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Federal Injunctive Relief: What Remains After Younger v. Harris?

Stephen Driesler
University of Kentucky

At present, the uniform nationwide standard of care is only an abstraction in the most progressive medical and legal minds. In an attempt to arrest the growing public criticism,[58] the medical profession has acted to improve both its practice of medicine and its relationship with the legal profession. To improve the practice of medicine, the profession has established numerous continuing education programs; it has been suggested that such programs might be more effective if attendance and a terminal examination were mandatory.[59] To improve its relationship with the legal profession, the medical profession, through local medical societies, has joined with bar associations to provide expert testimony for the injured patients.[60] Other mitigating activities include benefit schedules similar to workmen's compensation schedules; interim payment by insurers to injured patients, without admission of liability; and the use of arbitration.[61]

As noted above, the medical profession has taken concrete, although preliminary, steps toward a solution. The ideal, however, is still the uniform nationwide standard of care. Such standard should be an integral part of the "uniform national code of malpractice evidence and standards" requested by the First National Conference on Medical Malpractice.[62] It is hoped that the President's Commission on Medical Malpractice,[63] the single group with power delegated to act affirmatively and immediately, will delineate the standard so vital to renewed excellence in medical treatment.

Regardless of the solution ultimately reached, the Kentucky court's progressive decision in *Blair v. Eblen* may be viewed as a timely invitation to the medical profession to resolve the malpractice problem.

Katherine Randall Bowden

FEDERAL INJUNCTIVE RELIEF: WHAT REMAINS AFTER YOUNGER V. HARRIS?—Historically, the equitable remedy of injunction has been subjected to extensive limitations. Few legal maxims are as often referred to as "equity will not grant specific relief where there exists an adequate remedy at law." In application of this principle the courts have not

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[58] *See* notes 45-49 *supra,* and accompanying text.

[59] AMERICAN OSTEOPATHIC ASSOCIATION, *supra* note 48, at 30.

[60] For a discussion of the use of panels of experts by California, Arizona, Nevada, New Jersey, Indiana, and Wisconsin, *see* R. LONG, THE PHYSICIAN AND THE LAW 79 (1968).

[61] AMERICAN OSTEOPATHIC ASSOCIATION, *supra* note 48 at 28.

[62] *Id.* at 38.

[63] *See* note 46 *supra.*

been hesitant in denying injunctive relief where statutory civil, criminal and administrative procedures have been termed "adequate" to settling a plaintiff's grievances. There has, however, in recent years been a notable increase in the use of injunctions in two specific situations. The first situation arises when sensitive first amendment rights become subjected to the "chilling effects" of vague state statutes and the second when activities are protected from harassment of threatened or actual prosecution in bad faith under the Civil Rights Act of 1964.[1]

The purpose of this comment is to examine and explore the extent to which the recent Supreme Court decision in *Younger v. Harris*[2] has affected these recently expanded grounds for injunctive relief. In this case John Harris, Jr., was indicted under the California Criminal Syndicalism Act.[3] Harris then sought relief in the Federal District Court to enjoin Eville J. Younger, the District Attorney for Los Angeles County, from prosecuting him under this Act alleging that the prosecution and even the presence of this Act violated his freedoms of speech, press and association guaranteed by the Constitution of the United States.

Pursuant to 28 U.S.C. § 2284[4] a three-judge Federal District Court was convened and held that California's Criminal Syndicalism Act was unconstitutionally vague.[5] The District Court then enjoined Younger from "further prosecution of the currently pending action against the plaintiff Harris for alleged violation of the Act."[6] District Attorney Younger appealed the District Court's decision pursuant to 28 U.S.C. § 1253[7] and presented three basic questions: (1) whether the Supreme Court's decision, in *Whitney v. California*,[8] holding the California law here in question constitutional, was binding on the District Court; (2) whether the state's law is constitutional on its face and (3) whether the issuance of an injunction was in violation of 28 U.S.C. § 2283.[9]

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1 REV. STAT. § 1979 (1875), 42 U.S.C. § 1983 (1964).

2 —— U.S. ——, 91 S. Ct. 746 (1971).

3 CAL. PENAL CODE § 11401 which makes it a felony to advocate, teach or aid and abet the commission of crime, sabotage or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing any political change.

4 This section requires, by Act of Congress, a three-judge district court to hear cases asking for an injunction to restrain enforcement of a state statute.

5 Harris v. Younger, 281 F. Supp. 507 (C.D. Cal. 1968).

6 *Id.* at 517 (1968).

