstention) and Wells, Why Professor Redish is Wrong About Abstention, 19 Ga. L. Rev. 1097, 1112-15, 1122, 1132-33
the thesis of this Article is that, given the doctrine's prior civil extensions and its recent application in Pennzoil, Younger abstention can no longer be limited to prior pending state criminal, quasi-criminal, and civil enforcement actions.

Part I of the Article explores the background and theoretical foundations of Younger abstention. Part II traces the civil expansion of Younger prior to Pennzoil. Part III analyzes the distressingly divided Pennzoil Court, which mustered only a bare majority in support of abstention. Finally, Part IV offers both theoretical and pragmatic grounds for extending the doctrine.

I. BACKGROUND AND THEORETICAL FOUNDATIONS OF YOUNGER ABSTENTION

Younger was decided at the end of the Warren Court era, a time when federal courts routinely interfered with state court proceedings in order to protect the federal constitutional rights of state court defendants. The federal judiciary's activist role during the late 1960s stands in marked contrast to the role originally envisaged by the founding fathers. As one scholar wrote, under our constitutional scheme, the state courts "are the primary guarantors of constitutional rights, and in many cases they may be the ultimate ones." The framers of the Constitution evidently believed that state courts could adequately adjudicate federal rights, for the Constitution did not mandate the establishment of inferior federal courts. Instead, it left the creation of lower federal courts to the discretion of Congress. Had Congress never created inferior federal
courts, federal rights could have been enforced only in the existing state
courts, or in limited circumstances, in the Supreme Court.

Although the first Congress immediately exercised its discretion to cre-
ate lower federal courts, their jurisdiction was extremely limited. In
particular, Congress failed to confer the Constitution's grant of judicial
power over cases and controversies arising under the Constitution or
laws of the United States in creating the inferior federal courts. The
original lower federal courts were created principally to adjudicate diver-
sity cases; there was no statutory general federal question jurisdiction
for private civil litigation.

During the first seventy-five years of the federal judicial system,
roughly the period from the first Judiciary Act to Reconstruction, it was
generally accepted that "private litigants must look to the state tribunals
in the first instance for vindication of federal claims, subject to limited
review by the United States Supreme Court." Thus, prior to Recon-
struction, the state courts were the primary legal fora of the nation and
"the federal courts were subsidiary courts."

As a result of the Civil War and Reconstruction, however, the view
that state courts were the primary vindicators of federal rights was
largely abandoned. Although the process of change started during the

25. See Act of Sept. 24, 1789, ch. 20, 1 Stat. 73. See generally Hart & Wechsler, supra
note 9, at 30-33 (tracing organization and growth of federal judicial system); M. Redish,
Tensions, supra note 6, at 21 (discussing Congress' power to establish lower federal
courts); Redish & Woods, supra note 23, at 52-56 (discussing framers' debate over scope
of Congress' discretion to create inferior federal courts).

26. See Hart & Wechsler, supra note 9, at 30-33; see also Frankfurter, Distribution of
Judicial Power Between United States and State Courts, 13 Cornell L.Q. 499, 507-15
(1928) (surveying history of jurisdiction of lower federal courts). Following the adoption
of the Judiciary Act of 1789, it was much debated whether the lower courts must neces-
sarily exercise all the judicial power of the United States not allocated by the Constitution
to the original jurisdiction of the Supreme Court, or whether Congress could confer less
than the constitutional maximum in creating such courts. The latter view prevailed. See
U.S. (1 Wheat.) 304, 331 (1816) (Story, J.) (construing the words "shall be vested" in Art.
III, § 1 to require that entire grant of federal judicial power in Art. III, § 2 be vested in
some federal court).

27. See Hart & Wechsler, supra note 9, at 32.

28. See id.

29. Id. at 960 (footnote omitted); see also Warren, New Light on the History of the
Federal Judiciary Act of 1789, 37 Harv. L. Rev. 49, 131 (1923) (Judiciary Act was a
compromise between Federalist view that all judicial power should reside in federal
courts and the other view that federal government was "destroyer of states' rights").
Dissenting in Juidice v. Vail, 430 U.S. 327 (1977), Justice Brennan expressed the view
that Reconstruction legislation affecting the jurisdiction of the federal courts "completely
altered Congress' pre-Civil War policy of relying on state courts to vindicate rights arising
under the Constitution and federal laws." Id. at 342 (Brennan, J., dissenting); see also
Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U.S. 804, 826 (1986) (Brennan, J.,
dissenting) ("In the early days of our Republic, Congress was content to leave the task of
interpreting and applying federal laws in the first instance to the state courts . . . .")


31. See id. at 64-65; cf. Gressman, The Unhappy History of Civil Rights Legislation, 50
Mich. L. Rev. 1323, 1357 (1952) (Reconstruction legislation "premised on the belief that
Civil War,\textsuperscript{32} it climaxed in 1875 when Congress granted the federal courts permanent general federal question jurisdiction\textsuperscript{33} for the first time.\textsuperscript{34} Thereafter, according to two early twentieth century commentators, the federal courts "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."\textsuperscript{35}

The Reconstruction Congress enacted a series of civil rights and jurisdictional acts,\textsuperscript{36} under which the federal courts eventually became the primary vindicators of federal rights. The Act of April 20, 1871,\textsuperscript{37} was the centerpiece of this congressional effort. This now famous provision is codified as 42 U.S.C. § 1983 and provides:

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


\textsuperscript{32} See Hart & Wechsler, \textit{supra} note 9, at 961-62.

\textsuperscript{33} See \textit{Judiciary Act of March 3, 1875, ch. 137, 18 Stat. 470} (currently codified at 28 U.S.C. § 1331 (1982)). There was substantial controversy concerning the intended scope of the statutory grant of general federal question jurisdiction. See D. Currie, Federal Courts: Cases and Materials 190-92 (3d ed. 1982); Hart & Wechsler, \textit{supra} note 9, at 995-97; M. Redish, Tensions, \textit{supra} note 6, at 64. The statutory language tracks the constitutional grant of federal question jurisdiction. \textit{Compare} 28 U.S.C. § 1331 (1982) ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.") \textit{with} U.S. Const. art. III, § 2 ("The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ."). However, the statutory language has been given a narrower interpretation. One commentator concluded: "[D]espite the striking similarity in language of the two provisions . . . it is now well established that the scope of the general federal question statute is considerably narrower than that of the constitutional provision." M. Redish, Tensions, \textit{supra} note 6, at 64.

\textsuperscript{34} There was one earlier, short-lived attempt to confer general federal question jurisdiction. \textit{See Act of Feb. 13, 1801, ch. 4, §§ 11-13, 2 Stat. 89, 92-93, repealed by Act of March 8, 1802, ch. 8, 2 Stat. 132. See generally Hart & Wechsler, \textit{supra} note 9, at 960-61} (describing political origins of Congress' first attempt to confer general federal question jurisdiction); Frankfurter, \textit{supra} note 26, at 507-08 (same).

\textsuperscript{35} F. Frankfurter & J. Landis, \textit{supra} note 30, at 65.

\textsuperscript{36} For descriptions of these actions, see \textit{Developments, supra} note 1, at 1141-56. For a discussion of the legislative background of the Civil Rights Acts, see Gressman, \textit{supra} note 31, at 1324-36; Kaczorowski, \textit{supra} note 31, at 567-90.

\textsuperscript{37} Ch. 22, 17 Stat. 13.

\textsuperscript{38} 42 U.S.C. § 1983 (1982). For the historical and political background of section
Although recently the Court has read section 1983 expansively, in the immediate post-Reconstruction period courts construed it very narrowly, almost to the point of impotence.

Then, in 1939, the Court launched a new era of civil rights enforcement in *Hague v. Committee for Industrial Organization*, which enjoined local officials under section 1983 from using local law to interfere with labor organizers. This decision marked the first significant use of section 1983 in a case not involving racial discrimination or voting rights. Because *Hague* and other early section 1983 cases involved official conduct directly sanctioned by state or local law, they clearly satisfied even the narrowest definition of the statute’s “under color of” law requirement, which had previously been interpreted in a restrictive manner.

Although the narrow view of the “under color of” law requirement was largely abandoned by the Court in the 1940s, the modern renaissance of section 1983 did not begin until 1961 with *Monroe v. Pape*.

An explosion of civil rights litigation, mostly brought under section 1983, occurred in the twenty years following *Monroe*. Significantly, the awakening of section 1983 from its ninety-year dormancy occurred at the same time that constitutional rights, particularly those affecting state criminal defendants, were undergoing revolutionary change. The

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42. One commentator found that only 21 actions were brought under the predecessors to section 1983 in the period from 1871 to 1920. See Comment, The Civil Rights Act: Emergence of an Adequate Federal Civil Remedy?, 26 Ind. L.J. 361, 363 (1951). During the next 20 years, litigants occasionally invoked the statute, primarily in voting rights cases. See, e.g., Lane v. Wilson, 307 U.S. 268, 273-75 (1939); Nixon v. Herndon, 273 U.S. 536, 537, 540-41 (1927).

43. See, e.g., id. at 501-03; *Lane*, 307 U.S. at 270-72 & n.1; *Nixon*, 273 U.S. at 539-40.

44. See P. Low & J. Jeffries, supra note 10, at 850-51; Developments, supra note 1, at 1168.


46. 365 U.S. 167 (1961); see Developments, supra note 1, at 1169.

47. See P. Low & J. Jeffries, supra note 10, at 853-54 & n.9; Developments, supra note 1, at 1172.

combined expansion of section 1983 and constitutional rights undoubtedly precipitated greater use of section 1983.\textsuperscript{50} As a result, some observers expressed concern that these developments had caused a dangerous increase in the workload of the federal courts.\textsuperscript{51} They further warned that increased section 1983 litigation would upset the delicate balance of power between the states and the federal government.\textsuperscript{52}

The abstention doctrine of \textit{Younger v. Harris}\textsuperscript{53} emerged in the wake of these developments. In \textit{Younger}, a three-judge district court\textsuperscript{54} issued an injunction against a pending California criminal prosecution, which had been brought under a patently unconstitutional statute.\textsuperscript{55} On appeal, the Supreme Court reversed the lower court's grant of injunctive relief.

