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Carmine A. Reale

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COMMENTS

EXTENDING THE YOUNGER ABSTENTION DOCTRINE TO STATE ADMINISTRATIVE PROCEEDINGS: WILLIAMS v. RED BANK BOARD OF EDUCATION

The abstention doctrine enables a federal court, under certain circumstances, to decline the exercise of jurisdiction notwithstanding that a case is properly before it.1 In Younger v. Harris,2 the Supreme Court, relying upon the tenet that comity commands re-

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1 County of Allegheny v. Frank Mashudo Co., 360 U.S. 185, 188 (1959). The abstention doctrine may be invoked only when significant interests exist which countervail a court's duty to adjudicate a case that is properly before it. Id. at 188-89. Because of the diversity of these interests, the federal abstention doctrine appears in a variety of forms and is employed after consideration of a number of factors, including "the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions." Martin v. Creasy, 360 U.S. 219, 224 (1959). One type of abstention had its genesis in the case of Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941). Pullman abstention is invoked when a claim that particular state action is unconstitutional turns upon unsettled questions of state law. Id. at 500-01. This type of abstention is premised upon the reluctance of federal courts to decide issues which could be displaced by subsequent state adjudications. Id. A federal court should refrain from passing upon a constitutional issue when resolution of such issue would be rendered unnecessary by a state court's construction of a particular state law. See Clay v. Sun Ins. Office, Ltd., 363 U.S. 207, 212 (1960). It does not follow, however, that Pullman abstention should be applied simply because there is a "doubtful issue of state law," Baggett v. Bullitt, 377 U.S. 360, 375 (1964), for application of the doctrine is in the wise discretion of the court and should be resolved on a case-by-case basis, id.


spect for state functions, held that a federal court may abstain from deciding a case where such adjudication would interfere with pending state criminal proceedings. Subsequently, the Younger


\* 401 U.S. at 43-54. An examination of the history of Younger abstention must begin with the maxim that a court of equity will not interfere with the enforcement of even an unconstitutional state criminal statute. See In re Sawyer, 124 U.S. 200, 210 (1888). An exception to this rule developed, however, where "the circumstances are exceptional and the danger of irreparable loss is both great and immediate." Cline v. Frink Dairy Co., 274 U.S. 445, 452 (1927). In Ex parte Young, 209 U.S. 123 (1908), for example, the Supreme Court indicated that federal equitable relief was available when a criminal proceeding under an unconstitutional state statute was threatened rather than pending. Id. at 161-62. The next major development in the evolution of Younger abstention occurred at the height of the civil rights movement, when the Supreme Court decided the case of Dombrowski v. Pfister, 380 U.S. 479 (1965). In Dombrowski, the plaintiffs sought federal injunctive relief against enforcement of state criminal laws regulating Communists and subversive activities. Id. at 482. The Supreme Court, in granting the requested relief, reasoned that the threatened prosecution not only was designed to harass plaintiffs and to discourage the exercise of constitutionally protected rights, id. at 489-90, but also was to be brought under a statute which was an overbroad limitation on first amendment activity, id. at 490-92. Subsequently, the Supreme Court seemed to reaffirm the Dombrowski principle that a facially unconstitutional statute is an appropriate justification for federal equitable relief. See Cameron v. Johnson, 390 U.S. 611, 615 (1968).

It is interesting to note that these various developments do not appear to create a precedential basis for Younger abstention. What they do reflect, however, is the evolution of federal law on the subject of federal court interference with state prosecutions. For a more detailed discussion of the historical developments leading to Younger, see Marais, Federal Intervention in State Criminal Proceedings: Dombrowski, Younger and Beyond, 50 Tex. L. Rev. 1324, 1325-32 (1972); Note, Implications of the Younger Cases For the Availability of Federal Equitable Relief When No State Prosecution is Pending, 72 Colum. L. Rev. 874, 876-85 (1972); Comment, Federal Injunctive Relief: What Remains After Younger v. Harris?, 60 Ky. L.J. 216, 218-20 (1971).

