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FEDERAL EQUITABLE RESTRAINT: A YOUNGER ANALYSIS IN NEW SETTINGS

The doctrine of *Younger v. Harris* limits the availability of federal relief sought by individuals facing prosecutions under allegedly unconstitutional state statutes by requiring a federal court to refrain from granting equitable relief against pending state prosecutions absent certain extraordinary circumstances. However, if no state prosecution is pending against a federal complainant, the principles of comity and equity espoused by *Younger* do not require a federal court to exercise equitable restraint. The availability of federal relief, therefore, may depend in large part upon the determination of the pendency of a state prosecution.

Standards for determining when a state criminal prosecution is pending so as to limit federal relief from allegedly unconstitutional state statutes have not been fully specified by the Supreme Court. Two cases decided during the October Term, 1974, *Hicks v. Miranda* and *Huffman v. Pursue, Ltd.*, assist in defining the term "pending state prosecutions." *Hicks* held that before proceedings of substance on the merits in federal court have begun, *Younger* will apply even though the federal complaint was filed before the initiation of a state prosecution; *Huffman* held that *Younger* applied to limit federal intervention in state proceedings in

2. The federal complainant in *Younger* sought injunctive but not declaratory relief; hence, the holding in that case is limited to the proposition that a federal court may not grant an injunction against a pending state prosecution absent extraordinary circumstances. 401 U.S. at 53-54. In the companion case of *Samuels v. Mackell*, 401 U.S. 66 (1971), the Court applied the principles developed in *Younger* to preclude federal declaratory relief from pending state prosecutions. 401 U.S. at 73.
4. *Steffel v. Thompson*, 415 U.S. 452, 475 (1974), held that federal declaratory relief is not precluded by the *Younger* doctrine where no state prosecution is pending and there is a genuine threat of enforcement of the challenged state statute. Recently, the Court extended the principles of *Steffel* to hold that a preliminary injunction against future prosecutions was not subject to the *Younger* restrictions. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 930 (1975); see note 43 infra.

The rationale advanced for not denying federal equitable relief when no state prosecution is pending is that "the relevant principles of equity, comity, and federalism have little force in the absence of a pending state proceeding." *Steffel v. Thompson*, 415 U.S. 452, 462 (1974), quoting from *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 509 (1972).

5. 422 U.S. 332 (1975).
7. 422 U.S. at 349.
8. *Huffman* involved a public nuisance statute under which a state civil proceeding closely resembling a criminal prosecution was pending. The Court held that *Younger* principles applied in full to limit federal intervention in such state proceedings. 420 U.S. at 603-07. For further discussion of this portion of the *Huffman* decision see notes 67-70 and accompanying text infra.
which state appellate remedies had not been exhausted. Thus, the *Hicks* holding may aid in determining whether a state criminal proceeding which has not reached judgment is "pending" for purposes of applying *Younger*, while *Huffman* indicates that a state proceeding may still be "pending" even after the state judgment has been rendered.

These two cases further contract the availability of federal relief from enforcement of allegedly unconstitutional state statutes. This Comment examines the law leading up to these cases and the cases themselves. An analysis of *Hicks* and *Huffman*, both under the *Younger* doctrine and in light of the doctrine of *Monroe v. Pape* — that exhaustion of state administrative or judicial remedies is not required before a federal suit under 42 U.S.C. § 1983 can be maintained — leads to the conclusion that neither *Hicks* nor *Huffman* should be read as a mechanical test to undermine the duty of a federal court carefully to balance state and federal interests under *Younger* when determining the propriety of federal intervention in state proceedings.

**THE PRIOR LAW**

Federal policies restricting intervention in state criminal proceedings are founded in traditional equitable doctrines. Under the test for determining the propriety of federal intervention in state prosecutions formulated by the Supreme Court, it must be shown that there exists threatened injury greater than that incidental to the defense of any good faith criminal prosecution, and that a federal court can offer protection not available through the conventional state process and possible review by the Supreme Court. Hence, federal intervention normally will be inappropriate since state prosecutions generally afford an adequate remedy.

9. 420 U.S. at 609.
10. Application of *Younger* where federal relief is sought after completion of a state proceeding as to which the losing litigant did not exhaust state appellate remedies may produce harsh results. The *Huffman* Court implied that even if failure to make a timely appeal were to foreclose all state appellate remedies, *Younger* principles would apply to bar federal equitable relief as well. 420 U.S. at 611 n.22; see note 80 and accompanying text infra. *But cf.* Fay v. Noia, 372 U.S. 391, 434-35 (1963), where the Court held that a federal habeas corpus applicant need exhaust only those state remedies still available at the time an application in federal court is filed.
12. *See note 72 infra.*
13. *See text accompanying note 132 infra.*
14. *See, e.g.*, Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); *Fenner v. Boykin*, 271 U.S. 240 (1926). Both cases required extraordinary circumstances threatening great and immediate irreparable loss as a prerequisite to federal injunctions against state prosecutions; the *Fenner* Court noted that "[a]n intolerable condition would arise, if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some federal court." 271 U.S. at 244.
at law and threaten only that injury incidental to any criminal prosecution.\\(^{16}\)

Notions of comity, involving a balancing of federal interest in safeguarding constitutionally guaranteed rights against state interest in enforcing state laws, likewise restrict federal interference with state prosecutions.\\(^{17}\) Comity requires a close examination of the state interests involved, the federal rights imperiled, the gravity of the threat to federal rights, and the abilities of state and federal courts to provide adequate relief.\\(^{18}\) Comity is often realized through abstention, which requires a federal court having proper jurisdiction to abstain from the exercise of that jurisdiction in deference to a state court, giving the state court an

\[16.\] Behind the reluctance of federal equity courts to intervene in state prosecutions is a concern for avoiding interference with ongoing criminal proceedings. Justice Frankfurter recognized the powerful tradition involved: "The maxim that equity will not enjoin a criminal prosecution summarizes centuries of weighty experience in Anglo-American law." Stefanelli v. Minard, 342 U.S. 117, 120 (1951).


In Younger v. Harris, 401 U.S. 37, 44 (1971), Justice Black described comity in a federal system as

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\text{a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.}
\]

An assumption basic to maintaining the proper federal-state balance articulated in the cases presently under consideration is that state courts will protect and vindicate federal rights, for otherwise federal deference to state courts would be unjustified on equitable principles because an adequate state remedy at law would be absent. See Douglas v. City of Jeannette, 319 U.S. 157 (1943); Note, The Federal Anti-Injunction Statute and Declaratory Judgments in Constitutional Litigation, 83 Harv. L. Rev. 1870, 1873 (1970).

\[18.\] Maraist, Federal Intervention in State Criminal Proceedings: Dombrowski, Younger, and Beyond, 50 Texas L. Rev. 1324, 1338-48 (1972). To the extent state proceedings protect federal rights, the need for federal intervention dissipates. The customary respect due an individual's choice of a federal forum in a system of concurrent jurisdiction, see Zwickler v. Koota, 389 U.S. 241, 248 (1967), and the role of federal courts as primary vindicators of constitutional rights, see Steffel v. Thompson, 415 U.S. 452, 464 (1974), generally support federal intervention; however, "[w]hile the protective role of the federal courts always weighs in favor of federal intervention, another federal interest — the interest in avoiding unnecessary federal constitutional decisions — frequently weighs against it." Maraist, Federal Intervention, supra at 1338.

The anti-injunction statute, 28 U.S.C. § 2283 (1970), provides a legislative expression of principles of comity, operating in conjunction with comity rather than being merely a restatement of the judicial doctrine. Cf. Mitchell v. Foster, 407 U.S. 225, 243 (1972). While section 2283 is mandatory in its prohibition of federal injunctions where applicable, see Mitchum v. Foster, 407 U.S. 225 (1972); Atlantic Coast Line R.R. v Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 286-87 (1970), comity is also achieved through judicial discretion in those cases where section 2283 does not apply.
opportunity to resolve underlying issues of state law. When applicable, abstention requires that a federal court avoid resolution of federal constitutional questions until the state court has had an opportunity to dispose of the controversy on threshold state law grounds.

The Supreme Court reassessed federal abstention in *Dombrowski v. Pfister*. Holding the challenged statutes void as overbroad abridgments of first amendment rights, the Court felt that abstention was inappropriate for two reasons: allegations were made that state officials had invoked the statutes in bad faith to harass the complainants and to discourage the exercise of protected freedoms, and the statutes were attacked on...
their faces as overbroad infringements of first amendment freedoms.\textsuperscript{24} The implication of the second basis for the Court's refusal to abstain was that the chilling effect\textsuperscript{25} on the exercise of first amendment rights produced by a facially vague or overbroad statute constitutes irreparable harm sufficient to require federal equitable intervention.\textsuperscript{26}

In a group of cases known as the Younger sextet,\textsuperscript{27} decided during the 1970 Term, the Supreme Court examined the sufficiency of chilling effect alone as a ground for federal equitable intervention. Noting the supra. In Cameron v. Johnson, 390 U.S. 611, 621 (1968), the Court indicated that to establish bad faith a complainant must show that prosecutions had been brought without expectation of conviction and solely to discourage the exercise of protected activity.

