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The Expanding Scope of Federal Civil Rights Jurisdiction

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THE EXPANDING SCOPE OF FEDERAL CIVIL RIGHTS JURISDICTION

I. INTRODUCTION

After decades of restricted judicial interpretation, recent United States Supreme Court decisions have revitalized the effectiveness of the federal civil rights statutes enacted after the Civil War.[1] This note examines one part of this judicial trend: the growth of the scope of § 1343(3),[2] the jurisdictional counterpart of the descendant of Section 1 of the Civil Rights Act of 1871.[3] The focus is on two key issues—one, the rights that are included within the scope of § 1343(3) and two, how these rights must be "secured" by the Constitution and/or federal statutes to invoke §1343(3) jurisdiction.

The first issue is analyzed in light of *Lynch v. Household Finance Corporation*,[4] in which the United States Supreme Court unanimously rejected the longstanding "property rights" exception to § 1343(3) jurisdiction. The second issue, still largely unclarified, is emerging with the advent of lower federal court decisions finding private causes of action based on alleged violations of federal statutes regulating state-administered programs. While the main emphasis is on § 1343(3) jurisdiction, other federal jurisdictional issues are discussed to the extent that they relate to the two key issues.

II. THE RIGHTS INCLUDED WITHIN THE SCOPE OF §1343(3)

In 1972, the United States Supreme Court in *Lynch v. Household Finance Corporation*[5] repudiated the long standing "property rights" ex-

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1. *See generally,* Clark, *The Lawyer in the Civil Rights Movement-A Catalytic Agent or Counter-Revolutionary,* 19 KAN. L. REV. 459 (1971).

2. 28 U.S.C. § 1343(3):
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
(3) To redress the deprivation, under the color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution or by any Act of Congress providing for equal rights of citizens or of all persons within the United States . . . .

3. 42 U.S.C. § 1983:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

4. 405 U.S. 538 (1972).

5. *Id.*

ception to § 1343(3) jurisdiction. This exception, also known as the "property—personal right" distinction, originated in Mr. Justice Stone's concurring opinion in *Hague v. C.I.O.*[6] It proved to be increasingly unworkable and was followed unevenly by the various circuits since 1939.[7] Mr. Justice Stone's widely quoted formulation of the distinction read:

> [W]henever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights, there is jurisdiction under [§1343(3)] of the Judicial Code to entertain [a suit] without proof . . . [of an] amount in controversy. . . .[8]

The fact situation in *Lynch* is relatively simple: In February, 1968, Mrs. Dorothy Lynch authorized her employer to deposit $10.00 of her $69.00 weekly wage in a credit union savings account. Household Finance Corporation sued Mrs. Lynch in a state court, alleging nonpayment of a promissory note. On June 23, 1969, pursuant to Connecticut statutes, in response to the order of the finance company's attorney, a deputy sheriff garnished Mrs. Lynch's account by serving a writ of garnishment on the credit union. Three days later she was served with process.

Similarly, in October, 1969, Mrs. Norma Toro, who earns $85.00 weekly, opened a checking account. Eugene Camposano, Mrs. Toro's former landlord, sued her in state court for back rent allegedly due. In a manner similar to that of Mrs. Lynch, Mrs. Toro's checking account was garnished on January 30, 1970. One day later Mrs. Toro was served with process.

On March 4, 1970, Mrs. Lynch and Mrs. Toro, respectively, filed a class action suit in the United States District Court for the District of Connecticut. In both actions, the plaintiffs alleged that they had received neither prior notice of the garnishments nor an opportunity to be heard. They claimed that the state statutes were invalid under the Equal Protection and Due Process Clauses of the fourteenth amendment and sought declaratory and injunctive relief pursuant to the Civil

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6. 307 U.S. 496 (1939).

7. *See*, Laufer, *Hague v. C.I.O.: Mr. Justice Stone's Test of Federal Jurisdiction—A Reappraisal*, 19 BUFFALO L. REV. 547 (1970); Note, *Section 1343 of Title 28—Is the Application of the "Civil Rights-Property Rights" Distinction to Deny Jurisdiction Still Viable?*, 49 B.U.L. REV. 377 (1969); Note, *Civil Procedure: Section 1343(3) Jurisdiction and the Property-Personal Right Distinction*, 1970 DUKE L.J. 819; Note, *The "Property Rights" Exception to Civil Rights Jurisdiction—Confusion Compounded*, 43 N.Y.U.L. REV. 1208 (1968); Note, *Another and Hopefully Final Look at the Property-Personal Liberty Distinction of Section 1343(3)*, 24 VAND. L. REV. 990 (1971).

