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Constitutional Law - Scope of Congress' Authority to Legislate in Aid of the Fourteenth and Fifteenth Amendments

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by police. In view of these considerations, it is difficult to suggest another expedient that would protect the rights of the accused as does the presence of counsel.

Concluding that the presence of an attorney is necessary presents the authorities with immense practical difficulties. No machinery exists for the appointment of counsel when required by *Miranda*; if such machinery were devised, great hardship would be placed on the bar in working it. Perhaps a public defender system or the presence of a committing magistrate during questioning might be the answer. However, since no attorney-client relationship would exist between the accused and the magistrate, that system may be deemed unsatisfactory by the court. When an attorney is present, if he is to fulfill the traditional role of advocate of his client's interests, it seems he will advise the accused to remain silent; thus the number of confessions procured will be substantially reduced.

These problems do not lend themselves to an easy solution, in fact the different situations existing in city and country parishes and even between city and city will probably require different procedures. A truly workable solution in each instance can only be had after thorough and careful consideration by the law enforcement authorities, the bar and the courts.

Thomas R. Blum

CONSTITUTIONAL LAW — SCOPE OF CONGRESS' AUTHORITY TO LEGISLATE IN AID OF THE FOURTEENTH AND FIFTEENTH AMENDMENTS

The United States sought injunctive relief in federal district court against individual property owners of West Feliciana Parish for allegedly violating section 11(b) of the 1965 Voting Rights Act[1] by their individual acts[2] of discrimination against Negro citizens who had registered to vote. In refusing the injunction, the court *held* section 11(b) of the 1965 Voting Rights Act unconstitutional in that it purports to penalize purely individual acts which interfere with a person's right to vote in state

1. Section 11(b) of Public Law 89-110, 89th Congress, commonly known as the Voting Rights Act of 1965 provides: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote, or intimidate, threaten, or coerce

or local elections.[3] *United States v. Harvey*, 250 F. Supp. 219 (E.D. La. 1966).

The Supreme Court held in *The Civil Rights Cases*[4] that the fourteenth amendment[5] does not compel a private citizen to refrain from discrimination, but that it is aimed solely at state discrimination. The Court added that the grant of legislative power of section 5 of the fourteenth amendment does not extend to general legislation, but rather is restricted to corrective legislation aimed at counteracting state laws and practices that contravene the prohibitions of the amendment. The Supreme Court throughout the years has consistently applied this traditional doctrine requiring state action and allowing only corrective legislation.[6] Congress has thus specifically been denied authority to penalize private citizens for individual acts of discrimination under the fourteenth amendment.

The earliest circuit court decisions[7] reviewing statutes[8]

any person for exercising any powers or duties under Section 3(a), 6, 8, 9, 10, or 12(e)."

2. The alleged acts of discrimination were: (a) The termination of sharecropping and tenant farming relationships with Negro registrants; (b) the eviction of Negro registrants from homes held under rental agreements; (c) the release of Negro registrants from salaried or otherwise remunerative positions held on the farms; (d) the imposing of rents on houses which were formerly occupied in connection with sharecropping agreements.

3. The court went on to add in the alternative that if this holding is incorrect, plaintiff's injunctive relief must still be denied on the grounds that to construe and apply section 11(b) as plaintiff advocated would deny defendants due process of law and that the evidence adduced at the trial was insufficient to prove the alleged violations of 11(b) by a preponderance of the evidence. Pretermitting the alternative holdings, this Note will be primarily concerned with the holding declaring that section 11(b) of the 1965 Voting Rights Act is unconstitutional when applied to individual action.

4. 109 U.S. 3 (1883).

5. U.S. CONST. amend. XIV, §§ 1, 5.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

6. See, *e.g.*, Shelley v. Kraemer, 334 U.S. 1, 13 (1948); United States v. Williams, 341 U.S. 70, 77 (1951); Burton v. Wilmington Parking Authority, 365 U.S. 715, 721-25 (1961).

7. United States v. Given, 25 Fed. Cas. 1324, 1325-26 (No. 15,210) (C.C.D. Del. 1873); United States v. Hall, 26 Fed. Cas. 79, 81-82 (No. 15,282) (C.C.S.D. Ala. 1871); United States v. Crosby, 25 Fed. Cas. 701 (No. 14,893) (C.C.D.S.C. 1871).