Writing for a majority of eight,\textsuperscript{56} Justice Black based the reversal on two distinct but related grounds. Describing the first as a "basic doctrine of equity jurisprudence,"\textsuperscript{57} Justice Black stated that "courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief."\textsuperscript{58} Although some scholars criticized the Court's reliance on equitable principles,\textsuperscript{59}
earlier case law arguably supported the Court’s application of equity in Younger.\textsuperscript{60}

The second ground, characterized by Justice Black as an “even more vital consideration,”\textsuperscript{61} evolved from the related doctrines of comity and federalism. Together, these doctrines require federal courts to acknowledge the independent nature of state institutions and not unduly interfere with legitimate state functions, even when called upon to enforce federal rights.\textsuperscript{62} Thus, under the doctrines of comity and federalism, a federal
court may not restrain a pending state criminal prosecution when the federal claims could be raised as a defense in the pending state proceeding. The Court recognized certain exceptions to this principle of equitable restraint, including a bad faith prosecution aimed at harassing a federal plaintiff or other “extraordinary circumstances” requiring federal interference. Although the Court articulated exceptions to the Younger doctrine, Justice Black made it clear that the exceptions should be invoked only rarely.

Justice Black’s opinion announced the doctrine of “Our Federalism,” and presented two broad policy reasons for noninterference with state courts, but failed to articulate, except indirectly, the theoretical underpinnings of Younger’s doctrinal principle. The theoretical contours of Younger began to emerge in Justice Stewart’s concurring opinion. First, Justice Stewart firmly anchored the Younger doctrine to a pending state criminal proceeding. Thus, he implied that a state’s interest in enforcing its criminal laws is more vital as a matter of policy than is the interest of a single criminal defendant in an alternative, federal forum, provided that the defendant has an adequate opportunity to raise federal claims in the pending state proceeding. Undoubtedly, a state has a strong interest in defining and enforcing its own criminal laws free of federal oversight. This function is perhaps the most important to the sovereign independence of the several states. This conclusion follows from the

63. See Younger, 401 U.S. at 53-54. The exceptions to the general rule of noninterference “are so narrow that they will admit only a trivial number of cases into federal court for original adjudication.” Yackle, Explaining Habeas Corpus, 60 N.Y.U. L. Rev. 991, 1045 n.211 (1985). For a discussion of the Younger exceptions, see id. at 1045 n.210; see also L. Tribe, supra note 10, § 3-30, at 204-05 & nn.11-12 (discussing exceptions to Younger abstention).

64. Justice Black stated: “[T]he normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions.” 401 U.S. at 45.

65. See supra note 62.

66. See supra notes 2-3 and accompanying text. Justice Stewart also may have anticipated Steffel v. Thompson, 415 U.S. 452 (1974), which upheld federal declaratory relief in the absence of a prior pending state action. See Younger, 401 U.S. at 55 (Stewart, J., concurring) (“the Court today does not resolve the problems involved when a federal court is asked to give injunctive or declaratory relief from future state criminal proceedings”); see also infra notes 233-35 and accompanying text (discussing Steffel).

67. See 401 U.S. at 56 (Stewart, J., concurring).

68. See id.; see also id. at 45 (“The accused should first set up and rely upon his defense in the state courts . . . unless it plainly appears that this course would not afford adequate protection.”) (quoting Fenner v. Boykin, 271 U.S. 240, 244 (1926)); infra notes 146-50 and accompanying text.

division of powers between the states and the federal government implicit in the constitutional framework.

Although Younger rested on the twin pillars of equity and federalism, Younger’s progeny toppled the equity pillar and reinforced the federalism pillar. This shift in Younger’s doctrinal foundation was clearly articulated in Juidice v. Vail. In Juidice Justice Rehnquist unambiguously asserted that the predominant concerns behind the Younger doctrine were comity and federalism, and not the involvement of the state criminal process. Prior to its decision in Juidice, the Court had first applied Younger outside the criminal context in Huffman v. Pursue, Ltd. In Huffman, the Court identified four theoretical underpinnings of Younger’s comity-federalism rationale. The first is noninterference with the state’s effectuation of its substantive policies. This rationale, however, is generally applicable only to criminal or civil enforcement proceedings. The second is preventing general disruption of state judicial proceedings and allowing states to provide forums to adjudicate constitutional claims. Third, Younger abstention avoids “duplicative legal proceedings,” which would otherwise injure the systemic economy of

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70. See infra notes 71-72, 93-96, 127-29 and accompanying text; see also Yackle, supra note 63, at 1042. Professor Yackle trenchantly summarizes the doctrinal shift:

The Justices have abandoned the language of equity jurisprudence in explaining their hesitancy to allow early federal intervention and have substituted more general references to federalism and comity. The Court’s separation of the doctrine of restraint from equity generally should be applauded. In abandoning reliance on equitable doctrines, however, the Court has ceased to limit Younger to criminal proceedings, as if it were only the equitable rule against enjoining criminal proceedings that linked Younger restraint to criminal cases in the first instance. The Court now seems committed to federal restraint in noncriminal cases in which state officers initiate litigation in state court to further important state policies. In those cases, however, relitigation in habeas is unavailable.

Id. (footnotes omitted).

72. See id. at 334.
73. 420 U.S. 592 (1975).
74. The Court stated:

[I]nterference with a state judicial proceeding prevents the state not only from effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies. Such interference also results in duplicative legal proceedings, and can readily be interpreted “as reflecting negatively upon the state court’s ability to enforce constitutional principles.”

Id. at 604 (citing with a “cf.” cite and quoting Steffel v. Thompson, 415 U.S. 452, 462 (1974)).
75. See id.
76. Although possible in private civil litigation, interference with state substantive policy is more likely to occur when the state is prosecuting a criminal or civil enforcement claim. If the state is willing to commit resources to an action, there is likely to be an important substantive policy at stake.
77. See Huffman, 420 U.S. at 604.
78. Id.
the combined state-federal judicial system. Finally, Younger abstention prevents negative inferences concerning a state court's ability to enforce constitutional principles.

Building on the Huffman opinion and drawing strands of his analysis from Younger and its other progeny, Professor Martin Redish articulated four theoretical foundations for Younger abstention:

1. The desire to avoid affronting state judges by questioning their competence and/or unwillingness to enforce constitutional rights; 
2. The need to prevent federal judicial interference with the accomplishment of state substantive legislative goals; 
3. The need to preserve the discretion of state executive officers in general and state prosecutors in particular, and 
4. The desire to prevent federal interference with the orderly operation of the state judicial process.

Although critical of all four theoretical foundations for Younger abstention, Professor Redish is most disparaging of the second and third foundations, which implicate state substantive policy and state executive branch discretion. The second and third foundations, however, have been substantially undermined by subsequent case law, and should be accorded little or no weight in deciding to extend Younger to civil litigation.

Nevertheless, without considering their intrinsic merit, all four of Redish's foundations are readily applicable to civil proceedings in which the state is enforcing a substantial governmental interest. Consequently, the Supreme Court has had little practical or theoretical difficulty in extending Younger to civil enforcement proceedings.

II. PRE-PENNZOIL EXTENSIONS OF YOUNGER ABSTENTION TO CIVIL LITIGATION

Although it had earlier opportunities to extend Younger to civil litigation, the Supreme Court avoided any expansion outside the criminal context until Huffman v. Pursue, Ltd. Huffman may have been chosen to extend Younger to civil litigation because it enabled the Court to
achieve doctrinal consistency with *Younger* and its criminal progeny.\(^8\) *Huffman* arose from the efforts of a local prosecutor and sheriff to close a theater exhibiting pornographic films.\(^9\) Proceeding under Ohio’s public nuisance law,\(^10\) the local officials obtained a judgment closing the theater for one year and providing for the seizure and sale of the theater’s property.\(^11\) Instead of appealing the adverse judgment within the state system, the theater owner sought and obtained a federal injunction under section 1983 against enforcement of the state court judgment.\(^12\)

The Supreme Court reversed on appeal. After explaining that *Younger* rested not only on the long-standing equitable policy against enjoining state criminal prosecutions,\(^9\) but also on the “even more vital consideration”\(^9\) of comity,\(^9\) the Court concluded that “[t]he component of *Younger* which rests upon the threat to our federal system is thus applicable to a civil proceeding *such as this* quite as much as it is to a criminal proceeding.”\(^9\) The Court buttressed its view that *Younger* applied equally to a civil proceeding in which the state sought to enforce a nuisance statute by characterizing the proceeding as “more akin to a criminal prosecution than are most civil cases.”\(^9\) By drawing a comparison between Ohio’s quasi-criminal nuisance statute and a criminal prosecution, the Court may have been attempting to bring *Huffman* within the equitable branch of the *Younger* doctrine.\(^8\) In subsequent decisions, however, the Court demonstrated that *Huffman* relied more on *Younger*’s comity-federalism branch.\(^8\) The underlying rationales of *Younger*—preventing interference with state substantive policy, avoiding disruption of a state judicial system, refraining from duplication of effort and negative inferences regarding the competency of state judges—would be implicated whether the proceeding were criminal, quasi-criminal or civil enforcement.\(^10\) Consequently, at least in the nuisance proceeding at issue in *Huffman*, the Court had no difficulty extending *Younger* to a civil enforcement case.

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88. The Court recognized that there was little difference between a state acting to enforce a quasi-criminal nuisance statute and a criminal statute. See 420 U.S. at 604; *infra* notes 97-98 and accompanying text.
89. *See Huffman*, 420 U.S. at 595.
90. *See id.* at 595-97 & nn.3, 5-8.
91. *See id.* at 598.
92. *See id.* at 598-99.
93. *See id.* at 599-601.
94. *Id.* at 601 (quoting *Younger* v. Harris, 401 U.S. 37, 44 (1971)).
95. *See id.; supra* notes 72-80 and accompanying text.
96. *Huffman*, 420 U.S. at 604 (emphasis added).
97. *Id.* The Court concluded that “an offense to the State’s interest in the nuisance litigation is likely to be every bit as great as it would be were this a criminal proceeding.” *Id.*
98. *See Koury, supra* note 7, at 674-75 & n.78. Professor Koury speculates that this language may have misled lower federal courts to limit *Huffman*’s ambit to quasi-criminal contexts.
99. *See infra* notes 128-30 and accompanying text.
100. *See 420 U.S. at 604-05; supra* notes 74-82 and accompanying text.
Two terms after Huffman, the Court further extended Younger to civil actions in two very different contexts.\(^{101}\) Taken together, these opinions established that the Court saw the theoretical underpinnings of Younger as firmly rooted in federalism.\(^{102}\)

The first case was Juidice v. Vail,\(^{103}\) which the Pennzoil Court relied upon almost exclusively in extending Younger to wholly private civil litigation.\(^{104}\) The underlying litigation in Juidice dealt with debt collection between private parties in a New York state court.\(^{105}\) Vail, the state court defendant, failed to answer or otherwise respond to the action.\(^{106}\) After a default judgment had been entered, the judgment creditor invoked New York's supplementary procedures to ascertain whether Vail, the judgment debtor, had any assets to satisfy the judgment.\(^{107}\) Vail failed to appear for a scheduled supplementary deposition, and was ordered by the court to show cause why he should not be punished for contempt.\(^{108}\) He still refused to cooperate and was held in contempt, and eventually fined and jailed.\(^{109}\) Vail then commenced a class action on behalf of a class of judgment debtors in federal district court under section 1983, seeking to enjoin New York's statutory contempt procedures on the ground that the procedures, insofar as they resulted in confinement, violated the fourteenth amendment.\(^{110}\)

The Supreme Court unequivocally stated that the Younger doctrine was not confined to state criminal or quasi-criminal cases.\(^{111}\) The Court suggested that Younger applied whenever a federal court was asked to interfere with a pending state proceeding implicating state institutional functions.\(^{112}\)

Recognizing the vital state interest implicated by the invocation of the contempt power, the Court extended Younger's abstention doctrine to a pending state contempt proceeding:

> These principles apply to a case in which the State's contempt process is involved. A State's interest in the contempt process, through which it vindicates the regular operation of its judicial system, so long as that system itself affords the opportunity to pursue federal claims within it, is surely an important interest. Perhaps it is not quite as important as is the State's interest in the enforcement of its criminal laws, or even its interest in the maintenance of a quasi-criminal pro-


\(^{102}\) See infra notes 128-35 and accompanying text.

