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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1st OPINION DRAFT

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.

[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 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 elave after the seventh month of pregnancy unless that month fell in the last month of the school year, in which case the teacher

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 Civil Rights Act of 1871—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, which is now § 1983, and

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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] See Part II, *infra*, for a discussion of the effect of this opinion on *Monroe* v. *Pape*, 365 U. S. 167 (1961); *City of Kenosha* v. *Bruno*, 412 U. S. 507 (1973); *Moor* v. *County of Alameda*, 411 U. S. 693 (1973); and *Aldinger* v. *Howard*, 427 U. S. 1 (1976).

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

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

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[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*, *supra*, n. 7, at 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*, *supra*, n. 7, at 708, 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 —.

[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 —.

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, were concerned with whether the Federal Government consistent with the Constitution could obligate municipal corporations to keep the peace if those corporations were neither so obligated nor so authorized by their state charters and, therefore, were unwilling to impose damage liability for nonperformance of a duty which Congress could not require municipalities to perform. This concern 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 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 covered.

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

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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 —.

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;'—
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> "*Mark that*—
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> " '*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]

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[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

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 slaves [23];) third, that declaring that the 'citizens of each

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(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."

[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

> State shall be entitled to all the privileges and immunities of citizens in the several States.' [24]
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> "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 method for ensuring the protection which the Fourteenth Amendment made every citizen's federal right.[25] This much was clear from

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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.

[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 . . . .").

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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[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 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

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 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. . . .

". . . [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. . . .

"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

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municipal corporation to which the peacekeeping obligation had been delegated. See *id.*, at 791.

> (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 with is equally the creature of the State, to perform a duty." Globe, at 795.

While House debate primarily concerned the question whether Congress had the power to require municipalities to keep the peace, opponents of the Sherman amendment in the Senate primarily questioned the constitutionality of the judgment lien created by the Sherman amendment, a lien which ran against *all* money and property of a defendant municipality, including property held for public purposes, such as jails or courthouses. Opponents argued [31] 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. Moreover, everyone knew that sound policy prevented execution against public property since this too was needed if local government was to survive.[32] Thus, whereas constitutional objection in the House had rested on *potential* danger to the independence of the States if the Federal Government were allowed to mandate the duties of state instrumentalities or officers, objection in the Senate rested on the *actual probability* that municipal government would be extinguished if ever made subject to the lien.

The position of the Senate opponents, although not relevant to the question whether municipalities could be sued under § 1 of the Civil Rights Act,[33] nonetheless underscores the fact

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[31] See, *e. g.*, Globe, at 762 (Sen. Stevenson); *id.*, at 763 (Sen. Casserly).

[32] See, *e. g.*, *ibid.* Opponents were correct that public property was generally immune from execution. See *Meriwether* v. *Garrett*, 102 U. S. 472, 501, 513 (1880); *The Protector*, 20 F. 207 (CCD Mass. 1894); 2 Dillon, Municipal Corporations §§ 445–446 (1873 ed.).

[33] Execution in suits under § 1, like all other civil suits in federal courts in 1871, would have been governed by *state* procedures under the process

that opponents of the Sherman amendment were arguing primarily that the Constitution, in Blair's words, did not "inten[d] to give the Government of the United States power to destroy the government of the States," and yet, somehow, proponents of the Sherman amendment were intending to exercise just such a power. To understand why this was so—and, more important, why § 1 of the civil rights bill did not threaten the government of the States in an impermissible manner—it is necessary to examine the cases cited by opponents of the Sherman amendment.

The first case is *Prigg* v. *Pennsylvania*, *supra*, which had also been cited by Shellabarger in support of the Sherman amendment. See p. 12, *supra*. In addition to confirming a broad federal power to enforce federal rights against the States, Mr. Justice Story in *Prigg* held that Congress could not insist that the States create an adequate remedy for a federal right:

> "[Art. IV] is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. The states cannot, therefore, be compelled to enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that states are bound to provide means to carry into effect the duties of the national government . . . ." 16 Pet., at 615–616.

