

Defining the Parameters of Section 1983: *Parratt v. Taylor*¹ — 42 U.S.C. § 1983² prohibits any person acting under color of state law from depriving any other person of the rights, privileges and immunities secured by the Constitution and laws of the United States.³ For ninety years after its enactment the statute was rarely used.⁴ As a result of three developments, however, the scope of section 1983 increased dramatically. First, many of the provisions of the Bill of Rights were held to apply to the states through the fourteenth amendment⁵ and section 1983 became a vehicle to enforce those expanding rights against state interference. Second, in its 1961 decision of *Monroe v. Pape*,⁶ the Supreme Court held that section 1983 governed not only acts of state officials sanctioned by the state, but also acts which were in violation of state law.⁷ Finally the *Monroe* Court further extended the statute's reach by ruling that a section 1983 action was supplementary to remedies provided by the state.⁸

¹ 451 U.S. 527 (1981).

² 42 U.S.C. § 1983 (Supp. III 1979).

³ Section 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983 (Supp. III 1979).

The jurisdictional counterpart of § 1983 is 28 U.S.C. § 1343(a)(3). Under this section, federal district courts have original jurisdiction over § 1983 claims with no minimum monetary requirement. 28 U.S.C. § 1343(a)(3) (Supp. III 1979). Although this article is only concerned with the protection of constitutional rights afforded by the Act, § 1983 also provides a cause of action for violations of federal statutes. See *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980); *Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n*, 453 U.S. 1, 19-21 (1981).

⁴ Whitman, *Constitutional Torts*, 79 MICH. L. REV. 5, 5 (1980); *Developments in the Law* — Section 1983 and Federalism, 90 HARV. L. REV. 1133, 1169 (1977) [hereinafter cited as *Developments*]; Note, *Limiting the Section 1983 Action in the Wake of Monroe v. Pape*, 82 HARV. L. REV. 1486, 1486 (1969) [hereinafter cited as Note, *Limiting § 1983*].

⁵ The fourteenth amendment currently protects individuals from state interference with the following federal constitutional rights:

[T]he right to just compensation; the first amendment freedoms of speech, press, assembly, petition, free exercise of religion and non-establishment of religion; the fourth amendment rights to be free of unreasonable search and seizure and to exclude from criminal trials evidence illegally seized; the fifth amendment rights to be free of compelled self incrimination and double jeopardy; the sixth amendment rights to counsel, to a speedy and public trial before a jury, to an opportunity to confront opposing witnesses, and to compulsory process for the purpose of obtaining favorable witness; and the eighth amendment right to be free of cruel and unusual punishments.

L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 11-2, at 567-68 (1978).

⁶ 365 U.S. 167 (1961), *overruled in part*, *Monell v. Department of Social Servs.*, 436 U.S. 658, 701 (1978) (The Court overruled *Monroe* on the issue of municipal immunity and held that a municipal body is not entitled to absolute immunity under § 1983.).

⁷ 365 U.S. at 172.

⁸ *Id.* at 183.

As a result of the broadened scope of the statute, the number of section 1983 claims filed in federal court has increased greatly.⁹ In 1981, in *Parratt v. Taylor*,¹⁰ the Supreme Court made a significant attempt to check the proliferation of section 1983 cases, while ensuring that constitutional rights will continue to be protected. In so doing, the *Parratt* Court resolved the questions of whether negligent deprivations are actionable under section 1983 and whether postdeprivation hearings may satisfy due process requirements for a negligent deprivation of property.

The respondent in *Parratt*, Bert Taylor, was an inmate in a Nebraska state prison who ordered hobby materials worth \$23.50 by mail.¹¹ The package arrived at the prison and was signed for by two prison employees, but because he was in segregation, Taylor was unable to have the hobby kit at that time.¹² When he was released from segregation, prison officials were unable to locate the materials or determine what had happened to them.¹³ Taylor went through the prison grievance procedure apparently to no avail.¹⁴ Subsequently, he brought a section 1983 claim in federal district court against the Warden and the Hobby Manager of the prison to recover the cost of the materials.¹⁵ Taylor alleged that as a result of the negligence of the prison officials he was deprived of his property without due process of law.¹⁶ The district court granted Taylor's motion for summary judgment reasoning that the negligence of the officials resulted in a loss of property without due process.¹⁷ The Eighth Circuit Court of Appeals affirmed the summary judgment¹⁸ and the United States Supreme Court granted certiorari.¹⁹

In an 8-1 decision,²⁰ the Supreme Court held that although Taylor was

⁹ The number of civil rights actions filed in federal court, excluding suits by prisoners, has increased from 296 in 1961, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, 1975 ANN. REP. OF THE DIRECTOR 194 [hereinafter cited as 1975 ANN. REP.], to 12,944 in 1980, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, 1980 ANN. REP. OF THE DIRECTOR 70 [hereinafter cited as 1980 ANN. REP.]. Similarly, the number of civil rights actions filed by state prisoners also has increased greatly from 218 in 1966, 1975 ANN. REP. at 207, to 12,397 in 1980, 1980 ANN. REP. at 62.

¹⁰ 451 U.S. 527 (1981).

¹¹ *Id.* at 529.

¹² *Id.* at 530.

¹³ *Id.*

¹⁴ *Id.* at 556 (Marshall, J., concurring in part and dissenting in part).

¹⁵ *Id.* at 530. The Court has previously held that under § 1983 employers are not liable for the acts of their employees solely on the basis of the employer-employee relationship. *Monell v. Department of Social Servs.*, 436 U.S. at 692. In *Parratt*, however, the petitioners had never raised this argument in the district court. 451 U.S. at 537 n.3. Therefore, the *Parratt* Court accepted the district court's assumption that petitioners themselves were negligent and that this negligence caused the loss. *Id.*

¹⁶ *Id.* at 530.

¹⁷ *Taylor v. Parratt*, No. 76-L-57 (D. Neb. Oct. 25, 1978).

¹⁸ *Taylor v. Parratt*, 620 F.2d 307 (8th Cir. 1980).

¹⁹ *Parratt v. Taylor*, 449 U.S. 917 (1980).

²⁰ The Court's opinion, written by Justice Rehnquist was joined without reservation by Chief Justice Burger and Justices Brennan and Stevens. Justices Powell, Stewart and Blackmun concurred in separate opinions with Justice White joining Justice Blackmun's opinion. Justice Marshall wrote a separate opinion concurring in part and dissenting in part.

deprived of property by persons acting under color of state law, the negligent deprivation was not without due process of law.²¹ The Court recognized that Nebraska had a state tort remedy which would have adequately compensated Taylor for the loss of his hobby materials.²² The Court determined that the state postdeprivation remedy satisfied the requirements of procedural due process.²³ Since the postdeprivation state remedy satisfied the constitutional requirements of due process, the Court held that the negligent deprivation of Taylor's property was not a constitutional violation and therefore Taylor had no section 1983 cause of action.²⁴

The significance of *Parratt* lies in the impact that the Court's decision will have on section 1983. *Parratt* serves to expand the scope of section 1983 by indicating that negligent deprivations of property are actionable under section 1983. At the same time, however, *Parratt* limits the scope of section 1983 by holding that a postdeprivation hearing may satisfy fourteenth amendment due process requirements for deprivations of property. While *Parratt* will deny certain property deprivation claims a federal forum, the decision continues to protect property rights by denying a federal forum only when the state postdeprivation remedy satisfies the requirements of procedural due process. Although the *Parratt* Court dealt with a negligent deprivation of property, the decision may also have an impact on section 1983 claims based on other constitutional claims, such as intentional deprivations of property and both negligent and intentional deprivations of life and liberty.

