To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

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pp. 1, 2, 4, 5, 9, 12, 13, 14-20, 22, 24-25, 28-30, 31, 32-33-41

2d OPINION DRAFT

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See following pages for possible comment: 24, 25, 26 } same point ("full power")

SUPREME COURT OF THE UNITED STATES

No. 75-1914

Jane Monell et al., Petitioners, v. Department of Social Services of the City of New York et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

30, 35 (see my op. in Keys), 39, 40

This copy contains annotations by Sam which will be revised.

[January —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioners, a class of female employees of the Department of Social Services and the Board of Education of the City of New York, commenced this action under 42 U. S. C. § 1983 in July 1971.[1] The gravamen of the complaint was that the Board and the Department had as a matter of official policy compelled pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons.[2]

[1] The complaint was amended on September 14, 1972 to allege a claim under Title VII of the 1964 Civil Rights Act, as amended, 42 U. S. C. § 2000e (1970 ed., and Supp. V). The District Court held that the 1972 amendments to Title VII did not apply retroactively to discrimination suffered prior to those amendments even when an action challenging such prior discrimination was pending on the date of the amendments. 394 F. Supp. 853, 856 (SDNY 1975). This holding was affirmed on appeal. 532 F. 2d 259, 261–262 (CA2 1976). Although petitioners sought certiorari on the Title VII issue as well as the § 1983 claim, we restricted our grant of certiorari to the latter issue. 429 U. S. 1071.

[2] The plaintiffs alleged that New York had a citywide policy of forcing women to take maternity leave after the fifth month of pregnancy unless a city physician and the head of an employee's agency allowed up to an additional two months of work. Amended Complaint ¶ 28, App. 13–14. The defendants did not deny this, but stated that this policy had been changed after suit was instituted. Answer ¶ 13, App. 32–33. The plaintiffs further alleged that the Board had a policy of requiring women to take maternity leave after the seventh month of pregnancy unless that month fell in the last month of the school year, in which case the teacher

corporations are natural persons for virtually all purposes - 26

Cf. *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632 (1974). The suit sought injunctive relief and back pay for periods of unlawful forced leave. Named as defendants in the action were the Department and its Commissioner, the Board and its Chancellor, and the city of New York and its Mayor. In each case, the individual defendants were sued solely in their official capacities.[3]

On cross-motions for summary judgment, the District Court for the Southern District of New York held moot petitioners' claims for injunctive and declaratory relief since the city of New York and the Board, after the filing of the complaint, had changed their policies relating to maternity leaves so that no pregnant employee would have to take leave unless she was medically unable to continue to perform her job. 394 F. Supp. 853, 855. No one now challenges this conclusion. The court did conclude, however, that the acts complained of were unconstitutional under *LaFleur, supra.* 394 F. Supp., at 855. Nonetheless plaintiff's prayers for back pay were denied because any such damages would come ultimately from the City of New York and, therefore, to hold otherwise would be to "circumvent" the immunity conferred on municipalities by *Monroe* v. *Pape,* 365 U. S. 167 (1961). See 394 F. Supp., at 855.

On appeal, petitioners renewed their arguments that the Board of Education[4] was not a "municipality" within the meaning of *Monroe* v. *Pape, supra,* and that, in any event, the District Court had erred in barring a damage award against the individual defendants. The Court of Appeals for the Second Circuit rejected both contentions. The court first

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could remain through the end of the school term. Amended Complaint ¶¶ 39, 42, 45, App. 18–19, 21. This allegation was denied. Answer ¶¶ 18, 22, App. 35–37.

[3] Amended Complaint ¶ 24, App. 11–12.

[4] Petitioners conceded that the Department of Social Services enjoys the same status as New York City for *Monroe* purposes. See 532 F. 2d, at 263.

held that the Board of Education was not a person under § 1983 because "it performs a vital governmental function . . . , and, significantly, while it has the right to determine how the funds appropriated to it shall be spent . . . , it has no final say in deciding what its appropriations shall be." 532 F. 2d 259, 263 (1976) (citation omitted). The individual defendants, however, were "persons" under § 1983, even when sued solely in their official capacities. *Id.*, at 264. Yet, because a damage award would "have to be paid by a city that was held not to be amenable to such an action in *Monroe* v. *Pape*," a damage action against officials sued in their official capacities could not proceed. *Id.*, at 265.

We granted certiorari in this case, 429 U. S. 1071, to consider

> "Whether local governmental officials and/or local independent school boards are "persons" within the meaning of 42 U. S. C. § 1983 when equitable relief in the nature of back pay is sought against them in their official capacities?" Pet. for Cert. 8.

Although, after plenary consideration, we have decided the merits of over a score of cases brought under § 1983 in which the principal defendant was a school board [5]—and,

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[5] *Milliken* v. *Bradley*, 433 U. S. 267 (1977); *Dayton Board of Education* v. *Brinkman*, 433 U. S. 406 (1977); *Vorchheimer* v. *School District of Philadelphia*, 430 U. S. 703 (1977); *East Carroll Parish School Board* v. *Marshall*, 424 U. S. 636 (1976); *Milliken* v. *Bradley*, 418 U. S. 717 (1974); *Bradley* v. *School Board of the City of Richmond*, 416 U. S. 696 (1974); *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632 (1974); *Keyes* v. *School District No. 1*, 413 U. S. 189 (1973); *San Antonio School District* v. *Rodriguez*, 411 U. S. 1 (1973); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971); *Northcross* v. *City of Memphis Board of Education*, 397 U. S. 232 (1970); *Carter* v. *West Feliciana Parish School Board*, 396 U. S. 226 (1969); *Alexander* v. *Holmes County Board of Education*, 396 U. S. 19 (1969); *Kramer* v. *Union Free School District*, 395 U. S. 621 (1969); *Tinker* v. *Des Moines Independent School District*, 393 U. S. 503 (1969); *Monroe* v. *Board of Commissioners*, 391 U. S. 450 (1968); *Raney* v. *Board of Education*, 391 U. S. 443 (1968); *Green* v. *County School Board of New Kent County*, 391 U. S. 430 (1968); *School*

indeed, in some of which § 1983 and its jurisdictional counterpart, 28 U. S. C. § 1343, provided the only basis for jurisdiction[6]—we indicated in *Mt. Healthy City Board of Ed.* v. *Doyle*, 429 U. S. 274, 279 (1977), last Term that the question presented here was open and would be decided "another day." That other day has come and we now overrule *Monroe* v. *Pape*, *supra*, insofar as it holds that local governments are wholly immune from suit under § 1983.[7]

I

In *Monroe* v. *Pape*, we held that "Congress did not undertake to bring municipal corporations within the ambit of [§ 1983]." 365 U. S., at 187. The sole basis for this conclusion was an inference drawn from Congress' rejection of the "Sherman amendment" to the bill which became Civil Rights Act of 1871, 17 Stat. 13—the precursor of § 1983—which would have held a municipal corporation liable for damage done to the person or property of its inhabitants by *private* persons "riotously and tumultuously assembled."[8] Cong. Globe, 42d Cong., 1st Sess., 749 (1871) (hereinafter "Globe"). Although the Sherman amendment did not seek to amend § 1 of the Act,

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District of Abington Township v. *Schempp*, 374 U. S. 203 (1963); *Goss* v. *Board of Education*, 373 U. S. 683 (1963); *McNeese* v. *Board of Education*, 373 U. S. 668 (1963); *Orleans Parish School Board* v. *Bush*, 365 U. S. 569 (1961); *Brown* v. *Board of Education*, 347 U. S. 483 (1954).

[6] *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 636 (1974); App., *Keyes* v. *School District No. 1*, O. T. 1972, No. 71-507, p. 4a; App., *Swann* v. *Charlotte-Mecklenburg Board of Education*, O. T. 1970, No. 281, p. 465a; Petition for Certiorari, *Northcross* v. *Board of Education*, O. T. 1969, No. 1136, p. 3; *Tinker* v. *Des Moines Independent School District*, 393 U. S. 503, 504 (1969); *McNeese* v. *Board of Education*, 373 U. S. 668, 671 (1963).

[7] However, we do affirm *Monroe* v. *Pape*, 365 U. S. 167 (1961), insofar as it holds that the doctrine of *respondeat superior* is not a basis for rendering municipalities liable under § 1983 for the constitutional torts of their employees. See Part II, *infra*.

[8] We expressly declined to consider "policy considerations" for or against municipal liability. See 365 U. S., at 191.

fine change
Yes!

which is now § 1983, and although the nature of the obligation created by that amendment was vastly different from that created by § 1, the Court nonetheless concluded in *Monroe* that Congress must have meant to exclude municipal corporations from the coverage of § 1 because "the House [in voting against the Sherman amendment] had solemnly decided that in their judgment Congress had no constitutional power to impose any *obligation* upon county and town organizations, the mere instrumentality for the administration of state law." 365 U. S., at 190 (emphasis added), quoting Globe, at 804 (Rep. Poland). This statement, we thought, showed that Congress doubted its "constitutional power . . . to impose *civil liability* on municipalities," 365 U. S., at 190 (emphasis added), and that such doubt would have extended to any type of civil liability.[9]

A fresh analysis of debate on the Civil Rights Act of 1871, and particularly of the case law which each side mustered in its support, shows, however, that *Monroe* incorrectly equated the "obligation" of which Representative Poland spoke with "civil liability."