\(^{103}\) 430 U.S. 327 (1977).

\(^{104}\) See infra notes 202-06 and accompanying text.

\(^{105}\) See Juidice, 430 U.S. at 329.

\(^{106}\) See id. at 329-30.

\(^{107}\) See id. at 329.

\(^{108}\) See id.

\(^{109}\) See id. at 329-30.

\(^{110}\) See id. at 330.

\(^{111}\) See id. at 334.

\(^{112}\) See id. 334-36.
ceeding such as was involved in *Huffman*. But we think it is of sufficiently great import to require application of the principles of those cases. The contempt power lies at the core of the administration of a State's judicial system.\textsuperscript{113}

Although the underlying state litigation was purely private, and the principal beneficiary of the contempt process\textsuperscript{114} was a private civil litigant, the Court evidently relied on the state’s strong interest in the contempt process to trigger application of *Younger*'s abstention doctrine. At this point in the development of *Younger*'s civil progeny, the Court appeared unwilling to break away from the criminal roots of *Younger* with their important state interest element. Nevertheless, as Justice Brennan plainly recognized in a bitter and sarcastic dissent, the seeds for the full civil expansion of *Younger* were sown in *Juidice*.\textsuperscript{115}

Two months after *Juidice*, the Court returned to the conundrum of *Younger*'s civil application in *Trainor v. Hernandez*.\textsuperscript{116} In a civil action brought in state court, an Illinois state agency sought the return of public assistance funds alleged to have been fraudulently obtained by the defendants.\textsuperscript{117} Simultaneously, the agency instituted an attachment pro-

\textsuperscript{113} Id. at 335 (citations omitted).


> Whether disobedience of a court-sanctioned subpoena, and the resulting process leading to a finding of contempt of court, is labeled civil, quasi-criminal, or criminal in nature, we think the salient fact is that federal-court interference with the State’s contempt process is “an offense to the State’s interest... likely to be every bit as great as it would be were this a criminal proceeding.”

*Juidice*, 430 U.S. at 335-36 (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975)).

\textsuperscript{115} See *Juidice*, 430 U.S. at 344-45 (Brennan, J., dissenting). Justice Brennan concluded: “*Huffman*’s ‘quasi-criminal’ rationale and today’s reliance on state ‘contempt power’ are revealed to be only covers for the ultimate goal of denying § 1983 plaintiffs the federal forum in any case, civil or criminal, when a pending state proceeding may hear the federal plaintiff’s federal claims.” *Id.*

Justice Brennan’s cynicism regarding the majority’s denial of *Younger*’s general civil applicability was thus revealed:

> I suspect that the purported disclaimer that “[a]s we did in *Huffman*, we save for another day the question of ‘the applicability of *Younger* to all civil litigation...,”’ is tongue in cheek, and that “save” in today’s disclaimer is a signal that merely the formal announcement is being postponed.

*Id.* at 345 n.* (Brennan, J., dissenting) (citation omitted).

\textsuperscript{116} 431 U.S. 434 (1977).

\textsuperscript{117} See *id.* at 435-36.
ceeding to freeze the defendants' credit union account. Rather than respond to the attachment or the underlying state litigation, the state defendants sought relief under section 1983 in federal district court. The federal complaint alleged that the Illinois attachment statute deprived the debtors of their property without due process of law. The federal complaint attacked only the attachment and not the underlying state civil action.

The district court, narrowly circumscribing Huffman to its quasi-criminal context, refused to abstain and proceeded to the merits. Holding several sections of Illinois' attachment statute unconstitutional under the fourteenth amendment's due process clause, the court entered a broad injunction barring any use of the attachment statute and ordering the return of the federal plaintiffs' property still subject to attachment. On appeal, the Supreme Court reversed.

The Trainor Court recognized that Younger abstention is a by-product of our dual judicial system with its presumption of concurrent jurisdiction. The Court then reviewed the general principles distilled from Younger, Huffman and Juidice. Although the majority appeared to place renewed emphasis on Younger's largely abandoned equitable rationale, its opinion evidenced the Court's firm commitment to the comity-federalism branch of Younger:

Beyond the accepted rule that equity will ordinarily not enjoin the prosecution of a crime, however, the Court voiced a "more vital consideration," namely, that in a Union where both the States and the

118. See id. at 436-37.
119. See id. at 438.
120. See id. at 436-37 nn.1-5.
121. See id. at 438.
122. See id. Consequently, it was argued by the federal plaintiffs that federal injunctive relief would not interfere with the ongoing state civil fraud litigation. See id. at 446 n.9. Without close analysis, the Court concluded that the attachment was "very much a part of the underlying action for fraud." Id.
123. See id. at 439.
124. See id.
125. See id. at 440. Justice White stated:

Because our federal and state legal systems have overlapping jurisdiction and responsibilities, we have frequently inquired into the proper role of a federal court, in a case pending before it and otherwise within its jurisdiction, when litigation between the same parties and raising the same issues is or apparently soon will be pending in a state court. More precisely, when a suit is filed in a federal court challenging the constitutionality of a state law under the Federal Constitution and seeking to have state officers enjoined from enforcing it, should the federal court proceed to judgment when it appears that the State has already instituted proceedings in the state court to enforce the challenged statute against the federal plaintiff and the latter could tender and have his federal claims decided in the state court?

Id.
126. See id. at 440-44.
127. See id. at 440-42; see also supra notes 57-60, 70, 98-99 and accompanying text (discussing Younger's equitable rationale).
Federal Government are sovereign entities, there are basic concerns of federalism which counsel against interference by federal courts, through injunctions or otherwise, with legitimate state functions, particularly with the operation of state courts.128

This language is significant for two reasons. First, it does not distinguish between criminal and civil proceedings. Second, it implies that the operation of a state court system per se is a legitimate state function that should not be interfered with by a federal injunction.129 Thus, in Trainor the Court elevates noninterference with the institutional functioning of a state judicial system to the principal theoretical predicate of Younger abstention.130

The Court then concluded that “the principles of Younger and Huffman are broad enough to apply to interference by a federal court with an ongoing civil enforcement action such as this, brought by the State in its sovereign capacity.”131 Finding no Younger exception applicable,132 the Court reversed the district court on the merits, but remanded for consideration of whether the state attachment proceeding had afforded an adequate opportunity to raise the constitutional defense.133 Although the Trainor Court based abstention on the state’s interest in bringing an action in its sovereign capacity to protect state financial resources,134 its underlying rationale was predicated on nonin-

128. Trainor, 431 U.S. at 441 (citation omitted).
129. See id. This was the first time the Court used the term “operation of state courts” in this context, instead of “criminal case” or “prosecution.” See id.; cases cited supra note 60.
130. See Aldisert, On Being Civil to Younger, 11 Conn. L. Rev. 181 (1979), in which Judge Aldisert of the United States Court of Appeals for the Third Circuit states:

Even if the test is conceptualized as “a pronounced state interest,” I believe that a state has a pronounced interest in maintaining the viability and integrity of its own court system, which I consider to be a fundamental state institution. I do not agree that there is greater state interest in preserving the integrity of the executive branch of state government when engaging in a private suit for bill collection, than in preserving the integrity of the state judiciary against the charge that its courts are unable to vindicate the federal constitutional rights of the inhabitants of that state.

Id. at 198 (footnote omitted).
131. Trainor, 431 U.S. at 444 (footnote omitted).
132. See id. at 446-47.
133. See id. at 447 & n.10; see also id. at 466-70 (Stevens, J., dissenting) (asserting that Illinois attachment statute did not afford an adequate remedy). In his dissenting opinion, Justice Stevens, a former member of the United States Court of Appeals for the Seventh Circuit, incisively described the limitations of the Illinois attachment statutes. See id. at 466-70 (Stevens, J., dissenting). On remand, the district court held that the federal plaintiffs lacked an adequate opportunity to challenge the constitutional validity of the attachment under Illinois procedure. See Hernandez v. Finley, 471 F. Supp. 516, 518-20 (N.D. Ill. 1978), aff’d sub nom. Quern v. Hernandez, 440 U.S. 951 (1979) (mem.).