The Younger Court recognized that federal court abstention avoids duplicative proceedings on the federal and state levels. 401 U.S. at 44. Such a proposition, the Court indicated,
The Younger abstention rule was extended to include civil judicial proceedings involving important state interests. It has been unclear, however,
whether a federal court may abstain from deciding a matter when its determination would impact upon a pending state administrative proceeding. Recently, in Williams v. Red Bank Board of Education, the Third Circuit Court of Appeals, further extending the abstention doctrine, held that abstention properly may be applied to prevent federal interference with pending state administrative proceedings.

In Williams, charges of professional misconduct were filed against a tenured New Jersey schoolteacher. Although the charges initially were instituted with the Red Bank Board of Education, the case ultimately was referred to the New Jersey Office of Administrative Law. During the pendency of the administrative proceeding, the now suspended schoolteacher commenced an action in federal district court alleging that the dismissal proceeding was a response to her exercise of first amendment rights. Accordingly, she sought an injunction against further prosecution in the state proceeding, as well as damages and attorney's fees. The district

431 U.S. 434, 444 (1977). It should be observed that this abstention principle applies only if the state is a party to the proceedings, Cassidy v. Virginia Carolina Veneer Corp., 652 F.2d 380, 383 (4th Cir. 1981); Johnson v. Kelly, 583 F.2d 1242, 1249 (3d Cir. 1978), and the proceedings are not instituted by the state in bad faith or for purposes of harassment, 442 U.S. at 432.

662 F.2d at 1010. Three charges were filed against Portia Williams, a New Jersey teacher. Id. at 1010. The first charge alleged that Williams struck students with a ruler, thereby violating a New Jersey statute forbidding corporal punishment of pupils. Id. at 1010. The second charge alleged that Williams acted unprofessionally by questioning in front of the entire class the cleanliness and health habits of a student. Id. Finally, the third and most significant charge accused Williams of making anti-Semitic remarks at a Board of Education public meeting. Id. Her behavior allegedly constituted conduct unbecoming an employee of the Board. Id.

12 662 F.2d at 1011. Section 1983 allows a court, in its discretion, to award reasonable
The court, applying the Younger doctrine, dismissed the action, finding that the state's interest in disciplining teachers was important enough to permit abstention.

The United States Court of Appeals for the Third Circuit agreed that abstention was warranted, but vacated and remanded the district court's order on other grounds. Writing for an undivided panel, Judge Garth stated that the abstention inquiry should focus upon the importance of the state interest involved, rather than upon the nature, judicial or administrative, of the state proceeding. Recognizing that states often implement important poli-
cies through administrative regulation, the court reasoned that the comity considerations underlying the Younger doctrine precluded an outright refusal to abstain. Although the court favored federal abstention when "strong and compelling state interests" are at stake, it nevertheless noted that abstention will be proper only if the state administrative proceeding provides an adequate forum in which to raise federal claims. Furthermore, in holding that the district court properly abstained, Judge Garth determined that because a "substantial portion" of the relief being sought in the federal court could be granted in the state proceeding, the latter was an adequate forum in which to vindicate federal claims. The court vacated the lower court's order of dismissal, however, with respect to the claims for constitutional damages and attorney's fees since such relief could not be awarded in the state administrative action. Accordingly, the district court was ordered to retain jurisdiction, and merely stay the federal proceeding until provide a proper perspective on the role of federalism in our dual system of government. Clearly, federalism is a concept that mandates a respect not merely for state courts but also for state governments themselves. Just as the Rizzo Court was not overly concerned with the executive-judicial distinction, the Williams court did not focus upon the distinction between administrative and judicial proceedings. Indeed, Rizzo applied federalism to prevent federal judicial interference with the state executive branch, see id., while the Third Circuit in Williams used federalism to avoid a federal injunction against a state administrative proceeding, see 662 F.2d at 1017. It is submitted, therefore, that the Williams court simply has adhered to the federalistic respect for state government mandated by the Supreme Court in Rizzo.

18 662 F.2d at 1016.

19 Id. at 1016-17.

20 Id. at 1017. The court determined that the state's interest in education was sufficiently compelling to warrant application of the Younger abstention doctrine. Id. at 1018-19. Indeed, states often implement important interests through administrative bodies. New York, for example, supervises and disciplines medical practitioners through the New York State Board for Professional Medical Conduct. See Schachter v. Whalen, 581 F.2d 35, 36 (2d Cir. 1978). Similarly, Alabama regulates the licensing of optometrists through the Alabama Board of Optometry. See Gibson v. Berryhill, 411 U.S. 564, 566 (1973).

