

# Federal Courts - The Personal vs. Property Rights Distinction for Federal Jurisdiction under 28 U.S.C. 1343: Three Decades of Controversy Made Moot

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## CASE NOTES

### FEDERAL COURTS—THE PERSONAL VS. PROPERTY RIGHTS DISTINCTION FOR FEDERAL JURISDICTION UNDER 28 U.S.C. §1343: THREE DECADES OF CONTROVERSY MADE MOOT.

Legislation following the Civil War provided the basis for the federal courts to assume the role as prime guarantors of individual liberty as against infringement by the states.<sup>1</sup> Not until the twentieth century did the federal courts really begin to assume the role;<sup>2</sup> and in the process of carving out the form of federalism that was ultimately to emerge, through increasing litigation brought under the Civil Rights Acts,<sup>3</sup> a significant amount of judicial and academic effort has been spent in an attempt to give proper scope to those Acts.<sup>4</sup> Since Justice Stone's separate opinion in *Hague v. CIO* in 1939,<sup>5</sup> dealing with the problem of the scope of the Acts, both controversy and confusion have resulted from the attempt to reconcile the federal jurisdictional provisions of 28 U.S.C. §1331 and § 1343(3) on the basis of distinguishing between personal liberties and property rights in suits claiming jurisdiction under §1343(3).<sup>6</sup> That distinction as a basis for denying a federal forum for the protection of personal liberty from infringement by persons acting under color of state law has now been repudiated by the Supreme Court.

Recently suit was brought under 28 U.S.C. §1343(3) and 42 U.S.C. §1983<sup>7</sup> seeking a permanent injunction and declaratory relief, alleging that

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1. See notes 13 to 25 *infra*.

2. See note 36 *infra*.

3. See notes 35 to 39 *infra*.

4. See notes 48 to 53 *infra*.

5. 307 U.S. 496, 518 (1939).

6. See generally WRIGHT, *THE LAW OF FEDERAL COURTS* §32 (2d ed. 1970); Weschler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 *LAW & CONTEMP. PROB.* 216, 225-28 (1948).

7. 42 U.S.C. § 1983 (1964) provides: "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects, or causes to be subjected any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

the Connecticut attachment and garnishment statutes were unconstitutional in light of *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). Plaintiffs, representing other Connecticut residents similarly situated, were low income wage earners whose checking and credit union accounts were garnished without prior notice to the alleged debtors and without giving the debtors an opportunity to be heard in their own defense.

Ms. Lynch, one of the plaintiffs, was employed, and on an income of \$69.00 per week supported herself and a son, while providing partial support to another son. She deposited funds in an employee credit union, from which she made periodic withdrawals to purchase family needs. When Ms. Lynch's account was garnished to satisfy a note held by defendant Household Finance Corporation, she was unable to pay her rent and was threatened with eviction.

Ms. Toro, a second plaintiff whose garnishment was subsequently released, was supporting herself and a son on \$85.00 per week, derived from her employment and public assistance. She regularly deposited her weekly earnings in a checking account, which was garnished under the Connecticut procedure to satisfy an alleged indebtedness to a former landlord. As a result of the garnishment some of Ms. Toro's outstanding checks were not honored, subjecting her reputation and credit to severe damage, especially because two of the checks were written to creditors holding security interests in her personal property. This sequence was able to occur despite the fact that Ms. Toro had valid defenses against the former landlord.

Plaintiffs were dismissed by a three-judge district court on the basis of lack of jurisdiction under §1343(3).<sup>8</sup> Following the Second Circuit's reaffirmation of the personal-property rights distinction in *Eisen v. Eastman*,<sup>9</sup> the district court held that access to funds in checking and savings accounts is virtually indistinguishable from mere ownership of money,<sup>10</sup> hence a property right. As a property right, jurisdiction would have to be based on §1331, requiring satisfaction of the minimum amount in con-

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secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 28 U.S.C. §1343(3) (1964) provides: "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . . To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . . ."

8. *Lynch v. Household Finance Corp.*, 318 F. Supp. 1111 (1970).

9. 421 F.2d 560 (2d Cir. 1969).

10. *Lynch v. Household Finance Corp.*, 318 F. Supp. 1111, 1114 (1970).

trovency requirement. The parties were of limited means and, as a result of the personal-property rights distinction, were denied a federal forum in which to vindicate important federal rights.

In an opinion rendered without Mr. Justices Powell and Rehnquist, the Supreme Court reversed the district court dismissal and expressly rejected the distinction between personal liberties and proprietary rights as a guide to federal court jurisdiction under §1343(3).<sup>11</sup> *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972).

The decision in *Lynch* is significant for at least three reasons. First, it lays to rest the controversy and confusion surrounding the personal-property rights distinction in §1343 jurisdiction. Second, it accentuates the trend whereby federal courts are increasingly looked to as the most appropriate forum for vindication of constitutionally protected individual rights, with the consequent recasting of the relation of federal and state courts in a system of national federalism. Finally, it draws attention to the near impossibility of attempting to treat property as anything other than a personal right.

It is the purpose of this case note to briefly review the legislative and court history of the personal-property rights distinction, noting the application of the distinction by the courts up to *Lynch* and the inconsistencies it had produced. Next, the unanimous opinion disposing of the personal-property rights distinction will be analyzed, with particular emphasis on the underlying policy arguments which might have been more thoroughly commented upon by the Court. *Lynch* provides particular credence to the American Law Institute proposal recommending elimination of the amount in controversy requirement under §1331, and special consideration will be given to this aspect of the decision's impact. Lastly, *Lynch* will be considered as it takes its place in the evolution of modern federalism, focusing on the scope of §1983 protections after *Lynch*.

