Federal Civil Rights Act - Civil Cause of Action - Whether Punishment for Refusing to Incriminate Oneself Is a Denial of Due Process That Would Allow a Cause of Action to Arise Under the Federal Civil Rights Act

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DISCUSSION OF RECENT DECISIONS

FEDERAL CIVIL RIGHTS ACT—CIVIL CAUSE OF ACTION—WHETHER PUNISHMENT FOR REFUSING TO INCRIMINATE ONESelf IS A DENIAL OF DUE PROCESS THAT WOULD ALLOW A CAUSE OF ACTION TO ARISE UNDER THE FEDERAL CIVIL RIGHTS ACT—The question, whether punishment for refusing to incriminate oneself is a denial of due process that would allow a cause of action to arise under the Federal Civil Rights Act arose in the case of Hardwick v. Hurley. A policeman had beaten an arrested citizen for refusing to take the drunkometer test. The victim of the beating contended that he had a cause of action against the policeman under the Civil Rights Act. The defendants answered that the beating occurred in the performance of their duty as policemen, i.e., committed under "color of law."

The Seventh Circuit upheld a cause of action under the Civil Rights Act for Hardwick, the alleged victim of the police beating. The court followed Monroe v. Pape which the Supreme Court had decided only a few months before. In that case, Chicago policemen had broken into a home without warrant, frightened the family, and subjected them to a search, insults, and violence. The lower courts dismissed the case, stating that there was no cause of action under the Civil Rights Act. The United States Supreme Court reversed. In the majority opinion written by Justice Douglas, it was said that the statute covers unconstitutional acts unauthorized by the state, but done under "color of law" as the police action in Monroe v. Pape as well as unconstitutional acts authorized by the state.

Upon reviewing the discussion preceding the enactment of the Civil Rights Act, it is difficult to conceive upon what the dissenting justice in Monroe v. Pape based his contention. In his dissenting opinion, Justice Frankfurter stated that he believed the object Congress had in mind in the Civil Rights Act was to prevent illegal exactions by the state, to prevent state legislation that would be contrary to the Federal Constitution. In other words, Justice Frankfurter believed the statute should be limited to acts authorized by the state. At the time of the debate in 1871, over whether the Civil Rights Bill should be enacted, the antagonists considered the legislation unlawful under the 14th Amendment because it was in-

2 289 F. 2d 529 (7th Cir., 1961).
tended, they believed, to interfere with the states even when the states did not authorize unconstitutional acts. The protagonists did not appear to contend to limit the legislation in the manner suggested by the dissent. It can be said, therefore, that if Justice Frankfurter's opinions had prevailed in 1871, the Civil Rights Act would never have been passed. It becomes difficult to believe, then, upon reading the debate that the Civil Rights Act was intended to be limited in application to state legislation.

In *Hardwick v. Hurley*, the court followed the decision of *Monroe v. Pape*, but it cautioned that it would not give the decision in *Monroe v. Pape* a broad interpretation and thus open the floodgates for litigation. Both cases demonstrate fact situations in which the Civil Rights Act has been used to protect an individual from an act by a state official that was considered unlawful under the Federal Constitution. Another application of the Civil Rights Act is illustrated by *Lewis v. Brautigan*. Here the Court of Appeals held that when a prisoner is moved from jail to jail so that he cannot confer with counsel, he has a cause of action against the responsible authorities.

In speculation, one wonders to what other fact situations the Civil Rights Act can be applied. It is true, when the debates in the Congressional Globe are examined, that most of the discussion concentrated on the problems of the day, such as minimizing the effect of the Klu Klux Klan and eliminating anarchy and bloodshed. A bill similar to the Civil Rights Act had been introduced in the same session of the House by Rep.

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5 "The argument leads to the deduction that while the first section of the amendment prohibits all deprivation of rights by means of state laws, yet all rights may be subverted and denied without color of law, and the Federal Government have no power to interfere. All you have to do, therefore, under this view, is to drive every obnoxious man from a state, or slay him with impunity, is to have the law all right on the statute book, but quietly permit rapine and violence to take their way, without the hinderance of local authorities. Such a position, Mr. Speaker, defeats itself by its own absurdities." Rep. Lowe of Kansas, Id. at 375.

6 "Suppose the state governments are indisposed to act in the suppression of disorder, or refuse or neglect to punish for crimes against the citizens of the United States, where is there relief? In such a case has the nation no power, ... In saying what I have thus far, it has been my purpose merely to combat those positions which, if correct, might, in my judgment, deprive the people of all protection." Rep. Sheldon of Louisiana, Id. at 368.

7 "Plausibly and sophistically it is said the laws of North Carolina do not discriminate against them; that the provisions in favor of rights and liberties are general, that the courts are open to all, that juries, grand and petit, are commanded to hear and redress without distinction as to color, race, or political sentiment."

