Federal Injunctive Relief Against Pending State Civil Proceedings: Younger Days are Here Again

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COMMENTS

FEDERAL INJUNCTIVE RELIEF AGAINST PENDING STATE CIVIL PROCEEDINGS: YOUNGER DAYS ARE HERE AGAIN

Traditionally, a federal equity court may grant a permanent injunction only upon a showing of irreparable injury and inadequacy of legal remedies. Although this formulation of the rule appears to require the presence of two distinct elements, the two concepts are closely interrelated and often indistinguishable in application. The inadequacy of legal remedies to prevent or undo the plaintiff’s injury presents a situation in which irreparable injury will occur unless equity intervenes. Generally, the inadequacy of remedies at law in federal court warrants issuance of an injunction regardless of whether state courts afford an adequate legal remedy.

The Civil Rights Act of 1871, now codified as amended at 42 U.S.C. § 1983, vests federal courts with the power to enjoin a person acting under color of state law from depriving a United States citizen or other person within the nation’s jurisdiction of any rights, privileges, or immunities secured by the Constitution and laws of the United States. This injunctive power protects not only rights secured under constitutional and statutory guarantees of equal protection and civil liberty, but also encompasses claims based on purely statutory violations of federal law.

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2. See H. MCCLINTOCK, HANDBOOK OF THE PRINCIPLES OF EQUITY § 43, at 103 n.22 (2d ed. 1948) (“In equity ‘irreparable injury’ is an injury of such a nature that the recovery of monetary damages would not be an adequate remedy.”). Another analysis demonstrates the close interrelationship of the two formulae. This analysis recognizes the “inadequate remedy at law” rubric as the essential test for permanent injunctive relief and views irreparable injury as merely the most frequently-used ground for demonstrating the inadequacy of legal remedies. See Lewis v. Baune, 534 F.2d 1115, 1124 (5th Cir. 1976); 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROEDURE § 2944, at 399 (1973). However the test is formulated, the adequacy of the remedy at law entails a minimum threshold of sufficiency and certainty. Thus, a court may grant an injunction if the legal remedy is not as complete, practical, and efficient as that available in equity or if the presence of the remedy is doubtful. See, e.g., American Life Ins. Co. v. Stewart, 300 U.S. 203, 214 (1937); 11 C. WRIGHT & A. MILLER, supra, § 2944, at 396.


5. 42 U.S.C. § 1983 provides:

   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.

principle of sovereign immunity embodied in the eleventh amendment does not prevent a federal court from enjoining a state official from enforcing state law that violates federal law unless that remedy in actuality could be enforced against only the state. In particular, the amendment does not bar a federal injunction that restrains a state official from instituting or prosecuting state judicial proceedings to enforce state law. When a federal plaintiff seeks such an injunction, however, a question necessarily arises as to what extent the availability and adequacy of the state judicial remedies should affect issuance of the federal injunction. While suits under section 1983 raise this question more frequently, it will appear whenever a federal court is empowered to enjoin the commencement or prosecution of state judicial proceedings.

Threatened Judicial Proceedings

In regard to injunctions of threatened criminal prosecutions, the United States Supreme Court has focused on the adequacy of the defense in the impending state proceeding, rather than looking solely to the adequacy of the legal remedies available in federal court. Thus, cases such as Douglas v. City of Jeannette characterize irreparable injury in this context in terms of "extraordinary circumstances" which undermine an implicit assumption that the state proceeding provides an adequate remedy at law. The federal plaintiff can demonstrate irreparable injury in the face of impending criminal proceedings only if the threat to his federally protected rights cannot be eliminated by his defense against the single criminal prosecution.

7. "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. The Supreme Court has never applied the amendment literally. Rather than trimming the federal judicial power, the amendment ensures that common law sovereign immunity is available as a constitutional defense to an action brought against a state in nearly all of the categories of cases to which the federal judicial power extends. See generally Tribe, Intergovernmental Immunities in Litigation, Taxation, and Regulation: Separation of Powers Issues in Controversies About Federalism, 89 HARV. L. REV. 682 (1976).

8. Compare Ex parte Young, 209 U.S. 123 (1908) (a suit to enjoin threatened institution of state criminal proceedings not barred) with Edelman v. Jordan, 415 U.S. 651 (1974) (a suit for equitable restitution of funds withheld in violation of federal law barred) and In re Ayers, 123 U.S. 443 (1887) (a suit for specific performance of a contract to which the state was a party barred). Young adopted the fiction that a suit against a state officer to enjoin him from enforcing an unconstitutional state statute is not a suit against a state (and hence not a suit barred by the eleventh amendment sovereign immunity absent waiver) because state law cannot authorize an official to perform an unconstitutional action. Once the official is stripped of the mantle of state authority, the suit becomes one against an individual for violation of federal rights. See 209 U.S. at 159-60.


the state defendant into relinquishing his rights furnishes a recognized example of a situation in which the federal plaintiff’s state court defense would prove unavailing. However, the mere possibility that the state court might erroneously apply federal constitutional standards will not constitute irreparable injury. As in other contexts, the usual expense and inconvenience of litigation does not give rise to irreparable injury.

The doctrine of equitable restraint enunciated in Douglas has not undergone extensive development with respect to federal injunctions of threatened civil proceedings. In at least one instance, however, the Supreme Court rejected a request for such an injunction with a view toward the adequacy of the state court remedy. In Cavanaugh v. Looney, the federal plaintiff sought an injunction restraining the state attorney general from instituting a condemnation proceeding pursuant to the state’s power of eminent domain because of alleged constitutional deficiencies in the condemnation statute. The Court affirmed the district court’s denial of the request, observing that the claim of irreparable injury appeared “fanciful” and noting that objections to the validity of the condemnation statute could be raised in the impending state proceedings.

The Anti-Injunction Act

To obtain a federal injunction of a pending state judicial proceeding, the federal plaintiff must first hurdle the barrier posed by the Anti-Injunction Act, part of which is codified as amended at 28 U.S.C. §

17. Id. at 456.
18. See also Matthews v. Rodgers, 284 U.S. 521 (1932) (denying an injunction of state tax collection proceedings in the face of adequate state court remedies because of a well-established policy against federal interference with state tax collection); The Tax Injunction Act, 28 U.S.C. § 1341 (1976) (further restricting the availability of federal injunctive relief against state tax collection to situations where the state remedy is not “plain, speedy and efficient”); The Johnson Act, 28 U.S.C. § 1342 (1976) (restricting federal injunctions of public utility rate orders by, inter alia, the same standard).
19. Ch. 22, § 5, 1 Stat. 333, 334-35 (1793). The statute is construed as forbidding injunctions against the state officials litigating the pending state court proceedings as well as those staying the proceedings directly. See Harkrader v. Wadley, 172 U.S. 148 (1898). However, the statute does “not preclude injunctions against the institution of state court proceedings, but only bars stays of suits already instituted.” Dombrowski v. Pfister, 380 U.S. 479, 484 n.2 (1965). See generally P. Bator, P. Mishkin, D. Shapiro & H. Wechsler,
The Act absolutely bars federal injunctions against pending state judicial proceedings unless such relief is: (1) expressly authorized by an act of Congress, (2) necessary in aid of the federal court's jurisdiction, or (3) necessary to effectuate a federal court's judgment. A federal statute qualifies as an "expressly authorized" exception if it creates "a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding." An injunction necessary in aid of the federal court's jurisdiction seems to be one that is required to preserve the federal court's authority over a res that is the subject of both federal and state litigation. In order to "effectuate a judgment," a federal court can enjoin relitigation of cases and controversies that have become res judicata in a prior federal proceeding. If the federal plaintiff fails to fit his prayer for injunctive relief under one of these three statutory exceptions, his federal suit must be dismissed irrespective of whether the request for relief is proper under the applicable equitable principles.

In Mitchum v. Foster, the Court held that injunctions of pending state proceedings under section 1983 are "expressly authorized" as an exception to the prohibition of the Anti-Injunction Act. Thus, section 2283 does not bar issuance of a federal injunction against pending state judicial proceedings when that injunction is issued pursuant to section 1983. The Court, however, did not remove or qualify any restraints on such relief imposed by equitable considerations.

Pending Criminal Proceedings

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that his state-court defense will not adequately protect his federal rights because of bad faith, harassment, or other unusual circumstance in order to obtain the federal injunction. Thus, even if the federal plaintiff clears the Anti-Injunction Act with section 1983, his failure to satisfy the Younger requirements will mandate dismissal of his suit to enjoin the pending state criminal proceeding.