This casenote will examine the Supreme Court's decision in *Parratt* and its implication for future section 1983 litigation. The casenote begins with a description of the background against which *Parratt* was decided: the conflict between a federal judiciary overburdened by section 1983 litigation, and the mandate of the statute to protect constitutional rights. Next, the reasoning of the Court in *Parratt* will be described.

The Court's determination of the state of mind required for section 1983 violations will be analyzed. It will be submitted that although the Court failed to state explicitly whether negligence is actionable under section 1983, the implicit holding of *Parratt* is that such conduct is actionable under a procedural due process claim. The casenote then analyzes the Court's decision that the Nebraska tort remedy satisfied procedural due process for the negligent, unauthorized deprivation of Taylor's hobby kit. The question of whether a postdeprivation remedy may satisfy due process requirements for other types of deprivations will also be addressed. It will be submitted that although a postdeprivation remedy may satisfy procedural due process requirements for intentional unauthorized deprivations of property, it will generally not satisfy procedural due process requirements for deprivations of life or liberty. The casenote also examines the viability of an alternative section 1983 substantive due

²¹ 451 U.S. at 543.

²² *Id.* at 544.

²³ *Id.*

²⁴ *Id.* at 543-44.

process claim. Finally, the casenote will discuss the effect of *Parratt* on the section 1983 caseload, and will suggest an additional approach courts may adopt in order to limit the number of section 1983 claims without interfering with the protection of important constitutional rights.

I. THE BACKGROUND OF PARRATT: THE PROLIFERATION OF SECTION 1983 CLAIMS IN FEDERAL COURTS

The significance of the *Parratt* decision cannot be understood fully unless the context in which it was decided is examined. The modern federal judiciary is faced with an ever-increasing caseload, much of it attributable to the proliferation of section 1983 litigation. This section of the casenote will first consider the negative effects that the increasing section 1983 caseload may have on the federal judiciary. Then it will discuss the importance of section 1983 for the protection of constitutional rights. Finally, it will examine several approaches federal courts have used to reduce the number of section 1983 claims litigated in federal courts.

Courts and commentators have expressed a growing concern over the negative effects of the increasing section 1983 caseload.²⁵ Their concerns rest primarily on four grounds. First, the proliferation of section 1983 cases may be hindering the ability of federal courts to protect important constitutional rights.²⁶ Some commentators have asserted that if judges are pressed for time in deciding large numbers of section 1983 cases, they may be tempted to look for easy solutions or defer to the recommendations of clerks.²⁷ As a result, the overload of cases may hamper the ability of the federal courts to address adequately each section 1983 claim that comes before it.

The increasing number of section 1983 cases litigated in federal court also has been viewed as altering the balance of federalism by providing a federal

²⁵ Concern for the increase in the § 1983 caseload has led many commentators to suggest approaches for redefining the scope of § 1983. See generally, Aldisert, *Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thoughts on Section 1983, Comity and the Federal Caseload*, 1973 L. & SOC. ORD. 557 (recommending exhaustion of state remedies for prisoner's claims and statutory limits on the scope of § 1983); Kirkpatrick, *Defining a Constitutional Tort Under Section 1983: The State of Mind Requirement*, 46 CIN. L. REV. 45 (1977) (maintaining that the § 1983 state of mind requirement should depend on the constitutional provision being enforced); McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Protections*, 60 VA. L. REV. 1 (1974) (emphasizing caution in applying the doctrines of abstention and res judicata to § 1983); Nahmod, *Section 1983 and the "Background" of Tort Liability*, 50 IND. L.J. 5 (1974) (focusing on the elements of the underlying constitutional violation); O'Connor, *Trends in the Relationship Between the Federal and State Courts From the Perspective of a State Court Judge*, 22 WM. & MARY L. REV. 801, 808-10 (1981) (recommending exhaustion of state remedies); Shapo, *Constitutional Tort: Monroe v. Pape and the Frontiers Beyond*, 60 NW. U.L. REV. 277 (1965) (maintaining defendants conduct should be "outrageous" for a valid § 1983 claim); Whitman, *supra* note 4 (suggesting modification of the types of relief awarded); Note, *Limiting § 1983*, *supra* note 4 (recommending federal jurisdiction only when the state fails to provide an adequate remedy).

²⁶ See, e.g., Aldisert, *supra* note 25, at 566; Whitman, *supra* note 4, at 27; Turner, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, 92 HARV. L. REV. 610, 638 (1979).

²⁷ See, e.g., Whitman, *supra* note 4, at 27.

remedy for affairs which were traditionally left to the state.²⁸ Section 1983 actions do, after all, interfere with the state regulation of the behavior of its officials by allowing federal judges to set standards and punish misconduct.²⁹ In addition, as section 1983 actions increasingly are brought in federal court, some commentators fear state courts may become less competent to decide constitutional issues because of their lack of exposure to such claims.³⁰

Apart from concerns that section 1983 disrupts the roles of the state and federal judiciary, it also has been argued that Congress never intended section 1983 to include the types of cases considered within its scope. For example, the legislative debates prior to the enactment of section 1983³¹ have been interpreted as indicating that a section 1983 cause of action should be available only when the deprivation is authorized by state law or practice³² or when the state fails to provide an adequate remedy.³³ In addition, some commentators assert that the section 1983 cause of action is being trivialized by allowing claims which involve very small monetary amounts³⁴ or which can be remedied adequately in state court³⁵ to be actionable under the statute.

The desire to reduce the section 1983 caseload, however, has not been considered a sufficient reason to limit the protection of constitutional rights.³⁶ Rather, concern for a heavy caseload must be balanced against the general purpose of section 1983 — to protect important constitutional rights.³⁷ This purpose is evidenced by the remedy section 1983 gives an individual whose constitutional rights have been violated. First, section 1983 provides the in-

²⁸ See, e.g., *Whitman*, *supra* note 4, at 34-35; *Developments*, *supra* note 4 at 1173-75.

²⁹ *Monroe v. Pape*, 365 U.S. at 24-42 (Frankfurter, J., dissenting); *Whitman*, *supra* note 4, at 36.

³⁰ *Whitman*, *supra* note 4, at 35.

³¹ See CONG. GLOBE, 42d Cong., 1st Sess. (1871).

³² *Monroe v. Pape*, 365 U.S. at 236 (Frankfurter, J., dissenting).

³³ *Id.*; See also Note, *Limiting § 1983*, *supra* note 4, at 1491-92.

³⁴ See, e.g., *Aldisert*, *supra* note 25, at 569-70; Burger, *Report on the Federal Judicial Branch — 1973*, 59 A.B.A. J. 1125, 1128 (1973); Note, *Limiting § 1983*, *supra* note 4, at 1493.