The Dombrowski Court's willingness to permit federal intervention is explicable on traditional grounds: the presence of bad faith prosecution constituted irreparable injury, see 380 U.S. at 489-90; allegations of threats of prosecutions under statutes other than those supporting existing indictments meant that immediate state resolution of all constitutional issues was improbable, see id. at 489; and it was unlikely that an acceptable limiting construction of the allegedly vague statutory provisions could be attained in a solitary state prosecution, see id. at 491-92. As one commentator observed in regard to Dombrowski: "The formulations are new but the result is not. It has been well established that abstention is improper if the state statute is unconstitutional regardless of the construction the state court might give it." Wright, supra note 19, at 207 (footnotes omitted).

\textsuperscript{24} 380 U.S. at 490-91.

\textsuperscript{25} The chilling effect doctrine is a recent addition to constitutional law theory designed to protect the exercise of constitutional freedoms from unwarranted limitation generated by facially vague or overbroad laws. See Walker v. City of Birmingham, 388 U.S. 307, 344-45 (1967) (Brennan, J., dissenting). See generally Note, The Chilling Effect in Constitutional Law, 69 Colum. L. Rev. 808 (1969). A "vague" statute is imprecise in delineating the scope of conduct regulated, and is therefore susceptible to several interpretations, some of which may infringe upon constitutionally protected conduct; an "overbroad" statute is clear in describing the conduct regulated, but includes within its coverage constitutionally protected activity. Note, The Supreme Court, 1970 Term, 85 Harv. L. Rev. 38, 301 n.7 (1971). The Supreme Court has used chilling effect arguments to develop the doctrine that only by precise and sufficiently narrow statutes may freedom of expression be constitutionally regulated. See, e.g., Coates v. Cincinnati, 402 U.S. 611 (1971).

The chilling effect resulting from an unconstitutionally overbroad state statute presents a stronger argument for federal intervention in state prosecutions than does that resulting from an unconstitutionally vague statute. When a statute is challenged for vagueness, two substantial policies limit federal intervention: the interest of a state in construing its own laws to regulate only those activities that are not constitutionally protected and the policy of avoiding unnecessary federal constitutional decisions. When a statute is attacked as overbroad, no limiting state construction is possible and a decision on the constitutional question cannot be avoided. See Maraist, Federal Intervention, supra note 18, at 1344-46; Zwickler v. Koota, 389 U.S. 241, 250-52 (1967) (no limiting construction of overbroad statute conceivable; federal abstention inappropriate since chilling of protected freedom would result).

\textsuperscript{26} 380 U.S. at 490-92.

roles of equity and comity, "the settled doctrines that have always confined very narrowly the availability of injunctive relief against state criminal prosecutions," the Court held in Younger v. Harris that an allegation of chilling effect from facially vague or overbroad state statutes will not, by itself, support federal equitable intervention in pending state prosecutions. In the companion case of Samuels v. Mackell the Court


29. Id. at 53-54. The holding in Younger is that an allegation of facial unconstitutionality does not in itself justify a federal injunction against pending enforcement of a state statute absent bad faith, harassment, or other extraordinary circumstances. Id. at 54. Thus, even when a state prosecution is pending, federal intervention may be justified in certain instances. Bad faith prosecution, as discussed in Dombrowski v. Pfister, 380 U.S. 479, 488-90 (1965), is the most frequent "extraordinary circumstance." See note 23 supra. Other circumstances justifying federal intervention as enumerated in Younger are a "flagrantly and patently" unconstitutional state statute, see Watson v. Buck, 313 U.S. 387, 402 (1941); Sendak v. Nihiser, 44 U.S.L.W. 3297, 3298 (U.S. Nov. 18, 1975) (dissenting opinion), and a defense to a single state prosecution that is insufficient to vindicate endangered federal rights. See 401 U.S. at 46, 53-54.

In Hicks v. Miranda, 422 U.S. 332 (1975), the Supreme Court held that the district court erred in finding bad faith and harassment. 422 U.S. at 350. Since the seizure of allegedly obscene films had been supported by judicial order, the Court concluded that official bad faith could not be inferred even if the district court were correct in concluding that the challenged statute was unconstitutional; otherwise bad faith would always exist if a state statute were held unconstitutional "and the rule of Younger would be swallowed up by its exception." 422 U.S. at 352; cf. Anonymous v. Association of the Bar, 515 F.2d 427, 434-35 (2d Cir.), cert. denied, 96 S. Ct. 122 (1975) (neither lapse of time nor expectation of lack of success on constitutional questions at state level constitutes an exception to Younger principles).


The very nature of "extraordinary circumstances," of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention in state criminal proceedings. But whatever else is required, such circumstances must be "extraordinary" in the sense of creating an extraordinarily pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation.

In Helfant a New Jersey municipal court judge, facing an indictment for obstruction of justice and false swearing, alleged coercion and harassment by the New Jersey Supreme Court and the impossibility of obtaining a fair review by that Court if convicted of the state charges. Concluding that the New Jersey judicial system provided adequate safeguards to prevent a denial of due process in the state appellate process and noting that by the time of its decision different judges were sitting on the New Jersey Supreme Court, the Court held that the claim that a fair trial could not be received in the state court system was without foundation and the facts did not, therefore, come within any exception to Younger. 421 U.S. at 130-31; cf. Stefanelli v. Minard, 342 U.S. 117 (1951) (federal courts should not intervene in state prosecutions to suppress the use of evidence allegedly secured by unlawful search and seizure). But cf. Gibson v. Berryhill, 411 U.S. 564 (1973) (incompetency of state agency to adjudicate pending issues made Younger dismissal inappropriate).
stated that the standards for declaratory relief were no less rigid than those for injunctive relief; thus, a declaratory judgment generally should not issue when a state prosecution is pending.\(^{31}\)

While *Younger* and *Samuels* established that a federal court normally should refrain from considering the merits of requests for injunctive or declaratory relief from pending state prosecutions,\(^{32}\) neither case decided whether federal relief would be proper in the absence of a pending state prosecution.\(^{33}\) This issue was addressed in *Steffel v. Thompson*.\(^{34}\) The

31. *Id.* at 72-73. Looking to the practical effects of injunctive or declaratory relief, Justice Black said: "[O]rdinarily a declaratory judgment will result in precisely the same interference with and disruption of state proceedings that the long-standing policy limiting injunctions was designed to avoid." *Id.* at 72. But cf. Cameron v. Johnson, 390 U.S. 611 (1968) (affirmation of a grant of declaratory relief where injunctive relief denied); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 152-55 (1963) (request for declaratory relief from state statute does not require convening of three-judge court as would a request for injunctive relief).

Justice Brennan examined the equation of injunctive and declaratory relief in a lengthy opinion in *Perez v. Ledesma*, 401 U.S. 82, 93 (1971) (concurring in part and dissenting in part). He concluded that a declaratory judgment was intended by Congress as a less intrusive alternative to injunctive relief, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 (1970), having arisen in part from congressional antipathy toward federal court use of injunctions, see *id.* at 111-15, and that irreparable injury was not prerequisite to declaratory relief: "Congress expressly rejected that limitation and to engraft it upon the availability of the congressionally provided declaratory remedy is simply judicial defiance of the congressional mandate." *Id.* at 116. Justice Brennan also expressed his belief that federal intervention is appropriate when no state prosecution is pending, and opined that the milder and less intrusive nature of declaratory relief makes it suitable to vindicate constitutional rights endangered by threatened state prosecutions. *Id.* at 130.

*Samuels* was expressly limited to the situation of a pending state prosecution. 401 U.S. at 73-74. In *Steffel v. Thompson*, 415 U.S. 452 (1974), the Court adopted the position taken by Justice Brennan in *Perez* and rejected the application of *Samuels* when no prosecution was pending. See notes 39-42 and accompanying text infra.

32. The doctrine articulated in *Younger* and *Samuels* is distinct from abstention. Abstention requires federal court deference to state courts for resolution of issues of state law; jurisdiction is retained by the federal court for later disposition of the federal constitutional issues should that prove necessary. See *Zwickler v. Koota*, 389 U.S. 241, 244 n.4 (1967); *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 421 (1964) (reservation of federal claims in state court preserves them from the binding effect of a state adjudication); cf. *Harris County Comm'r's Court v. Moore*, 420 U.S. 77, 88 n.14 (1975). Under the *Younger* doctrine of equitable restraint, the federal court will dismiss the federal action, allowing a state court to decide the federal constitutional claim when it is raised as a defense to a state prosecution.

33. The Court in both *Younger* and *Samuels* expressly reserved the question whether federal courts could properly grant injunctive or declaratory relief when no state proceedings were pending. *Younger v. Harris*, 401 U.S. 37, 41 (1971); *Samuels v. Mackell*, 401 U.S. 66, 73-74 (1971).

34. 415 U.S. 452 (1974). Two years before the decision in *Steffel*, Justice Brennan indicated in *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498 (1972), that
petitioner in *Steffel* was twice threatened with arrest for distributing handbills protesting American involvement in Vietnam. He brought a federal action seeking declaratory and injunctive relief from threatened prosecution. The district court dismissed the claims as inappropriate for federal relief; upon Steffel's appeal from the denial of declaratory relief, the United States Court of Appeals for the Fifth Circuit affirmed. A unanimous Supreme Court reversed, holding that federal declaratory relief is appropriate if no state prosecution is pending and a genuine threat of enforcement of the challenged statute is demonstrated.

