University of Miami Law Review

Volume 25 | Number 3 Article 9

5-1-1971

Federal Injunctions Against State Prosecutions Reconsidered

Irma V. Hernandez

the soundness of this distinction is questionable. Mere membership, whether knowing or unknowing, is constitutionally protected under *Robel* and *Brandenburg*. Consequently, as *Baird* holds, the state has no legitimate interest in demanding disclosure of membership, unless that inquiry is confined to membership on the part of one sharing the specific intent to further the organization's unlawful aims. Therefore, the Court's validation of New York's Question 26(a) is inconsistent with the reasoning of *Baird* and *Stolar*. *Konigsberg* is undermined by these companion cases, but upheld by the instant case. Its continued vitality is, therefore, uncertain.

The significance of the decision noted herein extends beyond the narrow confines of the bar admission question. It stands as a further indication of the Burger Court's retreat from *Dombrowski*, begun in *Younger v. Harris*.[40] Appellants' heavy reliance on a "chilling effect" failed to win them the relief granted, on closely-related grounds, to rejected applicants Stolar and Baird.

The instant decision also reveals that a majority of the present Court holds a "traditional" view of the lawyer's role in society, one more akin to "officer of the court" than to "vigorous advocate of social change." These attitudes may be expected to collide with increasing frequency in the future.

JAMES T. HENDRICK

FEDERAL INJUNCTIONS AGAINST STATE PROSECUTIONS RECONSIDERED

Harris was indicted and charged with a violation of the California Criminal Syndicalism Act.[1] Thereafter, Harris filed suit in a federal district court to enjoin Younger, the District Attorney for Los Angeles County, from prosecuting him.[2] Jim Dan and Diane Hirsch, members of the Progressive Labor Party, and Farrell Broslawsky, a history professor, intervened as plaintiffs in the district court suit.[3] All alleged that immedi-

40. 91 S. Ct. 746 (1971). Noted in 25 U. MIAMI L. REV. 506 (1971).

1. CAL. PENAL CODE §§ 11400-11401 (West 1961).

2. Harris alleged "the prosecution and even the presence of the Act inhibited him in the exercise of his rights of free speech and press, rights guaranteed to him by the First and Fourteenth Amendments." Younger v. Harris, 91 S. Ct. 746, 748 (1971).

3. Dan and Hirsch alleged that

> the prosecution of Harris would inhibit them as members of the Progressive Labor Party from peacefully advocating the program of their party which was to replace capitalism with socialism and to abolish the profit system of production in this country. *Id.*

Broslawsky alleged "the prosecution of Harris made him uncertain as to whether he could teach about the doctrines of Karl Marx or read from the Communist Manifesto as part of his classwork." *Id.*

ate and irreparable injury would result unless the district court restrained the pending state prosecution of Harris.[4] A three-judge federal district court[5] held that the California Criminal Syndicalism Act was void for vagueness and overbreadth in violation of the first and fourteenth amendments, and enjoined the further prosecution of the pending action against Harris.[6] Upon appeal to the United States Supreme Court,[7] *held*: Reversed: As to Dan, Hirsch, and Broslawsky, the case was dismissed because "persons having no fears of state prosecution except those that are imaginary or speculative are not to be accepted as appropriate plaintiffs. . . ."[8] In other words, these plaintiffs did not have a justiciable controversy. As to Harris, the Court reversed and remanded, and held that the possible unconstitutionality of a statute on its face does not in itself justify an injunction against good faith attempts to enforce it where there is no showing of bad faith, harassment, or any other unusual circumstances that would call for equitable relief. *Younger v. Harris*, 91 S. Ct. 746 (1971).

The federal courts have generally avoided interference with threatened or pending criminal prosecutions in a state court. This doctrine of non-interference has been codified in the Anti-Injunction Act,[9] which developed from the Act of March 2, 1793.[10] Paralleling the intention expressed by Congress in the Anti-Injunction Act and its predecessor, the federal courts have developed the doctrines of comity and abstention as a further manifestation of the policy of non-interference in state court matters. A short review of both doctrines and their exceptions, together with the effect which *Dombrowski v. Pfister*[11] had upon these doctrines, is imperative in order to understand the significance of *Younger v. Harris*.[12]

Since their creation, federal courts have been reluctant to exercise their equity powers to restrain prosecutions which are pending or threatened in state courts.[13] This policy of non-interference is based on the concept that "federal courts, in exercising their jurisdiction, should give consideration to the sovereign status of the individual state." This policy is commonly referred to as "the doctrine of comity."[14]

---

4. *Id.*

5. Convened pursuant to 28 U.S.C. § 2284 (1964).

6. 281 F. Supp. 507 (C.D. Cal. 1968).

