Federal Court Doctrines in Avoidance of Adjudication: Exhaustion, Abstention and the Anti-Injunction Statute

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The federal district court often presents the best forum in which to raise law reform issues. However, considerable difficulties may be encountered in convincing the federal court that it has jurisdiction to act\(^1\) and that it should exercise its jurisdiction to decide the merits of the case. This article will focus upon the second hurdle, specifically, the federal court doctrines of exhaustion and abstention and the anti-injunction statute, 28 U.S.C. \$2283 (1970).

Since each of these doctrines is an expression of concern over the sensitivity of the state-federal relationship in federal court litigation, they are most likely to surface when the federal court defendant is some branch of state or municipal government, e.g., a welfare department or public housing authority. This makes the doctrines quite common to federal poverty law litigation and a source of frustration to many law reform plaintiffs.

The rules which the courts have laid down have not always been clearly stated and are subject to numerous qualifications and exceptions. The doctrines overlap considerably and, as applied by the courts, they are at times indistinguishable. It is some consolation, however, that the terrain is equally uncertain on the other side of the question. As shall be seen below, some plausible basis for the non-applicability of the doctrines can be argued in most cases where they are raised.

Exhaustion

Under the exhaustion doctrine, a plaintiff will not be permitted to institute a federal proceeding without first pursuing (exhausting) available state remedies. The question often arises in federal proceedings where a form of state action is challenged.

Rules limiting the application of the exhaustion doctrine are fairly clear. Plaintiff is ordinarily not required to exhaust prior state judicial remedies.\(^2\) This is particularly true regarding litigation brought under 28 U.S.C. \$1343 (1964) and 42 U.S.C. \$1983.\(^3\) Whether state administrative remedies\(^4\) need be exhausted is less certain, but a good argument can be made that they need not be—particularly when the federal court’s jurisdiction is invoked to hear civil rights and federal statutory claims under 42 U.S.C. \$1983. By the language in *McNeese v. Board of Education*,\(^5\) \$1983 provides “a remedy in the federal courts supplementary to any remedy any state might have.”\(^6\) This can be taken to mean that the presence of state administrative remedies can be ignored in \$1983 actions and *McNeese* has been so interpreted.\(^7\) Since it is possible to make a plausible argument of the existence of a cause of action under \$1983 in lawsuits filed in federal court,\(^8\) the *McNeese* exception to the exhaustion doctrine is of great importance. Even absent this special exception, exhaustion of administrative remedies cannot be required when resort would be obviously futile,\(^9\) or demonstrably inadequate. Demonstrable inadequacy of the administrative remedy would include the likelihood of unreasonable delay,\(^10\) or inaction,\(^11\) when the result the agency will reach can be clearly shown in advance.\(^12\)

Abstention

Abstention allows a federal court whose jurisdiction has been properly invoked to postpone decision, pending trial in a state court, when the result might turn on issues of state law.\(^13\) The Supreme Court will permit a lower federal court to abstain only in “limited special circumstances”: We yet like to believe that wherever the Federal Courts sit, human rights under the Federal Constitution are always a proper subject of adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum. The judge-made doctrine of abstention, first fashioned in 1941 in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971, sanctions such escape only in narrowly limited ‘special circumstances.’ [Citation omitted.]

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4. Some question exists whether plaintiff, in coming to federal court rather than appealing an administrative determination in state court, has elected not to exhaust an administrative or a judicial state remedy. It is established, however, that the absence of a de novo trial in state court would not ipso facto render the proceeding an administrative one. *Bacon v. Rutland R.R.*, 232 U.S. 134 (1914).


8. See the authorities cited in note 1, supra.


Of the "special circumstances" warranting abstention, the one most frequently relied upon is "the susceptibility of a state statute of a construction by the state courts that would avoid or modify the constitutional question" raised in federal court. 15

There are at least two important limitations on this "special circumstance." First there must be an ambiguity in the state law issue before the federal court which is both real and peculiarly susceptible to resolution by a state court. When the state law is unambiguous, federal court abstention ordinarily constitutes reversible error. 16 Second, the state law ambiguity must be material to plaintiffs' federal lawsuit.

...it is necessary for the ambiguity to be 'material' in the sense of being relevant to the possibility of avoiding the constitutional issues. If the state-law issues are irrelevant to the constitutional ones, if no possible state-law decision could destroy the federal questions, abstention would be futile. Someone will have to decide the constitutional issues, and since the federal courts have jurisdiction, they are a proper forum. 17

A state-law issue is material to the lawsuit only if plaintiff presents the issue to the court. The fact that a state-law issue conceivably exists in a given case which could warrant abstention does no harm to plaintiff if he has chosen not to raise it in his pleadings. 18

There are instances when plaintiff will be obliged to have state law issues touching upon his federal claims tried in state court. This occurs when the federal court determines that state and federal issues are interwoven and abstention is warranted on the state court issue. However, this does not mean that access to an adjudication of federal issues by a federal district court is foreclosed. In England v. Louisiana State Board of Medical Examiners, 19 the Supreme Court held that, under certain circumstances, the plaintiff may limit the state litigation to state issues. Plaintiff may place upon the state record a reservation that he is offering only his state issues for an adjudication, that he is revealing his federal issues merely as a matter of information, and that he intends to raise those issues subsequently in federal court. This may avoid the effect of res judicata from an adverse determination of federal issues by the state court. The problem posed by the state court determination would have been that it could not be collaterally attacked in a United States district court proceeding but would be open only to the possibility of ultimate review by the United States Supreme Court. 20

The rationale of the England case should be equally applicable to situations where the plaintiff is obliged to assert state rights in a state forum, either in advance of or contemporaneously with a federal suit, in order to preserve them.

