AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

The 1966 Amendments to the Federal Habeas Corpus Statute[1]

Many national legislators were unhappy with the direction of Supreme Court federal habeas corpus decisions during the 1950s and 1960s. One House of Congress often passed legislation restricting federal power to review state court decisions, but liberal supporters of the Warren Court were able to prevent such measures from becoming law. In 1966, Congress successfully passed legislation amending the Federal Habeas Corpus Act of 1867. The final bill, however, was not the unambiguous critique of judicial decisions that more conservative representatives had hoped to pass.

When reading the language of the 28 U.S.C. § 2254, consider whether Congress codified, modified, or reversed the rulings in Brown v. Allen *(1953),* Fay v. Noia *(1963), and* Townsend v. Sain *(1963). In particular,*

1. *Must a federal court review under § 2254 every claim that a convicted prisoner makes that a constitutional error occurred during their trial?*
2. *May a federal court under § 2254 refuse to hear a claim of constitutional error on the ground that the convicted prisoner did not follow state rules for making the claim?*
3. *Will a judge who believes a state court made an error of constitutional law always be able to find a reason under § 2254 for holding an evidentiary hearing on any factual dispute between the parties?*
4. *Does the statute below represent a considered policy choice or a decision to continue to allow the Supreme Court to determine the balance of federal-state relationships in federal habeas corpus?*

28 U.S. C. § 2254

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. (b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner. (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented. (d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear,

[1] 80 *U.S. Stat*. 1104, 1105-1106 (1966).

or the respondent shall admit (1) that the merits of the factual dispute were not resolved in the State court hearing; (2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing; (3) that the material facts were not adequately developed at the State court hearing; (4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding; (5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding; (6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or (7) that the applicant was otherwise denied due process of law in the State court proceeding; (8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record. . . .