Since there is no minimum monetary amount required for jurisdiction over a § 1983 claim, see note 3, *supra*, courts have generally allowed § 1983 claims which involve relatively small monetary amounts. See, e.g., *Diamond v. Thompson*, 523 F.2d 1201, 1203 (5th Cir. 1975) (\$68.35); *Russell v. Bodner*, 489 F.2d 280, 281 (3d Cir. 1973) (7 packages of cigarettes). Several courts, however, have denied such claims on the grounds that the claims are frivolous or the property interests are so de minimus that the deprivation is not a deprivation within the meaning of the fourteenth amendment. See, e.g., *Nickens v. White*, 536 F.2d 802, 803 (8th Cir. 1976) (mail order catalogue); *Pitts v. Griffin*, 518 F.2d 72, 73 (8th Cir. 1975) (multifrequency radio); *Howard v. Swenson*, 426 F.2d 277, 277 (8th Cir. 1970) (several pairs of shoes).

³⁵ See, e.g., *Aldisert*, *supra* note 25, at 570-71; Note, *Limiting § 1983*, *supra* note 4, at 1493.

Justice Stevens while sitting as a judge on the Seventh Circuit noted that "[t]he federal interest in conserving federal judicial resources for litigation in which significant federal questions are at stake favors a construction of the Civil Rights Act which will not enlarge it to provide an alternative means of processing ordinary common-law tort claims." *Kimbrough v. O'Neil*, 523 F.2d 1057, 1066 (7th Cir. 1975) (Stevens, J., concurring), *aff'd en banc*, 545 F.2d 1059 (7th Cir. 1976).

³⁶ See *Whitman*, *supra* note 4, at 28.

³⁷ *Id.*

dividual with a cause of action in federal court when he has no cause of action under state law for the protection of his constitutional rights.³⁸ Second, even when state law affords a cause of action, section 1983 provides a supplementary remedy which allows the individual to litigate his claim in either a federal or state court.³⁹ He is then able to decide which forum is best suited to hear his claim. Finally, the section 1983 remedy serves as a deterrent to constitutional violations since it allows recovery for punitive damages⁴⁰ and reasonable attorney's fees⁴¹ which may be unavailable in state court.⁴²

Besides providing litigants with maximum protection for violations of their constitutional rights, section 1983 symbolizes the importance accorded the protection of constitutional rights in our judicial system.⁴³ Although the argument has been raised that the increased scope of section 1983 has altered the balance of federalism, section 1983 was enacted in order to maintain a proper federal/state balance by providing a federal cause of action for violations of constitutional rights committed under color of state law.⁴⁴ Section 1983 was enacted after the Civil War where states were unable or unwilling to protect the constitutional rights of their citizens.⁴⁵ By its very terms, section 1983 is aimed at providing a federal remedy for the violation of constitutional rights by the states.⁴⁶

In a continuing attempt to balance the competing interests of complying with the mandate of section 1983 to protect constitutional rights and maintaining a manageable caseload, federal courts have been striving to reduce the number of section 1983 claims without precluding the use of section 1983 for the protection of constitutional rights.⁴⁷ One approach adopted by federal courts to balance these competing interests involves the use of various restrictive procedural devices. For example, courts have applied the doctrines of col-

³⁸ *E.g.*, *Carter v. Carlson*, 447 F.2d 358, 365 (D.C. Cir. 1971) (officials not subject to suit at common law due to official immunity), *rev'd on other grounds sub nom.* *District of Columbia v. Carter*, 409 U.S. 418 (1973).

³⁹ *Monroe v. Pape*, 365 U.S. at 183.

⁴⁰ *Carey v. Phipps*, 435 U.S. 247, 256-57 & n.11, 266 (1978).

⁴¹ The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 (1976).

⁴² Most tort remedies do not provide for reasonable attorney's fees, RESTATEMENT (SECOND) OF TORTS § 914 (1979), and some tort remedies may not provide for punitive damages, RESTATEMENT (SECOND) OF TORTS § 908 comment f (1979).

⁴³ *Whitman*, *supra* note 4, at 24.

⁴⁴ In *Mitchum v. Foster*, the Court stated "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights — to protect the people from unconstitutional action under color of state law . . ." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). *See also Developments*, *supra* note 4, at 1174-75.

⁴⁵ *See, e.g.*, CONG. GLOBE, *supra* note 31, at 379, 428, 653.

⁴⁶ *See Monroe v. Pape*, 365 U.S. at 171.

⁴⁷ Congress has also taken steps to reduce the number of § 1983 claims in federal court. Congress recently passed the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997e, which requires federal judges to continue § 1983 claims brought by prisoners for 90 days to allow all adequate administrative remedies to be exhausted. 42 U.S.C.A. § 1997e (West 1981).

lateral estoppel,⁴⁸ abstention,⁴⁹ immunity,⁵⁰ res judicata,⁵¹ and exhaustion⁵² to section 1983 claims to limit the availability of a federal forum to section 1983 claimants.

Apart from procedural mechanisms, certain substantive doctrines of the Supreme Court have also played a role in reducing the number of section 1983 claims. The Court's narrow definition of liberty and property interests for purposes of constitutional violations has precluded certain constitutional claims. For example, the Court has held that damage to reputation does not constitute

⁴⁸ *Allen v. McCurry*, 449 U.S. 90 (1980). In *Allen*, the Court held that collateral estoppel will preclude a § 1983 claim when the state court has given the parties a full and fair opportunity to litigate the issue. *Id.* at 96-105. The defendant in *Allen* had unsuccessfully brought a state claim for suppression of evidence alleging an illegal search and seizure of drug. *Id.* at 91. He then brought a § 1983 claim in federal court for damages against the officers who had conducted the search. *Id.* The Court held that collateral estoppel precluded the federal claim since the defendant had already litigated the issue in state court. *Id.* at 105.

⁴⁹ *Judice v. Vail*, 430 U.S. 327 (1977). The *Judice* Court held that the doctrine of abstention prevents federal courts from entertaining a § 1983 action and interfering in an ongoing state proceeding as long as plaintiffs could have raised the constitutional issues in proceedings conducted in state court. *Id.* at 337. In *Judice*, a state court entered a default judgment against the appellee. *Id.* at 329. After the appellee failed to pay the judgment, attend a deposition and appear at a contempt hearing, the state court found the appellee in contempt of court and he was arrested. *Id.* at 328-29. The appellee then brought an action in federal court to enjoin the state's contempt procedures on the grounds that imprisonment for contempt of court violated the fourteenth amendment. *Id.* at 329. Recognizing that the appellee had never appeared in the state court, the Court maintained that the appellee had had the opportunity to present his constitutional claim in the state court proceedings. *Id.* at 337. The Court therefore held that the doctrine of abstention required that the appellee's claim in federal court be dismissed. *Id.*

⁵⁰ The Court has extended the common law immunity of state court judges and the common law good faith and probable cause immunities of officers making arrests to § 1983 actions. *Pierson v. Ray*, 386 U.S. 547, 554-55, 557 (1967). The Court has also extended the common law good faith immunity of school board members and prosecuting attorneys to § 1983 actions. *Wood v. Strickland*, 420 U.S. 308, 313-22 (1975) (school board members); *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976) (prosecuting attorneys).