21 662 F.2d at 1020. The requirement that the state proceeding be adequate to vindicate federal claims is a fundamental element of Younger and its progeny. See 401 U.S. at 49. Indeed, the Supreme Court, in the Juidice decision, reiterated the necessity of adequate state proceedings. 430 U.S. at 337. Thus, when the Williams panel extended the Younger doctrine to state administrative proceedings, it maintained the requirement that the state proceedings be adequate. 662 F.2d at 1020.

22 662 F.2d at 1022. Williams sought various forms of relief from the federal court. See note 11 supra. Assuming that the disciplinary action was in retaliation to the exercise of Williams' first amendment rights, the only relief that she could not be granted in the state proceeding would be constitutional damages and attorney's fees. Id. at 1023.

23 662 F.2d at 1023-24; see note 22 supra.
The question of whether Younger abstention should be extended to prevent federal interference with state administrative proceedings has resulted in a body of inconsistent case law. Two Supreme Court decisions have contributed to the uncertainty in this area. In Geiger v. Jenkins, for example, a physician attempted to enjoin the enforcement of a state statutory licensing procedure. The federal district court, relying upon the federal anti-injunction statute, rather than upon the Younger doctrine, denied relief because state judicial and administrative proceedings were pending. The Supreme Court, citing Younger, summarily af-

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24 662 F.2d at 1023. Because abstention usually has the effect of denying all federal relief, the Williams court noted that dismissal typically is the proper course for the federal court to follow. Id. at 1022. As an illustration, the court posited a situation where the federal plaintiff seeks an injunction against state criminal prosecutions. Id. In such a circumstance, if the federal court abstains, the state trial will proceed. Id. at 1022-23. After the state proceeding has terminated, however, an injunction against prosecution of the state action is meaningless. Id. at 1023. Therefore, dismissal is proper at the time of abstention because it is at that stage that the federal court's role has come to an end. Id. at 1023.

25 See notes 37-43 and accompanying text infra.


27 316 F. Supp. at 371. Charges against the doctor seeking revocation of his license were filed with the State Board of Medical Examiners of Georgia. Id. The doctor subsequently brought an action in federal district court seeking an injunction against enforcement of the state licensing statute on the ground that it was unconstitutionally vague and overbroad. Id. at 372.

28 Id. at 372; see 28 U.S.C. § 2283 (1976). Section 2283 provides that "[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 (1976). For a discussion of the "expressly authorized" exception to the anti-injunction rule, see Mitchum v. Foster, 407 U.S. 225, 228-43 (1972). Section 2283 manifests the public policy, relied upon by Younger, that state adjudications should proceed free from federal court interference. See 401 U.S. at 43. The Younger abstention doctrine, however, is a consideration, separate and apart, from the applicability of section 2283. Henry v. First Nat'l Bank, 595 F.2d 291, 300 (5th Cir. 1979), cert. denied, 444 U.S. 1074 (1980). Thus, there appears to be a two-level inquiry when a federal court injunction is sought against a state proceeding. The first level deals with section 2283, while the second level deals with the Younger abstention considerations. See Mitchum v. Foster, 407 U.S. at 229-30.

29 316 F. Supp. at 374. The federal district court denied the injunction because state proceedings were pending before the state courts and the Board of Medical Examiners of Georgia. Id. at 372. The court based its refusal to grant injunctive relief upon the anti-injunction statute. Id. at 372-73; see note 28 and accompanying text supra. At the time the district court decided Geiger, the Supreme Court had not yet rendered the Younger decision. Younger was decided, however, by the time Geiger reached the Supreme Court. Hence, the timing of these two cases explains why the district court in Geiger did not rely upon Younger in denying the injunction.
firmed. Thus, although the Geiger affirmation may be based upon the quasi-criminal nature of the proceedings, the precise rationale for the Court's determination has remained "somewhat opaque."

Subsequently, in Gibson v. Berryhill, a group of optometrists sought a federal injunction against a state license revocation proceeding. The Supreme Court held that since institutional bias rendered the administrative proceeding inadequate, the district court's refusal to abstain was proper. Implicit in this reliance upon the inadequacy of the particular state proceeding is the notion that it is proper to abstain in favor of adequate administrative proceedings.