A. An Overview

There are three distinct stages in the legislative consideration of the bill which became the Civil Rights Act of 1871. On March 28, 1871, Representative Shellabarger, acting for a House select committee, reported H. R. 320, a bill "to enforce the provisions of the Fourteenth Amendment to the Constitution and for other purposes." H. R. 320 contained four sections. Section 1, now codified as 42 U. S. C. § 1983, was the subject of only limited debate and was passed without

[9] Mr. Justice Douglas, the author of *Monroe*, has suggested that the municipal exclusion might more properly rest on a theory that Congress sought to prevent the financial ruin that civil rights liability might impose on municipalities. See *City of Kenosha* v. *Bruno*, 412 U. S. 507, 517–520 (1973). However, this view has never been shared by the Court, see *Monroe* v. *Pape*, *supra*, n. 7, at 190; *Moor* v. *County of Alameda*, 411 U. S. 693, 708 (1973), and the debates do not support this position.

amendment.[10] Sections 2 through 4 dealt primarily with the "other purpose" of suppressing Ku Klux Klan violence in the southern States.[11] The wisdom and constitutionality of these sections—not § 1, now § 1983—was the subject of almost all congressional debate and each of these sections was amended. The House finished its initial debates on H. R. 320 on April 7, 1871 and one week later the Senate also voted out a bill.[12] Again, debate on § 1 of the bill was limited and that section was passed as introduced.

Immediately prior to the vote on H. R. 320 in the Senate, Senator Sherman introduced his amendment.[13] This was *not* an amendment to § 1 of the bill, but was to be added as § 7 at the end of the bill. Under the Senate rules, no discussion of the amendment was allowed and, although attempts were made to amend the amendment, it was passed as introduced. In this form, the amendment did *not* place liability on municipal corporations, but made any inhabitant of a municipality liable for damage inflicted by persons "riotously or tumultuously assembled." [14]

The House refused to acquiesce in a number of amendments made by the Senate, including the Sherman amendment, and the respective versions of H. R. 320 were there-

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[10] Globe, at 522.

[11] Briefly, § 2 created certain federal crimes in addition to those defined in § 2 of the 1866 Civil Rights Act, 14 Stat. 27, each aimed primarily at the Ku Klux Klan. Section 3 provided that the President could send the militia into any State wracked with Klan violence. Finally, § 4 provided for suspension of the writ of habeas corpus in enumerated circumstances, again primarily those thought to obtain where Klan violence was rampant. See Cong. Globe, 42d Cong., 1st Sess., App., at 335–336 (1871) (hereinafter "Globe App.").

[12] Globe, at 709.

[13] See *id.*, at 663, quoted in Appendix, *infra*, at 41–42.

[14] *Ibid.* An action for recovery of damages was to be in the federal courts and denominated as a suit against the county, city, or parish in which the damage had occurred. *Ibid.* Execution of the judgment was not to run against the property of the government unit, however, but against the private property of any inhabitant. *Ibid.*

fore sent to a conference committee. Section 1 of the bill, however, was not a subject of this conference since, as noted, it was passed verbatim as introduced in both Houses of Congress.

On April 18, 1871, the first conference committee completed its work on H. R. 320. The main features of the conference committee draft of the Sherman amendment were these: [15] First, a cause of action was given to persons injured by

> "any persons riotously and tumultuously assembled together; . . . with intent to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of his race, color, or previous condition of servitude . . . ."

Second, the act provided that the action would be against the county, city, or parish in which the riot had occurred and that it could be maintained by either the person injured or his legal representative. Third, unlike the amendment as proposed, the conference substitute made the government defendant liable on the judgment if it was not satisfied against individual defendants who had committed the violence. If a municipality were liable, the judgment against it could be collected

> "by execution, attachment, mandamus, garnishment, or any other proceeding in aid of execution or applicable to the enforcement of judgments against municipal corporations; and such judgment [would become] a lien as well upon all moneys in the treasury of such county, city, or parish, as upon the other property thereof."

In the ensuing debate on the first conference report, which was the first debate of any kind on the Sherman amendment, Senator Sherman explained that the purpose of his amendment was to enlist the aid of persons of property in the en-

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[15] See Globe, at 749 and 755, quoted in Appendix, *infra*, at 42–43.

forcement of the civil rights laws by making their property "responsible" for Ku Klux Klan damage.[16] Statutes drafted on a similar theory, he stated, had long been in force in England and were in force in 1871 in a number of States.[17] Nonetheless there were critical differences between the conference substitute and extant state and English statutes: the conference substitute, unlike most state riot statutes, lacked a short statute of limitations and imposed liability on the government defendant whether or not it had notice of the impending riot, whether or not the municipality was authorized to exercise a police power, whether or not it exerted all reasonable efforts to stop the riot, and whether or not the rioters were caught and punished.[18]

The first conference substitute passed the Senate but was rejected by the House. House opponents, within whose ranks

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[16] "Let the people of property in the southern States understand that if they will not make the hue and cry and take the necessary steps to put down lawless violence in those States their property will be holden responsible, and the effect will be most wholesome." Globe, at 761. Senator Sherman was apparently unconcerned that the conference committee substitute, unlike the original amendment, did not place liability for riot damage directly on the property of the well-to-do, but instead placed it on the local government. Presumably he assumed that taxes would be levied against the property of the inhabitants to make the locality whole.

[17] According to Senator Sherman, the law had originally been adopted in England immediately after the Norman Conquest and had most recently been promulgated as the law of 7 & 8 Geo. IV, ch. 31. See Globe, at 760. During the course of the debates, it appeared that Kentucky, Maryland, Massachusetts, and New York had similar laws. See *id.*, at 751 (Rep. Shellabarger); *id.*, at 762 (Sen. Stevenson); *id.*, at 771 (Sen. Thurman); *id.*, at 792 (Rep. Butler). Such a municipal liability was apparently common throughout New England. See *id.*, at 761 (Sen. Sherman).

[18] In the Senate, opponents, including a number of Senators who had voted for § 1 of the bill, criticised the Sherman amendment as an imperfect and impolitic rendering of the state statutes. Moreover, as drafted, the conference substitute could be construed to protect rights that were not protected by the Constitution. A complete critique was given by Senator Thurman. See Globe, at 770–772.

were some who had supported § 1, thought the Federal Government could not, consistent with the Constitution, obligate municipal corporations to keep the peace if those corporations were neither so obligated nor so authorized by their state charters. And, because of this constitutional objection, opponents of the Sherman amendment were unwilling to impose damage liability for nonperformance of a duty which Congress could not require municipalities to perform. This position is reflected in Representative Poland's statement that is quoted in *Monroe*.[19]

Because the House rejected the first conference report a second conference was called and it duly issued its report. The second conference substitute for the Sherman amendment abandoned municipal liability and, instead, made "any person or persons having knowledge [that a conspiracy to violate civil rights was afoot], and having power to prevent or aid in preventing the same," who did not attempt to stop the same, liable to any person injured by the conspiracy.[20] The amendment in this form was adopted by both Houses of Congress and is now codified as 42 U. S. C. § 1986.

The meaning of the legislative history sketched above can most readily be developed by first considering the debate on the report of the first conference committee. This debate shows conclusively that the constitutional objections raised against the Sherman amendment—on which our holding in *Monroe* was based, see p. 5, *supra*—would not have prohibited congressional creation of a civil remedy against state municipal corporations that infringed federal rights. Because § 1 of the Civil Rights Act does not state expressly that municipal corporations come within its ambit, it is finally necessary to interpret § 1 to confirm that such corporations were indeed intended to be included within the "persons" to whom that section applies.

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[19] See 365 U. S., at 190, quoted at p. 5, *supra*.

[20] See Globe, at 804, quoted in Appendix, *infra*, at 43.

B. Debate on the First Conference Report

The style of argument adopted by both proponents and opponents of the Sherman amendment in both Houses of Congress was largely legal, with frequent references to cases decided by this Court and the supreme courts of the several States. Proponents of the Sherman amendment did not, however, discuss in detail the argument in favor of its constitutionality. Nonetheless, it is possible to piece together such an argument from the debates on the first conference report and those on § 2 of the civil rights bill, which, because it allowed the Federal Government to prosecute crimes "in the states," had also raised questions of federal power. The account of Representative Shellabarger, the House sponsor of H. R. 320, is the most complete.

Shellabarger began his discussion of H. R. 320 by stating that "there is a domain of constitutional law involved in the right consideration of this measure which is wholly unexplored." Cong. Globe, 42d Cong., 1st Sess., App., at 67 (1871) (hereinafter "Globe App."). There were analogies, however. With respect to the meaning of § 1 of the Fourteenth Amendment, and particularly its Privileges or Immunities Clause, Shellabarger relied on the statement of Mr. Justice Washington in *Corfield* v. *Coryell*, 4 Wash. C. C. 371 (CCED Pa. 1825), which defined the privileges protected by Art. IV:

> "'What these fundamental privileges are[,] it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the Government;'—
>
> "*Mark that*—
>
> "'*protection by the Government;* the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety . . . .'" Globe App., at 69 (emphasis added), quoting 4 Wash. C. C., at 380.

Having concluded that citizens were owed protection,[21] Shellabarger then considered Congress' role in providing that protection. Here again there were precedents:

> "[Congress has always] assumed to enforce, as against the States, and also persons, every one of the provisions of the Constitution. Most of the provisions of the Constitution which restrain and directly relate to the States, such as those in [Art. I, § 10,] relate to the divisions of the political powers of the State and General Governments. . . . These prohibitions upon political powers of the States are all of such nature that they can be, and even have been, . . . enforced by the courts of the United States declaring void all State acts of encroachment on Federal powers. Thus, and thus sufficiently, has the United States 'enforced' these provisions of the Constitution. But there are some that are not of this class. These are where the court secures the rights or the liabilities of persons within the States, as between such persons and the States.
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> "These three are: first, that as to fugitives from justice [22]; second, that as to fugitives from service, (or

[21] Opponents of the Sherman amendment agreed that both protection and equal protection were guaranteed by the Fourteenth Amendment. See Globe, at 758 (Sen. Trumbull); *id.*, at 772 (Sen. Thurman); *id.*, at 791 (Rep. Willard). And the Supreme Court of Indiana had so held in giving effect to the Civil Rights Act of 1866. See *Smith* v. *Moody*, 26 Ind. 299 (1866) (following *Coryell*), one of three state supreme court cases referred to in Globe App., at 68 (Rep. Shellabarger). Moreover, § 2 of the 1871 Act as passed, unlike § 1, prosecuted persons who violated federal rights whether or not that violation was under color of official authority, apparently on the theory that Ku Klux Klan violence was infringing the right of protection defined by *Coryell*.

