

"Good Law Day" began 10.31.2013. 07.04.2018	LAW OFFICES OF LALIT K JAIN ESQ Practice of Law in NY State, US Tax and District Courts, US Supreme Court, and all Courts in India.™	Fon: 718-255-6576 Cell: 718-316-5921 Fax: 347-637-5498
Claimer instead of Disclaimers: Let all live in truth Knowing Justice <i>always insures nature.</i> ™		

A Memorandum of Law ("LKJMOL") is for Justice by laws *correctly applied* ending Injustice by laws *misapplied.*™

The **issue** is to **make** laws *correctly applied* for policing as **mandatory Justice**¹ **penalize all threats of frivolous claims and defenses**² by laws *misapplied* for *mispolicing* as *discretionary Injustice.*³ **So be it.**

¹ **On Oct 31, 2013**, due process of law *ended all threats* to **mandatory Justice** by *discretionary Injustice:* "[p20] ...Court: ... I do find the defendant guilty...unless you [Jain] want to be heard... [p21] MR JAIN: Yes ... [p22]. Court...Parties *step up real quick.* (Whereupon a bench discussion was held) ... Court: After re-examining the statute more closely and...as I *reread it, many, many more times, my initial reading of it was incorrect.* [p23]. ...I *have to change* my verdict to not guilty ...¶ Court Officer: You are free to go." Docket No. 2012QN040877, NYS Queens County Criminal Court 25-page Transcript of *People v Onuorah.*

"...where a court has jurisdiction, it has a [licit] right to decide every question which occurs in the cause, and whether its decision [when acting *under* the law thus *with* authority in law] be correct or otherwise, its judgment is regarded as [otherwise dead wrong yet] binding in every other court. But if it act [above the law thus *without* authority in law], its judgments and orders are regarded as [dead wrong] nullities [("Nullities")]...all persons...executing such [void] judgments or sentences are considered in law as trespassers [("Outlaws") *without immunity*]. *Elliott v Lessee of Piersol*, 1828, JUSTICE TRIMBLE, 26 US (1 Pet.) 328, 340-341.

"A **void** act ... *may be attacked in any forum, state or federal, where its validity may be drawn in issue.*" *Pennoyer v Neff*, 1878, 95 US 714, 732-733, *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286.

"When rule providing for relief from **void judgments** is applicable, relief is *not a discretionary* matter, but is **mandatory** [for Outlaws to return to their prey *all* property *held in deemed constructive trust for their prey's benefit* ("Mandatory Relief") and *even pay punitive damages*]. *Orner v Shalala*, Colo. 1994, 30 F3d 1307.

² **Misuse** of marriage to prove paternity that it doesn't prove *is the seminal frivolous claim and defense* in all paternity disputes that is the illicit father of *all other frivolous claims and defenses* in all other disputes, *isn't it?* The *self-correcting Oct 31, 2013 judicious u-turn ended it all* for jurists to not protect policemen who protect rapists as the predators instead of their helpless victims as their prey but begin to protect We the People instead.

On Oct 08, 1889 in *Riggs v Palmer* reported as 1889, 115 NY 506, 511-512, the Court **promised** as follows **to end** due process of law *always after, never before, making the injurers make their injureds whole as before:* "No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime [as the self-proving injurer]. These maxims are dictated by **public policy [correctly made and enforced]**, have their foundation in [as one sows so one reaps] universal law [correctly] administered [512]..., and have nowhere been superseded by statutes."

³ A "petition...is **rarely granted** when the asserted *error* consists of *erroneous factual findings* or the *misapplication of a properly stated rule of law.*" Rule 10 of the US Supreme Court **misapplying** the Constitution.

"...if two policemen see a rape and watch it just for their own [official] amusement [from politically correct immunized right to rape as the State Created Danger for the prey sold as the State Confirmed Security for the predator is] no violation of the Constitution [misapplied]...*(laughter).*" **May It Please the Court...** Transcripts of...Landmark Cases before the Supreme Court...1993, pp 39-60 at pp 46-47; Please hear this **Nov 2, 1988 confession without correction** by **Chief Justice Rehnquist** **shocking the conscience** in a **physical, not sexual, abuse case** of a baby boy by his father to make *DeShaney v Winnebago County* reported as 489 US 189 the 1989 *landmark case of discretionary Injustice.* It is archived at <http://tinyurl.com/pnu9lrj> at 39:00 to 41:00 minutes.

In 1997, A Matter of Interpretation, Federal Courts and the Law, p6 and p9, Justice Scalia **also confessed:** "...But if you think that it is terribly important that the case came out wrong, *you miss the point* of the common law. In the grand scheme of [injurers], whether the right party won is really secondary. Famous old cases are famous...not because they came out right, but because the *rule of law* they announced was the intelligent one ...Common-law courts performed **two [exact opposite yet equally right]** functions: One was to [correctly] apply the law to the facts....But the *second...more important one* was to [misapply the law **making a lie the law**] on a *case by case basis* (at p.6)]...and thus the common-law tradition [**of 24/7 lying**] is passed on (at p.9)]...."

← ELLIOTT ET AL. v. PEIRSON ET AL., 26 US 328 - Supreme Court

 **Read** How cited

26 U.S. 328 (____)

1 Pet. 328

JAMES ELLIOTT THE YOUNGER, BENJAMIN ELLIOTT, ANDERSON TAYLOR, REUBEN PATER, PATSEY ELLIOTT, AND WILFORD LEPELL, vs. THE LESSEE OF WILLIAM PEIRSON, LYDIA PEIRSON, ANN NORTH, JANE NORTH, SOPHIA NORTH, ELIZABETH F.P. NORTH, AND WILLIAM NORTH, DEFENDANTS IN ERROR.

Supreme Court of United States.

331 *331 Mr. Wirt, Attorney General, for the plaintiffs in error.

Mr. Wickliffe, for the defendants in error. —

333 *333 Mr. Justice TRIMBLE delivered the opinion of the Court. —

This is an action of ejectment, brought in the Circuit Court for the district of Kentucky, by the lessors of the defendant in error, and against the plaintiffs in error, who were defendants in the Court below.

The lessors of the plaintiff, in that Court, claimed the land in controversy, as heirs at law of Sarah G. Elliott, formerly Sarah G. Peart, deceased; who, in her lifetime, had intermarried with the defendant, James Elliott. The defendants claimed by virtue of a deed of conveyance, made by James Elliott and Sarah G. Elliott his wife, in her lifetime, to Benjamin Elliott, and a deed reconveying the land from Benjamin Elliott to James Elliott.

On the trial of the general issue between the parties, the defendants took a bill of exceptions to certain opinions of the Court, in overruling motions made by the defendants for instructions, &c., and in granting instructions to the jury, moved by the

334 *334 plaintiff, in the progress of the trial; and, a verdict and judgment having been rendered against the defendants, they have brought the case before this Court by writ of error.

The bill of exceptions states, "that upon the trial of this case, the plaintiffs read as evidence, a patent from the commonwealth to Griffin Peart, dated the 1st of May 1781, covering the land in controversy, (which patent is made part of the bill of exceptions,) and sundry depositions, taken and filed in the cause, (also made part of the bill of exceptions;) and proved that, upon a division of the land granted to Griffin Peart, by said patent, the part in contest was allotted to the late Sarah G. Elliott, formerly Sarah G.

Peart, and that she was seised thereof in severalty: that the said Sarah G. Elliott died, before the institution of this suit, about the year 1822, without issue; and that the defendants were in possession of the land, allotted to her as aforesaid. And after the plaintiffs had closed their evidence, touching their derivation of title, the defendants, as they had reserved the right to do, moved the Court to instruct the jury, that the evidence adduced on the part of the plaintiffs, was in sufficient to prove title in the lessors of the plaintiffs, and that the same ought to be rejected; but the Court refused so to instruct, or to exclude the evidence; and, on the contrary, instructed the jury that the said evidence, if believed by them, was *prima facie* evidence, that the lessors were the legal heirs of the patentee, Griffin Peart, &c. To which opinion of the Court, in all its parts, the defendants except.

The defendants then gave in evidence, the deed of conveyance from Sarah G. Elliott and her husband, to Benjamin Elliott, (dated the 12th day of June 1813,) for the land in contest, and the deed from Benjamin Elliott, to the said James, together with all the endorsements upon, and authentications annexed to the first mentioned deed; which endorsements and authentications are in the following words and figures, to wit: —

"Acknowledged by James Elliott & Sarah G. Elliott. September 11th, 1813.

Attest — J. M'KINNEY, JR. Clerk." "Woodford County, sct. September 11th, 1813.

This deed, from James Elliott, and Sarah G. Elliott his wife, to Benjamin Elliott, was this day produced before me, and acknowledged by said James and Sarah to be their act and deed, and the same is duly recorded.

JOHN M'KINNEY, JR. C.W.C.C.' "Woodford County, sct. November County Court, 1823.

"On motion of Benjamin Elliott, by his attorney, and it appearing to the satisfaction of the Court, by the endorsement on the deed from James Elliott and wife, to him, under date of 12th June 1813, and by parol proof, that said deed was acknowledged ^{*335} in due form of law by Sarah G. Elliott, before the clerk of this Court, on the 11th of September 1813; but that the certificate thereof was defectively made out: It is ordered, that the said certificate be amended to conform to the provisions of the law in such cases, and that said deed and certificate, as amended, be again recorded. Whereupon said certificate was directed to be amended, so as to read as follows, to wit: —

"Woodford County, sct. September 11th, 1813.

This day, the within named James Elliott, and Sarah G. Elliott his wife, appeared before me, the clerk of the Court of the county aforesaid, and acknowledged the within indenture, to be their act and deed: and the said Sarah being first examined, privily and apart from her husband, did declare, that she freely and willingly sealed the said writing, which was then shown and explained to her by me, and wished not to retract it, but consented that it should be recorded. The said deed, order of Court, and certificate, as directed to be amended, are all duly recorded in my office.

Attest — JOHN M'KINNEY, JR. C.W.C.C."

It was proved by John M'Kinney, a witness examined on the part of the defendants, that

the endorsement made on the back of the deed, from Elliott and wife, to Benjamin Elliott, in these words, to wit: — "Acknowledged by James Elliott and Sarah G. Elliott. September 11th, 1813.

Attest — J. M'KINNEY, Clerk;"

Was in the hand writing of the said clerk of the Woodford County Court, and was the minute made by him, at the time said deed was acknowledged; and it was also proved, that the certificate of the acknowledgment and recording of the said deed, endorsed on said deed, was, at some subsequent time, written and drawn out by a deputy of said clerk, from the said minute. And the clerk deposed, that although he had not a particular recollection of all the facts, that he remembered the circumstances of James Elliott and his wife coming to his office to acknowledge said deed: that he knew what his duty required in such cases, and that the acknowledgment and privy examination, and an explanation of the instrument to her, was requisite, in order to its being recorded as to her. And that he did not doubt he had done his duty in this instance, and that said deed had been acknowledged by Mrs. Elliott, in all respects. Other parol evidence was given, conducing to prove, that, in point of fact, the said deed from Elliott and his wife, was regularly acknowledged by the wife before the clerk, upon his privy examination of her.

The said M'Kinney, upon cross-examination, further proved, that after the said deed and certificate of the acknowledgment *336 thereof, had been recorded, and in the lifetime of Mrs. Elliott, he had, at the instance of her counsel, made out a true copy of the record of said deed, and certificate of the acknowledgment thereof, by Elliott and wife, as they were then upon the record; which copy, the plaintiff gave in evidence: that after the death of Mrs. Elliott, application was made to him, by the counsel of the defendants, to alter the certificate of the acknowledgment of the deed from Elliott and wife, to Benjamin Elliott, so as to state her privy examination; but which he declined. It was also proved, that the deed had remained in the possession of the clerk, from the time of its first acknowledgment, till after the certificate ordered by the County Court, was made upon it.

After the defendants had closed the evidence on their side, which was as above stated; the Court, upon the motion of the plaintiffs' counsel, instructed the jury, that the parol evidence which had been given on the part of the defendants, conducing to show a privy examination of Mrs. Elliott, was incompetent for that purpose: that a privy examination and acknowledgment of a feme covert, so as to pass or convey her estate, could not, legally, be proved by parol testimony, but by record; and that although they might believe, from the parol evidence, that said deed had been acknowledged by Mrs. Elliott, in all due form of law, upon her privy examination, and all proper explanations given to her; yet, it constituted no defence to the action, unless such privy examination had been duly certified and recorded.

The Court further instructed the jury, that the certificate of the acknowledgment of said deed, by Elliott and wife; and the after certificate, by order of the County Court, of her privy examination; were not sufficient, in law, to pass her estate; because, the first shows no privy examination, and the County Court had no jurisdiction to order the second to be made. To all which opinions, and decision of the Court, the defendants except, &c.

It is argued, by the learned counsel in this Court, that the motion of the defendants to exclude the evidence adduced on the part of the plaintiffs, or to instruct the jury that it was insufficient to prove title in the lessors of the plaintiff, ought to have been granted. The argument in this Court has not put the question on the ground, that taking the whole of the plaintiff's evidence together, touching the derivation of the title of the lessors of the plaintiff, it is insufficient to deduce the title to them down from the patentee, though Sarah S. Elliott, who was seised thereof in severalty.

We have however reviewed the evidence, with a view to that question, and are satisfied it is sufficient for that purpose.

337 The ground of argument relied on here, is, that a part of the ³³⁷ evidence was incompetent and inadmissible. It is said, that so much of the depositions as detail Mrs. Elliott's conversations, concerning the manner of her acknowledgment of the deed, and so much of Mrs. Braugh's deposition, as speaks of the letter of her deceased husband, and the letter itself, made part of her deposition were incompetent, and ought to have been rejected; and that the reservation of the right to move to reject the evidence, admitted in the bill of exceptions, shows that the defendants' counsel, had the right to insist upon the rejection of any part of the evidence, as incompetent. The argument admits of several answers deemed satisfactory. Mrs. Elliott's conversation, detailed in some of the depositions, in relation to the defendant's deed, can by no fair construction be brought within the motion. It related not to the title of the lessors of the plaintiff, but to supposed defects in the title of the defendants: and to use the language of the bill of exceptions, it was the plaintiff's evidence "touching the derivation of the title of the lessors of the plaintiff," which the defendants moved to exclude. Besides, at that stage of the case, the defendants had not introduced the deed; and when we come to consider the defendants' title, after the deed was introduced, it will appear, that Mrs. Elliott's declarations could in no manner have influenced the verdict, and were therefore harmless. We are not prepared to admit, that Mrs. Braugh's letter, on the subject of the family pedigree, proved by her evidence, and made part of her deposition, was not competent evidence to be left to the jury upon a question of pedigree or heirship. She was an aged member of the family, and traces back the pedigree, and several branches of the family, for about seventy years.

The rule of evidence, that in questions of pedigree the declarations of aged and deceased members of the family may be proved, and given in evidence, has not been controverted. But it is argued, that this rule is qualified by this exception — that declarations, made post litem motam, cannot be given in evidence; and it is insisted this case comes within the exception; for although no suit had been commenced, yet a controversy had arisen, or was expected to arise.

We doubt the application of the exception to this case. A controversy had arisen, or was expected to arise, between the heirs of Mrs. Elliott, and the defendants, concerning the validity of the deed of Mrs. Elliott, made while she was a feme covert. But it does not appear, that any controversy had arisen, or was expected to arise, about who were her heirs. The lis mota, if it existed, was not, who were heirs, but, whether Mrs. Elliott's deed made a good title against the heirs, whoever they might be. It is not necessary, however,

338

to give any ^{*338} positive opinion on this point, as other grounds exist upon which the motion was rightfully overruled.

It is conceded that the defendants' counsel had a right to move the Court below to exclude any part of the plaintiff's evidence, which he might choose to designate as incompetent; but it is not admitted that he exercised that right. It does not appear, from the bill of exceptions, that he designated any particular piece or part of the evidence, as objectionable, and moved the Court to exclude it. But on the contrary, resting his case upon the assumption, that the whole evidence of the plaintiffs, taken together, was either incompetent, or insufficient, he moved the Court either to exclude the whole, or to instruct the jury that the whole was insufficient to prove title in the lessors of the plaintiff. This could not be done, on the ground of incompetency, unless the whole was incompetent, which is not pretended; the Court was not bound to do more, than respond to the motion, in the terms in which it was made. Courts of justice are not obliged to modify the propositions submitted by counsel, so as to make them fit the case. If they do not fit, that is enough to authorize their rejection. We have already said, the evidence, taken all together, was sufficient to prove title in the lessors of the plaintiff. If any part of it was incomplete, the Court might, on a general motion to exclude the whole, have excluded such parts; but the Court was not obliged to do so. There is therefore no error in the decision of the Circuit Court, overruling the motion of the defendants; nor in the instructions given to the jury, upon that motion.

We now proceed to an examination of the questions arising out of the instructions given to the jury, on the motion of the plaintiffs, in relation to the deed of James Elliott and Sarah G. Elliott his wife, to Benjamin Elliott; set up by the defendants in their defence.

The general question involved in the first instruction, is, can the privy examination, and acknowledgment of a deed, by a feme covert so as to pass or convey her estate, be legally proved by parol testimony? We hold that they cannot.

By the principles of the common law, a married woman can in general, do no act to bind her; she is said to be sub potestate viri, and subject to his will and control. Her acts are not like those of infants, and some other disabled persons, voidable only; but are, in general, absolutely void ab initio.

In Virginia and Kentucky, the solemn modes of conveyance by fine and common recovery, have never been in common use; and in those states, the capacity of a feme covert to convey her estate by deed, is the creature of statute law; and to make her deed effectual, the forms and solemnities, prescribed by the statutes, must be pursued.

339

^{*339} The Virginia statute of 1748, ch. 1st, after making provisions to enable feme coverts to convey their estates by deed, upon acknowledgment and privy examination, according to prescribed forms; in the 7th section, has these words — "Whereas, it has always been adjudged, that where any deed has been acknowledged by a feme covert, and no record made of her privy examination, such deed is not binding upon the feme and her heirs." The 8th section enacts and declares, "That the law herein, shall always be held according to the said judgments, and shall never hereafter be questioned, &c."

This law was adopted by Kentucky at her separation from Virginia, and is understood never to have been repealed.

The 4th section of the Kentucky statute of 1796, (see 1 Litt. Laws, p. 569,) provides for the privy examination and acknowledgment of feme covert in open Court, and where they cannot conveniently attend; authorizes a commission to issue to two justices to take and certify the acknowledgment and privy examination; and declares, that "In either case, the said writing acknowledged by the husband, and proved by witnesses to be his act, and recorded, together with such privy examination and acknowledgment, &c., shall not only be sufficient to convey or release any right of dower, &c., but be as effectual for every other purpose, as if she were an unmarried woman."

The 1st section of this Act, authorizes clerks of the County Courts, General Court, and Court of Appeals, to take, in their offices, the acknowledgment or proof of the execution of deeds, and to record them, upon acknowledgments or proofs, so taken by themselves; but did not authorize them to take the acknowledgment and privy examination of feme coverts.

But, by a subsequent statute, clerks are authorized to take, in their offices, the "acknowledgment of all deeds, according to law." And the Act of 1810, (4 Litt. Ky. Laws, 165,) which authorizes the clerk of one county to take and certify the acknowledgment of a deed to be recorded by the clerk of another county where the land lies, &c., declares, that "if the due acknowledgment, or privy examination of the wife, &c., shall have been taken, &c. by the clerk receiving the acknowledgment of the deed, &c., and that being duly certified with the deed, and recorded, shall transfer such wife's estate, &c." as fully, as if the examination had been made by the Court, or the clerk in whose office the deed shall be recorded.

It is by construction of these last recited laws, that the clerks are held, in Kentucky, to be authorized to take the acknowledgments and privy examinations of feme coverts, in all cases of deeds made by them and their husbands.

The Kentucky statutes, above recited, show clearly, that the legislature of that state has never lost sight of the principle declared ³⁴⁰ by the Virginia statute of 1748: "That when any deed has been acknowledged, by a feme covert, and no record made of her privy examination, such deed is not binding upon the feme and her heirs."

340

What the law requires to be done, and appear of record, can only be done and made to appear by the record itself, or an exemplification of the record. It is perfectly immaterial whether there be an acknowledgment, or privy examination in fact or not, if there be no record made of the privy examination; for, by the express provisions of the law, it is not the fact of privy examination merely, but the recording of the fact, which makes the deed effectual to pass the estate of a feme covert.

It is now only necessary to state the second instruction given to the jury on the plaintiffs' motion, to manifest its entire correctness. It was, "that the first certificate of the acknowledgment and recording of the deed of Elliott and wife, was not sufficient in law to pass her estate; because, it showed no privy examination of the feme."

The last instruction given by the Court to the jury presents a question of more difficulty. It is, "that the after certificate, made by order of the County Court, of her privy examination, is insufficient, in law, to pass her estate; because the County Court had no jurisdiction or authority to order the said second certificate to be made."

It is argued, that the Circuit Court of the United States had no authority to question the jurisdiction of the County Court of Woodford county; and that its proceedings were conclusive upon the matter, whether erroneous or not.

We agree, that if the County Court had jurisdiction, its decision would be conclusive. But we cannot yield an assent to the proposition, that the jurisdiction of the County Court could not be questioned, when its proceedings were brought, collaterally, before the Circuit Court. We know nothing in the organization of the Circuit Courts of the Union, which can contradistinguish them from other Courts, in this respect.

Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.

This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority ^{*341} over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings.

It is well known that the jurisdiction and authority of the County Courts of Kentucky are derived wholly, from the statute law of the state. In argument, we were referred to no statute which was supposed, either in terms, or by fair construction, to confer upon the County Court any supervising or controlling power over the acts of the clerk, in taking, in his office, the acknowledgment of a deed, or in recording it, upon an acknowledgment there taken by him. We have sought in vain for such a provision, and it is believed none such exists. No such supervising and controlling power can result to the Court, from the general relations which exist between a Court and its clerk; for in this case, the statutes confer upon the clerk, in his office, a distinct, independent, personal authority, to be exercised by him upon his own judgment and responsibility. We think, therefore, with the Circuit Court that the County Court had no jurisdiction or authority to order the after certificate of Mrs. Elliott's privy examination to be made and recorded.

But the argument, which seemed to be relied on most confidently by the learned counsel, is, that the order of the County Court may be disregarded; and the amendment considered as an amendment made by the clerk, of his own authority, and that the clerk was authorized to amend his own certificate, and record, at any time.