The Younger opinion discussed the bases of its irreparable injury requirement in the context of pending criminal proceedings. The Court noted that the traditional reluctance of courts of equity to interfere with criminal prosecutions supports application of the irreparable injury standard. Yet, in the context of a federal injunction of a criminal prosecution pending in a state court, "more vital" considerations of comity and federalism reinforce this traditional requirement. These considerations counsel that federal sovereignty should be exercised and federal rights protected in a manner that does not unduly interfere with the legitimate sovereign activities of the states. Under Douglas and Younger, the requirement that the federal plaintiff demonstrate that state remedies will not adequately protect his federal rights allows the states to administer their criminal laws unhampered so long as their courts remain able and willing to guard federal rights.

Pending Civil Proceedings

In a series of cases, the Court has extended Younger's irreparable injury standard, with its focus on the adequacy of the opportunity to raise federal law challenges in the state proceeding, to requests for injunctions against pending civil proceedings that implicate "important state interests." Justice Rehnquist's opinion in Juidice v. Vail clearly

29. See id. at 53-54.
30. See id. at 43-44; see also In re Sawyer, 124 U.S. 200, 210-11 (1888) (the Court observed that courts of equity were without power to stay criminal proceedings).
31. 401 U.S. at 44.
32. See id. As Justice O'Connor observed in her separate opinion in Federal Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742 (1982), "notions of federalism subordinate neither national nor state interests." Id. at 796. Deference to state sovereignty "does not detract from the proper role of federal power in a federalist system, but merely requires the exercise of that power in a manner that does not destroy state independence." Id. at 795 n.33.
33. That considerations of federal-state comity may not compel equitable restraint in regard to threatened judicial proceedings has been suggested, however. See Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 509 (1972) (dictum); see also Doran v. Salem Inn, Inc., 422 U.S. 922, 930-31 (1975) (holding that the preliminary injunction of future prosecution of the federal plaintiff was not subject to Younger's restrictions). For an evaluation of this suggestion, see Hart & Wechsler, supra note 19, at 1046-47.
establishes that the "'more vital consideration' "3 of comity, rather than
the historical equitable deference to criminal prosecutions, provides the
essential support for application of the Younger doctrine.37 Thus, civil
proceedings found to implicate important state interests to date include
not only those "both in aid of and closely related to criminal statutes,"38
but also those brought for preserving the fiscal integrity of public assistance
programs,39 for providing for the welfare of children,40 and for supervis-
ing the professional conduct of attorneys.41

The Court laid the foundation for this extension of the Younger doc-
trine in Huffman v. Pursue, Ltd.42 Justice Rehnquist, writing for a six-
member majority, pinpointed the "relevant considerations of federalism"43
which indicate that federal interference with state civil proceedings pre-
sents as much of a threat to the smooth functioning of the federal system
as do injunctions of state criminal proceedings. He asserted that

interference with a state judicial proceeding [1] prevents the state
. . . from effectuating its substantive policies, [2] [prevents the
state] from continuing to perform the separate function of pro-
viding a forum competent to vindicate any constitutional objec-
tions interposed against those policies. . . [,] [3] results in
duplicative legal proceedings, and [4] can readily be interpreted
"as reflecting negatively upon the state court's ability to enforce
constitutional principles."44

Arguably, these considerations will appear every time a federal court con-
siders a request for an injunction against pending judicial proceedings.
Yet, the Court continues to reserve the question of whether the Younger-
Huffman irreparable injury requirement should apply to all requests for
a federal injunction against a pending state judicial proceeding, whether
civil, criminal, or quasi-criminal.45

Injunctions Pursuant to Section 1983

Section 1983 provides the principal basis for federal injunctions of

36. Id. at 334 (quoting Huffman v. Pursue, Ltd., 420 U.S. 592, 601 (1975) (quoting
Younger, 401 U.S. at 44)).
37. Id. at 334-35.
40. Moore v. Sims, 442 U.S. 415, 434-35 (1979) (also found the provision for tem-
porary removal of children to be in aid of and closely related to criminal statutes. Id. at 423).
41. Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432-35
(1982).
42. 420 U.S. 592 (1975).
43. Id. at 604.
44. Id. (quoting Steffel v. Thompson, 415 U.S. 452, 462 (1974)).
434, 445 n.8 (1977); Juidice, 430 U.S. at 336 n.13; Huffman, 420 U.S. at 607.
pending state proceedings," and thus, consideration of this unresolved issue properly begins with an examination of section 1983's effect on the problem. Justice Brennan, in his dissents in Huffman, Juidice, and Trainor v. Hernandez, raises the principal argument against complete extension of the Younger-Huffman doctrine to all requests for injunctions of state civil proceedings sought pursuant to section 1983. He urges that extension of the doctrine to such requests "effectively cripples the congressional scheme enacted in [section] 1983" because Congress intended for the section 1983 injunctive remedy to be available regardless of the pendency of state civil proceedings. Justice Brennan bases this argument in part on the historical fact that the rise of nationalism after the Civil War led Congress to alter its antebellum policy of relying completely on state courts for the protection of federal rights. Justice Brennan argues that, with section 1983, Congress deliberately opened the federal forum for protection of federal rights from action under color of state law "whether that action be executive, legislative, or judicial." Drawing on dicta from cases such as Monroe v. Pape, he concludes that a federal court should consider a prayer for an injunction against enforcement of a state law alleged to violate a federal right without regard to the pendency of state civil proceedings because "Congress has clearly ordained . . . that the federal courts are to be the 'primary and powerful reliances' for vindicating federal rights under [section] 1983."


48. All members of the Court have agreed, at least implicitly, that significant state interests justify application of Younger in regard to some state civil proceedings, although plenty of room is left to wrangle over how expansive that application should be. See Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 438 (1982) (Brennan, J., concurring); id. (Marshall, J., concurring).

49. Juidice, 430 U.S. at 343 (Brennan, J., dissenting).

50. See id. at 342 (Brennan, J., dissenting); Huffman, 420 U.S. at 616 (Brennan, J. dissenting).

51. Huffman, 420 U.S. at 617 (Brennan, J., dissenting).


53. 365 U.S. 167 (1961). Monroe held that a federal plaintiff need not initiate and exhaust prospective state administrative or judicial remedies as a prerequisite to maintaining a suit under § 1983 in federal court, declaring that "[t]he federal remedy is supplementary to the state remedy." Id. at 183.

In essence, Justice Brennan argues that a clear congressional command to honor the federal plaintiff's choice of forum, regardless of the state court's ability to protect his federal rights in the pending action, displaces the considerations of comity and federalism which lie at the heart of Younger's irreparable injury requirement. Yet, these considerations have always inhered in the federal chancellor's discretion, pursuant to equity's traditional solicitude for the public interests potentially affected by the granting of injunctive relief. Although a federal equity court must certainly exercise its discretion in accordance with the expressed will of Congress, that body must distinctly establish "the order of priorities in a given area" in order to nullify that traditional discretion. The

55. In Juidice, Justice Brennan writes:
"Congress imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims. Plainly, escape from that duty is not permissible merely because state courts also have the solemn responsibility, equally with the federal courts, "... to guard, enforce, and protect every right granted or secured by the Constitution of the United States.""


56. See supra text accompanying notes 31-32.


The Court's decision in Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941), provides a familiar example of equitable regard for principles of federal-state comity. Observing that "[f]ew public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies," id. at 500, the Court held that federal district courts should abstain when resolution of unsettled issues of state law necessarily precede consideration of an underlying constitutional claim. Id. at 501. Pullman abstention promotes harmony in federal-state relations by affording state courts the first opportunity to construe the law of their state, as well as by precluding "the friction of a premature constitutional adjudication." Id. at 500.


59. "[W]hen Congress invokes the Chancellor's conscience to further transcendent legislative purposes, what is required is the principled application of standards consistent with those purposes and not 'equity [which] varies like the Chancellor's foot.' " Albemarle Paper Co. v. Moody, 422 U.S. 405, 417 (1975) (quoting Gee v. Pritchard, 2 Swans. 403, 414, 36 Eng. Rep. 670, 674 (1818) (Lord Chancellor Eldon)).


A grant of jurisdiction to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances. We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made.

... The essence of equity jurisdiction has been the power of the Chancellor
general historical background of section 1983 and the rhetoric from recent jurisprudence upon which Justice Brennan relies do bear on the issue of whether Congress displaced the chancellor's traditional concern for principles of comity and federalism in this regard, yet they do not indicate with "crystal clarity"\(^6\) that Congress intended for section 1983 injunctive relief to be available "without regard to the pendency [or adequacy] of the state suit."\(^6\) In other words, accepting the premise that Congress established the federal courts as the primary guarantors of federal rights does not necessitate the conclusion that Congress intended for those courts to be the exclusive protectors of those rights. Yet such exclusivity would naturally result if the state defendant could terminate an entirely adequate state suit with a federal injunction whenever he could establish a claim of deprivation of federal rights under section 1983, a statute which indeed "cut a broad swath."\(^6\) Justification for such an extreme result seemingly would require indicia of legislative intent which are both more direct and more pertinent than those offered by Justice Brennan.