There were two primary bases for the *Steffel* Court's conclusion that declaratory relief is not precluded when no state prosecution is pending. First, federal declaratory relief involves less intrusion into a state's administration of its criminal laws and was intended by Congress to be available on a less rigid basis than injunctive relief. The milder relief afforded by a declaratory judgment was thus deemed appropriate in the absence of a state prosecution regardless of whether injunctive relief would be available. Second, the Court observed that while traditional considerations would preclude injunctive or declaratory relief from an ongoing state prosecution, "the relevant principles of equity, comity, and

35. 415 U.S. at 455-56. On both occasions Steffel left in order to avoid arrest. A companion of Steffel's was arrested and later arraigned when she continued handbilling; her state trial was stayed pending the outcome of Steffel's action. *Id.* at 455-56 n.3. A threshold consideration in *Steffel* was the presence of an actual and continuing controversy, since prosecution was only threatened, not pending. The Court concluded that real threats of prosecution created a justiciable controversy, but remanded for determination whether the controversy was currently extant. *Id.* at 458-60.


37. Becker v. Thompson, 459 F.2d 919 (5th Cir. 1972). Although the petitioner had sought declaratory and injunctive relief and his companion had sought to enjoin her pending prosecution, all of which was denied by the district court, only Steffel appealed, and ultimately only from the denial of declaratory relief. Steffel v. Thompson, 415 U.S. 452, 456 nn.5&6 (1974).

38. 415 U.S. at 475.

39. In *Steffel* the challenge was to a state statute as applied. The Court held that federal declaratory relief from threatened prosecution was available whether a state statute was challenged on its face or as applied. *Id.* at 473-75; see *The Supreme Court, 1973 Term*, 88 Harv. L. Rev. 41, 205 n.13 (1974).


41. 415 U.S. at 475; see note 31 supra.
Access to federal declaratory relief therefore was made dependent upon an initial determination of the pendency of a state proceeding. The Court did not specify, however, either in Steffel or in earlier cases, at what point in the federal litigation the determination of the pendency of state proceedings must be made.


43. Since Steffel involved only a request for declaratory relief, the Court did not consider the propriety of federal injunctive relief in the absence of a pending state prosecution. In Doran v. Salem Inn, Inc., 422 U.S. 922 (1975), the Court affirmed a grant of preliminary injunctions to federal plaintiffs who were not facing pending state prosecutions, holding that absent such a prosecution "the issuance of a preliminary injunction is not subject to the restrictions of Younger." Id. at 930.

The holding in Salem Inn was simply that the district court did not abuse its discretion by issuing a preliminary injunction. Id. at 934. The Court noted that the question was close, but concluded that under the traditional standards for granting a preliminary injunction, and given the limited nature of appellate review, the district court did not abuse its discretion. Id. at 931-32. Salem Inn does establish that when preliminary injunctive relief is sought and no state proceeding is pending against the federal plaintiff, the propriety of such relief is to be determined without consideration of the Younger doctrine. While neither Salem Inn nor any other Supreme Court decision clearly indicates whether a request for permanent injunctive relief should likewise be viewed without regard to Younger when no state proceeding is pending, it would seem that the Younger considerations of equity and comity would not preclude permanent injunctive relief. Cf. Steffel v. Thompson, 415 U.S. 452, 462-63 (1974); Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 509 (1972). However, as the Court observed in Salem Inn, where a state statute is found unconstitutional by the district court, the rights of parties not facing pending prosecutions can normally be protected by the issuance of a declaratory judgment rather than a more intrusive injunction. See 422 U.S. at 931.

44. Justices White and Rehnquist addressed this issue in concurring opinions in Steffel. Justice White felt that a state prosecution filed subsequent to the commencement of a federal suit might not force dismissal of the federal action if the latter had progressed sufficiently to raise considerations of judicial economy. 415 U.S. at 478. For Justice Rehnquist, any state proceeding prior to resolution of the federal action would seem to preclude federal relief. 415 U.S. at 480; cf. Allee v. Medrango, 416 U.S. 802, 816-20 (1974) (appearing to indicate that Younger applies if prosecutions are pending at the time of the federal court decision).

In Perez v. Ledesma, 401 U.S. 82 (1971), Justice Brennan, joined by Justices White and Marshall, stated that "[t]he availability of declaratory relief was correctly regarded to depend upon the situation at the time of the hearing and not upon the situation when the federal suit was initiated." 401 U.S. at 103 (concurring in part and dissenting in part). But see 401 U.S. at 130 (Justice Brennan determining pendency as of the time federal jurisdiction attaches); Comment, Federal Declaratory Relief and the Non-Pending State Criminal Suit, 34 Md. L. Rev. 87, 92 n.27 (1974) (discussing the apparent inconsistency in Justice Brennan's approach in Perez); Steffel v. Thompson, 415 U.S. 452, 454 (1974) (Justice Brennan using date of filing).

Some lower federal courts have determined pendency as of the time the federal complain is filed. See, e.g., Salem Inn, Inc. v. Frank, 501 F.2d 18, 21-23 (2d Cir. 1974), aff'd in part and rev'd in part sub nom., Doran v. Salem Inn, Inc., 422 U.S. 922 (1975); Jones v. Wade, 479 F.2d 1176, 1181 n.6 (5th Cir. 1973); Armour & Co. v. Ball, 468 F.2d 76, 78-79 (6th Cir. 1972), cert. denied, 411 U.S. 44.
The Hicks and Huffman Decisions

In *Hicks v. Miranda* the Supreme Court held that the principles of *Younger* applied to require dismissal of a federal action where state proceedings against the federal plaintiffs were initiated subsequent to filing of the federal complaint. State criminal misdemeanor charges had been filed against theater employees for showing an allegedly obscene film. A state court, after a show cause order, declared the film obscene and ordered all copies seized. Immediately thereafter, a federal suit was initiated by the theater owners seeking injunctive and declaratory relief. Seven weeks later, but just one day after service of the federal complaint, the state criminal complaint was amended, naming the federal plaintiffs as additional parties defendant.

In this posture the Supreme Court held that the district court erred in reaching the merits of the federal case. The Court first concluded that the federal plaintiffs did, in fact, have a state proceeding available in which to litigate fully their claims when they filed in federal court. This determination was based on the "substantial stake" that the plaintiffs had in the state proceedings pending against the theater employees and the "intertwining" of plaintiffs' interests with those of their employees.

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981 (1973). This test has been criticized as promoting a "race to the courthouse." See The Supreme Court, 1970 Term, supra note 25, at 308–09 (1971); Comment, Federal Declaratory Relief, supra at 119–21.

A test which determines the pendency of a state prosecution as of the date of the federal hearing ignores the inefficiency of requiring dismissal of a federal action which has progressed significantly towards decision. See Steffel v. Thompson, 415 U.S. 452, 478 (1974) (White, J., concurring). Commentators have proposed more complex tests designed to allow response to the specific federal and state interests at stake. See The Supreme Court, 1970 Term, supra note 25, at 309–10; Comment, Federal Declaratory Relief, supra at 119–21.

45. 422 U.S. 332 (1975).

46. Id. at 335. The theater employees originally charged in the state criminal proceeding were not parties to the later federal action.

47. Id. at 335–36. No appeal was taken from the order of the state court. The Supreme Court noted that this failure to appeal might itself preclude federal relief. Id. at 351 n.20; see Huffman v. Pursue, Ltd., 420 U.S. 592, 611 n.22 (1975).

48. 422 U.S. at 337. A temporary restraining order was requested and denied by a single district judge. A three-judge court was convened pursuant to 28 U.S.C. § 2281 (1970) to consider the constitutionality of the state statute and the injunctive relief sought. This court declared the statute unconstitutional and issued appropriate relief. Id. at 340–42. The Supreme Court was initially faced with the issue of its jurisdiction to hear the direct appeal of the case under 28 U.S.C. § 1253 (1970), and concluded that both the injunction and the declaratory judgment issued by the three-judge district court were properly before it. Id. at 348.

49. Id. at 339.

50. Id. at 348–49.

51. Id. at 348. The Court imposed the burden upon the plaintiffs, whose lawyers also represented the theater employees, to show clearly that they could not present and fully litigate all their claims in the state proceedings. Absent such a
Hicks therefore indicates that there may be situations where Younger principles are applicable even though no state proceedings are pending against the particular federal plaintiffs, if there are proceedings pending against others having a sufficient identity of interest with them.\textsuperscript{52} Notwithstanding this basis for requiring dismissal of the federal action, the Hicks Court went on to address the issue of the pendency of state proceedings against the federal plaintiffs themselves, holding

[t]hat where state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but before showing, Younger principles applied to restrict federal interference with these pending state court proceedings \textit{Id.} at 349. One clear instance where legally distinct state defendants would not adequately represent the interests of federal plaintiffs to whom they are closely related would be where the state defendants simply pled guilty to the state charges. The Court's treatment leaves unresolved the question whether a section 1983 plaintiff must always affirmatively demonstrate that there is no state proceeding in which to litigate his federal claims, or whether the state has the burden of raising the issue, leaving the ultimate burden on the plaintiff to show that the state proceeding does not provide for sufficient representation of his interests.

52. This portion of the Hicks decision is supported by the Court's language in Doran v. Salem Inn, Inc., 422 U.S. 922 (1975). In Salem Inn one corporate federal plaintiff had a state prosecution, initiated one day after filing of the federal complaint, pending against it, while two others did not. The Court determined that each federal plaintiff should have its request for relief decided independently of other plaintiffs' entitlement to relief. 422 U.S. at 928-29. However, the Court observed that while Salem Inn was not such a case, there might be cases where "legally distinct parties are so closely related that they should all be subject to the Younger considerations which govern any one of them . . . ." \textit{Id.} at 928. \textit{But cf.} Steffel v. Thompson, 415 U.S. 452 (1974), where a state prosecution against a federal plaintiff (who did not appeal the district court decision) was stayed by the state pending a decision in the federal case.