Indeed, Story suggested that those parts of the Act of 1793 which conferred jurisdiction on local magistrates to assist in the arrest and return of slaves were unconstitutional, see *id.*, at 622, a proposition with which other Justices agreed.[34]

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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.

[34] "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

The principle enunciated in *Prigg* was applied 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 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.

Although no one cited *Dennison* by name, the principle expressed there by Chief Justice Taney was well known to

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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.).

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]," but he wondered whether the "positive" obligation created by the Fugitive Slave Clause did not create an exception. See *id.*, at 664–665.

[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.

Members of Congress.[36] Reasoning identical to Taney's—that maintenance of the federal structure of the Nation was inconsistent with allowing Congress any power which might be used to impede the States from carrying out programs within their "legitimate spheres" of power, for if Congress had such power, it would inevitably override the independence of the States in violation of the federal plan of the Constitution[37]—had provided the ground for the Court's decision in *Collector* v. *Day*, 11 Wall. 113 (1871), to which Blair and many others referred,[38] in which the Court held that the Federal Government could not subject the salary of a state officer to a general income tax. Although *Day* and *Dennison* were the only Supreme Court cases setting a limit on the enumerated powers of the Federal Government, a series of state supreme court cases[39] in the mid-1860's had invalidated a federal tax on the process of state courts for the same reasons *Dennison* had invalidated the Act of 1793 and these cases were cited with approval by opponents of the amendment.[40]

Prigg obviously prohibited Congress from insisting that state officers or instrumentalities keep the peace. But it stands for only the narrow proposition for which it was cited

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[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).

[37] This is the principle of *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819), applied to protect States from federal interference in the same manner the Federal Government was protected from state interference.

[38] 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*).

[39] *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).

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

by Representative Blair: that the Federal Government cannot compel a state government, agency, or officer to provide a remedy, either executive or judicial, for a federal right. Therefore, equally obviously, *Prigg* has no bearing whatsoever on the question whether a federal court could award damages under § 1 of the Civil Rights Act against a state agency or officer that violated a federal right, since when a federal court makes a damage award under that section, the positive government action required to implement the federal right is carried out by that court, not by an agency or officer of the State.

The limits of the principle of *Dennison* and *Day* are somewhat more difficult to discern as a matter of logic but more apparent as a matter of history. It must be remembered that *Dennison* and *Day* coexisted with vigorous federal judicial enforcement of the Contract Clause. Thus, federal judicial enforcement of express limits on state power found in the Constitution, at least so long as interpretation of constitutional limits was left in the hands of the judiciary, apparently was seen to create no threat to federalism. 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 a federal law that sought only to hold a municipality liable for using its authorized powers in violation of the

Constitution—which is as far as § 1 of the Civil Rights Act went—would be constitutional:

> "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 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]

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[41] See, *e. g.*, Globe, at 334 (Rep. Hoar); *id.*, at 365 (Rep. Arthur); *id.*,

However, for *Prigg-Dennison-Day* purporses, 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 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*.

In sum, there is no basis in holdings of this Court, the common understanding of the bar, or the debates to find in the Constitution as interpreted in *Prigg*, *Dennison*, or *Day* a bar to Federal Government power to enforce the Fourteenth Amend-

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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).

[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.

ment against the States, or their agents, officers, instrumentalities, or subdivisions, through federal judicial action even though such enforcement would necessarily involve sanctions against officers or instrumentalities which violated that Amendment.

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.

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:
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> "'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 exercise the entirety of its power to enforce § 1 of the Fourteenth Amendment.[45]

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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 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., *id.*, 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 refused to carry out the law:

"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

Since the debates show that Congress intended to exercise its full power under the Fourteenth Amendment and, further, that Congress intended the statute to be construed broadly in favor of persons injured in their constitutional rights, 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*, 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*

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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 to exercise the full 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).

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 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.

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[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).

[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.

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 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

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

[50] See, *e. g.*, Globe, 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.").

[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'x. D and E (collecting state statutes which, in 1871, defined municipal corporations as bodies politic and corporate).

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]

II

Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress did intend

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[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 mandatory" 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.