It would be difficult to maintain that the second certificate, or amendment as it is called, could rightfully be regarded as the clerk's own act, independent of the order of the

County Court; it appearing that he refused to do the act until the order was made. But be it so.

Had the clerk authority to alter the record of his certificate of the acknowledgment of the deed, at any time after the record was made? We are of opinion he had not.

We are of opinion he acted ministerially, and not judicially, in the matter. Until his certificate of the acknowledgment of Elliott and wife was recorded, it was, in its nature, but an act in pais, and alterable at the pleasure of the officer. But the authority of the clerk to make and record a certificate of the acknowledgment of the deed, was functus officio, as soon as the record was made. By the exertion of his authority, the authority itself became exhausted. The act had become matter of record, fixed, permanent, and unalterable; and the remaining powers and duty of the clerk were only to keep, and preserve the record safely.

342 If a clerk may, after a deed, together with the acknowledgment ^{*342} or probate thereof have been committed to record, under colour of amendment, add any thing to the record of the acknowledgment, we can see no just reason why he may not also subtract from it.

The doctrine that a clerk may, at any time, without limitation alter the record of the acknowledgment of a deed, made in his office, would be, in practice, of very dangerous consequence to the land titles of the county, and cannot receive the sanction of this Court.

It is the opinion of this Court, that there is no error in the judgment and proceedings of the Circuit Court, and the same are affirmed, with costs.

← Pennoyer v. Neff, 95 US 714 - Supreme Court 1878

 [Read](#) [How cited](#)

95 U.S. 714 (____)

PENNOYER
v.
NEFF.

Supreme Court of United States.

719 *719 Mr. W.F. Trimble for the plaintiff in error.

Mr. James K. Kelly, contra.

MR. JUSTICE FIELD delivered the opinion of the court.

This is an action to recover the possession of a tract of land, of the alleged value of \$15,000, situated in the State of Oregon. The plaintiff asserts title to the premises by a patent of the United States issued to him in 1866, under the act of Congress of Sept. 27, 1850, usually known as the Donation Law of Oregon. The defendant claims to have acquired the premises under a sheriff's deed, made upon a sale of the property on execution issued upon a judgment recovered against the plaintiff in one of the circuit courts of the State. The case turns upon the validity of this judgment.

It appears from the record that the judgment was rendered in February, 1866, in favor of J.H. Mitchell, for less than \$300, including costs, in an action brought by him upon a demand for services as an attorney; that, at the time the action was commenced and the judgment rendered, the defendant therein, the plaintiff here, was a non-resident of the State

*720 that he was not personally served with process, and did not appear therein; and that the judgment was entered upon his default in not answering the complaint, upon a constructive service of summons by publication.

The Code of Oregon provides for such service when an action is brought against a non-resident and absent defendant, who has property within the State. It also provides, where the action is for the recovery of money or damages, for the attachment of the property of the non-resident. And it also declares that no natural person is subject to the jurisdiction of a court of the State, "unless he appear in the court, or be found within the State, or be a resident thereof, or have property therein; and, in the last case, only to the extent of such property at the time the jurisdiction attached." Construing this latter provision to mean, that, in an action for money or damages where a defendant does not appear in the court, and is not found within the State, and is not a resident thereof, but has property therein, the jurisdiction of the court extends only over such property, the declaration expresses a principle of general, if not universal, law. The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is

established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse. [D'Arcy v. Ketchum et al., 11 How. 165](#). In the case against the plaintiff, the property here in controversy sold under the judgment rendered was not attached, nor in any way brought under the jurisdiction of the court. Its first connection with the case was caused by a levy of the execution. It was not, therefore, disposed of pursuant to any adjudication, but only in enforcement of a personal judgment, having no relation to the property, rendered against a non-resident without service of process upon him in the action, or his appearance therein. The court below did not consider that an attachment of the property was essential to its jurisdiction or to the validity of the sale, but held that the judgment was invalid from defects in the affidavit upon which the order of publication was obtained, and in the affidavit by which the publication was proved.

721 *721 There is some difference of opinion among the members of this court as to the rulings upon these alleged defects. The majority are of opinion that inasmuch as the statute requires, for an order of publication, that certain facts shall appear by affidavit to the satisfaction of the court or judge, defects in such affidavit can only be taken advantage of on appeal, or by some other direct proceeding, and cannot be urged to impeach the judgment collaterally. The majority of the court are also of opinion that the provision of the statute requiring proof of the publication in a newspaper to be made by the "affidavit of the printer, or his foreman, or his principal clerk," is satisfied when the affidavit is made by the editor of the paper. The term "printer," in their judgment, is there used not to indicate the person who sets up the type, — he does not usually have a foreman or clerks, — it is rather used as synonymous with publisher. The Supreme Court of New York so held in one case; observing that, for the purpose of making the required proof, publishers were "within the spirit of the statute." [Bunce v. Reed, 16 Barb. \(N.Y.\) 350](#). And, following this ruling, the Supreme Court of California held that an affidavit made by a "publisher and proprietor" was sufficient. [Sharp v. Daugney, 33 Cal. 512](#). The term "editor," as used when the statute of New York was passed, from which the Oregon law is borrowed, usually included not only the person who wrote or selected the articles for publication, but the person who published the paper and put it into circulation. Webster, in an early edition of his Dictionary, gives as one of the definitions of an editor, a person "who superintends the publication of a newspaper." It is principally since that time that the business of an editor has been separated from that of a publisher and printer, and has become an independent profession.

If, therefore, we were confined to the rulings of the court below upon the defects in the affidavits mentioned, we should be unable to uphold its decision. But it was also contended in that court, and is insisted upon here, that the judgment in the State court against the plaintiff was void for want of personal service of process on him, or of his appearance in the action in which it was rendered, and that the premises in controversy could not be subjected to the payment of the demand *722 of a resident creditor except by a proceeding in rem; that is, by a direct proceeding against the property for that purpose. If these positions are sound, the ruling of the Circuit Court as to the invalidity of that judgment must be sustained, notwithstanding our dissent from the reasons upon which it was made. And that they are sound would seem to follow from two well-

722

established principles of public law respecting the jurisdiction of an independent State over persons and property. The several States of the Union are not, it is true, in every respect independent, many of the rights and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. Story, *Confl. Laws*, c. 2; *Wheat. Int. Law*, pt. 2, c. 2. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. "Any exertion of authority of this sort beyond this limit," says Story, "is a mere nullity, and incapable of binding ⁷²³ such persons or property in any other tribunals." Story, *Confl. Laws*, sect. 539.

723

But as contracts made in one State may be enforceable only in another State, and property may be held by non-residents, the exercise of the jurisdiction which every State is admitted to possess over persons and property within its own territory will often affect persons and property without it. To any influence exerted in this way by a State affecting persons resident or property situated elsewhere, no objection can be justly taken; whilst any direct exertion of authority upon them, in an attempt to give ex-territorial operation to its laws, or to enforce an ex-territorial jurisdiction by its tribunals, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property is situated, and be resisted as usurpation.

Thus the State, through its tribunals, may compel persons domiciled within its limits to execute, in pursuance of their contracts respecting property elsewhere situated, instruments in such form and with such solemnities as to transfer the title, so far as such formalities can be complied with; and the exercise of this jurisdiction in no manner interferes with the supreme control over the property by the State within which it is situated. [Penn v. Lord Baltimore, 1 Ves. 444](#); [Massie v. Watts, 6 Cranch, 148](#); [Watkins v. Holman, 16 Pet. 25](#); [Corbett v. Nutt, 10 Wall. 464](#).

So the State, through its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State

where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident ⁷²⁴ have no property in the State, there is nothing upon which the tribunals can adjudicate.

724

These views are not new. They have been frequently expressed, with more or less distinctness, in opinions of eminent judges, and have been carried into adjudications in numerous cases. Thus, in Picquet v. Swan, 5 Mas. 35, Mr. Justice Story said: —

"Where a party is within a territory, he may justly be subjected to its process, and bound personally by the judgment pronounced on such process against him. Where he is not within such territory, and is not personally subject to its laws, if, on account of his supposed or actual property being within the territory, process by the local laws may, by attachment, go to compel his appearance, and for his default to appear judgment may be pronounced against him, such a judgment must, upon general principles, be deemed only to bind him to the extent of such property, and cannot have the effect of a conclusive judgment in personam, for the plain reason, that, except so far as the property is concerned, it is a judgment *coram non judice*."

And in Boswell's Lessee v. Otis, 9 How. 336, where the title of the plaintiff in ejectment was acquired on a sheriff's sale, under a money decree rendered upon publication of notice against non-residents, in a suit brought to enforce a contract relating to land, Mr. Justice McLean said: —

"Jurisdiction is acquired in one of two modes: first, as against the person of the defendant by the service of process; or, secondly, by a procedure against the property of the defendant within the jurisdiction of the court. In the latter case, the defendant is not personally bound by the judgment beyond the property in question. And it is immaterial whether the proceeding against the property be by an attachment or bill in chancery. It must be substantially a proceeding in rem."

These citations are not made as authoritative expositions of the law; for the language was perhaps not essential to the decision of the cases in which it was used, but as expressions of the opinion of eminent jurists. But in Cooper v. Reynolds, reported in the 10th of Wallace, it was essential to the disposition of the case to declare the effect of a personal action against an absent party, without the jurisdiction of the court, not served ⁷²⁵ with process or voluntarily submitting to the tribunal, when it was sought to subject his property to the payment of a demand of a resident complainant; and in the opinion there delivered we have a clear statement of the law as to the efficacy of such actions, and the jurisdiction of the court over them. In that case, the action was for damages for alleged false imprisonment of the plaintiff; and, upon his affidavit that the defendants had fled from the State, or had absconded or concealed themselves so that the ordinary process of law could not reach them, a writ of attachment was sued out against their property. Publication was ordered by the court, giving notice to them to appear and

725

plead, answer or demur, or that the action would be taken as confessed and proceeded in ex parte as to them. Publication was had; but they made default, and judgment was entered against them, and the attached property was sold under it. The purchaser having been put into possession of the property, the original owner brought ejectment for its recovery. In considering the character of the proceeding, the court, speaking through Mr. Justice Miller, said: —

"Its essential purpose or nature is to establish, by the judgment of the court, a demand or claim against the defendant, and subject his property lying within the territorial jurisdiction of the court to the payment of that demand. But the plaintiff is met at the commencement of his proceedings by the fact that the defendant is not within the territorial jurisdiction, and cannot be served with any process by which he can be brought personally within the power of the court. For this difficulty the statute has provided a remedy. It says that, upon affidavit being made of that fact, a writ of attachment may be issued and levied on any of the defendant's property, and a publication may be made warning him to appear; and that thereafter the court may proceed in the case, whether he appears or not. If the defendant appears, the cause becomes mainly a suit in personam, with the added incident, that the property attached remains liable, under the control of the court, to answer to any demand which may be established against the defendant by the final judgment of the court. But if there is no appearance of the defendant, and no service of process on him, the case becomes in its essential nature a proceeding in rem, the only effect of which is to subject the property attached to the payment of the demand which the court may find to be due to the plaintiff. That such is ⁷²⁶ the nature of this proceeding in this latter class of cases is clearly evinced by two well-established propositions: first, the judgment of the court, though in form a personal judgment against the defendant, has no effect beyond the property attached in that suit. No general execution can be issued for any balance unpaid after the attached property is exhausted. No suit can be maintained on such a judgment in the same court, or in any other; nor can it be used as evidence in any other proceeding not affecting the attached property; nor could the costs in that proceeding be collected of defendant out of any other property than that attached in the suit. Second, the court, in such a suit, cannot proceed, unless the officer finds some property of defendant on which to levy the writ of attachment. A return that none can be found is the end of the case, and deprives the court of further jurisdiction, though the publication may have been duly made and proven in court."

The fact that the defendants in that case had fled from the State, or had concealed themselves, so as not to be reached by the ordinary process of the court, and were not non-residents, was not made a point in the decision. The opinion treated them as being without the territorial jurisdiction of the court; and the grounds and extent of its authority over persons and property thus situated were considered, when they were not brought within its jurisdiction by personal service or voluntary appearance.

The writer of the present opinion considered that some of the objections to the preliminary proceedings in the attachment suit were well taken, and therefore dissented from the judgment of the court; but to the doctrine declared in the above citation he agreed, and he may add, that it received the approval of all the judges. It is the only

doctrine consistent with proper protection to citizens of other States. If, without personal service, judgments in personam, obtained ex parte against non-residents and absent parties, upon mere publication of process, which, in the great majority of cases, would never be seen by the parties interested, could be upheld and enforced, they would be the constant instruments of fraud and oppression. Judgments for all sorts of claims upon contracts and for torts, real or pretended, would be thus obtained, under which property would be seized, when the evidence of the transactions upon ^{*727} which they were founded, if they ever had any existence, had perished.

727

Substituted service by publication, or in any other authorized form, may be sufficient to inform parties of the object of proceedings taken where property is once brought under the control of the court by seizure or some equivalent act. The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the State, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings in rem. But where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely in personam, constructive service in this form upon a non-resident is ineffectual for any purpose. Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the State where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability.

728

The want of authority of the tribunals of a State to adjudicate upon the obligations of non-residents, where they have no property within its limits, is not denied by the court below: but the position is assumed, that, where they have property within the State, it is immaterial whether the property is in the first instance brought under the control of the court by attachment or some other equivalent act, and afterwards applied by its judgment to the satisfaction of demands against its owner; or such demands be first established in a personal action, and ^{*728} the property of the non-resident be afterwards seized and sold on execution. But the answer to this position has already been given in the statement, that the jurisdiction of the court to inquire into and determine his obligations at all is only incidental to its jurisdiction over the property. Its jurisdiction in that respect cannot be made to depend upon facts to be ascertained after it has tried the cause and rendered the judgment. If the judgment be previously void, it will not become valid by the subsequent discovery of property of the defendant, or by his subsequent acquisition of it. The judgment if void when rendered, will always remain void: it cannot occupy the doubtful position of being valid if property be found, and void if there be none. Even if the position assumed were confined to cases where the non-resident defendant possessed property in the State at the commencement of the action, it would

still make the validity of the proceedings and judgment depend upon the question whether, before the levy of the execution, the defendant had or had not disposed of the property. If before the levy the property should be sold, then, according to this position, the judgment would not be binding. This doctrine would introduce a new element of uncertainty in judicial proceedings. The contrary is the law: the validity of every judgment depends upon the jurisdiction of the court before it is rendered, not upon what may occur subsequently. In [Webster v. Reid](#), reported in 11th of Howard, the plaintiff claimed title to land sold under judgments recovered in suits brought in a territorial court of Iowa, upon publication of notice under a law of the territory, without service of process; and the court said: —

"These suits were not a proceeding in rem against the land, but were in personam against the owners of it. Whether they all resided within the territory or not does not appear, nor is it a matter of any importance. No person is required to answer in a suit on whom process has not been served, or whose property has not been attached. In this case, there was no personal notice, nor an attachment or other proceeding against the land, until after the judgments. The judgments, therefore, are nullities, and did not authorize the executions on which the land was sold."

729

*729 The force and effect of judgments rendered against non-residents without personal service of process upon them, or their voluntary appearance, have been the subject of frequent consideration in the courts of the United States and of the several States, as attempts have been made to enforce such judgments in States other than those in which they were rendered, under the provision of the Constitution requiring that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State;" and the act of Congress providing for the mode of authenticating such acts, records, and proceedings, and declaring that, when thus authenticated, "they shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are or shall be taken." In the earlier cases, it was supposed that the act gave to all judgments the same effect in other States which they had by law in the State where rendered. But this view was afterwards qualified so as to make the act applicable only when the court rendering the judgment had jurisdiction of the parties and of the subject-matter, and not to preclude an inquiry into the jurisdiction of the court in which the judgment was rendered, or the right of the State itself to exercise authority over the person or the subject-matter.

[M'Elmoyle v. Cohen](#), 13 Pet. 312. In the case of [D'Arcy v. Ketchum](#), reported in the 11th of Howard, this view is stated with great clearness. That was an action in the Circuit Court of the United States for Louisiana, brought upon a judgment rendered in New York under a State statute, against two joint debtors, only one of whom had been served with process, the other being a non-resident of the State. The Circuit Court held the judgment conclusive and binding upon the non-resident not served with process; but this court reversed its decision, observing, that it was a familiar rule that countries foreign to our own disregarded a judgment merely against the person, where the defendant had not been served with process nor had a day in court; that national comity was never thus extended; that the proceeding was deemed an illegitimate assumption of power, and resisted as mere abuse; that no faith and credit or force and effect had been given to such judgments by any State of the Union, so far *730 as known; and that the State

730

courts had uniformly, and in many instances, held them to be void. "The international law," said the court, "as it existed among the States in 1790, was that a judgment rendered in one State, assuming to bind the person of a citizen of another, was void within the foreign State, when the defendant had not been served with process or voluntarily made defence; because neither the legislative jurisdiction nor that of courts of justice had binding force." And the court held that the act of Congress did not intend to declare a new rule, or to embrace judicial records of this description. As was stated in a subsequent case, the doctrine of this court is, that the act "was not designed to displace that principle of natural justice which requires a person to have notice of a suit before he can be conclusively bound by its result, nor those rules of public law which protect persons and property within one State from the exercise of jurisdiction over them by another." [The Lafayette Insurance Co. v. French et al., 18 How. 404.](#)

This whole subject has been very fully and learnedly considered in the recent case of [Thompson v. Whitman, 18 Wall. 457](#), where all the authorities are carefully reviewed and distinguished, and the conclusion above stated is not only reaffirmed, but the doctrine is asserted, that the record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction against its recital of their existence. In all the cases brought in the State and Federal courts, where attempts have been made under the act of Congress to give effect in one State to personal judgments rendered in another State against non-residents, without service upon them, or upon substituted service by publication, or in some other form, it has been held, without an exception, so far as we are aware, that such judgments were without any binding force, except as to property, or interests in property, within the State, to reach and affect which was the object of the action in which the judgment was rendered, and which property was brought under control of the court in connection with the process against the person. The proceeding in such cases, though in the form of a personal action, has been uniformly treated, where service was not obtained, and the party did not voluntarily ^{*731} appear, as effectual and binding merely as a proceeding in rem, and as having no operation beyond the disposition of the property, or some interest therein. And the reason assigned for this conclusion has been that which we have already stated, that the tribunals of one State have no jurisdiction over persons beyond its limits, and can inquire only into their obligations to its citizens when exercising its conceded jurisdiction over their property within its limits. In [Bissell v. Briggs](#), decided by the Supreme Court of Massachusetts as early as 1813, the law is stated substantially in conformity with these views. In that case, the court considered at length the effect of the constitutional provision, and the act of Congress mentioned, and after stating that, in order to entitle the judgment rendered in any court of the United States to the full faith and credit mentioned in the Constitution, the court must have had jurisdiction not only of the cause, but of the parties, it proceeded to illustrate its position by observing, that, where a debtor living in one State has goods, effects, and credits in another, his creditor living in the other State may have the property attached pursuant to its laws, and, on recovering judgment, have the property applied to its satisfaction; and that the party in whose hands the property was would be protected by the judgment in the State of the debtor against a suit for it, because the court rendering the judgment had jurisdiction to that extent; but that if the property attached were insufficient to satisfy the judgment, and the creditor

should sue on that judgment in the State of the debtor, he would fail, because the defendant was not amenable to the court rendering the judgment. In other words, it was held that over the property within the State the court had jurisdiction by the attachment, but had none over his person; and that any determination of his liability, except so far as was necessary for the disposition of the property, was invalid.

In [Kilbourn v. Woodworth, 5 Johns. \(N.Y.\) 37](#), an action of debt was brought in New York upon a personal judgment recovered in Massachusetts. The defendant in that judgment was not served with process; and the suit was commenced by the attachment of a bedstead belonging to the defendant, accompanied with a summons to appear, served on his wife after she had left her place in Massachusetts. The court held that ⁷³² the attachment bound only the property attached as a proceeding in rem, and that it could not bind the defendant, observing, that to bind a defendant personally, when he was never personally summoned or had notice of the proceeding, would be contrary to the first principles of justice, repeating the language in that respect of Chief Justice DeGrey, used in the case of [Fisher v. Lane, 3 Wils. 297](#), in 1772. See also [Borden v. Fitch, 15 Johns. \(N.Y.\) 121](#), and the cases there cited, and [Harris v. Hardeman et al., 14 How. 334](#). To the same purport decisions are found in all the State courts. In several of the cases, the decision has been accompanied with the observation that a personal judgment thus recovered has no binding force without the State in which it is rendered, implying that in such State it may be valid and binding. But if the court has no jurisdiction over the person of the defendant by reason of his non-residence, and, consequently, no authority to pass upon his personal rights and obligations; if the whole proceeding, without service upon him or his appearance, is *coram non judice* and void; if to hold a defendant bound by such a judgment is contrary to the first principles of justice, — it is difficult to see how the judgment can legitimately have any force within the State. The language used can be justified only on the ground that there was no mode of directly reviewing such judgment or impeaching its validity within the State where rendered; and that, therefore, it could be called in question only when its enforcement was elsewhere attempted. In later cases, this language is repeated with less frequency than formerly, it beginning to be considered, as it always ought to have been, that a judgment which can be treated in any State of this Union as contrary to the first principles of justice, and as an absolute nullity, because rendered without any jurisdiction of the tribunal over the party, is not entitled to any respect in the State where rendered. [Smith v. McCutchen, 38 Mo. 415](#); [Darrance v. Preston, 18 Iowa, 396](#); [Hakes v. Shupe, 27 id. 465](#); [Mitchell's Administrator v. Gray, 18 Ind. 123](#).

Be that as it may, the courts of the United States are not required to give effect to judgments of this character when any right is claimed under them. Whilst they are not foreign tribunals in their relations to the State courts, they are tribunals ⁷³³ of a different sovereignty, exercising a distinct and independent jurisdiction, and are bound to give to the judgments of the State courts only the same faith and credit which the courts of another State are bound to give to them.

Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal

732

733

rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution — that is, by the law of its creation — to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.

Except in cases affecting the personal status of the plaintiff, and cases in which that mode of service may be considered to have been assented to in advance, as hereinafter mentioned, the substituted service of process by publication, allowed by the law of Oregon and by similar laws in other States, where actions are brought against non-residents, is effectual only where, in connection with process against the person for commencing the action, property in the State is brought under the control of the court, and subjected to its disposition by process adapted to that purpose, or where the judgment is sought as a means of reaching such property or affecting some interest therein; in other words, where the action is in the nature of a proceeding in rem. As stated by Cooley in his Treatise on Constitutional Limitations, 405, for any other purpose than to subject the property of a non-resident to valid claims against ⁷³⁴ him in the State, "due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered."

