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Constitutional Law-Civil Rights-Solitary Confinement of Prisoner's Based on Religious Belief

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RECENT DECISIONS

CONSTITUTIONAL LAW—CIVIL RIGHTS—SOLITARY CONFINEMENT OF PRISONERS BASED ON RELIGIOUS BELIEFS—Plaintiff prisoner brought an action in a federal district court under the Civil Rights Act[1] to enjoin the defendant, a New York state prison warden, from further subjecting him to solitary confinement because of his religious beliefs. The district court refused to take jurisdiction on the ground that solitary confinement involved state prison discipline which was reviewable only in state courts. On appeal, *held*, reversed, one judge dissenting.[2] A complaint by a prisoner against a state prison official which charges violation of a "preferred freedom" by religious persecution states a claim under the Civil Rights Act which the district court must entertain. *Pierce v. LaVallee*, 293 F.2d 233 (2d Cir. 1961).

Lawful imprisonment deprives a prisoner of certain constitutional rights and privileges of citizenship,[3] but does not withdraw from him every protection of the law.[4] Imprisonment does not of itself deprive the prisoner of the right to invoke the Civil Rights Act for the protection of rights guaranteed by the federal government.[5] A federal court has the power to grant relief under the broad language of the act which vests jurisdiction in the federal courts for any civil action commenced for the redress of a deprivation of constitutional rights.[6] But when the complaint of a prisoner involves only disciplinary measures which do not violate constitutional rights, no judicial relief is available at the federal level. Federal courts have no power to intervene in the ordinary management and control of either state prisons[7] or federal prisons.[8]

1 Action was brought under the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983 (1958), which provides for a civil remedy in cases involving the deprivation of rights by persons acting under color of state law, and under 28 U.S.C. § 1343 (1958), which vests jurisdiction in the federal district courts over civil actions commenced by any persons for the redress of the deprivation of rights protected under the Constitution or acts of Congress. See Comment, 56 MICH. L. REV. 619 (1958) for a general discussion of the Civil Rights Act.

2 The dissenting judge argued that the issue had been abandoned in the trial court. Principal case at 236.

3 See Price v. Johnston, 334 U.S. 266, 285 (1948) (dictum); Edgerly v. Kennelly, 215 F.2d 420, 423 (7th Cir. 1954) (dictum), *cert. denied*, 348 U.S. 938 (1955).

4 *E.g.*, Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1945) (unlawful restraint of personal liberty subject to habeas corpus inquiry).

5 *E.g.*, Siegel v. Ragen, 180 F.2d 785, 787-88 (7th Cir. 1950) (dictum); McCollum v. Mayfield, 130 F. Supp. 112, 116-17 (N.D. Cal. 1955).

6 28 U.S.C. § 1343 (1958), summarized in note 1 *supra*.

7 *E.g.*, State of Oregon *ex rel.* Sherwood v. Gladden, 240 F.2d 910 (9th Cir. 1957); United States *ex rel.* Atterbury v. Ragen, 237 F.2d 953 (7th Cir. 1956); United States *ex rel.* Wagner v. Ragen, 213 F.2d 294 (7th Cir. 1954); Siegel v. Ragen, 180 F.2d 785 (7th Cir. 1950); Curtis v. Jacques, 130 F. Supp. 920 (W.D. Mich. 1954); Piccoli v. Board of Trustees, 87 F. Supp. 672 (D.N.H. 1949).

8 *E.g.*, Tabor v. Hardwick, 224 F.2d 526 (5th Cir. 1955); Dayton v. McGranery, 201

While federal court intervention under the Civil Rights Act to protect constitutional rights may be justified in situations involving federal prisons,[9] the traditionally more restricted application of the act to circumstances in which federal-state relations are involved must necessarily be considered before similar intervention is taken at the state level. The Supreme Court has indicated that the act should be construed narrowly in order to respect the balance of interest between the states and federal government in law enforcement.[10] A court of equity has discretionary power to refuse to exercise equitable relief under the Civil Rights Act when this balance might be disturbed.[11] This consideration has led most federal courts to refuse to take jurisdiction of complaints which allege that prison discipline in state penal institutions has violated constitutional rights. Decisions have often emphasized that available state remedies should be pursued and exhausted before a federal court will even consider taking jurisdiction.[12] Other cases have held that there must be a substantial interference with an important constitutional right before a federal court will intervene in matters relating to discipline in state prisons.[13] The latter approach acknowledges that a state may unconstitutionally infringe upon certain "minor" rights with impunity insofar as the federal courts are concerned.[14] One case has even implied that, notwithstanding a violation of constitutional rights, a federal court should refuse to intervene under any circumstances.[15] A factor under-

F.2d 711 (D.C. Cir. 1953); Stroud v. Swope, 187 F.2d 850 (9th Cir. 1951); Sturm v. McGrath, 177 F.2d 472 (10th Cir. 1949); Numer v. Miller, 165 F.2d 986 (9th Cir. 1948). Congress has entrusted the responsibility of prison discipline to the executive under 18 U.S.C. § 4001 (1958).