In a recent opinion, the Supreme Court required abstention to allow the Alaska courts to consider a state law which was unambiguous. However, the Court was clearly influenced by the fact that the law had been in force only a short time. 21 The general rule concerning abstention was restated by the Supreme Court in a subsequent case:

As we said in Twickler v. Koota, abstention should not be ordered merely to await an attempt to vindicate the claim in a state court. Where there is no ambiguity in the state statute, the federal court should not abstain but should proceed to decide the federal constitutional claim. 22

A special abstention problem exists when the relief sought from a federal court would interfere with a state criminal proceeding. The Supreme Court has held that since state interest in criminal prosecutions is particularly strong, federal courts should not take action interfering with state criminal prosecutions except under extraordinary circumstances. 23 Such circumstances were found to be present and the lower federal court was ordered not to abstain in Dombrowski v. Pfister, 24 where an injunction was sought against bad faith state prosecutions commenced subsequent to the filing of the federal action. However, the Dombrowski exception was considerably narrowed by a series of Supreme Court cases decided last term. In Younger v. Harris 25 the Court concluded that possible facial unconstitutionality of a state criminal statute will not justify federal court intervention to enjoin good faith attempts to enforce it. Federal court intervention by declaratory judgment in a similar context was struck down in Samuels v. MacKell. 26 However, the possibility that the abstention doctrine can be avoided is not foreclosed in cases where state criminal prosecutions are commenced after the federal suit is commenced or when state prosecutions are only threatened. 27 The practitioner should be aware of the Court's

15. See id. at 248-49.
19. This line of authority may be affected by the Supreme Court's recent holding in Askew v. Hargrave, 401 U.S. 476 (1971). The Court ordered abstention in a federal suit so that state law issues raised in a subsequent state proceeding (apparently by another party), could be resolved. However, the difference afforded plaintiff in his choice of issues is quite explicitly stated in the McNeese and Atlantic Coast cases.
20. See WRIGHT, supra note 2, at 198-199.
24. 380 U.S. 479 (1965) (statute held unconstitutional abridgment of first amendment rights).
approach in *Younger*. There, the issue was not framed in terms of abstention but in terms of the traditional equitable requirements that plaintiffs have no adequate remedy at law and establish on the record irreparable harm sufficient to warrant equitable interference with state criminal proceedings. Although *Younger*’s primary impact may be upon cases involving state criminal proceedings, plaintiffs’ attorneys should be prepared to meet these arguments whenever equitable and declaratory relief are sought.  

The Anti-Injunction Statute  

In addition to the judge-made doctrines of abstention and exhaustion, Congress has created a third obstacle to adjudication on the merits, a statute deferring to the state judiciary by barring injunctions against pending state court lawsuits:

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.

Section 2283 arguably applies only when relief in the form of an injunction is sought and then only when the order sought would necessitate the enjoining of a state court proceeding initiated prior to the filing of the federal action. The practical effect of §2283 may be to create a race to the courthouse. Timing of the filing of the federal lawsuit is crucial when §2283 is a factor. If the federal plaintiff permits the prospective federal court defendant to file in state court first, the statute becomes an obstacle. However, if the federal court plaintiff files first and alleges impending or threatened state court action by the federal defendant, his standing may be challenged as speculative while it is unsure whether state court action will actually be commenced and, if so, what form it will take. Application of §2283 is expressly limited by its own qualifying language. A federal court may enjoin pending state court actions (1) “when expressly authorized to do so by Act of Congress”; (2) “where necessary in aid of its jurisdiction”; or (3) “to protect or effectuate its judgments.” The first of these qualifications is significant. Several lower federal courts have held that actions brought under 42 U.S.C. §1983 constitute “expressly authorized” exceptions unaffected by §2283. The remaining two exceptions have little general application and have been very narrowly construed in Atlantic Coast Line Railroad Co. v. Brotherhood of Local Engineers.  

33. See Boyle v. Landry, 401 U.S. 77, 81 (1971). Two cases in which the timing of filing was successful are Jeanette Rankin Brigade v. Chief of the Capitol Police, 421 F.2d 1090 (D.C. Cir. 1969) (demonstrators advised by police their planned course of action violated law), and Gall v. Lawler, 322 F. Supp. 1223 (E.D. Wis. 1971) (plaintiff advised by city attorney that planned action would lead to prosecution).