734

It is true that, in a strict sense, a proceeding in rem is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein. Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a mortgage, or enforce a lien. So far as they affect property in the State, they are substantially proceedings in rem in the broader sense which we have mentioned.

It is hardly necessary to observe, that in all we have said we have had reference to proceedings in courts of first instance, and to their jurisdiction, and not to proceedings in an appellate tribunal to review the action of such courts. The latter may be taken upon such notice, personal or constructive, as the State creating the tribunal may provide. They are considered as rather a continuation of the original litigation than the commencement of a new action. [Nations et al. v. Johnson et al., 24 How. 195.](#)

It follows from the views expressed that the personal judgment recovered in the State court of Oregon against the plaintiff herein, then a non-resident of the State, was without any validity, and did not authorize a sale of the property in controversy.

To prevent any misapplication of the views expressed in this opinion, it is proper to

observe that we do not mean to assert, by any thing we have said, that a State may not authorize proceedings to determine the status of one of its citizens towards a non-resident, which would be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil status and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory. The State, for example, has absolute ^{*735} right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved. One of the parties guilty of acts for which, by the law of the State, a dissolution may be granted, may have removed to a State where no dissolution is permitted. The complaining party would, therefore, fail if a divorce were sought in the State of the defendant; and if application could not be made to the tribunals of the complainant's domicile in such case, and proceedings be there instituted without personal service of process or personal notice to the offending party, the injured citizen would be without redress. Bish. Marr. and Div., sect. 156.

Neither do we mean to assert that a State may not require a non-resident entering into a partnership or association within its limits, or making contracts enforceable there, to appoint an agent or representative in the State to receive service of process and notice in legal proceedings instituted with respect to such partnership, association, or contracts, or to designate a place where such service may be made and notice given, and provide, upon their failure, to make such appointment or to designate such place that service may be made upon a public officer designated for that purpose, or in some other prescribed way, and that judgments rendered upon such service may not be binding upon the non-residents both within and without the State. As was said by the Court of Exchequer in Vallee v. Dumergue, 4 Exch. 290. "It is not contrary to natural justice that a man who has agreed to receive a particular mode of notification of legal proceedings should be bound by a judgment in which that particular mode of notification has been followed, even though he may not have actual notice of them." See also The Lafayette Insurance Co. v. French et al., 18 How. 404. and Gillespie v. Commercial Mutual Marine Insurance Co., 12 Gray (Mass.), 201. Nor do we doubt that a State, on creating corporations or other institutions for pecuniary or charitable purposes, may provide a mode in which their conduct may be investigated, their obligations enforced, or their charters revoked, which shall require other than personal service upon their officers or members. Parties becoming members of such corporations or institutions would hold their ^{*736} interest subject to the conditions prescribed by law. Copin v. Adamson, Law Rep. 9 Ex. 345.

In the present case, there is no feature of this kind, and, consequently, no consideration of what would be the effect of such legislation in enforcing the contract of a non-resident can arise. The question here respects only the validity of a money judgment rendered in one State, in an action upon a simple contract against the resident of another, without service of process upon him, or his appearance therein.

Judgment affirmed.

MR. JUSTICE HUNT dissenting.

I am compelled to dissent from the opinion and judgment of the court, and, deeming the question involved to be important, I take leave to record my views upon it.

The judgment of the court below was placed upon the ground that the provisions of the statute were not complied with. This is of comparatively little importance, as it affects the present case only. The judgment of this court is based upon the theory that the legislature had no power to pass the law in question; that the principle of the statute is vicious, and every proceeding under it void. It, therefore, affects all like cases, past and future, and in every State.

The precise case is this: A statute of Oregon authorizes suits to be commenced by the service of a summons. In the case of a non-resident of the State, it authorizes the service of the summons to be made by publication for not less than six weeks, in a newspaper published in the county where the action is commenced. A copy of the summons must also be sent by mail, directed to the defendant at his place of residence, unless it be shown that the residence is not known and cannot be ascertained. It authorizes a judgment and execution to be obtained in such proceeding. Judgment in a suit commenced by one Mitchell in the Circuit Court of Multnomah County, where the summons was thus served, was obtained against Neff, the present plaintiff; and the land in question, situate in Multnomah County, was bought by the defendant Pennoyer, at a sale upon the judgment in such suit. This court now holds, that, by reason of the absence of a personal service of ⁷³⁷ the summons on the defendant, the Circuit Court of Oregon had no jurisdiction, its judgment could not authorize the sale of land in said county, and, as a necessary result, a purchaser of land under it obtained no title; that, as to the former owner, it is a case of depriving a person of his property without due process of law.

737

In my opinion, this decision is at variance with the long-established practice under the statutes of the States of this Union, is unsound in principle, and, I fear, may be disastrous in its effects. It tends to produce confusion in titles which have been obtained under similar statutes in existence for nearly a century; it invites litigation and strife, and overthrows a well-settled rule of property.

The result of the authorities on the subject, and the sound conclusions to be drawn from the principles which should govern the decision, as I shall endeavor to show, are these:

—

1. A sovereign State must necessarily have such control over the real and personal property actually being within its limits, as that it may subject the same to the payment of debts justly due to its citizens.
2. This result is not altered by the circumstance that the owner of the property is non-resident, and so absent from the State that legal process cannot be served upon him personally.
3. Personal notice of a proceeding by which title to property is passed is not indispensable; it is competent to the State to authorize substituted service by publication or otherwise, as the commencement of a suit against non-residents, the judgment in

which will authorize the sale of property in such State.

4. It belongs to the legislative power of the State to determine what shall be the modes and means proper to be adopted to give notice to an absent defendant of the commencement of a suit; and if they are such as are reasonably likely to communicate to him information of the proceeding against him, and are in good faith designed to give him such information, and an opportunity to defend is provided for him in the event of his appearance in the suit, it is not competent to the judiciary to declare that such proceeding is void as not being by due process of law.

738 5. Whether the property of such non-resident shall be seized ^{*738} upon attachment as the commencement of a suit which shall be carried into judgment and execution, upon which it shall then be sold, or whether it shall be sold upon an execution and judgment without such preliminary seizure, is a matter not of constitutional power, but of municipal regulation only.

To say that a sovereign State has the power to ordain that the property of non-residents within its territory may be subjected to the payment of debts due to its citizens, if the property is levied upon at the commencement of a suit, but that it has not such power if the property is levied upon at the end of the suit, is a refinement and a depreciation of a great general principle that, in my judgment, cannot be sustained.

A reference to the statutes of the different States, and to the statutes of the United States, and to the decided cases, and a consideration of the principles on which they stand, will more clearly exhibit my view of the question.

The statutes are of two classes: first, those which authorize the commencement of actions by publication, accompanied by an attachment which is levied upon property more or less, of an absent debtor; second, those giving the like mode of commencing a suit without an attachment.

The statute of Oregon relating to publication of summons, *supra*, p. 718, under which the question arises, is nearly a transcript of a series of provisions contained in the New York statute, adopted thirty years since. The latter authorizes the commencement of a suit against a non-resident by the publication of an order for his appearance, for a time not less than six weeks, in such newspapers as shall be most likely to give notice to him, and the deposit of a copy of the summons and complaint in the post-office, directed to him at his residence, if it can be ascertained; and provides for the allowance to defend the action before judgment, and within seven years after its rendition, upon good cause shown, and that, if the defence be successful, restitution shall be ordered. It then declares: "But the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected." Code, sects. 34, 35; 5 Edm. Rev. Stat. of N.Y., pp. 37-39.

Provisions similar in their effect, in authorizing the commencement of suits by attachment against absent debtors, in ^{*739} which all of the property of the absent debtor, real and personal, not merely that seized upon the attachment, is placed under the control of trustees, who sell it for the benefit of all the creditors, and make just distribution thereof, conveying absolute title to the property sold, have been upon the

statute-book of New York for more than sixty years. 2 id., p. 2 and following; 1 Rev. Laws, 1813, p. 157.

The statute of New York, before the Code, respecting proceedings in chancery where absent debtors are parties, had long been in use in that State, and was adopted in all cases of chancery jurisdiction. Whenever a defendant resided out of the State, his appearance might be compelled by publication in the manner pointed out. A decree might pass against him, and performance be compelled by sequestration of his real or personal property, or by causing possession of specific property to be delivered, where that relief is sought. The relief was not confined to cases of mortgage foreclosure, or where there was a specific claim upon the property, but included cases requiring the payment of money as well. 2 Edm. Rev. Stat. N.Y., pp. 193-195; 186, m.

I doubt not that many valuable titles are now held by virtue of the provisions of these statutes.

The statute of California authorizes the service of a summons on a non-resident defendant by publication, permitting him to come in and defend upon the merits within one year after the entry of judgment. Code, sects. 10,412, 10,473. In its general character it is like the statutes of Oregon and New York, already referred to.

The Code of Iowa, sect. 2618, that of Nevada, sect. 1093, and that of Wisconsin, are to the same general effect. The Revised Statutes of Ohio, sects. 70, 75, 2 Swan & Critchfield, provide for a similar publication, and that the defendant may come in to defend within five years after the entry of the judgment, but that the title to property held by any purchaser in good faith under the judgment shall not be affected thereby.

The attachment laws of New Jersey, Nixon Dig. (4th ed.), p. 55, are like those of New York already quoted, by which title may be transferred to all the property of a non-resident debtor. And the provisions of the Pennsylvania statute regulating ^{*740} proceedings in equity, Brightly's Purdon's Dig., p. 5988, sects. 51, 52, give the same authority in substance, and the same result is produced as under the New York statute.

Without going into a wearisome detail of the statutes of the various States, it is safe to say that nearly every State in the Union provides a process by which the lands and other property of a non-resident debtor may be subjected to the payment of his debts, through a judgment or decree against the owner, obtained upon a substituted service of the summons or writ commencing the action.

The principle of substituted service is also a rule of property under the statutes of the United States.

The act of Congress "to amend the law of the District of Columbia in relation to judicial proceedings therein," approved Feb. 23, 1867, 14 Stat. 403, contains the same general provisions. It enacts (sect. 7) that publication may be substituted for personal service, when the defendant cannot be found, in suits for partition, divorce, by attachment, for the foreclosure of mortgages and deeds of trust, and for the enforcement of mechanics' liens and all other liens against real or personal property, and in all actions at law or in equity having for their immediate object the enforcement or establishment of any lawful right,

claim, or demand to or against any real or personal property within the jurisdiction of the court.

A following section points out the mode of proceeding, and closes in these words: —

"The decree, besides subjecting the thing upon which the lien has attached to the satisfaction of the plaintiff's demand against the defendant, shall adjudge that the plaintiff recover his demand against the defendant, and that he may have execution thereof as at law." Sect. 10.

A formal judgment against the debtor is thus authorized, by means of which any other property of the defendant within the jurisdiction of the court, in addition to that which is the subject of the lien, may be sold, and the title transferred to the purchaser.

All these statutes are now adjudged to be unconstitutional and void. The titles obtained under them are not of the value ⁷⁴¹ of the paper on which they are recorded, except where a preliminary attachment was issued.

Some of the statutes and several of the authorities I cite go further than the present case requires. In this case, property lying in the State where the suit was brought, owned by the non-resident debtor, was sold upon the judgment against him; and it is on the title to that property that the controversy turns.

The question whether, in a suit commenced like the present one, a judgment can be obtained, which, if sued upon in another State, will be conclusive against the debtor, is not before us; nor does the question arise as to the faith and credit to be given in one State to a judgment recovered in another. The learning on that subject is not applicable. The point is simply whether land lying in the same State may be subjected to process at the end of a suit thus commenced.

It is here necessary only to maintain the principle laid down by Judge Cooley in his work on Constitutional Limitations, p. 404, and cited by Mr. Justice Field in Galpin v. Page, 3 Sawyer, 93, in these words: —

"The fact that process was not personally served is a conclusive objection to the judgment as a personal claim, unless the defendant caused his appearance to be entered in the attachment proceedings. Where a party has property in a State, and resides elsewhere, his property is justly subject to all valid claims that may exist against him there; but beyond this, due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered."

The learned author does not make it a condition that there should be a preliminary seizure of the property by attachment; he lays down the rule that all a person's property in a State may be subjected to all valid claims there existing against him.

The objection now made, that suits commenced by substituted service, as by publication, and judgments obtained without actual notice to the debtor, are in violation of that constitutional provision that no man shall be deprived of his property "without due process of law," has often been presented.

742

[In Matter of the Empire City Bank, 18 N.Y. 199](#), which ^{*742} was a statutory proceeding to establish and to enforce the responsibility of the stockholders of a banking corporation, and the proceedings in which resulted in a personal judgment against the stockholders for the amount found due, the eminent and learned Judge Denio, speaking as the organ of the Court of Appeals, says: —

"The notice of hearing is to be personal, or by service at the residence of the parties who live in the county, or by advertisement as to others. It may, therefore, happen that some of the persons who are made liable will not have received actual notice, and the question is, whether personal service of process or actual notice to the party is essential to constitute due process of law. We have not been referred to any adjudication holding that no man's right of property can be affected by judicial proceedings unless he have personal notice. It may be admitted that a statute which should authorize any debt or damages to be adjudged against a person upon a purely ex parte proceeding, without a pretence of notice or any provision for defending, would be a violation of the Constitution, and be void; but where the legislature has prescribed a kind of notice by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him, and an opportunity is afforded him to defend, I am of the opinion that the courts have not the power to pronounce the proceeding illegal. The legislature has uniformly acted upon that understanding of the Constitution."

Numerous provisions of the statutes of the State are commented upon, after which he proceeds: —

"Various prudential regulations are made with respect to these remedies; but it may possibly happen, notwithstanding all these precautions, that a citizen who owes nothing, and has done none of the acts mentioned in the statute, may be deprived of his estate, without any actual knowledge of the process by which it has been taken from him. If we hold, as we must in order to sustain this legislation, that the Constitution does not positively require personal notice in order to constitute a legal proceeding due process of law, it then belongs to the legislature to determine whether the case calls for this kind of exceptional legislation, and what manner of constructive notice shall be sufficient to reasonably apprise the party proceeded against of the legal steps which are taken against him."

743

^{*743} In *Happy v. Mosher*, 48 id. 313, the court say: —

"An approved definition of due process of law is 'law in its regular administration through courts of justice.' 2 Kent, Com. 13. It need not be a legal proceeding according to the course of the common law, neither must there be personal notice to the party whose property is in question. It is sufficient if a kind of notice is provided by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him, and an opportunity afforded him to defend."

The same language is used in *Westervelt v. Gregg*, 12 id. 202, and in *Campbell v. Evans*, 45 id. 356. *Campbell v. Evans* and *The Empire City Bank* are cases not of proceedings against property to enforce a lien or claim; but in each of them a personal judgment in damages was rendered against the party complaining.

It is undoubtedly true, that, in many cases where the question respecting due process of law has arisen, the case in hand was that of a proceeding in rem. It is true, also, as is asserted, that the process of a State cannot be supposed to run beyond its own territory. It is equally true, however, that, in every instance where the question has been presented, the validity of substituted service, which is used to subject property within the State belonging to a non-resident to a judgment obtained by means thereof, has been sustained. I have found no case in which it is adjudged that a statute must require a preliminary seizure of such property as necessary to the validity of the proceeding against it, or that there must have been a previous specific lien upon it; that is, I have found no case where such has been the judgment of the court upon facts making necessary the decision of the point. On the contrary, in the case of the attachment laws of New York and of New Jersey, which distribute all of the non-resident's property, not merely that levied on by the attachment, and in several of the reported cases already referred to, where the judgment was sustained, neither of these preliminary facts existed.

The case of [Galpin v. Page](#), reported in 18 Wall. 350, and again in [3 Sawyer, 93](#), is cited in hostility to the views I have expressed. There may be general expressions which will justify ⁷⁴⁴ this suggestion, but the judgment is in harmony with those principles. In the case as reported in this court, it was held that the title of the purchaser under a decree against a non-resident infant was invalid, for two reasons: 1st, That there was no jurisdiction of the proceeding under the statute of California, on account of the entire absence of an affidavit of non-residence, and of diligent inquiry for the residence of the debtor; 2d, the absence of any order for publication in Eaton's case, — both of which are conditions precedent to the jurisdiction of the court to take any action on the subject. The title was held void, also, for the reason that the decree under which it was obtained had been reversed in the State court, and the title was not taken at the sale, nor held then by a purchaser in good faith, the purchase being made by one of the attorneys in the suit, and the title being transferred to his law partner after the reversal of the decree. The court held that there was a failure of jurisdiction in the court under which the plaintiff claimed title, and that he could not recover. The learned justice who delivered the opinion in the Circuit Court and in this court expressly affirms the authority of a State over persons not only, but property as well, within its limits, and this by means of a substituted service. The judgment so obtained, he insists, can properly be used as a means of reaching property within the State, which is thus brought under the control of the court and subjected to its judgment. This is the precise point in controversy in the present action.

The case of [Cooper v. Reynolds, 10 Wall. 308](#), is cited for the same purpose. There the judgment of the court below, refusing to give effect to a judgment obtained upon an order of publication against a non-resident, was reversed in this court. The suit was commenced, or immediately accompanied (it is not clear which), by an attachment which was levied upon the real estate sold, and for the recovery of which this action was brought. This court sustained the title founded upon the suit commenced against the non-resident by attachment. In the opinion delivered in that case there may be remarks, by way of argument or illustration, tending to show that a judgment obtained in a suit not

745

commenced by the levy of an attachment will not give title to land purchased under it. They are, *745 however, extra-judicial, the decision itself sustaining the judgment obtained under the State statute by publication.

[Webster v. Reid, 11 How. 437](#), is also cited. There the action involved the title to certain lands in the State of Iowa, being lands formerly belonging to the half-breeds of the Sac and Fox tribes; and title was claimed against the Indian right under the statutes of June 2, 1838, and January, 1839. By these statutes, commissioners were appointed who were authorized to hear claims for accounts against the Indians, and commence actions for the same, giving a notice thereof of eight weeks in the Iowa "Territorial Gazette," and to enter up judgments which should be a lien on the lands. It was provided that it should not be necessary to name the defendants in the suits, but the words "owners of the half-breed lands lying in Lee County" should be a sufficient designation of the defendants in such suits; and it provided that the trials should be by the court, and not by a jury. It will be observed that the lands were not only within the limits of the territory of Iowa, but that all the Indians who were made defendants under the name mentioned were also residents of Iowa, and, for aught that appears to the contrary, of the very county of Lee in which the proceeding was taken. Non-residence was not a fact in the case. Moreover, they were Indians, and, presumptively, not citizens of any State; and the judgments under which the lands were sold were rendered by the commissioners for their own services under the act.

The court found abundant reasons, six in number, for refusing to sustain the title thus obtained. The act was apparently an attempt dishonestly to obtain the Indian title, and not intended to give a substitution for a personal service which would be likely, or was reasonably designed, to reach the persons to be affected.

The case of [Voorhees v. Jackson, 10 Pet. 449](#), affirmed the title levied under the attachment laws of Ohio, and laid down the principle of assuming that all had been rightly done by a court having general jurisdiction of the subject-matter.

746

In [Cooper v. Smith, 25 Iowa, 269](#), it is said, that where no process is served on the defendant, nor property attached, nor garnishee charged, nor appearance entered, a judgment based *746 on a publication of the pendency of the suit will be void, and may be impeached, collaterally or otherwise, and forms no bar to a recovery in opposition to it, nor any foundation for a title claimed under it. The language is very general, and goes much beyond the requirement of the case, which was an appeal from a personal judgment obtained by publication against the defendant, and where, as the court say, the petition was not properly verified. All that the court decided was that this judgment should be reversed. This is quite a different question from the one before us. Titles obtained by purchase at a sale upon an erroneous judgment are generally good, although the judgment itself be afterwards reversed. [McGoon v. Scales, 9 Wall. 311](#).

In [Darrance v. Preston, 18 Iowa, 396](#), the distinction is pointed out between the validity of a judgment as to the amount realized from the sale of property within the jurisdiction of the court and its validity beyond that amount. [Picquet v. Swan, 5 Mass. 35](#); [Bissell v. Briggs, 9 Mass. 462](#); [Ewer v. Coffin, 1 Cush. \(Mass.\) 23](#), are cited; but neither of them in its facts touches the question before us.

In Drake on Attachment, the rule is laid down in very general language; but none of the cases cited by him will control the present case. They are the following: —

[Eaton v. Bridger, 33 N.H. 228](#), was decided upon the peculiar terms of the New Hampshire statute, which forbids the entry of a judgment, unless the debtor was served with process, or actually appeared and answered in the suit. The court say the judgment was "not only unauthorized by law, but rendered in violation of its express provisions."

Johnson v. Dodge was a proceeding in the same action to obtain a reversal on appeal of the general judgment, and did not arise upon a contest for property sold under the judgment. Carleton v. Washington Insurance Co., 35 id. 162, and Bruce v. Cloutman, 45 id. 37, are to the same effect and upon the same statute.

[Smith v. McCutchen, 38 Mo. 415](#), was a motion in the former suit to set aside the execution by a garnishee, and it was held that the statute was intended to extend to that class of cases. Abbott v. Shepard, 44 id. 273, is to the same effect, and is based upon [Smith v. McCutchen, supra](#).

747

*747 So in [Eastman v. Wadleigh, 65 Me. 251](#), the question arose in debt on the judgment, not upon a holding of land purchased under the judgment. It was decided upon the express language of the statute of Maine, strongly implying the power of the legislature to make it otherwise, had they so chosen.

It is said that the case where a preliminary seizure has been made, and jurisdiction thereby conferred, differs from that where the property is seized at the end of the action, in this: in the first case, the property is supposed to be so near to its owner, that, if seizure is made of it, he will be aware of the fact, and have his opportunity to defend, and jurisdiction of the person is thus obtained. This, however, is matter of discretion and of judgment only. Such seizure is not in itself notice to the defendant, and it is not certain that he will by that means receive notice. Adopted as a means of communicating it, and although a very good means, it is not the only one, nor necessarily better than a publication of the pendency of the suit, made with an honest intention to reach the debtor. Who shall assume to say to the legislature, that if it authorizes a particular mode of giving notice to a debtor, its action may be sustained, but, if it adopts any or all others, its action is unconstitutional and void? The rule is universal, that modes, means, questions of expediency or necessity, are exclusively within the judgment of the legislature, and that the judiciary cannot review them. This has been so held in relation to a bank of the United States, to the legal-tender act, and to cases arising under other provisions of the Constitution.