Even though the Court has adopted these common law immunities for § 1983, these qualified immunities are more limited than absolute immunities granted by some states. *See, e.g., Carter v. Carlson*, 447 F.2d at 365.

⁵¹ Several lower federal courts have held that when a claim has been litigated in state court a subsequent § 1983 suit brought in federal court which asserts the same claim will be barred by the doctrine of res judicata. *E.g., Robbins v. District Court*, 592 F.2d 1015, 1018 (8th Cir. 1979); *Scoggin v. Schunk*, 522 F.2d 436, 437 (9th Cir. 1975); *Lovely v. Laliberte*, 498 F.2d 1261, 1263 (1st Cir. 1974), *cert. denied*, 419 U.S. 1038 (1974); *Blankner v. Chicago*, 504 F.2d 1037, 1042 (7th Cir. 1974), *cert. denied*, 421 U.S. 948 (1975).

In addition, the Supreme Court suggested in *Allen v. McCurry* that res judicata will apply to § 1983 claims. 449 U.S. at 96-100.

⁵² Several lower federal courts have determined that exhaustion of state administrative remedies is required as a prerequisite to a § 1983 action absent any of the traditional exceptions. *See, e.g., Patsy v. Florida Int'l Univ.*, 634 F.2d 900, 912 (5th Cir. 1981), *cert. granted sub nom.*, *Patsy v. Board of Regents*, 102 S.Ct. 88 (1981); *Secret v. Brierton*, 584 F.2d 823, 831 (7th Cir. 1978); *Gonzalez v. Shanker*, 533 F.2d 832, 833-34 (2d Cir. 1976). The Ninth Circuit has determined that exhaustion is only required when a § 1983 suit is brought to forestall a threatened future deprivation of civil rights. *Canton v. Spokane School Dist. # 81*, 498 F.2d 840, 844 (9th Cir. 1974).

a deprivation of liberty⁵³ and that there is no property right to continued employment when the employment is terminated pursuant to procedures authorized by state law.⁵⁴ In addition, the Court's recognition that certain deprivations of constitutional rights may nevertheless satisfy due process requirements has also narrowed the scope of section 1983 claims.⁵⁵ It is the context of this conflict between the legitimate scope of section 1983 and the burgeoning federal caseload that the Supreme Court reached its decision in *Parratt*.⁵⁶

II. THE SUPREME COURT'S REASONING IN *PARRATT*

The *Parratt* Court held that the Nebraska postdeprivation remedy provided Taylor with procedural due process for the negligent deprivation of his hobby kit and therefore Taylor had no section 1983 claim. This section of the casenote will describe the Court's analysis of whether negligence is actionable under section 1983. It then will present the Court's reasoning in concluding that the Nebraska tort remedy provided Taylor with procedural due process for the deprivation of his property. Finally, it will present the concurring and dissenting opinions which accompany the decision.

Writing for the Court in *Parratt*, Justice Rehnquist first considered whether negligence was actionable under section 1983.⁵⁷ The Court noted that the language of section 1983 and its legislative history do not expressly limit section 1983 to intentional deprivations.⁵⁸ Next, the Court discussed prior Supreme Court cases which suggested that negligent actions may give rise to a

⁵³ *Paul v. Davis*, 424 U.S. 693, 712 (1976). While the Court held that damage to reputation alone did not constitute a deprivation of liberty or property they suggested that reputation plus some other tangible interest such as employment may be a constitutional violation. *Id.* at 701.

⁵⁴ *Bishop v. Wood*, 426 U.S. 341, 345-47 (1976). The Court reasoned that since the city ordinance conditioned the employment upon specific removal procedures the employee had no entitlement to continued employment. *Id.* at 345.

⁵⁵ *Ingraham v. Wright*, 430 U.S. 651 (1977) (A subsequent state tort remedy was adequate procedural due process for the liberty interest implicated by excessive corporal punishment of public school students. *Id.* at 672, 682.); *Baker v. McCollan*, 443 U.S. 137 (1977) (Due process requirement for a three day deprivation of liberty as a result of a mistaken arrest was satisfied by an arrest warrant issued upon probable cause and defendant had to resort to his state claim for false imprisonment. *Id.* at 140-46.).

⁵⁶ In addition to reducing the number of § 1983 claims based on constitutional violations, the Court, in *Middlesex County Sewerage Auth.*, has limited the availability of a § 1983 cause of action for violations of federal statutes. 453 U.S. at 19-21. In *Middlesex County Sewerage Auth.*, the Court held that an individual has no remedy under § 1983 when the federal statute provides comprehensive remedies. *Id.*

⁵⁷ 451 U.S. at 532-35. Although the Court had granted certiorari to two prior cases in order to resolve whether negligence is actionable under § 1983, both cases were ultimately decided on other grounds. In *Procunier v. Navarette*, 434 U.S. 555 (1973), the Court avoided deciding the issue by finding that the defendants were entitled to good faith immunity. *Id.* at 562-66. Similarly, in *Baker v. McCollan*, 443 U.S. 137 (1979), the Court did not have to resolve the issue since the Court held that the plaintiff was not deprived of his liberty without due process. *Id.* at 145-47.

⁵⁸ 451 U.S. at 534.

section 1983 cause of action.⁵⁹ Noting that lower courts are divided on the issue,⁶⁰ the *Parratt* Court stated that it would attempt to provide better guidance for the lower courts to follow than it had in the past.⁶¹ Then, instead of holding explicitly that negligent actions can support a section 1983 claim, the Court maintained that the initial inquiry in any section 1983 claim is whether the actions complained of were committed under color of state law and whether they constituted a constitutional violation.⁶²

After summarily concluding that the prison guards had acted "under color of" state law,⁶³ the Court turned to whether Taylor had been deprived of property without due process of law in violation of the fourteenth amendment. The Court first noted that Taylor had a property interest in his hobby kit.⁶⁴ The Court then stated that the loss of Taylor's hobby kit, even though negligently caused, constituted a deprivation.⁶⁵ Finally, the Court examined whether the deprivation of the hobby kit occurred without due process of law.⁶⁶

In determining whether the deprivation had occurred with due process of law, the Court noted that due process requires that the state provide the aggrieved individual with the opportunity to be heard at a meaningful time and in a meaningful manner.⁶⁷ The Court first examined cases in which hearings were required prior to deprivations of property.⁶⁸ The Court noted that in those cases the deprivations had been pursuant to established state procedures and therefore it was possible for the state to anticipate the deprivation and provide a prior hearing.⁶⁹ The Court recognized, however, that the opportunity to be heard at a meaningful time and manner does not invariably require that a

⁵⁹ *Id.* at 534-35 (citing *Monroe v. Pape*, 365 U.S. 167 (1961)); *Baker v. McCollan*, 443 U.S. 137 (1979).

⁶⁰ See *infra* notes 127-28.

⁶¹ 451 U.S. at 533-34.

⁶² 451 U.S. at 535.