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31 The Supreme Court's summary affirmation in Geiger is problematic in that it does not explain why Younger was controlling. As has been noted, the Geiger case involved state proceedings which were pending at both the judicial and administrative levels. See note 29 supra. It appears unclear, therefore, how much weight the Geiger court attached to the fact that proceedings were pending in the state courts. Certainly, there was no indication that the Supreme Court would have affirmed by mere citation to Younger had the state proceedings merely been administrative. See 401 U.S. at 985. It is submitted that the affirmation may have been based solely upon the fact that the pending state proceedings were quasi-criminal. See 316 F. Supp. at 372. This explanation is supported by the fact that the early extensions of the Younger doctrine into the civil area were premised upon the criminal nature of the state civil proceedings. See Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975).

32 See Gibson v. Berryhill, 411 U.S. 564, 576 (1973). In Gibson, the Supreme Court characterized the Geiger holding as "somewhat opaque," indicating that such uncertain status resulted from the Court's summary affirmation of that case. Id. Thus, whatever import Geiger may have had at the time of the summary affirmation, the Court clearly was according it little weight at the time of the Gibson decision. This may be inferred from the language in Gibson stating that the applicability of Younger to state civil proceedings was an open question. Id. at 575-76. In the interests of clarity, it should be observed that Gibson was decided prior to Huffman, Trainor, and the other cases extending Younger into the realm of civil proceedings. See note 5 supra.


34 Id. at 568. The unprofessional conduct charges against the optometrists, which stemmed from the acceptance of employment in a corporation, were filed by the Alabama Optometric Association. Id. at 567. The proceedings were to be held before the Alabama Board of Optometry, an agency with the authority to revoke licenses. Id. While the charges were pending, however, the optometrists filed suit in federal district court seeking an injunction against the proceedings on the ground that they were violative of due process. Id. at 568-69.

35 Id. at 578-79. The Court determined that a possibility of bias existed because the Board, before whom the administrative proceedings were pending, had a financial stake in the outcome of the controversy. Id. Specifically, the members of the Board, who were optometrists themselves, would experience an increase in business if the optometrists charged with unprofessional conduct had their licenses revoked. Id. at 578.

36 Cf. Grandco Corp. v. Rochford, 536 F.2d 197, 205 (7th Cir. 1976) (abstention is inappropriate when the administrative proceeding is not pending before an established adjudica-
The confusion engendered by the Supreme Court's failure to address definitively the issue of whether abstention should ever be extended to administrative proceedings is apparent from several lower federal court decisions. Courts in the Second Circuit, for example, have determined that abstention in favor of state administrative proceedings is proper. These courts have not developed an independent basis of analysis, but rather, have adopted the dubious Geiger/Gibson rationales. In contrast, there is authority for the proposition that federal courts should not abstain when the

\[\text{tory body and state court review is a limited examination on the record).}\]


\[\text{See McCune v. Frank, 521 F.2d 1152, 1158 (2d Cir. 1975). In McCune, disciplinary charges were brought against a police officer for violating a departmental grooming regulation. Id. at 1153. Based upon his claim that the regulation was unconstitutional, the officer commenced an action in federal district court. Id. The district court temporarily restrained the state proceeding and ultimately enjoined enforcement of the regulation. Id. at 1154. Remanding the case, the Second Circuit instructed the district court to consider the applicability of Younger to the disciplinary proceeding. Id. at 1157. Clearly, the Second Circuit did not determine the applicability of Younger to the proceedings in McCune because, at the time of the district court's decision, Huffman had not yet been decided. The McCune court noted, however, that Geiger established that administrative proceedings could present a proper case for abstention since a judicial forum was not a "pre-requisite" for application of Younger. Id. at 1158.}\]

In Lang v. Berger, 427 F. Supp. 204, 214-15 (S.D.N.Y. 1977), the court relied upon McCune to reach a similar conclusion. In Lang, the plaintiff was a physician who was disqualified from New York's Medicaid program for allegedly submitting undocumented invoices and giving improper prescriptions. Id. at 207-08. During the pendency of the state hearing the physician commenced an action in federal district court alleging violations of his constitutional rights. Id. at 207-09. The district court, relying on McCune, denied equitable relief on the ground that federal courts must respect state administrative proceedings as well as state judicial proceedings. Id. at 214-15.