134. One commentator criticized the Trainor Court’s “emphasis on the presence of the state as a party to the proceeding,” Koury, supra note 7, at 680-81 (footnote omitted), because “[i]n Trainor it is clear that the state’s interest in the attachment proceeding was more attenuated than those interests encountered in previous cases.” Id. at 681.
terference with a prior pending state judicial proceeding.\textsuperscript{135}

The next civil extension of \textit{Younger} came two years later in \textit{Moore v. Sims}.\textsuperscript{136} As in \textit{Huffman} and \textit{Trainor}, the case resulted from a state agency’s attempt to enforce state law. At issue was the Texas Family Code, which described the “contours of the parent-child relationship and the permissible areas and modes of state intervention.”\textsuperscript{137} After receiving reports of suspected child abuse from school officials, the Texas Department of Human Resources took temporary custody of the federal plaintiffs’ children and instituted a state court action for emergency protection of the children.\textsuperscript{138} After participating in the state proceedings,\textsuperscript{139} the parents filed a section 1983 action in federal district court, launching a broad based attack on the constitutionality of various provisions of the Texas Family Code.\textsuperscript{140} Refusing to abstain because the case was complex, involved child custody, and resulted from confusion in the state courts, the district court addressed the merits, and found various parts of the Texas statutory scheme unconstitutional.\textsuperscript{141} On appeal, the Supreme Court reversed with instructions to dismiss the federal complaint on remand.\textsuperscript{142}

Undoubtedly, Texas’ strong interest in enforcing its Family Code allowed the Court to bring \textit{Moore} within the reasoning of \textit{Huffman} and \textit{Trainor}.\textsuperscript{143} Again the Court emphasized that “[t]he \textit{Younger} doctrine, which counsels federal-court abstention when there is a pending state proceeding, reflects a strong policy against federal intervention in state judicial processes in the absence of great and immediate irreparable injury to the federal plaintiff.”\textsuperscript{144} In addition, the Court expressed concern that the Texas courts should have the initial opportunity to construe their own statutory scheme in the face of a broad based constitutional attack.\textsuperscript{145}

\begin{footnotesize}
\begin{itemize}
\item 135. \textit{See supra} notes 129-30 and accompanying text.
\item 136. 442 U.S. 415 (1979).
\item 137. \textit{Id.} at 418.
\item 138. \textit{See id.} at 419.
\item 139. \textit{See id.} at 418-22.
\item 140. \textit{See id.} at 418, 421-23.
\item 141. \textit{See id.} at 418, 422.
\item 142. \textit{See id.} at 435.
\item 143. \textit{See id.} at 427, 435.
\item 144. \textit{Id.} at 423.
\item The \textit{Moore} Court’s discussion of \textit{Pullman} hinted at a merger of the various abstention doctrines:
\end{itemize}
\end{footnotesize}
The Moore Court devoted a large part of its opinion to respond to the district court's conclusion that the federal plaintiffs did not have an adequate opportunity to raise their federal claims in the state judicial system.146 Such an opportunity is of course the most crucial predicate of Younger abstention.147 In language suggesting a strong presumption in favor of adequate opportunity, Justice Rehnquist wrote: "[c]ertainly, abstention is appropriate unless state law clearly bars the interposition of the constitutional claims."148 In the past the Court had been vigilant in applying this critical requirement.149 The Moore Court, however, made it relatively difficult for a federal plaintiff to show an inadequate opportunity to raise federal claims in state court.150

The Supreme Court continued its expansion of Younger, extending the doctrine to administrative proceedings in Middlesex County Ethics Committee v. Garden State Bar Association,151 in which a state bar disciplinary proceeding was brought against a member of the New Jersey bar.152

The breadth of a challenge to a complex state statutory scheme has traditionally militated in favor of abstention, not against it. This is evident in a number of distinct but related lines of abstention cases which, although articulated in different ways, reflect the same sensitivity to the primacy of the State in the interpretation of its own laws and the cost to our federal system of government inherent in federal-court interpretation and subsequent invalidation of parts of an integrated statutory framework. Moore, 442 U.S. at 427. The Pennzoil Court drew Younger and Pullman abstention even closer together. See infra note 201.

146. See Moore, 442 U.S. at 422, 424-26.
147. See L. Tribe, supra note 10, § 3-30, at 204-05. The Moore majority rejected the view of the dissenters, as expressed by Justice Stevens, that an adequate opportunity is not afforded by a state proceeding unless "the constitutional claims may be raised 'as a defense.'" 442 U.S. at 436 (Stevens, J., dissenting). The majority caustically asserted:

The proposition that claims must be cognizable "as a defense" in the ongoing state proceeding, as put forward by our dissenting Brethren, converts a doctrine with substantive content into a mere semantical joust. There is no magic in the term "defense" when used in connection with the Younger doctrine if the word "defense" is intended to be used as a term of art. We do not here deal with the long-past niceties which distinguished among "defense," "counterclaims," "set-offs," "recoupments," and the like.

Id. at 430 n.12 (citation omitted).

148. Id. at 425-26 (emphasis added); see also id. at 432 ("appellees have not shown that state procedural law barred presentation of their claims") (emphasis added).
149. See, e.g., Trainor v. Hernandez, 431 U.S. 434, 441 (1977); Kugler v. Helfant, 421 U.S. 117, 124 (1975); Gerstein v. Pugh, 420 U.S. 103, 108 n.9 (1975); Gibson v. Berryhill, 411 U.S. 564, 577 (1973); see also L. Tribe, supra note 10, § 3-30, at 202, 204-05 & n.13 (critical component of Younger abstention is that "federal litigant... be able to raise the constitutional claim in the pending state proceeding").
152. See id. at 427-28.

The New Jersey Supreme Court had established a three-tiered system to process grievance complaints against members of the state's bar. See id. at 425. Under the scheme, initial investigation and adjudication of complaints occur at local district ethics committees appointed by the state supreme court. See id. at 425-26. The local committees are authorized to dismiss the complaint, issue a confidential written reprimand, or forward the case to the Disciplinary Review Board for further consideration. See id. at 427. The
At the time of the events in question, the rules for licensing and disciplining attorneys did not specifically provide for constitutional challenges to the disciplinary process.\textsuperscript{153}

The disciplinary proceeding was commenced against a member of the New Jersey bar by a district committee.\textsuperscript{154} Rather than responding within the administrative framework, the attorney filed a federal action contending that the state disciplinary rules violated the first amendment.\textsuperscript{155} The district court abstained on \textit{Younger} grounds, and after reopening the case to ascertain if any \textit{Younger} exceptions applied, the court adhered to its initial ruling and dismissed the complaint.\textsuperscript{156} Finding that the state bar disciplinary proceedings failed to provide a meaningful opportunity to raise and adjudicate constitutional claims, the Court of Appeals for the Third Circuit reversed.\textsuperscript{157} The Supreme Court granted certiorari and reversed the court of appeals.

New Jersey's strong state interest in the licensing and disciplining of its attorneys was undoubtedly sufficient under prior case law to trigger \textit{Younger} abstention.\textsuperscript{158} The only seriously contested issue was whether there was a meaningful opportunity to raise federal constitutional objections within the state attorney disciplinary system. Continuing the presumption in favor of finding an adequate opportunity, first articulated in \textit{Moore},\textsuperscript{159} the Court found that the federal plaintiff failed to establish that the local committee would have refused to consider a first amendment challenge to the disciplinary rules had one been made.\textsuperscript{160}

\texttt{Review Board, which undertakes a de novo review, must submit findings and recommendations to the New Jersey Supreme Court. See id.}

\textsuperscript{153} \textit{See id.} at 430 n.8.

\textsuperscript{154} \textit{See id.} at 427-28; \textit{supra} note 152.

\textsuperscript{155} \textit{See Middlesex County, 457 U.S. at 429.}

\textsuperscript{156} \textit{See id.}

\textsuperscript{157} \textit{See id.} \textit{Middlesex County} was decided after the three-judge court statute was amended. \textit{See supra} note 54. Hence, the appeal from the single district judge went to the court of appeals. \textit{See 28 U.S.C. § 1291 (1982).}

\textsuperscript{158} \textit{See Middlesex County, 457 U.S. at 434.} The Court stated:

\begin{quote}
The State of New Jersey has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses. States traditionally have exercised extensive control over the professional conduct of attorneys... The judiciary as well as the public is dependent upon professionally ethical conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice. The State's interest in the professional conduct of attorneys involved in the administration of criminal justice is of special importance.
\end{quote}

\textit{Id.} (citations omitted).

\textsuperscript{159} \textit{See supra} notes 146-50 and accompanying text.

\textsuperscript{160} The Court stated:

\begin{quote}
[The federal plaintiff] contends that there was no opportunity in the state disciplinary proceedings to raise his federal constitutional challenge to the disciplinary rules. Yet [he] failed to respond to the complaint filed by the local Ethics Committee and failed even to attempt to raise any federal constitutional challenge in the state proceedings. Under New Jersey's procedure, its Ethics Committees constantly are called upon to interpret the state disciplinary rules. [Plaintiff] points to nothing existing at the time the complaint was brought by
The Supreme Court's final\textsuperscript{161} pre-Pennzoil civil extension of \textit{Younger} was \textit{Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.},\textsuperscript{162} which, like \textit{Middlesex County}, arose in the context of a state administrative proceeding. In \textit{Dayton Christian Schools} a teacher was advised that her contract to teach at a sectarian day school would not be renewed because she was pregnant and the policy of the school required mothers of preschool age children to remain at home.\textsuperscript{163} Rather than appealing the nonrenewal decision internally, the teacher threatened litigation based on state and federal sex discrimination laws.\textsuperscript{164} In response, the school board terminated the teacher's employment.\textsuperscript{165} The teacher filed a complaint with the Ohio Civil Rights Commission, alleging that Dayton's nonrenewal decision constituted sex discrimination in violation of Ohio law, and that the board's termination decision unlawfully penalized her for asserting her rights.\textsuperscript{166}

After several rounds of preliminary procedural skirmishes,\textsuperscript{167} the Commission filed a complaint against the school, initiating formal administrative proceedings.\textsuperscript{168} While these proceedings were pending, the school brought a section 1983 action in federal district court seeking to enjoin the state administrative proceedings on the ground that the first amendment prohibited the Commission from exercising jurisdiction over it or punishing it for engaging in employment discrimination.\textsuperscript{169} The district court denied the injunction on the ground that the first amendment challenge was not ripe.\textsuperscript{170} The Court of Appeals for the Sixth Circuit reversed, holding that the exercise of jurisdiction and the enforcement of Ohio discrimination laws "would impermissibly burden [the school's] rights under the Free Exercise Clause and would result in excessive entanglement under the Establishment Clause."\textsuperscript{171}

The Supreme Court unanimously reversed. The Court was divided, however, on the appropriate ground for reversal. A majority of five justices held that the \textit{Younger} doctrine, which was previously extended to

\begin{itemize}
  \item the local Committee to indicate that the members of the Ethics Committee, the majority of whom are lawyers, would have refused to consider a claim that the rules which they were enforcing violated federal constitutional guarantees.
  \item \textit{Middlesex County}, 457 U.S. at 435.
  \item In dictum, the Court discussed \textit{Younger}'s civil branch in \textit{Hawaii Housing Authority v. Midkiff}, 467 U.S. 229, 238-39 (1984).
  \item 477 U.S. 619 (1986).
  \item \textit{See id.} at 623.
  \item \textit{See id.}
  \item \textit{See id.} Later the board rescinded its earlier nonrenewal decision because the teacher had not received adequate prior notice of the school's policy concerning mothers with young children, \textit{see id.}, and asserted that the termination was based solely on her failure to comply with the internal dispute resolution procedures, \textit{see id.}
  \item \textit{See id.} at 623-24.
  \item \textit{See id.} at 624.
  \item \textit{See id.}
  \item \textit{See id.} at 621, 624-25.
  \item \textit{See id.} at 621-22.
  \item \textit{Id.} at 622.
\end{itemize}
state civil and administrative proceedings, required the district court to abstain.\textsuperscript{172} After reviewing the general principles derived from \textit{Younger} and its previous civil extensions, which permit abstention when important state interests are at stake, the Court concluded that those principles governed \textit{Dayton Christian Schools}.\textsuperscript{173} The Court's opinion reaffirmed that all that is required to trigger the \textit{Younger} doctrine is a vital state interest and a prior pending state proceeding in which an adequate opportunity is afforded to raise federal claims. In \textit{Dayton Christian Schools}, both criteria were easily satisfied. As the Court conclusorily stated: "We have no doubt that the elimination of prohibited sex discrimination is a sufficiently important state interest to bring the present case within the ambit of [\textit{Younger}]. We also have no reason to doubt that Dayton will receive an adequate opportunity to raise its constitutional claims."\textsuperscript{174}

To the extent that the Court has articulated the doctrinal foundations of \textit{Younger} civil abstention, it did so in \textit{Huffman, Juidice} and \textit{Trainor}.\textsuperscript{175} The remainder of \textit{Younger}'s pre-\textit{Pennzoil} civil progeny merely applied the doctrine conclusorily.