7 This Act states:

> Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

8 274 U.S. 357 (1927).

9 This Act specifically notes:

> A court of the United States *may not grant an injunction* to stay pro-

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The Supreme Court, in *Younger v. Harris,* held:

> [T]he judgment of the District Court, enjoining appellant Younger from prosecuting under these California statutes, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin pending state proceedings except under special circumstances.[10]

HISTORY

Since the beginning of this nation's history the federal judiciary has been prevented, subject to a few exceptions, from interfering in state court proceedings. Yet, men have also been concerned about the possibility and problems of state courts not fully enforcing certain rights guaranteed to all citizens by the Federal Constitution. James Madison, father of the Federal Constitution, was concerned with "What was to be done after improper verdicts in state tribunals, obtained under the biased directions of a *dependent* judge, or the local prejudice of an undirected jury?"[11]

Because of the arguments of Madison and others, the Constitution does not prevent the federal courts from enjoining any state proceedings.[12] However, in 1793, Congress denied federal courts the power to interfere in state court proceedings. The Act of March 2, 1793, which is the predecessor of the present section 2283 provided: "[N]or shall a writ of injunction be granted to stay proceedings in any court of any state."[13] This clause remained intact with only slight modification, in the area of bankruptcy, until the new Judicial Code of 1948. Despite the seemingly absolute language of the prohibition against injunctions many exceptions were carved into it with little resistance.[14] In 1941, the Supreme Court attempted to stop this loose judicial interpretation of the anti-injunction law. In that year the Court, in its decision in *Toucey v. New York Life Insurance Co.,*[15] reversed this trend by "strictly" interpreting and applying the anti-injunction statutes. But the implications of *Toucey* were soon superceded by the somewhat more liberalized language of section 2283 of the Judicial Code of 1948. It has been criticized, however, that

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(Footnote continued from preceding page)
ceedings in a State court except as *expressly authorized* by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effecuate its judgments.

[10] —— U.S. ——, 91 S. Ct. 746, 749 (1971).

[11] 5 ELIOT, DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 159 (1787).

[12] Note, *Federal Power to Enjoin State Court Proceedings,* 74 HARV. L. REV. 726 (1961).

[13] Act of March 2, 1793, ch. 22, § 5, 1 Stat. 334 (1793).

[14] *See Developments in the Law-Injunctions,* 78 HARV. L. REV. 996 (1965).

[15] 314 U.S. 118 (1941).

"Section 2283 leaves the question of interference to the equitable discretion of the federal courts. . . ."[16]

In addition to section 2283, 42 U.S.C. 1983 has been very active in employing the courts' equity powers. In essence, this statute is a by-product of the Reconstruction Congress and was designed to protect the newly won rights of freedom by providing a civil remedy for the deprivation of these rights.[17] But according to traditional doctrine, equity would not enjoin criminal prosecution, protect personal rights, nor act when a legal remedy was available and adequate.[18] Thus, even after the passage of section 1983 and nearly two hundred years after Madison voiced his concern, we were still faced with the problems of "dependent" state judges and the "prejudices" of local juries prevailing. The all important question, however, still remained unanswered over the mandates of the Federal Constitution. Was there an "adequate remedy" at law when criminal laws were enforced discriminatorily or vexatiously in order to obstruct a legitimate activity?[19]

The Supreme Court, in *Monroe v. Pape*,[20] answered this question by examining the meaning of section 1983 to determine if Congress intended "to give a remedy to parties deprived of Constitutional rights, privileges and immunities by an official's abuse of his position."[21] In *Monroe* the Court held that Congress did intend to provide such a remedy because:

> It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and the claim of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies.[22]

Therefore, since the Act of 1793 was in force at the time section 1983 became law, if it were intended as an exception, section 1983 would still be so under the present section 2283. But unfortunately there is no indication whether or not section 1983 was meant as an exception to the anti-injunction act of 1793. Therefore the question of whether 42 U.S.C. § 1983 is an exception to 28 U.S.C. § 2283 is

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[16] Boyer, *Federal Injunctive Relief: A Counterpoise Against the Use of State Criminal Prosecution Designed to Deter the Exercise of Preferred Constitutional Rights*, 13 How. L.J. 69 (1967).

[17] Note, *The Dombrowski Remedy, Federal Injunctions Against State Court Proceedings Violative of Constitutional Rights*, 21 RUTGERS L. REV. 92, at 105 (1966).

[18] 78 HARV. L. REV., supra note 14, at 996.