The Court's decision in *Mitchum v. Foster*\(^6\) probably provides the most apposite exegesis of Congressional intent in regard to the exercise of federal injunctive power under section 1983. In *Mitchum* the Court considered the issue of whether injunctions of pending state proceedings pursuant to section 1983 were expressly authorized by Congress as an exception to the absolute bar of the Anti-Injunction Act. As noted before, resolution of this issue necessitated a determination of whether Congress, in enacting the Civil Rights Act of 1871, had "created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding."\(^6\) Turning to the legislative history, the Court observed that "[p]roponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights."\(^6\)

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\(^6\) Id. at 329-30 (invoking a statute stating that relief "shall be granted").

\(^6\) Id. at 243 (Brennan, J., dissenting).

\(^6\) Id.


\(^6\) Id. at 237. "The test . . . is whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity could be given its intended scope only by the stay of a state court proceeding." Id. at 238.

\(^6\) Id. at 240.
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remarks of Senator Osborn, in particular, demonstrated that Congress was "extending federal power in an attempt to remedy the state courts' failure to secure federal rights": 68

If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate . . . . We are driven by existing facts to provide for the several states in the South what they have been unable to fully provide for themselves; i.e., the full and complete administration of justice in the courts. 69

The Court concluded that Congress intended to grant the federal courts power to stay state proceedings; 70 otherwise, the federal equity court could not protect the federal rights covered by the statute from a failure of law and of justice in state court.

The legislative history of the Civil Rights Act of 1871 indicates that Congress was acting to correct an extraordinary circumstance in which courts, even entire state judicial systems, were acting as instruments of persecution against persons exercising their federal rights and were turning a deaf ear to defenses based on federal rights. 71 In such situations, Congress clearly ordered priorities in favor of a federal stay of the inadequate or corrupted state proceeding. However, Congress did not address, much less order priorities in, the situation where the federal plaintiff sought an injunction against an allegedly unconstitutional statute which was being applied to him in a properly functioning state court which was ready and able to consider his federal defense. Nothing in the legislative history indicates that Congress intended to displace the normal equitable considerations of comity and federalism in this setting. Significantly, the floor debates spoke only to the situations which presently constitute the exceptions to the Younger bar—bad faith prosecution and other circumstances undermining the adequacy of state legal remedies. 72

68. Id. at 241.
70. Id. at 242-43.

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A statute should be construed and applied in light of the situation which Congress sought to alter, especially when Congress invokes the federal court’s equitable powers. The decision to grant equitable relief is one based inherently on the various equities presented by the particular circumstances of a given case. A not unreasonable construction of section 1983 would allow a federal equity court to inquire into the facts of the case before it to determine whether the evil that concerned Congress—state court inability or unwillingness to protect federal rights—is indeed threatening to deprive the federal plaintiff of a right secured by the Constitution or laws of the United States. It stands neither federalism nor section 1983 “on its head” to remit the federal plaintiff to a pending state proceeding in which—absent bad faith or a statutory bar to his defense—his federal rights can be as ably and as diligently protected.

Moreover, an even stronger reason weighs against Justice Brennan’s contention that the Reconstruction Congress intended for the federal courts to honor the federal plaintiff’s choice of forum over a pending state pro-
ceeding without regard to the adequacy of that proceeding. If Congress had intended to accomplish such a result, it could have done so much more easily and directly by granting the state defendant the right to remove the state suit to federal court whenever the claim against him was brought pursuant to a state statute that deprived him of a federally protected right. Indeed, Congress enacted an analogous removal provision five years earlier in the Civil Rights Act of 1866. This provision, which remains in force, allows removal by "any person who is denied or cannot enforce in the courts of [a] State a right under any law providing for . . . equal civil rights." Removal under this provision is possible only when (1) the asserted right is protected under a "law providing for specific civil rights stated in terms of racial equality," i.e., "only laws comparable in nature to the Civil Rights Act of 1866," and (2) "it can be predicted by reference to a law of general application that the defendant will be denied or cannot enforce the specified federal rights in the state courts."

Justice Brennan's broad construction of Congressional intent would render this earlier civil rights removal statute superfluous. The ambit of the Civil Rights Act of 1871 encompasses rights protected under the Civil Rights Act of 1866. If injunctions pursuant to the 1871 Act issue without regard to the pendency of state proceedings, a state defendant statutorily deprived of a right guaranteed under the 1866 Act, and thus under the 1871 Act as well, effectively could remove the litigation from the state court to the federal judicial system merely because the state statute involved deprived him of the protected right. Yet, the now-federal plaintiff would achieve this result regardless of whether he could show that he was statutorily barred from enforcing the federal right in the state court, as would be required under the civil rights removal statute. That is, the state defendant could use a broadly-exercised injunctive power and section 1983 to bypass the civil rights removal statute, the only direct Congressional expression in regard to a state defendant's right to choose a federal forum in civil rights cases. In accord with accepted tenets of statutory construction, the Civil Rights Act of 1871 should be construed

77. Ch. 31, § 3, 14 Stat. 27 (codified as amended at 28 U.S.C. § 1443 (1976)).
80. Id. at 790. The substantive portions of the 1866 Act are codified as amended at 42 U.S.C. § 1981. It reads:
   All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
82. See Maine v. Thiboutot, 448 U.S. 1, 4-8 (1980) (by implication). Thiboutot holds that § 1983 encompasses claims based on violations of purely statutory federal law.
in a manner which does not render the civil rights removal statute superfluous, especially as the language and history of the 1871 Act plausibly support a construction which would preclude such an effect.\textsuperscript{3}

Furthermore, the Court has long held that Congress, when it passed the general removal provision in 1887,\textsuperscript{4} did not give state defendants with a federal defense the ability to transfer the case to the federal forum.\textsuperscript{5} If Congress did not give the federal law defendant the right to choose the federal forum over the pending state proceeding directly, it is unlikely that Congress intended for the ambiguous language of section 1983 to accomplish the same result indirectly. As Justice Brennan himself has stated: "Courts may properly take into account the later Act when asked to extend the reach of the earlier Act's vague language to the limits which, read literally, the words might permit."\textsuperscript{6}

With very due respect to Justice Brennan, the legislative history does not support his argument that Congress intended for section 1983 injunctive relief to be available despite the pendency of an adequate state court proceeding. Indeed, that legislative history can be read to support a contrary conclusion.\textsuperscript{7} His argument based on legislative intent appears especially tenuous when it is recognized that removal provides a much more direct means of assuring a federal forum to state defendants who raise a federal defense. Furthermore, Justice Brennan's broad construction of section 1983 would make resort to the civil rights removal provision that Congress actually adopted unnecessary.\textsuperscript{8} It is difficult to believe that Congress intended to produce this result with the innocuous phrase

\textsuperscript{3}Repeals by implication are not favored. Radzanower v. Touche Ross & Co., 426 U.S. 148, 154 (1976); \textit{cf.} United States v. United Continental Tuna Corp., 425 U.S. 164 (1976). In \textit{United Continental} the Court wrote:

\textit{[H]}ere the argument is not that the Public Vessels Act can no longer have application to a particular set of facts, but simply that its terms can be evaded at will by asserting jurisdiction under another statute. We should, however, be as hesitant to infer that Congress intended to authorize evasion of a statute at will as we are to infer that Congress intended to narrow the scope of a statute. Both types of "repeal"—effective and actual—involves the compromise or abandonment of previously articulated policies, and we would normally expect some expression by Congress that such results are intended. Indeed, the expectation that there would be some expression of an intent to "repeal" is particularly strong in a case like this one, in which the "repeal" would extend to virtually every case to which the statute had application.

\textit{Id.} at 169.

\textsuperscript{4}Ch. 373, § 2, 24 Stat. 552, 553 (1887) (codified as amended at 28 U.S.C. § 1441 (1976)).

\textsuperscript{5}See Tennessee v. Union & Planters' Bank, 152 U.S. 454 (1894).


\textsuperscript{7}See supra text accompanying notes 73-76.

\textsuperscript{8}See supra text accompanying notes 77-83.
“suit in equity.” By the very use of this phrase, Congress seemingly opted for the flexibility of equity practice rather than the rigidity of a blanket rule removing cases involving federal rights from entirely adequate state civil proceedings. Thus, nothing in the legislative history, the relationship of section 1983 to other statutes, or the text clearly supports, much less compels, the conclusion that the Act establishes an absolute right to the federal forum. More particularly, nothing in the relevant legislative materials indicates that Congress intended to displace the equitable discretion which has been traditionally exercised in light of all pertinent factors, including the strong public interests reflected in principles of comity and federalism. A contrary construction of the Act seems particularly appropriate because the relief involved, a federal injunction of a pending state court proceeding, so clearly implicates those concerns.