In [Jarvis v. Barrett, 14 Wis. 591](#), such is the holding. The court say: —

"The essential fact on which the publication is made to depend is property of the defendant in the State, and not whether it has been attached... . There is no magic about the writ [of attachment] which should make it the exclusive remedy. The same legislative power which devised it can devise some other, and declare that it shall have the same force and effect. The particular means to be used are always within the control of the legislature, so that the end be not beyond the scope of legislative power."

748

If the legislature shall think that publication and deposit in the post-office are likely to give the notice, there seems to be ⁷⁴⁸ nothing in the nature of things to prevent their adoption in lieu of the attachment. The point of power cannot be thus controlled.

That a State can subject land within its limits belonging to non-resident owners to debts due to its own citizens as it can legislate upon all other local matters; that it can prescribe the mode and process by which it is to be reached, — seems to me very plain.

I am not willing to declare that a sovereign State cannot subject the land within its limits to the payment of debts due to its citizens, or that the power to do so depends upon the fact whether its statute shall authorize the property to be levied upon at the commencement of the suit or at its termination. This is a matter of detail, and I am of opinion, that if reasonable notice be given, with an opportunity to defend when appearance is made, the question of power will be fully satisfied.

← World-Wide Volkswagen Corp. v. Woodson, 444 US 286 - Supreme Court 1980

 [Read](#) [How cited](#)

444 U.S. 286 (1980)

WORLD-WIDE VOLKSWAGEN CORP. ET AL.

v.

**WOODSON, DISTRICT JUDGE OF CREEK COUNTY, OKLAHOMA, ET.
AL.**

[No. 78-1078.](#)

Supreme Court of United States.

Argued October 3, 1979.

Decided January 21, 1980.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

287 *²⁸⁷ *Herbert Rubin* argued the cause for petitioners. With him on the briefs were *Dan A. Rogers, Bernard J. Wald*, and *Ian Ceresney*.

Jefferson G. Greer argued the cause for respondents. With him on the brief was *Charles A. Whitebook*.

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue before us is whether, consistently with the Due Process Clause of the Fourteenth Amendment, an Oklahoma court may exercise *in personam* jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products-liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma.

288

*²⁸⁸ |

Respondents Harry and Kay Robinson purchased a new Audi automobile from petitioner Seaway Volkswagen, Inc. (Seaway), in Massena, N. Y., in 1976. The following year the Robinson family, who resided in New York, left that State for a new home in Arizona. As they passed through the State of Oklahoma, another car struck their Audi in the rear, causing a fire which severely burned Kay Robinson and her two children.^[1]

The Robinsons^[2] subsequently brought a products-liability action in the District Court for Creek County, Okla., claiming that their injuries resulted from defective design and placement of the Audi's gas tank and fuel system. They joined as defendants the

automobile's manufacturer, Audi NSU Auto Union Aktiengesellschaft (Audi); its importer, Volkswagen of America, Inc. (Volkswagen); its regional distributor, petitioner World-Wide Volkswagen Corp. (World-Wide); and its retail dealer, petitioner Seaway. Seaway and World-Wide entered special appearances,^[3] claiming that Oklahoma's exercise of jurisdiction over them would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment.^[4]

The facts presented to the District Court showed that World-Wide is incorporated and has its business office in New *289 York. It distributes vehicles, parts, and accessories, under contract with Volkswagen, to retail dealers in New York, New Jersey, and Connecticut. Seaway, one of these retail dealers, is incorporated and has its place of business in New York. Insofar as the record reveals, Seaway and World-Wide are fully independent corporations whose relations with each other and with Volkswagen and Audi are contractual only. Respondents adduced no evidence that either World-Wide or Seaway does any business in Oklahoma, ships or sells any products to or in that State, has an agent to receive process there, or purchases advertisements in any media calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument, Tr. of Oral Arg. 32, there was no showing that any automobile sold by World-Wide or Seaway has ever entered Oklahoma with the single exception of the vehicle involved in the present case.

Despite the apparent paucity of contacts between petitioners and Oklahoma, the District Court rejected their constitutional claim and reaffirmed that ruling in denying petitioners' motion for reconsideration.^[5] Petitioners then sought a writ of prohibition in the Supreme Court of Oklahoma to restrain the District Judge, respondent Charles S. Woodson, from exercising *in personam* jurisdiction over them. They renewed their contention that, because they had no "minimal contacts," App. 32, with the State of Oklahoma, the actions of the District Judge were in violation of their rights under the Due Process Clause.

The Supreme Court of Oklahoma denied the writ, 585 P. 2d 351 (1978),^[6] holding that personal jurisdiction over petitioners was authorized by Oklahoma's "long-arm" statute, *290 Okla. Stat., Tit. 12, § 1701.03 (a) (4) (1971).^[7] Although the court noted that the proper approach was to test jurisdiction against both statutory and constitutional standards, its analysis did not distinguish these questions, probably because § 1701.03 (a) (4) has been interpreted as conferring jurisdiction to the limits permitted by the United States Constitution.^[8] The court's rationale was contained in the following paragraph, 585 P. 2d, at 354:

"In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. This is especially true of the distributor, who has the exclusive right to distribute such automobile in New York, New Jersey and Connecticut. The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive

substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justified in concluding *291 that the petitioners derive substantial revenue from goods used or consumed in this State."

291

We granted certiorari, 440 U.S. 907 (1979), to consider an important constitutional question with respect to state-court jurisdiction and to resolve a conflict between the Supreme Court of Oklahoma and the highest courts of at least four other States.^[9] We reverse.

II

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant. *Kulko v. California Superior Court*, 436 U.S. 84, 91 (1978). A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere.

Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878). Due process requires that the defendant be given adequate notice of the suit, *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313-314 (1950), and be subject to the personal jurisdiction of the court, *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). In the present case, it is not contended that notice was inadequate; the only question is whether these particular petitioners were subject to the jurisdiction of the Oklahoma courts.

As has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the defendant and the forum State. *International Shoe Co. v. Washington, supra*, at 316. The concept of minimum contacts, in turn, can be seen to perform two

292

related, but *292 distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend `traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington, supra*, at 316, quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U.S., at 317. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court*, *supra*, at 92, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37

(1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court, supra, at 93, 98*.

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. 293 As we noted in *McGee v. International Life Ins. Co., supra, at 222-223* *293 this trend is largely attributable to a fundamental transformation in the American economy:

"Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

The historical developments noted in *McGee*, of course, have only accelerated in the generation since that case was decided.

Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. The economic interdependence of the States was foreseen and desired by the Framers. In the Commerce Clause, they provided that the Nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities. *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U. S. 525, 538 (1949). But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

Hence, even while abandoning the shibboleth that "[t]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established," *Pennoyer v. Neff, supra, at 720*, we emphasized that the reasonableness of asserting jurisdiction over the defendant must be assessed "in the context of our federal system of government," *294 *International Shoe Co. v. Washington*, 326 U. S., at 317, and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws," *id.*, at 319. As we noted in *Hanson v. Denckla*, 357 U. S. 235, 250-251 (1958):

"As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff*, 95 U. S. 714, to the flexible standard of *International Shoe Co. v.*

Washington, 326 U. S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citation omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."

Thus, the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." International Shoe Co. v. Washington, *supra*, at 319. Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment. Hanson v. Denckla, *supra*, at 251, 254.

295

*295 III

Applying these principles to the case at hand,^[10] we find in the record before us a total absence of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

It is argued, however, that because an automobile is mobile by its very design and purpose it was "foreseeable" that the Robinsons' Audi would cause injury in Oklahoma. Yet "foreseeability" alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. In Hanson v. Denckla, *supra*, it was no doubt foreseeable that the settlor of a Delaware trust would subsequently move to Florida and seek to exercise a power of appointment there; yet we held that Florida courts could not constitutionally *296 exercise jurisdiction over a Delaware trustee that had no other contacts with the forum State. In Kulko v. California Superior Court, 436 U. S. 84 (1978), it was surely "foreseeable" that a divorced wife would move to California from New York, the domicile of the marriage, and that a minor daughter would live with the mother. Yet we held that California could not exercise jurisdiction in a child-support action over the former husband who had remained in New York.

If foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, see Erlanger Mills, Inc. v. Cohoes Fibre

296

Mills, Inc., 239 F. 2d 502, 507 (CA4 1956); a Wisconsin seller of a defective automobile jack could be haled before a distant court for damage caused in New Jersey, Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205 (NJ 1974); or a Florida soft-drink concessionaire could be summoned to Alaska to account for injuries happening there, see Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 170-171 (Minn. 1969). Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel. We recently abandoned the outworn rule of Harris v. Balk, 198 U. S. 215 (1905), that the interest of a creditor in a debt could be extinguished or otherwise affected by any State having transitory jurisdiction over the debtor. Shaffer v. Heitner, 433 U. S. 186 (1977). Having interred the mechanical rule that a creditor's amenability to a *quasi in rem* action travels with his debtor, we are unwilling to endorse an analogous principle in the present case.^[11]

297 *297 This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. See Kulko v. California Superior Court, *supra*, at 97-98; Shaffer v. Heitner, 433 U. S., at 216; and see *id.*, at 217-219 (STEVENS, J., concurring in judgment). The Due Process Clause, by ensuring the "orderly administration of the laws," International Shoe Co. v. Washington, 326 U. S., at 319, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," Hanson v. Denckla, 357 U. S., at 253, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not *298 exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Cf. Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

But there is no such or similar basis for Oklahoma jurisdiction over World-Wide or Seaway in this case. Seaway's sales are made in Massena, N. Y. World-Wide's market, although substantially larger, is limited to dealers in New York, New Jersey, and Connecticut. There is no evidence of record that any automobiles distributed by World-Wide are sold to retail customers outside this tristate area. It is foreseeable that the purchasers of automobiles sold by World-Wide and Seaway may take them to Oklahoma. But the mere "unilateral activity of those who claim some relationship with a

nonresident defendant cannot satisfy the requirement of contact with the forum State."
Hanson v. Denckla, supra, at 253.

In a variant on the previous argument, it is contended that jurisdiction can be supported by the fact that petitioners earn substantial revenue from goods used in Oklahoma. The Oklahoma Supreme Court so found, 585 P. 2d, at 354-355, drawing the inference that because one automobile sold by petitioners had been used in Oklahoma, others might have been used there also. While this inference seems less than compelling on the facts of the instant case, we need not question the court's factual findings in order to reject its reasoning.

This argument seems to make the point that the purchase of automobiles in New York, from which the petitioners earn substantial revenue, would not occur *but for* the fact that the automobiles are capable of use in distant States like Oklahoma. Respondents observe that the very purpose of an automobile is to travel, and that travel of automobiles sold by petitioners is facilitated by an extensive chain of Volkswagen

299 service centers throughout the country, including some in Oklahoma.^[12] *299 However, financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. See *Kulko v. California Superior Court*, 436 U. S., at 94-95. In our view, whatever marginal revenues petitioners may receive by virtue of the fact that their products are capable of use in Oklahoma is far too attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them.

Because we find that petitioners have no "contacts, ties, or relations" with the State of Oklahoma, *International Shoe Co. v. Washington, supra*, at 319, the judgment of the Supreme Court of Oklahoma is

Reversed.

MR. JUSTICE BRENNAN, dissenting.^[1]

The Court holds that the Due Process Clause of the Fourteenth Amendment bars the States from asserting jurisdiction over the defendants in these two cases. In each case the Court so decides because it fails to find the "minimum contacts" that have been required since *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945).

Because I believe that the Court reads *International Shoe* and its progeny too narrowly, and because I believe that the standards enunciated by those cases may already be obsolete as constitutional boundaries, I dissent.

|

The Court's opinions focus tightly on the existence of contacts between the forum and the defendant. In so doing, they accord too little weight to the strength of the forum State's interest in the case and fail to explore whether there *300 would be any actual inconvenience to the defendant. The essential inquiry in locating the constitutional limits on state-court jurisdiction over absent defendants is whether the particular exercise of

jurisdiction offends "traditional notions of fair play and substantial justice."³⁰¹ *International Shoe, supra, at 316*, quoting *Milliken v. Meyer, 311 U. S. 457, 463 (1940)*. The clear focus in *International Shoe* was on fairness and reasonableness. *Kulko v. California Superior Court, 436 U. S. 84, 92 (1978)*. The Court specifically declined to establish a mechanical test based on the quantum of contacts between a State and the defendant:

"Whether due process is satisfied must depend rather upon the quality and nature of the activity *in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure*. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has *no* contacts, ties, or relations." *326 U. S., at 319* (emphasis added).

The existence of contacts, so long as there were some, was merely one way of giving content to the determination of fairness and reasonableness.

Surely *International Shoe* contemplated that the significance of the contacts necessary to support jurisdiction would diminish if some other consideration helped establish that jurisdiction would be fair and reasonable. The interests of the State and other parties in proceeding with the case in a particular forum are such considerations. *McGee v. International Life Ins. Co., 355 U. S. 220, 223 (1957)*, for instance, accorded great importance to a State's "manifest interest in providing effective means of redress" for its citizens. See also *Kulko v. California Superior Court, supra, at 92*; *Shaffer v. Heitner, 433 U. S. 186, 208 (1977)*; *Mullane v. Central Hanover Trust Co., 339 U. S. 306, 313 (1950)*.

301 Another consideration is the actual burden a defendant *301 must bear in defending the suit in the forum. *McGee, supra*. Because lesser burdens reduce the unfairness to the defendant, jurisdiction may be justified despite less significant contacts. The burden, of course, must be of constitutional dimension. Due process limits on jurisdiction do not protect a defendant from all inconvenience of travel, *McGee, supra, at 224*, and it would not be sensible to make the constitutional rule turn solely on the number of miles the defendant must travel to the courtroom.^[1] Instead, the constitutionally significant "burden" to be analyzed relates to the mobility of the defendant's defense. For instance, if having to travel to a foreign forum would hamper the defense because witnesses or evidence or the defendant himself were immobile, or if there were a disproportionately large number of witnesses or amount of evidence that would have to be transported at the defendant's expense, or if being away from home for the duration of the trial would work some special hardship on the defendant, then the Constitution would require special consideration for the defendant's interests.

That considerations other than contacts between the forum and the defendant are relevant necessarily means that the Constitution does not require that trial be held in the State which has the "best contacts" with the defendant. See *Shaffer v. Heitner, supra, at 228* (BRENNAN, J., dissenting). The defendant has no constitutional entitlement to the best forum or, for that matter, to any particular forum. Under even the most restrictive view of *International Shoe*, several States could have jurisdiction over a particular cause of action. We need only determine whether the forum States in these cases satisfy the

constitutional minimum.^[2]

302

*302 ||

In each of these cases, I would find that the forum State has an interest in permitting the litigation to go forward, the litigation is connected to the forum, the defendant is linked to the forum, and the burden of defending is not unreasonable. Accordingly, I would hold that it is neither unfair nor unreasonable to require these defendants to defend in the forum State.

A

In No. 78-952, a number of considerations suggest that Minnesota is an interested and convenient forum. The action was filed by a bona fide resident of the forum.^[3] Consequently, Minnesota's interests are similar to, even if lesser than, the interests of California in *McGee, supra*, "in providing a forum for its residents and in regulating the activities of insurance companies" doing business in the State.^[4] Post, at 332. Moreover, Minnesota has "attempted to assert [its] particularized interest in trying such cases in its courts by . . . enacting a special jurisdictional statute." *Kulko, supra, at 98*; *McGee, supra, at 221, 224*. As in *McGee*, a resident forced to travel to a distant State to

303

prosecute an action *303 against someone who has injured him could, for lack of funds, be entirely unable to bring the cause of action. The plaintiff's residence in the State makes the State one of a very few convenient fora for a personal injury case (the others usually being the defendant's home State and the State where the accident occurred).^[5]

In addition, the burden on the defendant is slight. As Judge Friendly has recognized, *Shaffer* emphasizes the importance of identifying the real impact of the lawsuit. *O'Connor v. Lee-Hy Paving Corp.*, 579 F. 2d 194, 200 (CA2 1978) (upholding the constitutionality of jurisdiction in a very similar case under New York's law after *Shaffer*). Here the real impact is on the defendant's insurer, which is concededly amenable to suit in the forum State. The defendant is carefully protected from financial liability because the action limits the prayer for damages to the insurance policy's liability limit.^[6] The insurer will handle the case for the defendant. The defendant is only a nominal party who need be no more active in the case than the cooperation clause of his policy requires.

304

Because of the ease of airline transportation, he need not lose significantly more time than if the case were at home. Consequently, if the suit went forward *304 in Minnesota, the defendant would bear almost no burden or expense beyond what he would face if the suit were in his home State. The real impact on the named defendant is the same as it is in a direct action against the insurer, which would be constitutionally permissible.

Watson v. Employers Liability Assurance Corp., 348 U. S. 66 (1954); *Minichiello v. Rosenberg*, 410 F. 2d 106, 109-110 (CA2 1968). The only distinction is the formal, "analytica[!] prerequisite," post, at 331, of making the insured a named party. Surely the mere addition of appellant's name to the complaint does not suffice to create a due process violation.^[7]

Finally, even were the relevant inquiry whether there are sufficient contacts between the forum and the named defendant, I would find that such contacts exist. The insurer's presence in Minnesota is an advantage to the defendant that may well have been a consideration in his selecting the policy he did. An insurer with offices in many States makes it easier for the insured to make claims or conduct other business that may become necessary while traveling. It is simply not true that "State Farm's decision to do business in Minnesota was completely adventitious as far as Rush was concerned." *Post*, at 328-329. By buying a State Farm policy, the defendant availed himself of the benefits he might derive from having an insurance agent in Minnesota who could, among other things, facilitate a suit for appellant against a Minnesota resident. It seems unreasonable to read the Constitution as permitting one to take advantage of his nationwide insurance network but not to be burdened by it.

In sum, I would hold that appellant is not deprived of due process by being required to submit to trial in Minnesota, first because Minnesota has a sufficient interest in and connection ³⁰⁵ to this litigation and to the real and nominal defendants, and second because the burden on the nominal defendant is sufficiently slight.

305

B

In No. 78-1078, the interest of the forum State and its connection to the litigation is strong. The automobile accident underlying the litigation occurred in Oklahoma. The plaintiffs were hospitalized in Oklahoma when they brought suit. Essential witnesses and evidence were in Oklahoma. See *Shaffer v. Heitner*, 433 U. S., at 208. The State has a legitimate interest in enforcing its laws designed to keep its highway system safe, and the trial can proceed at least as efficiently in Oklahoma as anywhere else.

The petitioners are not unconnected with the forum. Although both sell automobiles within limited sales territories, each sold the automobile which in fact was driven to Oklahoma where it was involved in an accident.^[8] It may be true, as the Court suggests, that each sincerely intended to limit its commercial impact to the limited territory, and that each intended to accept the benefits and protection of the laws only of those States within the territory. But obviously these were unrealistic hopes that cannot be treated as an automatic constitutional shield.^[9]

306

³⁰⁶ An automobile simply is not a stationary item or one designed to be used in one place. An automobile is *intended* to be moved around. Someone in the business of selling large numbers of automobiles can hardly plead ignorance of their mobility or pretend that the automobiles stay put after they are sold. It is not merely that a dealer in automobiles foresees that they will move. *Ante*, at 295. The dealer actually intends that the purchasers will use the automobiles to travel to distant States where the dealer does not directly "do business." The sale of an automobile does *purposefully* inject the vehicle into the stream of interstate commerce so that it can travel to distant States. See *Kulko*, 436 U. S., at 94; *Hanson v. Denckla*, 357 U. S. 235, 253 (1958).

This case is similar to *Ohio v. Wyandotte Chemicals Corp.*, 401 U. S. 493 (1971). There we indicated, in the course of denying leave to file an original-jurisdiction case, that

corporations having no direct contact with Ohio could constitutionally be brought to trial in Ohio because they dumped pollutants into streams outside Ohio's limits which ultimately, through the action of the water, reached Lake Erie and affected Ohio. No corporate acts, only their consequences, occurred in Ohio. The stream of commerce is just as natural a force as a stream of water, and it was equally predictable that the cars petitioners released would reach distant States.^[10]

The Court accepts that a State may exercise jurisdiction over a distributor which "serves" that State "indirectly" by "deliver[ing] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Ante*, at 297-298. It is difficult to see why the Constitution should distinguish between a case involving goods which reach a distant State through a chain of distribution and a case involving goods which reach the same State because a consumer, using them as the dealer knew the customer would, took them there.^[11] In each case the seller purposefully injects the goods into the stream of commerce and those goods predictably are used in the forum State.^[12]

Furthermore, an automobile seller derives substantial benefits from States other than its own. A large part of the value of automobiles is the extensive, nationwide network of highways. Significant portions of that network have been constructed by and are maintained by the individual States, including Oklahoma. The States, through their highway programs, contribute in a very direct and important way to the value of petitioners' businesses. Additionally, a network of other related dealerships with their service departments operates throughout the country under the protection of the laws of the various States, including Oklahoma, and enhances the value of petitioners' businesses by facilitating their customers' traveling.

Thus, the Court errs in its conclusion, *ante*, at 299 (emphasis added), that "petitioners have no `contacts, ties, or relations'" with Oklahoma. There obviously are contacts, and, given Oklahoma's connection to the litigation, the contacts are sufficiently significant to make it fair and reasonable for the petitioners to submit to Oklahoma's jurisdiction.

III

It may be that affirmance of the judgments in these cases would approach the outer limits of *International Shoe*'s jurisdictional principle. But that principle, with its almost exclusive focus on the rights of defendants, may be outdated. As MR. JUSTICE MARSHALL wrote in *Shaffer v. Heitner*, 433 U. S., at 212: "[T]raditional notions of fair play and substantial justice' can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures. . . ."

International Shoe inherited its defendant focus from *Pennoyer v. Neff*, 95 U. S. 714 (1878), and represented the last major step this Court has taken in the long process of liberalizing the doctrine of personal jurisdiction. Though its flexible approach represented a major advance, the structure of our society has changed in many significant ways since *International Shoe* was decided in 1945. Mr. Justice Black, writing for the Court in

307

308

McGee v. International Life Ins. Co., 355 U. S. 220, 222 (1957), recognized that "a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents." He explained the trend as follows:

"In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." *Id.*, at 222-223.

