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## Federal Jurisdiction: The Perils and Rewards of Pulling Things Together

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# FEDERAL JURISDICTION: THE PERILS AND REWARDS OF PULLING THINGS TOGETHER

Gene R. Shreve\*

FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER. By *Martin H. Redish*. Indianapolis: Bobbs-Merrill Co. 1980. Pp. xiii, 361. \$25.

Professor Redish's book about the nature and limits of federal jurisdiction enters a field previously occupied by innumerable law review articles and books treating only parts of the subject.<sup>1</sup> No stranger to the field,<sup>2</sup> he has produced a treatise of exceptional merit.

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1. A list of some of the most prominent books might include: AMERICAN LAW INSTITUTE, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS (1967) (federal question and diversity jurisdiction, removal); P. CARRINGTON, D. MEADOR & M. ROSENBERG, JUSTICE ON APPEAL (1976) (federal appellate jurisdiction); O. FISS, THE CIVIL RIGHTS INJUNCTION (1978) (the relationship of remedies to federal jurisdiction in civil rights cases); H. FRIENDLY, FEDERAL JURISDICTION (1973) (jurisdiction of lower federal courts); G. GILMORE & C. BLACK, LAW OF ADMIRALTY (2d ed. 1975) (admiralty and maritime jurisdiction, federal common law); R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE (5th ed. 1978) (Supreme Court jurisdiction).

Several casebooks in the field should also be noted. See P. BATOR, D. SHAPIRO, P. MISHKIN & H. WECHSLER, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (2d ed. 1973); D. CURRIE, FEDERAL COURTS (2d ed. 1975); C. MCCORMICK, J. CHADBOURN & C. WRIGHT, CASES AND MATERIALS ON FEDERAL COURTS (6th ed. 1976). They offer greater scope but are not intended to synthesize and clarify material as Professor Redish does in his book.

Finally, Professor Charles Alan Wright's excellent work, HANDBOOK OF THE LAW OF FEDERAL COURTS (3d ed. 1976), should be noted. Although Professor Wright wrote the book for law students, it has reached a far greater and more sophisticated audience. It surveys issues of federal subject matter jurisdiction that are the concern of Professor Redish's book, as well as many other areas, e.g., the federal rules of civil procedure, personal jurisdiction and res judicata. Professor Wright's book often does not, as a consequence, treat Professor Redish's subjects with comparable length and detail.

2. Two articles by Professor Redish now appear in "slightly revised" form as chapters in this book. See Redish & Phillips, *Erie and the Rules of Decision Act: In Search of the Appropriate Dilemma*, 91 HARV. L. REV. 356 (1977) (appearing as chapter 7); Redish, *The Anti-Injunction Statute Reconsidered*, 44 U. CHI. L. REV. 717 (1977) (appearing as chapter 10).

He has published a number of other articles in the field. See *Continuing the Erie Debate: A Response to Westen and Lehman*, 78 MICH. L. REV. 959 (1980); *Revitalizing Civil Rights Removal Jurisdiction*, 64 MINN. L. REV. 523 (1980); *The Doctrine of Younger v. Harris: Deference in Search of a Rationale*, 63 CORNELL L. REV. 463 (1978); with Muench, *Adjudication of Federal Causes of Action in State Court*, 75 MICH. L. REV. 311 (1976); with Woods, *Congressional Power to Control the Jurisdiction of Lower Federal Courts: A Critical Review and a New Synthesis*, 124 U. PA. L. REV. 45 (1975).

He has attempted to design the book so that it can be read on two levels. First, and most successfully, he has written a collection of analytic essays on what he calls "twelve of the leading areas of federal jurisdiction."<sup>3</sup> Most of the essays explore some aspect of the relationship between the state and federal courts. A scholar writing in an area so complex and, at times, controversial, necessarily runs the opposing risks of temporization and dogmatic assertion. Professor Redish falls prey to neither. While he develops and applies his own critical judgments on issues where viewpoints have differed, he is also scrupulously fair in presenting the other side.<sup>4</sup> The result is not a monograph but a treatise in the true sense of the word.