Indeed, if Congress had so absolutely distrusted the fidelity of state courts to the Constitution, it could have coupled a broad removal jurisdiction in cases involving a federal defense with a grant of exclusive jurisdiction to the lower federal courts over § 1983 cases. Instead, Congress indicated its trust in state courts by not depriving them of concurrent jurisdiction over such claims. Cf. Allen v. McCurry, 449 U.S. 90 (1980). In Allen the Court wrote:

As the Court has understood the history of the legislation, Congress realized that in enacting § 1983 it was altering the balance of judicial power between the state and federal courts. . . . But in doing so, Congress was adding to the jurisdiction of the federal courts, not subtracting from that of the state courts. See Monroe v. Pape, [365 U.S.] at 183 . . . ("The federal remedy is supplementary to the state remedy . . ."). The debates contain several references to the concurrent jurisdiction of the state courts over federal questions, and numerous suggestions that the state courts would retain their established jurisdiction so that they could, when the then current political passions abated, demonstrate a new sensitivity to federal rights.

Id. at 99-100 (emphasis added; citations & footnotes omitted).

90. Cf. Allen v. McCurry, 449 U.S. 90, 103-04 (1980) (finding that § 1983 did not give every person asserting a federal right an entitlement to one unencumbered opportunity to litigate that right in an original action in a federal district court without regard to any prior disposition of the claim in state court).

91. Justice Brennan would surely not argue that the phrase, "the primary and powerful reliances for vindicating every right given by the Constitution," Zwickler v. Koota, 389 U.S. 241, 247 (1967) (emphasis added) (quoting F. FRANKFURTER & J. LANDIS, supra note 54, at 65), possesses a talismanic quality which, of its own force, displaces the inherent concerns of comity and federalism. Cf. Hanna v. Plumer, 380 U.S. 460, 466-67 (1965) ("'Outcome-determination' analysis was never intended to serve as a talisman.'"). Significantly, the professor who originally penned that phrase, see F. FRANKFURTER & J. LANDIS, supra note 54, held a view of § 1983 as a justice which differed greatly from that adhered to by Justice Brennan.

For even if the power to grant the relief here sought may fairly and constitutionally be derived from the generality of language of the Civil Rights Act, to sustain the claim would disregard the power of courts of equity to exercise discretion when, in a matter of equity jurisdiction, the balance is against the wisdom of using their power.
Younger's irreparable injury standard strikes the delicate balance that is sought by these principles of comity and federalism. As noted before, federal-state comity seeks the attainment of national goals without undue interference with the legitimate functioning of the states. By limiting its judicial intervention to cases of irreparable injury, i.e., inadequacy of state court remedies, the federal sovereign limits its interference with state functions to those cases where federal intervention is actually necessary to preserve federal rights. Where state remedies are adequate, the federal plaintiff's federal rights are protected, and the state's enforcement of its substantive law and operation of its judicial system continue free of unwarranted federal interference.

Once it is determined that section 1983 does not displace the traditional equitable concern for federalism and comity, and that Younger's irreparable injury standard properly reflects the federal-state balance inherent in these principles, the inquiry focuses upon how far these principles carry the civil component of the Younger doctrine. The four considerations of federalism canvassed by Justice Rehnquist in Huffman indicate that Younger's irreparable injury standard should apply in regard to all requests for a section 1983 injunction against pending state judicial proceedings. Arguably, every request for a federal injunction of a state court under section 1983 will implicate these factors. Every injunction against a pending state judicial proceeding interferes with the legitimate functioning of the state's judicial system because it prevents the state from providing a forum to consider federal objections to its laws. Federal consideration of the merits of the federal claim prior to issuance of the injunction always results in duplicative proceedings which consider an issue already before the state tribunal. Furthermore, every injunction against a pending state judicial proceeding that is not statutorily barred from hearing the federal defense necessarily casts a negative reflection upon the state court's ability to enforce federal law, as well as upon the court's fidelity to the rule of law under the Constitution.

The fourth Huffman factor, the impairment of the state's ability to effectuate its substantive policies, also arises whenever the federal court enjoins the pending state proceeding. The argument lies, however, that

92. See supra text accompanying note 32.
93. See supra text accompanying note 44.
these policies may not always reflect "important state interests"** and thus \textit{Younger} abstention should not be required in regard to all state judicial proceedings. The requirements of comity and federalism must determine whether a distinction between "important" and "unimportant" state interests is tenable for purposes of \textit{Younger} abstention.

If the Court were to institute such a dichotomy, it would risk effecting a double affront to state sovereignty. The state would not only suffer the harshness of an injunction against enforcement of its substantive law in its own pending court proceedings; it would be further informed that the intrusive federal injunction was justified because the federal court somehow considered the state's interest in the particular subject matter "unimportant." Furthermore, federal interference in pending enforcement of purportedly "unimportant" state interests could prove detrimental to that "healthy pluralism" which is an important concomitant of the federalism principle. That is, a federal court's conclusion that a state's policy is not "important," and thus is subject to federal court interference, may hinder a state's commencement of a novel social experiment by stalling its construction and implementation in the state's own courts. Arguably, the Court should eschew the selective censorial role embodied in a distinction between "important" and "unimportant" state interests because of the stultifying and stifling effect of an injunction issued on such a basis.***


Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

97. That the Court theoretically distinguished between "legitimate," "important," and "compelling" state interests on the merits of equal protection claims aids little, if at all, in developing criteria for distinguishing cases which might be appropriate for federal court consideration in spite of abstention principles. The analyses are clearly not interchangeable. For example, while tax collection and disbursement might prove merely a "legitimate" interest for equal protection review, \textit{cf.} San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973), that interest is clearly "important" for purposes of comity and federalism. \textit{See, e.g.}, Matthews v. Rodgers, 284 U.S. 521 (1934).
Moreover, in suits in which the state is a party, the state will have invoked its legislative, judicial, and executive capacities in pursuit of its substantive policy by the time an injunction is sought in the federal district court. Whatever the subjective “importance” of that policy, this multi-institutional commitment of state resources should indicate that effectuation of that policy is “important” for determining the requirements of comity and federalism. Phrased another way, by the time state judicial proceedings commence, the state will have committed sufficient governmental resources to enforcement of a policy to render a federal injunction of the pending proceeding highly intrusive. Thus, in terms of interference with legitimate state interests, all four of the considerations of federalism and comity outlined in *Huffman* counsel application of the *Younger* doctrine to at least those judicial proceedings in which the state is a party.

**Section 1983 Injunctions of Wholly Private State Civil Suits**

A distinction between state-initiated enforcement actions and wholly private litigation is closely related to the distinction based upon the relative importance of various state interests. Some lower courts have held that *Younger*’s irreparable injury requirement should apply only to state-initiated enforcement actions. The underlying premise of these cases—that concerns of comity and federalism are not as compelling in suits between purely private litigants—is questionable. Indeed, delegation of the

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98. *Compare* Trainor v. Hernandez, 431 U.S. 434, 444 (1977) (“The District Court thought that *Younger* policies were irrelevant because suits to recover money and writs of attachment were available to private parties as well as the State . . . . But the fact remains that the State was a party to the suit . . . .”) with *Judice* v. Vail, 430 U.S. 327, 336 n.12 (1977) (“Contempt 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.”) (Citation omitted).

99. See, e.g., Johnson v. Kelley, 583 F.2d 1242, 1249 (3d Cir. 1978); see also *Younger*, 401 U.S. at 56 n.2 (Stewart, J., concurring) (comparing the offense to state interests presented by injunctions of criminal and civil proceedings in which the state may not be a party); *O’Hair* v. White, 675 F.2d 680, 695 (5th Cir. 1982) (en banc) (holding that the *Younger* doctrine did not apply to the instant civil suits which involved wholly private disputes and in which federal intervention would not affect any important state interests). *See generally* I C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4254 (1978).

100. See, e.g., Comment, *Limiting the Younger Doctrine: A Critique and Proposal*, 67 CALIF. L. REV. 1318, 1320, 1343-45 (1979) (neither state nor federal interests depend upon whether the state initiated the suit); *Recent Decisions*, 17 DUQ. L. REV. 911, 925 (1979) (the distinction is inconsistent with the underlying policy of respect for state court competency); *Case Comments*, 13 SUFFOLK L. REV. 1187, 1202 (1979) (*Younger*’s paramount concern is not identity of the parties, but state autonomy); *see also* Webb v. Webb, 451 U.S. 493, 499 (1981) (“Principles of comity in our federal system require that the state courts be afforded the opportunity to perform their duty, which includes responding to attacks on state authority based on the federal law, or, *if the litigation is wholly private, construing and applying the applicable federal requirements.*”) (Emphasis added)).
civil suit to private parties may indicate a greater state interest in controlling certain behavior because the state may conclude that entrusting the litigation to parties with strong self-interests is the most effective means of enforcement.\textsuperscript{101} In any event, the question of whether the \textit{Younger} doctrine should be applicable to wholly private civil suits should be viewed in the specific contexts in which \textit{Younger} would be at issue.