As the Court acknowledges, *ante*, at 292-293, both the nationalization of commerce and the ease of transportation and communication have accelerated in the generation since

309 1957.^[13] *309 The model of society on which the *International Shoe* Court based its opinion is no longer accurate. Business people, no matter how local their businesses, cannot assume that goods remain in the business' locality. Customers and goods can be anywhere else in the country usually in a matter of hours and always in a matter of a very few days.

In answering the question whether or not it is fair and reasonable to allow a particular forum to hold a trial binding on a particular defendant, the interests of the forum State and other parties loom large in today's world and surely are entitled to as much weight as are the interests of the defendant. The "orderly administration of the laws" provides a firm basis for according some protection to the interests of plaintiffs and States as well as of defendants.^[14] Certainly, I cannot see how a defendant's right to due process is violated if the defendant suffers no inconvenience. See *ante*, at 294.

The conclusion I draw is that constitutional concepts of fairness no longer require the extreme concern for defendants that was once necessary. Rather, as I wrote in dissent from *Shaffer v. Heitner, supra, at 220* (emphasis added), minimum

310 *310 contacts must exist "among the parties, the contested transaction, and the forum State."^[15] The contacts between any two of these should not be determinate. "[W]hen a suitor seeks to lodge a suit in a State with a substantial interest in seeing its own law applied to the transaction in question, we could wisely act to minimize conflicts, confusion, and uncertainty by adopting a liberal view of jurisdiction, unless considerations of fairness or efficiency strongly point in the opposite direction."^[16] *433 U. S., at 225-226*. Mr. Justice Black, dissenting in *Hanson v. Denckla, 357 U. S., at 258-259*, expressed similar concerns by suggesting that a State should have jurisdiction over a case growing out of a transaction significantly related to that State "unless litigation there would impose such a heavy and disproportionate burden on a nonresident defendant that it would offend what this Court has referred to as 'traditional notions of fair play and substantial

311 justice.'"^[17] Assuming *311 that a State gives a nonresident defendant adequate notice and opportunity to defend, I do not think the Due Process Clause is offended merely because the defendant has to board a plane to get to the site of the trial.

The Court's opinion in No. 78-1078 suggests that the defendant ought to be subject to a State's jurisdiction only if he has contacts with the State "such that he should reasonably anticipate being haled into court there." [18] *Ante*, at 297. There is nothing unreasonable or unfair, however, about recognizing commercial reality. Given the tremendous mobility of goods and people, and the inability of businessmen to control where goods are taken by customers (or retailers), I do not think that the defendant should be in complete control of the geographical stretch of his amenability to suit. Jurisdiction is no longer premised on the notion that nonresident defendants have somehow impliedly consented to suit. People should understand that they are held responsible for the consequences of their actions and that in our society most actions have consequences affecting many States. When an action in fact causes injury in another State, the actor should be prepared to answer for it there unless defending in that State would be unfair for some reason other than that a state boundary must be crossed. [19]

312 In effect the Court is allowing defendants to assert the sovereign *312 rights of their home States. The expressed fear is that otherwise all limits on personal jurisdiction would disappear. But the argument's premise is wrong. I would not abolish limits on jurisdiction or strip state boundaries of all significance, see *Hanson, supra, at 260* (Black, J., dissenting); I would still require the plaintiff to demonstrate sufficient contacts among the parties, the forum, and the litigation to make the forum a reasonable State in which to hold the trial. [20]

I would also, however, strip the defendant of an unjustified veto power over certain very appropriate fora—a power the defendant justifiably enjoyed long ago when communication and travel over long distances were slow and unpredictable and when notions of state sovereignty were impractical and exaggerated. But I repeat that that is not today's world. If a plaintiff can show that his chosen forum State has a sufficient interest in the litigation (or sufficient contacts with the defendant), then the defendant who cannot show some real injury to a constitutionally protected interest, see *O'Connor v. Lee-Hy Paving Corp.*, 579 F. 2d, at 201, should have no constitutional excuse not to appear. [21]

313 The plaintiffs in each of these cases brought suit in a forum with which they had significant contacts and which had significant contacts with the litigation. I am not convinced that the defendants would suffer any "heavy and disproportionate burden" in defending the suits. Accordingly, I would hold *313 that the Constitution should not shield the defendants from appearing and defending in the plaintiffs' chosen fora.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BLACKMUN joins, dissenting.

For over 30 years the standard by which to measure the constitutionally permissible reach of state-court jurisdiction has been well established:

"[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend `traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945), quoting

Milliken v. Meyer, 311 U. S. 457, 463 (1940).

The corollary, that the Due Process Clause forbids the assertion of jurisdiction over a defendant "with which the state has no contacts, ties, or relations," 326 U. S., at 319, is equally clear. The concepts of fairness and substantial justice as applied to an evaluation of "the quality and nature of the [defendant's] activity," *ibid.*, are not readily susceptible of further definition, however, and it is not surprising that the constitutional standard is easier to state than to apply.

This is a difficult case, and reasonable minds may differ as to whether respondents have alleged a sufficient "relationship among the defendant[s], the forum, and the litigation," Shaffer v. Heitner, 433 U. S. 186, 204 (1977), to satisfy the requirements of *International Shoe*. I am concerned, however, that the majority has reached its result by taking an unnecessarily narrow view of petitioners' forum-related conduct. The majority asserts that "respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York *314 residents, happened to suffer an accident while passing through Oklahoma." *Ante*, at 295. If that were the case, I would readily agree that the minimum contacts necessary to sustain jurisdiction are not present. But the basis for the assertion of jurisdiction is not the happenstance that an individual over whom petitioners had no control made a unilateral decision to take a chattel with him to a distant State. Rather, jurisdiction is premised on the deliberate and purposeful actions of the defendants themselves in choosing to become part of a nationwide, indeed a global, network for marketing and servicing automobiles.

314

Petitioners are sellers of a product whose utility derives from its mobility. The unique importance of the automobile in today's society, which is discussed in MR. JUSTICE BLACKMUN'S dissenting opinion, *post*, at 318, needs no further elaboration. Petitioners know that their customers buy cars not only to make short trips, but also to travel long distances. In fact, the nationwide service network with which they are affiliated was designed to facilitate and encourage such travel. Seaway would be unlikely to sell many cars if authorized service were available only in Massena, N. Y. Moreover, local dealers normally derive a substantial portion of their revenues from their service operations and thereby obtain a further economic benefit from the opportunity to service cars which were sold in other States. It is apparent that petitioners have not attempted to minimize the chance that their activities will have effects in other States; on the contrary, they have chosen to do business in a way that increases that chance, because it is to their economic advantage to do so.

315

To be sure, petitioners could not know in advance that this particular automobile would be driven to Oklahoma. They must have anticipated, however, that a substantial portion of the cars they sold would travel out of New York. Seaway, a local dealer in the second most populous State, and World-Wide, *315 one of only seven regional Audi distributors in the entire country, see Brief for Respondents 2, would scarcely have been surprised to learn that a car sold by them had been driven in Oklahoma on Interstate 44, a heavily traveled transcontinental highway. In the case of the distributor, in particular, the probability that some of the cars it sells will be driven in every one of the contiguous

States must amount to a virtual certainty. This knowledge should alert a reasonable businessman to the likelihood that a defect in the product might manifest itself in the forum State—not because of some unpredictable, aberrant, unilateral action by a single buyer, but in the normal course of the operation of the vehicles for their intended purpose.

It is misleading for the majority to characterize the argument in favor of jurisdiction as one of "foreseeability" alone." *Ante*, at 295. As economic entities petitioners reach out from New York, knowingly causing effects in other States and receiving economic advantage both from the ability to cause such effects themselves and from the activities of dealers and distributors in other States. While they did not receive revenue from making direct sales in Oklahoma, they intentionally became part of an interstate economic network, which included dealerships in Oklahoma, for pecuniary gain. In light of this purposeful conduct I do not believe it can be said that petitioners "had no reason to expect to be haled before a[n Oklahoma] court." *Shaffer v. Heitner, supra, at 216*; see *ante*, at 297, and *Kulko v. California Superior Court*, 436 U. S. 84, 97-98 (1978).

The majority apparently acknowledges that if a product is purchased in the forum State by a consumer, that State may assert jurisdiction over everyone in the chain of distribution. See *ante*, at 297-298. With this I agree. But I cannot agree that jurisdiction is necessarily lacking if the product enters the State not through the channels of distribution but in the course of its intended use by the consumer. We have recognized

316

*316 the role played by the automobile in the expansion of our notions of personal jurisdiction. See *Shaffer v. Heitner, supra, at 204*; *Hess v. Pawloski*, 274 U. S. 352 (1927). Unlike most other chattels, which may find their way into States far from where they were purchased because their owner takes them there, the intended use of the automobile is precisely as a means of traveling from one place to another. In such a case, it is highly artificial to restrict the concept of the "stream of commerce" to the chain of distribution from the manufacturer to the ultimate consumer.

I sympathize with the majority's concern that persons ought to be able to structure their conduct so as not to be subject to suit in distant forums. But that may not always be possible. Some activities by their very nature may foreclose the option of conducting them in such a way as to avoid subjecting oneself to jurisdiction in multiple forums. This is by no means to say that all sellers of automobiles should be subject to suit everywhere; but a distributor of automobiles to a multistate market and a local automobile dealer who makes himself part of a nationwide network of dealerships can fairly expect that the cars they sell may cause injury in distant States and that they may be called on to defend a resulting lawsuit there.

In light of the quality and nature of petitioners' activity, the majority's reliance on *Kulko v. California Superior Court, supra*, is misplaced. *Kulko* involved the assertion of state-court jurisdiction over a nonresident individual in connection with an action to modify his child custody rights and support obligations. His only contact with the forum State was that he gave his minor child permission to live there with her mother. In holding that the exercise of jurisdiction violated the Due Process Clause, we emphasized that the cause of action as well as the defendant's actions in relation to the forum State arose "not from the

317

defendant's commercial transactions in interstate commerce, but rather from his personal, *317 domestic relations," [436 U. S., at 97](#) (emphasis supplied), contrasting Kulko's actions with those of the insurance company in [McGee v. International Life Ins. Co., 355 U. S. 220 \(1957\)](#), which were undertaken for commercial benefit. [*

Manifestly, the "quality and nature" of commercial activity is different, for purposes of the *International Shoe* test, from actions from which a defendant obtains no economic advantage. Commercial activity is more likely to cause effects in a larger sphere, and the actor derives an economic benefit from the activity that makes it fair to require him to answer for his conduct where its effects are felt. The profits may be used to pay the costs of suit, and knowing that the activity is likely to have effects in other States the defendant can readily insure against the costs of those effects, thereby sparing himself much of the inconvenience of defending in a distant forum.

Of course, the Constitution forbids the exercise of jurisdiction if the defendant had no judicially cognizable contacts with the forum. But as the majority acknowledges, if such contacts are present the jurisdictional inquiry requires a balancing of various interests and policies. See *ante*, at 292; *Rush v. Savchuk*, *post*, at 332. I believe such contacts are to be found here and that, considering all of the interests and policies at stake, requiring petitioners to defend this action in Oklahoma is not beyond the bounds of the Constitution. Accordingly, I dissent.

MR. JUSTICE BLACKMUN, dissenting.

I confess that I am somewhat puzzled why the plaintiffs in this litigation are so insistent that the regional distributor and the retail dealer, the petitioners here, who handled the ill-fated Audi automobile involved in this litigation, be named defendants. It would appear that the manufacturer and the *318 importer, whose subjectability to Oklahoma jurisdiction is not challenged before this Court, ought not to be judgment-proof. It may, of course, ultimately amount to a contest between insurance companies that, once begun, is not easily brought to a termination. Having made this much of an observation, I pursue it no further.

For me, a critical factor in the disposition of the litigation is the nature of the instrumentality under consideration. It has been said that we are a nation on wheels. What we are concerned with here is the automobile and its peripatetic character. One need only examine our national network of interstate highways, or make an appearance on one of them, or observe the variety of license plates present not only on those highways but in any metropolitan area, to realize that any automobile is likely to wander far from its place of licensure or from its place of distribution and retail sale. Miles per gallon on the highway (as well as in the city) and mileage per thankful are familiar allegations in manufacturers' advertisements today. To expect that any new automobile will remain in the vicinity of its retail sale—like the 1914 electric car driven by the proverbial "little old lady"—is to blink at reality. The automobile is intended for distance as well as for transportation within a limited area.

It therefore seems to me not unreasonable—and certainly not unconstitutional and beyond the reach of the principles laid down in [International Shoe Co. v. Washington](#).

319

326 U. S. 310 (1945), and its progeny—to uphold Oklahoma jurisdiction over this New York distributor and this New York dealer when the accident happened in Oklahoma. I see nothing more unfair for them than for the manufacturer and the importer. All are in the business of providing vehicles that spread out over the highways of our several States. It is not too much to anticipate at the time of distribution and at the time of retail sale that this Audi would be in Oklahoma. Moreover, in assessing "minimum contacts," foreseeable use in another State seems to me to be little different from foreseeable resale *319 in another State. Yet the Court declares this distinction determinate. *Ante*, at 297-299.

MR. JUSTICE BRENNAN points out in his dissent, *ante*, at 307, that an automobile dealer derives substantial benefits from States other than its own. The same is true of the regional distributor. Oklahoma does its best to provide safe roads. Its police investigate accidents. It regulates driving within the State. It provides aid to the victim and thereby, it is hoped, lessens damages. Accident reports are prepared and made available. All this contributes to and enhances the business of those engaged professionally in the distribution and sale of automobiles. All this also may benefit defendants in the very lawsuits over which the State asserts jurisdiction.

My position need not now take me beyond the automobile and the professional who does business by way of distributing and retailing automobiles. Cases concerning other instrumentalities will be dealt with as they arise and in their own contexts.

I would affirm the judgment of the Supreme Court of Oklahoma. Because the Court reverses that judgment, it will now be about parsing every variant in the myriad of motor vehicle fact situations that present themselves. Some will justify jurisdiction and others will not. All will depend on the "contact" that the Court sees fit to perceive in the individual case.

[1] The driver of the other automobile does not figure in the present litigation.

[2] Kay Robinson sued on her own behalf. The two children sued through Harry Robinson as their father and next friend.

[3] Volkswagen also entered a special appearance in the District Court, but unlike World-Wide and Seaway did not seek review in the Supreme Court of Oklahoma and is not a petitioner here. Both Volkswagen and Audi remain as defendants in the litigation pending before the District Court in Oklahoma.

[4] The papers filed by the petitioners also claimed that the District Court lacked "venue of the subject matter," App. 9, or "venue over the subject matter," *id.*, at 11.

[5] The District Court's rulings are unreported, and appear at App. 13 and 20.

[6] Five judges joined in the opinion. Two concurred in the result, without opinion, and one concurred in part and dissented in part, also without opinion.

[7] This subsection provides:

"A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's . . . causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state. . . ."

The State Supreme Court rejected jurisdiction based on § 1701.03 (a) (3), which authorizes jurisdiction over any

person "causing tortious injury in this state by an act or omission in this state." Something in addition to the infliction of tortious injury was required.

[8] [Fields v. Volkswagen of America, Inc.](#), 555 P. 2d 48 (Okla. 1976); [Carmack v. Chemical Bank New York Trust Co.](#), 536 P. 2d 897 (Okla. 1975); [Hines v. Clendenning](#), 465 P. 2d 460 (Okla. 1970).

[9] Cf. [Tilley v. Keller Truck & Implement Corp.](#), 200 Kan. 641, 438 P. 2d 128 (1968); [Granite States Volkswagen, Inc. v. District Court](#), 177 Colo. 42, 492 P. 2d 624 (1972); [Pellegrini v. Sachs & Sons](#), 522 P. 2d 704 (Utah 1974); [Oliver v. American Motors Corp.](#), 70 Wash. 2d 875, 425 P. 2d 647 (1967).

[10] Respondents argue, as a threshold matter, that petitioners waived any objections to personal jurisdiction by (1) joining with their special appearances a challenge to the District Court's subject-matter jurisdiction, see n. 4, *supra*, and (2) taking depositions on the merits of the case in Oklahoma. The trial court, however, characterized the appearances as "special," and the Oklahoma Supreme Court, rather than finding jurisdiction waived, reached and decided the statutory and constitutional questions. Cf. [Kulko v. California Superior Court](#), 436 U. S. 84, 91, n. 5 (1978).

[11] Respondents' counsel, at oral argument, see Tr. of Oral Arg. 19-22, 29, sought to limit the reach of the foreseeability standard by suggesting that there is something unique about automobiles. It is true that automobiles are uniquely mobile, see [Tyson v. Whitaker & Son, Inc.](#), 407 A. 2d 1, 6, and n. 11 (Me. 1979) (McKusick, C. J.), that they did play a crucial role in the expansion of personal jurisdiction through the fiction of implied consent, e. g., [Hess v. Pawloski](#), 274 U. S. 352 (1927), and that some of the cases have treated the automobile as a "dangerous instrumentality." But today, under the regime of *International Shoe*, we see no difference for jurisdictional purposes between an automobile and any other chattel. The "dangerous instrumentality" concept apparently was never used to support personal jurisdiction; and to the extent it has relevance today it bears not on jurisdiction but on the possible desirability of imposing substantive principles of tort law such as strict liability.

[12] As we have noted, petitioners earn no direct revenues from these service centers. See *supra*, at 289.

[*] [This opinion applies also to No. 78-952, *Rush et al. v. Savchuk*, *post*, p. 320.]

[1] In fact, a courtroom just across the state line from a defendant may often be far more convenient for the defendant than a courtroom in a distant corner of his own State.

[2] The States themselves, of course, remain free to choose whether to extend their jurisdiction to embrace all defendants over whom the Constitution would permit exercise of jurisdiction.

[3] The plaintiff asserted jurisdiction pursuant to Minn. Stat. § 571.41, subd. 2 (1978), which allows garnishment of an insurer's obligation to defend and indemnify its insured. See *post*, at 322-323, n. 3, and accompanying text. The Minnesota Supreme Court has interpreted the statute as allowing suit only to the insurance policy's liability limit. The court has held that the statute embodies the rule of [Seider v. Roth](#), 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966).

[4] To say that these considerations are relevant is a far cry from saying that they are "substituted for . . . contacts with the defendant and the cause of action." *Post*, at 332. The forum's interest in the litigation is an independent point of inquiry even under traditional readings of *International Shoe*'s progeny. If there is a shift in focus, it is not away from "the relationship among the defendant, the forum, and the litigation." *Post*, at 332 (emphasis added). Instead it is a shift within the same accepted relationship from the connections between the defendant and the forum to those between the forum and the litigation.

[5] In every *International Shoe* inquiry, the defendant, necessarily, is outside the forum State. Thus it is inevitable that either the defendant or the plaintiff will be inconvenienced. The problem existing at the time of [Pennoyer v. Neff](#), 95 U. S. 714 (1878), that a resident plaintiff could obtain a binding judgment against an unsuspecting, distant defendant, has virtually disappeared in this age of instant communication and virtually instant travel.

[6] It is true that the insurance contract is not the subject of the litigation. *Post*, at 329. But one of the undisputed clauses of the insurance policy is that the insurer will defend this action and pay any damages assessed, up to the policy limit. The very purpose of the contract is to relieve the insured from having to defend himself, and under the state statute there could be no suit absent the insurance contract. Thus, in a real sense, the insurance contract is the source of the suit. See [Shaffer v. Heitner](#), 433 U. S. 186, 207 (1977).

[7] Were the defendant a real party subject to actual liability or were there significant noneconomic consequences such as those suggested by the Court's note 20, *post*, at 331, a more substantial connection with the forum State might well be constitutionally required.

[8] On the basis of this fact the state court inferred that the petitioners derived substantial revenue from goods used in Oklahoma. The inference is not without support. Certainly, were use of goods accepted as a relevant contact, a plaintiff would not need to have an exact count of the number of petitioners' cars that are used in Oklahoma.

[9] Moreover, imposing liability in this case would not so undermine certainty as to destroy an automobile dealer's ability to do business. According jurisdiction does not expand liability except in the marginal case where a plaintiff cannot afford to bring an action except in the plaintiff's own State. In addition, these petitioners are represented by insurance companies. They not only could, but did, purchase insurance to protect them should they stand trial and lose the case. The costs of the insurance no doubt are passed on to customers.

[10] One might argue that it was more predictable that the pollutants would reach Ohio than that one of petitioners' cars would reach Oklahoma. The Court's analysis, however, excludes jurisdiction in a contiguous State such as Pennsylvania as surely as in more distant States such as Oklahoma.

[11] For example, I cannot understand the constitutional distinction between selling an item in New Jersey and selling an item in New York expecting it to be used in New Jersey.

[12] The manufacturer in the case cited by the Court, *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N. E. 2d 761 (1961), had no more control over which States its goods would reach than did the petitioners in this case.

[13] Statistics help illustrate the amazing expansion in mobility since *International Shoe*. The number of revenue passenger-miles flown on domestic and international flights increased by nearly three orders of magnitude between 1945 (450 million) and 1976 (179 billion). U. S. Department of Commerce, Historical Statistics of the United States, pt. 2, p. 770 (1975); U. S. Department of Commerce, Statistical Abstract of the United States 670 (1978). Automobile vehicle-miles (including passenger cars, buses, and trucks) driven in the United States increased by a relatively modest 500% during the same period, growing from 250 billion in 1945 to 1,409 billion in 1976. Historical Statistics, *supra*, at 718; Statistical Abstract, *supra*, at 647.

[14] The Court has recognized that there are cases where the interests of justice can turn the focus of the jurisdictional inquiry away from the contracts between a defendant and the forum State. For instance, the Court indicated that the requirement of contacts may be greatly relaxed (if indeed any personal contacts would be required) where a plaintiff is suing a nonresident defendant to enforce a judgment procured in another State. *Shaffer v. Heitner*, 433 U. S., at 210-211, nn. 36, 37.

[15] In some cases, the inquiry will resemble the inquiry commonly undertaken in determining which State's law to apply. That it is fair to apply a State's law to a nonresident defendant is clearly relevant in determining whether it is fair to subject the defendant to jurisdiction in that State. *Shaffer v. Heitner*, *supra*, at 225 (BRENNAN, J., dissenting); *Hanson v. Denckla*, 357 U. S. 235, 258 (1958) (BLACK, J., dissenting). See n. 19, *infra*.

[16] Such a standard need be no more uncertain than the Court's test "in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable.' *Estin v. Estin*, 334 U. S. 541, 545 (1948)." *Kulko v. California Superior Court*, 436 U. S. 84, 92 (1978).