7. Pursuant to 28 U.S.C. § 1253 (1964).

8. 91 S. Ct. 746, 749 (1971).

9. "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1964).

10. Act of Mar. 2, 1793, ch. 12, § 720, 1 Stat. 136.

11. 380 U.S. 479 (1965).

12. 91 S. Ct. 746 (1971).

13. *See, e.g.*, Fitts v. McGhee, 172 U.S. 516 (1899).

14. Maraist, *Federal Injunctive Relief Against State Court Proceedings: The Significance of Dombrowski*, 48 TEXAS L. REV. 535, 541 (1970) [hereinafter cited as Maraist].

An exception to this doctrine was created in *Ex Parte Young*,[15] where the Court granted injunctive relief against a state officer to prevent threatened enforcement of an unconstitutional criminal statute, which provided for severe sanctions and exorbitant fines for disobedience of an order fixing the rates for railroads in Minnesota. While the Court recognized the general rule that federal courts cannot interfere in a case where the proceedings are already pending in a state court,[16] an injunction was granted in view of the fact that the statute involved was unconstitutional on its face, and that the plaintiffs would suffer irreparable loss if the threatened proceedings were not enjoined.[17]

In 1941, the Court, in *Beal v. Missouri Pac. R.R.*,[18] noted that if the federal district court found "irreparable injury" which was both great and immediate, together with the threat of a "multiplicity of prosecutions," then a federal court injunction of state proceedings would be proper.[19] *Watson v. Buck*[20] established the test which is to be applied by the federal district courts in determining whether to grant an injunction against threatened prosecution under an unconstitutional state statute.

> The imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irreparable injury which complainants would sustain if those threats were carried out, are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified.[21]

The policy of non-interference with state court proceedings was restated in *Douglas v. City of Jeannette*.[22] The Court noted that no person was immune from good faith criminal prosecution, and the fact that the statute or ordinance was allegedly unconstitutional was not enough to justify federal injunctive relief.[23] It was stated in *Douglas* that the injury caused by a single criminal proceeding brought lawfully and in good faith was not the sort of irreparable injury which warrants a federal court's enjoining a threatened state court criminal prosecution.[24]

Another aspect of the doctrine of non-intervention was enunciated by Justice Frankfurter, in *Railroad Commission v. Pullman Co.*[25]

> [T]he federal courts, "exercising a wise discretion," restrain their authority because of "scrupulous regard for the rightful

15. 209 U.S. 123 (1908).
16. *Id.* at 155-56.
17. *Id.*
18. 312 U.S. 45 (1941).
19. *Id.* at 50.
20. 313 U.S. 387 (1941).
21. *Id.* at 400.
22. 319 U.S. 157 (1943).
23. *Id.* at 163.
24. *Id.* at 163-64.
25. 312 U.S. 496 (1941).

> independence of the state governments" and for the smooth working of the federal judiciary.[26]

This doctrine, known as the "abstention doctrine," permits a federal court whose jurisdiction has been properly invoked to postpone any decision, pending trial of the case in a state court thus giving the state court the opportunity to dispose of the case on the basis of state law.[27]

Abstention has often sent the litigants on a long and arduous road through the state courts.[28] The Supreme Court has tacitly admitted that the doctrine might prove to be a hardship, and that, in some instances, it serves to deny litigants a federal forum for the decision of their federal claims.[29] In addition, the doctrine has been used to dam the flow of "civil rights" cases which flooded the federal courts after World War II.[30] It was clear to the federal judiciary that strict application of abstention to civil rights actions was an obstacle to effective protection of constitutional guarantees.[31]

Thus, the need arose to create an exception to the abstention doctrine where certain federal "civil rights" were involved.[32] In *Monroe v. Pape*,[33] the Court disregarded abstention, stating that "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."[34] In 1963, the Court reaffirmed this exception in the case of *McNeese v. Board of Education*,[35] wherein the Court explained that the Congressional purpose in the enacting of section 1983[36] would be defeated if the assertion of the federal claim had to await an attempt to vindicate the same right in state courts.[37] Subsequent to *Monroe* and *McNeese*, the Court, in *Baggett v. Bullet*,[38] suggested that the abstention doctrine is not applicable in cases involving the infringement of first amendment rights:

> [A]bstention operates to require piecemeal adjudication in many courts . . . a result quite costly where the vagueness of a state statute may inhibit the exercise of First Amendment freedoms.