Finally, in Schachter v. Whalen, 445 F. Supp. 1376, 1380-81 (S.D.N.Y.), aff'd per curiam on other grounds, 581 F.2d 35 (2d Cir. 1978), the court cited Gibson and Geiger as authority for abstaining during the pendency of state administrative proceedings. 445 F. Supp. at 1380. In Schachter, a doctor sought to enjoin professional misconduct proceedings pending before the New York State Board for Professional Medical Conduct. Id. at 1378. This administrative body served the doctor with a subpoena duces tecum directing him to furnish the medical records of people whom he treated with laetrile. Id. at 1379. The court held that "the state interests at issue . . . [were] substantial and certainly sufficient to entitle the medical disciplinary proceedings to the deference afforded by the doctrine of abstention." Id. at 1381.
pending state proceeding is administrative. Like the authorities that favor abstention in this context, however, the analytical bases for these pronouncements are unpersuasive. For instance, some courts have relied blindly upon the assertion that Younger and its progeny apply only to judicial proceedings. Notably, one tribunal even refused to abstain upon the ground that the administrative proceeding was unrelated to the state's criminal laws. It is suggested that reliance upon this rationale fails to consider that Younger abstention has been applied to state judicial proceedings where important state interests, other than criminal, were involved.


41 Jamestown School Comm. v. Schmidt, 427 F. Supp. 1338, 1344 (D.R.I. 1977); Hodory v. Ohio Bureau of Employment Servs., 408 F. Supp. 1016, 1020 (N.D. Ohio 1976), rev'd on other grounds, 431 U.S. 471 (1977). In Jamestown, two town school committees refused to adhere to a Rhode Island statute requiring that town school committees provide transportation for students to regionalized sectarian schools within a 15 mile radius. 427 F. Supp. at 1342. The supposed justification for this refusal was that adherence to the statutory mandate would violate the establishment clause of the first amendment. Id. The Commissioner of Education determined, however, that the committees had a duty to transport the children. Id. While the Commissioner's decision was on appeal to the Board of Regents, the school committees brought an action in federal district court seeking declaratory and injunctive relief. Id. at 1340-43. Notwithstanding the claim that Younger abstention should be applied due to the pendency of the Board of Regents proceeding, the court tersely stated that "the policies which the comity doctrine seeks to vindicate are implicated only when federal courts interfere with state judicial proceedings." Id. at 1344 (emphasis in original) (citing Huffman v. Pursue, Ltd., 420 U.S. 592, 604 (1975)).

The Hodory court was equally vague in reaching a similar conclusion. In that case, a steelworker was denied unemployment benefits pursuant to an Ohio statute. 408 F. Supp. at 1018. While his administrative appeal was pending, a suit was commenced in federal district court. Id. Although recognizing that the Younger doctrine had been extended to civil proceedings, the court nevertheless found that "the Supreme Court in Huffman made it clear that its holding was limited to the enjoining of ongoing state-initiated judicial proceedings." 408 F. Supp. at 1019-20 (emphasis in original).

42 See Rite Aid Corp. v. Board of Pharmacy, 421 F. Supp. 1161, 1167 (D.N.J. 1976), appeal dismissed, 430 U.S. 951 (1977). The Rite Aid court stated that the abstention principles of Younger and Huffman do not apply to ordinary state agency proceedings "where a criminal nexus is absent." 421 F. Supp. at 1167. The precedential value of this case, however, has been diminished by subsequent decisions which have applied Younger in situations further removed from criminal enforcement. See note 43 infra.