[22] U. S. Const., Art. IV, § 2, cl. 2:

"A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

slaves [23];) third, that declaring that the 'citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.' [24]

"And, sir, every one of these—the only provisions where it was deemed that legislation was required to enforce the constitutional provisions—the only three where the rights or liabilities of persons in the States, as between these persons and the States, are directly provided for, Congress has by legislation affirmatively interfered to protect . . . such persons." Globe App., at 69–70.

Of legislation mentioned by Shellabarger, the closest analog of the Sherman amendment, ironically, was the statute implementing the fugitives from justice and fugitive slave provisions of Art. IV—the Act of Feb. 12, 1793, ch. 7, 1 Stat. 302—the constitutionality of which had been sustained in 1842, in *Prigg v. Pennsylvania*, 16 Pet. 539. There, Mr. Justice Story, writing for the Court, held that Art. IV gave slaveowners a federal right to the unhindered possession of their slaves in whatever State such slaves might be found. 16 Pet., at 612. Because state process for recovering runaway slaves might be inadequate or even hostile to the rights of the slaveowner, the right intended to be conferred could be negated if left to state implementation. *Id.*, at 614. Thus, since the Constitution guaranteed the right and this in turn required a remedy, Story held it to be a "natural inference" that Congress had the power itself to ensure an appropriate (in the Necessary and Proper Clause sense) remedy for the right. *Id.*, at 615.

Building on *Prigg*, Shellabarger argued that a remedy against municipalities and counties was an appropriate—and

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[23] *Id.*, cl. 3:

"No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

[24] *Id.*, cl. 1.

hence constitutional—method for ensuring the protection which the Fourteenth Amendment made every citizen's federal right.[25] This much was clear from the adoption of such statutes by the several States as devices for suppressing riot.[26] Thus, said Shellabarger, the only serious question remaining was "whether, since a county is an integer or part of a State, the United States can impose upon it, as such, *any obligations to keep the peace* in obedience to United States laws." [27] This he answered affirmatively, citing *Board of Commissioners* v. *Aspinwall*, 24 How. 376 (1861), the first of many cases [28] upholding the power of federal courts to enforce the Contract Clause against municipalities.[29]

The most complete statement of the constitutional argument of the House opponents of the Sherman amendment—whose views are particularly important since only the House voted down the amendment—was that of Representative Blair: [30]

> "The proposition known as the Sherman amendment . . . is entirely new. It is altogether without a pre-

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[25] See Globe, at 751. See also *id.*, at 760 (Sen. Sherman) ("If a State may . . . pass a law making a county . . . responsible for a riot in order to deter such crime, then we may pass the same remedies . . . .").

[26] *Id.*, at 751; see n. 17, *supra*.

[27] Globe, at 751 (emphasis added). Compare this statement with Representative Poland's remark upon which our holding in *Monroe* was based. See p. 5, *supra*.

[28] See, *e. g.*, *Gelpcke* v. *City of Dubuque*, 1 Wall. 175 (1864); *Von Hoffman* v. *City of Quincy*, 4 *id.*, 535 (1867); *Riggs* v. *Johnson County*, 6 *id.*, 166 (1868); *Weber* v. *Lee County*, 6 *id.*, 210 (1868); *Supervisors* v. *Rogers*, 7 *id.*, 175 (1869); *Benbow* v. *Iowa City*, 7 *id.*, 313 (1869); *Supervisors* v. *Durant*, 9 *id.*, 415 (1870). See generally C. Fairman, History of the Supreme Court of the United States: Reconstruction and Reunion, 1864–1888, chs. 17–18 (1971).

[29] See Globe, at 751–752.

[30] Others taking a view similar to Representative Blair's included: Representative Willard, see *id.*, at 791; Representative Poland, see *id.*, at 794; Representative Burchard, see *id.*, at 795; Representative Farnsworth, see *id.*, at 799. Representative Willard also took a somewhat different

cedent in this country. . . . That amendment claims the power in the General Government to go into the States of this Union and lay such obligations as it may please upon the municipalities, which are the creations of the States alone. . . .

". . . [H]ere it is proposed, not to carry into effect an obligation which rests upon the municipality, but to

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position. He thought that the Constitution would not allow the Federal Government to dictate the manner in which a State fulfilled its obligation of protection. That is, he thought it a matter of state discretion whether it delegated the peacekeeping power to a municipal or county corporation, to a sheriff, etc. He did not doubt, however, that the Federal Government could impose on the *States* the obligation imposed by the Sherman amendment, and presumably he would have enforced the amendment against a municipal corporation to which the peacekeeping obligation had been delegated. See *id.*, at 791.

Opponents of the Sherman amendment in the Senate agreed with Blair that Congress had no power to pass the Sherman amendment because it fell outside limits on national power implicit in the federal structure of the Constitution, and recognized in, *e. g.*, *Collector* v. *Day*, 11 Wall. 113 (1871). However, the Senate opponents focused not on the amendment's attempt to obligate municipalities to keep the peace, but on the lien created by the amendment, which ran against *all* money and property of a defendant municipality, including property held for public purposes, such as jails or courthouses. Opponents argued that such a lien once entered would have the effect of making it impossible for the municipality to function, since no one would trade with it. See, *e. g.*, Globe, at 762 (Sen. Stevenson); *id.*, at 763 (Sen. Casserly). Moreover, everyone knew that sound policy prevented execution against public property since this too was needed if local government was to survive. See, *e. g.*, *ibid.* See also *Meriwether* v. *Garrett*, 102 U. S. 472, 501, 513 (1880) (recognizing principle that public property of a municipality not subject to execution); 2 Dillon, Municipal Corporations §§ 445–446 (1973 ed.) (same).

Although the arguments of the Senate opponents appear to be a correct analysis of then-controlling constitutional and common-law principles, their arguments are not relevant to an analysis of the constitutionality of § 1 of the Civil Rights Act since any judgment under that section, as in any civil suit in the federal courts in 1871, would have been enforced pursuant to *state* laws under the process acts of 1792 and 1828. See Act of May 8, 1792, ch. 36, 1 Stat. 275; Act of May 19, 1828, ch. 68, 4 Stat. 278.

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This is a new ¶ that previously appeared in WJB's Memorandum to the Conference. It makes the point that the Senate opponents of the Sherman Amendment disliked its broad judgment lien provision.

> create that obligation, and that is the provision I am unable to assent to. The parallel of the hundred does not in the least meet the case. The power that laid the obligation upon the hundred first put the duty upon the hundred that it should perform in that regard, and failing to meet the obligation which had been laid upon it, it was very proper that it should suffer damage for its neglect. . . .
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> ". . . [T]here are certain rights and duties that belong to the States, . . . there are certain powers that inhere in the State governments. They create these municipalities, they say what their powers shall be and what their obligations shall be. If the Government of the United States can step in and add to those obligations, may it not utterly destroy the municipality? If it can say that it shall be liable for damages occurring from a riot, . . . where [will] its power . . . stop and what obligations . . . might [it] not lay upon a municipality. . . .
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> "Now, only the other day, the Supreme Court . . . decided [in *Collector* v. *Day*, 11 Wall. 113 (1871)] that there is no power in the Government of the United States, under its authority to tax, to tax the salary of a State officer. Why? Simply because the power to tax involves the power to destroy, and it was not the intent to give the Government of the United States power to destroy the government of the States in any respect. It was held also in the case of Prigg *vs.* Pennsylvania [16 Pet. 539 (1842)] that it is not within the power of the Congress of the United States to lay duties upon a State officer; that we cannot command a State officer to do any duty whatever, as such; and I ask . . . the difference between that and commanding a municipality which is equally the creature of the State, to perform a duty." Globe, at 795.

Any attempt to impute a unitary constitutional theory to opponents of the Sherman amendment is, of course, fraught with difficulties, not the least of which is that most Members

Blair's reasons

of Congress did not speak to the issue of the constitutionality of the amendment. Nonetheless, two considerations lead us to conclude that opponents of the Sherman amendment found it unconstitutional substantially because of the reasons stated by Representative Blair: First, Blair's analysis is precisely that of Poland, whose views were quoted as authoritative in Monroe, see p. 5, *supra*, and that analysis was shared in large part by all House opponents who addressed the constitutionality of the Sherman amendment.[31] Second, Blair's exegesis of the reigning constitutional theory of his day, as we shall explain, was clearly supported by precedent—albeit precedent that has not survived, see *Ex Parte Virginia*, 100 U. S. 339, 347–348 (1880); *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 486 (1939)—and no other correct constitutional formula was advanced by any other participant in the House debates.

Collector v. *Day*, cited by Blair, was the clearest and, at the time of the debates, the most recent pronouncement of a doctrine of coordinate sovereignty that, as Blair stated, placed limits on even the enumerated powers of the National Government in favor of protecting State prerogatives. There, the Court held that the United States could not tax the income of Day, a Massachusetts state judge, because the independence of the States within their legitimate spheres would be imperiled if the instrumentalities through which States executed their powers were "subject to the control of another and distinct government." 11 Wall., at 127. Although the Court in *Day* apparently rested this holding in part on the proposition that the taxing "power acknowledges no limits but the will of the legislative body imposing the tax," *id.*, at 125–126; cf. *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819), the Court had in other cases limited other national powers in order to avoid interference with the States.[32]

WJB's discussion on pp. 16-19 here restates the discussion appearing on pp 15-19 of the 1st. Draft. This restatement is much clearer than the original (see p 19, infra).