Neither Hicks nor Salem Inn explained precisely what will constitute a sufficient identity of interest to ensure that the interests of a federal complainant are adequately represented in state proceedings pending against others. The Salem Inn plaintiffs had similar business interests and were represented by common counsel; the crucial factor for the Court was that they were "unrelated in terms of ownership, control and management." 422 U.S. at 929. In Hicks the interests of the employers and their employees were observed to be "intertwined" and common counsel represented both groups. While the Salem Inn Court determined that there was not an identity of interest sufficient to make all plaintiffs subject to the Younger principles governing one of them, the Hicks Court found that the employers' interests could have been protected in the state proceedings pending against their employees. The status of employee-employer in Hicks, therefore, would appear to supply the relationship missing in Salem Inn. The Court's treatment of this problem seems less than adequate when viewed in light of the basic nature of the Younger doctrine. The interests of employees facing state prosecutions, and therefore the possibility of conviction and consequent punishment, are not necessarily substantially identical to those of their employers. And even assuming that the employee-employer relationship creates an "identity of interest," the fact that the state proceeding is not pending against the federal plaintiff is a factor which is relevant to the careful balancing of interests required under Younger.
any proceedings of substance on the merits have taken place in the federal court, the principles of Younger v. Harris should apply in full force.\(^5\)

This holding significantly limits access to federal relief from applications of allegedly unconstitutional state statutes. While one faced with a threatened state prosecution may seek federal relief under Steffel,\(^4\) that relief will be precluded if the state initiates a good faith prosecution at any time before there have been “proceedings of substance on the merits” in federal court.

As observed by Justice Stewart in his dissenting opinion, the meaning of the standard “proceedings of substance on the merits” is not altogether clear.\(^5\) It is not apparent from Hicks exactly what combination of federal proceedings “of substance” and “on the merits” is required before Younger principles will apply to curtail federal intervention in a state proceeding begun subsequent to the federal action. Some definition can be gleaned from the facts in Hicks, where considerable federal court activity had transpired in the seven weeks between filing of the federal action and the addition of the federal plaintiffs as defendants in the state complaint.\(^5\) Hicks indicates that a hearing by a single federal judge on a request for a temporary restraining order, the designation of a three-judge district court, the filing of answers and motions, and the submission of several briefs and affidavits do not, in combination, amount to proceedings of substance on the merits.\(^5\)

53. 422 U.S. at 349. In Hicks the Court applied Younger to require dismissal of the federal action. Id. at 350. Although the district court had concluded that official harassment and bad faith were present, the Court held that constant judicial authorization for the actions of prosecutorial officials indicated that no bad faith exception to Younger had been established. Id. at 351.

54. While Steffel v. Thompson, 415 U.S. 452 (1974), held that federal declaratory relief is not precluded absent a pending state prosecution, and Doran v. Salem Inn, Inc., 422 U.S. 922 (1975), extended Steffel to permit a federal preliminary injunction, it remains uncertain whether permanent federal injunctive relief would be available if no state prosecution were pending. See note 43 supra. Regardless of the type of federal equitable relief sought, application of Younger principles where a state prosecution is initiated prior to federal proceedings of substance would bar federal intervention absent extraordinary circumstances, because Younger and its companion case, Samuels v. Mackell, 401 U.S. 66 (1971), preclude federal injunctive or declaratory relief against pending state proceedings.

55. 422 U.S. at 353-54 n.1.
56. Id. at 338-39.
57. The proceedings in federal court in Hicks, although not sufficient to meet the test the Court formulated, did involve seven weeks of trial preparation. In Doran v. Salem Inn, Inc., 422 U.S. 922 (1975), a state prosecution was commenced against one of the federal plaintiffs one day after the federal suit was filed. The Court found federal relief inappropriate: “[T]he federal litigation was in an embryonic stage and no contested matter had been decided. In this posture, [the plaintiff’s] prayer for injunction is squarely governed by Younger.” 422 U.S. at 929. Since the only federal court activity preceding the initiation of the state prosecution in Salem Inn was the filing of the federal complaint, the decision offers
While dismissal of the federal action is required under the facts in *Hicks*,\(^5\) the decision does not expressly condone federal intervention whenever federal proceedings of substance on the merits have preceded the initiation of a state prosecution. It would seem that there may be situations in which dismissal of the federal complaint would be within the district court's discretion despite considerable federal proceedings in advance of a state prosecution. The propriety of federal intervention is determined by weighing federal interests in protecting individual rights against the federal court's duty to respect state interests under notions of comity;\(^5\) the resulting balance may still dictate that a federal court refrain from intervention in state proceedings begun after considerable federal court proceedings. The more substantial the federal proceedings have been, however, the more considerations of judicial economy would appear to affect the *Younger* balance in favor of permitting the federal action to proceed to decision.\(^6\)

In *Huffman v. Pursue, Ltd.*\(^6\) the Supreme Court considered the propriety of federal equitable relief when a state court judgment had been issued prior to filing of the federal complaint. Proceedings under an Ohio public nuisance statute\(^6\) had been instituted against the federal com-

no aid in determining the precise meaning of "proceedings of substance on the merits."

\(^5\) *Hicks* involved state criminal proceedings, and the Court's holding is limited to criminal prosecutions. 422 U.S. at 348. Given the extension of *Younger* principles in *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), to include cases of pending quasi-criminal state proceedings, it would appear likely that the concept proposed in *Hicks* would be equally applicable if state quasi-criminal proceedings were commenced prior to any proceedings of substance on the merits in a federal action. Such was the fear expressed by Justice Stewart in his dissent. 422 U.S. at 357. His additional concern that the filing of *any* state civil action might someday suffice to require dismissal of federal action is as yet purely speculative.

\(^5\) See notes 17-18 and accompanying text *supra*.

\(^6\) In *Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975), the Court discussed in another context the weight to be given the interest in efficient judicial administration. In determining that a federal plaintiff not facing a pending state prosecution must have its request for federal relief considered separately from other plaintiffs facing state prosecutions, the Court noted that "the interest of avoiding conflicting outcomes in the litigation of similar issues . . . must of necessity be subordinated to the claims of federalism in this particular area of the law." 422 U.S. at 928. The Court proceeded to discuss the interest in conserving judicial manpower, concluding that occasional duplication in similar cases is unavoidable in a federal, as opposed to a unitary, system. *Id.* While this is also true in settings such as that presented by *Hicks*, interest in avoiding duplicative proceedings and waste of judicial time is a relevant factor to be weighed in attempting to achieve the balance of state and federal interests demanded by comity. *See* notes 111-14 and accompanying text *infra*.

\(^6\) 420 U.S. 592 (1975).

plaintant's predecessor in interest for exhibiting allegedly obscene films. When Pursue succeeded to the leasehold interest in the theater, it filed a federal action seeking injunctive and declaratory relief rather than appealing the judgment in the state courts. A three-judge district court, apparently without considering the applicability of Younger, found the Ohio nuisance statute unconstitutionally overbroad and enjoined the execution of a portion of the state court order.

The Supreme Court reversed, holding that Younger principles applied to federal complainants seeking relief against proceedings instituted under the Ohio nuisance statute. The Court concluded that federal interference with this state civil proceeding would offend a significant state interest in the nuisance litigation and disrupt state attempts to protect interests and enforce standards essentially equivalent to those found in criminal laws. Both the express language and the rationale of Huffman

63. Section 3767.01(C) of the Ohio statute defines "nuisance" as including a place where obscene films are exhibited.

64. 420 U.S. at 598. The state court judgment was that Pursue's predecessor in interest "had engaged in a course of conduct of displaying obscene movies . . . and that the theater was therefore to be closed . . . 'for any purpose for a period of one year unless sooner released by Order of [the] Court . . . '" Id. In addition, provision was made pursuant to section 3767.06 of the statute for the seizure and sale of personal property used in operating the theater. Id.

65. The federal district court concluded that Pursue had standing to challenge the statute since it had succeeded to the property interest against which the state judgment was directed; it was conceded that Pursue could have appealed the state judgment in the Ohio courts. 420 U.S. at 598 n.10.

66. Id. at 599. The court determined that the statute was overbroad insofar as it prevented the showing of films not adjudged obscene in prior adversary hearings, and therefore enjoined only that portion of the state judgment that closed the theater to films not yet adjudged obscene.

67. Id. at 607. Since the district court did not treat the Younger issues, the Supreme Court remanded for consideration of whether the facts fit within a recognized exception to Younger. Id. at 611-13.

68. The Huffman Court noted two bases of the Younger doctrine: (1) the serious threat to our federal system posed by federal interference with state proceedings, and (2) "the traditional reluctance of courts of equity, even within a unitary system, to interfere with a criminal prosecution." Id. at 604. The Court found the first Younger component equally applicable when state civil proceedings were involved, since federal interference would prevent effectuation of substantive state policies, inhibit the state from providing a forum adequate to vindicate constitutional challenges to those policies, require duplicative proceedings, and reflect negatively on the ability of state courts to resolve constitutional issues. While the second component normally would not apply to civil proceedings, the Huffman Court concluded that the particular proceeding before it was "more akin to a criminal prosecution than are most civil cases," since the state was a party and the proceeding was "in aid of and closely related to criminal statutes." Id.