8. 307 U.S. at 531, 532.

Rights Act of 1871.[9] Because the plaintiffs sought an injunction against the operation of an allegedly unconstitutional state statute, a special statutory district court of three judges was convened to hear and determine the actions.[10]

This three-judge court, in response to the defendant-creditors' motions, dismissed the plaintiffs' complaints without an evidentiary hearing on October 22, 1970.[11] The lower court ruled that it lacked jurisdiction under § 1343(3) and that relief was barred by the statute prohibiting injunctions against state court proceedings.[12]

On appeal the United States Supreme Court reversed the lower court's judgment, and remanded the case, holding "that neither § 1343 (3) nor § 2283 warranted dismissal of the appellant's complaint."[13] In a unanimous decision[14] the Court, through Mr. Justice Stewart, ruled that the district court had jurisdiction under § 1343(3), expressly rejecting the historic "property-personal right" distinction of *Hague v. C.I.O.*[15]

At the onset of his opinion Justice Stewart noted that the Supreme Court never adopted the *Hague* distinction.[16] Furthermore, although the Court had never before expressly rejected the distinction, Mr. Justice Stewart found it to be unsupported by both the literal meaning of § 1343(3) and its legislative history. The direct lineal ancestor of §§ 1983 and 1343(3) is § 1 of the Civil Rights Act of 1871.[17] This

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9. Lynch v. Household Finance Corporation, 318 F. Supp. 1111 (D. Conn. 1970).
10. 28 U.S.C. §§ 2281 and 2284.
11. Mrs. Toro, the second appellant, had her garnishment released on March 24, 1970. The possible issue of mootness was not resolved by the lower court, in view of its dismissal on the other grounds. Likewise, the Supreme Court did not reach the mootness issue, treating garnishment of a checking and savings account identically. 405 U.S. at 540, n.2.
12. 28 U.S.C. § 2283.
13. 405 U.S. at 542.
14. Justices Powell and Rehnquist took no part in the consideration or decision of the case. The Court divided 4-3 in finding that an injunction against the Connecticut garnishment statute is not barred by the terms of § 2283. The majority opinion, written by Mr. Justice Stewart, reasoned that the state act in question was not a proceeding "in state court" within the meaning of § 2283, since the Connecticut garnishment can be instituted without judicial order. Justices Douglas, Brennan, and Marshall joined in the majority opinion, while Justice White filed a dissenting opinion, which Chief Justice Burger and Justice Blackmun joined. The dissenting opinion did agree without reservation that § 1343(3) jurisdiction is not limited to the adjudication of personal rights, but differed on the § 2283 issue. Any further discussion of the § 2283 issue is beyond the scope of this note.
15. 405 U.S. at 542.
16. *Id.*
17. The original statute, 17 Stat. 13 read:

> . . . any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution of the United States, shall,

section, in turn, was derived from § 2 of the Civil Rights Act of 1866, and was passed for the express purpose of enforcing the fourteenth amendment. Nothing in the legislative history indicated that Congress intended to exclude property rights; in fact, the clear intention of the enactment of § 1 of the 1871 Civil Rights Act was to provide a federal judicial forum for the redress of wrongful deprivations of property by persons acting under color of state law.[18]

The Court's opinion also undermines the essential rationale behind the "property-personal rights" distinction—the notion that the general federal question provision,[19] enacted by Congress in 1875, apparently conflicts with § 1343(3). Proponents of this rationale had argued that a broad reading of §1343(3) to include all rights secured by the Constitution would render § 1331, and its amount in controversy requirement superfluous. Mr. Justice Stone's opinion in the *Hague* case had sought to harmonize the coexistence of the two jurisdictional provisions by construing § 1343(3) to confer federal jurisdiction only when the right asserted is personal, thus incapable of pecuniary valuation.

Lynch made short shrift of this notion by first observing that there is no conflict between the two jurisdictional sections as § 1343(3) applies only to rights infringed "under color of state law," as opposed to § 1331, which has no such restriction. Second, and more importantly, the Court found "no indication whatsoever" from the legislative history of § 1331 that Congress intended to contract the scope of § 1 of the 1871 Civil Rights Act. Applying the rule that repeal by implication is disfavored, the Court held that "§ 1983 and § 1343 must be given the meaning and sweep that their origins and their

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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; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication, and other remedial laws of the United States which are in their nature applicable in such cases.