Yes

[31] See n. 30, *supra*.

[32] In addition to the cases discussed in text, see *Lane County* v. *Oregon*, 7 Wall. 71, 77, 81 (1869), in which the Court held that the federal legal

In *Prigg* v. *Pennsylvania*, *supra*, for example, Mr. Justice Story, in addition to confirming a broad national power to legislate under the Fugitive Slave Clause, see p. 12, *supra*, held that Congress could not "insist that states . . . provide means to carry into effect the duties of the national government." 16 Pet., at 615–616.[33] And Mr. Justice McLean agreed that, "[a]s a general principle," it was true "that Congress had no power to impose duties on state officers, as provided in the [Act of 1793, *supra*]." Nonetheless he wondered whether Congress might not impose "positive" duties on state officers where a clause of the Constitution, like the Fugitive Slave Clause, seemed to require affirmative government assistance, rather than restraint of government, to secure federal rights. See *id.*, at 664–665.

Had Justice McLean been correct in his suggestion that, where the Constitution envisioned affirmative government assistance, the States or their officers or instrumentalities could be required to provide it, there would have been little doubt that Congress could have insisted that municipalities afford by "positive" action the protection[34] owed individuals under § 1 of the Fourteenth Amendment. However, any such argument, largely foreclosed by *Prigg*, was made impossible by the Court's holding in *Kentucky* v. *Dennison*, 24 How. 66 (1861). There, the Court was asked to require Dennison, the Governor of Ohio, to hand over Lago, a fugitive from justice wanted in

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tender acts should not be construed to require the States to accept taxes tendered in United States notes since this might interfere with a legitimate State activity.

[33] Chief Judge Taney agreed:

"The state officers mentioned in the law [of 1793] are not bound to execute the duties imposed upon them by Congress, unless they choose to do so, or are required to do so by a law of the state; and the state legislature has the power, if it thinks proper, to prohibit them. The act of 1793, therefore, must depend altogether for its execution upon the officers of the United States named in it." 16 Pet., at 630 (Taney, C. J.).

[34] See pp. 10–11, and n. 21, *supra*.

Kentucky, as required by § 1 of the Act of 1793,[35] *supra*, which implemented Art. IV, § 2, cl. 2, of the Constitution. Chief Justice Taney, writing for a unanimous Court, refused to enforce that section of the Act:

> "[W]e think it clear, that the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State." 24 How., at 107–108.

The rationale of *Dennison*—that the Nation could not impose duties on state officers since that might impede States in their legitimate activities—is obviously identical to that which animated the decision in *Collector* v. *Day*. See p. 16, *supra*. And, as Blair indicated, municipalities as instrumentalities through which States executed their policies could be equally disabled from carrying out State policies if they were also obligated to carry out federally imposed duties. Although no one cited *Dennison* by name, the principle for which it stands was well known to Members of Congress,[36] many of

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[35] "Be it enacted . . . That whenever the executive authority of any state in the Union . . . shall demand any person as a fugitive from justice . . . and shall moreover produce a copy of an indictment found . . . charging the person so demanded, with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state . . . from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured . . . and to cause the fugitive to be delivered to such agent [of the demanding state] when he shall appear . . . ." 1 Stat. 302.

[36] "The Supreme Court of the United States has decided repeatedly that Congress can impose no duty on a State officer." Globe, at 799 (Rep. Farnsworth). See also *id.*, at 788–789 (Rep. Kerr).

whom discussed *Day* [37] as well as a series of state supreme court cases [38] in the mid-1860's which had invalidated a federal tax on the process of state courts on the ground that the tax threatened the independence of a vital state function.[39] Thus, there was ample support for Blair's view that the Sherman amendment, by putting municipalities to the Hobson's choice of keeping the peace or paying civil damages, attempted to impose obligations on municipalities by indirection that could not be imposed directly, thereby threatening to "destroy the government of the States." Globe, at 795.

If municipal liability under § 1 of the Civil Rights Act created a similar Hobson's choice, we might conclude, as *Monroe* did, that Congress could not have intended municipalities to be among the "persons" to which that section applied. But this is not the case.

The limits on federal power mandated by the doctrine of coordinate sovereignty are somewhat difficult to discern as a matter of logic, but quite apparent as a matter of history. It must be remembered that the same Court which rendered *Day* also vigorously enforced the Contracts Clause against municipalities.[40] Under the theory of dual solvereignty set out in *Prigg*, this is quite understandable. So long as federal courts were vindicating the Federal Constitution, they were providing the "positive" government action required to protect federal constitutional rights and no question was raised of enlisting the States in "positive" action. Moreover, federal judicial enforce-

[37] See, *e. g.*, Globe, at 764 (Sen. Davis); *ibid.* (Sen. Casserly); *id.*, 772 (Sen. Thurman) (reciting logic of *Day*); *id.*, at 777 (Sen. Frelinghuysen); *id.*, at 788–789 (Rep. Kerr) (reciting logic of *Day*); *id.*, at 793 (Rep. Poland); *id.*, at 799 (Rep. Farnsworth) (also reciting logic of *Day*).

[38] *Warren* v. *Paul*, 22 Ind. 276 (1864); *Jones* v. *Estate of Keep*, 19 Wis. 369 (1865); *Fifield* v. *Close*, 15 Mich. 505 (1867); *Union Bank* v. *Hill*, 3 Cold. (43 Tenn.) 325 (1866); *Smith* v. *Short*, 40 Ala. 385 (1867).

[39] See Globe, at 764 (Sen. Davis); *ibid.* (Sen. Casserley). See also T. Cooley, Constitutional Limitations *483–*484 (1871 ed.).

[40] See n. 28, *supra*.

ment of the Constitution's express limits on state power, since it was done so frequently, must notwithstanding anything said in *Dennison* or *Day* have been permissible, at least so long as the interpretation of the Constitution was left in the hands of the judiciary. Since § 1 of the Civil Rights Act simply conferred jurisdiction on the federal courts to enforce § 1 of the Fourteenth Amendment—a situation precisely analogous to the grant of diversity jurisdiction under which the Contract Clause was enforced against municipalities—there is no reason to suppose that opponents of the Sherman amendment would have found any constitutional barrier to § 1 suits against municipalities.

Indeed, opponents expressly distinguished between imposing an obligation to keep the peace and merely imposing civil liability for damages on a municipality that was obligated by state law to keep the peace, but which had not in violation of the Fourteenth Amendment. Representative Poland, for example, reasoning from Contract Clause precedents, indicated that Congress could constitutionally confer jurisdiction on the federal courts to entertain suits seeking to hold municipalities liable for using their authorized powers in violation of the Constitution—which is as far as § 1 of the Civil Rights Act went:

> "I presume . . . that where a State had imposed a duty [to keep the peace] upon [a] municipality . . . an action would be allowed to be maintained against them in the courts of the United States under the ordinary restrictions as to jurisdiction. But enforcing a liability, existing by their own contract, or by a State law, in the courts, is a very widely different thing from devolving a new duty or liability upon them by the national Government, which has no power either to create or destroy them, and no power or control over them whatever." Globe, at 794.

Representative Burchard agreed:

> "[T]here is no duty imposed by the Constitution of the United States, or usually by State laws, upon a county to

In my view, this is the gist of what troubled the opponents of the Sherman Amendment.

> protect the people of that county against the commission of the offenses herein enumerated, such as the burning of buildings or any other injury to property or injury to person. Police powers are not conferred upon counties as corporations; they are conferred upon cities that have qualified legislative power. And so far as cities are concerned, where the equal protection required to be afforded by a State is imposed upon a city by State laws, perhaps the United States courts could enforce its performance. But counties . . . do not have any control of the police . . . ." *Id.*, at 795.

That those who voted for § 1 of the Civil Rights Act, but against the Sherman amendment, would not have thought § 1 unconstitutional if it applied to municipalities is also confirmed by considering what exactly those voting for § 1 had approved. Section 1 without question could be used to obtain a damage judgment against state or municipal *officials* who violated federal constitutional rights while acting under color of law.[41] However, for *Prigg-Dennison-Day* purposes, as Blair and others recognized,[42] there was no distinction of constitutional magnitude between officers and agents—including corporate agents—of the State: both were state instrumentalities and the State could be impeded no matter over which sort of instrumentality the Federal Government sought to assert its power. *Dennison* and *Day*, after all, were not suits against municipalities but against *officers* and Blair was quite conscious that he was extending *Prigg* by applying it to municipal

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[41] See, *e. g.*, Globe, at 334 (Rep. Hoar); *id.*, at 365 (Rep. Arthur); *id.*, at 367–368 (Rep. Sheldon); *id.*, at 385 (Rep. Lewis); Globe App., at 217 (Sen. Thurman). In addition, officers were included among those who could be sued under the second conference substitute for the Sherman Amendment. See Globe, at 805 (exchange between Rep. Willard and Rep. Shellabarger). There were no constitutional objections to the second report.

[42] See Globe, at 795 (Rep. Blair); *id.*, at 788 (Rep. Kerr); *id.*, at 795 (Rep. Burchard); *id.*, at 799 (Rep. Farnsworth).

corporations.[43] Nonetheless, Senator Thurman, who gave the most exhaustive critique of § 1—*inter alia* complaining that it would be applied to state officers, see Globe, at 217—and who opposed both § 1 and the Sherman amendment, the latter on *Prigg* grounds, agreed unequivocally that § 1 was constitutional.[44] Those who voted for § 1 must similarly have believed in its constitutionality despite *Prigg*, *Dennison*, and *Day*.