69. "For the purposes of the case before us . . . we need make no general pronouncements upon the applicability of Younger to all civil litigation." Id. at 607.
are limited to civil proceedings of a quasi-criminal nature that are designed to enforce state interests normally embodied in criminal laws and, therefore, are functionally equivalent to criminal prosecutions.\textsuperscript{70}

\textit{Huffman} did not merely extend the application of \textit{Younger} to certain pending civil proceedings. The federal complainant in \textit{Huffman} chose not to pursue an available state appellate remedy; the Court held that "\textit{Younger} standards must be met to justify federal intervention in a state judicial proceeding as to which a losing litigant has not exhausted his state appellate remedies."\textsuperscript{71} Thus, absent extraordinary circumstances constituting an exception to \textit{Younger}, federal equitable relief will not be available if a state judgment has been issued and state appellate remedies have not been exhausted.

In a dissenting opinion joined by Justices Marshall and Douglas, Justice Brennan criticized the \textit{Huffman} decision for its apparent conflict with the policies of 42 U.S.C. \textsection{} 1983,\textsuperscript{72} the statute under which the federal action was brought.\textsuperscript{73} Justice Brennan noted that section 1983, together with the Judiciary Act of 1875, was intended to make the federal courts "primary and powerful reliances for vindicating every right given

\begin{itemize}
  \item The \textit{Huffman} Court's extension of \textit{Younger} to pending state quasi-criminal proceedings is supported by traditional principles. Quasi-criminal state proceedings attempt to effectuate interests and sanctions similar to those present in criminal prosecutions. State interest in the administration of criminal laws has traditionally been a factor in the effort to achieve comity in a federal system. Since quasi-criminal state proceedings afford an adequate forum in which to raise constitutional challenges to the statutes supporting the proceedings, established concepts of equity support federal dismissal. \textit{See} Anonymous v. Association of the Bar, 515 F.2d 427 (2d Cir.), \textit{cert. denied}, 96 S. Ct. 122 (1975).
  \item Yet where the pending state proceedings are solely civil in nature, the reasons for applying \textit{Younger} principles to curtail federal intervention are not as forceful. \textit{Cf.} Cleaver v. Wilcox, 499 F.2d 940 (9th Cir. 1974) (civil dependency proceedings). State interest is diminished where criminal laws and the policies underlying them are not involved, and equitable constraints on federal intervention are less significant. The \textit{Younger} balance appears to warrant federal relief: the state interest is less substantial and procedural safeguards which prevent the initiation of frivolous or meritless criminal prosecutions do not have their equivalents in civil proceedings, yet the primary federal interest in vindicating constitutional rights remains. \textit{See} 420 U.S. at 613–18 (Brennan, J., dissenting); \textit{cf.} Puerto Rico Int'l Airlines, Inc. v. Silva Recio, 520 F.2d 1342 (1st Cir. 1975) (pending state civil suit brought by private individuals; \textit{Younger} doctrine held inapplicable).
  \item 420 U.S. at 609. The scope of the \textit{Huffman} Court's language appears to include situations involving state criminal prosecutions as well as the quasi-criminal proceeding at issue in \textit{Huffman}. \textit{See id.} at 608–09.
  \item 42 U.S.C. \textsection{} 1983 (1970) provides:
    Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
  \item 420 U.S. at 616–18.
\end{itemize}
by the Constitution. He therefore felt that to extend Younger to pending state civil proceedings served to defeat the congressional objective of section 1983. Moreover, since Monroe v. Pape and its progeny established that exhaustion of state administrative or judicial remedies is not a prerequisite to bringing a federal action under section 1983, Justice Brennan observed that to require exhaustion of state appellate remedies in Huffman drastically undercut Monroe.

There is some basis for Justice Brennan's concern with the effect of the Huffman holding upon the established duty of the federal courts to protect and vindicate individual constitutional rights and the recognized purpose of section 1983 to guarantee federal rights against state power by interposing the federal courts as a buffer between the state and the people. The Huffman majority indicated that even when state appellate remedies are no longer available to a party seeking federal relief under section 1983, Younger principles would apply to preclude federal relief absent extraordinary circumstances. Access to federal relief under sec-

75. 420 U.S. at 616.
77. Id. at 183; McNeese v. Board of Educ., 373 U.S. 668, 671 (1963).
78. 420 U.S. at 617. The Huffman majority undertook to reconcile its holding with the doctrine of non-exhaustion in section 1983 actions by focusing on the party which had initiated, or would be required to initiate, the state action. Monroe held that an individual need not initiate state proceedings before relief under section 1983 can be sought in federal court; Huffman requires deference to proceedings already initiated by the state. Id. at 609-10 n.21; see text accompanying notes 139-41 infra.
80. On two occasions in Huffman, Justice Rehnquist indicated that it does not matter whether a state appellate remedy was still available at the time that the federal relief was determined. Observing that the state judgment presumably became final and non-appealable sometime between the federal filing and entry of the federal district court judgment, he stated:

[ R]egardless of when the [lower state court] judgment became final, we believe that a necessary concomitant of Younger is that a party in appellee's posture must exhaust his state appellate remedies before seeking relief in the District Court, unless he can bring himself within one of the exceptions specified in Younger.

420 U.S. at 608. Later, he repeated similar language:

While appellee had the option to appeal in state courts at the time it filed this action, we do not know for certain whether such remedy remained available at the time the District Court issued its permanent injunction, or whether it remains available now. In any event, appellee may not avoid the standards of Younger by simply failing to comply with the procedures of perfecting its appeal within the Ohio judicial system.

Id. at 611 n.22.
tion 1983 thus may be foreclosed.\textsuperscript{81} The impact of *Huffman* upon access to a federal court for relief from a state statute challenged as unconstitutional will vary, however, dependent upon the procedural posture of the litigation involved.

If a party against whom judgment in a state court has been rendered pursues a review of the decision in the highest court of the state, either by appeal or through writ of certiorari,\textsuperscript{82} and the lower court judgment is affirmed,\textsuperscript{83} review is then available in the Supreme Court under 28 U.S.C. § 1257.\textsuperscript{84} As long as the state court has decided in favor of the validity of a state statute challenged on constitutional grounds, appeal is by right under section 1257(2).\textsuperscript{85} Although the reality of such review is questionable since a large number of section 1257 appeals are disposed of by the Court without argument,\textsuperscript{86} access to a federal court adjudication of the

\textsuperscript{81} In *Hicks* v. Miranda, 422 U.S. 332 (1975), no appeal of the state order declaring the film obscene and ordering its seizure was made. Justice White observed:

It may be that under *Huffman* v. *Pursue* . . . the failure of appellees to appeal the [state court] order . . . would itself foreclose resort to federal court, absent extraordinary circumstances bringing the case within some exception to Younger v. Harris.

422 U.S. at 351 n.20. In neither *Hicks* nor Ellis v. Dyson, 421 U.S. 426, 435 (1975), did the Court reach this issue.

\textsuperscript{82} If no appellate remedy is available in the state system, the lower court judgment is reviewable by the United States Supreme Court. Thompson v. City of Louisville, 362 US. 199 (1960); see *Wright*, *supra* note 19, at 483.

\textsuperscript{83} A reversal of the lower court decision by a state appellate court will, of course, make federal relief necessary.

\textsuperscript{84} 28 U.S.C. § 1257 (1970) provides in relevant part:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

An affirmance of a state prosecution or civil proceeding challenged on grounds that the statute under which the proceedings were initiated is unconstitutional will, therefore, be appealable under section 1257(2).

\textsuperscript{85} Review by writ of certiorari is discretionary in nature. *Sup. Ct. R.* 19.


The sufficiency of Supreme Court review as an alternative to a federal suit to protect constitutional rights has been questioned by the Court itself. *See England
constitutional issues raised, a decision on the merits, appears assured. 87 Federal habeas corpus relief will be available only if the state proceeding resulted in custody of the defendant; where a criminal conviction has not resulted in custody or, as in Huffman, where the state judgment is merely quasi-criminal, access to a federal court through petition for a writ of habeas corpus is unavailable. 88 Whether the state proceeding was criminal or civil, a federal suit under section 1983 seeking either an injunction against enforcement or a declaratory judgment as to the unconstitutionality of a state statute would seem precluded by traditional principles of res judicata. 89 Except for those occasions where federal habeas corpus is

87. Supreme Court dispositions of appeals from state courts are all decisions on the merits. See Wright, supra note 19, at 495.

If the Supreme Court, either through appeal or by writ of certiorari, renders a judgment on a prisoner's claim, that judgment is conclusive and federal habeas corpus relief will not then be available. See 28 U.S.C. § 2244(c) (1970).

88. 28 U.S.C. § 2241(c) (1970) provides in pertinent part: "The writ of habeas corpus shall not extend to a prisoner unless . . . [h]e is in custody in violation of the Constitution or laws or treaties of the United States . . . ." The "custody" requirement of the federal habeas corpus statute has been broadened considerably by the Supreme Court, and actual physical custody is no longer prerequisite to federal habeas corpus relief. See Hensley v. Municipal Court, 411 U.S. 345 (1973) (release on one's own recognizance constitutes "custody"); Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973) (Kentucky's lodging of detainer against Alabama prisoner puts prisoner in Kentucky "custody"); Carafas v. LaVallee, 391 U.S. 234 (1968) (unconditional release does not moot pending habeas corpus application); Jones v. Cunningham, 371 U.S. 236 (1963) (person released on parole is in "custody").