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 at least in those situations where as here the action of the municipality 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, since the touchstone of the § 1983 action against a government body is an allegation that official policy or official action is to blame for a deprivation of rights protected by the Constitution, unwritten practices or predilections which have by force of time and consistent application crystalized into official policy can also, on an appropriate factual showing,[55] provide a basis

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[54] There is certainly no constitutional impediment to such 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. *Usury*, 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 such 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, however, 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.

[55] 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 our conclusion *infra* that Congress did not intend to enact a regime of vicarious liability, that 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

for suit against a local government. See *Addickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 167–169 (1970); *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 264–268 (1977).

This conclusion is obviously at odds with some of our previous decisions. Therefore, we now consider to what extent previous holdings must be limited or overruled.

A

Only one of our cases, *City of Kenosha* v. *Bruno*, 412 U. S. 507 (1973), dealt with a situation in which there was an allegation that official action of a local government was itself to blame for an alleged violation of constitutional rights. That

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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).

However, had there been an allegation and showing that the Mayor of Philadelphia or the Police Commissioner had consciously disregarded steps that might have been taken to stop unconstitutional police brutality, cf. *Estelle* v. *Gamble*, 429 U. S. 97, 104–105 (1976), or, indeed, a showing that such officials had approved or abetted such brutality as official policy, a case for § 1983 relief against these officials and the city might have been made out.

allegation was that the city of Kenosha and other Wisconsin cities had, by city council vote pursuant to state authorizing legislation, denied liquor licenses to taverns which featured nude dancing, in violation of both the Due Process Clause of the Fourteenth Amendment and the First Amendment as applied to the States through the Fourteenth Amendment. See 412 U. S., at 508; App., *City of Kenosha* v. *Bruno*, O. T. 1972, No. 72-658, p. 11. Under a proper analysis of the legislative history of § 1983, the allegation in *City of Kenosha* is sufficient to support a cause of action against the various cities who were defendants in that case.[56] Since *City of Kenosha* is flatly inconsistent with the correct construction of § 1983, it is hereby overruled.[57]

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[56] Of course, plaintiffs in *City of Kenosha* might not have won on the merits. Cf. *California* v. *LaRue*, 409 U. S. 109 (1972). Nonetheless, there is no suggestion in the pleadings that the constitutional violations alleged were so insubstantial that jurisdiction would have been lacking. Cf. *Bell* v. *Hood*, 327 U. S. 678 (1946); *Mt. Healthy City Board of Ed.* v. *Doyle*, 429 U. S. 274, 279 (1977).

[57] Although we have from time to time intimated that *stare decisis* has more force in statutory analysis than in constitutional adjudication, see, *e. g.*, *Edelman* v. *Jordan*, *supra*, n. 54, at 671, and n. 14, we have never applied that doctrine mechanically to prohibit overruling our earlier erroneous opinions 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). Since the modern revival of § 1983 in *Monroe* v. *Pape*, we have taken it upon ourselves, without guidance from Congress, to construe the broad language of § 1983 in light of its history, reason, and purpose. See, *e. g.*, *Pierson* v. *Ray*, 386 U. S. 547 (1967); *Scheuer* v. *Rhodes*, 416 U. S. 232 (1974). If we were justified in treating § 1983 in this way without seeking congressional guidance—and nothing suggests that we were not or that Congress would have us do otherwise—we are equally justified in correcting our own mistakes, cf. *United States* v. *Reliable Transfer Co., Inc.*, 421 U. S. 397, 409 (1975), especially where as here our mistaken interpretation of § 1983 limits Congress' undeniable and principal purpose of creating a civil remedy

B

Despite our conclusion that *Monroe* v. *Pape, supra,* incorrectly held that cities can never be subjected to § 1983 liability, the judgment in *Monroe* need not be questioned. The only issue before the Court in that case was whether municipalities could be held liable on a *respondeat superior* theory—by which was apparently meant (and which we now use to mean) liability imposed on employers without regard to their fault or blame—for the torts of their employees.[58] And we shall now explain, *Monroe* was correct insofar as it held that Congress did not intend municipalities to be held vicariously liable on such a theory.[59]

We begin with the language of § 1983 as passed:

"*[A]ny person who,* under color of any law, statute, ordinance, regulation, custom, or usage of any State, *shall*

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for constitutional violations. Cf. *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770,* 398 U. S. 235, 241 (1970).