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11. In the alternative, defendants had argued that given jurisdiction under §1343(3), 28 U.S.C. §2283 (barring federal courts from granting injunctions to stay proceedings in state courts) would bar issuance of an injunction to stay the prejudgment garnishment. The Court rejected this application of §2283 on the basis that the Connecticut prejudgment garnishment, Conn. Gen. Stat. §52-239 (1968), is not a *proceeding* in a state court. Three Justices dissented from the majority on the §2283 question, arguing that plaintiffs should have been compelled to pursue their constitutional attack in the state courts. In support of their argument, the dissent raised contentions which relate to the same questions of federalism which underlay the continuing vitality and persistence of the personal-property rights distinction. However, the issues regarding federalism in the context of §2283 have been diffused by the Court's recent holding that §1983 is an *express exception* to §2283. *Mitchum v. Foster*, 407 U.S. 225 (1972).

## HISTORY OF THE PERSONAL-PROPERTY RIGHTS DISTINCTION

The original Civil Rights Act of 1866,<sup>12</sup> passed during the post Civil War reconstruction era to protect all citizens in the exercise of basic civil rights,<sup>13</sup> is the origin of the present Civil Rights Act<sup>14</sup> protecting individuals against deprivation of rights, privileges and immunities under color of state law. The constitutionality of the 1866 Act was established by passage of the fourteenth amendment,<sup>15</sup> one of three constitutional amendments passed by Congress in response to the discriminatory "Black Codes" of the South.<sup>16</sup> Modeled after §1 of the original 1866 Act, Congress passed the Civil Rights Act of 1871,<sup>17</sup> under the authority of §5 of the fourteenth amendment, to provide for the enforcement of that amendment.<sup>18</sup> It is the Act of 1871 from which §§1983 and 1343(3) are directly derived.<sup>19</sup> Today, the substantive provisions of the Act are contained in 42 U.S.C. §1983<sup>20</sup> and the jurisdictional counterpart in 28 U.S.C. §1343(3).<sup>21</sup> These sections were first separated in 1875,<sup>22</sup> and in the evolutionary process leading to the present §§1983 and 1343(3)<sup>23</sup>

12. Act of April 9, 1866, ch. 31, 14 Stat. 27 (1866).

13. *Sullivan v. Little Hunting Park*, 396 U.S. 229, 237 (1969); *Jones v. Mayer Co.*, 392 U.S. 409, 432 (1968); *Monroe v. Pape*, 365 U.S. 167, 171-86 (1961). See also CONG. GLOBE, 42nd Cong., 1st Sess., App. 69 (1871) (Rep. Shellabarger).

14. *Monroe v. Pape*, 365 U.S. 167, 171, 183-85 (1961). See Gressman, *The Unhappy History of Civil Rights Legislation*, 50 MICH. L. REV. 1323 (1952).

15. *Monroe v. Pape*, 365 U.S. 167, 171, (1961); *Hague v. CIO*, 307 U.S. 496 509-10 (1939). See also CONG. GLOBE, 42nd Cong., 1st Sess., App. 313 (1871) (Rep. Burchard).

16. Gressman, *supra* note 14, at 1323-26.

17. Act of April 20, 1871, ch. 22, 17 Stat. 13 (1871).

18. See CONG. GLOBE, 42nd Cong., 1st Sess., App. 68-70 (1871) (Rep. Shellabarger).

19. §1983 was first enacted as §1 of the Civil Rights Act (also known as the Ku Klux Klan Act) of April 20, 1871, 17 Stat. 13. Of the five Civil Rights Acts passed between 1866 and 1875, which include Act of April 9, 1866, ch. 31, 14 Stat. 27 (1866); Act of May 31, 1870, ch. 114, 16 Stat. 140 (1870); Act of Feb. 28, 1871, ch. 99, 16 Stat. 433 (1871); Act of April 20, 1871, ch. 22, 17 Stat. 13 (1871); and Act of March 1, 1875, ch. 114, 18 Stat. 335 (1875), only §1 of 17 Stat. 13, presently §1983, remained [along with its jurisdictional counterpart §1343(3)] as a significant basis for subsequent litigation.

20. See provisions of the statute set out in note 7, *supra*.

21. See provisions of the statute set out in note 7, *supra*.

22. Rev. Stat. tit. 13, §§629(16), 563(12), 1979 (1875).

23. In 1871 Congress began codification of the then existing law under separate titles in the Revised Statutes. The jurisdictional provisions of the Civil Rights Act of 1871 were placed in the Judicial Code of the Revised Statutes of 1875, granting distinct jurisdiction for circuit and district courts. These separate jurisdictional grants were merged when Congress abolished the circuit court original jurisdiction,

some changes were made in the precise phraseology of the two statutes.<sup>24</sup> This has caused some commentators to speculate as to newly imposed limitations on the scope of §§1983 and 1343(3) respectively.<sup>25</sup> However, the Supreme Court has clearly enunciated that the purpose of the Act of 1871 was singular in providing redress for the deprivation of any rights secured by the fourteenth amendment,<sup>26</sup> and it follows that the scope of §§1983 and 1343(3) should be co-extensive.<sup>27</sup>

Congress expanded the national authority over matters previously reserved for state courts with passage of the general jurisdictional statute in the Judiciary Act of 1875,<sup>28</sup> giving federal courts power to hear suits arising under article III, §2 of the Constitution.<sup>29</sup> The provision is presently embodied in 28 U.S.C. §1331.<sup>30</sup> The reasons for the passage of the Ju-

Act of March 3, 1911, ch. 231, 36 Stat. 1087. The present §1343(3) jurisdictional provision derives from the 1911 revisions, Act of March 3, 1911, ch. 231, 36 Stat. 1092 (1911), as amended in 28 U.S.C. § 41(12), (13), (14) (1940 ed.).

24. When the substantive provision was separated in the Revised Statutes of 1875, its language was altered to provide a remedy for deprivation of rights, privileges and immunities secured by *federal laws* as well as by the Constitution. Rev. Stat. §1979 (1875). However, the jurisdictional provision for circuit courts was limited to deprivations of rights, privileges and immunities secured by the Constitution or by *any Act of Congress providing for equal rights*. Rev. Stat. §629(16) (1875). The scope of the district court jurisdictional grant was worded exactly as the substantive provision. Rev. Stat. §563(12) (1875). When the jurisdictional provisions were merged in 1911, the *equal rights* limitation was retained. Act of March 3, 1911, ch. 231, 36 Stat. 1092 (1911). For a discussion of the language variances between §1343(3) and §1983 see Herzer, *Federal Jurisdiction Over Statutorily Based Welfare Claims*, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 1, 7-16 (1970).