If habeas corpus is available to challenge the validity of the fact or duration of custody, it is the exclusive federal remedy for challenging the state statute under which the conviction was achieved. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). A suit under section 1983 would be proper if damages were sought, however, since neither the fact nor the duration of confinement would be challenged. Id. at 494.

89. The res judicata effect of a state court judgment upon a federal action under section 1983 is not fully settled. The Supreme Court has not decided the issue, although in Preiser v. Rodriguez, 411 U.S. 475, 497 (1973) (dictum), the Court observed that lower federal courts have held res judicata applicable to section 1983 actions. In Huffman res judicata was not raised in the district court, and was thus not properly before the Court. 420 U.S. at 607-08 n.19. Justice Rehnquist noted, however, that the Court was not suggesting "that the normal rules of res judicata and judicial estoppel do not operate to bar relitigation in actions under 42 U.S.C. § 1983 of federal issues arising in state court proceedings." Id. at 606 n.18.

Numerous federal courts have held that collateral attack by federal section 1983 proceedings on a state conviction is barred by res judicata or collateral estoppel. See, e.g., Chism v. Price, 457 F.2d 1037, 1040 (9th Cir. 1972); Coogan v. Cincinnati Bar Ass'n, 431 F.2d 1209, 1211 (6th Cir. 1970); Rhodes v. Meyer, 334 F.2d 709, 716 (8th Cir. 1964); Goss v. Illinois, 312 F.2d 257, 259 (7th Cir. 1963); Lathon v. Parish of Jefferson, 358 F. Supp. 558 (E.D. La. 1973); Mertes v. Mertes, 350 F. Supp. 472 (D. Del. 1972), aff'd, 411 U.S. 961 (1973); cf. Huron Holding Corp. v. Lincoln Mine Operating Co., 312 U.S. 183 (1941) (final state court judgment given full faith and credit in federal court); McCune v. Frank, 521 F.2d
available, when state appellate remedies have been exhausted access to federal relief from deprivations of individual constitutional rights is limited to Supreme Court review. Whether an appeal as a matter of right under 28 U.S.C. § 1257(2) is sufficient to satisfy the federal courts' role as primary vindicators of individual constitutional rights is arguable. But any insufficiency lies in the nature of Supreme Court review and not in denying federal court access under section 1983, because established principles of res judicata may apply to preclude relitigation in federal court of federal issues already decided in state court proceedings between the same parties.

1152 (2d Cir. 1975) (willingness of state courts to give their own decisions res judicata effect is an important factor in determining whether federal court, in section 1983 action, should accord res judicata effect to state court decision); Prager v. El Paso Nat'l Bank, 417 F.2d 1111 (5th Cir. 1969) (state decision pending appeal given res judicata effect in later federal action). The res judicata effect of a state court judgment does not bar federal habeas corpus relief. See Brown v. Allen, 344 U.S. 443, 456 (1953).

90. While the extension of Younger to quasi-criminal proceedings in Huffman creates a further situation, in addition to criminal convictions not resulting in "custody" of the defendant, in which Supreme Court review may be the only means to federal relief, the broad availability of federal habeas corpus limits the impact of this aspect of the Huffman decision upon access to federal relief. The concept of "custody" for purposes of federal habeas corpus relief is now quite broad, see note 88 supra, and few state proceedings are likely to fall within the category of quasi-criminal.

91. Whether review by the highest state court in which a decision can be rendered is by appeal or through writ of certiorari does not matter. If certiorari is sought and denied by the state's highest court, appeal to the Supreme Court is still available as a matter of right, see Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954), and such review is subject to shortcomings similar to those effecting appeals of right to the Supreme Court. See note 86 supra. Federal habeas corpus is available only if the state prosecution has resulted in custody, see note 88 supra, and a federal action seeking injunctive or declaratory relief under section 1983 probably would be barred by res judicata. See note 89 supra.

92. See note 84 supra.

93. See note 89 supra.

In Thistlethwaite v. City of New York, 497 F.2d 339 (2d Cir.), cert. denied, 419 U.S. 1093 (1974), a federal suit under section 1983 was held barred on principles of collateral estoppel by an earlier state court conviction. The dissent objected that the majority, without citation to any authority, had for the first time held that res judicata or collateral estoppel applied to bar a challenge under section 1983 to the constitutionality of a state law solely because the federal complainant had at one time been convicted under the statute, despite the fact that the relief requested in federal court was a declaration prohibiting future enforcement of the statute as implemented by another statute. 497 F.2d at 343. If in fact a constitutional issue could not have been raised in the state court proceeding, neither res judicata nor collateral estoppel would preclude federal litigation of the claim. A federal suit seeking relief from future prosecutions under a statute the constitutionality of which was or could have been litigated in an earlier state prosecution of the same individual would, however, appear to be barred.

If the equitable restraint doctrine of Younger and its progeny were viewed as an abstention doctrine, res judicata would not bar relitigation of federal issues
Different considerations are apposite if the losing state litigant has failed to exhaust state appellate remedies which remain available. Supreme Court review is not possible as there has not been a decision by the highest state court able to render a decision.\textsuperscript{94} Even if the state proceeding has resulted in custody of the defendant, federal habeas corpus relief cannot be sought under 28 U.S.C. § 2254(b) since available state remedies have not been exhausted.\textsuperscript{95} With both Supreme Court review and federal habeas corpus relief precluded, collateral attack of the state lower court judgment under section 1983 would be the only remaining avenue to federal relief. \textit{Huffman}, however, requires federal dismissal in such a setting, and holds that federal intervention in state proceedings when state appellate remedies have not been exhausted is strictly limited to circumstances satisfying one of the exceptions to \textit{Younger}.\textsuperscript{96}

The \textit{Huffman} requirement of exhaustion of state appellate remedies appears sound when those remedies remain available to the losing litigant. As noted by the Court, the states have a legitimate interest in overseeing state court determinations of constitutional issues, a function which is effectuated by providing for appellate review of lower court decisions.\textsuperscript{97} In the interest of comity, federal courts should allow state appellate courts the opportunity to act without interference to correct state law or lower

\textsuperscript{94} If available, state court review must be sought before resort may be had to Supreme Court review. Banks v. California, 395 U.S. 708 (1969); Gotthilf v. Sills, 375 U.S. 79 (1963). A purely formal appeal to a state appellate court has been required even though rejection of such an appeal was predetermined. \textit{See} Great Western Tel. Co. v. Burnham, 162 U.S. 339 (1896). \textit{See generally} \textit{WRIGHT}, supra note 19, at 482–83.

\textsuperscript{95} 28 U.S.C. § 2254(b) (1970) provides:

\begin{quote}
An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
\end{quote}

\textsuperscript{96} 420 U.S. at 609. For a discussion of the recognized exceptions to \textit{Younger} see note 29 supra. By merely extending the application of \textit{Younger} to circumstances where a state judgment has been rendered but state appellate remedies have not been exhausted, \textit{Huffman} preserves intact the exceptions to \textit{Younger}. Where bad faith state prosecutions or other extraordinary circumstances are present, state interest is lessened and the threat to individual rights is increased sufficiently to require federal intervention in ongoing state proceedings, including the \textit{Huffman} setting.

\textsuperscript{97} \textit{See} 420 U.S. at 609.
court interpretations of state law.\textsuperscript{98} Once state appellate remedies have been exhausted without success, federal court disposition of the constitutional issues would be available in the form of Supreme Court review, or, if the state judgment resulted in custody, federal habeas corpus relief.

However, if state appellate remedies have not been pursued and are no longer available, federal relief from state statutes challenged as unconstitutional may be permanently foreclosed under \textit{Huffman}. Supreme Court review is not available since there has not been a final judgment by the highest state court in which a decision could be had.\textsuperscript{99} If the state court action resulted in custody of the defendant, federal habeas corpus is available under the doctrine that only those state remedies still open to an applicant at the time he files his habeas corpus application in federal court must be exhausted.\textsuperscript{100} Broad language in both \textit{Huffman} and \textit{Hicks} appears to require federal equitable restraint under \textit{Younger} where state appellate remedies have not been pursued and are no longer available.\textsuperscript{101} Under this language, federal relief through section 1983 proceedings would not be possible, since the federal court would be required to dismiss the action even though no state proceedings in which relief could be sought were available. The state judgment would be final for state purposes, and section 1983 proceedings could not be initiated in federal court.\textsuperscript{102} To the losing

\textsuperscript{98} Similar considerations form the basis of the \textit{Pullman} abstention doctrine. \textit{See} notes 19-20 and accompanying text \textit{supra}. The exhaustion of available state remedies requirement for federal habeas corpus is likewise based in notions of comity and federalism, with a resultant desire to avoid conflict by showing a proper respect for legitimate state functions and interests. \textit{See} Preiser v. Rodriguez, 411 U.S. 475, 490-91 (1973); Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 489-90 (1973); Fay v. Noia, 372 U.S. 391, 419-20 (1963).

\textsuperscript{99} \textit{See} \textit{WRIGHT, supra} note 19, at 482.

The Supreme Court will "decline to review state court judgments which rest on independent and adequate state grounds, even where these judgments also decide federal questions." \textit{Henry v. Mississippi}, 379 U.S. 443, 446 (1965); \textit{see} \textit{Herb v. Pitcairn}, 324 U.S. 117, 125-26 (1945); \textit{Murdock v. Memphis}, 87 U.S. (20 Wall.) 590 (1875). Whether failure to pursue a timely appeal to a state appellate court is an adequate state ground which will preclude Supreme Court review is uncertain. The Court has distinguished between state substantive and state procedural grounds, holding that to prevent review, a state procedural ground must serve a legitimate state interest. \textit{See} \textit{Henry v. Mississippi, supra} at 447-48. State procedural rules requiring reasonably timely applications for state court review would appear to serve legitimate state purposes and, therefore, preclude Supreme Court review.