[17] This strong emphasis on the State's interest is nothing new. This Court, permitting the forum to exercise jurisdiction over nonresident claimants to a trust largely on the basis of the forum's interest in closing the trust, stated:

"[T]he interest of each state in providing means to close trusts that exist by the grace of its laws and are administered under the supervision of its courts is so insistent and rooted in custom as to establish beyond doubt the right of its courts to determine the interests of all claimants, resident or nonresident, provided its procedure accords full opportunity to appear and be heard." *Mullaney v. Central Hanover Trust Co.*, 339 U. S. 306, 313 (1950).

[18] The Court suggests that this is the critical foreseeability rather than the likelihood that the product will go to the forum State. But the reasoning begs the question. A defendant cannot know if his actions will subject him to jurisdiction in another State until we have declared what the law of jurisdiction is.

[19] One consideration that might create some unfairness would be if the choice of forum also imposed on the defendant an unfavorable substantive law which the defendant could justly have assumed would not apply. See n. 15, *supra*.

[20] For instance, in No. 78-952, if the plaintiff were not a bona fide resident of Minnesota when the suit was filed

or if the defendant were subject to financial liability, I might well reach a different result. In No. 78-1078, I might reach a different result if the accident had not occurred in Oklahoma.

[21] Frequently, of course, the defendant will be able to influence the choice of forum through traditional doctrines, such as venue or *forum non conveniens*, permitting the transfer of litigation. [*Shaffer v. Heitner*, 433 U. S., at 228, n. 8 \(BRENNAN, J., dissenting\)](#).

[*] Similarly, I believe the Court in [*Hanson v. Denckla*, 357 U. S. 235 \(1958\)](#), was influenced by the fact that trust administration has traditionally been considered a peculiarly local activity.

← Orner v. Shalala, 30 F. 3d 1307 - Court of Appeals, 10th Circuit 1994

 [Read](#) [How cited](#)

30 F.3d 1307 (1994)

Eugene R. ORNER, Plaintiff-Appellant,

v.

**Donna E. SHALALA, Secretary of the United States Department of
Health & Human Services, Defendant-Appellee.**

[No. 93-1400.](#)

United States Court of Appeals, Tenth Circuit.

July 19, 1994.

1308 *1308 Frederick W. Newall, Colorado Springs, CO, for plaintiff-appellant.

1309 *1309 James R. Allison, Interim U.S. Atty., Stephen D. Taylor, Asst. U.S. Atty., Denver, CO (Randolph W. Gaines, Acting Chief Counsel for Social Security, John M. Sacchetti, Chief, Retirement, Survivors and Supplemental Assistance Litigation Branch, Ira E. Ziporkin, Attorney, Office of the General Counsel, U.S. Dept. of Health and Human Services, of counsel), for defendant-appellee.

Before ANDERSON and KELLY, Circuit Judges, and LUNGSTRUM,^[1] District Judge.

PAUL KELLY, Jr., Circuit Judge.

Plaintiff appeals^[1] from a district court order granting the Secretary's motion under Fed.R.Civ.P. 60(b) to amend a prior order that mistakenly awarded plaintiff \$18,159.82 in attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). The amendment deleted all references to the EAJA and provided, instead, that the fees were awarded pursuant to 42 U.S.C. § 406(b). Fees under § 406(b) satisfy a client's obligation to counsel and, therefore, are paid out of the plaintiff's social security benefits, while fees under the EAJA penalize the Secretary for assuming an unjustified legal position and, accordingly, are paid out of agency funds. Thus, the amendment in question effectively returned the \$18,159.82 erroneously awarded plaintiff back to the Secretary.

The following events are essential to a proper understanding of the issues raised by this appeal:

- (1) July 23, 1992. Judgment is entered on the parties' stipulation to a period of disability commencing February 15, 1977.
- (2) August 10, 1992. Plaintiff moves for fees under the EAJA.

(3) August 28, 1992. The district court enters judgment on the parties' stipulation to an EAJA fee award of \$4,000.

(4) December 2, 1992. Plaintiff moves for approval of an \$18,159.82 fee under 20 C.F.R. § 404.1728 (i.e., 42 U.S.C. § 406(b)). The Secretary is given until December 15 to respond to the motion, but does not oppose it.

(5) December 23, 1992. The district court enters judgment on plaintiff's unopposed motion, but inexplicably awards the requested fee under the EAJA.

(6) June 18, 1993. The Secretary moves to amend the December 23, 1992 judgment, generally citing Rule 60(b).

(7) August 10, 1993. Relying on Rule 60(b)(1), the district court enters an amended judgment, over plaintiff's objection, identifying § 406(b) as the proper basis for the \$18,159.82 fee awarded December 23, 1992.

The district court's final order amending judgment in favor of the Secretary consists of a frank acknowledgment that the court had made a mistake and the legal conclusion that the error was correctable under Rule 60(b)(1). See App. at 196-97. We review this decision for an abuse of discretion. *United States v. 31.63 Acres of Land*, 840 F.2d 760, 761 (10th Cir.1988); see also *Johnston v. Cigna Corp.*, 14 F.3d 486, 497 (10th Cir.1993). "A district court would necessarily abuse its discretion if it based its ruling [under Rule 60(b)] on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Lyons v. Jefferson Bank & Trust*, 994 F.2d 716, 727 (10th Cir.1993) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 2461, 110 L.Ed.2d 359 (1990)).

Plaintiff argues that, under this circuit's case law, the Secretary's motion was untimely with respect to Rule 60(b)(1). We agree. This court has held, without qualification, that "a mistake of law cannot be reached under [Rule] 60(b)(1) where [as here] no notice of appeal was timely filed from the order in which the mistake is alleged to have occurred, and the time for filing such a notice of appeal had expired" ¹³¹⁰ when the [Rule] 60(b) motion was filed. " *Morris v. Adams-Millis Corp.*, 758 F.2d 1352, 1358 (10th Cir.1985); see also *Van Skiver v. United States*, 952 F.2d 1241, 1244 (10th Cir.1991), cert. denied, U.S. 113 S.Ct. 89, 121 L.Ed.2d 51 (1992). Consequently, Rule 60(b)(1) was not available to the district court as a basis upon which to grant the Secretary discretionary relief from its judgment regarding EAJA fees.

1310

That conclusion does not end our inquiry, however, as we may affirm challenged decisions of the district court on alternative grounds, so long as the record is sufficient to permit conclusions of law. *United States v. Roederer*, 11 F.3d 973, 977 (10th Cir.1993). We recognize that the assessment of a motion for relief from judgment under the various subsections of Rule 60(b) is committed, in the first instance, to the discretion of the district court. Thus, a remand would be the usual disposition following appellate detection of error with respect to any one particular basis for granting such relief. However, as explained below, "remanding on the basis of [the court's] legal error

[granting relief under Rule 60(b)(1)] would be pointless, because it would have been an abuse of discretion for the trial court to [rule otherwise] under Rule 60(b)[(4)]." Lyons, 994 F.2d at 729.

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, "is not subject to any time limitation." V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n. 9 and accompanying text (10th Cir.1979) ("if a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a reasonable time"); see also Venable v. Haislip, 721 F.2d 297, 299-300 (10th Cir.1983). Furthermore, when Rule 60(b)(4) is applicable, "relief is not a discretionary matter; it is mandatory." V.T.A., Inc., 597 F.2d at 224 n. 8; see also Venable, 721 F.2d at 300.

This court has indicated on a number of occasions that a judgment may be void for purposes of Rule 60(b)(4) if entered in a manner inconsistent with due process. See, e.g., V.T.A., Inc., 597 F.2d at 224-25; Arthur Andersen & Co. v. Ohio (In re Four Seasons Sec. Laws Litig.), 502 F.2d 834, 842 (10th Cir.), cert. denied, 419 U.S. 1034, 95 S.Ct. 516, 42 L.Ed.2d 309 (1974). We ultimately rejected the due process arguments asserted in the cited cases because fundamental procedural prerequisites — particularly, adequate notice and opportunity to be heard — were fully satisfied. Here, in contrast, the Secretary was not given any notice that her EAJA liability, already resolved by stipulated order, would be redetermined in the proceeding on plaintiff's second motion for attorney fees and, given plaintiff's express reliance on § 406(b), had no reason whatsoever to anticipate this development. Accordingly, the Secretary did not oppose the motion, which to all appearances was primarily a matter between plaintiff and counsel. Under the circumstances, entry of the resultant order under the EAJA, which everyone involved concedes was an improbable mistake, cannot be deemed consistent with due process. Therefore, relief was not only appropriate but mandatory under Rule 60(b)(4).

We are very troubled by the conduct of plaintiff and plaintiff's counsel, who were willing to accept the fruits of the district court's obviously mistaken and unlawful EAJA order and, since discovery of the error, have doggedly opposed its correction. Moreover, plaintiff's position that due process was satisfied because the Secretary "had notice that attorney's fees were at issue [prior to the December 23, 1993 award]," Appellant's Reply Brief at 5, is patently disingenuous and misleading. The only pertinent question is whether the Secretary had notice that EAJA fees were — or even possibly could have been — at issue, and the circumstances recited above demonstrate she clearly did not. Finally, plaintiff defends his self-aggrandizing exploitation of an obvious judicial mistake with an audacious non-sequitur: the "equities" are somehow in *his* favor as he lays claim to funds rightfully belonging to the public fisc, because his underlying disability (for which the government pays him benefits) arose out of a service-related injury, see Appellant's Brief at 11. Only the provisions of Fed.R.App.P. 39(b) and the strictures of due process, see Braley v. Campbell, 832 F.2d 1504, 1515 (10th Cir.1987), restrain us from *1311 awarding the Secretary her costs on this appeal.

The judgment of the United States District Court for the District of Colorado is
AFFIRMED.

 Honorable John W. Lungstrum, District Judge, United States District Court for the District of Kansas, sitting by designation.

 [1] After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed.R.App.P. 34(a); 10th Cir.R. 34.1.9. The case is therefore ordered submitted without oral argument.

COURT LISTENER

From [Free Law Project](#), a 501(c)(3) non-profit.

[About](#) [FAQ](#) [Tour](#) [Sign in / Register](#)
[Opinions](#)
[RECAP Archive](#)
[Oral Arguments](#)
[Judges](#)
[Visualizations](#) ▾

[Donate](#)

Cited By (119)



This case has been cited by these opinions:

[Simon & Schuster, Inc. v. Members of NY State Crime Victims Bd. \(1991\)](#)

[Egelhoff v. Egelhoff \(2001\)](#)

[Fidelity-Phenix Fire Ins. Co. v. Murphy \(1933\)](#)

[People v. Schmidt \(1915\)](#)

[Price v. Hitaffer \(1933\)](#)

[View All Citing Opinions](#)

Authorities (2)

This opinion cites:

[New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. ...](#)

[Owens v. Owens, 6 S.E. 794 \(N.C. 1888\)](#)

[View All Authorities](#)

Share



Support FLP

CourtListener is a project of [Free Law Project](#), a federally-recognized 501(c)(3) non-

□ Riggs v. Palmer, 22 N.E. 188 (NY 1889)

New York Court of Appeals

Filed: October 8th, 1889

Precedential Status: Precedential

Citations: 22 N.E. 188, 115 N.Y. 506

Docket Number: Unknown

[LEAD OPINION](#)

[DISSENT](#)

Author: Robert Earl

On the 13th day of August 1880, Francis B. Palmer made his last will and testament, in which he gave small legacies to his two daughters, Mrs. Riggs and Mrs. Preston, the plaintiffs in this action, and the remainder of his estate to his grandson, the defendant, Elmer E. Palmer, subject to the support of Susan Palmer, his mother, with a gift over to the two daughters, subject to the support of Mrs. Palmer, in case Elmer should survive him and die under age, unmarried and without any issue. The testator at the date of his will owned a farm and considerable personal property. He was a widower, and thereafter, in March 1882, he was married to Mrs. Bresee, with whom before his marriage he entered into an ante-nuptial contract in which it was agreed that, in lieu of dower and all other claims upon his estate in case she survived him, she should have her support upon his farm during her life, and such support was expressly charged upon the farm. At the date of the will, and, subsequently, to the death of the testator, Elmer lived with him as a member of his family, and at his death was sixteen years old. He knew of the provisions made in his favor in the will, and, that he • might prevent his ^{*Page 509} grandfather from revoking such provisions, which he had manifested some intention to do, and to obtain the speedy enjoyment and immediate possession of his property, he willfully murdered him by poisoning him. He now claims the property, and the sole question for our determination is, can he have it? The defendants say that the testator is dead; that his will was made in due form and has been admitted to probate, and that, therefore, it must have effect according to the letter of the law.

It is quite true that statutes regulating the making, proof and effect of wills, and the devolution of property, if literally construed, and if their force and effect can in no way and under no circumstances be controlled or modified, give this property to the murderer.

The purpose of those statutes was to enable testators to dispose of their estates to the objects of their bounty at death, and to carry into effect their final wishes legally expressed; and in considering and giving effect to them this purpose must be kept in view. It was the intention of the law-makers that the donees in a will should have the property given to them. But it never could have been their intention that a donee who murdered the testator to make the will operative should have any benefit under it. If such a case had been present to their minds, and it had been supposed necessary to make some provision of law to meet it, it cannot be doubted that they would have provided for it. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute, unless it be within the intention of the makers. The writers of laws do not always express their intention perfectly, but either exceed it or fall short of it, so that judges are

profit. We rely on donations for our financial security.

Please support our work with a donation.

[Donate Now](#)

to collect it from probable or rational conjectures only, and this is called rational interpretation; and Rutherford, in his Institutes (p. 407), says: "When we make use of rational interpretation, sometimes we restrain the meaning of the writer so as to take in less, and sometimes ^{*Page 510} we extend or enlarge his meaning so as to take in more than his words express."

Such a construction ought to be put upon a statute as will best answer the intention which the makers had in view, for *qui haeret in litera, haeret in cortice*. In Bacon's Abridgment (Statutes I, 5); Puffendorf (book 5, chapter 12), Rutherford (pp. 422, 427), and in Smith's Commentaries (814), many cases are mentioned where it was held that matters embraced in the general words of statutes, nevertheless, were not within the statutes, because it could not have been the intention of the law-makers that they should be included. They were taken out of the statutes by an equitable construction, and it is said in Bacon: "By an equitable construction, a case not within the letter of the statute is sometimes held to be within the meaning, because it is within the mischief for which a remedy is provided. The reason for such construction is that the law-makers could not set down every case in express terms. In order to form a right judgment whether a case be within the equity of a statute, it is a good way to suppose the law-maker present, and that you have asked him this question, did you intend to comprehend this case? Then you must give yourself such answer as you imagine he, being an upright and reasonable man, would have given. If this be that he did mean to comprehend it, you may safely hold the case to be within the equity of the statute; for while you do no more than he would have done, you do not act contrary to the statute, but in conformity thereto." In some cases the letter of a legislative act is restrained by an equitable construction; in others it is enlarged; in others the construction is contrary to the letter. The equitable construction which restrains the letter of a statute is defined by Aristotle, as frequently quoted, in this manner: *Aequitas est correctio legis generaliter latæ qua partedeficit*. If the law-makers could, as to this case, be consulted, would they say that they intended by their general language that the property of a testator or of an ancestor should pass to one who had taken his life for the express purpose of

- getting his property? In 1 Blackstone's ^{*Page 511} Commentaries (91) the learned author, speaking of the construction of statutes, says: "If there arise out of them any absurd consequences manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. *** When some collateral matter arises out of the general words, and happen to be unreasonable, then the judges are in decency to conclude that the consequence was not foreseen by the parliament, and, therefore, they are at liberty to expound the statute by equity and only *quoad hoc* disregard it;" and he gives as an illustration, if an act of parliament gives a man power to try all causes that arise within his manor of Dale, yet, if a cause should arise in which he himself is party, the act is construed not to extend to that because it is unreasonable that any man should determine his own quarrel.

There was a statute in Bologna that whoever drew blood in the streets should be severely punished, and yet it was held not to apply to the case of a barber who opened a vein in the street. It is commanded in the Decalogue that no work shall be done upon the Sabbath, and yet, giving the command a rational interpretation founded upon its design, the Infallible Judge held that it did not prohibit works of necessity, charity or benevolence on that day.

What could be more unreasonable than to suppose that it was the legislative intention in the general laws passed for the orderly, peaceable and just devolution of property, that they should have operation in favor of one who murdered his ancestor that he might speedily come into the possession of his estate? Such an intention is inconceivable. We need not, therefore, be much troubled by the general language contained in the laws.

Besides, all laws as well as all contracts may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law

- administered ^{*Page 512} in all civilized countries, and have nowhere been superseded by statutes. They were applied in the decision of the case of the *New York Mutual Life Insurance Company v. Armstrong* (117 U. S. 591). There it was held that the person who procured a policy upon the life of another, payable at his death, and then murdered the assured to make the policy payable, could not recover thereon. Mr. Justice FIELD, writing the opinion, said: "Independently of any proof of the

motives of Hunter in obtaining the policy, and even assuming that they were just and proper, he forfeited all rights under it when, to secure its immediate payment, he murdered the assured. It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired."

These maxims, without any statute giving them force or operation, frequently control the effect and nullify the language of wills. A will procured by fraud and deception, like any other instrument, may be decreed void and set aside, and so a particular portion of a will may be excluded from probate or held inoperative if induced by the fraud or undue influence of the person in whose favor it is. (*Allen v. M'Pherson*, 1 H.L. Cas. 191; *Harrison's Appeal*, 48 Conn. 202.) So a will may contain provisions which are immoral, irreligious or against public policy, and they will be held void.

Here there was no certainty that this murderer would survive the testator, or that the testator would not change his will, and there was no certainty that he would get this property if nature was allowed to take its course. He, therefore, murdered the testator expressly to vest himself with an estate. Under such circumstances, what law, human or divine, will allow him to take the estate and enjoy the fruits of his crime? The will spoke and became operative at the death of the testator. He caused that death, and thus by his crime made it speak and have operation. Shall it speak and operate in

- his favor? If he had met the testator and taken his property by ^{*Page 513} force, he would have had no title to it. Shall he acquire title by murdering him? If he had gone to the testator's house and by force compelled him, or by fraud or undue influence had induced him to will him his property, the law would not allow him to hold it. But can he give effect and operation to a will by murder, and yet take the property? To answer these questions in the affirmative, it seems to me, would be a reproach to the jurisprudence of our state, and an offense against public policy.

Under the civil law evolved from the general principles of natural law and justice by many generations of jurisconsults, philosophers and statesmen, one cannot take property by inheritance or will from an ancestor or benefactor whom he has murdered. (Domat, part 2, book 1, tit. 1, § 3; Code Napoleon, § 727; Mackeldy's Roman Law, 530, 550.) In the Civil Code of Lower Canada the provisions on the subject in the Code Napoleon have been substantially copied. But, so far as I can find, in no country where the common law prevails has it been deemed important to enact a law to provide for such a case. Our revisers and law-makers were familiar with the civil law, and they did not deem it important to incorporate into our statutes its provisions upon this subject. This is not a *casus omissus*. It was evidently supposed that the maxims of the common law were sufficient to regulate such a case and that a specific enactment for that purpose was not needed.

For the same reasons the defendant Palmer cannot take any of this property as heir. Just before the murder he was not an heir, and it was not certain that he ever would be. He might have died before his grandfather, or might have been disinherited by him. He made himself an heir by the murder, and he seeks to take property as the fruit of his crime. What has before been said as to him as legatee applies to him with equal force as an heir. He cannot vest himself with title by crime.

- My view of this case does not inflict upon Elmer any ^{*Page 514} greater or other punishment for his crime than the law specifies. It takes from him no property, but simply holds that he shall not acquire property by his crime, and thus be rewarded for its commission.

Our attention is called to *Owens v. Owens* (100 N.C. 240), as a case quite like this. There a wife had been convicted of being an accessory before the fact to the murder of her husband, and it was held that she was, nevertheless, entitled to dower. I am unwilling to assent to the doctrine of that case. The statutes provide dower for a wife who has the misfortune to survive her husband and thus lose his support and protection. It is clear beyond their purpose to make provision for a wife who by her own crime makes herself a widow and willfully and intentionally deprives herself of the support and protection of her husband. As she might have died before him, and thus never have been his widow, she cannot by her crime vest herself with an estate. The principle which lies at the bottom of the maxim, *volenti non fit injuria*, should be applied to such a case, and a widow should not, for the purpose of acquiring, as such, property rights, be permitted to allege a widowhood which she has wickedly and intentionally created.

The facts found entitled the plaintiffs to the relief they seek. The error of the referee was in his

conclusion of law. Instead of granting a new trial, therefore, I think the proper judgment upon the facts found should be ordered here. The facts have been passed upon twice with the same result, first upon the trial of Palmer for murder, and then by the referee in this action. We are, therefore, of opinion that the ends of justice do not require that they should again come in question.

The judgment of the General Term and that entered upon the report of the referee should, therefore, be reversed and judgment should be entered as follows: That Elmer E. Palmer and the administrator be enjoined from using any of the personality or real estate left by the testator for

- Elmer's benefit; that the devise and bequest in the will to Elmer be declared ^{*Page 515} ineffective to pass the title to him; that by reason of the crime of murder committed upon the grandfather he is deprived of any interest in the estate left by him; that the plaintiffs are the true owners of the real and personal estate left by the testator, subject to the charge in favor of Elmer's mother and the widow of the testator, under the ante-nuptial agreement, and that the plaintiffs have costs in all the courts against Elmer.

Newsletter

Sign up to receive the Free Law Project newsletter with tips and announcements.

[Subscribe](#)

[About](#) [Citation
Lookup](#)
[Visualizations](#) [FAQ](#) [Coverage](#)
[Tour](#) [APIs and
Bulk Data](#)
[Donate](#) [Feeds &
Podcasts](#) [Jurisdictions](#)

[Blog &
Newsletter](#) [Contact](#) [Data
Services](#)
[Terms &
Privacy](#) [Removal](#)
[Contribute](#)

Donate
to
Support our work

CourtListener is sponsored by the non-profit [Free Law Project](#).





 **Read** How cited

489 U.S. 189 (1989)

DESHANEY, A MINOR, BY HIS GUARDIAN AD LITEM, ET AL.

v.

WINNEBAGO COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL.

No. 87-154.

Supreme Court of United States.

Argued November 2, 1988

Decided February 22, 1989

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

190 *190 *Donald J. Sullivan* argued the cause for petitioners. With him on the briefs was *Curry First*.