26. *Id.* at 501.

27. *See generally* Note, *Federal-Question Abstention: Justice Frankfurter's Doctrine in an Activist Era*, 80 HARV. L. REV. 604 (1967).

28. *See* Kurland, *Toward a Co-Operative Judicial Federalism: The Federal Court Abstention Doctrine*, 24 F.R.D. 481, 489 (1959).

29. *See* County of Allegheny v. Frank Mashuda Company, 360 U.S. 185, 196-97 (1959). England v. Louisiana State Bd. of Medical Exam., 375 U.S. 411, 425-27 (1964), concurring opinion of Justice Douglas citing Wright, *The Abstention Doctrine Reconsidered*, 37 TEXAS L. REV. 815 (1959).

30. Maraist, *supra* note 14, at 539.

31. *Id.*

32. Note, *Federal-Question Abstention: Justice Frankfurter's Doctrine in an Activist Era*, 80 HARV. L. REV. 604, 607 (1967).

33. 365 U.S. 167 (1961).

34. *Id.* at 183.

35. 373 U.S. 668 (1963).

36. 42 U.S.C. § 1983 (1964).

37. 373 U.S. 668, 675 (1963).

38. 377 U.S. 360, 378-79 (1964).

Thus, by 1965, the abstention doctrine was no longer the strict non-interference policy which it had been originally. With the addition of the "civil rights" and the first amendment exceptions, abstention lost much of its vitality.[39]

In 1965 the Court decided *Dombrowski v. Pfister*.[40] In *Dombrowski*, an action was brought under the Civil Rights Act[41] seeking a declaratory judgment and an injunction restraining defendants from prosecuting or threatening to prosecute plaintiffs for alleged violations of the Louisiana Subversive Activities and Communist Control Law[42] and Communist Propaganda Control Law.[43] A three-judge district court denied relief.[44] The Supreme Court reversed, noting that the Anti-Injunction Act[45] did not apply because there was no *pending* prosecution.[46] It also noted plaintiff's allegation that there were threats of multiple prosecutions with no real intent to obtain valid convictions. The Court considered these factors as sufficient irreparable injury to justify injunctive relief.[47] In regard to the abstention doctrine, the Court concluded that where state statutes on their face violate first amendment rights, or the statutes are being used for the purpose of discouraging protected first amendment activities, abstention was improper.[48]

The *Dombrowski* decision did not give the lower courts clear guidelines as to its scope and future application. The majority opinion held, in effect, that there is sufficient showing of irreparable injury, justifying injunctive relief[49] when the prosecution or threat of prosecution under an overbroad statute works a "chilling effect" on freedom of expression.[50] This language has been widely used by the lower courts to justify granting an injunction against threatened state prosecutions, and in some instances, against pending state prosecutions.[51] Since *Dombrowski*, literally hundreds of cases in the lower courts have claimed the benefit of the doctrine.[52]

Understandably, there has been confusion and disagreement among the many lower court interpretations of *Dombrowski*.[53] Professor Wright has expressed the need for further clarification of the doctrine:

> It is . . . hoped that the decision of these cases [set for rehear-

39. Maraist, *supra* note 14, at 541.
40. 380 U.S. 479 (1965).
41. 42 U.S.C. § 1983 (1964).
42. LA. REV. STAT. ANN. §§ 14:358, 14:374 (Cum. Supp. 1962).
43. LA. REV. STAT. ANN. §§ 14:390, 14:390.8 (Cum. Supp. 1962).
44. 227 F. Supp. 556, 564 (E.D. La. 1964).
45. 28 U.S.C. § 2283 (1964).
46. 380 U.S. at 484 n.2.
47. *Id.* at 489.
48. *Id.* at 491-92.
49. *Id.* at 489.
50. *Id.* at 486-88.
51. Maraist, *supra* note 14, at 581 n.215 and cases cited therein.
52. C. WRIGHT, FEDERAL COURTS § 52 (2d ed. 1970).
53. *Id.*

> ing], will clarify the meaning of Dombrowski and will establish that every person prosecuted under state law for conduct arguably protected by the First Amendment cannot, by murmuring the words "chilling effect," halt the state prosecution while a federal court . . . passes on the validity of the statute and the bona fides of the state law enforcement officers.[54]

The questions of whether *Dombrowski*-type relief could be expanded to cover pending prosecutions, and whether it could cover any action under color of law were live controversies when *Younger v. Harris*[55] reached the Court.