The second, and perhaps intellectually more important level is more difficult to understand. Professor Redish's introduction confidently asserts that "the chapters are designed to be linked with one another on a broader level, as applications of a unified approach to the issues of judicial federalism."<sup>5</sup> Despite his good intentions, however, the unified approach, if there is one, never materializes. Indeed, it is difficult to see how it could have, given the diversity of the topics that make up the various chapters. Some subjects simply lack discernible strands of federalism — for example, the discussion of whether the Supreme Court exercises original or appellate jurisdiction in a given class of cases (pp. 11-12), and comparisons between article I and article III courts (pp. 35-51). Most of the other topics treated at least arguably involve the tensions of federalism.<sup>6</sup> But the contexts and characteristics of each issue vary so greatly that it is difficult to imagine how they could be successfully unified in one coherent theory of federal jurisdiction. Assuming that interests of

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3. P. 1. "Each chapter attempts to describe and to criticize the current state of the law as embodied in judicial decisions as well as in the theories of leading commentators." P. 1. Titles of the twelve chapters explain clearly the coverage of the book: (1) "Congressional Power to Control Federal Court Jurisdiction," (2) "Legislative Courts," (3) "The Scope of Lower Federal Court Power to Interpret Federal Law: Federal Question Jurisdiction," (4) "The Power of the Federal Courts to Fashion Federal Common Law," (5) "State Courts and Federal Power," (6) "Sovereign Immunity and the Eleventh Amendment," (7) "*Erie* and the Rules of Decision Act," (8) "Supreme Court Review of State Court Decisions: Procedural Limitations," (9) "Abstention," (10) "The Anti-Injunction Statute," (11) "Our Federalism," and (12) "Civil Rights Removal Jurisdiction." P. ix.

4. *See, e.g.*, his exchange with Professor Fiss, described in note 21 *infra*.

5. P. 1. He continues: "The critique of decisions and theories advanced here, as well as the suggestions for alternative approaches contained within each chapter, may be seen as an attempt to reorganize the values and priorities underlying the allocation of judicial power." P. 1 (citation omitted).

6. *E.g.*, p. 8 (the constitutional debates); p. 62 (scope of federal question jurisdiction); pp. 80 & 93 (federal common law); p. 119 (state court adjudication of federal claims); p. 197 (*Erie*); pp. 216-17 (Supreme Court review of state decisions); pp. 259-60 (the anti-injunction statute — 28 U.S.C. § 2283).

federalism have been violated, how does one equate the unwarranted displacement of state governing law<sup>7</sup> with the unwarranted displacement of state judicial forums,<sup>8</sup> or either with the unwarranted revision of state judicial decisions?<sup>9</sup> If there are answers to these questions, they do not appear in Redish's book. Each chapter begins a new topic<sup>10</sup> and is relatively self-contained. There is no concluding chapter. Unless the author chooses to elaborate upon his theories elsewhere, the puzzle of his second theme may remain forever locked in the book's introduction.<sup>11</sup>

## I

*Federal Jurisdiction* criticizes, as well as summarizes, the law. Professor Redish reserves his most trenchant criticisms for those who would invoke the doctrine of federalism to deny a federal forum to plaintiffs with federal claims. He states at the outset that "the integrity of the Article III federal courts as the primary adjudicators of federal law must be preserved" (p. 1), and that "[a]n individual should . . . be presumed to be able to obtain judicial vindication of his federal rights in federal, rather than state court" (p. 1). He flatly rejects the common counterargument that federal and state courts provide an equal opportunity for the vindication of federal rights (p. 2). Plaintiffs, he concludes, should not be forced to assert their federal claims before unsympathetic and perhaps less competent state judges.<sup>12</sup>

The villain here is not Congress, but rather the far-reaching ab-

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7. Either through violation of the *Erie* doctrine or excessive federal common law.

8. For example, through unwarranted federal question jurisdiction.

9. Either directly through unwarranted Supreme Court review or collaterally through abuse of federal habeas corpus.

10. See note 3 *supra*.

11. This would be more of a concern had the author not succeeded so admirably in the book's first purpose. See note 5 *supra* and accompanying text. Indeed, it is difficult to see how both objectives could be realized in the same book.

12. Since the federal courts were given general federal question jurisdiction in 1875, those courts have developed a broad expertise in dealing with problems and applications at federal law. At the same time, state judges have been increasingly less exposed to the intricacies of federal substantive legal principles. Moreover, the fact that federal judges are appointed by the President and confirmed by the Senate assures a floor of competence of the federal bench. There is no such assurance for state judges. Finally, federal judges retain the salary and life tenure protections of Article III, while many state judges must stand for election, a fact which significantly undermines their independence.