Mark J. Mingo argued the cause for respondents. With him on the brief were *Wayne M. Yankala* and *Joel I. Klein*.

Deputy Solicitor General Ayer argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Fried*, *Assistant Attorney General Bolton*, *Roy T. Englert, Jr.*, *Barbara L. Herwig*, and *John S. Koppel*.¹⁹¹

Briefs urging affirmance were filed for the State of New York et al. by *Robert Abrams*, Attorney General of New York, *O. Peter Sherwood*, Solicitor General, *Peter H. Schiff*, Deputy Solicitor General, and *Michael S. Buskus*, Assistant Attorney General, *Joseph I. Lieberman*, Attorney General of Connecticut, *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Dave Frohnmayer*, Attorney General of Oregon, *LeRoy S. Zimmerman*, Attorney General of Pennsylvania, *Donald J. Hanaway*, Attorney General of Wisconsin, and *Charles Hoornstra*, Assistant Attorney General; and for the National Association of Counties et al. by *Benna Ruth Solomon* and *Douglas A. Poe*.

Gwendolyn H. Gregory, *August W. Steinhilber*, and *Thomas A. Shannon* filed a brief for the National School Boards Association as *amicus curiae*.

191 *191 CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner is a boy who was beaten and permanently injured by his father, with whom he lived. Respondents are social workers and other local officials who received complaints that petitioner was being abused by his father and had reason to believe that this was the case, but nonetheless did not act to remove petitioner from his father's custody. Petitioner sued respondents claiming that their failure to act deprived him of his liberty in violation of the Due Process Clause of the Fourteenth Amendment to the United States

Constitution. We hold that it did not.

The facts of this case are undeniably tragic. Petitioner Joshua DeShaney was born in 1979. In 1980, a Wyoming court granted his parents a divorce and awarded custody of Joshua to his father, Randy DeShaney. The father shortly thereafter moved to Neenah, a city located in Winnebago County, Wisconsin, taking the infant Joshua with him. There he entered into a second marriage, which also ended in divorce.

192

*192 The Winnebago County authorities first learned that Joshua DeShaney might be a victim of child abuse in January 1982, when his father's second wife complained to the police, at the time of their divorce, that he had previously "hit the boy causing marks and [was] a prime case for child abuse." App. 152-153. The Winnebago County Department of Social Services (DSS) interviewed the father, but he denied the accusations, and DSS did not pursue them further. In January 1983, Joshua was admitted to a local hospital with multiple bruises and abrasions. The examining physician suspected child abuse and notified DSS, which immediately obtained an order from a Wisconsin juvenile court placing Joshua in the temporary custody of the hospital. Three days later, the county convened an ad hoc "Child Protection Team" — consisting of a pediatrician, a psychologist, a police detective, the county's lawyer, several DSS case-workers, and various hospital personnel — to consider Joshua's situation. At this meeting, the Team decided that there was insufficient evidence of child abuse to retain Joshua in the custody of the court. The Team did, however, decide to recommend several measures to protect Joshua, including enrolling him in a preschool program, providing his father with certain counselling services, and encouraging his father's girlfriend to move out of the home. Randy DeShaney entered into a voluntary agreement with DSS in which he promised to cooperate with them in accomplishing these goals.

Based on the recommendation of the Child Protection Team, the juvenile court dismissed the child protection case and returned Joshua to the custody of his father. A month later, emergency room personnel called the DSS caseworker handling Joshua's case to report that he had once again been treated for suspicious injuries. The caseworker concluded that there was no basis for action. For the next six months, the caseworker made monthly visits to the DeShaney home, during which she observed a number of suspicious injuries on *193 Joshua's head; she also noticed that he had not been enrolled in school, and that the girlfriend had not moved out. The caseworker dutifully recorded these incidents in her files, along with her continuing suspicions that someone in the DeShaney household was physically abusing Joshua, but she did nothing more. In November 1983, the emergency room notified DSS that Joshua had been treated once again for injuries that they believed to be caused by child abuse. On the caseworker's next two visits to the DeShaney home, she was told that Joshua was too ill to see her. Still DSS took no action.

In March 1984, Randy DeShaney beat 4-year-old Joshua so severely that he fell into a life-threatening coma. Emergency brain surgery revealed a series of hemorrhages caused by traumatic injuries to the head inflicted over a long period of time. Joshua did not die, but he suffered brain damage so severe that he is expected to spend the rest of his life confined to an institution for the profoundly retarded. Randy DeShaney was

subsequently tried and convicted of child abuse.

Joshua and his mother brought this action under 42 U. S. C. § 1983 in the United States District Court for the Eastern District of Wisconsin against respondents Winnebago County, DSS, and various individual employees of DSS. The complaint alleged that respondents had deprived Joshua of his liberty without due process of law, in violation of his rights under the Fourteenth Amendment, by failing to intervene to protect him against a risk of violence at his father's hands of which they knew or should have known. The District Court granted summary judgment for respondents.

The Court of Appeals for the Seventh Circuit affirmed, 812 F. 2d 298 (1987), holding that petitioners had not made out an actionable § 1983 claim for two alternative reasons.

First, the court held that the Due Process Clause of the Fourteenth Amendment does not require a state or local governmental entity to protect its citizens from "private violence, or other *194 mishaps not attributable to the conduct of its employees." *Id.*, at 301. In so holding, the court specifically rejected the position endorsed by a divided panel of the Third Circuit in *Estate of Bailey by Oare v. County of York*, 768 F. 2d 503, 510-511 (1985), and by dicta in *Jensen v. Conrad*, 747 F. 2d 185, 190-194 (CA4 1984), cert. denied, 470 U. S. 1052 (1985), that once the State learns that a particular child is in danger of abuse from third parties and actually undertakes to protect him from that danger, a "special relationship" arises between it and the child which imposes an affirmative constitutional duty to provide adequate protection. 812 F. 2d, at 303-304.

Second, the court held, in reliance on our decision in *Martinez v. California*, 444 U. S. 277, 285 (1980), that the casual connection between respondents' conduct and Joshua's injuries was too attenuated to establish a deprivation of constitutional rights actionable under § 1983. 812 F. 2d, at 301-303. The court therefore found it unnecessary to reach the question whether respondents' conduct evinced the "state of mind" necessary to make out a due process claim after *Daniels v. Williams*, 474 U. S. 327 (1986), and *Davidson v. Cannon*, 474 U. S. 344 (1986). 812 F. 2d, at 302.

Because of the inconsistent approaches taken by the lower courts in determining when, if ever, the failure of a state or local governmental entity or its agents to provide an individual with adequate protective services constitutes a violation of the individual's due process rights, see *Archie v. Racine*, 847 F. 2d 1211, 1220-1223, and n. 10 (CA7 1988) (en banc) (collecting cases), cert. pending, No. 88-576, and the importance of the issue to the administration of state and local governments, we granted certiorari. 485 U. S. 958 (1988). We now affirm.

II

The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." Petitioners

*195 contend that the State^[1] deprived Joshua of his liberty interest in "free[dom] from . . . unjustified intrusions on personal security," see *Ingraham v. Wright*, 430 U. S. 651, 673 (1977), by failing to provide him with adequate protection against his father's violence.

The claim is one invoking the substantive rather than the procedural component of the Due Process Clause; petitioners do not claim that the State denied Joshua protection without according him appropriate procedural safeguards, see *Morrissey v. Brewer*, 408 U. S. 471, 481 (1972), but that it was categorically obligated to protect him in these

circumstances, see [*Youngberg v. Romeo*, 457 U. S. 307, 309 \(1982\)](#).^[2]

But nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text. *196 Like its counterpart in the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment was intended to prevent government "from abusing [its] power, or employing it as an instrument of oppression," [*Davidson v. Cannon*, *supra*, at 348](#); see also [*Daniels v. Williams*, *supra*, at 331](#) ("`to secure the individual from the arbitrary exercise of the powers of government,' ' ' and "to prevent governmental power from being `used for purposes of oppression' ") (internal citations omitted); [*Parratt v. Taylor*, 451 U. S. 527, 549 \(1981\)](#) ([*Powell*, J., concurring in result](#)) (to prevent the "affirmative abuse of power"). Its purpose was to protect the people from the State, not to ensure that the State protected them from each other. The Framers were content to leave the extent of governmental obligation in the latter area to the democratic political processes.

Consistent with these principles, our cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual. See, e. g., [*Harris v. McRae*, 448 U. S. 297, 317-318 \(1980\)](#) (no obligation to fund abortions or other medical services) (discussing Due Process Clause of Fifth Amendment); [*Lindsey v. Normet*, 405 U. S. 56, 74 \(1972\)](#) (no obligation to provide adequate housing) (discussing Due Process Clause of Fourteenth Amendment); see also [*Youngberg v. Romeo*, *supra*, at 317](#) ("As a general matter, a State is under no constitutional duty to provide substantive services for those within its border"). As we said in [*Harris v. McRae*](#): "Although the liberty protected by the Due Process Clause affords protection against unwarranted *government* interference . . . , it does not confer an entitlement to such [governmental aid] as may be necessary to realize all the advantages of that freedom." [*448 U. S.*, at 317-318](#) (emphasis added). If the Due Process Clause does not require the State to provide its citizens with particular protective services, it follows that the State cannot *197 be held liable under the Clause for injuries that could have been averted had it chosen to provide them.^[3] As a general matter, then, we conclude that a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.

Petitioners contend, however, that even if the Due Process Clause imposes no affirmative obligation on the State to provide the general public with adequate protective services, such a duty may arise out of certain "special relationships" created or assumed by the State with respect to particular individuals. Brief for Petitioners 13-18. Petitioners argue that such a "special relationship" existed here because the State knew that Joshua faced a special danger of abuse at his father's hands, and specifically proclaimed, by word and by deed, its intention to protect him against that danger. *Id.*, at 18-20. Having actually undertaken to protect Joshua from this danger — which petitioners concede the State played no part in creating — the State acquired an

affirmative "duty," enforceable through the Due Process Clause, to do so in a reasonably competent fashion. Its failure to discharge that duty, so the argument goes, was an abuse of governmental power that so "shocks the conscience," *Rochin v. California*, 342 U. S. 165, 172 (1952), as to constitute a substantive due process violation. Brief for Petitioners 20.^[4]

198 *198 We reject this argument. It is true that in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals. In *Estelle v. Gamble*, 429 U. S. 97 (1976), we recognized that the Eighth Amendment's prohibition against cruel and unusual punishment, made applicable to the States through the Fourteenth Amendment's Due Process Clause, *Robinson v. California*, 370 U. S. 660 (1962), requires the State to provide adequate medical care to incarcerated prisoners. 429 U. S., at 103-104.^[5] We reasoned *199 that because the prisoner is unable " `by reason of the deprivation of his liberty [to] care for himself,' " it is only " `just' " that the State be required to care for him. *Ibid.*, quoting *Spicer v. Williamson*, 191 N. C. 487, 490, 132 S. E. 291, 293 (1926).

In *Youngberg v. Romeo*, 457 U. S. 307 (1982), we extended this analysis beyond the Eighth Amendment setting,^[6] holding that the substantive component of the Fourteenth Amendment's Due Process Clause requires the State to provide involuntarily committed mental patients with such services as are necessary to ensure their "reasonable safety" from themselves and others. *Id.*, at 314-325; see *id.*, at 315, 324 (dicta indicating that the State is also obligated to provide such individuals with "adequate food, shelter, clothing, and medical care"). As we explained: "If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional [under the Due Process Clause] to confine the involuntarily committed — who may not be punished at all — in unsafe conditions." *Id.*, at 315-316; see also *Revere v. Massachusetts General Hospital*, 463 U. S. 239, 244 (1983) (holding that the Due Process Clause requires the responsible government or governmental agency to provide medical care to suspects in police custody who have been injured while being apprehended by the police).

200 But these cases afford petitioners no help. Taken together, they stand only for the proposition that when the State takes a person into its custody and holds him there *200 against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. See *Youngberg v. Romeo*, *supra*, at 317 ("When a person is institutionalized — and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist").^[7] The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs — e. g., food, clothing, shelter, medical care, and reasonable safety — it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. See *Estelle v. Gamble*, *supra*, at 103-104; *Youngberg v. Romeo*, *supra*, at 315-316. The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf. See *Estelle v. Gamble*, *supra*, at 103 ("An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met"). In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf — through incarceration,

institutionalization, or other similar restraint of personal liberty — which is the "deprivation of liberty" triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means.^[8]

201

*201 The *Estelle-Youngberg* analysis simply has no applicability in the present case. Petitioners concede that the harms Joshua suffered occurred not while he was in the State's custody, but while he was in the custody of his natural father, who was in no sense a state actor.^[9] While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. That the State once took temporary custody of Joshua does not alter the analysis, for when it returned him to his father's custody, it placed him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individual's safety by having once offered him shelter. Under these circumstances, the State had no constitutional duty to protect Joshua.

It may well be that, by voluntarily undertaking to protect Joshua against a danger it concededly played no part in creating, the State acquired a duty under state tort law to

202

provide *202 him with adequate protection against that danger. See Restatement (Second) of Torts § 323 (1965) (one who undertakes to render services to another may in some circumstances be held liable for doing so in a negligent fashion); see generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on the Law of Torts* § 56 (5th ed. 1984) (discussing "special relationships" which may give rise to affirmative duties to act under the common law of tort). But the claim here is based on the Due Process Clause of the Fourteenth Amendment, which, as we have said many times, does not transform every tort committed by a state actor into a constitutional violation. See *Daniels v. Williams*, 474 U. S., at 335-336; *Parratt v. Taylor*, 451 U. S., at 544; *Martinez v. California*, 444 U. S. 277, 285 (1980); *Baker v. McCollan*, 443 U. S. 137, 146 (1979); *Paul v. Davis*, 424 U. S. 693, 701 (1976). A State may, through its courts and legislatures, impose such affirmative duties of care and protection upon its agents as it wishes. But not "all common-law duties owed by government actors were . . . constitutionalized by the Fourteenth Amendment." *Daniels v. Williams*, *supra*, at 335. Because, as explained above, the State had no constitutional duty to protect Joshua against his father's violence, its failure to do so — though calamitous in hindsight — simply does not constitute a violation of the Due Process Clause.^[10]

Judges and lawyers, like other humans, are moved by natural sympathy in a case like this to find a way for Joshua and his mother to receive adequate compensation for the grievous *203 harm inflicted upon them. But before yielding to that impulse, it is well to

203

remember once again that the harm was inflicted not by the State of Wisconsin, but by Joshua's father. The most that can be said of the state functionaries in this case is that they stood by and did nothing when suspicious circumstances dictated a more active role for them. In defense of them it must also be said that had they moved too soon to take custody of the son away from the father, they would likely have been met with charges of improperly intruding into the parent-child relationship, charges based on the same Due Process Clause that forms the basis for the present charge of failure to provide adequate protection.

The people of Wisconsin may well prefer a system of liability which would place upon the

State and its officials the responsibility for failure to act in situations such as the present one. They may create such a system, if they do not have it already, by changing the tort law of the State in accordance with the regular lawmaking process. But they should not have it thrust upon them by this Court's expansion of the Due Process Clause of the Fourteenth Amendment.

Affirmed.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

"The most that can be said of the state functionaries in this case," the Court today concludes, "is that they stood by and did nothing when suspicious circumstances dictated a more active role for them." *Ante* this page. Because I believe that this description of respondents' conduct tells only part of the story and that, accordingly, the Constitution itself "dictated a more active role" for respondents in the circumstances presented here, I cannot agree that respondents had no constitutional duty to help Joshua DeShaney.

It may well be, as the Court decides, *ante*, at 194-197, that the Due Process Clause as construed by our prior cases creates no general right to basic governmental services.

204 That, *204 however, is not the question presented here; indeed, that question was not raised in the complaint, urged on appeal, presented in the petition for certiorari, or addressed in the briefs on the merits. No one, in short, has asked the Court to proclaim that, as a general matter, the Constitution safeguards positive as well as negative liberties.

This is more than a quibble over dicta; it is a point about perspective, having substantive ramifications. In a constitutional setting that distinguishes sharply between action and inaction, one's characterization of the misconduct alleged under § 1983 may effectively decide the case. Thus, by leading off with a discussion (and rejection) of the idea that the Constitution imposes on the States an affirmative duty to take basic care of their citizens, the Court foreshadows — perhaps even preordains — its conclusion that no duty existed even on the specific facts before us. This initial discussion establishes the baseline from which the Court assesses the DeShaneys' claim that, when a State has — "by word and by deed," *ante*, at 197 — announced an intention to protect a certain class of citizens and has before it facts that would trigger that protection under the applicable state law, the Constitution imposes upon the State an affirmative duty of protection.

The Court's baseline is the absence of positive rights in the Constitution and a concomitant suspicion of any claim that seems to depend on such rights. From this perspective, the DeShaneys' claim is first and foremost about inaction (the failure, here, of respondents to take steps to protect Joshua), and only tangentially about action (the establishment of a state program specifically designed to help children like Joshua). And from this perspective, holding these Wisconsin officials liable — where the only difference between this case and one involving a general claim to protective services is Wisconsin's establishment and operation of a program to protect children — would seem to punish an effort that we should seek to promote.

205 *205 I would begin from the opposite direction. I would focus first on the action that Wisconsin *has* taken with respect to Joshua and children like him, rather than on the

actions that the State failed to take. Such a method is not new to this Court. Both *Estelle v. Gamble*, 429 U. S. 97 (1976), and *Youngberg v. Romeo*, 457 U. S. 307 (1982), began by emphasizing that the States had confined J. W. Gamble to prison and Nicholas Romeo to a psychiatric hospital. This initial action rendered these people helpless to help themselves or to seek help from persons unconnected to the government. See *Estelle, supra, at 104* ("[I]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself"); *Youngberg, supra, at 317* ("When a person is institutionalized — and wholly dependent on the State — it is conceded by petitioners that a duty to provide certain services and care does exist"). Cases from the lower courts also recognize that a State's actions can be decisive in assessing the constitutional significance of subsequent inaction. For these purposes, moreover, actual physical restraint is not the only state action that has been considered relevant. See, e. g., *White v. Rochford*, 592 F. 2d 381 (CA7 1979) (police officers violated due process when, after arresting the guardian of three young children, they abandoned the children on a busy stretch of highway at night).

Because of the Court's initial fixation on the general principle that the Constitution does not establish positive rights, it is unable to appreciate our recognition in *Estelle* and *Youngberg* that this principle does not hold true in all circumstances. Thus, in the Court's view, *Youngberg* can be explained (and dismissed) in the following way: "In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf — through incarceration, institutionalization, or other similar restraint of personal liberty — which is the 'deprivation of liberty' triggering the protections of the Due Process ²⁰⁶ Clause, not its failure to act to protect his liberty interests against harms inflicted by other means." *Ante*, at 200. This restatement of *Youngberg*'s holding should come as a surprise when one recalls our explicit observation in that case that Romeo did not challenge his commitment to the hospital, but instead "argue[d] that he ha[d] a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed these rights *by failing to provide* constitutionally required conditions of confinement." *457 U. S., at 315* (emphasis added). I do not mean to suggest that "the State's affirmative act of restraining the individual's freedom to act on his own behalf," *ante*, at 200, was irrelevant in *Youngberg*; rather, I emphasize that this conduct would have led to no injury, and consequently no cause of action under § 1983, unless the State then had failed to take steps to protect Romeo from himself and from others. In addition, the Court's exclusive attention to state-imposed restraints of "the individual's freedom to act on his own behalf," *ante*, at 200, suggests that it was the State that rendered Romeo unable to care for himself, whereas in fact — with an I. Q. of between 8 and 10, and the mental capacity of an 18-month-old child, *457 U. S., at 309* — he had been quite incapable of taking care of himself long before the State stepped into his life. Thus, the fact of hospitalization was critical in *Youngberg* not because it rendered Romeo helpless to help himself, but because it separated him from other sources of aid that, we held, the State was obligated to replace. Unlike the Court, therefore, I am unable to see in *Youngberg* a neat and decisive divide between action and inaction.

Moreover, to the Court, the only fact that seems to count as an "affirmative act of restraining the individual's freedom to act on his own behalf" is direct physical control. *Ante*, at 200 (listing only "incarceration, institutionalization, [and] other similar restraint of personal liberty" in describing relevant "affirmative acts"). I would not, however, give

207

Youngberg *207 and *Estelle* such a stingy scope. I would recognize, as the Court apparently cannot, that "the State's knowledge of [an] individual's predicament [and] its expressions of intent to help him" can amount to a "limitation . . . on his freedom to act on his own behalf" or to obtain help from others. *Ante*, at 200. Thus, I would read *Youngberg* and *Estelle* to stand for the much more generous proposition that, if a State cuts off private sources of aid and then refuses aid itself, it cannot wash its hands of the harm that results from its inaction.

Youngberg and *Estelle* are not alone in sounding this theme. In striking down a filing fee as applied to divorce cases brought by indigents, see [Boddie v. Connecticut, 401 U. S. 371 \(1971\)](#), and in deciding that a local government could not entirely foreclose the opportunity to speak in a public forum, see, e. g., [Schneider v. State, 308 U. S. 147 \(1939\)](#); [Hague v. Committee for Industrial Organization, 307 U. S. 496 \(1939\)](#); [United States v. Grace, 461 U. S. 171 \(1983\)](#), we have acknowledged that a State's actions — such as the monopolization of a particular path of relief — may impose upon the State certain positive duties. Similarly, [Shelley v. Kraemer, 334 U. S. 1 \(1948\)](#), and [Burton v. Wilmington Parking Authority, 365 U. S. 715 \(1961\)](#), suggest that a State may be found complicit in an injury even if it did not create the situation that caused the harm.

Arising as they do from constitutional contexts different from the one involved here, cases like *Boddie* and *Burton* are instructive rather than decisive in the case before us. But they set a tone equally well established in precedent as, and contradictory to, the one the Court sets by situating the DeShaneys' complaint within the class of cases epitomized by the Court's decision in [Harris v. McRae, 448 U. S. 297 \(1980\)](#). The cases that I have cited tell us that [Goldberg v. Kelly, 397 U. S. 254 \(1970\)](#) (recognizing entitlement to welfare under state law), can stand side by side with [Dandridge v. Williams, 397 U. S. 471, 484 \(1970\)](#) (implicitly rejecting idea that welfare is a fundamental right), and that [Goss v. Lopez, 419 U. S. 565, 573 \(1975\)](#) (entitlement to public education under state law), is perfectly consistent with [San Antonio Independent School Dist. v. Rodriguez, 411 U. S. 1, 29-39 \(1973\)](#) (no fundamental right to education). To put the point more directly, these cases signal that a State's prior actions may be decisive in analyzing the constitutional significance of its inaction. I thus would locate the DeShaneys' claims within the framework of cases like *Youngberg* and *Estelle*, and more generally, *Boddie* and *Schneider*, by considering the actions that Wisconsin took with respect to Joshua.