← OMISSION ↩ WJB has dropped that ¶ on PP. 21-22 of the 1st Draft that troubled us. good

C. Debate on § 1 of the Civil Rights Bill

From the foregoing discussion, it is readily apparent that nothing said in debate on the Sherman amendment would have prevented holding a municipality liable under § 1 of the Civil Rights Act for its own violations of the Fourteenth Amendment. The question remains, however, whether the general language describing those to be liable under § 1—"any person"—covers more than natural persons. An examination of the debate on § 1 and application of appropriate rules of construction shows unequivocally that § 1 was intended to cover legal as well as natural persons.

Representative Shellabarger was the first to explain the function of § 1:

> "[Section 1] not only provides a civil remedy for persons whose former condition may have been that of slaves, but also to all people where, under color of State law, they or any of them may be deprived of rights to which they are entitled under the Constitution by reason and virtue of their national citizenship." Globe App., at 68.

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[43] "[W]e cannot command a State officer to do any duty whatever, as such; and I ask . . . the difference between that and commanding a municipality . . . ." Globe, at 795.

[44] See Globe App., at 216–217, quoted, *infra*, at n. 45. In 1879, moreover, when the question of the limits of the *Prigg* principle was squarely presented in *Ex parte Virginia*, 100 U. S. 339 (1880), this Court held that *Dennison* and *Day* and the principle of federalism for which they stand did not prohibit federal enforcement of § 5 of the Fourteenth Amendment through suits directed to state officers. See 100 U. S., at 345–348.

good

By extending a remedy to all people, including whites, § 1 went beyond the mischief to which the remaining sections of the 1871 Act were addressed. Representative Shellabarger also stated without reservation that the constitutionality of § 2 of the Civil Rights Act of 1866 controlled the constitutionality of § 1 of the 1871 Act, and that the former had been approved by "the supreme courts of at least three States of this Union" and by Mr. Justice Swayne, sitting on circuit, who had concluded "We have no doubt of the constitutionality of every provision of this act." *Ibid.* He then went on to describe how the courts would and should interpret § 1:

> "This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such statutes are liberally and beneficently construed. It would be most strange and, in civilized law, monstrous were this not the rule of interpretation. As has been again and again decided by your own Supreme Court of the United States, and everywhere else where there is wise judicial interpretation, the largest latitude consistent with the words employed is uniformly given in construing such statutes and constitutional provisions as are meant to protect and defend and give remedies for their wrongs to all the people. . . . Chief Justice Jay and also Story say:
>
> "'Where a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and it is generally adopted in the interpretation of laws.'—1 *Story on Constitution*, sec. 429." Globe App., at 68.

The sentiments expressed in Representative Shellabarger's opening speech were echoed by Senator Edmunds, the manager of H. R. 320 in the Senate:

> "The first section is one that I believe nobody objects to, as defining the rights secured by the Constitution of the

> United States when they are assailed by any State law or under color of any State law, and it is merely carrying out the principles of the civil rights bill [of 1866], which have since become a part of the Constitution." Globe, at 568.
>
> "[Section 1 is] so very simple and really reenacting the Constitution." *Id.*, at 569.

And he agreed that the bill "secure[ed] the rights of white men as much as of colored men." *Id.*, at 696.

In both Houses, statements of the supporters of § 1 corroborated that Congress, in enacting § 1, intended to give a *complete* remedy for violations of federally protected civil rights.[45] Moreover, since municipalities through their official

you might ask WJB to use "comprehensive rather than "complete" remedy

Yes

WJB has eliminated the "full power" language

Otherwise I would not join this.

LTP

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[45] Representative Bingham, the author of § 1 of the Fourteenth Amendment, for example, declared the bill's purpose to be "the enforcement . . . of the Constitution on behalf of every individual citizen of the Republic . . . to the extent of the rights guaranteed to him by the Constitution." Globe App., at 81. He continued:

"The States never had the right, though they had the power, to inflict wrongs upon free citizens by a denial of the full protection of the laws. . . . [And] the States did deny to citizens the equal protection of the laws, they did deny the rights of citizens under the Constitution, and except to the extent of the express limitations upon the States, as I have shown, the citizen had no remedy. . . . They took property without compensation, and he had no remedy. They restricted the freedom of the press, and he had no remedy. They restricted the freedom of speech, and he had no remedy. They restricted the rights of conscience, and he had no remedy. . . . Who dare say, now that the Constitution has been amended, that the nation cannot by law provide against all such abuses and denials of right as these in the States and by States, or combinations of persons?" *Id.*, at 85.

Representative Perry, commenting on Congress' action in passing the civil rights bill also stated:

"Now, by our action on this bill we have asserted as fully as we can assert the mischief intended to be remedied. We have asserted as clearly as we can assert our belief that it is the duty of Congress to redress that

acts, could equally with natural persons create the harms intended to be remedied by § 1, and, further, since Congress intended § 1 to be broadly construed, there is no reason to suppose that municipal corporations would have been excluded from the sweep of § 1. Cf., *e. g.*, *Ex parte Virginia*, 100 U. S. 339, 346–347 (1880); *Home Tel. & Tel. Co.* v. *Los Angeles*,

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mischief. We have also asserted as fully as we can assert the constitutional right of Congress to legislate." Globe, at 800.

See also *id.*, at 376 (Rep. Lowe); *id.*, at 428–429 (Rep. Beatty); *id.*, at 448 (Rep. Butler); *id.*, at 475–477 (Rep. Dawes); *id.*, at 578–579 (Sen. Trumbull); *id.*, at 609 (Sen. Pool); Globe App., at 182 (Rep. Mercur).

Other supporters were quite clear that § 1 of the act extended a remedy not only where a State had passed an unconstitutional statute, but also where officers of the State were deliberately indifferent to the rights of black citizens:

"But the chief complaint is [that] by a systematic maladministration of [state law], or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection under them. Whenever such a state of facts is clearly made out, I believe [§ 5 of the Fourteenth Amendment] empowers Congress to step in and provide for doing justice to those persons who are thus denied equal protection." Globe App., at 153 (Mr. Garfield). See also *Monroe* v. *Pape*, *supra*, n. 7, at 171–187.

Importantly for our inquiry, even the opponents of § 1 agreed that it was constitutional and, further, that it represented an attempt broadly to exercise the power conferred by § 5 of the Fourteenth Amendment. Thus, Senator Thurman, who gave the most exhaustive critique of § 1, said:

"This section relates wholly to civil suits. . . . Its whole effect is to give to the Federal Judiciary that which now does not belong to it—*a jurisdiction that may be constitutionally conferred upon it, I grant*, but that has never yet been conferred upon it. 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. . . .

. . . . . .

"*[T]here is no limitation whatsoever upon the terms that are employed [in the bill], and they are as comprehensive as can be used.*" Globe App., at 216–217 (emphasis added).

227 U. S. 278, 286–287, 294–296 (1913). One need not rely on this inference alone, however, for the debates show that Members of Congress understood "persons" to include municipal corporations.

Representative Bingham, for example, in discussing § 1 of the bill, explained that he had drafted § 1 of the Fourteenth Amendment with the case of *Barron* v. *Baltimore*, 7 Pet. 243 (1834), especially in mind. "In [that] case the *city* had taken private property for public use, without compensation . . . , and there was no redress for the wrong . . . ." Globe App., at 84 (emphasis added). Bingham's further remarks clearly indicate his view that such takings as had occurred in *Barron* would be redressable under § 1 of the bill. See *id.*, at 85. More generally, and as Bingham's remarks confirm, § 1 of the bill would logically be the vehicle by which Congress provided redress for takings, since that section provided the only civil remedy coextensive with the Fourteenth Amendment and that Amendment unequivocally prohibited uncompensated takings.[46] Given this purpose, it beggars reason to suppose that Congress would have exempted municipalities from suit, insisting instead that compensation for a taking come from an officer in his individual capacity rather than from the government unit that had the benefit of the property taken.[47]

In addition, by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis. This had not always been so. When this Court first considered the question of the status of corporations, Chief Justice Marshall, writing for the Court, denied that corporations "as such" were persons as that term was used in Art. III and the Judiciary Act of

[46] See Story, Commentaries on the Constitution of the United States § 1956 (Cooley ed. 1873).

[47] Indeed the federal courts found no obstacle to awards of damages against municipalities for common-law takings. See *Sumner* v. *Philadelphia*, 23 F. Cas. 392 (CCED Pa. 1873) (No. 13,611) (awarding damages of $2,273.36 and costs of $346.35 against the city of Philadelphia).

In my view, this is a very important point.

This sounds like "full power" to me.

I agree with Sam

No

implementing

Don't see how W & B could say this and not join my opinion in Bellotti

1789. See *Bank of the United States* v. *Deveaux*, 5 Cranch 61, 86 (1809).[48] By 1844, however, the *Deveaux* doctrine was unhesitatingly abandoned:

> "[A] corporation created by and doing business in a particular state, is to be deemed *to all intents and purposes as a person*, although an artificial person, . . . capable of being treated as a citizen of that state, as much as a natural person." *Louisville R. Co.* v. *Letson*, 2 How. 497, 558 (1844) (emphasis added), discussed in Globe, at 752.

And only two years before the debates on the Civil Rights Act, in *Cowles* v. *Mercer County*, 7 Wall. 118, 121 (1869), the *Letson* principle was automatically and without discussion extended to municipal corporations. Under this doctrine, municipal corporations were routinely sued in the federal courts[49] and this fact was well known to Members of Congress.[50]

That the "usual" meaning of the word person would extend to municipal corporations is also evidenced by an Act of Congress which had been passed only months before the Civil Rights Act was passed. This Act provided that

> "in all acts hereafter passed . . . the word 'person' may extend and be applied to bodies politic and corporate . . . unless the context shows that such words were intended to be used in a more limited sense[]." Act of Feb. 25, 1871, ch. 71, § 2, 16 Stat. 431.