By the time it heard \textit{Pennzoil}, the Court had extended the \textit{Younger} doctrine, originally rooted in the criminal context, to state civil and administrative proceedings pertaining to enforcement of quasi-criminal nuisance laws,\textsuperscript{176} the judicial contempt process,\textsuperscript{177} the fiscal integrity of a state welfare system,\textsuperscript{178} the protection of abused children,\textsuperscript{179} the disciplining of professionals,\textsuperscript{180} and employment discrimination.\textsuperscript{181} Reluctant to jettison the theoretical moorings of \textit{Younger} from the criminal context,\textsuperscript{182} the Court found important, substantial, or vital state interests at

\textsuperscript{172}. \textit{See id.} at 625-29. Justice Stevens, writing for four justices, concurred in the result, but disagreed with the majority regarding the applicability of \textit{Younger}. Stevens' opinion agreed with the district court that the first amendment challenge was not ripe for adjudication because the Commission could dismiss the teacher's complaint after a hearing. \textit{See id.} at 632-33 (Stevens, J., concurring).

\textsuperscript{173}. \textit{See id.} at 626-28.

\textsuperscript{174}. \textit{Id.} at 628.

\textsuperscript{175}. \textit{See supra} notes 71-80, 87-135 and accompanying text.

\textsuperscript{176}. \textit{See Huffman v. Pursue, Ltd.}, 420 U.S. 592 (1975); \textit{supra} notes 87-99 and accompanying text.

\textsuperscript{177}. \textit{See Juidice v. Vail}, 430 U.S. 327 (1977); \textit{supra} notes 103-15 and accompanying text.


\textsuperscript{179}. \textit{See Moore v. Sims}, 442 U.S. 415 (1979); \textit{supra} notes 136-50 and accompanying text.

\textsuperscript{180}. \textit{See Middlesex County Ethics Comm'n v. Garden State Bar Ass'n}, 457 U.S. 423 (1982); \textit{supra} notes 151-60 and accompanying text.

\textsuperscript{181}. \textit{See Ohio Civil Rights Comm'n v. Dayton Christian Schools}, 477 U.S. 619 (1986); \textit{supra} notes 162-74 and accompanying text.

stake in each of these prior civil applications of Younger. The state, or more accurately a state agent or agency, was the plaintiff in each of these prior civil applications of Younger. In each instance the state agency had prosecuted a civil enforcement action before a state court or administrative agency. As the Second Circuit observed in affirming the district court injunction in Pennzoil, "[t]he state interests at stake in this proceeding differ in both kind and degree from those present in the six cases in which the Supreme Court held that Younger applied." Although the Second Circuit correctly analyzed the common conceptual theme of Younger's prior civil progeny and the theme's inapplicability to Pennzoil, it inaccurately concluded that abstention was unwarranted.

III. THE PENNZOIL LITIGATION

Competing tender offers for Getty Oil Company touched off litigation between Pennzoil and Texaco in the state courts of Delaware and Texas. After Texaco won the acquisition contest, it found itself a defendant in an action filed by Pennzoil in a Texas state court. Alleging that Texaco had tortiously induced Getty to breach its contract with Pennzoil, the complaint sought actual damages of $7.53 billion and a like amount of punitive damages. The state court jury returned a verdict of $7.53 billion of actual and $3 billion of punitive damages. Counting prejudgment interest, the judgment would have exceeded $11 billion.

Texas law permitted Pennzoil to execute the judgment pending appeal unless Texaco, the judgment debtor, filed a supersedeas bond in an amount at least equal to the "judgment, interest and costs." Texaco

183. See Althouse, supra note 182, at 1077-78; supra notes 113-14, 128-30, 143-44, 158, 173-74 and accompanying text.
186. The Delaware litigation is discussed in Gelfand, supra note 185, at 349-55.
187. The Texas state court litigation is discussed in Gelfand, supra note 185, at 355-60; Comment, supra note 185, at 768-69 & nn.7-12.
188. See supra note 187.
190. See Pennzoil, 481 U.S. at 4.
191. Id. at 5 (quoting Tex. R. Civ. P. 364(b)). For discussion and analysis of the constitutionality of the Texas supersedeas bond requirement, see Carlson, Mandatory Supersedeas Bond Requirements—A Denial of Due Process Rights?, 39 Baylor L. Rev. 29, 33-49 (1987); see also Note, Expanding the Due Process Rights of Indigent Litigants: Will Tex-
could not post the required bond.\textsuperscript{192} Immediately prior to the entry of judgment, Texaco, without raising any federal claims in the state court, filed a section 1983 action in the United States District Court for the Southern District of New York.\textsuperscript{193} The federal complaint raised several constitutional and federal statutory claims attacking the state court judgment and the Texas bond and lien procedures, and sought to enjoin Pennzoil from enforcing the judgment.\textsuperscript{194} The district court issued a preliminary injunction.\textsuperscript{195} On appeal, the United States Court of Appeals for the Second Circuit affirmed, but limited its affirmation to the district court's holding that the Texas post-judgment bond and lien provisions were unconstitutional as applied.\textsuperscript{196} The Supreme Court noted probable jurisdiction\textsuperscript{197} and reversed.

Although the Court unanimously concluded that Texaco was not entitled to federal relief, it split five different ways in six separate opinions regarding the proper rationale for its conclusion. Justice Powell wrote the opinion of the Court, joined by Chief Justice Rehnquist and Justices White, O'Connor and Scalia. By a bare majority, the Court held that the district court should have abstained under the \textit{Younger} abstention doctrine.\textsuperscript{198} Except for Justice Scalia, who wrote a brief separate opinion responding to Justice Marshall,\textsuperscript{199} the other concurring Justices found \textit{Younger} inapplicable, but would have denied Texaco federal relief on other grounds.\textsuperscript{200}

\textsuperscript{192} The Court of Appeals for the Second Circuit stated that "[i]t is estimated that the world-wide surety bond capacity ranges from $1 billion to $1.5 billion under the best possible circumstances." Texaco Inc. v. Pennzoil Co., 784 F.2d 1133, 1138 (2d Cir. 1986), rev’d, 481 U.S. 1 (1987).

\textsuperscript{193} Texaco filed its complaint in the United States District Court for the Southern District of New York in White Plains, New York, the location of Texaco's corporate headquarters. \textit{See} \textit{Pennzoil}, 481 U.S. at 6.

\textsuperscript{194} See id. & n.6.


\textsuperscript{197} Jurisdiction was based on 28 U.S.C. § 1254(2) (1982).


\textsuperscript{199} Justice Scalia, joined by Justice O’Connor, expressed the view that the \textit{Rooker-Feldman} doctrine, \textit{see infra} note 200, did not deprive the district court of jurisdiction because, in resolving the dispute over the Texas post-judgment enforcement statutes, “the Court need not decide any issue either actually litigated in the Texas courts or inextricably intertwined with issues so litigated.” \textit{Pennzoil}, 481 U.S. at 18 (Scalia, J., concurring).

\textsuperscript{200} Justice Marshall would have invoked the \textit{Rooker-Feldman} doctrine, \textit{see District
In extending *Younger* to a section 1983 case seeking relief against the enforcement of a state court judgment, *Pennzoil* articulated a test with strong links to federalism and comity:

This concern mandates application of *Younger* abstention not only when the pending state proceedings are criminal, but also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government.\(^{201}\)

In concluding that Texas' interests were critically implicated in *Pennzoil*, the Court relied principally on *Juidice v. Vail*,\(^ {202}\) which held that a federal court could not enjoin state court judges from enforcing state civil judgments through use of the contempt process.\(^ {203}\) The Court, in *Pennzoil*, stated that *Juidice* "rest[ed] on the importance to the States of enforcing the orders and judgments of their courts."\(^ {204}\) Justice Powell found "little difference between the State's interest in forcing persons to transfer property in response to a court's judgment and in forcing persons to respond to the court's process on pain of contempt."\(^ {205}\) Justice Powell invoked *Juidice* to fulfill the important, substantial, or vital state interest requirement derived from the Court's prior civil applications of...

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of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), which prohibits lower federal courts from hearing federal cases that are, in effect, appeals from a state judicial system. See *Pennzoil*, 481 U.S. at 24-26. For discussion and analysis of the *Rooker-Feldman* doctrine and its application in *Pennzoil*, see Comment, supra note 185, at 777-83; Casenote, supra note 196.

Justice Blackmun would have invoked *Pullman* abstention, which would have required Texaco to obtain a decision from the Texas courts regarding the scope and applicability of the Texas post-judgment enforcement statutes. See *Pennzoil*, 481 U.S. at 29; supra note 145; infra note 201.

Justices Brennan and Stevens would have denied relief to Texaco on the merits of its federal constitutional claims. See 481 U.S. at 18-22, 29-34.

\(^{201}\) *Pennzoil*, 481 U.S. at 11. In addition to restating the *Younger* civil abstention test, the Court, in a footnote, rejected application of *Pullman* abstention, because *Pennzoil* failed to argue it. See id. n.9. In doing so, the Court may have foreshadowed a potential merger of *Pullman* and *Younger*, and perhaps other forms of abstention, when it stated:

We merely note that considerations similar to those that mandate *Pullman* abstention are relevant to a court's decision whether to abstain under *Younger*. The various types of abstention are not rigid pigeonholes into which federal courts must try to fit cases. Rather, they reflect a complex of considerations designed to soften the tensions inherent in a system that contemplates parallel judicial processes.