⁶³ *Id.* at 535-36.

⁶⁴ *Id.* at 536. The Court pointed out that property interests are defined by state law and that the petitioners had not contended that Taylor did not have a property interest in the hobby kit under Nebraska law. *Id.* at 529 n.1.

⁶⁵ *Id.* at 536-37. The petitioners in *Parratt* argued that Taylor's hobby kit constituted a de minimus amount and therefore was not a deprivation within the meaning of the fourteenth amendment. Petitioner's Brief at 12. The *Parratt* Court apparently did not accept this argument even though in *Ingraham v. Wright*, 430 U.S. 651 (1977), the Court indicated that there is a de minimus level of imposition with which the Constitution is not concerned. *Id.* at 674.

⁶⁶ 451 U.S. at 537-44.

⁶⁷ *Id.* at 540 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

⁶⁸ 451 U.S. at 537-38. Those cases cited by the Court which held that notice and opportunity to be heard are required prior to a deprivation of liberty or property were: *Fuentes v. Shevin*, 407 U.S. 67, 69 (1972) (repossession of consumer goods); *Bell v. Burson*, 402 U.S. 535, 543 (1971) (driver's license); *Boodie v. Connecticut*, 401 U.S. 371, 382-83 (1971) (access to the courts in divorce proceedings); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (welfare benefits); *Snidach v. Family Fin. Corp.*, 395 U.S. 337, 342 (1969) (garnishment of wages); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 320 (1950) (settlement of the accounts of a common trust fund).

⁶⁹ 451 U.S. at 537.

hearing precede a deprivation of property.⁷⁰ Indeed the Court explicitly examined cases involving emergency seizures of property by the state in which postdeprivation remedies were found to satisfy procedural due process.⁷¹

The *Parratt* Court noted that there were two justifications for finding that a postdeprivation hearing satisfied procedural due process for emergency seizure of property.⁷² The justifications were the impracticality of the state providing a hearing prior to the initial deprivation and the availability of a meaningful determination of liability before the deprivation by the state became final.⁷³ The Court found similar justifications in cases involving property lost as a result of random and unauthorized acts by state officials.⁷⁴ The Court reasoned that in such cases it would be impossible for the state to provide a hearing prior to the initial deprivation by its officials, and that an adequate state remedy could provide a meaningful determination of the liability of the state for an unjust deprivation of property.⁷⁵

Since the loss of Taylor's hobby kit resulted from an unauthorized act of a state official and therefore a predeprivation hearing was impossible, the Court examined whether the Nebraska tort remedy provided Taylor with an adequate remedy to satisfy due process requirements.⁷⁶ The Court noted that the tort remedy could have fully compensated Taylor for his lost property.⁷⁷ Although the Nebraska tort remedy failed to provide for punitive damages, a right to trial by jury, or an action against individual state employees, the Court maintained the tort remedy was sufficient to satisfy the requirements of procedural due process.⁷⁸ Even though it may not have provided Taylor with all the relief he could have obtained under section 1983, because the tort action could have fully compensated Taylor for his property loss, the remedy provided procedural due process.⁷⁹

Thus, the plurality opinion in *Parratt* examined the plaintiff's claim in terms of whether the negligent deprivation of property was conducted without

⁷⁰ *Id.* at 540.

⁷¹ *Id.* at 538-39. Those cases cited by the Court which held that procedural due process was satisfied by a postdeprivation hearing were: *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594, 599-600 (1950) (seizure of misbranded drugs); *Fahey v. Mallonee*, 332 U.S. 245, 253-54 (1947) (appointing a conservator of a bank); *Bowles v. Willingham*, 321 U.S. 503, 521 (1944) (fixing of rents during wartime); *Corn Exch. Bank v. Coler*, 280 U.S. 218, 223 (1930) (seizure of property of deserting husband to support wife and children); *McKay v. McClines*, 279 U.S. 820, 820 (1929) (pretrial attachment of property), *aff'g* 127 Me. 110, 115-17 (1928); *Coffin Bros. & Co. v. Bennett*, 277 U.S. 29, 31 (1928) (issuance of executions against debtor stockholders of a bank); *Ownbey v. Morgan*, 256 U.S. 94, 112 (1921) (pretrial attachment of property of a non-resident as security for a judgment); *North Am. Cold Storage Co. v. City of Chicago*, 211 U.S. 306, 320 (1908) (seizure of diseased poultry).

⁷² 451 U.S. at 540-41.

⁷³ *Id.*

⁷⁴ *Id.* at 541.

⁷⁵ *Id.*

⁷⁶ *Id.* at 543.

⁷⁷ *Id.* at 544.

⁷⁸ *Id.* at 543-44.

⁷⁹ *Id.* at 544.

due process of law. Because of both the impracticality of providing a predeprivation hearing when negligent conduct is involved, and the availability of a meaningful postdeprivation determination of liability, the Court found the requirements of due process satisfied. So finding, the Court concluded that there was no fourteenth amendment violation and, therefore, no section 1983 cause of action.⁸⁰ The Court maintained that if it were to accept Taylor's argument that the deprivation of property was without due process, every alleged injury negligently inflicted by a state official would be a constitutional violation — a result, according to the Court, never intended by the framers of the fourteenth amendment.⁸¹

Although the Court decided *Parratt* 8-1, four Justices wrote opinions clarifying and criticizing the Court's plurality opinion.⁸² In his concurring opinion, Justice Blackmun, joined by Justice White, presented his understanding of the narrow reach of the Court's opinion.⁸³ Justice Blackmun first noted that he joined the Court's opinion insofar as it applied to deprivations of property but not to deprivations of life or liberty.⁸⁴ Then, he noted that when an *intentional* deprivation of property is involved, a subsequent state tort remedy may not satisfy procedural process requirements.⁸⁵ Finally, Justice Blackmun carefully pointed out that in *Parratt* the Court addressed only procedural rights and therefore he did not read the Court's opinion as limiting in any way substantive rights flowing from the due process clause.⁸⁶

Justice Powell also wrote separately, concurring only in the result.⁸⁷ He maintained that the initial question in *Parratt* which was ignored by the Court was whether a negligent deprivation of property can give rise to a fourteenth amendment due process claim.⁸⁸ In addressing this threshold issue, Justice Powell concluded that a negligent deprivation of property is not a constitutional deprivation within the meaning of the fourteenth amendment.⁸⁹ Maintaining that the word "deprivation" connotes an intentional act,⁹⁰ he stated

⁸⁰ 451 U.S. at 543-44. This approach was first articulated by Judge (now Justice) Stevens in *Bonner v. Coughlin*, 517 F.2d 1311, 1319 (7th Cir. 1975) *modified en banc*, 545 F.2d 565 (7th Cir. 1976) (When the Seventh Circuit considered the case en banc it did not reach the issue of whether the state remedy provided due process since it held that negligent deprivations do not give rise to a § 1983 claim. 545 F.2d at 569.), *cert. denied*, 435 U.S. 932 (1978). For an analysis of *Bonner* see Note, *Prisoner Property Deprivations: Section 1983 and the Fourteenth Amendment*, 52 IND. L. J. 257, 262-80 (1976) [hereinafter cited as note, *Prisoner Property Deprivations*].