In regard to requests for injunctions under section 1983, the mere filing of a private civil action may not support a cause of action under the statute. To establish a cause of action under section 1983, the federal plaintiff must demonstrate (1) that he has been deprived of a right secured by the Constitution or laws of the United States, and (2) that the defendant deprived him of this right "under color of state law."\textsuperscript{102} Where the right involved is one secured against only state governmental interference, the plaintiff can satisfy the first requirement only if he shows that the defendant's action constitutes "state action."\textsuperscript{103} If he establishes the presence of state action, he will have satisfied the "under color of state law" requirement as well.\textsuperscript{104} Several lower courts have held that the mere filing of a private civil action does not constitute state action and thus initiation of a private civil suit will not provide a basis under section 1983 for a federal court's injunction of the pending state civil proceeding.\textsuperscript{105} That such conduct would constitute action under color of state law in claims involving federal rights not subject to the state action requirement seems unlikely.\textsuperscript{106}


\textsuperscript{103} See Lugar v. Edmondson Oil Co., 457 U.S. 922, 928-29 (1982); Gresham Park Community Org. v. Howell, 652 F.2d 1227, 1237 (5th Cir. 1981). As the Court recently explained in \textit{Lugar}, the "state action" issue is one of whether "the conduct allegedly causing the deprivation of a federal right [is] fairly attributable to the state." 457 U.S. at 937. Conduct is "fairly attributable" to the state when (1) "the deprivation [is] caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible," \textit{id.}, and (2) "the party charged with the deprivation [is] a person who may fairly be said to be a state actor...[either] because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the state." \textit{Id.}

\textsuperscript{104} See Lugar v. Edmondson Oil Co., 457 U.S. 922, 935 (1982). That all action under color of state law satisfies the state action requirement does not follow, however. \textit{Id.} at 935 n.18.

\textsuperscript{105} See, e.g., Henry v. First Nat'l Bank, 444 F.2d 1300 (5th Cir. 1971).

\textsuperscript{106} Section 1983 encompasses claims based on constitutional and statutory provisions
The state court's issuance of an immediately enforceable judgment that applies state law to deprive the federal plaintiff of a federal right should constitute state action, and thus action under color of state law. At this point, the court's action is "fairly attributable" to the state because the state's full power and authority can be invoked to accomplish the deprivation of federal rights. Ordinarily, a judgment awarding

that do not contain a state action limitation. See Maine v. Thiboutot, 448 U.S. 1 (1980) (by implication) (§ 1983 provides a cause of action for a state's deprivation of welfare benefits provided for under the federal Social Security Act). Under the Court's analysis in Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), the under color of state law requirement would attain distinct relevance in regard to such claims. That is, the finding of a deprivation of a federal right in such cases would not involve a finding of state action, and thus, the finding of the federal violation would not automatically satisfy the under color of state law requirement. See id. at 935 n.18. Thus, assuming that the mere commencement of the private civil action operated as a deprivation of a federal right secured against private action, the federal plaintiff would have to show that the filing of the suit constituted an act under color of state law. In Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970), the Court stated that, while more might be required under this standard, action "with knowledge of and pursuant to" state law was an essential requisite. Id. at 162 n.23. Although commencement of a private civil action may satisfy this essential feature of the under color of state law standard, whether mere filing would satisfy any additional requirements is unknown. Cf. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978) (not finding the requisite "state action," the Court did not determine whether a warehouseman's sale of goods entrusted to him, as permitted by a state statute, would constitute action under color of state law even if the Adickes standard was satisfied). That such action would constitute action under color of state law seems unlikely. Compare Lugar, 457 U.S. at 939 n.21 (expressly not holding that a private party's mere invocation of legal procedures satisfies the under color of state law requirement) with id. at 951 (Powell, J., dissenting, joined by Rehnquist and O'Connor, JJ.) (stating that cases do not establish that such conduct would satisfy the under color of state law requirement).


108. See Henry v. First Nat'l Bank, 595 F. 2d 291, 299 (5th Cir. 1979), cert. denied, 444 U.S. 1074 (1980). Where, on the other hand, the state plaintiff merely uses the court to enforce a valid state rule, the presence of an immediately enforceable judgment should not constitute state action, even if the state plaintiff's underlying motive is retaliation against the federal plaintiff's exercise of his otherwise federally protected rights. See, e.g., Higbee v. Starr, 698 F.2d 945 (8th Cir. 1983) (use of a valid state eviction procedure for the improper purpose of retaliating against the federal plaintiff's exercise of constitutional rights is not state action under Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982)); Miller v. Hartwood Apts., 689 F.2d 1239 (5th Cir. 1982) (similar); Taylor v. Gilmartin, 686 F.2d 1346 (10th Cir. 1982), cert. denied, 103 S. Ct. 788 (1983) (in an action for damages against a "deprogrammer" of persons in various unconventional religious sects, the fact that the deprogrammer had duped the court into appointing the plaintiff's father as a temporary guardian did not present state action); cf. Dennis v. Sparks, 449 U.S. 24 (1980) (in this § 1983 damages action against a private party for obtaining an illegal injunction against continued mineral production, the defendant's mere victory in state court did not present
monetary damages will not be immediately enforceable until the period for appellate review has expired or until the judgment is sustained by the state's highest court.\textsuperscript{110} In the absence of a stay, a state court injunction presents an immediately enforceable judgment.\textsuperscript{111}

Thus, at least with respect to section 1983 suits subject to a state action requirement,\textsuperscript{112} the federal court should possess no statutory power to enjoin pending private state civil proceedings until the state court issues an immediately enforceable judgment. The presence of such a judgment does not end the federal plaintiff's problems, however. Successfully stating a claim for relief under section 1983 in this context merely exposes the federal plaintiff's claim to principles of jurisdiction, \textit{res judicata} and collateral estoppel which could render consideration of the \textit{Younger} question unnecessary.

A question of jurisdiction presents the first potential obstacle to the federal plaintiff's claim. A federal district court is without jurisdiction to enjoin enforcement of a state court judgment if issuance of the injunction would constitute an exercise of appellate jurisdiction over the state court.\textsuperscript{113} That the lower federal courts lack appellate jurisdiction over state courts follows simply from the fact that Congress has not provided them with such jurisdiction.\textsuperscript{114} The lower federal courts possess only such state action (\textit{dictum}), but the corrupt conspiracy with the state court trial judge to deny federal rights did present state action); Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972) (the mere licensing of a private club that practiced racial discrimination was not state action, but a statutory requirement that a club comply with its bylaws, which were in fact discriminatory, presented state action). \textit{But cf.} Shelley v. Kraemer, 334 U.S. 1 (1948) (judicial enforcement of restrictive covenants based on race constitutes state action). Arguably, the state plaintiff's \textit{scienter} presents too tenuous of a link between the exercise of state power and the deprivation of federal rights in such situations. Whether such action would satisfy the independent "under color" requirement is, of course, a question subject to only conjectural discussion. For such discussion, see \textit{supra} note 106.

\textsuperscript{110} \textit{But cf.} Henry v. First Nat'l Bank, 595 F.2d 291, 299-300 (5th Cir. 1979), \textit{cert. denied}, 444 U.S. 1074 (1980) (the requirement of a supersedeas bond that would have bankrupt the NAACP rendered a money judgment immediately enforceable).

\textsuperscript{111} See Gresham Park Community Org. v. Howell, 652 F.2d 1227, 1239 n.31 (5th Cir. 1981); \textit{see also} Lewis Serv. Center v. Mack Fin. Corp., 696 F.2d 66 (8th Cir. 1982) (state action was present for purposes of this § 1983 damages action against the creditor because a temporary court order in the state replevin action directed the federal plaintiff to hold his property "unimpaired and unencumbered" until a hearing on the merits).

\textsuperscript{112} For a discussion of § 1983 suits that are \textit{not} subject to the state action requirement, see \textit{supra} note 106.

\textsuperscript{113} \textit{Cf.} District of Columbia Court of Appeals v. Feldman, 103 S. Ct. 1303 (1983) (the district court could not hear claims "inextricably intertwined" with the District of Columbia court's judicial denial of the federal plaintiff's application for admission to the bar because such claims called for a direct review of a state court decision); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) (the district court possessed no jurisdiction to declare a state court judgment null and void on constitutional grounds).