8. Popularly known as the Enforcement Act, the Force Act, and the Ku Klux Act, the statutes were: Act of May 31, 1870, 16 Stat. 140; Act of Feb. 28, 1871, 16 Stat. 933; Act of April 20, 1871, 17 Stat. 13.

passed under the authority of the fifteenth amendment[9] stand for the proposition that Congress had implied authority to protect fifteenth amendment rights against private individual action. A later circuit court decision[10] by Justice Bradley sitting as a Circuit Judge held Congress could protect equal access to the franchise under authority of the fifteenth amendment even against private interference. In *United States v. Reese*,[11] the Supreme Court held the fifteenth amendment invested citizens with a new constitutional right, an exemption from discrimination in the exercise of the franchise on account of race, color, or previous condition of servitude. The opinion went on to state that by inference this right is an attribute of national citizenship and could, therefore, be protected from private interference. In *Ex parte Yarbrough*,[12] the Supreme Court seemingly applied the fifteenth amendment to private interference with the right to vote. However, *Yarbrough* is presently considered to stand only for the proposition that the right of all citizens to vote in *federal* elections can be protected from private interference.[13]

The argument has been advanced that judicial decisions at the beginning of the twentieth century reflect a change in the mood of the nation from apathy to sympathy for the position of the southern white,[14] with Reconstruction generally viewed as a futile experiment, part sinister, part naive.[15] Be that as it may, the Supreme Court in 1903 decided in *James v. Bowman*[16] that the fifteenth amendment prohibits only action by the United States or any state, and does not proscribe wrongful individual acts. In effect the Court adopted for the fifteenth amendment the traditional state action requirement enunciated in *The Civil Rights Cases* for the fourteenth amendment. Decisions following

9. U.S. CONST. amend. XV.
"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."
"Section 2. The Congress shall have power to enforce this article by appropriate legislation."
10. United States v. Cruikshank, 25 Fed. Cas. 707 (No. 14,897) (C.C.D. La. 1874).
11. 92 U.S. 214 (1876).
12. 110 U.S. 651 (1884).
13. See, *e.g.*, United States v. Williams, 341 U.S. 70, 77 (1951); United States v. Classic, 313 U.S. 299, 315 (1941).
14. 74 YALE L.J. 1448, 1454 (1965).
15. Woodward, ORIGINS OF THE NEW SOUTH 324-25 (1951); WOODWARD, THE STRANGE CAREER OF JIM CROW 52-53 (1955).
16. 190 U.S. 127 (1903).

James v. Bowman have consistently held that state action is a necessary requirement under the fifteenth amendment.[17]

To this point state action is necessary under both the fourteenth and fifteenth amendments. Therefore, it seems logical that *United States v. Harvey* declaring section 11(b) of the 1965 Voting Rights Act unconstitutional was correct under established law[18] since Congress, assuming its authority[19] under the enforcement clause of the fifteenth amendment, purported to penalize purely individual action as well as state action in section 11(b).

However, two recent decisions have created doubt whether the Supreme Court would declare section 11(b) of the 1965 Voting Rights Act unconstitutional as it applies to individual action. In *Katzenbach v. Morgan*,[20] the Supreme Court with seven members in the majority held section 4(e) of the 1965 Voting Rights Act[21] was a proper exercise of the powers granted Con-

17. See Terry v. Adams, 345 U.S. 461 (1953); Smith v. Allwright, 321 U.S. 649 (1944); United States v. Classic, 313 U.S. 299 (1941).

18. In holding section 11(b) of the 1965 Voting Rights Act unconstitutional, the federal district court relied squarely on James v. Bowman, 190 U.S. 127 (1903), a Supreme Court decision which declared U.S. Rev. Stat. § 5507 unconstitutional. Section 5507, which contained language very similar to section 11(b) of the 1965 Voting Rights Act, provided: "Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising the right of suffrage, to whom that right is guaranteed by the Fifteenth Amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts of labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section." The Supreme Court, in James v. Bowman, stated, "[T]he Fifteenth Amendment relates solely to action by the United States or by any state and does not contemplate wrongful individual acts." The Court went on to hold "that a statute which purports to punish purely individual action cannot be sustained as an appropriate exercise of the power conferred by the 15th amendment upon Congress to prevent action by the state through some one or more of its official representatives."

19. The very title of the 1965 Voting Rights Act leaves no doubt that the act was enacted by Congress under an assumption that its authority to do so was contained in the fifteenth amendment. The act is entitled "To Enforce the Fifteenth Amendment to the Constitution of the United States, and for Other Purposes." In addition, the act shows by its repeated reference to the fifteenth amendment that the amendment is considered to be the source of congressional power to enact this legislation. It is repeatedly stated that its purpose is "to enforce the guarantees of the Fifteenth Amendment."