25. Comment, *The Civil Rights Acts and Mr. Monroe*, 49 CALIF. L. REV. 145 (1961); Note, *The Proper Scope of the Civil Rights Acts*, 66 HARV. L. REV. 1285 (1953).

26. *Monroe v. Pape*, 365 U.S. 167, 171 (1961).

27. Note, *Section 1343 of Title 28—Is the Application of the "Civil Rights-Property Rights" Distinction To Deny Jurisdiction Still Viable?*, 49 B.U.L. REV. 377, 383 (1969).

28. Act of March 3, 1875, ch. 137, 18 Stat. 470 (1875). With exception of a short-lived attempt by Congress to give lower federal courts original jurisdiction under the authority of Art. III, §1, in the Act of Feb. 13, 1801, ch. 4, §11, 2 Stat. 92, repealed by Act of March 8, 1802, ch. 8, §1, 2 Stat. 132 (1801), the Act of 1875 was the first time Congress broadly exercised its constitutional power to give lower federal courts jurisdiction of all suits arising under the Constitution, laws and treaties of the United States. *Tennessee v. Union and Planters' Bank*, 152 U.S. 454 (1893).

29. FRANKFURTER AND LANDIS, *THE BUSINESS OF THE SUPREME COURT* 65 (1928); *Zwickler v. Koota*, 389 U.S. 241, 245-48 (1967).

30. 28 U.S.C. §1331 (1964) provides: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States. . . ."

diciary Act of 1875 are obscure due to a lack of Congressional debate,<sup>31</sup> but it has been regarded as simply another step in strengthening the federal government against the states during the post Civil War era.<sup>32</sup> Though not required by the Constitution, ever since the Judiciary Act of 1789<sup>33</sup> a minimum amount in controversy has been required in some types of cases to invoke federal jurisdiction, including those which are brought under §1331.<sup>34</sup>

Early court interpretation of the fourteenth amendment was restrictive.<sup>35</sup> The Civil Rights Acts passed to enforce the amendment were thus infrequently used through the early twentieth century,<sup>36</sup> when most of the Court's attention was directed to the development of rising economic nationalism.<sup>37</sup>

The late 1930's was an era in which various special interest groups were frequently seeking to achieve social change by engaging in public expression of their ideas.<sup>38</sup> Often restricted by municipal authority as threats to public tranquility, these groups sought to redress the deprivation of their civil rights under the fourteenth amendment enforcement acts, notably the predecessors of §§1983 and 1343(3). Thus it was that the CIO, seeking to disseminate information regarding the new national

31. FRANKFURTER AND LANDIS, *supra* note 29, at 66.

32. FRANKFURTER AND LANDIS, *supra* note 29, at 59; Chadbourn and Levin, *Original Jurisdiction of Federal Questions*, 90 U. PA. L. REV. 639, 642-43 (1942); Maury, *The Late Civil War, Its Effect on Jurisdiction and On Civil Remedies Generally*, 14 AM. L. REG. 129 (1875); *McNeese v. Board of Education*, 373 U.S. 668, 673 (1963).

33. 1 Stat. 85 (1789). This Act also authorized Supreme Court appellate review of federal question cases, but the jurisdictional authorization was not broadly granted until the Act of 1875. See Wiecek, *The Reconstruction of Federal Judicial Power, 1863-1875*, 13 AM. J. LEGAL HIST. 333, 348-49 (1969).

34. WRIGHT, *THE LAW OF FEDERAL COURTS* §32 (2d ed. 1970). The jurisdictional amount for federal question jurisdiction was \$500 under Act of March 3, 1875, ch. 137, § 2, 18 Stat. 470 (1875), and was successively increased in Act of March 3, 1887, ch. 373, 24 Stat. 552 (1887); Act of March 3, 1911, ch. 231, §24, 36 Stat. 1087, 1091 (1911); and Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415 (1958) to its present level of \$10,000.

35. *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872); *United States v. Cruikshank*, 92 U.S. 542 (1875).

36. See CURRIE, *THE FEDERAL COURTS* 427 (1968), discussing the companion cases of *Carter v. Greenhow*, 114 U.S. 317 (1884), and *Pleasants v. Greenhow*, 114 U.S. 323 (1884), which were the only two cases discussing the scope of the predecessor of §1343(3) prior to Justice Stone's opinion in *Hague v. CIO*, 307 U.S. 496 (1939). See also Comment, *The Civil Rights Act: Emergence of an Adequate Federal Civil Remedy*, 26 IND. L.J. 361 (1951).

37. Wiecek, *supra* note 33.

38. GUNTHER AND DOWLING, *CONSTITUTIONAL LAW* 1137 (8th ed. 1970).

labor legislation, invoked the aid of federal courts in *Hague v. CIO*.<sup>39</sup>

In *Hague*, the Supreme Court found jurisdiction over the suit alleging that city ordinances prohibiting the right to hold public meetings and distribute leaflets constituted deprivation of the rights of free speech and assembly, though the Court did not express unanimity as to the basis of their affirmance of the lower court.<sup>40</sup> Justice Stone filed a separate opinion wherein he found it necessary to protect §1343(3) from being swallowed up by the general federal question jurisdictional provisions of §1331,<sup>41</sup> which would have had the effect of making the amount in controversy requirement applicable to civil rights cases. Finding that the due process clause of the fourteenth amendment guarantees to all persons, regardless of citizenship, basic personal liberties including freedom of speech and assembly, and that plaintiffs were thus authorized by the Civil Rights Act of 1871<sup>42</sup> to sue in equity to restrain infringement of those rights, Justice Stone then confronted the jurisdictional question as to amount in controversy. Noting the parallel existence of the two jurisdictional provisions, §§1331 and 1343(3), and that the language of §1331 *could be read to include* §1343(3), Justice Stone apparently felt it necessary to distinguish the two statutes so as to protect federal jurisdiction over those suits brought under §1343(3) *irrespective* of the amount in controversy requirement. He asserted that “. . . at least . . . [those] suits in which the subject matter is one incapable of valuation . . .” (emphasis added)<sup>43</sup> could be brought under §1343(3) without satisfying any minimum amount in controversy requirement. He restated this “harmonization” of the two statutes by saying that §1343(3) conferred jurisdiction when “. . . the right asserted is inherently incapable of pecuniary valuation,”<sup>44</sup> and “. . . whenever the right or immunity is one of personal liberty, not dependent for its existence on the infringement of property rights. . . .”<sup>45</sup> *Ergo* the personal-property rights distinction.<sup>46</sup>

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39. 307 U.S. 496 (1939).