9 Sewell v. Pegelow, 291 F.2d 196 (4th Cir. 1961). In this case the discipline infringed upon the prisoner's religious freedom. The circuit court distinguished cases involving ordinary managerial measures by pointing out that the complaint attacked prison discipline, not because of the infraction of a rule, but solely because of the prisoner's religion.

10 Stefanelli v. Minard, 342 U.S. 117, 121 (1951) (dictum).

11 Douglas v. City of Jeannette, 319 U.S. 157 (1943).

12 Kelly v. Dowd, 140 F.2d 81, 83 (7th Cir. 1944). See also Siegel v. Ragen, 180 F.2d 785, 788 (7th Cir. 1950); Petroleum Exploration, Inc. v. Public Serv. Comm'n, 304 U.S. 209, 223 (1938) (dictum). Kelly v. Dowd, *supra*, involved the same problem as the principal case, a claim of religious persecution in the denial of a prisoner's right of access to religious materials. It is significant that the district court dismissed a complaint alleging denial of access to religious materials, while the district court in the principal case accepted the same issue—denial to purchase the Koran—although dismissing the other issues.

13 Nichols v. McGee, 169 F. Supp. 721 (N.D. Cal. 1959). See also Piccoli v. Board of Trustees, 87 F. Supp. 672 (D.N.H. 1949); Bowers v. Calkins, 84 F. Supp. 272, 279 (D.N.H. 1949).

14 This approach should be clearly distinguished from that normally employed to test the constitutionality of state action which balances the respective interests of the state and the individual. See Barenblatt v. United States, 360 U.S. 109 (1959). In declining jurisdiction in cases of violation of "minor" rights, the federal courts refuse to intervene *despite* the unconstitutionality of the state action.

15 United States *ex rel.* Morris v. Radio Station WENR, 209 F.2d 105 (7th Cir. 1953).

lying all of these approaches is the judicial focus on and concern with the state interest in prison administration and discipline rather than the violation of federally guaranteed rights.[16] Once a dispute can be characterized as one involving prison discipline, the federal courts seem to find it relatively easy to defer jurisdiction to the state courts. This approach has given rise to a situation in which the federal courts admit the relevancy of the Civil Rights Act in general, but almost unanimously deny its applicability in any particular case. In fact, aside from the principal case, only one federal court has entertained a state prisoner's claim that aspects of prison discipline violated his constitutional rights.[17] This court recognized the state interest in the maintenance of prison discipline but held that such disciplinary measures should not constitute a deprivation of civil rights.

Similarly, the court in the principal case has chosen to emphasize the violation of a constitutional right rather than the state interest in prison discipline. The court denied that matters involving prison discipline are immune from federal intervention, and was not swayed by the plaintiff's failure to pursue a purportedly adequate state remedy.[18] However, the principal case fails to provide a satisfactory guide for determining what constitutional rights of prisoners in state penal institutions are deserving of federal protection. The court emphasized that the right violated was freedom of religion, characterizing it as a "preferred freedom." This characterization presumably refers to the "preferred position" doctrine whereby first amendment rights are sometimes given special consideration and protection by the judiciary.[19] A reference to the "preferred freedom" doctrine may indicate that the court is adopting the view that certain

See also United States *ex rel.* Atterbury v. Ragen, 237 F.2d 953 (7th Cir. 1956); United States *ex rel.* Wagner v. Ragen, 213 F.2d 294 (7th Cir. 1954); Curtis v. Jacques, 130 F. Supp. 920 (W.D. Mich. 1954). United States *ex rel.* Morris v. Radio Station WENR, *supra*, and Nichols v. McGee, 169 F. Supp. 721 (N.D. Cal. 1959), involved claims by Negro prisoners that they were denied the equal protection of the law.