[19] *See generally*, Yick Wo v. Hopkins, 118 U.S. 356 (1886).

[20] 365 U.S. 167 (1961).

[21] *Id.* at 172.

[22] *Id.* at 180.

still a matter of judicial interpretation. This interpretation is likely to turn on the points of comity and abstention.

CONSIDERATION OF COMITY

The English doctrine of comity was adopted in the United States to prevent friction between state and federal courts. It is basically defined as "[t]he principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation . . ."[23] Comity is "more than a mere courtesy or goodwill but less than a positive rule of law."[24] It is the reason behind the long-standing policy against federal courts interfering in state court proceedings.

The first major exception that established the power of the federal courts to intervene in state court proceedings was set forth in *Ex Parte Young*.[25] In *Young* the court stated that federal courts could enjoin state proceedings where state officials "[t]hreaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected by an unconstitutional act . . ."[26] Strict application of this principle would have allowed federal courts to adjudicate the constitutionality of any questionable state law. But the Court went on to temper that principle by saying that this may not be done except under *extraordinary* circumstances where the danger of irreparable loss is both *great* and *immediate*.[27]

CONSIDERATION OF ABSTENTION

The Supreme Court has sought to avoid conflicts with state courts through the doctrine of judicial restraint. In the case of *Railroad Commission of Texas v. Pullman Co.*,[28] the Supreme Court held in establishing the abstention doctrine, that a federal court should sometimes abstain from deciding a case until after the state court has ruled on the matter. Abstention has been defined as the doctrine "whereby a federal court motivated by principles of comity or by a desire to avoid premature constitutional adjudication, declines to proceed in a case over which it has jurisdiction and remits all or part of the controversy to a state court."[29] This doctrine assumes that state courts and prosecutors will observe constitutional limitations in their pro-

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[23] BLACK'S LAW DICTIONARY, 334 (4th ed. rev. 1968).
[24] 13 How. L.J., *supra* note 16 at 73.
[25] 209 U.S. 123 (1908).
[26] *Id.* at 156.
[27] *Id.*
[28] 312 U.S. 496 (1941).
[29] 13 How. L.J., *supra* note 16, at 76-77.

ceedings. Therefore the mere possibility of erroneous initial application of constitutional standards will not usually constitute "irreparable injury" necessary to justify a federal court injunction. This rule was explicitly set forth in *Douglas v. City of Jeanette.*[30] The Supreme Court, in refusing to grant injunctive relief, stated that the enjoining of a state's criminal process, by a federal court is to be justified only on a showing of both great and immediate irreparable injury.[31]

Thus, strict application of the *Douglas* principle would have prevented federal courts from intervening in state criminal prosecutions or enjoining enforcement of unconstitutional state laws. However, to assure protection of preferred constitutional rights the Supreme Court in *Dombrowski v. Pfister*[32] held that abstention is inappropriate in First Amendment cases.[33]

DEVELOPMENT OF THE INJUNCTION—DOMBROWSKI TO HARRIS

In *Dombrowski,* the executive director of the Southern Conference Educational Fund (SCEF), James Dombrowski was arrested under two Louisiana "anti-subversion" statutes. One was the "Subversive Activities and Communist Control Law"[34] and the other was the "Communist Propaganda Control Law."[35] These were criminal statutes whose possible punishment included a fine of $10,000 and 10 years imprisonment.[36] Among the dangerous articles found upon search of Dombrowski's house and office were Thoreau's *Journal* and SCEF membership and contribution lists. These articles and other files and records were removed from the SCEF's office, destroying its capacity to function. Soon after, the warrants were summarily vacated on the ground that there were no facts whatsoever to justify binding the defendants over for trial. Despite this, Representative Pfister, Chairman of the Louisiana Joint Legislative Committee on Un-American Activities demanded enforcement of the "anti-subversion"

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[30] 319 U.S. 157 (1943).

[31] *Id.* at 163-64.

[32] 380 U.S. 479 (1965).

[33] Mr. Justice Brennan, speaking for the court, stated:

> [T]he abstention doctrine is inappropriate for cases such as the present one where, unlike Douglas v. City of Jeannette, statutes are justifiably attacked on their face as abridging free expression, or as *applied* for the *purpose of discouraging protected activities.*

[34] LA. REV. STAT. ANN. §§ 14:358-374 (Supp. 1971).

[35] LA. REV. STAT. ANN. §§ 14:390-390.8 (Supp. 1971).