For the subsequent legislative developments see Lynch, 405 U.S. at 543-46, n.7-11 and also Herzer, *Federal Welfare Jurisdiction,* 6 HARVARD CIV. LIB.-CIV. RIGHTS L. REV. 1, 4-9 (1970).

18. 405 U.S. at 543.

19. 18 Stat. 470. The present federal question statute, 28 U.S.C. § 1331 (1964) provides: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

language dictate."[20]

Finally, the *Lynch* opinion noted the practical impossibilities of distinguishing between property rights and personal rights:

> Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is, in truth a "personal" right, whether the "property" in question be a welfare check, a home or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other.[21]

Although the *Lynch* opinion stated that the Supreme Court never adopted the "property-personal right" distinction of *Hague*, most of the various circuit courts of appeals had in some fashion used it.[22] Thus, *Lynch* will eliminate the tortured methods some lower courts have used to find § 1343(3) jurisdiction within the confines of the now defunct distinction.[23] Also, some plaintiffs will now have a federal forum for adjudication of allegations of infringement of "property" rights, where previously they were barred by some courts' overly strict application of the *Hague* test.

In fact, the impact of *Lynch* is already apparent in some cases of the October, 1971 term. The Supreme Court, consistent with the *Lynch* decision, has found § 1343(3) jurisdiction in a number of cases where deprivations of only property rights were alleged.

Three of these cases like *Lynch*, fall roughly into the category of "consumer" suits: (1) *Lindsey v. Normet*[24] involved a tenant's challenge to Oregon's Forcible Entry and Wrongful Detainer Statute; (2) *Swarb v. Lennox*[25] involved a debtor's challenge to the Pennsylvania statutory confession of judgment procedure; (3) *Tucker v. Maher*,[26]

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20. 405 U.S. at 549.
21. *Id.* at 552.
22. *See* n.7, *supra.*
23. *See, e.g.*, Escalera v. New York City Housing Authority, 425 F.2d 853 (2nd Cir. 1970) (right to be free from deprivation of property without procedural due process is a civil right); Hall v. Garson, 438 F.2d 430 (5th Cir. 1970) (suit challenging seizure of property pursuant to state statutory lien; right protected not property right, but right to privacy in the home). 405 U.S. at 551, n.19.
24. 405 U.S. 56.
25. 405 U.S. 191. *See also* Osmond v. Spence, 405 U.S. 971, judgment vacated and remanded in light of Swarb v. Lennox.
26. 405 U.S. 1052, judgment vacated and remanded. (The lower court held no § 1343(3) jurisdiction since rights involved are "property" rights and not "personal" rights).

like *Lynch*, involved a challenge to the Connecticut prejudgment attachment statute.

Two other cases that the Supreme Court has vacated and remanded in light of *Lynch* concern other kinds of "property" rights. One case, *Garren v. City of Winston-Salem*,[27] involved a landowner's challenge to the constitutionality of a North Carolina statute giving municipalities extraterritorial zoning authority. Prior to *Lynch*, allegations of infringement to pure property rights, such as allegations of diminution in property value caused by zoning, was considered outside the scope of §1343(3).[28] Clearly, because of *Lynch* there will be more federal litigation testing the constitutionality of zoning and other municipal decisions affecting real property uses.[29]

The second case, *Lung v. Jones*,[30] illustrates two other aspects of federal jurisdiction related to § 1343(3). The *Lung* plaintiffs brought a class action to enjoin the allegedly unconstitutional collection of the New Mexico state income tax. The district court, ruling there was no federal jurisdiction, dismissed the complaint. The plaintiffs asserted two grounds for jurisdiction: (1) general federal question jurisdiction under § 1331 and (2) jurisdiction under § 1343(3).