\textsuperscript{114} See, \textit{e.g.}, 28 U.S.C. § 1331 (Supp. V 1981) ("original jurisdiction" over claims raising federal questions); \textit{id.} § 1343(3) (Supp. V 1981) ("original jurisdiction" over civil
jurisdiction as is entrusted to them by Congress.\textsuperscript{115} Thus, whether issuance of the injunction against the state court’s judgment constitutes an exercise of original or appellate jurisdiction determines the presence or absence of the district court’s power.\textsuperscript{116} The Court’s recent decision in District of Columbia Court of Appeals \textit{v. Feldman}\textsuperscript{117} instructs that the nature of the underlying claim, rather than the nature of the relief sought, determines whether the court’s action would be original or appellate. If the plaintiff presents federal claims to the district court that are “inextricably intertwined”\textsuperscript{118} with the judicial decision of a state court, then the court “is in essence being called upon to review the state court decision.”\textsuperscript{119} A claim challenging a state court judgment on the basis that the applicable state law violated the plaintiff’s federal rights calls for appellate review of the state court’s decision and thus falls outside of the district court’s subject matter jurisdiction.\textsuperscript{120} Thus, a federal court cannot enjoin enforcement of a state court judgment on this basis without exceeding the jurisdiction conferred on it by Congress.\textsuperscript{121} \textit{Feldman} makes


\textsuperscript{116} Cf. Marbury \textit{v. Madison}, 5 U.S. (1 Cranch) 137 (1803) (the Supreme Court’s jurisdiction over the claim depended upon whether issuance of the mandamus to Madison would be an act of appellate or original jurisdiction).

\textsuperscript{117} 103 S. Ct. 1303 (1983).

\textsuperscript{118} \textit{Id.} at 1315 n.16.

\textsuperscript{119} \textit{Id.}

\textsuperscript{120} See \textit{id.} at 1316-17.

\textsuperscript{121} \textit{Feldman} should put to rest the notion that the Court’s holding in \textit{Rooker v. Fidelity Trust Co.}, 263 U.S. 413 (1923), involved a mere matter of pleading. \textit{Rooker} held that a federal district court had no jurisdiction to declare a state supreme court judgment null and void as violative of the Constitution. Some lower courts and commentators read \textit{Rooker} as turning on the fact that the federal plaintiffs requested that the district court vacate the state court judgment, an exclusively appellate act. Under this reading, the federal plaintiff could avoid \textit{Rooker} merely by styling his complaint as a request for an injunction against enforcement of the state court judgment, rather than as a request to vacate the judgment. This view lead to the conclusion that the adoption of Federal Rule of Civil Procedure 8, with its provision for the liberal reading of complaints, overruled \textit{Rooker} in 1938. The court would read the complaint as one requesting an injunction. See, \textit{e.g.}, Gresham Park Community Org. \textit{v. Howell}, 652 F.2d 1227, 1236 (5th Cir. 1981), and authorities cited therein. \textit{Feldman} belies this view by steering the inquiry away from a mechanical classification of the relief requested and toward consideration of the nature of the underlying claim. \textit{Feldman} also undercuts another jurisdictional approach taken by the \textit{Gresham} court. The Fifth Circuit had also read \textit{Rooker} as possibly turning on an absence of either diversity or state action as a ground for original jurisdiction independent of the prohibited appellate
it emphatically clear that this result should follow even if the federal plaintiff fails to raise his federal claims in state court.\footnote{122}

Not all claims challenging a state court judgment should require appellate review of a state court decision, however.\footnote{123} In essence, an appeal differs from an original action in that an exercise of appellate jurisdiction requires review of another court's resolution of factual and legal issues.\footnote{124} If the federal plaintiff's claim does not assail findings of fact or conclusions of law “inextricably intertwined” with the state court decision, but raises extrinsic matters that affect the validity of the judgment without regard to whether the state court erred on the merits, then the claim should fall within the district court's original jurisdiction. The Court has long recognized a similar distinction, one between appellate review of a state court's decision for legal or factual errors and an original action to raise extrinsic matters that affect the state court victor's right to

\footnote{122} In Dasher v. Supreme Court, 658 F.2d 1045 (5th Cir. 1981), the Fifth Circuit held that a district court had jurisdiction over constitutional claims that a federal plaintiff had failed to raise in state court proceedings that denied his application for admission to a state bar. The \textit{Dasher} Court described the reasoning of \textit{Dasher} as “flawed.” 103 S. Ct. at 1315 n.16. In a related development, the Court vacated and remanded the Fifth Circuit's decision in Howell v. State Bar, 674 F.2d 1027 (5th Cir. 1982), with an express directive to reconsider the case in light of \textit{Feldman}. See Howell v. State Bar, 103 S. Ct. 1515 (1983). On remand, the Fifth Circuit concluded that the erroneous promise of the reservation expressed in \textit{England} v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411 (1964), even when coupled with the federal plaintiff's reliance, could not give rise to federal jurisdiction that did not otherwise exist under \textit{Feldman}. See Howell v. State Bar, 710 F.2d 1075 (5th Cir. 1983).

\footnote{123} \textit{Feldman} focuses upon the distinction between review of state court decisions and general facial challenges to legislatively-adopted rules, see 103 S. Ct. at 1316-17, and is thus not especially helpful in distinguishing between “appellate” and “original” challenges to state court judgments.

\footnote{124} \textit{Cf.} \textit{Marbury} v. Madison, 5 U.S. (1 Cranch) 137, 175 (1803) (“It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause.”). For an analysis of the relation between appellate and original jurisdiction in this context, see Chang, \textit{Rediscovering the Rooker Doctrine: Section 1983, Res Judicata and the Federal Courts}, 31 \textit{Hastings L.J.} 1337, 1346-49 (1980).
benefit from the judgment, in regard to suits to enjoin enforcement of state court judgments obtained through fraud.\textsuperscript{125} Arguably, claims that the opposing litigant conspired with the state trial judge to deprive the federal plaintiff of his rights\textsuperscript{126} or that the proceeding itself deprived him of procedural due process\textsuperscript{127} should raise matters extrinsic to the controversy that was the subject of the state court proceeding. In these and similar circumstances, the federal court should be able to enjoin enforcement of a state court judgment in the exercise of its original jurisdiction even though the injunction effectively nullifies the state court's decision.

Under the foregoing analysis, a federal district court will possess jurisdiction over a request for an injunction against enforcement of a state civil judgment only to the extent that the underlying claim stands on issues extrinsic to the state court's decision. As this constraint arises not from a policy choice to inhibit relitigation or to effectuate federal-state comity but rather from limits on the subject matter jurisdiction of the district courts, it cannot be avoided by waiver or through an exercise of the court's discretion. Yet, even if jurisdictional concerns do not pose as serious an obstacle as has been outlined above, principles of \textit{res judicata} and collateral estoppel may confine the availability of the injunctive remedy to a correspondingly limited class of cases.\textsuperscript{128}

The congressional command contained in 28 U.S.C. § 1738 requires all federal courts to give the same preclusive effect to state-court judgments as would the courts of the judgment-rendering state.\textsuperscript{129} Section 1738 thus

\textsuperscript{125} See Barrow v. Hunton, 99 U.S. 80 (1878). In Barrow the Court wrote: The distinction between the two classes of cases may be somewhat nice, but it may be affirmed to exist. In the one class there would be a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the State courts; and in the other class, the investigation of a new case arising upon new facts, although having relation to the validity of an actual judgment or decree, or of the party's right to claim any benefit by reason thereof. \textit{Id.} at 83. \textit{See also} Marshall v. Holmes, 141 U.S. 589, 597-99 (1891); cf. Ballance v. Forsyth, 65 U.S. (24 How.) 183 (1860) (similar distinction in regard to injunctions of enforcement of federal judgments); Parker v. Judges of the Circuit Court, 25 U.S. (12 Wheat.) 561, 563 (1827). For a discussion of the relation between federal injunctions of fraudulently- obtained state judgments and the Anti-Injunction Act, see \textit{Hart & Wechsler}, \textit{supra} note 19, at 1236, 1253.

\textsuperscript{126} Cf. Dennis v. Sparks, 449 U.S. 24 (1980) (in this damages action, the opposing litigant and the state trial judge conspired to unlawfully enjoin the federal plaintiff's mineral production; the Court found that the litigant acted under color of state law).

\textsuperscript{127} Cf. Rhoades v. Penfold, 694 F.2d 1043 (5th Cir. 1983) (the federal plaintiff, an indigent, alleged that the state court had deprived her of procedural due process by failing to provide her with appointed counsel in a custody termination hearing; her inability to afford counsel contributed to her forfeiting her right to appeal in the state courts).