In *Younger*, the Court first turned its attention to appellees Dan, Hirsch and Broslawsky. These parties had never been threatened with state prosecution, and their only allegation was that they "felt inhibited" by the mere presence of the state statute on the books. The Court stated that there was no live controversy, that they were not the proper plaintiffs to bring the suit, and that they had no standing to attack the statute as it applied to defendant Harris.

It had been suggested that *Dombrowski*-type cases supported a rule of standing which stated that:

> *Any party* whose exercise of freedom of expression is being abridged by the existence of an overbroad statute regulating expression has standing to seek a declaratory judgment and injunctive relief against the statute.[56]

It appears from the decision in the instant case that standing has been restricted to include only those parties who are threatened with prosecution or are actually prosecuted under an overbroad statute. The Court specifically stated that the allegation made by appellees Dan, Hirsch and Broslawsky of "feeling inhibited" by the mere presence of the Act was insufficient to warrant a federal court injunction restraining a pending state criminal prosecution.[57]

Appellee Harris, however, was being criminally prosecuted in the state court. His case, therefore, fulfilled the standing requirement. In discussing his case, the Court first gave a brief exposition of the historical background behind the long-standing public policy against federal court interference with state court proceedings and cited cases supporting the doctrine of comity and its exceptions. The Court emphasized the need for exceptional circumstances and a great and immediate danger of irreparable loss, prior to issuance of a federal court injunction against a state proceeding. The injury caused by a single good faith state prosecution was expressly excluded from the concept of "irreparable injury."[58]

---

54. *Id.*
55. 91 S. Ct. 746 (1971).
56. Maraist, *supra* note 14, at 589 (emphasis added).
57. 91 S. Ct. 746, 749-50 (1971).
58. *Id.* at 751.

> *Dombrowski* was distinguished on its facts: [the] circumstances, as viewed by the Court [in Dombrowski] sufficiently establish the kind of irreparable injury, above and beyond that associated with the defense of a single prosecution brought in good faith, that had always been considered sufficient to justify federal intervention.[59]

It appears that the bad faith element present in *Dombrowski* was not present in *Younger*. Also, there was no pending state prosecution in *Dombrowski* unlike the situation in *Younger*.

The district court in *Younger* had interpreted *Dombrowski* as substantially broadening the availability of injunctions against state criminal prosecution. It viewed *Dombrowski* as permitting the federal courts to grant equitable relief against state prosecutions without regard to any showing of bad faith, whenever a state statute is found "on its face" to be vague or overbroad, in violation of the first amendment.[60] The Supreme Court disapproved of this interpretation and considered the reasons supporting such a position inadequate.[61] The Court reasoned that: (1) the *Dombrowski*-type relief was not effective in eliminating the uncertainty as to the state statutes, and (2) the states would be stripped of all power to prosecute even constitutionally unprotected conduct until a new statute could be passed.[62] The "chilling effect" which *Dombrowski* considered so important to first amendment freedoms was minimized by the Court:

> [T]he existence of a "chilling effect," even in the area of First Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting state action.[63]

The *Younger* Court also found the procedure for testing the constitutionality of a statute by resorting to either a declaratory judgment or injunctive relief in a federal court to be "fundamentally at odds with the function of the federal courts in our constitutional plan."[64] The Court stated that

> the possible unconstitutionality of a statute "on its face" does not in itself justify an injunction against good faith attempts to enforce it . . . [where there is no] showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief.[65]

Thus, it appears that in order for a federal court to exercise equitable powers to restrain a pending state criminal prosecution, there must be a showing of irreparable injury both great and immediate and (1) an un-

59. *Id.* at 752.
60. *Id.* at 753.
61. *Id.*
62. *Id.* at 753-54.
63. *Id.* at 753.
64. *Id.* at 754.
65. *Id.* at 755.

constitutional statute; (2) a bad faith attempt to enforce it; or (3) another unusual circumstance which would suggest that a single defense of the action in the state court will not adequately protect the defendant's federal constitutional rights.