*Id.* (citation omitted).

One commentator recently expressed the view that "this footnote holds the potential for much greater deference to the state courts under principles of federalism and comity." Miner, *The Tensions of a Dual Court System and Some Prescriptions for Relief*, 51 Alb. L. Rev. 151, 164 (1987) (footnote omitted); see also supra note 145 (earlier hint by Court of possible merger of *Pullman* and *Younger* abstention).


\(^{203}\) See supra notes 103-15 and accompanying text.

\(^{204}\) *Pennzoil*, 481 U.S. at 13.

\(^{205}\) *Id.*
Younger. His reliance on Juidice, however, was misplaced. Juidice was distinguishable even though the underlying litigation also was between purely private parties. The invocation of the contempt process implicates a state interest that is markedly different from the state interest in the enforcement of a private civil judgment. The Juidice Court recognized this, finding that federal interference with the state contempt process could be as offensive as interference with a state criminal prosecution. Subsequently, in Trainor, the Court drew an analogy between judicial contempt proceedings and state civil enforcement actions. Once an order of contempt is entered, the state becomes an interested party in the litigation, not only to enforce a private judgment, but, more significantly, to defend and maintain its judicial system. In contrast to the contempt process at issue in Juidice, Texas' post-judgment bond, lien and execution statutes involved in Pennzoil are invoked by private litigants with minimal involvement by the state. Indeed, the state's interest in its post-judgment enforcement statutes is no different from its interest in rules of court, evidence or any other procedural matter. Accordingly, Pennzoil, stripped of its superficial analogy to Juidice, is an application of Younger abstention to purely private litigation.

206. See id. at 12-13; supra notes 113-15 and accompanying text.
207. See supra notes 203-05 and accompanying text; infra notes 208-12 and accompanying text.
208. See supra notes 203-05 and accompanying text; infra notes 208-12 and accompanying text.
209. See supra notes 203-05 and accompanying text; infra notes 208-12 and accompanying text.
210. See supra notes 203-05 and accompanying text; infra notes 208-12 and accompanying text.
211. See Juidice v. Vail, 430 U.S 327, 335-36 (1977), in which the Court observed that "[c]ontempt in these cases, serves, of course, to vindicate and preserve the private interests of competing litigants, but its purpose is by no means spent upon purely private concerns. It stands in aid of the authority of the judicial system, so that its orders and judgments are not rendered nugatory." Id. at 336 n.12 (emphasis added) (citations omitted).
212. See Pennzoil, 481 U.S. at 30 n.2 (Stevens, J., concurring). Justice Stevens persuasively asserts that in prior civil applications of Younger, the Court has "invariably required that the State have a substantive interest in the ongoing proceeding, an interest that goes beyond its interest as adjudicator of wholly private disputes." Id. Thus, he concludes: "By abandoning this critical limitation, the Court cuts the Younger doctrine adrift from its original doctrinal moorings which dealt with the States' interest in enforcing their criminal laws, and the federal courts' longstanding reluctance to interfere with such proceedings." Id. Justice Stevens' observation is, in part, specious as it refers only to Younger's criminal moorings, and the well-settled equitable policy of noninterference with "such proceedings." This ignores, however, that Younger was also grounded on the more vital considerations of comity and federalism, which are not limited to criminal proceedings. See supra notes 61-62 and accompanying text.
Having applied *Younger* to wholly private litigation with no discernable state interest at stake, there is no logical basis on which to limit the doctrine to criminal and civil enforcement actions. Accordingly, the Supreme Court should forthrightly acknowledge that *Pennzoil* represents the full civil maturity of *Younger*.

IV. **Younger Abstention Should Apply to All Pending State Proceedings**

It is axiomatic to American judicial federalism that state and federal courts should be independent of one another. Complete autonomy is not feasible, however, in a system with overlapping and concurrent jurisdiction. Moreover, with few exceptions, federal oversight of state courts is intended to come on direct review by the Supreme Court, and not on collateral review by lower federal courts. The first Congress was sufficiently concerned about federal intrusion into state judicial process that it passed the Anti-Injunction Act, which in relevant part provided

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214. The principal exception is federal habeas corpus. *See* 28 U.S.C. §§ 2241-2255 (1982). In the last two decades, however, the Court has substantially reduced the availability of federal habeas corpus relief. *See*, e.g., Rose v. Lundy, 455 U.S. 509 (1982) (requiring federal court to dismiss habeas applications if they contain both exhausted and unexhausted claims); Stone v. Powell, 428 U.S. 465, 481-82, 489-96 (1976) (limiting habeas review of fourth amendment claims).


216. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 333, 334-35. Just last term in *Chick Kam Choo v. Exxon Corp.*, 108 S. Ct. 1684 (1988), the Supreme Court reiterated the fundamental policy rationale underlying the Anti-Injunction Statute:

The Act . . . is a necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts. It represents Congress' considered judgment as to how to balance the tensions inherent in such a system. Prevention of frequent federal court intervention is important to make the dual system work effectively. By generally barring such intervention, the Act forestalls "the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court." Due in no small part to the fundamental constitutional independence of the States, Congress adopted a general policy under which state proceedings "should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court."

that "[no]... writ of injunction [may] be granted to stay proceedings in any court of a state."\textsuperscript{217} For almost two centuries, federal courts operated under the constraining influence of this simple legislative directive.

The traditional relationship between state and federal courts was threatened, however, by the possibility that section 1983 was an "expressly authorized" exception to the anti-injunction statute.\textsuperscript{218} The potential clash between the Anti-Injunction Act and section 1983 was not evident until Monroe v. Pape,\textsuperscript{219} which resuscitated section 1983 from its long dormancy. The newly invigorated section 1983 had the potential not only to reverse the long-settled prohibition of federal injunctive relief against state prosecutions, but, more significantly, threatened to completely subvert the Anti-Injunction Act.\textsuperscript{220}

Unrestrained use of section 1983 would allow federal courts to interfere with, and collaterally review, the judgments of state courts. Such federal oversight is potentially broader in scope and more intrusive than collateral review in habeas corpus proceedings.\textsuperscript{221} The application of the exceptions to, Anti-Injunction Act). The principal commentaries on the Anti-Injunction Act are collected in Theis, \textit{supra} note 1, at 113 n.42.

\textsuperscript{217} Act of March 2, 1793, ch. 22, § 5, 1 Stat. 333, 335.

\textsuperscript{218} The current version of the anti-injunction statute, enacted in 1948, 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." 28 U.S.C. § 2283 (1982); cf. Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 294-95 (1970) (Anti-Injunction Act absolutely bars federal interference with state proceedings, civil or criminal).

\textsuperscript{219} 365 U.S. 167 (1961); see \textit{supra} notes 46-47 and accompanying text. After Monroe opened the federal courthouse door to section 1983, litigants could attack state court proceedings on the ground that they violated federally protected rights. Typically, a litigant claiming violation of federal rights would seek federal injunctive or declaratory relief under section 1983. If the anti-injunction statute did not apply to section 1983, there would be nothing to prevent direct federal interference with a properly pending state litigation.

\textsuperscript{220} Professor Weinberg expressed this concern as follows:

Moreover, the exception could annihilate the rule. Any state judicial proceeding may be couched as a section 1983 deprivation on the theory that what a state court does is state action. Wholly private cases conceivably could be scooped out of the state courts and into the federal judicial system. That certainly could happen if the federal plaintiff alleged a state judicial denial of procedural due process. It also could happen if judicial enforcement of state tort or contract law was thought to infringe substantive first amendment and other civil rights. But it could also happen, potentially, if judicial enforcement of state law was alleged to deny the federal plaintiff substantive due process in the sense in which the railroad argued in \textit{Ex parte Young} that the state ratemaking was so arbitrary and confiscatory as to deny it due process of law. The result could be total federal control over state adjudications, public and private, destroying any significant independent role for the state tribunals in our federal system.


\textsuperscript{Weinberg, \textit{supra} note 52, at 1210 (footnotes omitted).}

Younger doctrine to all pending state actions ensures the adjudication of cases properly pending before state courts without federal interference. In every civil application of Younger by the Supreme Court, a federal defense arose in the context of a state-created cause of action properly pending in a state court or administrative agency. In each instance, rather than raising the federal defense in the pending state proceeding, the federal plaintiff invoked section 1983 to obtain a federal decision on the defense, and in the process disrupted the ongoing state proceeding. Application of Younger in these circumstances prevents this disruption. Thus, the Younger doctrine can function as a judicially created forum-allocation device.

Concern about federal disruption of a prior, properly pending state proceeding is implicated whether the proceeding is denominated criminal, civil enforcement or private civil. Why, then, has the Supreme Court been reluctant to acknowledge expressly that Younger applies to all prior pending state proceedings? One explanation for the Court's reluctance is that two of the four underlying policy rationales for Younger abstention are not readily applicable to private civil litigation. All four rationales, however, apply to the quasi-criminal and civil enforcement actions previously recognized by the Court as appropriate civil applications of Younger. All four rationales are implicated whether the state proceeds civilly or criminally to enforce its substantive interests. Only the first and fourth, however, are readily applicable to private civil litigation. Even Professor Redish, who is no advocate of abstention, has argued that the second and third rationales are subject to substantial criticism, and that the most important rationale is the fourth—avoiding interference with the orderly operation of the state judicial system.

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222. See supra Part II.

223. As discussed earlier, see supra notes 81-82 and accompanying text, Professor Redish identified these rationales as follows:

(1) The desire to avoid affronting state judges by questioning their competence and/or willingness to enforce constitutional rights; (2) the need to prevent federal judicial interference with the accomplishment of state substantive legislative goals; (3) the need to preserve the discretion of state executive officers in general and state prosecutors in particular, and (4) the desire to prevent federal interference with the orderly operation of the state judicial process.

M. Redish, Tensions, supra note 6, at 298.

224. See supra notes 75-76, 84-85 and accompanying text; infra notes 231-36 and accompanying text.

225. It is theoretically possible for a substantive state interest to be implicated in private civil litigation. In addition, the state has an interest in the fair adjudication of disputes between private parties. However, the state's substantive interest in a dispute realistically is only implicated when the state is a party. See supra note 212 and accompanying text.


227. See M. Redish, Tensions, supra note 6, at 298-302; Redish, supra note 8, at 468-71, 477-80.
The fourth rationale, essentially a combination of the previous three, is equally as applicable to private civil litigation as it is to criminal, quasi-criminal or civil enforcement litigation.