For jurisdiction under § 1331 it is necessary that the matter in controversy exceed the sum or value of $10,000. None of the individual plaintiffs in *Lung* asserted a claim for more than $10,000. However, in their class action the plaintiffs contended by aggregating their individual claims the requisite jurisdictional amount was met. The lower court refused to permit aggregation of claims, stating it was bound by *Snyder v. Harris*,[31] which held that claims of class members may not be aggregated to arrive at the jurisdictional amount unless the action is a true class action[32] defined prior to the 1966 amendment to Rule 23, Federal Rules of Civil Procedure. A true class action requires that the rights of the class members be common and undivided, arising from a single right or title. The lower court held that the *Lung* suit

27. 405 U.S. 1052, judgment vacated and remanded.
28. *Cf.* Joiner v. City of Dallas, 329 F. Supp. 943 (N.D. Texas 1971) (no § 1343(3) jurisdiction to enjoin state condemnation proceedings) (alternative holding).
29. *See, e.g.* Freilich and Bass, *Exclusionary Zoning: Suggested Litigation Approaches*, 3 URBAN LAWYER 344 (1971); *see also*, Sisters of Providence of St. Mary of the Woods v. City of Evanston, 335 F. Supp. 396 (N.D. Ill. 1971) (§ 1343(3) as alternate ground for federal jurisdiction in suit challenging city council's refusal to rezone property intended to be used for low and moderate income housing development).
30. 322 F. Supp. 1069 (D.N.M. 1971), judgment vacated and remanded, 405 U.S. 1051 (1972).
31. 394 U.S. 332 (1969).
32. 322 F. Supp. 1067, 1068.

was not a true class action and the Supreme Court on appeal did not disturb this part of the lower court's finding.

Without consideration of the state taxation issue, discussed next, the Supreme Court's action in *Lung* illustrates how *Lynch* alleviates the harsh effect of *Snyder v. Harris*,[33] at least in cases arising under § 1983.[34] Hence, with "property" included within the scope of § 1343(3), which requires no jurisdictional amount, some plaintiffs will get a federal forum, where they could not meet the jurisdictional requirement of § 1331.

The district court in *Lung* also held there was no jurisdiction under § 1343(3) since it characterized the right allegedly infringed as a "property" right. The court applied the *Hague* test—finding the property right here outside the scope of § 1343(3) jurisdiction. However, the Supreme Court vacated and remanded the case in view of *Lynch*.

Interestingly, the lower court in *Lung* apparently also based its denial of § 1343(3) jurisdiction on two Supreme Court cases involving challenges to collection of state taxes. The two cases the lower court cited— *Hornbeak v. Hamm*[35] and *Abernathy v. Carpenter*[36]—were also cited in the *Lynch* opinion.[37] In fact, the respondents in *Lynch* had cited these two cases, among several, as authority for the proposition that the Supreme Court had endorsed the concept that property rights are excluded from the scope of § 1343(3) jurisdiction. The *Lynch* Court disagreed with this interpretation of *Abernathy* and *Hornbeak*. Instead, the Court viewed these cases as reflecting the restriction of federal jurisdiction in suits seeking injunctions of state tax collection based on both statutory[38] and long-standing judicial policy.[39] Thus, federal jurisdiction will still be denied in suits seeking to enjoin the collection of state taxes, but this lack of jurisdiction must be based directly upon the congressional policy expressed in 28 U.S.C. § 1341. Presumably on remand the lower court in *Lung* would hold that the suit is barred by the terms of § 1341.

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33. 394 U.S. 332 (1969).
34. *See*, Herzer, *Federal Jurisdiction Over Statutorily-based Welfare Claims*, 6 HARV. CIV. LIB.-CIV. RIGHTS L. REV. 1, 2-3 (1970).
35. 283 F. Supp. 549 (M.D. Ala. 1968), *aff'd.* 393 U.S. 9 (1968).
36. 208 F. Supp. 793 (W.D. Mo. 1962), alternate holding, *aff'd.* 373 U.S. 241 (1963).
37. 405 U.S. 538, 542 n.6.
38. 28 U.S.C. § 1341 (1964) provides: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."
39. *See*, Matthews v. Rodgers, 284 U.S. 521 (1932); *See also*, Note, *The "Property Rights" Exception to Civil Rights Jurisdiction*, 43 N.Y.U.L. REV. 1208, 1212 (1968).