Younger has categorized *Dombrowski* as another exception to the comity doctrine. It has also placed in doubt the existence of a first amendment exception to the abstention doctrine. No longer can plaintiffs murmur "chilling effect" and obtain federal courts' equitable relief against pending good faith attempts to enforce a state statute which "tends to have the incidental effect of inhibiting first amendment rights."[66]

The absence of discussion concerning the abstention doctrine in *Younger* is significant. The sharp restriction imposed upon *Dombrowski*-type relief necessarily affects abstention because a portion of the *Dombrowski* holding referred to the impropriety of abstention in first amendment cases.[67] This absence of discussion seems to indicate that the federal courts should not apply the abstention doctrine in first amendment cases unless the prerequisites for equitable relief against a pending state prosecution are satisfied.

The *Younger* opinion makes no mention of the factors which are necessary before a federal court may exercise equitable powers to restrain future state prosecutions. However, insight on this subject may be gleaned from the cases decided by the Supreme Court on the same day as *Younger*.

Boyle v. Landry[68] was a class action by Chicago citizens for a declaratory judgment and injunctive relief against the enforcement of several Illinois statutes and Chicago ordinances. The Supreme Court held that no injunction should have been issued in the absence of any threat of state prosecution. The Court stated that "the normal course of state criminal prosecutions cannot be disrupted or blocked on the basis of charges which in the last analysis amount to nothing more than speculation about the future."[69] Apparently, threats of prosecution under an unconstitutional statute are one of the essential factors which form the concept of "irreparable injury." A showing of irreparable injury which is both great and immediate is necessary before a federal court can exercise its equitable powers against future state prosecutions.

In *Samuels v. Mackrell*[70] the plaintiffs had been indicted in New York state courts on charges of criminal anarchy. The plaintiffs prayed for a federal court injunction against the state court proceedings, or in the alternative, for a declaratory judgment. After denying injunctive relief on the basis of *Younger v. Harris,* the Court held that where the state criminal prosecution had begun prior to the federal suit, the same equita-

66. *Id.* at 754.
67. 380 U.S. 479, 491-92 (1965).
68. 91 S. Ct. 758 (1971).
69. *Id.* at 760.
70. 91 S. Ct. 764 (1971).

ble principles that apply to injunctions must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment. Where an injunction would be impermissible under these principles, declaratory relief should ordinarily be denied as well.[71]

Prior to this opinion, declaratory judgments were thought to be appropriate and were more liberally granted than injunctive relief in similar circumstances.[72] As with *Younger*, the Court failed to set guidelines for federal equitable relief where there is no pending state prosecution.

Dyson v. Stein[73] was decided per curiam. The Court again stated that there must be a finding of irreparable injury, carefully determined from the facts of the case, before a federal court may grant injunctive or declaratory relief against a pending state prosecution.

Byrnes v. Karalexis,[74] also decided per curiam, was a similar suit. In this case the Court stated that "the threat to appellees' federally protected rights was not shown to be one that cannot be eliminated by his defense against a single criminal prosecution."[75]

In conclusion, it is evident that *Younger v. Harris* and its companion cases have established new standards for the propriety of federal intervention in pending state criminal proceedings. These cases stand for the proposition that federal injunctions and declaratory relief against a pending state prosecution are not proper unless it is shown that irreparable injury, both great and immediate, will occur. Although the Court did not undertake to define all of the circumstances which result in the requisite irreparable injury,[76] it is clear that the following conditions satisfy the test for the issuance of an injunction against the state court criminal proceedings: a pending prosecution brought under an unconstitutional statute in such a manner that the threat to appellee's federally protected rights is one that cannot be eliminated by his defense against a single criminal prosecution, or the criminal prosecution—or threats thereof—are brought in bad faith, for the purpose of harassment, with no real hope of securing a valid state conviction.

IRMA V. HERNANDEZ

71. *Id.* at 768.
72. *Id.* at 769.
73. 91 S. Ct. 769 (1971).
74. 91 S. Ct. 777 (1971).
75. *Id.* at 780.
76. Other unusual situations calling for federal intervention might also arise, but there is no point in our attempting now to specify what they might be.
91 S. Ct. at 755.