[36] These statutes made it a felony for anyone belonging to a "communist front organization" to remain in Louisiana longer than five days without registering as such. The statutes created a presumption that an organization was "communist front" if it "had in any . . . way been officially cited or identified" as such by (1) Attorney General of the United States, (2) Subversive Activities Control Board of the United States, or (3) by committee or subcommittee of the United States Congress.

laws against Dombrowski. At this point Dombrowski filed a complaint in the federal district court. He sought permanent and interlocutory relief under 42 U.S.C. § 1983 on the grounds that the prosecution commenced and threatened against them was not undertaken in good faith, but was malicious and without probable cause.[37]

In December of 1963, a three-judge district court was convened and a majority orally ruled that (1) the statutes were constitutional on their face and that (2) assuming the facts alleged to be true, the complaint failed to state a claim for which relief could be granted.[38] On appeal the Supreme Court held that the defendant's complaint was valid and that he should not be barred from obtaining equitable relief in federal courts. In explaining its reasons for overturning the District Court, the Supreme Court stated that the threatened and actual prosecution, under the Louisiana statutes, was not made with any expectation of securing valid convictions. Rather, this was part of a plan to use threats of prosecution, arrests, searches, and seizures to harass and discourage appellant and his supporters from asserting or attempting to vindicate the constitutional rights of Negro citizens of Louisiana.[39] This prosecution, unaffected by the prospects of its success or failure, was termed by the Court to be "[t]he chilling effect upon the exercise of First Amendment rights . . ."[40]

In summary, the *Dombrowski* case said that a district court should not *abstain,* but should grant injunctive relief when statutes are unconstitutional on their face *or* where they are applied to harass and discourage the exercise of free expression or other First Amendment rights.[41] In addition, *Dombrowski* also limited the use of abstention by expanding the meaning of "irreparable injury."[42]

After *Dombrowski* it became clear that the court was not about to let "bad faith enforcement" prevail by itself. The Supreme Court, in *Cameron v. Johnson*[43] limited the "bad faith" part of *Dombrowski* to cases of clear harassment and bad faith. In *Cameron* a district court injunction was sought against enforcement of Mississippi's anti-picketing statute.[44] It was alleged that the statute was both unconstitutionally vague and unconstitutionally applied. A divided court denied the injunction after finding that the record did not establish

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[37] *See* Civ. A. No. 14019, Dombrowski v. Pfister, E.D. La. 1963.
[38] Dombrowski v. Pfister, 227 F.Supp. 556 (E.D. La. 1964).
[39] 380 U.S. at 482.
[40] 380 U.S. at 487.
[41] Comment, *The Louisiana Compromise, Abstention and Vagueness: Dombrowski v. Pfister,* 13 U.C.L.A. L. REV. 153 (1965).
[42] Note, *Constitutional Law: Limitations Imposed on Traditional Use of Doctrine of Federal Judicial Abstention,* 1966 DUKE L.J. 219 (1966).
[43] 390 U.S. 611 (1968).
[44] MISS. CODE ANN. § 2318.5 (Supp. 1970).

the necessary bad faith and harassment.[45] In *Cameron* the court adopted a "distinction that the lower federal courts had been following in practice, the distinction between obvious harassment and a claim of bad faith enforcement.[46]

It is against this background that the propriety of an injunction in the *Harris* case must be judged. This main issue the court considered in *Harris,* and the point the case seems to turn on, is the "long-standing public policy against federal court interference with state court proceedings . . ."[47] The reasons behind this policy are two-fold. First, in doctrine of equity jurisprudence:

> [T]hat courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an *adequate remedy at law* and will not suffer irreparable injury if denied equitable relief.[48]

This reason is supported by the second consideration, the doctrine of "comity." The Court went on to discuss "Our Federalism" and how "the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate way."[49] The Court pointed out that when absolutely necessary, for the protection of constitutional rights, federal courts have the power to enjoin state officers from initiating criminal proceedings. However, this may not be done "except under extraordinary circumstances" where the danger of irreparable injury is both great and immediate.[50] Irreparable injury became a key turning point in *Harris.* Throughout the case the court stressed the importance of showing this factor. However, the Court made it clear that "even irreparable injury is insufficient unless it is both great and immediate."[51]

Irreparable damage, the Court concluded, does include the cost, anxiety, and inconvenience of a single criminal prosecution. Though

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[45] Cameron v. Johnson, 390 U.S. 611 (1968). Mr. Justice Brennan, speaking for the Court stated:

> [W]e viewed Dombrowski to be a case presenting a situation of the "impropriety of [state officials] invoking the statute in bad faith to impose continuing harassment in order to discourage appellants' activities". . . . In contrast . . . in this case . . . there was no harassment, intimidation, or oppression. . . . *Id.* at 619.