40. *Id.* at 500, 518, 532, 533.

41. *Id.* at 518.

42. At the time of the *Hague* decision the present Civil Rights Act, 28 U.S.C. §1343(3) was included in §24(14) of the Judicial Code.

43. *Hague v. CIO*, 307 U.S. 496, 530 (1939).

44. *Id.*

45. *Id.* at 531.

46. Rather than treating the several phrases used by Justice Stone to describe his concept as merely emphasizing language, some commentators have speculated as to possible operative distinctions. See, e.g., Note, *Section 1343 of Title 28—Is the Application of the “Civil Rights-Property Rights” Distinction to Deny Jurisdiction*

As noted in *Lynch*,<sup>47</sup> the Supreme Court has never as a majority explicitly adopted the personal-property rights distinction in determining the boundaries of §1343(3) jurisdiction. But the lower federal courts have not had such a fortunate history: some have adopted the distinction,<sup>48</sup> others have rejected it,<sup>49</sup> still others have ignored it altogether where it might have been raised as an issue,<sup>50</sup> and finally, some courts have recognized the distinction but proceeded to grant jurisdiction where the right involved was difficult to classify as either property or personal liberty.<sup>51</sup> The Supreme Court, most notably when dealing with welfare rights, has often not noticed the distinction where it might have been raised as an issue.<sup>52</sup> Further, the problems created by its application have evoked a flood of commentary, generally critical of the distinction and its limitation upon the operation of §1343(3) and frequently calling for the pre-

*Still Viable?*, 49 B.U.L. REV. 377, 380 (1969); Note, *Civil Procedure: Section 1343(3) Jurisdiction and the Property-Personal Rights Distinction*, 1970 DUKE L.J. 819, 825 (1970).

47. 405 U.S. 538, 542 (1972).

48. *E.g.*, *Holt v. Indiana Mfg. Co.*, 176 U.S. 68 (1900) (the case was Justice Stone's single example of an action where §1343(3) did not apply); *Bussie v. Long*, 383 F.2d 766 (5th Cir. 1967); *Howard v. Higgins*, 379 F.2d 227 (10th Cir. 1967); *Gray v. Morgan*, 371 F.2d 172 (7th Cir. 1966); *Fuller v. Volk*, 351 F.2d 323 (3d Cir. 1965); *Hornbeak v. Hamm*, 283 F. Supp. 549 (M.D. Ala. 1968), *aff'd mem.*, 393 U.S. 9 (1968); *Booth v. General Dynamics Corp.*, 264 F. Supp. 465 (N.D. Ill. 1967); *Ream v. Handley*, 259 F. Supp. 728 (7th Cir. 1966); *Alterman Transp. Lines v. PSC of Tenn.*, 259 F. Supp. 486 (M.D. Tenn. 1966), *aff'd mem.*, 386 U.S. 262 (1967); *Abernathy v. Carpenter*, 208 F. Supp. 793 (W.D. Mo. 1962), *aff'd mem.*, 373 U.S. 241 (1963).

49. *E.g.*, *Mansell v. Saunders*, 373 F.2d 573 (5th Cir. 1967); *McGuire v. Sadler*, 337 F.2d 902 (5th Cir. 1964); *Hornsby v. Allen*, 326 F.2d 605 (5th Cir. 1964); *Joe Louis Milk Comp. v. Hershey*, 243 F. Supp. 351 (N.D. Ill. 1965).

50. *E.g.*, *Barnes v. Merritt*, 376 F.2d 8 (5th Cir. 1967); *Birnbaum v. Trussell*, 371 F.2d 672 (2d Cir. 1966); *Cobb v. City of Malden*, 202 F.2d 701 (1st Cir. 1953); *Glicker v. Michigan Liquor Control Commission*, 160 F.2d 96 (6th Cir. 1947); *Burt v. City of New York*, 156 F.2d 791 (2d Cir. 1946); *Fuentes v. Faircloth*, 317 F. Supp. 954 (S.D. Fla. 1970).

51. *E.g.*, *Gold v. Lomenzo*, 425 F.2d 959 (2d Cir. 1970); *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2d Cir. 1970) (challenge to termination of lease in public housing, where court found jurisdiction under §1343(3) because the action involved deprivation of procedural due process, a *civil right*, which ultimately led to the loss of a property right; *Santiago v. McElroy*, 319 F. Supp. 284 (E.D. Pa. 1970); *Roberge v. Philbrook*, 313 F. Supp. 608 (D. Vt. 1970).

52. *E.g.*, *Lindsey v. Normet*, 405 U.S. 56 (1972); *California Department of Human Resources v. Java*, 402 U.S. 121 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Rosado v. Wyman*, 397 U.S. 397 (1970); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *King v. Smith*, 392 U.S. 309 (1968); *Damico v. California*, 389 U.S. 416 (1967); *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Swarb v. Lennox*, 314 F. Supp. 1091 (E.D. Pa. 1970), *aff'd mem.*, 405 U.S. 191 (1972). *Also* *Truax v. Raich*, 239 U.S. 33 (1915).

cise holding handed down in *Lynch*.<sup>53</sup>

The Second Circuit had been one of the most consistent adherents of the personal-property rights distinction,<sup>54</sup> confirmed by Judge Friendly in *Eisen v. Eastman*.<sup>55</sup> Recognizing the difficulties that an application of the personal-property rights distinction necessarily entails,<sup>56</sup> Judge Friendly nevertheless felt compelled to follow Justice Stone in *Hague* by denying §1343(3) jurisdiction in a suit which challenged the constitutionality of a rent control law.<sup>57</sup> *Eisen* was the case most prominently relied upon in the district court's denial of jurisdiction in *Lynch*,<sup>58</sup> thus leading to the ultimate demise of the distinction.