⁸¹ 451 U.S. at 544. The Court stated that such reasoning "would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States." *Id.* (quoting *Paul v. Davis*, 424 U.S. 693, 701 (1976)).

⁸² See *supra* note 20.

⁸³ 451 U.S. at 545-46 (Blackmun, J., concurring).

⁸⁴ *Id.* at 545.

⁸⁵ *Id.* at 545-46.

⁸⁶ *Id.* at 545.

⁸⁷ *Id.* at 546-54 (Powell, J., concurring in the result).

⁸⁸ *Id.* at 547.

⁸⁹ *Id.* at 548.

⁹⁰ *Id.*

that the most reasonable interpretation of the fourteenth amendment would be to limit due process claims to intentional deprivations.⁹¹

Justice Powell also asserted that requiring a constitutional deprivation to consist of an intentional act avoids trivializing section 1983.⁹² In his view of its legislative history, section 1983 was enacted to deter intentional abuses of official power rather than negligent ones.⁹³ Justice Powell maintained that section 1983 will continue to be trivialized under the Court's approach since many cases involving negligent deprivations will continue to be heard under section 1983 where the state fails to provide an adequate tort remedy.⁹⁴

Since Justice Powell concluded that a negligent deprivation of property is not a constitutional violation, he determined that there was no need for the Court to consider whether the state remedy provided due process.⁹⁵ Nevertheless, Justice Powell noted that assuming negligent actions constitute a deprivation within the meaning of the fourteenth amendment, the state tort remedy in *Parratt* would have provided sufficient procedural due process.⁹⁶ Finally, Justice Powell maintained that substantive due process was not an issue in *Parratt* since in his view negligent deprivations do not violate substantive guarantees.⁹⁷

In a brief concurring opinion, Justice Stewart, like Justice Powell, stated that the negligent deprivation of the hobby kit was not a deprivation of property within the meaning of the fourteenth amendment.⁹⁸ Justice Stewart emphasized that holding such a deprivation of property is a constitutional violation within the meaning of the fourteenth amendment trivializes and distorts the meaning and intent of the fourteenth amendment.⁹⁹ Yet, in maintaining that the deprivation of the hobby kit was not the kind of deprivation to which the fourteenth amendment is addressed, Justice Stewart failed to clarify the basis of his reasoning. He did not state whether *all* negligent deprivations should be excluded from the protection of the fourteenth amendment or only negligent deprivations involving a minimal loss to the individual. If the deprivation of the hobby kit were a constitutional deprivation, however, Justice Stewart stated that he would find the Nebraska tort remedy satisfied due process requirements.¹⁰⁰

The fourth separate opinion was written by Justice Marshall.¹⁰¹ He dissented from the result while concurring with much of Justice Rehnquist's

⁹¹ *Id.*

⁹² *Id.* at 549.

⁹³ *Id.* at 549.

⁹⁴ *Id.* at 550-51.

⁹⁵ *Id.* at 551-52.

⁹⁶ *Id.* at 547 n.1.

⁹⁷ *Id.* at 553.

⁹⁸ *Id.* at 544 (Stewart, J., concurring).

⁹⁹ *Id.* at 545.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 554-56 (Marshall, J., concurring in part and dissenting in part).

reasoning.¹⁰² Justice Marshall stated that he joined in the Court's opinion to the extent that it held that negligent conduct is actionable under section 1983.¹⁰³ He also agreed that in cases involving negligent deprivations of property, an adequate post deprivation state remedy may provide procedural due process and preclude a section 1983 claim.¹⁰⁴ Justice Marshall concluded, however, that in *Parratt* there was no adequate state remedy available to Taylor.¹⁰⁵ Noting that prisoners have limited access to information about their legal rights, Marshall maintained that prison officials should have a duty to inform prisoners about their remedies under state law.¹⁰⁶ According to Justice Marshall, if state officials fail to inform a prisoner of his state remedies, they should not be able to assert the availability of the state remedy as a bar to a section 1983 claim.¹⁰⁷ Since there was no indication that the prison officials had informed Taylor that he could have filed a state tort claim, Justice Marshall concluded that there was no adequate remedy to satisfy the fourteenth amendment.¹⁰⁸ Therefore, according to Justice Marshall, Taylor was deprived of his property without due process of law and had a valid section 1983 claim.¹⁰⁹

The *Parratt* Court's plurality opinion was thus joined without reservation by only four Justices with the remaining Justices joining four separate opinions. The Justices are in disagreement as to whether a negligent deprivation is actionable under section 1983. Assuming such a deprivation is actionable, however, all of the concurring opinions agreed with the plurality opinion that the Nebraska state tort claim satisfied the requirements of procedural due process. The dissent, however, argued that the unique facts of *Parratt* meant that the mere presence of a postdeprivation hearing was insufficient to guarantee due process. In spite of the disagreement among the Justices, the *Parratt* decision clarifies the scope of section 1983. The following section therefore analyzes the reasoning of *Parratt* and its implication for the future of section 1983.

III. CLARIFICATION OF THE SCOPE OF SECTION 1983 — STATE OF MIND AND PROCEDURAL DUE PROCESS REQUIREMENTS

In *Parratt*, the Court held that when a state official negligently deprives an individual of property and the state provides an adequate postdeprivation tort remedy, there is no violation of the procedural due process requirements of the fourteenth amendment and therefore no basis for a section 1983 claim.¹¹⁰ In reaching its decision, the Court addressed two main issues. The Court first

¹⁰² *Id.* at 556.

¹⁰³ *Id.* at 554-55.

¹⁰⁴ *Id.* at 555.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 556.

¹⁰⁷ *Id.* at 555-56.

¹⁰⁸ *Id.*

¹⁰⁹ *See id.*

¹¹⁰ 451 U.S. at 544.

considered the state of mind with which a defendant must have acted for a valid section 1983 claim to exist.¹¹¹ Then the Court addressed what process is due by the state when an individual is negligently deprived of property by persons acting under color of state law.¹¹² This section of the casenote will analyze the Court's reasoning on each issue. It will then discuss whether the Court's reasoning on each issue should be limited to negligent deprivations of property or extended to other types of claims in order to effectuate a balance between allowing section 1983 claims which protect important constitutional rights and denying more trivial section 1983 claims which overburden the federal courts.

A. State of Mind

The *Parratt* Court addressed the issue of whether negligent actions by a state official can give rise to a section 1983 claim. Previously, in *Monroe v. Pape*¹¹³ and *Baker v. McCollan*,¹¹⁴ the Court suggested that section 1983 did not require that the defendant act with a specific state of mind. In *Monroe* the police intentionally searched the plaintiff's house and detained him at the police station in violation of the fourth amendment.¹¹⁵ Consequently, the plaintiff brought a section 1983 suit.¹¹⁶ Although the state of mind of the defendant was not at issue,¹¹⁷ the *Monroe* Court suggested that section 1983 does not require a specific intent to deprive a person of a federal right.¹¹⁸ The Court compared section 1983 with its criminal counterpart, 18 U.S.C. section 242, and noted that although section 242 required that state actions be "willful" in order for criminal penalties to be imposed, the word "willful" does not appear in section 1983.¹¹⁹ The Court therefore concluded that a specific intent to deprive an individual of his constitutional rights should not be read into section 1983.¹²⁰

In *Baker v. McCollan*, the Court also suggested that section 1983 does not require that the defendant act with a particular state of mind and that the question of what state of mind is required must be decided separately for each constitutional violation.¹²¹ In *Baker*, the plaintiff alleged that he was deprived of liberty without due process when he was detained in jail for three days due to a mistake as to his identity.¹²² The Court found it unnecessary to decide whether

¹¹¹ *Id.* at 532-35.