Amid the disagreement prevailing in the lower federal courts, the Williams panel unequivocally has proclaimed that Younger abstention can be applied to state administrative proceedings. It is submitted that this novel application of the abstention doctrine is consistent with the concept of comity upon which the Younger decision itself is premised. In its broadest sense, the notion of comity, as applied in the abstention area, demands that federal courts defer not merely to state courts, but rather to the states themselves. Hence, if important state interests are involved in an administrative action, the concept of comity would appear to support a federal court's decision to defer to the state proceeding, provided, of course, that the state agency is an adequate forum in which to determine the federal claims that have been raised.
Although the Williams decision appears to be well reasoned, the extension of the Younger doctrine to the administrative area raises a procedural difficulty, namely, the collateral estoppel effect of the administrative determination.48 Despite the uncertain collateral estoppel effect of administrative factual determinations upon subsequent civil litigation,49 it should be observed that there is a requires that the pending proceeding be an adequate forum for the federal plaintiff to present his federal claim. See Moore v. Sims, 442 U.S. at 426; Juidice v. Vail, 430 U.S. at 337. This analysis apparently has been recognized by the courts. See Grandco Corp. v. Rochford, 536 F.2d 197, 206 (7th Cir. 1976). In Grandco, the pending state administrative proceeding involved a licensing determination made pursuant to a hearing before an appointee of the mayor. Id. State court review of his decision involved only a very limited examination of the administrative record. Id. In finding abstention inappropriate, the court noted that “the state proceedings [were] not before a court or any established adjudicatory body.” Id. (emphasis added). Clearly, this holding was not based upon the obvious fact that the state proceeding was inferior to a federal court proceeding, but rather, upon the federal plaintiff’s inability to raise his federal claims in the state proceeding. See id. Similarly, in Plano v. Baker, 504 F.2d 595 (2d Cir. 1974), the Second Circuit held that an administrative proceeding was inadequate where the testimony of witnesses expressly was forbidden and no procedure for the determination of factual issues was available. Id. at 598. Although the Plano case did not deal specifically with Younger abstention, it is helpful in that it addressed the analogous area of exhaustion of administrative remedies. Id. The holding, therefore, provides some insight into the meaning of the term “adequate proceedings.” In any event, the language of Younger and its progeny, as well as the foregoing case discussions, appear to suggest that an administrative proceeding can be an adequate forum notwithstanding that in some respects it may be “inferior” to a judicial proceeding.

See 662 F.2d at 1022. The distinctions between the discrete concepts of collateral estoppel and res judicata have generated much confusion. The doctrine of res judicata provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are barred from instituting a second suit based upon the same cause of action. Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 326 (1955); 1B J. MOORE, FEDERAL PRACTICE ¶ 0.405[1], at 622-24 (2d ed. 1982). In contrast, the doctrine of collateral estoppel bars the parties to a cause of action from relitigating, in a suit based upon a different cause of action, factual issues that were determined in the original suit. McCord v. Bailey, 636 F.2d 606, 608 (D.C. Cir. 1980), cert. denied, 451 U.S. 983 (1981); 1B J. MOORE, supra ¶ 0.405[1], at 622-24.

The Williams court referred to res judicata in its discussion of the potential preclusive effect of state administrative proceedings. 662 F.2d at 1022. It is submitted that the Williams court may have confused the concepts of collateral estoppel and res judicata. The claim for constitutional damages was the only claim that could not be raised in the administrative proceeding, and the only claim which Williams later would be allowed to raise in federal court. Id. at 1023-24. It would appear, then, that if a claim cannot be presented in a particular proceeding, res judicata will not bar litigation of that claim in a subsequent action. The plaintiff in Williams raised the possibility of being precluded from relitigating factual issues relevant to both the administrative proceeding and any subsequent federal action for constitutional damages. Id. at 1022. Thus, it appears that the plaintiff was referring to the collateral estoppel effect which the administrative findings of fact would have in a subsequent federal court suit.

The collateral estoppel and res judicata effects of state administrative proceedings upon a subsequent civil rights action brought under section 1983 of title 42, see note 11
legitimate possibility that a federal plaintiff may be collaterally estopped from relitigating the factual issues of a constitutional claim in federal court, since a federal claim frequently hinges upon the identical factual questions resolved in an administrative proceeding.\(^5\) It is suggested that any collateral estoppel effect which may attach to administrative fact findings subsequent to the exercise of Williams abstention can be avoided by analogy to the type of abstention practiced in Railroad Commission v. Pullman Co.\(^6\) Pullman abstention enables a federal court to refrain from determining the constitutionality of state action if resolution of such issues


\(^6\) Although Younger abstention in the face of pending state administrative proceedings is proper despite the possibility that these proceedings may be somewhat inferior to a judicial forum, see note 47 supra, it is understandable that a federal plaintiff would not want factual issues underlying his constitutional claim to be finally determined in the administrative setting. It is submitted that this is due, at least in part, to intangible considerations. The adjudication of constitutional questions traditionally has been afforded a special position in our judicial heritage. See Testa v. Katt, 330 U.S. 386, 390-92 (1947). Despite the proclaimed equality of competence between federal and state courts, many civil liberties litigators prefer to have constitutional claims decided before a federal tribunal. See Neuborne, The Myth of Parity, 90 HARv. L. Rev. 1105, 1115-16 (1977). One of the reasons advanced for this penchant is that the relatively small number of judges on the federal bench enables that court to maintain a higher degree of technical competence than is possible in state court. Id. at 1121-22. If in fact state courts are less preferable than federal courts, then it would follow that state administrative tribunals are also less preferable.