\textsuperscript{128} Cf. Chang, \textit{supra} note 124, at 1355 (equating the scope of the jurisdictional bar in Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), with that of the \textit{res judicata} law of the rendering state).

makes the doctrines of collateral estoppel and *res judicata* available to federal litigants to the same extent that these principles could be raised in the courts of the state in which the earlier judgment was rendered. Generally, collateral estoppel prevents a party from relitigating an issue of fact or law actually litigated in and necessary to a prior judgment even if the later suit pursues a different cause of action.10 *Res judicata*, on the other hand, broadens the preclusion to issues that were or could have been raised in a prior action but limits its application to the plaintiff's second suit on the same claim or the defendant's attack on an adverse judgment.11 Where section 1738 is fully applicable, a state's principles of collateral estoppel operate conclusively in federal court unless the proceedings leading to the prior state judgment fail to satisfy the minimum procedural requirements of due process.12

In *Allen v. McCurry*,13 the Court held that section 1983 does not present a blanket exception to section 1738 or a categorical bar to application of principles of collateral estoppel.14 The Court noted its earlier implicit approval of lower court decisions applying *res judicata* principles in section 1983 suits,13 yet expressly reserved the question of whether *res judicata* should bar litigation of a federal issue that a section 1983 plaintiff could have raised but failed to do so in an earlier state-court suit between the parties.14 The majority view among the circuits concludes that *res judicata* applies in section 1983 suits17 and that the doctrine may bar litigation in a section 1983 suit of issues that might have been raised, but were not, in a prior state proceeding.18 While the Court has not

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11. See *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *Lee v. City of Peoria*, 685 F.2d 196, 198 (7th Cir. 1982); *Developments in the Law, supra* note 130, at 1331-32. Some courts and commentators use *res judicata* generically to denote the entire class of preclusion principles. See *McCurry*, 449 U.S. at 94 n.5. In order to avoid confusion, the term is used herein only in the narrow sense defined in the text.


14. In particular, the Court held that the unavailability of federal habeas corpus review did not render the doctrine of collateral estoppel inapplicable to the federal plaintiff's § 1983 suit for damages.

15. See 449 U.S. at 96.

16. *Id.* at 97 n.10. See also *Castorr v. Brundage*, 103 S. Ct. 240 (1982) (White, J., dissenting from the denial of certiorari).

17. See, e.g., *Southern Jam, Inc. v. Robinson*, 675 F.2d 94, 97 (5th Cir. 1982); see also *Developments in the Law, supra* note 130, at 1336-43 (arguing that principles of *res judicata*, but not of collateral estoppel, should apply in § 1983 suits).

18. See, e.g., *Southern Jam, Inc. v. Robinson*, 675 F.2d 94, 97 (5th Cir. 1982). Justice
expressly held that section 1738 requires the application of state preclusion rules, rather than a body of federal common law, in section 1983 suits.\(^1\) Most lower courts look to the applicable state law.\(^2\) Whether section 1983 may temper the command of section 1738 in certain circumstances remains to be seen.\(^3\) Presently, however, no generally-recognized exception to section 1738 prevents its application of state-law preclusion principles to determine whether federal claims raised in support of a section 1983 suit to enjoin enforcement of an earlier state court judgment should be barred by that judgment.

If the federal plaintiff overcomes the obstacles posed by the requirements of the section 1983 cause of action, the limitations of the federal district court's original jurisdiction, and federal full faith and credit,\(^4\) then he will be able to press his argument that the *Younger* doctrine should not apply to his request for an injunction of a purely private state civil suit. The plaintiff can succeed in this argument only if he demonstrates that concerns for federal-state comity are of considerably less moment when the state suit originates in a private dispute. As intimated earlier, the soundness of any such conclusion seems dubious.\(^5\) The plaintiff's arguments should carry even less force, however, in the post-judgment context that arises under section 1983. Even assuming that the suit involves only private concerns before judgment, it ceases to be an exclusively private affair upon issuance of an immediately enforceable

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\(^1\) White's opinion dissenting from the denial of certiorari in Castorr v. Brundage, 103 S. Ct. 240 (1982), supplies a head count of the circuits for and against the majority view.


\(^3\) See, e.g., Folsom Inv. Co. v. Moore, 681 F.2d 1032, 1035-36 (5th Cir. 1982) (holding that federal courts cannot grant even greater preclusive effect to state-court judgments than would the courts of the judgment-rendering state).

\(^4\) See supra text accompanying notes 98-101.
judgment. Arguably, this commitment of the state's power and authority to effectuation of the state policy underlying the judgment would render any subsequent federal intervention highly intrusive. Application of Younger's irreparable injury standard here merely insures that any such post-judgment intrusion will occur only when deficiencies in the state appellate process make intervention necessary to protect federal rights.144

The facts of Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers144 provide a suitable basis for illustrating the operation of these principles in the context of a section 1983 injunction of a purely private state civil suit. The plaintiff union had been picketing a switching yard, but the railroad had successfully halted this practice with a state court injunction. Subsequent to the issuance of this injunction in Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.,145 the Supreme Court held that the Railway Labor Act146 precluded a state court from enjoining picketing by the plaintiff and certain other unions at a terminal immediately adjacent to the switching yard. Despite such a strong precedent, the state court refused to dissolve its injunction, so the union sought and obtained a federal injunction against enforcement of the state court injunction. The Supreme Court ultimately held that the federal injunction was not permitted since not necessary either in aid of the district court's jurisdiction or in order to protect or effectuate its judgments.

The intriguing question remains of what might happen if, on the same facts, the union attempted to protect its federal right to picket by way of an injunction pursuant to section 1983. The state court injunction would constitute an immediately enforceable judgment and would thus present action under color of state law. Having established the deprivation of its federal right through action under color of state law, the union would state a cause of action under section 1983 and would thereby overcome the barrier presented by the Anti-Injunction Act. However, the conclusion that federal law did not preclude issuance of the state court injunction was not only intertwined with, but was in fact central to, the state court's decision not to dissolve its injunction. The state court had even considered and distinguished the specific decision upon which the union based its claim in federal court. Thus, the claim should fall outside of the original jurisdiction granted to the district court.144 Moreover, col-

144. See also Huffman v. Pursue, Ltd., 420 U.S. 592, 607-11 (1975) (the Court recognized that considerations of federalism are no less compelling in the context of post-judgment intervention and thus adopted a requirement of exhaustion of appellate remedies for those actions subject to Younger during trial).
148. The Court wrote in Atlantic Coast Line R.R.: [W]e are convinced that the union in effect tried to get the Federal District Court to decide that the state court judge was wrong in distinguishing the Jacksonville
lateral estoppel should preclude relitigation of the federal preemption issue as it had actually been argued in the state court proceedings.

Even if the union could overcome these difficulties, it probably could not satisfy Younger's irreparable injury standard. As Justice Black suggested in his Atlantic Coast Line R.R. opinion, a plaintiff in the union's position normally would have an adequate remedy in the state's appellate courts. In particular, the union could obtain a stay of the state trial court order from the state's appellate courts upon a showing of irreparable injury in its traditional equitable sense. The deprivation of its federal right to apply economic pressure through picketing, a loss which cannot be compensated by money damages, should provide a sufficient basis for a stay under the traditional standard. The availability of such a remedy would give the union an adequate opportunity to protect its right to picket, absent any bias in the state appellate courts. Thus, as a matter primarily of federal court jurisdiction, but also of collateral estoppel and equitable restraint, the union should not obtain a federal injunction on facts similar to those present in Atlantic Coast Line R.R., even were it to avoid the bar of the Anti-Injunction Act by resort to section 1983.

**Injunctions Pursuant to Other Bases of Federal Relief**

A federal plaintiff need not demonstrate state action or action under color of state law in order to establish a cause of action for injunctive relief under federal statutes other than section 1983. Free of this limitation, he can seek a federal stay of a private state civil suit without regard to whether the state court has rendered an immediately enforceable judgment. The problems of jurisdiction and preclusion that are attendant to injunctions of such judgments under section 1983 will arise only if the federal plaintiff chooses to wait until after judgment to seek relief. Yet, regardless of whether the federal plaintiff requests federal intervention before or after issuance of the state court judgment, he must first fit his claim under one of three exceptions to the Anti-Injunction Act.

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*Terminal decision. Such an attempt to seek appellate review of a state decision in the Federal District Court cannot be justified as necessary "to protect or effectuate" the 1967 order.*

398 U.S. at 293. "Nor was an injunction necessary because the state court may have taken action which the federal court was certain was improper under the Jacksonville Terminal decision. Again, lower federal courts possess no power whatever to sit in direct review of state court decisions." *Id.* at 296.

149. See *id.*

150. Some question exists as to whether § 2283 applied to a stay sought after judgment in the state court on the theory that the state proceedings are completed and thus no longer pending. See Hart & Wechsler, *supra* note 19, at 1236, 1253. Yet, the entire court in Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623 (1977), discussed *infra* text accompanying notes 156-61, apparently assumed that the Act actually does apply to injunctions against enforcement of state-court judgments. Moreover, the original proponent of the Act clearly intended for it to apply in the post-judgment context. See Randolph, *Report on the Judiciary*
Moreover, unless the particular facts of his case render the injunction necessary either in aid of the district court’s jurisdiction or to effectuate its judgments, the plaintiff must establish his statutory basis for relief as an “expressly authorized” exception to the Act.  