III. Invoking §1343(3) Jurisdiction in Statutorily-Based Action

Lynch by eliminating the "property-personal right" test has clarified the scope of § 1343(3) jurisdiction. The question of how these rights must be "secured" in order to invoke § 1343(3) jurisdiction is as yet unanswered by the Supreme Court. Specifically, this issue may be framed as whether it is necessary that plaintiffs allege violations of the United States Constitution or whether it is enough that they merely allege violations of federal statutes.[40]

Whereas the "personal-property right" distinction had been widely litigated and analyzed by many commentators[41] before the clarification provided by *Lynch*, the question how these rights must be "secured" has been subject to little commentary[42] and only recently been frequently litigated, probably most intensely in welfare rights cases. Specifically, the Fifth Circuit case, *Gomez v. Florida State Employment Service*,[43] and the cases adopting its rationale present substantial judicial support for the proposition that a civil rights[44] suit may be brought and that § 1343(3) jurisdiction lies in statutorily-based claims.

A major obstacle to obtaining § 1343(3) jurisdiction in statutorily-based claims is the difference in the language between § 1983 and § 1343(3). While the former provides a cause of action for deprivation of rights "secured" by federal "laws", the parallel part of the latter reads "secured . . . by any Act of Congress *providing for equal rights*."[45] Apparently, this literal difference caused the Second Circuit to hold that § 1343(3) jurisdiction will lie only when there is an allegation of deprivation of substantial constitutional rights.[46] On

40. A related issue, assuming that claims based on federal statutes alone are insufficient, is whether § 1343(3) requires "substantial" constitutional claims, as opposed to "colorable" constitutional claims. *See, e.g.*, Carter v. Like, 448 F.2d 798, 801 (8th Cir. 1971), *cert. denied*, 405 U.S. 1045 (1972) (concluded that where colorable constitutional claims are raised federal jurisdiction will lie); *cf.*, Almenares v. Wyman, 453 F.2d 1075, 1082 (2nd Cir. 1971) (requires substantial constitutional claims).

41. *See*, note 7, *supra*.

42. *See*, Herzer, *supra*, note 17; Cover, *Establishing Federal Jurisdiction to Vindicate Statutory (Federal) Rights*, Clearinghouse Rev., Feb.-March 1969, at 5.; Note, *Federal Judicial Review of Welfare Practices*, 67 Col. Law Rev. 84, 109-15 (1967).

43. 417 F.2d 569 (5th Cir. 1969).

44. *See*, note 3, *supra*.

45. Emphasis added.

46. Almenares v. Wyman, 453 F.2d 1075, 1082 and n.9 (essential that substantial constitutional claim be presented as Social Security Act is not an "Act of Congress providing for equal rights . . ." under § 1343(3)); McCall v. Shapiro, 416 F.2d 246 (2nd Cir. 1969); Rosado v. Wyman, 414 F.2d 170 (2nd Cir. 1969).

the other hand, some courts, particularly the Fifth Circuit, have disregarded this difference of wording and find federal jurisdiction for statutorily-based claims.

To ascertain the real meaning of these statutes, like any statute, it is necessary to analyze legislative history, policy considerations behind their enactment, and, their meaning as expressed in judicial decisions. An examination of these considerations casts doubt on the notion that the difference of language between the two sections is critical.

The legislative history of § 1983 and § 1343(3) has been traced by the Supreme Court, most recently in *Lynch*,[47] and has been thoroughly discussed in earlier commentaries.[48] These two sections are the direct descendants of § 1 of the Civil Rights Act of 1871.[49] In the Revised Statutes of 1875 Congress enlarged the scope of the substantive provision to protect rights secured by federal law as well as rights secured by the Constitution.[50] This substantive provision became § 1979, separated from its jurisdictional counterparts: § 563 (12) providing for district court jurisdiction was identical in scope to § 1979; while § 629(16) providing for circuit court jurisdiction was restricted in scope to statutory claims "secured . . . by any Act of Congress providing for equal rights." The 1911 Congress in the process of abolishing orginal jurisdiction in the circuit courts merged the two jurisdictional sections into what is now § 1343(3).[51] The merged section retained the "equal rights" restriction of § 629(16).