Commentators have criticized Younger's concern with state substantive policy and state executive branch discretion. While the first and fourth Younger rationales are implicated only when there is a prior pending state proceeding, the state has an interest in its substantive policies and the discretion of its executive branch officers irrespective of whether there is a prior pending state proceeding implicating these interests. Accordingly, these interests may be interfered with by federal declaratory or injunctive relief even in the absence of a prior pending proceeding. The Court has expressly permitted federal interference with state substantive policy and executive branch discretion in the absence of a prior pending proceeding. In Steffel v. Thompson the Court allowed such interference because "the relevant principles of equity, comity, and federalism 'have little force in the absence of a pending state proceeding.'" Justice Brennan elaborated this point in Steffel:

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

Because a state's interest in both its substantive policy and the discretion of its executive branch officers is implicated regardless of whether there is a prior pending state proceeding, this interest cannot stand as part of the theoretical foundation of Younger. The practical effect of

228. See M. Redish, Tensions, supra note 6, at 302; Redish, supra note 8, at 472.
229. See M. Redish, Tensions, supra note 6, at 300-01; Redish supra note 8, at 473-80; Comment, supra note 9, at 1343-44.
230. It is possible to argue that the state judicial process is undermined by federal interference even in the absence of a pending proceeding. But, any such interference would be indirect, and would not impugn the integrity of the state judicial system with respect to enforcement of federal rights.
231. See infra notes 232-35 and accompanying text.
234. Id. at 462 (quoting Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 509 (1972)).
235. Steffel, 415 U.S. at 462. Additionally, in the absence of pending proceedings, a potential state court defendant has no forum to present constitutional or other federal claims unless state declaratory judgments are permitted. See M. Redish, Tensions, supra note 6, at 308 & n.112. But even if state declaratory judgment procedure is available, it is well-settled that a section 1983 plaintiff need not exhaust state remedies. See supra note 221.
236. For an analysis of the impact of Steffel on the theoretical foundations of Younger, see M. Redish, Tensions, supra note 6, at 307-11; Redish, supra note 8, at 474-77.

The Court, however, substantially reduced the significance of Steffel in Hicks v. Mi-
this analysis is that by narrowing Younger's theoretical underpinning the doctrine's scope has expanded so that Younger now applies to all prior pending state litigation.

In articulating the fourth rationale—noninterference with the state judicial process—for Younger abstention, Justice Black drew heavily on the Anti-Injunction Act, which is equally applicable to civil and criminal litigation. When Younger was decided, the Court had not yet determined that section 1983 was a congressionally authorized exception to the Anti-Injunction Act. If the Anti-Injunction Act had applied, it would have foreclosed federal interference with state civil and criminal cases. As if anticipating its holding the next term in *Mitchum v. Foster*, which found that section 1983 was an "expressly authorized" exception to the anti-injunction statute, the Court developed the Younger doctrine to ameliorate the perceived harmful effect to federalism of a blanket exception to the Anti-Injunction Act. While some commentators view the tension between section 1983 and the Anti-Injunction Act after *Mitchum* as irreconcilable, one writer attempted the following

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237. See Redish, supra note 8, at 481. Professor Redish stated that such expansion would be paradoxical.
238. Justice Black observed:

Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts. In 1793 an Act unconditionally provided: "[N]or shall a writ of injunction be granted to stay proceedings in any court of a state..." 1 Stat. 335, c. 22, § 5. A comparison of the 1793 Act with 28 U.S.C. § 2283, its present-day successor, graphically illustrates how few and minor have been the exceptions granted from the flat, prohibitory language of the old Act. During all this lapse of years from 1793 to 1970 the statutory exceptions to the 1793 congressional enactment have been only three: (1) "except as expressly authorized by Act of Congress"; (2) "where necessary in aid of its jurisdiction"; and (3) "to protect or effectuate its judgments." In addition, a judicial exception to the longstanding policy evidenced by the statute has been made where a person about to be prosecuted in a state court can show that he will, if the proceeding in the state court is not enjoined, suffer irreparable damages.


239. See supra note 218 and accompanying text.
240. See Younger, 401 U.S. at 54.
242. Id. at 243.

243. See, e.g., Weinberg, supra note 52, at 1211-12. Professor Weinberg offers the following cynical analysis:

And so the real explanation for "Our Federalism" surfaces: It obliterates section 1983 as a threat to established patterns of judicial federalism; the Court decided Younger as it did because *Mitchum* was waiting in the wings. After
reconciliation:

Although Congress' distrust of the state courts in civil rights cases is sufficiently strong to exempt such cases from the Anti-Injunction Statute's presumption against federal court restraint of state court proceedings, that distrust is not sufficiently strong to create a presumption in favor of such federal court interference.\textsuperscript{244}

Without \textit{Younger}, there would be a presumption in favor of federal interference. Moreover, application of \textit{Younger} to any prior pending state civil action would not, as suggested by Justice Brennan and certain commentators,\textsuperscript{245} represent an implicit overruling of \textit{Mitchum}. Those espousing implicit overruling rely almost exclusively on the presumed intent of the Reconstruction Congress to allow federal intervention into the state judicial process.\textsuperscript{246} Though Congress intended federal intrusion to remedy the lingering effects of slavery in the South, there is substantial scholarly debate regarding the scope of any permissible intrusion.\textsuperscript{247} In any event, the conflict between the anti-injunction statute and section 1983 ultimately comes down to a debate about the soundness of \textit{Mitchum}, which, in turn, ultimately comes down to a debate about the intent of the Reconstruction Congress in 1871.\textsuperscript{248} Neither the Court nor the commentators have ever been able to resolve these issues, and it is unlikely that they ever will.\textsuperscript{249} Consequently, generalized attacks on \textit{Younger}'s application to civil litigation based on perceived inconsistency with \textit{Mitchum} are not dispositive of the issue of \textit{Younger}'s civil application.

Prior to \textit{Pennzoil}, one commentator asserted that any extension of \textit{Younger} to private civil litigation would be unwarranted for two reasons.\textsuperscript{250} First, he argued that while \textit{Younger} may be justified in the crim-

\textit{Younger} the Court could decide \textit{Mitchum} without fear of opening any new jurisdictional doors other than those it was prepared to open.

\textit{Id.} at 1212.

\textsuperscript{244.} Bartels, \textit{supra} note 4, at 49.


\textsuperscript{246.} See sources cited \textit{supra} note 245.

\textsuperscript{247.} See infra note 248.

\textsuperscript{248.} Cf. Nichol, \textit{supra} note 9, at 985 (arguing that, although section 1983 was designed to be extremely intrusive, its scope was exceedingly narrow). \textit{Compare} Zeigler, \textit{supra} note 4, at 1020-43 (arguing that \textit{Younger} and its progeny directly contravene the intent of the Reconstruction Congresses \textit{with} Eisenberg, \textit{Section 1983: Doctrinal Foundations and an Empirical Study}, 67 Cornell L. Rev. 482, 484-87 (1982) (suggesting that the Court has failed to acknowledge that there are competing visions of section 1983) and Wells, \textit{supra} note 19, at 1103-07 (suggesting that the Court misread the legislative history of section 1983 to expand its scope beyond its original purpose). \textit{See generally} Logan, \textit{supra} note 38, at 479-515 (reviewing legislative history of the Reconstruction Congress' civil rights legislation).

\textsuperscript{249.} See sources cited \textit{supra} notes 245, 248.

\textsuperscript{250.} See Edwards, \textit{supra} note 62, at 1021.
inal context due to the availability of federal post-conviction relief, because no similar federal remedy is available on the civil side,\textsuperscript{251} the \textit{Younger} doctrine should not apply. Second, he maintained that \textit{Younger} should not apply to private civil litigation because the proceedings are not initiated by the state as they are in the criminal or civil enforcement contexts.\textsuperscript{252} Neither of these arguments precludes application of \textit{Younger} to private civil litigation. Although obviously true, the latter point lacks any significance. If \textit{Younger} is intended primarily to reduce federal disruption of a properly pending state proceeding, it is irrelevant whether the state is a party to that proceeding.\textsuperscript{253} As to the former point, if the absence of post-judgment relief, such as habeas corpus, is not sufficient to preclude application of \textit{Younger} to state civil enforcement proceedings, \textit{a fortiori} it should not preclude \textit{Younger}'s application to purely private civil litigation. Accordingly, the argument against application of \textit{Younger} to private civil litigation because of the lack of a federal post-judgment relitigation alternative is specious.\textsuperscript{254}

Contrary to the vague fears of many critics,\textsuperscript{255} application of \textit{Younger} to civil cases between private parties will not result in a wholesale abdication of federal authority in such cases. In general, application of \textit{Younger} to private litigation will be limited to the preliminary relief and post-judgment enforcement stages of a litigation.\textsuperscript{256} As recognized by the Court of Appeals for the Second Circuit,\textsuperscript{257} and the concurring opinion of Justice Stevens\textsuperscript{258} in \textit{Pennzoil}, a section 1983 claim may only be maintained if the litigant can establish "deprivation (1) of a right 'secured by the Constitution and laws of the United States', (2) by a defendant acting under color of state law."\textsuperscript{259} Applying the two-step analysis of \textit{Lugar v. Edmondson Oil Co.}\textsuperscript{260} to test the second element of the section 1983 claim in \textit{Pennzoil}, the Second Circuit found that "to enforce the judgment, Pennzoil would have to act jointly with state agents by calling on

\textsuperscript{251. See id.}
\textsuperscript{252. See id. at 1017-18.}
\textsuperscript{253. See supra notes 128-30 and accompanying text.}
\textsuperscript{254. Moreover, since Stone v. Powell, 428 U.S. 465 (1976), which removed fourth amendment claims from the ambit of federal habeas corpus, the scope of habeas corpus review has been substantially reduced. See id. at 494-95. But cf. Kimmelman v. Morrison, 477 U.S. 365, 382-83 (1986) (refusing to extend \textit{Stone} to the sixth amendment).}
\textsuperscript{255. See sources cited supra note 245.}
\textsuperscript{256. This is not to suggest that application of \textit{Younger} in private civil litigation is unimportant, or should not be carefully scrutinized, merely because it is restricted to the preliminary relief and enforcement stages of a litigation. It should be recognized, however, that opportunities to invoke \textit{Younger} are more limited in private civil cases than in criminal or civil enforcement litigation.}
\textsuperscript{257. See \textit{Texaco, Inc. v. Pennzoil Co.}, 784 F.2d 1133, 1145 (2d Cir. 1986), rev'd, 481 U.S. 1 (1987).}
\textsuperscript{258. See \textit{Pennzoil}, 481 U.S. at 30 & n.1 (Stevens, J., concurring).}
\textsuperscript{259. \textit{Pennzoil}, 784 F.2d at 1145 (emphasis added) (quoting \textit{Flagg Bros., Inc. v. Brooks}, 436 U.S. 149, 155 (1978)).}
\textsuperscript{260. 457 U.S. 922, 937 (1982).}
state officials to attach and seize Texaco's assets,]\(^{261}\) and, consequently, concluded that the "[e]nforcement of the state court judgment therefore necessarily involves a panoply of activities undertaken together by Pennzoil and state officials, which constitutes joint action for the purposes of § 1983."\(^{262}\) Accordingly, the required action under state law for invoking section 1983 realistically can occur only in private civil litigation during the preliminary relief or post-judgment enforcement phases of a litigation, when private parties would necessarily require assistance of state agents in obtaining relief. It would be offensive to federalism for a federal court to intrude into the state judicial process at these stages of litigation. Application of the \textit{Younger} doctrine would prevent this interference, and would allow a state court to provide "a forum competent to vindicate any constitutional objections interposed"\(^ {263}\) at the pre- and post-trial stages of private litigation.