¹¹² *Id.* at 537-44.

¹¹³ 365 U.S. 167 (1961).

¹¹⁴ 443 U.S. 137 (1979).

¹¹⁵ 365 U.S. at 169.

¹¹⁶ *Id.* at 170.

¹¹⁷ The issue in *Monroe* was not whether an intent to deprive an individual of a constitutional right was necessary for a § 1983 cause of action, but whether state officials acting in violation of the fourth amendment were acting under color of state law. *Id.* at 172.

¹¹⁸ 365 U.S. at 187.

¹¹⁹ *Id.*

¹²⁰ *Id.* The Court added that "[§ 1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Id.*

¹²¹ 443 U.S. at 139-40.

¹²² *Id.* at 140-41.

negligence can give rise to a section 1983 claim.¹²³ Rather the Court held that since the arrest was pursuant to a warrant issued on probable cause, due process requirements were satisfied and there was no basis for a section 1983 claim.¹²⁴ Nevertheless, the Court suggested that in some instances negligence may support a section 1983 claim depending upon the particular constitutional violation being alleged.¹²⁵ The Court maintained that whether negligence is actionable under section 1983 "may well not be susceptible of a uniform answer across the entire spectrum of conceivable constitutional violations which might be the subject of a section 1983 action."¹²⁶

Although the Court in *Monroe* and *Baker* suggested that negligence may give rise to a section 1983 claim, lower courts have split on the issue. While some circuit courts have held that mere negligence by a state official does not give rise to a section 1983 claim,¹²⁷ others have held that negligence may be actionable under section 1983.¹²⁸ The *Parratt* Court, recognizing the need to provide better guidance for the lower courts on the relationship between negligence and section 1983, discussed the issue.¹²⁹

Although the *Parratt* Court failed to state explicitly that negligence can give rise to a section 1983 claim, such a ruling is implicit in the holding of the case. After citing the language from *Baker* and *Monroe* which implied that section 1983 has no state of mind requirement,¹³⁰ the Court maintained that the initial inquiry was not whether a negligent deprivation can give rise to a section 1983 claim.¹³¹ Instead, the initial question was whether the state official had been acting under color of state law and whether the conduct of the official had deprived the individual of a constitutional right.¹³² Yet, by holding that the Nebraska tort remedy provided procedural due process for the negligent deprivation, the Court implicitly held that negligence is actionable under section 1983 in the context of a procedural due process claim. If negligence is not actionable under section 1983 there would have been no need to reach the issue

¹²³ *Id.* at 140.

¹²⁴ *Id.* at 145-47.

¹²⁵ *Id.* at 139-40. This approach has been suggested by several commentators. See, e.g., Kirkpatrick, *supra* note 25, at 49; Nahmod, *supra* note 25, at 22-23.

¹²⁶ 443 U.S. at 139-40.

¹²⁷ *Williams v. Kelley*, 624 F.2d 695, 698 (5th Cir. 1980); *Harper v. Cserr*, 544 F.2d 1121, 1124 (1st Cir. 1976); *Hampton v. Holmsburg Prison Officials*, 546 F.2d 1077, 1081 (3d Cir. 1976); *Bonner v. Coughlin*, 545 F.2d 565, 567 (7th Cir. 1976); *Williams v. Vincent*, 508 F.2d 541, 546 (2d Cir. 1974).

¹²⁸ *Taylor v. Parratt*, 620 F.2d 307 (8th Cir. 1980), *aff'g*, *Taylor v. Parratt*, No. 76-L-57 (D. Neb. Oct. 25, 1978); *Navarette v. Enomoto*, 536 F.2d 277, 282 (9th Cir. 1976), *rev'd on other grounds sub nom.* *Procunier v. Navarette*, 434 U.S. 555 (1978); *McGray v. Maryland*, 456 F.2d 1, 5, (4th Cir. 1972); *Fitzke v. Shappell*, 468 F.2d 1072, 1077 & n.7 (6th Cir. 1972); *Carter v. Carlson*, 447 F.2d 358, 365 (D.C. Cir. 1971), *rev'd on other grounds sub nom.* *District of Columbia v. Carter*, 409 U.S. 418 (1973).

¹²⁹ 451 U.S. at 532-35.

¹³⁰ *Id.* at 534-35.

¹³¹ *Id.* at 535.

¹³² *Id.*

of procedural due process or the adequacy of the state remedy.¹³³ By holding that the Nebraska tort remedy provided procedural due process, the *Parratt* Court concluded that a negligent deprivation of property can give rise to a section 1983 procedural due process claim, at least in the absence of an adequate state remedy.

Since the Court's opinion was joined without reservation by only three Justices other than Justice Rehnquist,¹³⁴ it is necessary to consider whether the view that negligence is actionable under section 1983 is held by a majority of the Court. In his separate opinion, Justice Blackmun, joined by Justice White, concurred with the Court's opinion that a negligent deprivation of property does not rise to the level of a constitutional violation as long as the state provides an adequate postdeprivation remedy.¹³⁵ Thus, Justices Blackmun and White appear to be in agreement with the plurality opinion that a negligent deprivation will be actionable under a section 1983, due process claim when the state fails to provide an adequate remedy. In addition, Justice Marshall, in his dissent, explicitly stated that he joined the Court insofar as negligent conduct may be actionable under section 1983.¹³⁶ Justices Stewart and Powell, in separate opinions, however, maintained that the negligent deprivation of the hobby kit was not a constitutional deprivation.¹³⁷ While Justice Powell suggested that no negligent actions by state officials should be actionable under section 1983,¹³⁸ Justice Stewart left open the possibility that negligent conduct by a state official may be actionable under section 1983 if a more serious deprivation of property or a different type of constitutional violation is alleged.¹³⁹ Therefore, in examining all of the opinions in *Parratt*, it appears that a majority of the Court, consisting of Justices Rehnquist, Burger, Brennan, Stevens, Blackmun, White and Marshall, agree that negligence is actionable under section 1983.

Since the holding in *Parratt* and the division among the Justices indicates that negligence is actionable under section 1983, the extent to which this view of section 1983 is consistent with the original purposes of the statute must be considered. The legislative debates prior to the enactment of section 1983 show that it was originally passed to deter deprivations of an individual's rights or privileges under the Constitution which resulted from the failure of the states to enforce their laws against members of the Ku Klux Klan.¹⁴⁰ Although Justice Powell suggested in his concurrence that section 1983 as enacted referred only to intentional abuse of state authority,¹⁴¹ the legislative debates prior to the

¹³³ Powell acknowledges this point in his concurring opinion, 451 U.S. at 551-52 (Powell, J., concurring).