This difference in language causes no difficulty when the substantive claim of the suit alleges a constitutional violation. In that instance § 1343(3) clearly provides federal jurisdiction. However, the lower courts have divided on the jurisdictional question when statutorily-based claims only are asserted in § 1983 suits. To date, the Supreme Court has found it unnecessary to resolve this conflict. The cases in which this issue may have been presented to the Court have followed a pattern typified by *King v. Smith*.[52]

Although initially, the plaintiff in *King* raised a constitutional challenge to a state welfare regulation, eventually the Supreme Court struck down the regulation on statutory grounds—i.e. the federal stat-

47. 405 U.S. 538, 543-48 and nn.7-15.
48. *See, e.g.*, Herzer, note 17 *supra*, 4-9; *Federal Judicial Review of Welfare Practices, supra* note 42, 111-15.
49. *See*, note 17, *supra*.
50. 405 U.S. 538, 548, n.15.
51. Act of March 3, 1911, c.231, 36 Stat. 1087.
52. 392 U.S. 309 (1968).

ute under which the state welfare program was administered prohibited the state regulation in question. The pattern established in *King v. Smith*, and followed in subsequent welfare rights litigation,[53] consists of (1) finding, without significant discussion, § 1343(3) jurisdiction where deprivation of constitutional rights (denial of due process and equal protection) is alleged; and (2) a decision of the substantive issues of the case on statutory grounds rather than constitutional grounds.[54]

Without guidance from the Supreme Court, the lower federal courts have disagreed on the issue of whether § 1343(3) jurisdiction is conferred in statutorily-based suits. Until the advent of welfare rights litigation, there were relatively few § 1983 suits brought on the basis of violation of federal statutes. In one of these cases, *Bomar v. Keyes*,[55] the difference in language between § 1983 and § 1343(3) apparently was not crucial. The Second Circuit, through Judge Learned Hand, held that a "probationary" teacher could bring a suit in the federal courts against her public school employer. She alleged that she was fired because she missed work while on federal jury duty. Judge Hand, in finding federal jurisdiction, did not even mention § 1343(3), but rather, found that the federal jury statute conferred a "privilege" within the meaning of the Civil Rights Act.[56] On the other hand, the

53. *E.g.*, Shapiro v. Solman, 396 U.S. 5 (1969) (per curiam affirmance of decision invalidating a state "man in the house" rule); Goldberg v. Kelly, 397 U.S. 254 (1970) (held violation of due process where benefits terminated without a hearing); Dandridge v. Williams, 397 U.S. 471 (1970) (rejecting an equal protection challenge to a maximum on AFDC benefits to a family unit); Rodriguez v. Swank, 403 U.S. 901 (1971) (summarily affirming lower courts' denial of motion to dismiss where plaintiffs alleged delay in receipt of benefits); Townsend v. Swank, 404 U.S. 282 (1971) (invalidating state regulation allowing AFDC payments for students 18 to 21 years old—in vocational schools, but denying payments for students in colleges).

54. For example, the appellants in Carter v. Stanton, 405 U.S. 669 (1972) brought a § 1983 action challenging an Indiana welfare regulation. The three-judge district court dismissed the suit holding no substantial constitutional question was presented. The Supreme Court, in a per curiam opinion, held the lower court erred and remanded the case for decision on the merits. The Court also found error in the lower court's holding that the plaintiffs were required to exhaust their administrative remedies. The Indiana regulation in question "provides that a person who seeks assistance due to separation or the desertion of a spouse is not entitled to aid until the spouse has been continuously absent for at least six months, unless there are exceptional circumstances of need" 405 U.S. at 670. The Court then cited Dandridge v. Williams, 397 U.S. 971 (1970) (levels of welfare assistance); Shapiro v. Thompson, 394 U.S. 618 (1969) (durational residency requirement); and Damico v. California, 389 U.S. 416 (1967) (provision which did not allow aid to a child until his parents had been separated for three months, etc.) as cases presenting a substantial constitutional question. This case-by-case approach of deciding what is a substantial constitutional question for purposes of § 1343(3) yields no usable standards for possible future cases.

55. 162 F.2d 136 (2nd Cir. 1946), *cert. denied*, 332 U.S. 825 (1947); *see* Note, *The Proper Scope of the Civil Rights Acts*, 66 HARV. L. REV. 1285, 1291-93 (1953).

56. *Id.* at 138.

Ninth Circuit interpreted the difference in language between § 1983 and § 1343(3) as excluding federal jurisdiction in statutorily-based suits.[57]

Presently, there are two court of appeals decisions, *McCall v. Shapiro*[58] and *Gomez v. Florida State Employment Service*,[59] which illustrate the conflicting views on federal jurisdiction where only statutorily-based claims are asserted.