Wisconsin has established a child-welfare system specifically designed to help children like Joshua. Wisconsin law places upon the local departments of social services such as respondent (DSS or Department) a duty to investigate reported instances of child abuse. See Wis. Stat. § 48.981(3) (1987-1988). While other governmental bodies and private persons are largely responsible for the reporting of possible cases of child abuse, see § 48.981(2), Wisconsin law channels all such reports to the local departments of social services for evaluation and, if necessary, further action. § 48.981(3). Even when it is the sheriff's office or police department that receives a report of suspected child abuse, that report is referred to local social services departments for action, see § 48.981(3)(a); the only exception to this occurs when the reporter fears for the child's *immediate* safety. § 48.981(3)(b). In this way, Wisconsin law invites — indeed, directs — citizens and other governmental entities to depend on local departments of social services such as respondent to protect children from abuse.

208

209

The specific facts before us bear out this view of Wisconsin's system of protecting children. Each time someone voiced a suspicion that Joshua was being abused, that information was relayed to the Department for investigation and possible action. When Randy DeShaney's second wife told the police that he had " `hit the boy causing marks and [was] a prime case for child abuse,' " the police referred her *209 complaint to DSS. *Ante*, at 192. When, on three separate occasions, emergency room personnel noticed suspicious injuries on Joshua's body, they went to DSS with this information. *Ante*, at 192-193. When neighbors informed the police that they had seen or heard Joshua's father or his father's lover beating or otherwise abusing Joshua, the police brought these reports to the attention of DSS. App. 144-145. And when respondent Kemmeter, through these reports and through her own observations in the course of nearly 20 visits to the DeShaney home, *id.*, at 104, compiled growing evidence that Joshua was being abused, that information stayed within the Department — chronicled by the social worker in detail that seems almost eerie in light of her failure to act upon it. (As to the extent of the social worker's involvement in, and knowledge of, Joshua's predicament, her reaction to the news of Joshua's last and most devastating injuries is illuminating: " `I just knew the phone would ring some day and Joshua would be dead.' " 812 F. 2d 298, 300 (CA7 1987).)

Even more telling than these examples is the Department's control over the decision whether to take steps to protect a particular child from suspected abuse. While many different people contributed information and advice to this decision, it was up to the people at DSS to make the ultimate decision (subject to the approval of the local government's corporation counsel) whether to disturb the family's current arrangements. App. 41, 58. When Joshua first appeared at a local hospital with injuries signaling physical abuse, for example, it was DSS that made the decision to take him into temporary custody for the purpose of studying his situation — and it was DSS, acting in conjunction with the corporation counsel, that returned him to his father. *Ante*, at 192. Unfortunately for Joshua DeShaney, the buck effectively stopped with the Department.

210

In these circumstances, a private citizen, or even a person working in a government agency other than DSS, would doubtless feel that her job was done as soon as she had reported *210 her suspicions of child abuse to DSS. Through its child-welfare program, in other words, the State of Wisconsin has relieved ordinary citizens and governmental bodies other than the Department of any sense of obligation to do anything more than report their suspicions of child abuse to DSS. If DSS ignores or dismisses these suspicions, no one will step in to fill the gap. Wisconsin's child-protection program thus effectively confined Joshua DeShaney within the walls of Randy DeShaney's violent home until such time as DSS took action to remove him. Conceivably, then, children like Joshua are made worse off by the existence of this program when the persons and entities charged with carrying it out fail to do their jobs.

It simply belies reality, therefore, to contend that the State "stood by and did nothing" with respect to Joshua. *Ante*, at 203. Through its child-protection program, the State actively intervened in Joshua's life and, by virtue of this intervention, acquired ever more certain knowledge that Joshua was in grave danger. These circumstances, in my view, plant this case solidly within the tradition of cases like *Youngberg* and *Estelle*.

It will be meager comfort to Joshua and his mother to know that, if the State had

"selectively den[ied] its protective services" to them because they were "disfavored minorities," *ante*, at 197, n. 3, their § 1983 suit might have stood on sturdier ground. Because of the posture of this case, we do not know why respondents did not take steps to protect Joshua; the Court, however, tells us that their reason is irrelevant so long as their inaction was not the product of invidious discrimination. Presumably, then, if respondents decided not to help Joshua because his name began with a "J," or because he was born in the spring, or because they did not care enough about him even to formulate an intent to discriminate against him based on an arbitrary reason, respondents would not be liable to the DeShaneys because they were not the ones who dealt the blows that destroyed Joshua's life.

211

*211 I do not suggest that such irrationality was at work in this case; I emphasize only that we do not know whether or not it was. I would allow Joshua and his mother the opportunity to show that respondents' failure to help him arose, not out of the sound exercise of professional judgment that we recognized in *Youngberg* as sufficient to preclude liability, see [457 U. S., at 322-323](#), but from the kind of arbitrariness that we have in the past condemned. See, e. g., *Daniels v. Williams*, 474 U. S. 327, 331 (1986) (purpose of Due Process Clause was "to secure the individual from the arbitrary exercise of the powers of government" (citations omitted)); *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 399 (1937) (to sustain state action, the Court need only decide that it is not "arbitrary or capricious"); *Euclid v. Ambler Realty Co.*, 272 U. S. 365, 389 (1926) (state action invalid where it "passes the bounds of reason and assumes the character of a merely arbitrary fiat," quoting *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192, 204 (1912)).

Youngberg's deference to a decisionmaker's professional judgment ensures that once a caseworker has decided, on the basis of her professional training and experience, that one course of protection is preferable for a given child, or even that no special protection is required, she will not be found liable for the harm that follows. (In this way, *Youngberg*'s vision of substantive due process serves a purpose similar to that served by adherence to procedural norms, namely, requiring that a state actor stop and think before she acts in a way that may lead to a loss of liberty.) Moreover, that the Due Process Clause is not violated by merely negligent conduct, see *Daniels, supra*, and *Davidson v. Cannon*, 474 U. S. 344 (1986), means that a social worker who simply makes a mistake of judgment under what are admittedly complex and difficult conditions will not find herself liable in damages under § 1983.

212

As the Court today reminds us, "the Due Process Clause of the Fourteenth Amendment was intended to prevent government *212 'from abusing [its] power, or employing it as an instrument of oppression.' " *Ante*, at 196, quoting *Davidson, supra*, U. S., at 348. My disagreement with the Court arises from its failure to see that inaction can be every bit as abusive of power as action, that oppression can result when a State undertakes a vital duty and then ignores it. Today's opinion construes the Due Process Clause to permit a State to displace private sources of protection and then, at the critical moment, to shrug its shoulders and turn away from the harm that it has promised to try to prevent. Because I cannot agree that our Constitution is indifferent to such indifference, I respectfully dissent.

JUSTICE BLACKMUN, dissenting.

Today, the Court purports to be the dispassionate oracle of the law, unmoved by "natural sympathy." *Ante*, at 202. But, in this pretense, the Court itself retreats into a sterile formalism which prevents it from recognizing either the facts of the case before it or the legal norms that should apply to those facts. As JUSTICE BRENNAN demonstrates, the facts here involve not mere passivity, but active state intervention in the life of Joshua DeShaney — intervention that triggered a fundamental duty to aid the boy once the State learned of the severe danger to which he was exposed.

The Court fails to recognize this duty because it attempts to draw a sharp and rigid line between action and inaction. But such formalistic reasoning has no place in the interpretation of the broad and stirring Clauses of the Fourteenth Amendment. Indeed, I submit that these Clauses were designed, at least in part, to undo the formalistic legal reasoning that infected antebellum jurisprudence, which the late Professor Robert Cover analyzed so effectively in his significant work entitled *Justice Accused* (1975).

Like the antebellum judges who denied relief to fugitive slaves, see *id.*, at 119-121, the Court today claims that its decision, however harsh, is compelled by existing legal doctrine. On the contrary, the question presented by this case ²¹³ is an open one, and our Fourteenth Amendment precedents may be read more broadly or narrowly depending upon how one chooses to read them. Faced with the choice, I would adopt a "sympathetic" reading, one which comports with dictates of fundamental justice and recognizes that compassion need not be exiled from the province of judging. Cf. A. Stone, *Law, Psychiatry, and Morality* 262 (1984) ("We will make mistakes if we go forward, but doing nothing can be the worst mistake. What is required of us is moral ambition. Until our composite sketch becomes a true portrait of humanity we must live with our uncertainty; we will grope, we will struggle, and our compassion may be our only guide and comfort").

Poor Joshua! Victim of repeated attacks by an irresponsible, bullying, cowardly, and intemperate father, and abandoned by respondents who placed him in a dangerous predicament and who knew or learned what was going on, and yet did essentially nothing except, as the Court revealingly observes, *ante*, at 193, "dutifully recorded these incidents in [their] files." It is a sad commentary upon American life, and constitutional principles — so full of late of patriotic fervor and proud proclamations about "liberty and justice for all" — that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded. Joshua and his mother, as petitioners here, deserve — but now are denied by this Court — the opportunity to have the facts of their case considered in the light of the constitutional protection that 42 U. S. C. § 1983 is meant to provide.

[1] Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union Children's Rights Project et al. by Christopher A. Hansen, Marcia Robinson Lowry, John A. Powell, Steven R. Shapiro, and Helen Hershkoff; and for the Massachusetts Committee for Children and Youth by Laura L. Carroll.

[2] As used here, the term "State" refers generically to state and local governmental entities and their agents.

[3] Petitioners also argue that the Wisconsin child protection statutes gave Joshua an "entitlement" to receive protective services in accordance with the terms of the statute, an entitlement which would enjoy due process protection against state deprivation under our decision in *Board of Regents of State Colleges v. Roth*, 408 U. S. 564 (1972). Brief for Petitioners 24-29. But this argument is made for the first time in petitioners' brief to this Court: it was not pleaded in the complaint, argued to the Court of Appeals as a ground for reversing the District

Court, or raised in the petition for certiorari. We therefore decline to consider it here. See [Youngberg v. Romeo, 457 U. S., at 316, n. 19](#); [Dothard v. Rawlinson, 433 U. S. 321, 323, n. 1 \(1977\)](#); [Duignan v. United States, 274 U. S. 195, 200 \(1927\)](#); [Old Jordan Mining & Milling Co. v. Societe Anonyme des Mines, 164 U. S. 261, 264-265 \(1896\)](#).

[3] The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause. See [Yick Wo v. Hopkins, 118 U. S. 356 \(1886\)](#). But no such argument has been made here.

[4] The genesis of this notion appears to lie in a statement in our opinion in [Martinez v. California, 444 U. S. 277 \(1980\)](#). In that case, we were asked to decide, *inter alia*, whether state officials could be held liable under the Due Process Clause of the Fourteenth Amendment for the death of a private citizen at the hands of a parolee. Rather than squarely confronting the question presented here — whether the Due Process Clause imposed upon the State an affirmative duty to protect — we affirmed the dismissal of the claim on the narrower ground that the causal connection between the state officials' decision to release the parolee from prison and the murder was too attenuated to establish a "deprivation" of constitutional rights within the meaning of § 1983. *Id.*, at 284-285. But we went on to say:

"[T]he parole board was not aware that appellants' decedent, as distinguished from the public at large, faced any special danger. We need not and do not decide that a parole officer could never be deemed to 'deprive' someone of life by action taken in connection with the release of a prisoner on parole. But we do hold that at least under the particular circumstances of this parole decision, appellants' decedent's death is too remote a consequence of the parole officers' action to hold them responsible under the federal civil rights law." *Id.*, at 285 (footnote omitted).

Several of the Courts of Appeals have read this language as implying that once the State learns that a third party poses a special danger to an identified victim, and indicates its willingness to protect the victim against that danger, a "special relationship" arises between State and victim, giving rise to an affirmative duty, enforceable through the Due Process Clause, to render adequate protection. See [Estate of Bailey by Oare v. County of York, 768 F. 2d 503, 510-511 \(CA3 1985\)](#); [Jensen v. Conrad, 747 F. 2d 185, 190-194](#), and n. 11 (CA4 1984) (dicta), cert. denied, [470 U. S. 1052 \(1985\)](#); [Balistreri v. Pacifica Police Dept., 855 F. 2d 1421, 1425-1426 \(CA9 1988\)](#). But see, in addition to the opinion of the Seventh Circuit below, [Estate of Gilmore v. Buckley, 787 F. 2d 714, 720-723 \(CA1\)](#), cert. denied, [479 U. S. 882 \(1986\)](#); [Harpole v. Arkansas Dept. of Human Services, 820 F. 2d 923, 926-927 \(CA8 1987\)](#); [Wideman v. Shallowford Community Hospital Inc., 826 F. 2d 1030, 1034-1037 \(CA11 1987\)](#).

[5] To make out an Eighth Amendment claim based on the failure to provide adequate medical care, a prisoner must show that the state defendants exhibited "deliberate indifference" to his "serious" medical needs; the mere negligent or inadvertent failure to provide adequate care is not enough. [Estelle v. Gamble, 429 U. S., at 105-106](#). In [Whitley v. Albers, 475 U. S. 312 \(1986\)](#), we suggested that a similar state of mind is required to make out a substantive due process claim in the prison setting. *Id.*, at 326-327.

[6] The Eighth Amendment applies "only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. . . . [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law." [Ingraham v. Wright, 430 U. S. 651, 671-672, n. 40 \(1977\)](#); see also [Revere v. Massachusetts General Hospital, 463 U. S. 239, 244 \(1983\)](#); [Bell v. Wolfish, 441 U. S. 520, 535, n. 16 \(1979\)](#).

[7] Even in this situation, we have recognized that the State "has considerable discretion in determining the nature and scope of its responsibilities." [Youngberg v. Romeo, 457 U. S., at 317](#).

[8] Of course, the protections of the Due Process Clause, both substantive and procedural, may be triggered when the State, by the affirmative acts of its agents, subjects an involuntarily confined individual to deprivations of liberty which are not among those generally authorized by his confinement. See, e. g., [Whitley v. Albers, supra, at 326-327](#) (shooting inmate); [Youngberg v. Romeo, supra, at 316](#) (shackling involuntarily committed mental patient); [Hughes v. Rowe, 449 U. S. 5, 11 \(1980\)](#) (removing inmate from general prison population and confining him to administrative segregation); [Vitek v. Jones, 445 U. S. 480, 491-494 \(1980\)](#) (transferring inmate to mental health facility).

[9] Complaint ¶ 16, App. 6 ("At relevant times to and until March 8, 1984, [the date of the final beating,] Joshua DeShaney was in the custody and control of Defendant Randy DeShaney"). Had the State by the affirmative exercise of its power removed Joshua from free society and placed him in a foster home operated by its agents, we might have a situation sufficiently analogous to incarceration or institutionalization to give rise to an affirmative duty to protect. Indeed, several Courts of Appeals have held, by analogy to *Estelle* and *Youngberg*, that the State may be held liable under the Due Process Clause for failing to protect children in foster homes from mistreatment at the hands of their foster parents. See [Doe v. New York City Dept. of Social Services, 649 F.](#)

2d 134, 141-142 (CA2 1981), after remand, 709 F. 2d 782, cert. denied *sub nom. Catholic Home Bureau v. Doe*, 464 U. S. 864 (1983); Taylor ex rel. Walker v. Ledbetter, 818 F. 2d 791, 794-797 (CA11 1987) (en banc), cert. pending *Ledbetter v. Taylor*, No. 87-521. We express no view on the validity of this analogy, however, as it is not before us in the present case.

[10] Because we conclude that the Due Process Clause did not require the State to protect Joshua from his father, we need not address respondents' alternative argument that the individual state actors lacked the requisite "state of mind" to make out a due process violation. See Daniels v. Williams, 474 U. S., at 334, n. 3. Similarly, we have no occasion to consider whether the individual respondents might be entitled to a qualified immunity defense, see Anderson v. Creighton, 483 U. S. 635 (1987), or whether the allegations in the complaint are sufficient to support a § 1983 claim against the county and DSS under Monell v. New York City Dept. of Social Services, 436 U. S. 658 (1978), and its progeny.



Sign in

Books



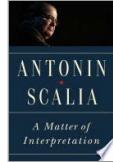
Add to my library

Front Cover



BUY EBOOK - \$11.94

Get this book in print ▾



0 Reviews

Write review

A Matter of Interpretation: Federal Courts and the Law - New Edition

By Antonin Scalia

About this book

My library

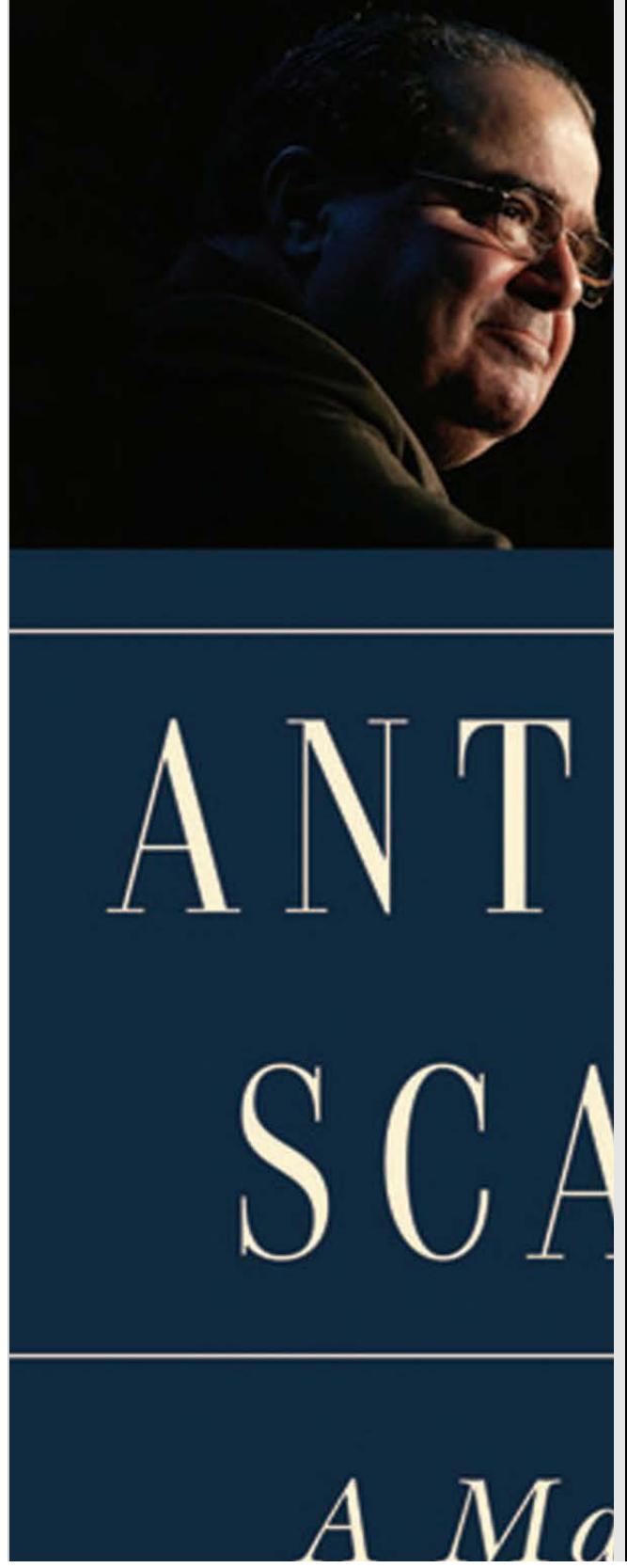
My History

Books on Google Play

Terms of Service



Pages displayed by permission of [Princeton University Press. Copyright.](#)





RULES OF THE SUPREME COURT OF THE UNITED STATES > PART III.

Jurisdiction on Writ Of Certiorari > Rule 10.
Considerations Governing Review on Writ of Certiorari

Rule 10. Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

Ad
Law Settlement Cash
Advances - Cash Delivery in FloridaToday

No payments. Apply by Phone, have a lawsuit ? get some pre settlement money

lawsuit-settlement-money.com



Ad
Law Settlement Cash
Advances - Cash Delivery in FloridaToday

No payments. Apply by Phone, have a lawsuit ? get some pre settlement money

lawsuit-settlement-money.com



Find a Lawyer

- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

[< PART III.](#) [up](#) [Rule 11. Certiorari to a United States Court of Appeals before Judgment >](#)
[Jurisdiction on Writ Of Certiorari](#)

Law Settlement Cash Advances
- Cash Delivery in FloridaToday

No payments. Apply by Phone, have a lawsuit ? get some pre settlement money [lawsuit-settlement-money.com](#)



ABOUT LII

CONTACT US

ADVERTISE HERE

HELP

TERMS OF USE

PRIVACY

[LII]



RULES OF THE SUPREME COURT OF THE UNITED STATES > PART III.

Jurisdiction on Writ Of Certiorari > Rule 10.
Considerations Governing Review on Writ of Certiorari

Rule 10. Considerations Governing Review on Writ of Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

Maritime Injury Lawyers -
Best Law Firms. Super
Lawyers.

Injured At Sea? Pay Only If You Win -
No Risk! Fast, Easy Settlement
Process.

wagnermclaughlin.com



Process Server's Toolbox - 1000's of

Professional Software for the
Professional Process Server.

dbsinfo.com

Find a Lawyer



- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

[< PART III.](#) [up](#) [Rule 11. Certiorari to a United States Court of Appeals before Judgment >](#)
[Jurisdiction on Writ Of Certiorari](#)

Divorce Lawyer 25 Yrs
Exp - Family Law Attorney   Ac
Aggressive Divorce Attorneys. Divorce, Alimony, Custody, Support shafercohen.com

ABOUT LII

CONTACT US

ADVERTISE HERE

HELP

TERMS OF USE

PRIVACY

[LII]

Oyez

[CASES](#)[JUSTICES](#)[TOUR](#)[NEWS](#)

BODY POLITIC

The Supreme
Court and
abortion law

PHOTOGRAPHY
BY MATT WADE

DOCKET NO.**DECIDED BY***Case pending***Cite this page**[APA](#) [Bluebook](#) [Chicago](#) [MLA](#)

". " Oyez, 12 Jan. 50649, www.oyez.org/cases/1988/87-154.