[46] Sedler, *The Dombrowski-Type Suit as an Effective Weapon for Social Change: Reflections From Without and Within,* 18 KAN. L. REV. 237, 269 1968).

[47] Younger v. Harris, —— U.S. ——, 91 S. Ct. 746, 750 (1971).

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.* at 751.

these factors may have a "chilling effect" they, by themselves, do not justify federal intervention.[52]

In addition the Supreme Court in *Harris* concluded that the procedures for testing a statute's validity "on its face," in *Dombrowski* are "fundamentally at odds with the function of the federal court in our constitutional plan."[53] The Court based this conclusion on the well established principle that the source and duty of the judiciary to declare laws unconstitutional is in the final analysis, derived from its responsibility for resolving concrete disputes brought before the courts for decision.[54] In other words, it is rarely an appropriate task for the courts to render "advisory opinions" on the constitutionality of statutes "on their face."

Finally, the Court held that "[t]he *Dombrowski* decision should not be regarded as having upset the settled doctrines that have already confined very narrowly the availability of injunctive relief against state criminal prosecutions."[55]

At this point it might be helpful to compare the holdings in the *Dombrowski* and the *Harris* cases. There are two basic distinguishing facts. First, in *Dombrowski* there was no state prosecution pending before federal proceeding started, whereas in *Harris* there was. Second, James Dombrowski alleged and proved "bad faith" and "harassment" whereas John Harris did not even allege that the prosecution was brought in bad faith to harass him.

CONCLUSION

> The general principle, basic to American Federalism, that the United States courts should refrain from interfering with state courts' enforcing local laws is unassailable. But the sharp edge of the Supremacy Clause cuts across all such generalizations. When a state, under the pretext of preserving law and order uses local laws, valid on their face, to harass and punish citizens for exercise of their constitutional rights or federally protected statutory rights, the general principle must yield to the exception. . . .[56]

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[52] Mr. Justice Black, speaking for the court, stated:
> Moreover, the existence of a "chilling effect," even in the area of First Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting state action. *Id.* at 754.

[53] *Id.*

[54] *See,* Marbury v. Madison, 5 U.S. (1 Cranch) 49 (1803).

[55] Younger v. Harris, —— U.S. ——, 90 S. Ct. 746, 755 (1971). In concluding his opinion, Mr. Justice Black stated:
> Because our holding rests on the *absence* of the factors under equitable principles to justify federal intervention, we have *no occasion* to consider whether 28 U.S.C. § 2283 . . . would in and of itself be controlling under the circumstances of this case.

[56] Cox v. Louisiana, 348 F.2d 750 (5th Cir. 1965).

In essence, injunctive relief should be given when a plaintiff's constitutional rights are threatened by "bad faith" criminal prosecution. If an injunction were not granted, the only remedy left would be to subject the plaintiff to the uncertainties and dangers of multiple criminal prosecution. It is these imponderables and contingencies that inhibit the full exercise of first amendment rights. In such a case the remedy at law would be at war with itself. Therefore, the rule established in *Harris* seems to be in conflict with the public policy of assuring that legitimate conduct is not inhibited by unnecessary legal uncertainty.[57]

The final result of the *Harris* decision is that an individual's constitutional rights vary depending upon whether or not he is able to file his papers in the federal court *before* the prosecution can present its case to a grand jury. This "race to the court house" was predicted by Mr. Justice Harlan in his dissenting opinion in *Dombrowski* in which he said: "to make standing and criminality turn on which party wins the race to the forum of its own choice is to repudiate the considerations of federalism to which the Court pays lip service."[58]

Despite the ambiguities and the questions left unanswered in *Younger v. Harris,* the decision appears to signal a retreat in the judicial attitude toward substantive due process by restricting the availability of injunctive relief.

Stephen Driesler

CONSTITUTIONAL LAW—THE INDIGENT DEFENDANT MOVES ONE STEP CLOSER TO EQUALITY.

> We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. 'Indigence' in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. . . .
>
> Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession

[57] See Bunis v. Conway, 17 App. Div. 2d 207, 234 N.Y.S.2d 435 (1962), *appeal dismissed,* 12 N.Y.2d 882, 188 N.E.2d 260 (1963).

[58] 380 U.S. at 502 (Harlan, J., dissenting).