Municipal corporations in 1871 were included within the

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[48] Nonetheless, suits could be brought in federal court if the natural persons who were members of the corporation were of diverse citizenship from the other parties to the litigation. See 5 Cranch, at 91.

[49] See n. 28, *supra*.

[50] See, *e. g.*, Globe, at 777 (Sen. Sherman); *id.*, at 752 (Rep. Shellabarger) ("counties, cities, and corporations of all sorts, after years of judicial conflict, have become thoroughly established to be an individual or person or entity of the personal existence, of which, as a citizen, individual, or inhabitant, the United States Constitution does take note and endow with faculty to sue and be sued in the courts of the United States.").

phrase "bodies politic and corporate" [51] and, accordingly, the "plain meaning" of § 1 is that local government bodies were to be included within the ambit of the persons who could be sued under § 1 of the Civil Rights Act. Indeed, a Circuit Judge, writing in 1873 in what is apparently the first reported case under § 1, read the Dictionary Act in precisely this way in a case involving a corporate plaintiff and a municipal defendant.[52] See *Northwestern Fertilizing Co.* v. *Hyde Park*, 18 F. Cas. 393, 394 (CCND Ill. 1873) (No. 10,336).[53]

[51] See *Northwestern Fertilizing Co.* v. *Hyde Park*, 18 F. Cas. 393, 394 (CCND Ill. 1873) (No. 10,336); 2 Kent's Commentaries *278–*279 (12th O. W. Holmes ed. 1873). See also *United States* v. *Maurice*, 2 Brock. 96, 109 (CC Va. 1823) (Marshall, C. J.) ("The United States is a government, and, consequently, a body politic and corporate"); Brief for Petitioner in *Monroe* v. *Pape*, O. T. 1960, No. 39, App's. D and E (collecting state statutes which, in 1871, defined municipal corporations as bodies politic and corporate).

[52] The court also noted that there was no discernible reason why persons injured by municipal corporations should not be able to recover. See 18 F. Cas., at 394.

[53] In considering the effect of the Act of Feb. 25, 1871 in *Monroe*, however, Justice Douglas, apparently focusing on the word "may," stated: "this definition [of person] is merely an allowable, not a mandatory, one." 365 U. S., at 191. A review of the legislative history of the Dictionary Act shows this conclusion to be incorrect.

There is no express reference in the legislative history to the definition of person, but Senator Trumbull, the Act's sponsor, discussed the phrase "words importing the masculine gender *may* be applied to females," (emphasis added), which immediately precedes the definition of person, and stated:

"The only object [of the Act] is to get rid of a great deal of verbosity in our statutes by providing that when the words 'he' is used it *shall* include females as well as males[]." Congressional Globe, 41st Cong., 3d Sess., 775 (Jan. 27, 1871) (emphasis added).

Thus, in Trumbull's view the word "may" meant "shall." Such a mandatory use of the extended meanings of the words defined by the Act is also required for it to perform its intended function—to be a guide to "rules of construction" of Acts of Congress. See *id.*, at 775 (Remarks of Sen. Trumbull). Were the defined words "allowable, [but] not manda-

II

Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies.[54] Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person,"

important

tory" constructions, as *Monroe* suggests, there would be no "rules" at all. Instead, Congress must have intended the definitions of the Act to apply across-the-board except where the Act by its terms called for a deviation from this practice—"[where] the context shows that [defined] words were to be used in a more limited sense." Certainly this is how the *Northwestern Fertilizing* court viewed the matter. Since there is nothing in the "context" of § 1 of the Civil Rights Act calling for a restricted interpretation of the word "person," the language of that section should prima facie be construed to include "bodies politic" among the entities that could be sued.

[54] There is certainly no constitutional impediment to municipal liability. "The Tenth Amendment's reservation of nondelegated powers to the States is not implicated by a federal-court judgment enforcing the express prohibitions of unlawful state conduct enacted by the Fourteenth Amendment." *Milliken* v. *Bradley*, 433 U. S. 267, 291 (1977); see *Ex parte Virginia*, 100 U. S. 339, 347–348 (1880). For this reason, *National League of Cities* v. *Usery*, 426 U. S. 833 (1976), is irrelevant to our consideration of this case. Nor is there any basis for concluding that the Eleventh Amendment is a bar to municipal liability. See, *e. g.*, *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 456 (1976); *Lincoln County* v. *Luning*, 133 U. S. 529, 530 (1890). Our holding today is, of course, limited to local government units which are not considered part of the State for Eleventh Amendment purposes. Where this is not the case, *Edelman* v. *Jordan*, 415 U. S. 651 (1974), and *Milliken* v. *Bradley*, *supra*, govern the framework for analysis.

WJB has cured any intimation that there is no Eleventh Amendment limitation to §1983 suits against the States, qua States.

by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels. As Mr. Justice Harlan recognized: "Congress included custom and usage [in § 1983] because of persistent and widespread discriminatory practices of State officials. . . . Although not authorized by written law, such practices of state officials could well be so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 167–168 (1970).[55]

On the other hand, the language of § 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless official municipal action of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.

We begin with the language of § 1983 as passed:

"[*A*]*ny person who*, under color of any law, statute,

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[55] See also Justice Frankfurter's statement in *Nashville, C. & St. L. R. Co.* v. *Browning*, 310 U. S. 362, 369 (1940):

"It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice . . . can establish what is state law. The Equal Protection Clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text."

Moreover, ~~will not in general create a violation of the Constitution~~ as we affirmed two Terms ago, where the Constitution imposes a duty on state officials to act, and they are deliberately indifferent to that duty—a form of inaction which by its nature will seldom be officially adopted or written local policy—§ 1983 provides an avenue of redress. See *Estelle* v. *Gamble*, 429 U. S. 97, 104–105 (1976).

> ordinance, regulation, custom, or usage of any State, *shall subject, or cause to be subjected*, any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . . ." Globe App., at 335 (emphasis added).

The italicized language plainly imposes liability on a government that, under color of some official policy, "causes" an employee to violate another's constitutional rights. At the same time, that language cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor. Indeed, the fact that Congress did specifically provide that *A*'s tort became *B*'s liability if *B* "caused" *A* to subject another to a tort suggests that Congress did not intend § 1983 liability to attach where such causation was absent.[56] See *Rizzo* v. *Goode*, 423 U. S. 362, 370–371 (1976).

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[56] Support for such a conclusion can be found in the legislative history. As we have indicated, there is virtually no discussion of § 1 of the Civil Rights Act. Again, however, Congress' treatment of the Sherman amendment gives a clue to whether it would have desired to impose *respondeat superior* liability.

The primary constitutional justification for the Sherman amendment was that it was a necessary and proper remedy for the failure of localities to protect citizens as the Privileges or Immunities Clause of the Fourteenth Amendment required. See pp. 10–13, *supra*. And according to Sherman, Shellabarger, and Edmunds, the amendment came into play only when a locality was at fault or had neglected its duty to provide protection. See Globe, at 761 (Sen. Sherman); *id.*, at 756 (Sen. Edmunds); *id.*, at 751–752 (Rep. Shellabarger). But other proponents of the amendment apparently viewed it as a form of vicarious liability for the unlawful acts of the citizens of the locality. See *id.*, at 792 (Rep. Butler). And whether intended or not, the amendment as drafted did impose a species of vicarious liability on municipalities since it could be construed to impose

These changes (see original note 60) are stylistic, but WJB has eliminated "the sentence that the legal basis for [Sherman Amendment] liability was not some sort of respondeat superior theory...." See p. 33 of 1st Draft.

Equally important, creation of a federal law of *respondeat superior* where state law did not impose such an obligation would raise all the constitutional problems associated with the obligation to keep the peace, an obligation Congress chose not to impose because it thought imposition of such an obligation unconstitutional. To this day, there is disagreement about the basis for imposing vicarious liability on an employer for the torts of an employee when the employer itself is not at fault.[57] See W. Prosser, Law of Torts, § 69, at 569 (4th ed. 1971). Nonetheless, two justifications tend to stand out. First in the commonsense notion that no matter how blame-

liability even if a municipality did not know of an impending or ensuing riot or did not have the wherewithall to do anything about it. Indeed, the statute held a municipality liable even if it had done everything in its power to curb the riot. See p. 8, *supra;* Globe, at 761 (Sen. Stevens); *id.*, at 771 (Sen. Thurman); *id.*, at 788 (Rep. Kerr); *id.*, at 791 (Rep. Willard). While the first conference substitute was rejected principally on constitutional grounds, see *id.*, at 804 (Rep. Poland), it is plain from the text of the second conference substitute—which limited liability to those who, having the power to intervene against Ku Klux violence, "neglect[ed] or refuse[d] so to do," see Appendix, *infra*, at 41, and which was enacted as § 6 of the 1871 Act and is now codified as 42 U. S. C. § 1986—that Congress also rejected those elements of vicarious liability contained in the first conference substitute even while accepting the basic principle that the inhabitants of a community were bound to provide protection against the Ku Klux Klan. Strictly speaking, of course, the fact that Congress refused to impose vicarious liability for the wrongs of a few private citizens does not conclusively establish that it would similarly have refused to impose vicarious liability for the torts of a municipality's employees. Nonetheless, when Congress' rejection of the only form of vicarious liability presented to it is combined with the absence of any language in § 1983 which can easily be construed to create *respondeat superior* liability, the inference that Congress did not intend to impose such liability is quite strong.