[58] Mr. Justice Frankfurter noted in dissent in *Monroe* that the complaint alleged that "it is the custom of the [Chicago Police] Department to arrest and confine individuals for prolonged periods on 'open' charges for interrogation, with the purpose of inducing incriminating statements, exhibiting its prisoners for identification, holding them *incommunicado* while police officers investigate their activities, and punishing them by imprisonment without judicial trial." 365 U. S., at 204. While this allegation could be liberally construed to encompass an allegation that the custom of the Police Department had crystallized into its official policy, the plaintiffs in *Monroe* did not so interpret their own complaint. Instead, they proceeded on a *respondeat superior* theory in the District Court, see App., *Monroe* v. *Pape,* O. T. 1960, No. 39, p. 30, in the Court of Appeals for the Seventh Circuit, see *id.,* at 31–32, and in this Court, see Brief for Petitioner, *Monroe* v. *Pape,* O. T. 1960, No. 39, pp. 21–22.

[59] Our decision in *Moor* v. *County of Alameda, supra,* n. 7, stands on the same footing as our decision regarding municipal liability in *Monroe,* since the only question in *Moor* as in *Monroe* was whether the county was liable under a *respondeat superior* theory for the torts of its police officers. 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.

> *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 body 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 tortious act suggests that Congress did not intend § 1983 liability to attach where such causation was absent.[60]

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[60] 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.

Certainly the Sherman amendment went very far toward imposing vicarious liability on a community for the tortious or criminal conduct of some of its citizens. Nonetheless, it is important to recognize that the legal basis for such liability was not some sort of *respondeat superior* theory but fault on the part of the community in its exercise of its peace-keeping powers. Senator Sherman, for example, described the purpose of his amendment in terms of negligent or wilfull failure to keep the peace. See Globe, at 761. See also Globe, at 756 (municipalities are liable if "they fail to perform the duty of protection") (Sen. Edmunds); *id.*, at 751–752 (duty to provide protection limited to those cases in which a riot was "committed tumultuously in the face of the community" and where community was guilty of "neglect" of its duty to protect). But, as we have already noted, see p. 8, *supra*, Sherman's amendment was poorly drafted

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 such an obligation unconstitutional. To this day, there is no agreed basis for imposing vicarious liability on an employer for the torts of an employee when the employer is not at fault for negligent hiring, improper training, or inadequate control or direction of his employees.[61] See W. Prosser, Law of Torts, § 69, at 459 (4th ed. 1971). Nonetheless, two justifications tend to stand out. First is the commonsense notion that no matter how blameless 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 & F. James, The Law

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and many congressmen spoke against it not only on constitutional grounds, but also because, as drafted, it imposed a form of strict or vicarious liability on the citizens of an affected community. See 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, it is plain from the text of the second conference substitute, see Appendix, *infra*, at ——, which was enacted as § 6 of the 1871 Act and is now codified as 42 U. S. C. § 1986, that a majority of Congress rejected strict liability even while accepting the basic principle that the inhabitants of a community were bound to provide aid to the targets of Ku Klux violence if they were aware of impending violence and had the power to intervene. Strictly speaking, of course, the fact that Congress refused to impose vicarious liability on a community for the wrongs of a few private citizens does not conclusively establish that it would similarly have refused to impose *respondeat superior* liability. Nonetheless, when this history 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 vicarious liability is quite strong.

[61] 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.

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.

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 constitutional attack 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 and, indeed, it would appear to be objectionable not only on *Prigg-Dennison-Day* grounds but also on the ground that the Constitution nowhere creates a right to insurance.[62]

C

Finally, it is necessary to comment briefly on our decision in *Aldinger* v. *Howard*, 427 U. S. 1 (1976). There we held that pendent party jurisdiction predicated on 28 U. S. C. § 1343 (3), the jurisdictional counterpart of § 1983, would be inconsistent

[62] A third justification, often cited but which on examination is 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*, *supra*, n. 55, 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 423 U. S., at 370–371.

with Congress' refusal to create a cause of action against local governments. See 427 U. S., at 16–17. Our conclusion today that Congress did indeed intend to create a cause of action against such governments is squarely inconsistent with the *ratio decidendi* of *Aldinger*. Moreover, although we today conclude that Congress did not impose *respondeat superior* liability on local governments, the legislative history of the Civil Rights Act evinces no congressional hostility to federal court enforcement of state-law claims. Indeed, the legislative history is to the contrary. See p. 20, *supra*.