P. 119 (footnote omitted).

An interesting dialogue on the appropriate roles of state and federal courts in the adjudication of federal rights can be found in the contributions of Professors Bator, Cover, Field, Newbourn, and others in the Symposium, *State Courts and Federalism in the 1980's*, 22 WM. & MARY L. REV. 599 (1981).

stention doctrine established recently in *Younger v. Harris*.<sup>13</sup> A federal court's power to refuse to adjudicate a federal question properly brought before it is based upon the principle of self-restraint, derived from the equitable nature of the remedy sought. The decision whether to hear a case, then, involves a determination of whether "Our Federalism" (p. 298)<sup>14</sup> might be better served by requiring the plaintiff to press his claim in state, rather than federal court. Unlike the earlier and narrower *Pullman* abstention doctrine,<sup>15</sup> which at least required the existence of an unclear or unsettled issue of state law,<sup>16</sup> *Younger* may deprive a plaintiff of the right to litigate before a federal tribunal when there is *any* possibility of a state remedy. As originally set out, *Younger* expressly applied only against plaintiffs seeking to enjoin ongoing state criminal prosecutions by filing a civil rights suit in federal court under 42 U.S.C. § 1983.<sup>17</sup> The doctrine has since been extended to cover declaratory judgments against criminal proceedings.<sup>18</sup> It has also been used to protect pending state civil proceedings,<sup>19</sup> even when they involved only private par-

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13. 401 U.S. 37 (1971).

14. The phrase, of course, is Justice Black's. See *Younger v. Harris*, 401 U.S. 37, 44 (1971).

15. *Railroad Commn. v. Pullman Co.*, 312 U.S. 496 (1941).

16. *Pullman* is the more limited and less onerous of the two doctrines. The *Pullman* doctrine applies when, first, the need to invalidate a state statute or regulation as unconstitutional can be avoided if state law is given a certain meaning and, second, that meaning is not clear enough for a federal court to feel comfortable in declaring, but is within the greater interpretive power of a state court to define.

When a federal constitutional question is not raised, rules governing abstention are more difficult to determine. Compare *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959), with *Meredith v. Winter Haven*, 320 U.S. 228 (1943).

There are a number of ways in which possibilities under state law have been used under the *Pullman* doctrine to avoid reaching the federal constitutional issues. The state law issue might be whether the challenged state statute might be defined so as to avoid constitutional problems, *Babbitt v. United Farm Workers Natl. Union*, 442 U.S. 289 (1979), whether the challenged statute might not also violate the state constitution, *Reetz v. Bozanich*, 397 U.S. 82 (1970), or whether the case might not be disposed of short of considering the state statute or regulation under attack. *Railroad Commn. v. Pullman Co.*, 312 U.S. 496 (1941).

Professor Redish has strongly criticized the deference that the federal courts accord the state courts when confronted with unresolved and important questions of statutory construction. He notes that "the federal court is certainly as capable as its state counterpart of construing state statutes in a manner that avoids constitutional difficulties." P. 234. The Supreme Court, however, continues to regard state supreme courts as the highest arbiters of the meaning of state law. See *Landmark Communications v. Virginia*, 435 U.S. 829, 837 n.9 (1978). Recently the Supreme Court again applied the *Pullman* doctrine, this time to permit the Arizona courts the opportunity to apply a curative interpretation to portions of an Arizona statute. *Babbitt v. United Farm Workers Natl. Union*, 442 U.S. 289 (1979).

17. 42 U.S.C. § 1983 (1976 & Supp. III 1979). The exceptions to the doctrine were and are narrow and difficult to satisfy. See pp. 304-07.

18. See *Samuels v. Mackell*, 401 U.S. 66 (1971), discussed at pp. 303-04.

19. See, e.g., *Moore v. Sims*, 442 U.S. 415 (1979); *Trainer v. Hernandez*, 431 U.S. 434 (1977), discussed at pp. 316-18; *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975).

ties.<sup>20</sup> It has sometimes been invoked to protect even state proceedings commenced *after* a federal suit was filed.<sup>21</sup> The *Younger* doctrine, moreover, differs significantly from the *Pullman* doctrine in that its invocation leads to dismissal of the federal complaint and submits the frustrated plaintiff to the risks of claim or issue preclusion generated by the state case.<sup>22</sup>

I share some of Professor Redish's dissatisfaction over the broad-based withdrawal of federal trial forums for the adjudication of important federal rights — a particular (if not actually intended) consequence of the *Younger* doctrine. I think, however, that an equity analysis can do more to resolve the problem than Professor Redish suspects.<sup>23</sup>

The principal vice of the usual *Younger*-type analysis is rigidity. Professor Redish notes:

Except for the extremely narrow exceptions mentioned in *Younger*, deference under the doctrine is total in scope. The federal court makes no decision on the merits of the federal plaintiff's constitutional claims. Instead, the court informs the plaintiff that he has brought his claim to the wrong forum — in effect, that he has followed an incorrect procedure in seeking to have his constitutional claim adjudicated. [Pp. 300-01.]