The Second Circuit in *McCall v. Shapiro* refused to find § 1343(3) jurisdiction where only violations of the Social Security Act were pressed on appeal. The court reasoned that the scope of § 1343(3) was less than that of § 1983, citing the difference in language, and concluded there was no legislative intent to provide § 1343(3) jurisdiction in all § 1983 cases.[60] However, because the *McCall* court relied on the "property-personal right" distinction of *Hague*, its view of the legislative intent is questionable. Essentially, the *McCall* court observed that in enacting welfare statutes Congress had not specifically provided for their enforcement in federal courts. Applying the *Hague* test, it held that § 1343(3) jurisdiction did not lie in suits involving money claims not related to a violation of civil rights.[61] The court added:

> It is reasonably clear then that Section 1343(3) . . . dealing with statutes providing for "equal rights" . . . is aimed at questions of personal liberty rather than property matters, and that the latter are relegated to the general provisions of 28 U.S.C. § 1331 (a).[62]

In view of the *Lynch* decision, a conclusion opposite to *McCall* seems more plausible—that there is no indication that Congress, in

57. Schatte v. International Alliance of Theatrical Stage Employees, 182 F.2d 158 (9th Cir. 1950) (no jurisdiction where suit brought under Social Security and National Labor Relations Act, alternate holding); *see also* McGuire v. Amrein, 101 F. Supp. 414 (D. Md. 1951) (Federal Communications Act not an "Act of Congress which creates equal rights").

58. 416 F.2d 246 (2nd Cir. 1969).

59. 417 F.2d 569 (5th Cir. 1969).

60. 416 F.2d 246, 250 (2nd Cir. 1969). The court also rejected the argument that jurisdiction is proper under 28 U.S.C. § 1343(4) (1964), which provides for original jurisdiction: "To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

61. *Id.* The Second Circuit softened the effects of this decision in Johnson v. Harder, 438 F.2d 7 (2nd Cir. 1971), a case where the constitutional claim was asserted on appeal. The court circumvented the *Hague* test for welfare cases. There, the court held that the right to receive welfare payments, although a monetary claim, was a "personal" right—some sort of right to exist in society. In view of *Lynch* this kind of judicial maneuvering is unnecessary.

62. *Id.* The Second Circuit followed *McCall* in Almenares v. Wyman, 453 F.2d 1075, 1082 and n.9. *Accord,* Acosta v. Swank, 325 F. Supp. 1157 (N.D. Ill. 1971).

revising the statutes, intended to make the scope of §1343(3) narrower than that of § 1983.[63]

In contrast to *McCall*, the Fifth Circuit in deciding *Gomez v. Florida State Employment Service*[64] found federal jurisdiction where only statutorily-based claims were asserted. The claims were based on the Wagner-Peyser Act of 1933[65] and the regulations[66] promulgated by the Secretary of Labor. The plaintiffs, migrant workers, brought an action based on violations of the statute and regulations. The district court dismissed for want of jurisdiction. The Fifth Circuit reversed and remanded, finding jurisdiction under § 1343(4) to hear a § 1983 suit based on the Wagner-Peyser Act.[67] The *Gomez* court did not determine that the statute in question was an "Act of Congress providing for equal rights," nor did it deal with the open question of *King v. Smith*.[68] The court reasoned:

> We need not do this since § 1343(4) does provide jurisdiction for all claims stated under § 1983, although operating as a conduit through which other statutory rights are protected, is itself an "Act of Congress providing for the protection of civil rights."[69]

Since *Gomez*, other courts have found federal jurisdiction in suits alleging a violation of federal statutes. For example, *Ayala v. District 60 School Board of Pueblo, Colorado*[70] involved a challenge, on equal protection grounds, to the administration of an elementary school lunch program. Invoking pendent jurisdiction, the court held it had jurisdiction to hear a claim under the National School Lunch Act.[71] Further, the court hinted that it might have "original jurisdiction of the statutory claim as a federal law within the meaning of § 1983."[72] The recent wave of litigation challenging reductions by states in their Medicaid programs[73] has also shown that the federal courts will entertain claims based on federal statutes—here, the Medicaid statute enacted

63. *See*, Note, *Review of Welfare Practices, supra*, note 42, at 113. Cover, *supra* note 42.
64. 417 F.2d 569 (5th Cir. 1969).
65. 29 U.S.C. §§ 49 *et seq.* (1964).
66. 20 C.F.R. § 602.9.
67. 417 F.2d at 580. The court also found jurisdiction under 28 U.S.C. § 1337 (1964): "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade or commerce against restraints and monopolies."
68. 417 F.2d at 580 n.39. *See also* note 52, *supra*, and accompanying text.
69. 417 F.2d at 580.
70. 327 F. Supp. 980 (D. Colo. 1971).
71. 42 U.S.C. §§ 1751 *et seq.* (1964).
72. 327 F. Supp. at 982.
73. *See*, Blang and Butler, *Developments in Medicaid Cutback Remedies*, 5 CLEARING HOUSE REV. 723 (1972).