\textsuperscript{101} \textit{See} notes 80-81 \textit{supra}.

\textsuperscript{102} Res judicata would seem to preclude relitigation of the federal issue since the state decision is a final judgment. The applicability of res judicata in these circumstances is not yet certain, however, although lower federal courts have often held res judicata or collateral estoppel to bar relitigation under a section 1983 action. \textit{See} note 89 \textit{supra}.
state civil litigant or criminal defendant not in custody, no means to federal relief from a state statute challenged as unconstitutional would be open.

**Hicks Under the Younger Balance**

The extension of *Younger* in *Hicks* can be examined in light of the *Younger* balance. Factors pertinent to this balance include the state interest in administration of state laws, the pendency of a state proceeding furnishing an adequate legal remedy, the possibility that federal intervention would reflect negatively on state court capabilities, considerations of judicial economy, the duty of a federal court to vindicate individual constitutional rights, the effect of a delay in relief upon the individual rights at stake, the particular federal right imperiled, and the gravity of the threat to it. While this list attempts to enumerate all the factors relevant in *Hicks*, the nature of the *Younger* balancing process makes it impossible to identify all factors which conceivably might arise in other settings.

The extent of a state's interest in the administration and enforcement of its criminal laws may vary with the particular state statute and state proceeding involved. While significant state interest in the enforcement of state criminal laws has traditionally been acknowledged, state interest in purely civil laws and proceedings may be considerably less. The *Huffman* Court recognized that state interest in a civil proceeding "in aid of and closely related to criminal statutes" is essentially equivalent to state interest in a criminal prosecution. In such a quasi-criminal state proceeding, the state is the party which initiates the action, as in a criminal prosecution, and the policies embodied in the pertinent statute are similar to those which support state criminal laws. State interest in the administration and enforcement of state laws, while varying with the type of state statute and proceeding involved, does not vary merely because a federal suit is commenced prior to the initiation of a state prosecution. The state interest at stake in *Hicks* therefore would appear to be of such significance as to suggest that dismissal of the federal suit would be justified.

Once a state prosecution is initiated, there is a pending state proceeding which furnishes an adequate forum for resolution of the constitutional issues raised. If, however, a state proceeding has not been


105. 420 U.S. at 604.

106. See id. at 604-05.

107. The state forum is adequate only so long as none of the extraordinary circumstances constituting exceptions to *Younger* are present. See *Younger v. Harris*, 401 U.S. 37, 53-54 (1971).
commenced, there is no adequate state remedy at law. In the Hicks setting, the pending state prosecution furnished an adequate remedy, thus favoring federal deference to the state court under Younger.

In Steffel v. Thompson the Court noted that absent a pending state prosecution, federal intervention would not be interpreted as reflecting negatively on the ability of a state to uphold constitutional principles. By implication, the possibility of such negative reflection should be weighed as a factor in the Younger balance, supporting dismissal of the federal suit where to proceed would reflect negatively, and supporting the completion of the federal action where it would not. Where, as in Hicks, the federal suit was filed before the state proceeding began, the likelihood that completion of the federal action would be interpreted as disparaging the abilities of the state court is less than if the state proceeding were commenced first, but greater than if there were no state forum at all, as in Steffel.

When both a federal and a state proceeding are ongoing, considerations of judicial economy and the desire to avoid unnecessary duplication of litigation are pertinent factors in the Younger balance. However, in Doran v. Salem Inn, Inc. the Supreme Court stated that there will inevitably be duplication and overlapping of judicial activities in a federal system that is comprised of distinct judicial systems, each of which is charged with interpreting the United States Constitution. The Salem Inn Court decided that the propriety of federal relief for each individual federal plaintiff should be determined independently of facts that would govern relief for other plaintiffs, concluding that notions of federalism embodied in Younger outweighed interests in efficient judicial administration. In Hicks, where continuing the federal action after the state proceeding has been commenced might result in duplicative proceedings, considerations of judicial economy favor dismissal of the federal action. Thus, what little viability remains to the factor of judicial economy after

110. Id. at 462.
112. 422 U.S. 922 (1975).
113. Id. at 928.
114. Id. The Court stated that both "the interest of avoiding conflicting outcomes in the litigation of similar issues" and "the interest in conservation of judicial manpower" must be subordinated to considerations of federalism. Therefore, Younger would require denial of one plaintiff's request for federal relief, while it would not preclude federal relief for co-plaintiffs not faced with pending state prosecutions.

Considerations of judicial economy are a vital element of the Supreme Court's test for whether a trial court, in its discretion, should refuse to hear a pendent state claim after the federal claim on which federal jurisdiction is based has been dismissed. See United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); Rosado v. Wyman, 397 U.S. 397, 420-05 (1970).
*Salem Inn* tends, in the *Hicks* circumstance, to support the application of *Younger*.

As noted by Justice Stewart in his dissent in *Hicks*,\(^{115}\) the federalism portrayed in *Younger* requires "sensitivity to the legitimate interests of both State and National Governments.\(^{116}\) The federal duty to vindicate individual constitutional rights\(^{117}\) and the fact that 42 U.S.C. § 1983 traditionally has been observed as providing a federal remedy supplementary to any state remedy\(^{118}\) reflect the significant federal interests at stake. The dissenting Justices in *Hicks* felt that the majority holding ousted the federal courts from their historic place as protectors of constitutional freedoms, and that permitting state interference with this legitimate federal interest was an offense to federalism.\(^{119}\) The duty of federal courts to protect individual constitutional rights clearly supports not restricting federal intervention in state proceedings.

The dissenting Justices in *Hicks* also expressed their fear that in holding *Younger* applicable where a state prosecution was initiated after commencement of the federal suit, the majority was permitting state prosecutorial officials to usurp federal jurisdiction at any time merely by initiating state proceedings.\(^{120}\) Although this argument has a certain appeal, two considerations should undercut any problem which might exist. Continued use of careful balancing of interests under *Younger* will result in retention of the federal action where federal and individual interests outweigh those of the state, especially where proceedings of substance on the merits have transpired in federal court prior to initiation of the state prosecution. Moreover, where the state proceedings have been commenced without expectation of conviction, the *Younger* doctrine would not apply because of "bad faith" on the part of state officials.\(^{121}\)

An additional consideration in the *Younger* balance is the effect of delay in relief upon the individual rights threatened. *Younger* held that the chilling effect accompanying an unconstitutional state statute did not, by itself, support federal intervention in pending state prosecutions.\(^{122}\) The result of the *Hicks* holding may be to delay eventual relief, thus prolonging any chilling effect upon the individual rights at stake. This possible increase

\(^{115}\) 422 U.S. at 353.


\(^{119}\) 422 U.S. at 356-57.

\(^{120}\) "Today's opinion virtually instructs state officials to answer federal complaints with state indictments." 422 U.S. at 357 (dissenting opinion).

\(^{121}\) See note 23 *supra*.

\(^{122}\) 401 U.S. at 53.
in chilling effect is a factor in the Younger balance which favors federal intervention.\textsuperscript{123}

Consideration of all factors relevant to effectuation of this balance leads to the conclusion that Younger properly applies in the Hicks setting to preclude federal relief. The high state interest in administration of the criminal statute in Hicks and the existence of a pending state prosecution furnishing an adequate remedy under state law are factors which swing the Younger balance in favor of dismissal of the federal action. However, the impact of Hicks should not be extended beyond the factual setting there involved. Cases may arise where, upon consideration of all pertinent factors, Hicks should not require dismissal of the federal action despite the absence of federal proceedings of substance on the merits. Since the intensity of state interest in the administration and enforcement of state laws is dependent upon the type of state statute and proceeding involved,\textsuperscript{124} in certain situations the state interest may have less of an impact upon the Younger balance. State interest in a local ordinance might be of less significance to the Younger balance than the interest in a statute having state-wide effect. Huffman held that the state interest in enforcement of state policies through civil proceedings closely related to criminal statutes is roughly equivalent to the state interest in a criminal prosecution.\textsuperscript{125} But state interest in purely civil laws would seem to be considerably less than the traditionally recognized state interest in the administration of state criminal laws,\textsuperscript{126} and even the state interest in a state-wide criminal statute might vary depending upon the seriousness of the activity the statute is intended to regulate. Thus, a quasi-criminal proceeding brought to enforce a local ordinance proscribing allegedly protected activity of minimal significance to the state might not involve a state interest of sufficient magnitude to require, under a Younger balancing process, dismissal of a federal action in the Hicks procedural posture.