No matter how desperate the plaintiff's plight, if he falls within the ambit of the rule, he loses. The principal virtue, conversely, of a traditional equity analysis is flexibility.<sup>24</sup> Close cases should be decided not by hard-and-fast rules — which ignore the balance of the equities between the plaintiff and the defendant<sup>25</sup> — but by particu-

20. See *Judice v. Vail*, 430 U.S. 327 (1977), discussed at p. 318.

21. See *Hicks v. Miranda*, 422 U.S. 332 (1975), discussed at pp. 314-15. Shortly thereafter, however, a future criminal prosecution was enjoined in *Wooley v. Maynard*, 430 U.S. 705 (1977). Professor Redish is uncertain about the force of *Wooley* but, with characteristic fairness, he presents the somewhat opposing view of Professor Fiss, who suggests that the way for injunctions against future prosecutions is clear. See pp. 312-13. I am inclined to agree with Professor Fiss, particularly in light of *Zablocki v. Redhail*, 334 U.S. 374, 379 n.5 (1978), decided after *Wooley*.

22. See *Allen v. McCurry*, 449 U.S. 90 (1980). In *Allen* the Court held that the plaintiff was collaterally estopped from relitigating in a § 1983 damage suit a search and seizure issue that had been adjudicated in plaintiff's prior state criminal proceeding.

23. He notes cryptically that "reliance on equity doctrines . . . only serves to distort the delicate balancing of competing state and federal interests which should be the true focus of the inquiry." P. 293.

24. Granted, a plaintiff threatened with a constitutional wrong may be left without a preventative remedy. It may be appropriate for the court, in its equitable discretion, to deny a civil rights injunction, even in compelling cases of need, if the force of countervailing considerations of federalism is strong enough.

25. See *Boomer v. Atlantic Cement Co.*, 26 N.Y.2d 219, 257 N.E.2d 870, 309 N.Y.S.2d 312 (1970); D. DOBBS, HANDBOOK OF THE LAW OF REMEDIES 357 (1973). The same inquiry is sometimes expressed as balancing the harms: Will it be more difficult for the defendant to live with the injunction than it will be for the plaintiff to live without it?

larized weighing of individual factors, the method characteristic of discretionary decision-making.<sup>26</sup> Cases so decided would then both provide material for the development of a methodology to be used by federal trial judges in deciding questions of abstention and set outer limits for appellate review.<sup>27</sup> Using equitable discretion, however, to justify the imposition of hard-and-fast rules conditioning the exercise of federal jurisdiction, is a distortion and an abuse of judicial method. The *Younger* doctrine, in short, unjustifiably suspends the civil rights plaintiff's statutory right to litigate the merits of his claim in federal court.

## II

Whatever the intrinsic merit of the *Younger* doctrine, its effects are largely indirect, at least in the limited sense that plaintiffs' rights remain theoretically undiminished. This may soon change. The most significant development in the field since *Federal Jurisdiction* was published may be the mood and movement in Congress to reduce the subject matter jurisdiction of federal courts. Largely because of the delay and uncertainty invariably encountered in attempts to overrule unpopular Supreme Court decisions by constitutional amendment, members of Congress are attempting to achieve the same end by introducing bills that will deprive lower courts of the opportunity to follow certain constitutional precedents and the Supreme Court of the power to enforce them. Bills pending at this writing would withdraw the authority of some or all federal courts to hear cases involving abortion,<sup>28</sup> prayer in public schools,<sup>29</sup> and

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26. See Shreve, *Questioning Intervention of Right — Toward A New Methodology of Decisionmaking*, 74 Nw. U. L. Rev. 894, 925 n.133 (1980).

27. It is far from clear that federal appellate courts should repeat the entire weighing process for each discretionary decision. The concept of discretion suggests a more restricted appellate role. *Id.* at 900 n.20.