#### THE SUPREME COURT DISPOSES OF THE PERSONAL-PROPERTY RIGHTS DISTINCTION

*Lynch v. Household Finance Corp.*<sup>59</sup> was an opportunity for the Supreme Court to lay to rest the confusion some federal courts had brought upon themselves by over-interpretation of Justice Stone's analysis and to remove an outmoded impediment to vindication of federally guaranteed rights in the most appropriate forum.<sup>60</sup> The well-documented his-

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53. Note, *Another and Hopefully Final Look at the Property-Personal Liberty Distinction of Section 1343(3)*, 24 VAND. L. REV. 990 (1971); Comment, *Federal Jurisdiction Under the Civil Rights Act—The Case Against the Personal-Property Rights Distinction*, 17 VILL. L. REV. 313 (1971); Note, *Section 1343 of Title 28—Is the Application of the "Civil Rights-Property Rights" Distinction Still Viable?*, 49 B.U.L. REV. 377 (1969); Note, *The Proper Scope of the Civil Rights Act*, 66 HARV. L. REV. 1285, 1289-91 (1953).

54. *Gold v. Lomenzo*, 425 F.2d 959 (2d Cir. 1970); *Eisen v. Eastman*, 421 F.2d 560, 566 (2d Cir. 1969); *McCall v. Shapiro*, 416 F.2d 246 (2d Cir. 1969). See *Hornbeak v. Hamm*, 283 F. Supp. 549 (M.D. Ala. 1968), *aff'd mem.*, 393 U.S. 9 (1968).

55. 421 F.2d 560 (2d Cir. 1969). *But see* *Gold v. Lomenzo*, 425 F.2d 959 (2d Cir. 1970), where Judge Friendly granted jurisdiction under §1343(3) in a suit seeking to enjoin enforcement of an order by the New York Secretary of State suspending plaintiff's real estate license. Judge Friendly recognized the personal-property rights distinction but did not apply it because he considered that a business license could be interpreted as involving *either* personal liberty or property rights.

56. 421 F.2d 560, 565 (2d Cir. 1969).

57. "We therefore hold, although with a good deal less than complete assurance, that Justice Stone's *Hague* formulation, generously construed, should continue to be regarded as the law of this circuit." *Id.* at 566.

58. 318 F. Supp. 1111 (D. Conn. 1970).

59. *Id.*

60. The implications of *Lynch* were quickly recognized while it was pending before the Supreme Court. See Note, *Another and Hopefully Final Look at the Property-Personal Liberty Distinction of Section 1343(3)*, 24 VAND. L. REV. 990 (1971).

ories of §§1331 and especially 1343(3),<sup>61</sup> recent Supreme Court decisions dealing with vindication of rights containing mixed elements of personal liberty and proprietary interest,<sup>62</sup> continued conflict of outcome in lower federal courts which dealt with the personal-property rights question,<sup>63</sup> and increasing acceptance of the concept of property as a truly personal right,<sup>64</sup> all provided persuasive argument for simply dispensing with Justice Stone's formulation as no longer necessary. Further, the jurisdictional question of a purported limit to §1343(3) certainly posed for the court important policy considerations in terms of its impact on the administration of federal courts,<sup>65</sup> and more importantly on the role of federal courts in the American federal system as it evolved from the Reconstruction Era.

In concluding that there is no limit to §1343(3) jurisdiction in terms of a personal-property rights dichotomy, Justice Stewart speaking for the Court, relied on all of the above arguments and dealt briefly with the impact on federal court administration:

[T]his court has never adopted the distinction between personal liberties and proprietary rights as a guide to the contours of §1343(3) jurisdiction. Today we expressly reject that distinction.<sup>66</sup>

Acknowledging that there is no basis for such a distinction in the legislative histories of either §1331 or §1343(3)<sup>67</sup> to apply to specific kinds of acts which deprive persons of their individual rights,<sup>68</sup> the Court concluded that there is simply no conflict between the two jurisdictional provisions. The Court recognized the difficulty of applying this distinction,<sup>69</sup> thus giving rise to the statement that "property does not have rights. People have rights."<sup>70</sup> Finally, the Court notes that whatever concern there might have been, in careful reconciliation of §§1331 and 1343(3)

61. See notes 12 to 34 *supra* and accompanying text.

62. See cases cited at note 52 *supra*.

63. Compare *Roberts v. Harder*, 440 F.2d 1229 (2d Cir. 1971) with *Alvarado v. Schmidt*, 317 F. Supp. 1027 (W.D. Wis. 1970).

64. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

65. Note, *The Proper Scope of the Civil Rights Act*, 66 HARV. L. REV. 1285, 1287 (1953). *Supra* note 60, at 1022-25.

66. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 542 (1972).

67. *Id.* at 543-46, 548-49.

68. *Id.* at 547. §§1983 and 1343(3) are limited to cases alleging deprivation of constitutionally guaranteed rights by *persons acting under color of state law*.

69. See cases cited at notes 48 to 52 *supra*.

70. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972). The Court also points to the recognition of the falsity of any conceptual dichotomy between personal liberty and property rights by such eminent theorists as Locke, J. Adams, and Blackstone. See also Reich, *supra* note 64.

to prevent denial of jurisdiction over an important case because of the amount in controversy requirement, surely does not now obtain in light of the erosion of the impact of §1331 by other specific jurisdictional statutes which do not contain an amount in controversy requirement.<sup>71</sup>

The important underlying policy considerations which present fundamental reasons for the inception of the personal-property rights distinction in the first place, and which certainly were partially responsible for its continued vitality, were at least implicitly dealt with by *Lynch*. One of these, often disguising more basic concerns, is that expansive interpretation of federal jurisdictional statutes will impede the courts' ability to effectively administer the caseload, because such interpretation would invite a "flood of litigation." It is possible that elimination of the personal-property rights distinction as a limitation to §1343(3) jurisdiction may result in an increased caseload.<sup>72</sup> But these cases alleging deprivation of constitutional rights by persons acting under color of state law, present important federal questions,<sup>73</sup> which are better litigated in a federal forum.<sup>74</sup> For a Supreme Court which has been especially concerned