The argument that \textit{Younger} is a judicially-created forum allocation device, which is central to the thesis of this Article, was in some measure buttressed by the Supreme Court last term in \textit{Deakins v. Monaghan}.\(^ {264}\) Although the Court expressly declined to decide if \textit{Younger} applies to an action seeking only money damages,\(^ {265}\) it affirmed reversal of a district court dismissal under \textit{Younger} of claims for monetary relief that could not be raised in a state criminal proceeding.\(^ {266}\) It did so in language strongly supportive of parallel federal jurisdiction in cases seeking only monetary relief.\(^ {267}\) Parallel jurisdiction in cases seeking only monetary

\textit{Younger} is a judicially-created forum allocation device, which is central to the thesis of this Article, was in some measure buttressed by the Supreme Court last term in \textit{Deakins v. Monaghan}. Although the Court expressly declined to decide if \textit{Younger} applies to an action seeking only money damages, it affirmed reversal of a district court dismissal under \textit{Younger} of claims for monetary relief that could not be raised in a state criminal proceeding. It did so in language strongly supportive of parallel federal jurisdiction in cases seeking only monetary relief. Parallel jurisdiction in cases seeking only monetary  

\(261.\) \textit{Pennzoil}, 784 F.2d at 1145.  
\(262.\) \textit{Id.} at 1146.  
\(265.\) See \textit{id.} at 529.  
\(266.\) See \textit{id.} at 531.  
\(267.\) See \textit{id.} at 530. Justice Blackmun observed:

In reversing the District Court's dismissal of the claims for damages and attorney's fees, the Court of Appeals applied the Third Circuit rule that requires a District Court to stay rather than dismiss claims that are not cognizable in the parallel state proceeding. The Third Circuit rule is sound. It allows a parallel state proceeding to go forward without interference from its federal sibling, while enforcing the duty of federal courts "to assume jurisdiction where jurisdiction properly exists." This Court repeatedly has stated that the federal courts have a "virtually unflagging obligation" to exercise their jurisdiction except in those extraordinary circumstances "where the order to the parties to repair to the State court would clearly serve an important countervailing interest."  

We are unpersuaded by petitioners' suggestion that this case presents such extraordinary circumstances. First, petitioners' speculation that the District Court, if allowed to retain jurisdiction, would "hover" about the state proceeding, ready to lift the stay whenever it concluded that things were proceeding unsatisfactorily, is groundless. Petitioners seem to assume that the District Court would not hold up its end of the comity bargain—an assumption as inappropriate as the converse assumption that the States cannot be trusted to enforce federal rights with adequate diligence. . . .

Finally, petitioners argue that allowing the District Court to dismiss the complaint will prevent the piecemeal litigation of the dispute between the parties.
relief would generally not offend *Younger* principles, because such pro-
ceedings could in theory go forward without directly interfering with any
ongoing state litigation.268

Additional support for the full civil application of *Younger* may be
found in the dramatic improvement of our state courts in the last fifteen
to twenty years.269 Between the close of the Civil War and the end of the
era of civil rights activism, roughly the hundred-year period between
1870 and 1970, state courts frequently failed to enforce federal rights.270
Indeed, state courts often deliberately thwarted federal rights.271 In such
a climate it was understandable that federal courts would interfere with
state court adjudication. Although there is substantial debate on the is-
ssue of state court competence to enforce federal rights,272 most observers
would agree that state courts now take seriously their obligation under

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But the involvement of the federal courts cannot be blamed for the fragmentary
nature of the proceedings in this litigation. Because the state criminal pro-
cceeding can provide only equitable relief, any action for damages would necessarily
be separate. Indeed, the state forum in which petitioners invite respondents to
pursue their claims for monetary relief clearly would require the initiation of a
separate action.

**Id.** (citations and footnote omitted).

268. The *Deakins* Court approved the Third Circuit rule under which a federal dam-
age action is stayed rather than dismissed pending resolution of a state prosecution in
which monetary relief is not available. See 108 S. Ct. at 529-30. The Court plainly re-
served the issue of *Younger*’s general applicability to federal proceedings seeking only
monetary relief. Although the majority opinion of Justice Blackmun may fairly be read
to support a parallel federal damage action that does not interfere with a pending state
proceeding, the concurring opinion of Justice White, which was joined by Justice
O’Connor, strongly suggests that *Younger* applies to actions seeking only money dam-
ages. See id. at 532-33 & nn.3-4 (White, J., concurring); see also id. at 529 n.6 (declining
to reach issue of whether *Younger* applies to action where only money damages are
sought in federal forum).

269. See Rosenfeld, supra note 8, at 645-50; Sheran, *State Courts and Federalism in the

270. State courts patently failed to enforce federal rights during Reconstruction. See
Logan, supra note 38, at 507-10; *Developments*, supra note 1, at 1150-56. During the
1950s and 1960s state courts resisted the Warren Court’s expansion of federal civil and
criminal rights. See Sheran, supra note 269, at 791; see also Amsterdam, *Criminal Prose-
cutions Affecting Federally Guaranteed Civil Rights: Federal Removal and Habeas Corpus
Jurisdiction to Abort State Court Trial*, 113 U. Pa. L. Rev. 793 (1965) (federal courts have
obligation to intervene in state criminal prosecutions that flout federal constitutional
Rev. 437, 440 (1987) (referring to “unjustifiable abuses of state governments . . . in the
late 1950s and early 1960s”).

271. See supra note 270.

272. Compare Bator, supra note 19, at 629-35 (arguing that state courts should con-
tinue to adjudicate federal constitutional claims) and Rosenfeld, supra note 8, at 645-50
(arguing that a lack of parity between state and federal judges has yet to be proven) with
Courts*, 3 Hastings Const. L.Q. 141, 168-69 (1976) (arguing that defendants in a state civil
proceeding should be permitted to seek a federal court injunction or declaratory judg-
ment); cf. Marvell, *The Rationales for Federal Question Jurisdiction: An Empirical Ex-
amination of Student Rights Litigation*, 1984 Wis. L. Rev. 1315, 1356-58 (litigants choose
to litigate in federal court because they perceive federal judges to be more knowledgeable
about federal law and more sympathetic to federally created rights).
the supremacy clause to vigorously and forthrightly enforce federal law. Moreover, without regard to the merits of the academic debate, the Supreme Court consistently has rejected the notion that state courts are inadequate to enforce federal rights, and the Court is unlikely to change its view of this issue. Although obviously not mandated by the new era of state court competence, Younger abstention makes good sense from the perspectives of both federalism and judicial economy.

Given the worthy rationales for the doctrine, the full expansion of Younger to civil litigation is doctrinally sound, and there is no rational basis to limit Younger abstention to criminal and civil enforcement cases. Accordingly, federal courts should generally abstain from deciding federal issues that arise in a prior pending state proceeding unless the federal plaintiff can establish the lack of an adequate opportunity to raise and litigate the federal issue in the state proceeding, or can establish one of Younger’s other exceptions.

CONCLUSION

After Pennzoil, there is no principled basis to limit Younger abstention to criminal, quasi-criminal and civil enforcement cases. Consequently, a federal court may abstain under Younger without regard to the character of the federal claim. See Althouse, supra note 182, at 1086; supra note 271; sources cited infra note 274; cf. Althouse, How to Build a Separate Sphere: Federal Courts and State Power, 100 Harv. L. Rev. 1485, 1489, 1537-38 (1987) (state courts will inevitably apply federal law and should be encouraged to do so); Meltzer, State Court Forfeitures of Federal Rights, 99 Harv. L. Rev. 1128, 1231-34 (1986) (state courts generally try to fairly interpret and apply federal law).


274. See supra notes 75-82 and accompanying text.

275. See infra notes 198, 201-12 and accompanying text.

276. But see sources cited supra note 245 (expressing fear that full civil extension of Younger will ultimately deny section 1983 plaintiffs a federal forum).

277. In view of the court’s presumption of an adequate opportunity unless state law precludes presentation of federal claims, see infra notes 146-50 and accompanying text, federal district courts should conduct evidentiary hearings on the issue of adequate opportunity when asked to abstain under Younger. See The Committee on Federal Courts of the New York State Bar Association, Report on the Abstention Doctrine: The Consequences of Federal Court Deference to State Proceedings, 122 F.R.D. 89, 107 (Aug. 30, 1988) (suggesting that federal district courts should hold evidentiary hearings to assess impact of abstention upon litigants’ rights when asked to abstain).

278. While some critics have argued that the Court’s interpretation of Younger’s exceptions makes it difficult for the exceptions ever to apply, see, e.g., Yackle, supra note 63, at 1045 n.211; Comment, supra note 9, at 1288-31; Comment, The Younger Abstention Doctrine: Bleak Prospects for Federal Intervention in Pending State Proceedings, 19 Duq. L. Rev. 313, 326-33 (1981), others argue that the exceptions are consistent with the basic policies underlying noninterference with ongoing state proceedings. See, e.g., Collins, The Right to Avoid Trial: Justifying Federal Court Intervention into Ongoing State Court Proceedings, 66 N.C.L. Rev. 49, 54-72, 97-104 (1987).
of the prior pending state proceeding. Preventing disruption of the state judicial process is the critical rationale for Younger abstention, and it applies in any litigation context—criminal or civil, public or private.

An early Younger commentator stated that "the Court has failed to articulate a workable, principled formula for allocating responsibility for constitutional adjudication between the two systems of courts." This may well be true. But to the extent that policy and theoretical foundations support Younger, they are equally applicable to private civil litigation as they are to criminal and civil enforcement litigation. If applied as suggested here, Younger would at least allocate constitutional litigation directly arising in an ongoing state proceeding to the state system.

280. Whitten, supra note 1, at 596.