in 1965.[74] In one of the suits, *Bass v. Rockefeller*,[75] the court, while finding jurisdiction under the general federal question provision, stated in a footnote that it would also probably find jurisdiction under § 1343(3) following the *Gomez* approach.[76]

The Hill-Burton Act,[77] which provides for federal grants of funds to states and private parties to build or modernize hospital facilities has provided the statutory basis for four suits recently filed in the federal courts.[78] Significantly, all of the district court decisions except one, held that private suits could be based on the section of the statute which provides, *inter alia*, "there will be made available in the facility . . . a reasonable volume of services to persons unable to pay therefor. . . ."[79]

Euresti v. Stenner,[80] the one district court decision holding that no action could lie under the Hill-Burton Act, was overturned by the Tenth Circuit, which remanded the case for trial. The decision of the Tenth Circuit in *Euresti* and the other district court cases have followed the lead of *Gomez* in holding that a private cause of action can be based on a federal statute. Generally, these cases did not discuss the federal jurisdictional issue.[81]

In *Euresti*, the Tenth Circuit (through Mr. Justice Clark) did not even mention the federal jurisdictional basis, even though it was reversing the district court's dismissal for lack of jurisdiction. The court simply found (1) that in receiving the federal funds, the appellee-defendants obligated themselves to provide a reasonable amount of health care;[82] (2) that the plaintiffs as the intended beneficiaries of this obligation had standing to sue;[83] and (3) that § 291(m) of the Hill-Burton Act is not a bar to enforcement of these obligations.[84] Additionally, the court did cite *Gomez* in discussing the standing issue.

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74. 42 U.S.C. § 1396(a), (d).
75. 331 F. Supp. 945 (S.D.N.Y. 1971).
76. 331 F. Supp. at 949, n.5.
77. 42 U.S.C. §§ 291 *et seq.* (1964).
78. *See,* Organized Mis. in Com. Act. v. Archer, 325 F. Supp. 268 (S.D. Fla. 1971); Cook v. Ochsner, 319 F. Supp. 603 (E.D. La. 1970); Perry v. Greater Southeastern Community Hospital Foundation, Inc., No. 725-71 (D.D.C. 1971) (§ 1331 jurisdiction); Euresti v. Stenner, 458 F.2d 1115 (10th Cir. 1972).
79. 42 U.S.C. § 291(e).
80. Euresti v. Stenner, 458 F.2d 1115 (10th Cir. 1972).
81. In O.M.I.C.A. v. Archer, 325 F. Supp. 268 (S.D. Fla. 1971), the court mentioned that the jurisdiction was asserted under § 1331 or § 1343.
82. 458 F.2d 1117.
83. *Id.* at 1119.
84. *Id.*

While the impact of *Euresti* is difficult to assess due to the Tenth Circuit's failure to discuss jurisdiction,[85] the presumed finding of jurisdiction illustrates the progress plaintiffs are making in obtaining judicial enforcement of federal statutorily-based claims.

CONCLUSION

Lynch v. Household Finance has largely clarified the issue of what rights are within the scope of § 1343(3) jurisdiction. No longer will courts have to use tortured methods to find federal jurisdiction when traditional "property" rights are allegedly infringed. The real significance of *Lynch's* abolition of the "personal-property right" distinction is the resulting increased accessibility of federal courts. This is further illustrated by the *Euresti* decision wherein federal jurisdiction was found based only on an alleged violation of a federal statute. This trend toward increased accessibility will at last permit judicial interpretation of the federal civil rights acts to the full extent contemplated by Congress.

EDWIN R. MCCULLOUGH

85. Substantively, however, *Euresti*'s impact has been direct and immediate. In the wake of these Hill-Burton suits the Department of Health, Education, and Welfare issued regulations for some 6,308 health care institutions that receive the federal construction funds. The regulations order the hospitals to provide some level of health care to persons unable to pay. New York Times, § 4, p. 4, April 23, 1972.