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71. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 549 n.17 (1972). Statutes which grant jurisdiction without regard to amount in controversy and which apply to cases otherwise falling within §1331 include: admiralty and maritime 28 U.S.C. §1333; bankruptcy 28 U.S.C. §1334; review of orders of the Interstate Commerce Commission 28 U.S.C. §1336; cases arising under any Act of Congress regulating commerce 28 U.S.C. §1337; postal matters 28 U.S.C. §1339; internal revenue and customs duties actions 28 U.S.C. §1340; election disputes 28 U.S.C. §1344; cases in which the United States is a party 28 U.S.C. §§1345-49, 1358, 1361; tort actions by aliens 28 U.S.C. §1350; actions on bonds executed under federal law 28 U.S.C. §1352; cases involving Indian allotments 28 U.S.C. §1353; injuries under federal law 28 U.S.C. §1357.

72. Consider Judge Friendly's admonition in *Negron v. Wallace*, 436 F.2d 1132, 1141 (2d Cir. 1971): ". . . [T]he framers of the Act of 1871 could hardly have intended it to become the standard method of constitutional attack upon state action. . . . Suits under that statute thus should not be lightly brought. Apart from the burden they impose on federal judges and their abrasive effect on federal-state relations, counsel should never forget Mr. Justice Jackson's observation . . . that 'it must prejudice the occasional meritorious application to be buried in a flood of worthless ones.' . . . There is thus a responsibility, resting upon all counsel . . . not to swell the tidal wave of actions under the civil rights statute by bringing suits for declaratory or injunctive relief when no need for this exists." (citations omitted).

73. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 546 (1972). *But see Hingle v. Perez*, 312 F. Supp. 127, 129 (E.D. La. 1970), where the court argues that the federal courts should *not* spend their time on cases involving small pecuniary value, even though federal questions are presented.

74. ALI STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS (1969), discussed at text accompanying notes 96 to 113 *infra* (hereinafter cited as ALI STUDY). *But see Mosher v. Beirne*, 237 F. Supp. 684 (E.D. Mo. 1964), *aff'd*, 357 F.2d 638 (8th Cir. 1966).

with protection of individual liberties,<sup>75</sup> the Stone formulation necessarily had to be discarded as an unworkable argument on which to rely as a means of controlling the "flood of litigation." Thus it was that the distinction was discarded by the unanimous nod of the seven Justices sitting on the case, despite vigorous expressions of concern with increasing case-loads in the federal courts by some of the Justices in other cases.<sup>76</sup>

But the more significant policy consideration which inevitably runs through *Lynch* is that of the Court's century long struggle with striking a balance between the need to protect federal rights in a federal court with the need to protect the respective roles of federal and state courts in a system of federalism undergoing significant alteration in recent decades.<sup>77</sup>

The question then arises as to what the Court has said about this most fundamental question of federalism in relation to protection of individual liberties, through its decision in *Lynch*. Has the Court by having wholeheartedly repudiated the personal-property rights distinction, as seized upon by courts to limit the role of the federal judiciary in the protection of important personal liberties against state action, thereby given credence to the idea that the common law of civil liberties had truly been nationalized by the fourteenth amendment and that the federal courts are the only appropriate guardians of these rights?<sup>78</sup> Clearly an affirmative answer to this question would be to overstate the impact of *Lynch*. But with an artificial barrier removed, analysis might be made of the kinds of rights which the courts will protect under §1983, and in defining the limits to the scope of §1983 protections the federal courts will necessarily give further delineation to the form of modern federalism.

The Civil Rights Act is narrower in scope than general federal question jurisdiction,<sup>79</sup> §1343(3) jurisdiction being limited to state action or

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75. See generally McCLOSKEY, *THE MODERN SUPREME COURT* 1-10 (1972).

76. See, e.g., *Wisconsin v. Constantineau*, 400 U.S. 433, 439-43 (1971) (Chief Justice Burger, dissenting); *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 430 (Blackmun, J., dissenting). See also Burger, *The State of the Federal Judiciary—1972*, 58 A.B.A.J. 1049 (1972).

77. The concept of an evolving federalism is pointedly addressed to by the ALL STUDY, *supra* note 74, at 6: "The objective of this study is that cases be divided between the state and federal courts in a manner grounded on rational principle. Access to federal courts should not be frozen into a pattern set in 1789 or 1875, whether or not the pattern was right to meet the needs of its time, if it does not make sense in light of conditions in the last half of the twentieth century." See McCLOSKEY, *supra* note 75, at 4-5, 45-54. But see Burns, *The Death of E Pluribus Unum*, 19 DEPAUL L. REV. 651 (1970).

78. For an early pronouncement of this position see 1 BURGESS, *POLITICAL SCIENCE AND COMPARATIVE CONSTITUTIONAL LAW* 227-28 (1890).

79. *Kline v. Jones*, 315 F. Supp. 109 (N.D. Cal. 1970).

application of state law.<sup>80</sup> Beyond this basic premise, it is instructive to consider instances where courts have not applied §1983 protections. Even where the alleged deprivation is due to state action, the courts are reluctant to infringe upon state taxing power,<sup>81</sup> though denial of relief may ultimately result in restriction of an underlying constitutional right. Nor does it extend to protection of rights guaranteed by state law.<sup>82</sup> The protections of §1983 have been narrowly circumscribed by some courts when dealing with allegations of infringement of employment status, unless racial overtones can be shown,<sup>83</sup> and have not been extended by other courts to state laws prohibiting strikes by public employees.<sup>84</sup> Other examples of denial of jurisdiction may be found, often resulting in the denial of a hearing to redress an important constitutional right.<sup>85</sup>

However, a wide range of cases, some directly contradictory to those cited above, have been granted jurisdiction. Many cases involving welfare rights have been granted jurisdiction under §1983,<sup>86</sup> as have challenges to state employment tenure laws,<sup>87</sup> to denial of employee salary benefits at a state university where free speech was at issue,<sup>88</sup> and to discriminatory discharge from public employment.<sup>89</sup> In addition, §1983 protections include protection of free speech where infringed by obscenity statutes,<sup>90</sup> sex discrimination,<sup>91</sup> equitable relief against actions by judicial officers,<sup>92</sup>

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80. *Williams v. Rogers*, 449 F.2d 513 (8th Cir. 1971). *See also* *Wheeldin v. Wheeler*, 373 U.S. 647 (1963).