Furthermore, a plaintiff would not want factual issues underlying a constitutional claim to be determined administratively because often the rules of evidence followed by state administrative agencies are more lenient than those employed by the courts. See, e.g., ARK. STAT. ANN. § 5-709 (1947); CAL. GOV'T CODE § 11513 (West Supp. 1982); CONN. GEN. STAT. ANN. § 4-178 (West Supp. 1981); MASS. GEN. LAWS ANN. ch. 30A § 11 (West 1979); MINN. STAT. ANN. § 15.0419 (West Supp. 1982); MO. ANN. STAT. § 536.070 (Vernon Supp. 1982). Hence, it is submitted that federal court abstention in favor of state administrative proceedings may preclude a federal plaintiff from having the factual issues relating to his constitutional claim determined by rules of evidence that are more objective and formalistic.

Although these deficiencies would not make an administrative proceeding "inadequate" in the sense that Younger abstention would be inappropriate, see note 47 supra, they do raise interesting problems if preclusive effect is to be given to the administrative proceeding when the federal plaintiff returns to federal court. Given the importance of constitutional adjudication, it is proposed that the factual issues underlying such adjudication should be resolved by a federal court receptive to constitutional delicacies, rather than an administrative body concerned with achieving the objectives for which it was created.

\(^61\) 312 U.S. 496 (1941).
turns upon unsettled questions of state law. Typically, in such a situation, the federal court, by using the procedure employed by the Williams court, will retain jurisdiction over the case and stay the federal proceedings until the parties obtain a state court determination of the unsettled question of state law. The Supreme Court, resolving the collateral estoppel question in the area of Pullman abstention, has stated that "where . . . the primary fact determination would have been by the District Court, a litigant may not be unwillingly deprived of that determination" by application of the abstention doctrine. When federal jurisdiction is in-

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62 Id. at 499-501. Pullman involved an order of the Railroad Commission of Texas that allegedly discriminated against blacks. Id. at 498. The Pullman Company brought an action to enjoin enforcement of the order on the ground that it was, inter alia, violative of due process. Id. The district court determined that the commission was without authority to issue the order and, accordingly, granted the requested relief. Id. at 497-98. The Supreme Court, however, held that the district court should have stayed the federal proceedings until the Texas courts determined whether the commission had authority to issue the controversial order. Id. at 500-01. The Court stated that a federal court can avoid "[deciding] an issue by making a tentative answer which may be displaced tomorrow by a state adjudication." Id. at 500 (citations omitted).

The Supreme Court frequently has ordered Pullman-type abstention in recent years. See, e.g., Bellotti v. Baird, 428 U.S. 132, 146-47 (1976); Carey v. Sugar, 425 U.S. 73, 78-79 (1976); Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970). Bellotti involved a Massachusetts statute that governed the type of consent required before an abortion could be performed on an unmarried minor. 428 U.S. at 133-34. The day before the statute was to go into effect, the plaintiffs commenced an action in federal district court seeking injunctive and declaratory relief on fourteenth amendment grounds. Id. at 136. The Court held that abstention was appropriate because the potential for statutory construction by the Massachusetts courts would eliminate or modify the need for federal constitutional adjudication. Id. at 146-47. In Reetz, the validity of certain Alaska fishing laws hinged upon an uninterpreted clause of the Alaska Constitution. 397 U.S. at 85-87. It was held that the federal district court should have abstained until the Alaska courts could give an authoritative construction to their state constitution. Id. at 87. The Court noted that the purpose of the Pullman doctrine was "the avoidance of needless friction' between federal pronouncements and state policies." Id. (quoting Pullman, 312 U.S. at 500). Similarly, the Carey decision held that abstention was mandated because the challenged New York attachment statute conceivably could be given a constitutional interpretation by the state courts. 425 U.S. at 78-79. Emphasis was placed upon New York's need for continued utilization of the attachment statute. Id. at 79.