8 "But it is a fact, asserted in the report, that of the hundreds of outrages committed upon loyal people through the agency of this Klu Klux Klan Organization, not one has been punished." Sen. Pratt of Indiana, Id. at 505.

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Butler of Massachusetts. This bill was unsuccessful, however, because it specifically applied to the South and problems current in 1871. A general bill with wider application, one that did not point an accusing finger at any particular group or era was desired, and thus the Civil Rights Bill as we know it was passed. It seems evident that the intent of Congress was to enact legislation of more permanent and general application than much of the discussion printed in the Congressional Globe would indicate.

The courts, through the Civil Rights Act, have allowed a citizen damages where a state public servant had violated the "search and seizure" clause, the "self incrimination" clause, and the "due process" clause.

By gleaning the Congressional intent as expressed in the debates recorded in the Congressional Globe, the Supreme Court, in *Monroe v. Pape* and *Hardwick v. Hurley*, concluded that the Civil Rights Act authorized action in tort in the Federal Courts against state officials who allegedly deprived citizens of their rights under the Federal Constitution. Several congressmen were quoted in the *Monroe v. Pape* opinion as examples of those who either intended that there be allowed actions in tort against state officials or who objected to the bill because such actions were intended.

The *Hannah v. Larche* decision implied, in denying the injunction against the Civil Rights Commission, that the Federal Government does not deprive its people of liberty or property when it publicizes evidence that defames, degrades, or incriminates them. If non-adjudicatory Federal proceedings have license to so proceed, it is doubtful that the states would be subjected under the Civil Rights Act to a restriction as to defamatory matter that would give rise to a cause of action.

It is possible to rationally conclude from portions of the debate that are never refuted by those in attendance that the Congressmen of 1871 did intend the statute to afford a cause of action for the infringements

10 Id. at 173.
11 Id.
12 "Men were murdered, houses were burned, women were outraged, men were scourged, and officers of the law shot down; and the state made no successful effort to bring the guilty to punishment or afford protection or redress to the outraged and innocent." Beatty of Ohio, Cong. Globe, 42d Cong., 1st Sess., 428 (1871).
13 "If every sheriff in South Carolina refuses to serve a writ for a colored man, and those sheriffs are kept in office year after year by the people of South Carolina, and no verdict against them for their failure of duty can be obtained before a South Carolina jury, the state of South Carolina, through the class of officers who are its representatives to afford the equal protection of the laws to that class of citizens, has denied that protection." Hoar of Massachusetts, Id. at 334.
Taxation—Income Tax—Whether the Phrase "Useful Life" Refers to Actual Useful Life or the Period of Usefulness to a Particular Taxpayer and Whether There Is an Amount Other Than the Built-In Salvage Value Below Which a Taxpayer Using the Declining Balance Method May Not Depreciate the Asset—In Hertz Corporation v. United States, the genius of the Commissioner of Internal Revenue has once again run the gamut of Appellate and Supreme Court review in attempting to prevent the drawing of a credit claimed against the United States Treasury. The Hertz Corporation, engaged in leasing and renting trucks and automobiles on both a long and short term basis, was merged into by the J. Frank Connor, Inc., through a statutory merger in 1956, thereby becoming entitled to file claims for refund of Federal Income Tax to which Connor Inc. might have been entitled. The merged corporation had used the straight line method of depreciation, however, the 1954 revision to the Internal Revenue Code provided the

15 "Suits may be instituted without regard to amount or character of claim by any person within the limits of the United States who conceives that he has been deprived of any right, privilege, or immunity secured him by the Constitution of the United States, under color of any law, statute, ordinance, regulation, custom, or usage of any state. That is to say, that if a police officer of the city of Richmond or New York should find a drunken negro or white man upon the streets with loaded pistol flourishing it, and by virtue of any ordinance, law, or usage, either of city or state, he takes it away, the officer may be sued, because the right to bear arms is secured by the Constitution." Whitthorne of Tennessee, Cong. Globe, 42d Cong., 1st Sess., 337 (1871).

"It authorizes any person who is deprived of any right, privilege or immunity secured to him by the Constitution of the United States, to bring an action against the wrongdoer in the Federal Courts, and that without any limit whatsoever as to the amount in controversy. The deprivation may be of the slightest conceivable character, the damages in the estimation of any sensible man may not be five dollars or even five cents, they may be what lawyers call merely nominal damages." Thurman of Ohio, Id. at 216.

2 26 U. S. C. § 167 (1958); Int. Rev. Code of 1954, § 167; as well as Int. Rev. Code of 1939, § 23, provide the authority for the use of the straight line method of depreciation of property used in the trade or business, or of property held for the production of income. Under this method the taxpayer deducts the cost of the property in equal annual installments during the life of the property. The amount deducted each year is the result of multiplying the reciprocal of the remaining useful life by the depreciated basis (in the first year, the purchase price less salvage value).