81. *Hickman v. Wujick*, 333 F. Supp. 1221 (E.D. N.Y. 1971); *Jones v. Township of North Bergen*, 331 F. Supp. 1281 (D.C. N.J. 1971). *Contra*, *Burdman v. Nyquist*, 332 F. Supp. 460 (W.D. N.Y. 1971). *See also* *Mathews v. Rodgers*, 284 U.S. 521 (1931).

82. *Stiltner v. Rhay*, 332 F.2d 314 (9th Cir. 1963); *O'Connor v. O'Connor*, 315 F.2d 420, 422 (5th Cir. 1963). *Cf.* *Screws v. U.S.*, 325 U.S. 91 (1944).

83. *E.g.*, *Freeman v. Gould Special School Dist. of Lincoln County Ark.*, 405 F.2d 1153 (8th Cir. 1969).

84. *Kieran v. Lindsay*, 334 F. Supp. 588 (S.D. N.Y. 1971).

85. *See, e.g.*, *Papish v. Board of Curators of the Univ. of Mo.*, 331 F. Supp. 1321 (W.D. Mo. 1971) (action to enjoin dismissal of non-resident student of state university for distribution of allegedly obscene publications).

86. *Like v. Carter*, 448 F.2d 798 (8th Cir. 1971); *McClellan v. University Hts. Inc.*, 338 F. Supp. 374 (D. R.I. 1972); *Male v. Crossroads Associates*, 337 F. Supp. 1190 (S.D. N.Y. 1971).

87. *Krzewinsky v. Kugler*, 338 F. Supp. 492 (D.C. N.J. 1972).

88. *Jervey v. Martin*, 336 F. Supp. 1350 (W.D. Va. 1972).

89. *Birnbaum v. Trussell*, 371 F.2d 672 (2d Cir. 1966). *But compare* *Kieran v. Lindsay*, 334 F. Supp. 588 (S.D. N.Y. 1971). *Also* *Potter v. McQueeney*, 338 F. Supp. 1133 (D.C. R.I. 1972).

90. *Amato v. Ruth*, 332 F. Supp. 326 (W.D. Wis. 1970).

91. *Eslinger v. Thomas*, 340 F. Supp. 886 (D. S.C. 1972).

92. *Haley v. Troy*, 338 F. Supp. 794 (D.C. Mass. 1972); *see also* *McElroy v. Swan*, 457 F.2d 1303 (6th Cir. 1972).

and voting rights.<sup>93</sup>

In the cases cited above, where jurisdiction was granted under § 1343(3), the courts frequently proceeded to touch on development of the basic doctrines making up the structure of the relation today between federal and state courts.<sup>94</sup> These standards and tests, as applied to suits to redress constitutionally protected liberties under the mandates of the Supreme Court,<sup>95</sup> without the troubling shibboleths such as the personal-property rights distinction, will necessarily result in a clearer picture of the structure of modern federal-state relations.

Since suits alleging infringement of basic personal liberties, including those associated with so-called property rights, are usually brought alternatively under §§1331 and 1343(3), and because *Lynch* has removed the threshold blockade to discussion of the real issues of federalism in cases under §1343(3) that might have been denied jurisdiction by the personal-property rights distinction, it would seem to follow that it is desirable to eliminate the amount in controversy requirement under §1331 as a last remaining impediment to the full treatment of constitutional rights of individual liberties in the context of the basic issues of federalism.

Based on the suggestion of Mr. Chief Justice Warren, the American Law Institute completed a study in 1969 of the federal judicial system reappraising the distribution of business between the federal and state courts, in the face of rapidly increasing litigation in the federal courts.<sup>96</sup> It is submitted that the decision in *Lynch*, in having eliminated the personal-property rights distinction as a limit to §1343(3) jurisdiction, presents another indication of the expansive trend in the federal courts and thereby gives import to the proposal to eliminate the amount in controversy requirement under §1331.<sup>97</sup>

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93. *Baker v. Carr*, 369 U.S. 186 (1962); *Leopold v. Young*, 340 F. Supp. 1014 (D. Vt. 1972).

94. Particularly: the abstention doctrines [*Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941); *Burdman v. Nyquist*, 332 F. Supp. 460 (W.D. N.Y. 1971)]; WRIGHT, *THE LAW OF FEDERAL COURTS* §52 (2d ed. 1970)]; presentation of substantial constitutional questions [*Ashwander v. TVA*, 297 U.S. 288 (1936)] exhaustion of state remedies [WRIGHT, *supra* at §49]; and compelling state objectives [*Dandridge v. Williams*, 397 U.S. 471 (1970)].

95. *Ex parte Young*, 209 U.S. 123 (1908); *Fay v. New York*, 332 U.S. 261 (1947); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Dombrowski v. Pfister*, 380 U.S. 479 (1964). See also *Younger v. Harris*, 401 U.S. 37, 58 (1971) (Douglas, J., dissenting); Note, *Federal Jurisdiction—Younger v. Harris: A Current Appraisal of the Policy Against Federal Court Interference With State Court Proceedings*, 21 DEPAUL L. REV. 519 (1971).