28. See S. 583, 97th Cong., 1st Sess. (1981); H.R. 73, 97th Cong., 1st Sess. (1981); H.R. 867, 97th Cong., 1st Sess. (1981). A more sophisticated approach can be found in S. 158, 97th Cong., 1st Sess., 127 CONG. REC. S287-88 (daily ed. Jan. 19, 1981); H.R. 900, 97th Cong., 1st Sess. (1981). The first section of each defines the right to life, protected by the due process clause of the fourteenth amendment, as beginning with conception. The second section of each withdraws the authority of inferior article III courts to grant injunctive and declaratory relief in abortion cases. Each also invokes section 5 of the fourteenth amendment, presumably to provide Congress with added legislative authority. See *Hutto v. Finney*, 437 U.S. 678 (1978); *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). *Fitzpatrick* and *Hutto* support the special authority of Congress, derived from § 5, to suspend the effect of the eleventh amendment. It is at least doubtful, however, that section 5 confers upon Congress the authority to override the Supreme Court's own reading of the fourteenth amendment: "[T]he word 'person', as used in the fourteenth amendment, does not include the unborn." *Roe v. Wade*, 410 U.S. 113, 158 (1973).

29. See S. 481, 97th Cong., 1st Sess., 127 CONG. REC. S1284 (daily ed. Feb. 16, 1981); H.R.

school desegregation.<sup>30</sup> The possibility that some of these bills, or others like them, will be enacted is substantial.<sup>31</sup>

Professor Redish's opening chapter carefully surveys the case law and scholarly commentary on the power of Congress to restrict the jurisdiction of federal courts under article III of the Constitution. After reviewing the possibility of inferring limitations on Congress from the language of article III itself, and after examining the added problems of due process and the separation of powers, Professor Redish cautiously concludes that Congress probably can selectively restrict the jurisdiction of the federal courts. Some of the authorities whose views he discusses<sup>32</sup> — as well as some who have made their views known only recently<sup>33</sup> — have reached the opposite conclusion. Still, the chapter does provide an excellent foundation and point of departure for further examination of a problem that recently has become so important.

Other developments, too, have unfolded since the appearance of the book. Covering so much ground in so fast-moving an area, Professor Redish faced the certainty that the book would soon begin to be outdated. There is no longer an amount-in-controversy requirement in 28 U.S.C. § 1331,<sup>34</sup> and two recent Supreme Court decisions<sup>35</sup> would prompt him to alter his conclusions about the vitality of federal environmental common law.<sup>36</sup> Other cases were decided

408, 97th Cong., 1st Sess. (1981); H.R. 865, 97th Cong., 1st Sess. (1981); H.R. 2347, 97th Cong., 1st Sess. (1981).

30. See H.R. 869, 97th Cong., 1st Sess. (1981).

31. Shortly after his retirement, Justice Potter Stewart observed, "There have been such bills ever since I've been here. The problem now is that they seem more likely to pass." *Justice Stewart (Retired)*, NEW YORKER, Oct. 19, 1981, at 36. See Kaufman, *Congress v. The Court*, N.Y. Times, Sept. 20, 1981, § 6 (Magazine), at 44.

32. See Hart, *The Power of Congress to Limit the Jurisdiction of the Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362 (1953) (extensively cited throughout chapter 1); Eisenberg, *Congressional Authority to Restrict Lower Court Jurisdiction*, 83 YALE L.J. 498 (1974), discussed at p. 23; Ratner, *Congressional Power Over the Appellate Jurisdiction of the Supreme Court*, 109 U. PA. L. REV. 157 (1960), discussed at p. 19.

33. Raoul Berger, who largely agrees with Redish's position, particularly notes the diverging views of Lawrence Tribe and John Hart Ely. See Berger, *Congressional Contraction of Federal Jurisdiction*, 1980 WIS. L. REV. 807, 807. For an excellent recent treatment of this subject, see Sager, *The Supreme Court, 1980 Term — Foreword: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 HARV. L. REV. 17 (1981).

34. See Federal Question Jurisdictional Amendments Act of 1980, Pub. L. No. 96-486, 94 Stat. 2369 (codified at 28 U.S.C.A. § 1331 (Supp. 1981)). Professor Redish refers to the now outdated requirement as one "well known to any attorney who litigates in federal court." P. 21.