63 See text accompanying notes 23-24 supra.

64 See American Trial Lawyer's Ass'n v. New Jersey Supreme Court, 409 U.S. 467, 469 (1973); Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 512-13 (1972).

65 England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 417 (1964) (footnote omitted). The England Court noted that the possibility of appellate review by the Supreme Court of state court decisions was not an adequate substitute for a full federal adjudication of all the issues involved in a federal claim. Id. The Court held, therefore, that if a party reserves his right to return to federal court after an order of abstention, the federal court will adjudicate the issues after the state court has acted. Id. at 421. This reservation, however, does not have to be explicit. Id. In order to lose the right to return to federal court, the party must litigate fully all of his claims before the state court. Id.
voked properly, the Court reasoned, a litigant should not be forced to accept a state court determination of his constitutional claim.\textsuperscript{66} It is suggested that the rationale underlying the Court's reluctance to accord collateral estoppel to the findings of a state judicial proceeding is even more persuasive when the state proceeding is administrative in nature.\textsuperscript{67} Indeed, the proposed application of the \textit{Pullman} decision to the \textit{Williams} situation insures that state functions properly will be respected by abstention and that federal plaintiffs will be afforded the opportunity to litigate fully their constitutional claims in federal court.

\textbf{CONCLUSION}

To the extent that the \textit{Younger} abstention doctrine is considered valid, the \textit{Williams} court appears to have acted correctly by ruling that federal abstention in favor of state administrative proceedings is proper. Undoubtedly, the notion of comity, relied upon in \textit{Younger}, requires more than federal court respect for state judicial proceedings. Indeed, comity is a broad concept which mandates federal noninterference with state government itself. Additionally, the tangential problem of the collateral estoppel effect which may attach to administrative factual findings subsequent to federal court abstention can be avoided simply by application of

\textsuperscript{66} Id. at 415.

\textsuperscript{67} There has been recent authority to the effect that \textit{England}, see notes 55-56 and accompanying text supra, does not apply when abstention is premised upon \textit{Younger}. Olitt v. Murphy, 453 F. Supp. 354, 358 (S.D.N.Y.), aff'd, 591 F.2d 1331 (2d Cir. 1978), cert. denied, 444 U.S. 825 (1979). Olitt involved an attorney who was subjected to state bar disciplinary proceedings. 453 F. Supp. at 355. Three times during the pendency of the state proceedings the attorney commenced federal actions involving questions of constitutional dimension, and the federal court abstained on \textit{Younger} grounds on all three occasions. \textit{Id.} Each time the attorney reserved his rights under \textit{England}. \textit{Id.} at 357-58. The attorney ultimately was suspended, whereupon he commenced a fourth federal action raising the identical constitutional issues that he had raised in the state proceedings. \textit{Id.} at 355-58. The federal court found that the plaintiff's reliance on \textit{England} was misplaced and that, therefore, his constitutional claims were barred by res judicata. \textit{Id.} at 358. The court stated that \textit{England} was implicated only when abstention was premised upon \textit{Pullman} grounds in a situation where a federal plaintiff was assured a return to federal court. \textit{Id.} Thus, the court continued, when a case was dismissed pursuant to \textit{Younger} abstention, the \textit{England} doctrine was inapplicable. \textit{Id.} It is submitted that the \textit{Olitt} rationale does not preclude application of \textit{England} to the \textit{Williams} situation. The \textit{Olitt} decision took the restrictive view that \textit{Younger} abstention always contemplates dismissal. \textit{Id.} The \textit{Williams} court, however, retained jurisdiction over the federal action. 662 F.2d at 1023. Thus, inasmuch as \textit{Younger} abstention necessarily does not require dismissal, it appears to resemble closely \textit{Pullman}-type abstention. As a result, \textit{England} should be as applicable to those \textit{Younger} cases where dismissal is not ordered as it is to cases involving \textit{Pullman} abstention.
the principles enunciated by the Supreme Court in the area of *Pullman* abstention. Adoption of this flexible approach will permit a broad expansion of *Younger* abstention, and, concomitantly, protect the interests of individual federal litigants.

*Carmine A. Reale*