Accordingly, we conclude that the question of pendent party jurisdiction decided in *Aldinger, supra,* and not before us here, must now be considered open for re-examination in an appropriate case.

III

Given our conclusion that local government bodies can be sued directly under § 1983 for all forms of relief, there remains the question what official immunity these bodies are entitled to. Obviously municipal entities 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). Moreover, a grant of absolute immunity to local government bodies sued for inflicting constitutional deprivations is not warranted under the approach we have consistently taken in determining whether and to what extent a given type of defendant is entitled to immunity in a § 1983 action—namely "a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it," *Imbler* v. *Pachtman*, 424 U. S. 409, 421 (1976). Although the common law once afforded municipal bodies immunity in the performance of their "governmental" functions,[63] this doctrine has not received the repeated and consistent approval given the principle of

[63] See E. McQuillan, Municipal Corporations § 53.24 (3d rev. ed. 1977).

judicial and quasi-judicial immunity,[64] but instead "[f]or well over a century . . . has been subjected to vigorous criticism," W. Prosser, Handbook of the Law of Torts 984 (4th ed. 1971).[65] Indeed, this Court has described the tenet of absolute municipal immunity for the performance of governmental functions as "a rule of law that is inherently unsound." *Indian Towing Co.* v. *United States*, 350 U. S. 61 (1955). Dissatisfaction with the rule has resulted in "a minor avalanche of decisions repudiating municipal immunity," W. Prosser, *supra*, at 985, as a consequence of which

> "the majority rule appears to be, that in the absence of a statute granting immunity, a municipality is liable for its negligence in the same manner as a private person or corporation. The common-law doctrine of sovereign or governmental immunity once asserted by the city, as a defense in actions against it based on tort, would appear to obtain in this country only in a minority of states." E. McQuillin, Municipal Corporations § 53.02 at 104 (3d rev. ed. 1977) (footnotes omitted).

At present, it appears that no more than 11 States continue strictly to adhere to the old common-law rule. See P. Harley & B. Wasinger, Government Immunity: Despotic Mantle

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[64] *Stump* v. *Sparkman*, — U. S. — (No. 76–1750, March 28, 1978); *Imbler* v. *Pachtman*, 424 U. S. 409 (1976); *Pierson* v. *Ray*, 386 U. S. 547 (1967); *Bradley* v. *Fisher*, 13 *Wall.* 335 (1872); *Randall* v. *Brigham*, 7 *Wall.* 523 (1869).

[65] "The sovereign or governmental immunity doctrine, holding that the state, its subdivisions and municipal entities, may not be held liable for tortious acts, was never completely accepted by the courts, its underlying principle being deemed contrary to the basic concept of the law of torts that liability follows negligence, as well as foreign to the spirit of the constitutional guarantee that every person is entitled to a legal remedy for injuries he may receive in his person or property. As a result, the trend of judicial decisions was always to restrict, rather than to expand, the doctrine of municipal immunity." E. McQuillin, Municipal Corporations § 53.02 at 104 (3d rev. ed. 1977) (footnotes omitted).

or Creature of Necessity, 16 Washburn L. Rev. 12, 34–53 (1976). What sapped vitality remains of the largely repudiated common-law rule of absolute municipal immunity provides a clearly inadequate basis for adopting that rule in the § 1983 context in the face of our determination that Congress intended to allow § 1983 suits directly against municipal bodies.

Since the question of the nature of official immunity to be afforded local government bodies has been neither extensively briefed by the parties nor addressed by the courts below, we express no views on its scope beyond holding that municipal bodies sued under § 1983 are not entitled to absolute immunity. Cf. *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U. S. 389, 397–398 (1971).

IV

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 com-

> mitted 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 representative 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).