[57] We note, however, that where there is fault in hiring, training, or direction, that fault is the basis for liability under the common law, see 2 F. Harper & F. James, The Law of Torts, § 26.1, at 1362–1363 (1956), *not* the fault of the employee-tortfeasor vicariously applied to the employer.

less an employer appears to be in an individual case, accidents might nonetheless be reduced if employers had to bear the cost of accidents. See, *e. g., ibid.;* 2 F. Harper & James, The Law of Torts, § 26.3, at 1368–1369 (1956). Second is the argument that the cost of accidents should be spread to the community as a whole on an insurance theory. See, *e. g., id.,* § 26.5; W. Prosser, *supra,* at 459.[58]

The first justification is of the same sort that was offered for the Sherman amendment: "The obligation to make compensation for injury resulting from riot is, by arbitrary enactment of statutes, affirmatory law, and the reason of passing the statute is to secure a more perfect police regulation." Globe, at 777 (Sen. Frelinghuysen). This justification was obviously insufficient to sustain the amendment against perceived constitutional difficulties and there is no reason to suppose that a more general liability imposed for a similar reason would have been thought less constitutionally objectionable. The second justification was similarly put forward as a justification for the Sherman amendment: "we do not look upon [the Sherman amendment] as a punishment .... It is a mutual insurance." *Id.,* at 792 (Rep. Butler). Again, this justification was insufficient to sustain the amendment.

In sum, a local government may be sued for monetary, declaratory, or injunctive relief under § 1983 when it is at fault, but not for the fault purely of its employees or agents.[59]

[58] A third justification, often cited but which on examination is apparently insufficient to justify the doctrine of *respondeat superior,* see, *e. g.,* 2 F. Harper & F. James, *supra,* n. 61, § 26.3, is that liability follows the right to control the actions of a tortfeasor. By our decision in *Rizzo* v. *Goode,* 423 U. S. 362 (1976), we would appear to have decided that the mere right to control without any control or direction having been exercised and without any failure to supervise is not enough to support § 1983 liability. See *id.,* at 370–371.

[59] Given the variety of ways that official policy may be demonstrated, we do not today attempt to establish any firm guidelines for determining when individual action executes or implements official policy. However, given

It is only when the government's policy, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, itself inflicts the injury or itself authorizes or directs the specific act charged against its officer [60] that the government is responsible under § 1983. In all other cases, a § 1983 action must be brought against the individual officers whose acts form the basis of the § 1983 complaint.

III

Although we have stated that *stare decisis* has more force in statutory analysis than in constitutional adjudication because, in the former situation, Congress can correct our mistakes

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our conclusion that Congress did not intend to enact a regime of vicarious liability, whatever official action is involved must be sufficient to support a conclusion that a local government itself is to blame or is at fault.

For example, in *Rizzo* v. *Goode*, 423 U. S. 362 (1976), we recognized that fault is a crucial factor in determining whether relief may run against a party for its alleged participation in a constitutional tort. Distinguishing the relief approved by the lower courts in *Rizzo* from that sanctioned by this Court in school desegregation cases, the Court explained:

"Respondents . . . ignore a critical factual distinction between their case and the desegregation cases decided by this Court. In the latter, segregation imposed by law had been implemented by state authorities for varying periods of time, whereas in the instant case the District Court found that the responsible authorities had played no affirmative part in depriving any members of the two respondent classes of any constitutional rights. Those against whom injunctive relief was directed in cases such as *Swann* [v. *Charlotte-Mecklenberg Board of Education*, 402 U. S. 1 (1971),] and *Brown* [v. *Board of Education*, 347 U. S. 483 (1954),] were not administrators and school board members who had in their employ a small number of individuals, which latter on their own deprived black students of their constitutional rights to a unitary school system. They were administrators and school board members who were found by their *own* conduct in the administration of the school system to have denied those rights. Here, the District Court found that none of the petitioners had deprived the respondent classes of any rights secured under the Constitution. 423 U. S., at 377 (emphasis in original).

[60] See, however, n. 55, *supra*.

good

This is a new section on stare decisis.

WJB has dropped the last seven lines of p. 30 which had suggested a way of getting around Rizzo v. Goode.

Welcome

through legislation, see, *e. g.*, *Edelman* v. *Jordan*, 415 U. S. 651, 671, and n. 14 (1974), we have never applied *stare decisis* mechanically to prohibit overruling our earlier decisions determining the meaning of statutes. See, *e. g.*, *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U. S. 36, 47–49 (1977); *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 n. 1 (1932) (Brandeis, J., dissenting) (collecting cases). Nor is this a case where we should "place on the shoulders of Congress the burden of the Court's own error." *Girouard* v. *United States*, 328 U. S. 61, 70 (1946).

First, *Monroe* v. *Pape*, *supra*, insofar as it completely immunizes municipalities from suit under § 1983, was a departure from prior practice. See, *e. g.*, *Northwestern Fertilizing Co.* v. *Hyde Park*, *supra*; *City of Manchester* v. *Leiby*, 117 F. 2d 661 (CA1 1941); *Hannan* v. *City of Haverhill*, 120 F. 2d 87 (CA1 1941); *Douglas* v. *City of Jeannette*, 319 U. S. 157 (1943); *Holmes* v. *City of Atlanta*, 350 U. S. 879 (1955), in each of which municipalities were defendants in § 1983 suits.[61] Moreover, the constitutional defect that led to the rejection of the Sherman amendment would not have distinguished between municipalities and school boards, each of which is an instrumentality of state administration. See pp. 14–22, *supra*. For this reason, our cases—decided both before and after *Monroe*, see n. 5, *supra*—holding school boards liable in § 1983 actions are inconsistent with *Monroe*, especially as *Monroe*'s immunizing principle was extended to suits for injunctive relief in *City of Kenosha* v. *Bruno*, 412 U. S. 507 (1973).[62] And

equitable relief cases

[61] Each case cited by *Monroe*, see 365 U. S., at 191 n. 50, as consistent with the position that local governments were not § 1983 "persons" reached its conclusion by assuming that state-law immunities overrode the § 1983 cause of action. This has never been the law and, as we set out in Part IV, *infra*, municipalities enjoy no absolute immunity.

[62] Although many suits against school boards also include private individuals as parties, the "principal defendant is usually the local board of education or school board." *Milliken* v. *Bradley*, *supra*, n. 4, at — (POWELL, J., concurring).

although in many of these cases jurisdiction was not questioned, we ought not "disregard the implications of an exercise of judicial authority assumed to be proper for [100] years." *Brown Shoe Co.* v. *United States*, 370 U. S. 294, 307 (1962); see *Bank of the United States* v. *Deveaux*, *supra*, at 88 (Marshall, C. J.) ("Those decisions are not cited as authority . . . but they have much weight, as they show that this point neither occurred to the bar or the bench"). Thus, while we have reaffirmed *Monroe* without further examination on three occasions,[63] it can scarcely be said that *Monroe* is so consistent with the warp and woof of civil rights law as to be beyond question.

Second, the principle of blanket immunity established in *Monroe* cannot be cabined short of school boards. Yet such an extension would itself be inconsistent with recent expressions of congressional intent. In the wake of our decisions, Congress not only has shown no hostility to federal court decisions against school boards, but it has indeed rejected efforts to strip the federal courts of jurisdiction over school boards.[64] Moreover, recognizing that school boards are often

good point

[63] *Moor* v. *County of Alameda*, 411 U. S. 693 (1973); *City of Kenosha* v. *Bruno*, 412 U. S. 507 (1973); *Aldinger* v. *Howard*, 427 U. S. 1 (1976).

[64] During the heyday of the furor over busing, both the House and the Senate refused to adopt bills that would have removed from the federal courts jurisdiction

"to make any decision, enter any judgment, or issue any order requiring any *school board* to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system, or requiring any *school board* to transport any students from public school to another public school or from one place to another place or from one school district to another school district or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with a freedom of choice system, or requiring any *school board* to close any school and transfer the students from the closed school to any other school for the purpose of altering the racial composition of the student body at any

defendants in school desegregation suits, which have almost without exception been § 1983 suits, Congress has twice passed legislation authorizing grants to school boards to assist them in complying with federal court decrees.[65] Finally, in

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public school, or precluding any *school board* from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract." S. 179, 93d Cong., 1st Sess., § 1207 (1971) (emphasis added).

Other bills designed either completely to remove the federal courts from the school desegregation controversy, S. 287, 93d Cong., 1st Sess. (1973), or to limit the ability of federal courts to subject school boards to remedial orders in desegregation cases, S. 619, 93d Cong., 1st Sess. (1973); S. 179, 93d Cong., 1st Sess., § 2 (a) (1973); H. R. 13534, 92d Cong., 2d Sess., § 2922 (1972), have similarly failed.

[65] In 1972, spurred by a finding "that the process of eliminating or preventing minority group isolation and improving the quality of education for all children often involves the expenditure of additional funds to which local educational agencies do not have access," 20 U. S. C. § 1601 (a) (Supp. V, 1975), Congress passed the 1972 Emergency School Act. Section 643 (a)(1)(A)(i) of that Act, 20 U. S. C. § 1605 (a)(1)(A)(i) (Supp. V, 1975), authorizes the Assistant Secretary

"to make a grant to, or a contract with, *a local educational agency* [*which*] *is implementing a plan which has been undertaken pursuant to a final order issued by a court of the United States* . . . which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of minority group isolation in such schools." (Emphasis added.)