The federal interests at stake may also vary.\textsuperscript{127} The specific individual constitutional rights imperiled and the seriousness of the threat to them may determine how important it is that a federal court fulfill its duty to protect those rights by exercising its power to intervene in state proceedings.\textsuperscript{128} The additional delay and expense to a federal plaintiff result-

\textsuperscript{123} Another factor might be the additional expense an individual would incur if forced to terminate a federal action in which considerable resources had been expended and then to defend a state action from the beginning.
\textsuperscript{124} See notes 103–06 and accompanying text supra.
\textsuperscript{125} 420 U.S. at 604.
\textsuperscript{126} See Huffman v. Pursue, Ltd., 420 U.S. 592, 614–15 (1975) (dissenting opinion). Younger has not yet been applied by the Supreme Court where purely civil laws having little relation to criminal standards are involved. See note 70 supra.
\textsuperscript{127} The extent of the federal interests at stake must be determined as of the time the state prosecution is initiated. See Hicks v. Miranda, 422 U.S. 332, 354 (1975) (dissenting opinion).
\textsuperscript{128} While the federal interest in protecting an individual complainant's threatened constitutional rights may be substantial, the same interest might not be present if
ing from dismissal of the federal action after considerable time and effort have been expended, and subsequent defense of a state proceeding from the start, may also favor continuance of the federal action even if the *Hicks* standard of federal proceedings of substance on the merits has not been met.

Proper exercise of the duty of a federal court faced with a request for intervention in state proceedings should thus continue to require a careful weighing of all relevant interests in order to determine whether the principles of the *Younger* doctrine actually necessitate dismissal of the federal suit. The fact that no proceedings of substance on the merits have taken place in federal court should not *compel* federal dismissal when no exception to *Younger* is present. Nor should the fact that such proceedings have transpired prior to commencement of the state suit relieve the federal court of its obligation to consider carefully all pertinent factors to determine whether the *Younger* balance nonetheless requires dismissal of the federal action. *Hicks* should not be read as setting down a strict line, with cases falling on one side requiring, and cases on the other precluding, federal dismissal. Analysis under the weighing process of *Younger* and its progeny should continue to be the applicable test.

*Huffman* and the Doctrine of *Monroe v. Pape*

Continued use of a test employing careful scrutiny and weighing of the specific state and federal interests at stake would also help to preserve the recognized purpose of section 1983:

The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights — to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial."129

In *Monroe v. Pape*130 and *McNeese v. Board of Education*,131 the Supreme Court established the doctrine that in actions brought in federal court under section 1983 there is no requirement that the complainant first exhaust state administrative or judicial remedies: "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."132 Thus, an individual may seek federal relief under section 1983 without first resorting to available state remedies.

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the litigation were being pursued actively by an interest group rather than by the individual facing the state proceedings.

There is an apparent conflict between the *Monroe* non-exhaustion doctrine and the *Younger* doctrine. In effect, the *Younger* line of cases creates a substantial "exception" to the non-exhaustion doctrine. So long as no state proceeding has been commenced, *Monroe*, in combination with *Steffel v. Thompson* and *Doran v. Salem Inn, Inc.*, permits a federal court to hear the merits of a claim made under section 1983 and grant appropriate relief. However, when a state proceeding has been commenced prior to the federal suit, the *Younger* doctrine requires a party to litigate his constitutional claims in the state court proceedings rather than in the federal action under section 1983. *Hicks* extends *Younger* so that dismissal of the federal action is also required in some instances when the federal suit was commenced prior to the state proceedings. And *Huffman* makes an additional impact on the *Monroe* non-exhaustion doctrine by holding that *Younger* also requires that relief be sought in state rather than federal court when a losing state litigant has not exhausted state appellate remedies.

The majority in *Huffman* attempted to reconcile its holding with the doctrine of *Monroe*. Justice Rehnquist observed that while *Monroe* held that one suing under section 1983 "need not first initiate state proceedings," the exhaustion of appellate remedies requirement in *Huffman* concerned "the deference to be accorded state proceedings which have already been initiated." This reconciliation is supported by the specific language of *Monroe*, which held that a state remedy "need not be first sought and refused before the federal one is invoked." The *Younger* cases involve situations where the state has initiated proceedings against the federal complainant, and Justice Rehnquist's distinction appears sound in that circumstance. *Hicks* properly should be interpreted simply as a refinement of *Younger*, with careful weighing of state and federal interests still determining whether federal dismissal is warranted; thus *Hicks* does not...

136. *Steffel* permitted federal declaratory relief from a threatened state prosecution and *Salem Inn* affirmed a district court discretionary grant of a preliminary injunction in the absence of a pending state prosecution. Although the Court has not as yet decided whether permanent federal injunctive relief from threatened state prosecutions is permitted under the *Steffel-Salem Inn* reasoning, see note 43 supra, a request for such relief may be heard by a federal court; if the challenge to the state statute is successful, declaratory rather than the more coercive injunctive remedy will normally be sufficient to assure proper relief. See *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975).
138. 420 U.S. at 609. *Huffman* makes a further impact upon the *Monroe* rule by extending the application of *Younger* to quasi-criminal as well as criminal proceedings.
139. 420 U.S. at 609-10 n.21.
140. 365 U.S. at 183 (emphasis added).
represent a significant erosion of the Monroe rule since it is encompassed in the Younger exception to non-exhaustion. The effect of Huffman upon non-exhaustion is less easily explained by Justice Rehnquist's reconciliation, since the Court's holding actually requires the losing state litigant, who is also the federal complainant, to initiate a state proceeding by seeking appellate review.

It is questionable whether consideration of who initiates a state proceeding should be the determining factor in deciding whether relief must be sought in state court or is available in a federal suit under section 1983. More properly, this factor is but one of a variety of considerations under a Younger balancing process. Justice Rehnquist's explanation in Huffman does demonstrate the consistency of the Monroe and Younger doctrines. The traditional balancing of state and federal interests under Younger should remain, however, the essential test for determining the propriety of federal relief from state proceedings, regardless of whether the state action was commenced before federal relief was sought, and regardless of whether the state proceeding is in a trial or appellate posture.141

141. The Supreme Court may clarify the relationship between the Younger doctrine and that of Monroe v. Pape when it decides McCray v. Burrell, 516 F.2d 357 (4th Cir.) (en banc), cert. granted, 96 S. Ct. 264 (1975). One of the issues presented is whether a state prisoner must exhaust adequate state administrative remedies before bringing a federal action under section 1983 challenging the conditions of his confinement. See 44 U.S.L.W. 3257 (U.S. Nov. 4, 1975); Comment, The Maryland Inmate Grievance Commission or the Federal Courts? A Problem of Exhaustion, 35 Md. L. Rev. 458 (1975). An indication by the Court that available and adequate state administrative remedies must be exhausted before an action under section 1983 can be brought in federal court would not significantly undermine Younger. It is almost inconceivable that the Court will establish an unqualified doctrine requiring exhaustion of adequate state administrative and judicial remedies. Monroe forecloses the issue of exhaustion of state judicial remedies and is a well-accepted doctrine. See Huffman v. Pursue, Ltd., 420 U.S. 592, 599-10 n.21 (1975). Requiring exhaustion of judicial remedies might preclude federal declaratory relief from a threatened state prosecution, as was sought in Steffel v. Thompson, 415 U.S. 452 (1974), because an available state declaratory remedy would have to be pursued first. A requirement that state judicial remedies be exhausted in a section 1983 suit would be inconsistent with traditional notions of the roles of the federal courts and section 1983 in vindicating individual constitutional rights. See notes 74-75 and 117-18 and accompanying text supra. Therefore, a balancing of interests under Younger should remain the proper test for determining the propriety of federal equitable intervention in state criminal or quasi-criminal proceedings. See Comment, The Maryland Inmate Grievance Commission, supra, at 469-71.

There are sound arguments for distinguishing between exhaustion of state administrative and judicial remedies. The potential res judicata or collateral estoppel effect of a state court judgment means that an exhaustion of judicial remedies requirement would seriously restrict access to federal relief under section 1983 suits. Cf. Lane v. Wilson, 307 U.S. 268 (1939); Baron v. Rutland R.R., 232 U.S. 134 (1914); Comment, Exhaustion of State Administrative Remedies in Section 1983 Cases, 41 U. Chi. L. Rev. 537, 551 n.68 (1974); notes 89, 93, and 101-02 and accompanying text supra. An administrative agency charged with resolving particular disputes will develop an expertise in that area which is unattainable by federal or
Conclusion

In both Huffman and Hicks the Supreme Court held that Younger principles must be considered by a federal court deciding whether to intervene in state court proceedings, thus making federal relief unavailable absent extraordinary circumstances even when the federal action was commenced prior to initiation of the state proceeding or where a lower state court judgment had already been rendered. Viewed under the Younger doctrine, these decisions appear properly to effectuate the balance of interests which Younger requires. Well-considered application of the Younger balance continues as the necessary test, and lower federal courts should determine and weigh carefully the various state and federal interests involved. Mechanical application of the language of the Court in Hicks should not take the place of analysis.

The Huffman Court attempted to reconcile its holding that Younger applied to restrict federal equitable relief when state appellate remedies have not been exhausted with the doctrine of Monroe v. Pape and the role of federal courts as vindicators of individual constitutional rights through section 1983 proceedings. While this reconciliation, based on who must initiate the state proceeding, appears sound in the Hicks setting, some problems remain. Huffman requires a federal complainant to initiate state appellate proceedings, a position seemingly inconsistent with the Monroe rule. More fundamentally, consideration of who initiates the state proceeding should not be conclusive in deciding the propriety of federal equitable relief. Determinations in this area continue to require careful weighing of all factors pertinent to the Younger balance rather than mechanical application of isolated considerations.

state courts; the benefit to be derived from deference to such expertise by requiring exhaustion of adequate administrative remedies seems a valid consideration in the balance. See Comment, The Maryland Inmate Grievance Commission, supra, at 471-72. In McCray the Court might formulate a qualified requirement that adequate state administrative remedies be exhausted, limiting it to actions by state prisoners because of the special state interests involved. Cf. Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973) ("It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.").