16 *Compare* Bailleaux v. Holmes, 177 F. Supp. 361 (D. Ore. 1959) *with* Piccoli v. Board of Trustees, 87 F. Supp. 672 (D.N.H. 1949). These cases involved similar facts, the imposition of excessive restrictions on the obtaining of law books. Bailleaux v. Holmes, *supra*, entertained the prisoner's claim by emphasizing the relation of deprivation of legal materials and denial of access to the courts. Full access to the courts had previously been recognized as a guaranteed right. White v. Ragen, 324 U.S. 760 (1945); *Ex parte* Hull, 312 U.S. 546 (1941). But Piccoli v. Board of Trustees *supra*, viewed the conflict solely as one of prison discipline and therefore denied relief.

17 Bailleaux v. Holmes, *supra* note 16, at 362. Jurisdiction has been granted over a number of claims against police officers and prison officials for damages arising out of unlawful acts during periods of imprisonment. *E.g.*, Coleman v. Johnston, 247 F.2d 273 (7th Cir. 1957); McCollum v. Mayfield, 130 F. Supp. 112 (N.D. Cal. 1955).

18 Prisoners may sue to secure their rights to religious liberty in the supreme court of the state district in which the prisoner is incarcerated. N.Y. CORREC. LAW § 610.

19 See Kovacs v. Cooper, 336 U.S. 77, 90-95 (1949), in which Mr. Justice Frankfurter reviews the preferred position doctrine at some length; Schneider v. State, 308 U.S. 147, 161 (1939); Cahn, *The Firstness of the First Amendment*, 65 YALE L.J. 464 (1956).

"minor" rights may be suspended. Such an approach seems undesirable. The "preferred position" doctrine itself has been seriously questioned.[20] Its use in this context leaves the serious problem of determining which rights are "minor" and which "preferred" unanswered. One may question, for example, whether it can properly be held that a prisoner's right to be free of religious discrimination is more important than the right to be free from racial discrimination.[21] While use of the "preferred freedom" doctrine in the principal case provides a handy tool to find that this particular right should be protected, it provides no satisfactory guide for future cases which may involve deprivation of other constitutional rights.

A federal court, in deciding whether it will take jurisdiction of the claims of a state prisoner, must determine initially whether the case involves only questions of prison discipline or whether it also involves an interference with, or deprivation of, constitutional rights. Without such an interference or deprivation, a federal court, of course, has no power to intervene. But if federally guaranteed rights are found to be invaded by prison disciplinary action, the court must then decide the difficult question of whether it should exercise its discretionary power to grant relief. An attempt to classify rights as "minor" or "preferred" seems a difficult one which would be best avoided. In the first instance a federal court ought to determine only whether there has been a violation of a protected constitutional right. Any "weighing" process should be reserved for the other factors involved in the determination of whether a claim should be entertained, essentially the extent of the violation and the availability of state relief. It may well be that an alleged violation is so insubstantial as not to support federal intervention. And, the availability of a covenient state remedy may be a factor weighing against intervention in light of the oft-repeated dictum that the state courts too are charged with the obligation to recognize and protect constitutional rights.[22] The impact of this latter factor has been weakened by a recent Supreme Court decision holding that the state remedy need not be sought first, and refused, before a federal one is properly granted.[23] This decision may indicate that an adequate state remedy should be used as a basis for non-intervention only when practicalities dictate that it would be more convenient to hold the trial in the state court. But, importantly, a federal court should not use as a basis for non-intervention the characterization of an action as disciplinary when that action has also violated a protected constitutional right. Such a characterization may be a

20 See Kovacs v. Cooper, *supra* note 19, at 89-97 (concurring opinion). The fact that the term "preferred" was placed in quotation marks may indicate that the court itself has doubts about its doctrinal status. Principal case at 235.

21 *Compare* principal case *with* Nichols v. McGee, 169 F. Supp. 721 (N.D. Cal. 1959) *and* United States *ex rel.* Morris v. Radio Station WENR, 209 F.2d 105 (7th Cir. 1953).

22 *E.g.*, Kelly v. Dowd, 140 F.2d 81, 82 (7th Cir. 1944).

23 Monroe v. Pape, 365 U.S. 167 (1961).

convenient vehicle by which to escape the otherwise difficult task of determining whether federal court intervention is justified, but it is also in effect a surrender of the power and duty of the federal courts to protect constitutional rights.[24]

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[24] The New York court recently held that previous criminal connections of certain Black Muslim members did not warrant prison officials' alleged denial of access to "religious" advice. Brown v. McGinnis, 10 N.Y.2d 531, 225 N.Y.S.2d 497 (1962).