A "local educational agency" is defined by 20 U. S. C. § 1619 (8) (Supp. V, 1975), as "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, public elementary or secondary schools in a city, county, township, school, or other political subdivision of a State, or a federally recognized Indian reservation, or such combination of school districts, or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies . . . ." Congress thus clearly recognized that school boards were often parties to federal school desegregation suits. In § 718 of the Act, 20 U. S. C. § 1617 (Supp. V, 1975), Congress gave its explicit approval to the institution of

the Civil Rights Attorneys' Fees Award Act of 1976, — Stat. —, which allows prevailing parties in § 1983 suits to obtain attorneys fees from the losing party, the Senate stated:

> "[D]efendants in these cases are often State or local *bodies* or State or local officials. In such cases it is intended that the attorneys' fees, like other items of costs, will be collected either directly from the official, *in his*

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federal desegregation suits against school boards—presumably under § 1983. That section provides:

"Upon the entry of a final order *by a court of the United States against a local education agency* . . . for discrimination on the basis of race, color, or national origin in violation of . . . the fourteenth amendment to the Constitution of the United States . . . the court may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." (Emphasis added.)

Two years later, Congress found that "the implementation of desegregation plans that require extensive student transportation has, in many cases, required *local educational agencies* to expand [*sic*] large amounts of funds, thereby depleting their financial resources . . . . 20 U. S. C. § 1702 (a) (3). (Emphasis added.) Congress did not respond by declaring that school boards were not subject to suit under § 1983 or any other federal statute, "but simply [legislated] revised evidentiary standards and remedial priorities to be employed by the courts in deciding such cases." Brief for National Education Assn., at 15–16. Indeed, Congress expressly reiterated that a cause of action, cognizable in the federal courts, exists for discrimination in the public school context. 20 U. S. C. §§ 1703, 1706, 1708, 1710, 1718. The Act assumes that school boards will usually be the defendants in such suits. For example, § 211 of the Act, 20 U. S. C. § 1710 provides:

"The Attorney General shall not institute a civil action under section 1706 of this title [which allows for suit by both private parties and the Attorney General to redress discrimination in public education] before he—

"(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part [the prohibitions against discrimination in public education]." Section 219 of the Act, 20 U. S. C. § 1718, provides for the termination of court ordered busing "if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable, and will continue to be in compliance with the requirements thereof."

> *official capacity*, from funds of his agency or under his control, or *from the State or local government* (*whether or not the agency or government is named as a party*). S. Rep. No. 94–1101, at — (emphasis added).

Far from showing that Congress has relied on *Monroe*, therefore, events since 1961 show that Congress has refused to extend the benefits of *Monroe* to school boards and has attempted to limit *Monroe* to allow awards of attorneys' fees against local governments even though *Monroe*, *City of Kenosha* v. *Bruno*, *supra*, and *Aldinger* v. *Howard*, 427 U. S. 1 (1976), have made the joinder of such governments impossible.[66]

Third, municipalities can assert no reliance claim which can support an absolute immunity. As Mr. Justice Frankfurter said in *Monroe*, "[t]his is not an area of commercial law in which, presumably, individuals may have arranged their affairs in reliance on the expected stability of decision." 365 U. S., at 221–222 (dissent). Indeed, municipalities simply cannot "arrange their affairs" on an assumption that they can violate constitutional rights indefinitely since injunctive suits against local officials under § 1983 would prohibit any such arrangement. And it scarcely need be mentioned that nothing in *Monroe* encourages municipalities to violate constitutional rights or even suggests that such violations are anything other than completely wrong.

Finally, even under the most stringent test for the propriety of overruling a statutory decision proposed by Mr. Justice Harlan in *Monroe* [67]—"that it must appear beyond doubt from

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[66] Whether Congress' attempt is in fact effective is the subject of *Hutto* v. *Finney*, 1977 Term, No. 76–1660, and therefore we express no view on it here.

[67] We note, however, that Mr. Justice Harlan's test has not been expressly adopted by this Court. Moreover, that test is based on two factors: *stare decisis* and "indications of congressional acceptance of this Court's earlier interpretation [of the statute in question]." 365 U. S., at

good point. yes

In light of Hutto v. Finney, I would not characterize what Congress sought to do in the Attorney's Fee Act. I would just say the Act "allowed" such awards.

WJB reads too much into that Act

the legislative history of the 1871 statute that [*Monroe*] misapprehended the meaning of the [section]," *Monroe* v. *Pape*, *supra*, at 192 (concurring opinion)—the overruling of *Monroe* insofar as it holds that local governments are not "persons" who may be defendants in § 1983 suits is clearly proper. It is simply beyond doubt that, under the 1871 Congress' view of the law, were § 1983 liability unconstitutional as to local governments, it would have been equally unconstitutional as to state officers. Yet everyone—proponents and opponents alike—knew § 1983 would be applied to state officers and nonetheless stated that § 1983 was constitutional. See pp. 21–22, *supra*. And, moreover, there can be no doubt that § 1 of the Civil Rights Act was intended to provide a complete remedy, to be broadly construed, against all forms of official violation of federally protected rights. Therefore, absent a clear statement in the legislative history supporting the conclusion that § 1 was not to apply to the official acts of a municipal corporation—which simply is not present—there is no justification for excluding municipalities from the "persons" covered by § 1.

For the reasons stated above, therefore, we hold that *stare decisis* does not bar our overruling of *Monroe* insofar as it is inconsistent with Parts I and II of this opinion.[68]

IV

Since the question whether local government bodies should

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192. As we have explained, the second consideration is not present in this case.

[68] No useful purpose would be served by an attempt at this late date to determine whether *Monroe* was correct on its facts. Similarly, since this case clearly involves official policy and does not involve *respondeat superior*, we do not assay a view on how our cases which have relied on that aspect of *Monroe* that is overruled today—*Moor* v. *County of Alameda*, *supra*, n. 9, *City of Kenosha* v. *Bruno*, *supra*, n. 9, and *Aldinger* v. *Howard*, *supra*, n. 63—should have been decided on a correct view of § 1983. Nothing we say today affects the conclusion reached in *Moor*, see 411 U. S., at 703–704, that 42 U. S. C. § 1988 cannot be used to create a federal cause of action where § 1983 does not otherwise provide one.

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What PETERS told me that because of pressure from JPS, WJB has to leave open the question of the continued vitality of Moor, Kenosha and Aldinger, as well as Monroe's correctness on the facts.

be afforded some form of official immunity was not presented as a question to be decided on this petition and was not briefed by the parties nor addressed by the courts below, we express no views on the scope of any municipal immunity beyond holding that municipal bodies sued under § 1983 cannot be entitled to an absolute immunity, lest our decision that such bodies are subject to suit under § 1983 "be drained of meaning," *Scheuer* v. *Rhodes*, 416 U. S. 232, 248 (1974). Cf. *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U. S. 389, 397–398 (1971).

WJB no longer casts doubt on the strength of the common-law immunity.

Good. I think I can live with his neutral statement

V

For the reasons stated above, the judgment of the Court of Appeals is

Reversed.

APPENDIX

As proposed, the Sherman amendment was as follows:

"That if any house, tenement, cabin, shop, building, barn, or granary shall be unlawfully or feloniously demolished, pulled down, burned, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together; or if any person shall unlawfully and with force and violence be whipped, scourged, wounded, or killed by any persons riotously and tumultuously assembled together; and if such offense was committed to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of his race, color, or previous condition of servitude, in every such case the inhabitants of the county, city, or parish in which any of the said offenses shall be committed shall be liable to pay full compensation to the person or persons damnified by such offense if living, or to his widow or legal representative if dead; and such compensation may be recovered by such person or his repre-

sentative by a suit in any court of the United States of competent jurisdiction in the district in which the offense was committed, to be in the name of the person injured, or his legal representative, and against said county, city, or parish. And execution may be issued on a judgment rendered in such suit and may be levied upon any property, real or personal, of any person in said county, city, or parish, and the said county, city, or parish may recover the full amount of such judgment, costs, and interest, from any person or persons engaged as principle or accessory in such riot in an action in any court of competent jurisdiction." Globe, at 663.

The complete text of the first conference substitute for the Sherman amendment is:

"That if any house, tenement, cabin, shop, building, barn, or granary shall be unlawfully or feloniously demolished, pulled down, burned, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together; or if any person shall unlawfully and with force and violence be whipped, scourged, wounded, or killed by any persons riotously and tumultuously assembled together, with intent to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of his race, color, or previous conditions of servitude, in every such case the county, city, or parish in which any of the said offenses shall be committed shall be liable to pay full compensation to the person or persons damnified by such offense, if living, or to his widow or legal representative if dead; and such compensation may be recovered in an action on the case by such person or his representative in any court of the United States of competent jurisdiction in the district in which the offense was committed, such action to be in the name of the person injured, or his legal representative,

> and against said county, city, or parish; and in which action any of the parties committing such acts may be joined as defendants. And any payment of any judgment, or part thereof unsatisfied, recovered by the plaintiff in such action, may, if not satisfied by the individual defendant therein within two months next after the recovery of such judgment upon execution duly issued against such individual defendant in such judgment, and returned unsatisfied, in whole or in part, be enforced against such county, city, or parish, by execution, attachment, mandamus, garnishment, or any other proceeding in aid of execution or applicable to the enforcement of judgments against municipal corporations; and such judgment shall be a lien as well upon all moneys in the treasury of such county, city, or parish, as upon the other property thereof. And the court in any such action may on motion cause additional parties to be made therein prior to issue joined, to the end that justice may be done. And the said county, city, or parish may recover the full amount of such judgment, by it paid, with costs and interest, from any person or persons engaged as principal or accessory in such riot, in an action in any court of competent jurisdiction. And such county, city, or parish, so paying, shall also be subrogated to all the plaintiff's rights under such judgment." Globe, at 749 and 755.

The relevant text of the second conference substitute for the Sherman amendment is as follows:

> "[A]ny person or persons, having knowledge that any of the wrongs conspired to be done and mentioned in the second section of this act are about to be committed, and having power to prevent or aid in preventing the same, *shall neglect or refuse so to do*, and such wrongful act shall be committed, such person or persons shall be liable to the person injured, or his legal representative." Globe, at 804 (emphasis added).