20. 384 U.S. 641 (1966).

21. Section 4(e) provides that no person who has successfully completed the sixth primary grade in a public school in, or a private school accredited by, the Commonwealth of Puerto Rico in which the language of instruction was other than English shall be denied the right to vote in any election because of his inability to read or write English.

gress by section 5 of the fourteenth amendment[22] and that by the force of the Supremacy Clause[23] a New York English-literacy requirement could not be enforced to the extent it was inconsistent with section 4(e). The Supreme Court did not find that the New York English-literacy voting requirement violated the Constitution and carefully refused to overrule *Lassiter v. Northampton Election Board*,[24] which held that a North Carolina English-literacy voting requirement did not violate the Equal Protection Clause of the fourteenth amendment. Thus the Supreme Court permitted Congress to strike down a state law without finding that it violated the Constitution. The decision was based on the view that section 5 of the fourteenth amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining what legislation is necessary and proper to secure the guarantees of the amendment. The scope of this discretion seems to be similar to the discretion Congress enjoys under the Necessary and Proper Clause of the Constitution.[25] Justice Harlan dissented on the ground that it is first necessary to find a state violation of the fourteenth amendment before Congress can enact legislation striking down state laws.

In *United States v. Guest*,[26] the Supreme Court reversed the dismissal of charges against six defendants for conspiring to violate a citizen's rights under the Constitution or federal law in violation of 18 U.S.C. § 241.[27] Justice Stewart, delivering the opinion of the court, found state action and restated the traditional view that rights under the fourteenth amendment arise only if there has been action by the state, or one acting under the color of its authority, in violation of that amendment. Two concurring opinions indicate that a majority of the Court while agreeing with the disposition of the case disagree with Justice Stewart as to the necessity of state action violating the

22. The Court stated that section 2 of the fifteenth amendment grants Congress a similar power to enforce by "appropriate legislation" the provisions of that amendment.

23. U.S. CONST. art. VI, § 2.

24. 360 U.S. 45 (1959).

25. U.S. CONST. art. I, § 8, cl. 18. For the classic formulation of the reach of those two powers, see McCulloch v. Maryland, 4 Wheat. 316, 421, 4 L.Ed. 579, 605 (1819).

26. 383 U.S. 745 (1966).

27. This section provides in part: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, ... They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

amendment before Congress is competent to legislate in support of it. Justice Clark, with whom Justices Black and Fortas joined, stated, ". . . the specific language of section 5 empowers the Congress to enact laws punishing all conspiracies — *with or without state action* — that interfere with Fourteenth Amendment rights." Justice Brennan in his concurring opinion, in which Chief Justice Warren and Justice Douglas joined, argued that 18 U.S.C. § 241 reaches a private conspiracy not because the fourteenth amendment itself prohibits such a conspiracy, but because 18 U.S.C. § 241 is a valid exercise of congressional legislative authority pursuant to section 5 of the fourteenth amendment. Justice Brennan acknowledged the traditional doctrine under which Congress' authority to legislate in support of the fourteenth amendment is confined to corrective legislation to counteract state laws and acts that violate the amendment's guarantees, but he noted that he and a majority of the Court reject the traditional interpretation in favor of the view that section 5 authorizes Congress to enact all laws reasonably necessary and proper to protect rights created by and arising under the fourteenth amendment.

Morgan and *Guest* indicate that the Supreme Court has substantially expanded the scope of congressional legislative authority under the fourteenth and fifteenth amendments. Two limitations seem to have been removed. First, Congress is no longer limited to enacting corrective legislation but may legislate in support of the fourteenth and fifteenth amendments whenever it deems the legislation reasonably necessary to secure the civil and political rights protected by the amendments. The condition on this power is that there must be a reasonable relation between the legislation and the protections of the amendments. Second, it seems that state action is no longer a limitation on congressional legislative authority and Congress may now penalize individuals as well as states when enacting laws in support of the fourteenth and fifteenth amendments. Thus, the Supreme Court has greatly broadened the scope of congressional legislative authority under these amendments, which apparently will be read as "authorizing Congress to exercise its discretion in fashioning remedies to achieve civil and political equality for all citizens."[28]

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28. Quotation from Brennan, concurring, United States v. Guest, 383 U.S. 745, 784 (1966).