35. *City of Milwaukee v. Illinois*, 101 S. Ct. 1784 (1981); *Middlesex County Sewerage Auth. v. National Sea Clammers Assn.*, 101 S. Ct. 2615 (1981).

36. See pp. 105-07. The author bases his analysis primarily on *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972).

in time to be cited in the book but received insufficient attention, perhaps due to publication deadlines. Treatment of *Walker v. Armco Steel Corp.*<sup>37</sup> is confined to one footnote (p. 180 n.98), though the case is quite relevant to the Rules of Decision Act<sup>38</sup> perspective that Professor Redish brings to bear on the *Erie* problem (p. 171). He devotes a chapter to Supreme Court doctrine requiring exhaustion of state judicial remedies, but discussion of *Moore v. Sims*,<sup>39</sup> an important case, is confined to two footnotes (pp. 307 n.108, 318 n.171).

Of course, publishers' page proofs freeze the process of research and revision, and clairvoyance cannot be expected of Professor Redish regarding matters that have taken shape since the book appeared. The best that can be done and what, I think, he has succeeded in doing, is to present a sufficiently thoughtful and resilient analysis of contemporary topics that will aid us in examining developments that follow the book's publication.

### CONCLUSION

There are areas not covered by Professor Redish's book that would complement the topics treated. This is hardly a criticism, since the book is unparalleled in scope as it stands. It is more of a request for the author to produce an encore with a second volume. For example, it would be interesting to be able to compare his discussion of statutory federal question jurisdiction with developments in judge-made pendent and ancillary jurisdiction,<sup>40</sup> his discussion of eleventh amendment doctrine with federal sovereign immunity,<sup>41</sup> and his treatment of exhaustion of state judicial remedies with exhaustion of state administrative remedies.<sup>42</sup> An examination of federal *habeas corpus*,<sup>43</sup> especially, would disclose when and to what extent the possibility for federal judicial remedies in addition to those discussed might be available. Professor Redish's analysis of the *Younger v. Harris* doctrine provides extensive material for understanding the consequences of filing the federal lawsuit too late — after state proceedings have begun. Missing, however, is an explana-

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37. 446 U.S. 740 (1980).

38. 28 U.S.C. § 1652 (1976).

39. 442 U.S. 415 (1979).

40. See, e.g., *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978).

41. See P. BATOR, P. MISHKIN, D. SHAPIRO & H. WECHSLER, *supra* note 1, at 1373-77.

42. See Comment, *Exhaustion of State Administrative Remedies in Section 1983 Cases*, 41 U. CHI. L. REV. 537 (1974).

43. See Michael, *The "New" Federalism and the Burger Court's Deference to the States in Federal Habeas Proceedings*, 64 IOWA L. REV. 233 (1979); Note, *Guilt, Innocence, and Federalism in Habeas Corpus*, 65 CORNELL L. REV. 1123 (1980).

tion of the equally difficult problems that plaintiffs encounter if their lawsuits are filed too soon. These include problems of prematurity, which derive from article III of the Constitution. A discussion of the case or controversy requirement of article III<sup>44</sup> would further complement the author's *Younger* analysis (p. 314 & n.147). And finally, a discussion of problems of federal judicial administration and their relation to developments in the law of federal jurisdiction<sup>45</sup> would be useful.

But on the whole, I found Professor Redish's book informative and constantly challenging. The thoroughness and honesty of his technique demonstrates how much controversy exists in the field of federal jurisdiction. It is a difficult branch of the law, one that at times may lead scholars and practitioners to agree with the assessment that "what the legal system cannot answer it organizes."<sup>46</sup> Professor Redish's book is well organized, but the reader will find in it a good many answers as well.

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44. See Brilmayer, *The Jurisprudence of Article III: Perspectives on the "Case and Controversy" Requirement*, 93 HARV. L. REV. 297 (1979).

45. For example, docket congestion in the federal courts of appeal, see Betten, *Institutional Reform in the Federal Courts*, 52 IND. L.J. 63 (1976); Carrington, *Crowded Dockets and the Courts of Appeals: The Threat to the Function of Review and the National Law*, 82 HARV. L. REV. 542 (1969), has undoubtedly influenced the trend in recent Supreme Court cases to read statutory grants of federal appellate jurisdiction more narrowly. See Shreve, *supra* note 26, at nn. 186-87 and accompanying text.

46. T. SHAFFER & R. REDMOUNT, *LAWYERS, LAW STUDENTS AND PEOPLE* 7 (1977).