96. ALI STUDY, *supra* note 74, at 1-7.

97. Wechsler, *supra* note 6, at 222; Friedenthal, *New Limits on Federal Juris-*

While cautioning against allowing litigation involving civil rights to dominate federal question thinking,<sup>98</sup> the *ALI Study* discusses the most important arguments why suits involving vindication of federally protected rights should be litigated in a federal forum irrespective of the monetary value that the suit may represent. These include the special expertise of federal judges in dealing with constitutional questions, uniformity in the application of federal law, and possible hostility or conflict present in a state court which is called upon to test the constitutionality of one of the laws of that state. However these reasons are not taken to conclude that *all* federal question litigation should be in a federal forum.<sup>99</sup> Further, the *ALI Study* does note that there are some types of cases which still suffer from denial of federal jurisdiction because they are of the limited category still subject to the §1331 amount in controversy requirement,<sup>100</sup> such as deprivation of constitutional rights by federal officers and deprivation of federal civil service preference rights for veterans.<sup>101</sup>

The amount in controversy requirement is the source of other jurisdictional difficulties to litigants. Problems are often encountered by multiple parties in dealing with aggregation of their claims to meet the amount in controversy.<sup>102</sup> Courts have been tempted to find their way around the requirement where it is “. . . not so clearly baseless that the court was bound to disregard it . . . ,”<sup>103</sup> or by accepting as not speculative allegations of damages for infringement of rights not easily susceptible to valuation,<sup>104</sup> even in cases where no relief in damages is sought.<sup>105</sup> Even Judge Friendly in *Eisen v. Eastman*<sup>106</sup> noted that adherence to the Stone

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*diction*, 11 STAN. L. REV. 213, 216-18 (1959); Currie, *Federal Courts and the ALI, Part II*, 36 U. CHI. L. REV. 268 (1969).

98. ALI STUDY, *supra* note 74, at 163.

99. *Id.* at 162-68.

100. *Id.* at 172-73, 491.

101. See *Giancana v. Johnson*, 335 F.2d 366 (7th Cir. 1964). *But see* *Giancana v. Johnson*, *id.* at 371 (Swygert, J., dissenting): “It is incongruous to hold that a formal allegation of the amount in controversy is necessary when personal liberties of the magnitude alleged . . . are involved.” See also *Jackson v. Kuhn*, 254 F.2d 555 (8th Cir. 1958); *Powers v. Gold*, 124 F. Supp. 93 (D. Mass. 1953). For a challenge to the constitutionality of the amount in controversy requirement see *Murray v. Vaughn*, 300 F. Supp. 688 (D. R.I. 1969).

102. *Fuller v. Volk*, 351 F.2d 323 (3d Cir. 1965).

103. *Empresa Hondurena De Vapores v. McLeod*, 300 F.2d 222, 226 (2d Cir. 1962).

104. *Marquez v. Hardin*, 339 F. Supp. 1364 (N.D. Cal. 1969).

105. *Bauer v. McLaren*, 332 F. Supp. 723 (S.D. Iowa 1971). See also *Brown v. Donielson*, 334 F. Supp. 294 (S.D. Iowa 1971).

106. 421 F.2d 560, 566 n.10 (2d Cir. 1969).

formulation in *Hague* would result in denial of a federal forum because of the amount in controversy requirement of §1331 and cited the *ALI Study* with approval, and in another case gave broad interpretation to the scope of 28 U.S.C. §1337, granting jurisdiction of any civil action arising under any act of Congress regulating commerce, so as to *avoid* the amount in controversy problem.<sup>107</sup> Finally, at least one court has suggested that in cases where validity of the amount in controversy was doubtful and the action was triable by jury as of right, that the jury should determine the amount in controversy to protect plaintiff's right to jury trial.<sup>108</sup> Elimination of the amount in controversy requirement certainly provides the simpler means of protecting individual rights and assuring litigation in the most appropriate forum.

The inherent difficulty in using an arbitrary figure as the minimum amount in controversy to establish jurisdiction is illustrated by the statistics of the Administrative Office of the United States Courts cited in the *ALI Study*<sup>109</sup> which indicate that the majority of the federal question cases heard to judgment result in awards of less than \$10,000 anyway.

Finally, the *ALI Study* reiterates the argument that elimination of the amount in controversy requirement would have little impact on the business of the federal courts, because of numerous specific jurisdictional statutes which are exceptions to §1331, including the exception provided by §1343(3).<sup>110</sup> The *ALI Study* discusses the personal-property rights distinction as commendable so far as it dispenses with the amount in controversy requirement where the suit is to redress a right not capable of pecuniary valuation, but questions the desirability of the distinction where it bars cases involving real constitutional issues.<sup>111</sup> By removing this significant category of cases where the amount in controversy requirement might have some effect on limiting litigation in the federal courts under federal question jurisdiction, the decision in *Lynch* establishes that the requirement is no longer consistent with current thinking regarding proper subject matter jurisdiction and that the *ALI* proposal should be adopted,<sup>112</sup> with its focus on the proposition that litigants should at least

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107. *Murphy v. Colonial Fed. Savings and Loan Ass'n.*, 388 F.2d 609, 614-15 (2d Cir. 1967).

108. *Shaffer v. Coty Inc.*, 183 F. Supp. 662, 666-67 (S.D. Cal. 1960).

109. *ALI STUDY*, *supra* note 74, at 491-92.

110. *Id.* at 489-91.

111. *Id.* at 490.

112. The *ALI STUDY* diffuses the impact of traditional arguments in favor of the amount in controversy requirement, most importantly that it serves to control the amount of litigation, by its concurrent proposals regarding diversity jurisdic-

have a choice of forum in which to vindicate federally protected rights.<sup>118</sup>

The early post-Civil War enabling legislation, enacted to give life to the fourteenth amendment, has undergone a long process of growth as the Court gradually undertook to intervene on the behalf of an ever larger number of individual liberties when these were threatened by action under the color of state authority. The Supreme Court in *Lynch* has properly discarded the much disputed personal-property rights distinction as a limitation to federal court intervention, thereby casting new light on the form of modern national federalism. In so doing, the amount in controversy requirement under federal question jurisdiction appears in conflict with court pronouncements encouraging a free choice of the federal forum in which to vindicate important constitutional rights without arbitrary limitations, and as controlled only by the more substantial issues of federalism such as are found in the abstention doctrines.

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tion which would shift many cases presently litigated in federal courts to state courts. ALI STUDY, *supra* note 74, at 1-7, 99-110, 458-64.

113. ALI STUDY, *supra* note 74, at 173.