Under *Mitchum v. Foster*, a statute will constitute an “expressly authorized” exception (1) if the statute creates “a specific and uniquely federal right or remedy, enforceable in a federal court of equity,” and (2) if the federal right or remedy could be frustrated or denied its intended scope if the federal court were not authorized to stay pending state court proceedings. Arguably, the *Mitchum* test will be satisfied whenever a statute authorizes injunctive relief in circumstances constituting irreparable injury under *Younger*. If a party cannot adequately protect his federal right or remedy in the pending state court proceeding, the right or remedy will necessarily be frustrated and denied its intended scope unless a federal court is empowered to intervene. The *Younger* standard permits federal intervention only when the right or remedy would be so impaired or frustrated. Thus, if a federal statute creates a federal right or remedy that is enforceable with a federal injunction and that right or remedy cannot be adequately protected in a pending state court proceeding (i.e., *Younger’s* irreparable injury is present), then an injunction of the state court proceeding will be “expressly authorized” under the statute.

One indication of the congruence between the *Mitchum* and *Younger* tests lies in the fact that the very circumstances that led the *Mitchum* Court to recognize section 1983 as an exception to section 2283 also present irreparable injury under *Younger*. Another illustration may be found in *Vendo Co. v. Lektro-Vend Corp.*, the Supreme Court’s most recent attempt to apply *Mitchum’s* test. In *Vendo*, the federal plaintiff sought an injunction against enforcement of a state-court judgment obtained in the course of a single nonrepetitive suit for breach of noncompetition covenants. The federal suit alleged that the state-court proceeding was being used to harass the plaintiff and to prevent it from engaging in its federally-guaranteed right to compete commercially with the defendant.

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153. *Id.* at 237.
154. *Id.* at 238.
155. *See supra* text accompanying note 72.
157. The defendant in the federal action raised the matter of full faith and credit under § 1738, but none of the justices reached the issue because reversal was predicated on other grounds. *See id.* at 629. The jurisdictional problems outlined earlier in the text, *see supra* text accompanying notes 113-28, are not raised or considered in the *Vendo* opinions.
The plaintiff sought relief under section 16 of the Clayton Act, which authorizes a private action for injunctive relief against violations of the antitrust laws.

The attempt to apply the Mitchum test to these facts produced a splintered Court. Justice Rehnquist, writing for himself and Justices Stewart and Powell, concluded that section 16 did not satisfy the second prong of the test, and thus the three justices voted to deny injunctive relief. Justice Blackmun, joined by Chief Justice Burger, concurred in this result, but on the ground that section 16 itself would not authorize an injunction unless the pending state-court proceedings are “part of a ‘pattern of baseless, repetitive claims’ that [is] being used as an anticompetitive device.” The concurring opinion further indicated that the two justices would hold that section 16 constituted an expressly authorized exception to section 2283 under such circumstances. The four dissenters agreed with the concurring justices that section 16 qualified as an expressly authorized exception, but disagreed with the conclusion that the single, nonrepetitive claim involved did not support an injunction under section 16.

A six-justice majority would have held in Vendo that injunctions of pending state court proceedings are expressly authorized under section 16 of the Clayton Act. Yet, an actual holding to this effect did not arise because only a minority of the Court concluded that injunctive relief was appropriate under the facts presented. Arguably, a single, allegedly baseless, state suit that is not part of a larger pattern of vexatious litigation does not present irreparable injury under Younger because the state court defendant can raise the federal right to compete as an affirmative defense in the state-court proceeding. If the suit is part of a pattern of repetitive sham state-court proceedings, however, the ability to raise the right to compete as a defense in the single state court proceeding will not adequately protect that right from anti-competitive harassment. Such circumstances clearly present irreparable injury under the Younger doctrine. Significantly, a six-justice majority would have held that the Anti-Injunction Act does not bar a federal stay in this situation. Thus, Vendo indicates that the Court will not deny a request for a federal stay.

160. Any “disadvantage” to which the federal plaintiff is put in the initial proceeding is diminished by his ability to set up the federal antitrust claim as an affirmative defense, reviewable by this Court under 28 U.S.C. § 1257 (3), and his ability to sue for treble damages resulting from the vexatious prosecution of that state-court litigation.
161. Cf. Younger, 401 U.S. at 48 (the Court gives a pattern of vexatious criminal prosecution as an example of irreparable injury).
under Mitchum if the plaintiff presents circumstances constituting irreparable injury under Younger.

If the statute qualifies as an exception to section 2283 under the Mitchum test, the inquiry naturally turns to whether the doctrine of equitable restraint applies to bar the injunction. Of course, if the federal plaintiff clears Mitchum by demonstrating that an injunction is necessary to avert irreparable injury in his case, then the doctrine will not bar his claim. In addition, if the statute empowers a federal court to stay state judicial proceedings only in circumstances that would satisfy the Younger standard in any event, then the issue of equitable restraint will not attain any independent significance. The provision authorizing injunctions of pending state-court proceedings in furtherance of federal statutory interpleader illustrates this point. Interpleader serves as a remedy against the danger of unnecessary vexation arising from a multiplicity of suits in respect to a single liability. The plaintiff in an interpleader action can in no way preserve this remedy by raising a defense in a single state-court proceeding, and, in fact, the remedy is lost to the extent that the stakeholder must engage in proceedings in other courts. As the federal stay provides the only adequate means of preserving this remedy, irreparable injury will always be present and thus equitable restraint should never operate to bar an injunction in interpleader.

The question of whether the doctrine should apply as a bar will appear clearly only when a statute authorizes a stay of the state court proceedings and the federal plaintiff, nonetheless, cannot demonstrate irreparable injury under Younger. In this situation, the same basic analysis developed above with respect to section 1983 will apply to determine whether Younger should govern injunctions of state judicial proceedings under the statute. The fundamental issue focuses upon whether Congress intended for injunctions under the particular statute to issue without regard to the state court's ability to protect the federal right involved. This inquiry will of course require a determination of legislative intent peculiar to the particular statute relied upon by the federal plaintiff. Thus, no categorical statement properly can be made as to whether the Younger doctrine should apply to all statutes that authorize federal injunctions of pending state judicial proceedings. Yet, as with section 1983, Younger's irreparable injury standard should apply unless Congress had displaced the underlying equitable regard for federal-state comity by clearly ordering priorities in favor of issuance of the federal injunction.

164. See supra text accompanying notes 55-61.
Conclusion

The study of federal injunctions of pending state judicial proceedings begins with the simple proposition that a federal court shall never stay pending state judicial proceedings. Over the years, this unequivocal command has been tempered by judicial improvisation and finally by express legislative qualification. Yet, the notion lingers that the Anti-Injunction Act stands as an absolute bar to the federal stay, operating without regard to what might result under traditional principles of equity and comity. The practical validity of this notion seems suspect, however. Whenever principles of equity and comity would authorize the injunction under Younger, the federal plaintiff will not be turned back by the Anti-Injunction Act under the Mitchum standard. In fact, the combined rule of Younger and Mitchum has produced a framework in which a flexible judicial standard adapted from equity practice, rather than “a clear-cut prohibition qualified only by specifically defined exceptions,” actually governs the circumstances of federal intervention into pending state judicial proceedings.

This development may not present a model of judicial deference to the strict letter of the law, but the result ably accommodates the policy that generated the statutory bar. Section 2283 is founded upon the belief that “needless friction between state and federal courts” will undermine the proper functioning of the dual system of courts unless lines of demarcation between the two systems are developed. This concern for federal-state comity reflects a balanced concept, however, as friction is “needless” only so long as the state court stands able and willing to protect the federal right involved. Imposition of a woodenly-applied “clear-cut prohibition” risks directing federal deference even in situations where intervention is actually necessary to preserve federal rights. Applying Younger’s irreparable injury standard as the sole test for federal intervention, on the other hand, draws the boundary between the two systems at precisely the point where federal rights can be preserved without needless  

165. Act of March 2, 1793, ch. 22, § 5, 1 Stat. 333, 335 (“[N]or shall a writ of injunction be granted [by any federal court] to stay proceedings in any court of a state . . . .”).
166. See generally HART & WECHSLER, supra note 19, at 1235-36.
167. For the text adopted in the 1948 revision of the Judicial Code, see supra note 20.
169. See supra text accompanying notes 152-61. Mere irreparable injury, in its traditional equitable sense, will not suffice, however. See cases cited supra note 168.
friction. Thus, this delicately-balanced standard serves quite appropriately as the true basis for supervising federal intervention into pending state judicial proceedings.

George Sheram King

173. See supra text accompanying note 92.