¹³⁴ See *supra* note 20.

¹³⁵ See *supra* text and notes at notes 83-86.

¹³⁶ *Id.* at 554-55.

¹³⁷ *Id.* at 544-46.

¹³⁸ *Id.* at 548-49.

¹³⁹ *Id.* at 544-45.

¹⁴⁰ See *supra* text and notes at notes 99-100.

¹⁴¹ 451 U.S. at 549.

enactment of section 1983 do not support his view. The debates make reference to both the intentional¹⁴² and negligent¹⁴³ failures of the states to enforce their laws against the Klan. After extensively reviewing the legislative debates, the Court in *Monroe* stated:

It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies. [emphasis added]¹⁴⁴

Therefore, the implicit holding in *Parratt* that negligent deprivations are actionable under section 1983 is consistent with the Court's more general understanding of section 1983's original purposes as expressed in *Monroe*.

Since the Court's decision in *Parratt*, several lower courts have considered whether a negligent deprivation of property can support a section 1983 claim. These courts have interpreted *Parratt* as indicating that negligence may be enough to support a section 1983 claim.¹⁴⁵ Therefore, it appears that the holding of *Parratt*, in light of the four separate opinions, has served as a signal to lower courts that negligence is actionable under section 1983.

B. Due Process

After determining that the negligent loss of Taylor's hobby kit amounted to a deprivation of property¹⁴⁶ by officials acting under color of state law,¹⁴⁷ the *Parratt* Court considered whether the deprivation occurred without due process.¹⁴⁸ This section will begin with an examination of the Court's reasoning in holding that the Nebraska tort remedy provided procedural due process for the negligent, unauthorized deprivation of Taylor's hobby kit. Next, it will discuss whether the due process approach taken in *Parratt* should be applied to intentional unauthorized deprivations of property and to both negligent and intentional deprivations of life and liberty. Finally, this section will examine the substantive limits which the due process clause imposes on actions of state officials.

¹⁴² See, e.g., CONG. GLOBE, *supra* note 31, at 374 (remarks of Rep. Lowe) ("While murder is stalking abroad in disguise, while whippings and lynchings and banishment have been visited upon unoffending American citizens, the local administrations have been found inadequate or unwilling to apply the proper corrective.).

¹⁴³ See, e.g., *id.* app., at 153 (remarks of Rep. Garfield) ("[E]ven where the laws are just and equal on their face, yet, by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection.).

¹⁴⁴ *Monroe v. Pape*, 365 U.S. at 180.

¹⁴⁵ See *Mills v. Smith*, 656 F.2d 337 (8th Cir. 1981) ("[t]he Supreme Court indicated that negligence may be enough in some cases to support recovery under § 1983 for lost property." *Id.* at 340 n.2); *Bonner v. Coughlin*, 657 F.2d 931 (7th Cir. 1981) ("[*Parratt*] apparently [will] allow a § 1983 claim based upon a negligent deprivation of property by prison guards." *Id.* at 933 n.3.).

¹⁴⁶ 451 U.S. at 536-37.

¹⁴⁷ *Id.* at 535-36.

¹⁴⁸ *Id.* at 537-44.

1. The Court's Decision

In *Parratt*, the Court acknowledged that the fundamental requirement of procedural due process is that the individual must be provided with the opportunity to be heard at a meaningful time and in a meaningful manner when the state deprives him of his life, liberty, or property.¹⁴⁹ Procedural due process requirements serve two purposes: they protect the individual against erroneous deprivations by the state,¹⁵⁰ and they provide the individual with the sense that the state is treating him in a fair manner.¹⁵¹ Due process requirements are flexible¹⁵² and both the type of hearing and the point at which it must be provided depend on what a particular situation requires to protect the individual against erroneous deprivations by the state.¹⁵³ Generally, when the state is able to provide the individual with a hearing prior to the deprivation, the Court has balanced the competing interests of the state and the individual to determine whether a prior hearing is required and what type of hearing it should be.¹⁵⁴

In *Matthews v. Eldridge*,¹⁵⁵ the Court described three factors to be balanced in determining what type of hearing must be conducted and at what point it must be provided.¹⁵⁶ The first factor is the private interest affected by the deprivation.¹⁵⁷ The weight given to the individual interest typically varies depending on the nature of the interest involved and the degree to which the deprivation affects the individual.¹⁵⁸ The second factor consists of the risk of an erroneous deprivation and the value of additional procedures in reducing that risk.¹⁵⁹ The third factor is the governmental interest at stake, including the

¹⁴⁹ 451 U.S. at 540 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The Court has recently indicated, however, that procedures other than a hearing may satisfy procedural due process. In *Baker v. McCollan* the Court held that an arrest warrant issued upon probable cause provided due process for an erroneous detention for three days. 443 U.S. at 145-46.

¹⁵⁰ *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

¹⁵¹ *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-72 (Frankfurter, J., concurring).

No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.

Id.; L. TRIBE *supra* note 5, at 502-03 (1978).

¹⁵² *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

¹⁵³ *Matthews v. Eldridge*, 424 U.S. 319, 333-35 (1976). See generally Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267 (1975) (discussion of the various forms of hearings that should be afforded individuals based on the nature of the deprivation).

¹⁵⁴ See, e.g., *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 17-22 (1978); *Ingraham v. Wright*, 430 U.S. 651, 675-82 (1977); *Matthews v. Eldridge* 424 U.S. 319, 335-49 (1976); *Goss v. Lopez*, 419 U.S. 565, 577-84 (1975); *Goldberg v. Kelly*, 397 U.S. 254, 260-71 (1970).

¹⁵⁵ 424 U.S. 319, 335 (1976).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1979) (An individual's interest in avoiding an erroneous termination of welfare benefits weighs heavily since it provides the means to obtain essential food, clothing, housing and medical care. *Id.* at 264-65.).

¹⁵⁹ 424 U.S. at 335. See, e.g., *Goss v. Lopez* 419 U.S. at 565 (1975) (Allowing a student

financial and administrative burdens involved in providing the additional safeguards.¹⁶⁰ A balancing of these three factors determines whether the hearing must precede the deprivation¹⁶¹ and to what extent it must resemble a full evidentiary hearing¹⁶² in order to satisfy the requirements of procedural due process.

Although procedural due process generally requires that a hearing or other procedural safeguard precede a deprivation of property by the state,¹⁶³ under limited circumstances a postdeprivation remedy alone may be sufficient. As the Court indicated in *Parratt*, a postdeprivation remedy may provide procedural due process for deprivations of property by the state when it is impossible or impracticable for the state to provide a hearing or other safeguards prior to the deprivation.¹⁶⁴ For example, when it has been necessary for the state to act quickly to seize property for the protection of public health and welfare a prior hearing has not been required.¹⁶⁵ The state interest in acting quickly to safeguard the public has outweighed the risk of an erroneous deprivation and the interest of the property owner in retaining his property.¹⁶⁶ Reviewing emergency seizure cases, the *Parratt* Court emphasized that since it was impracticable for the state to provide a hearing prior to an emergency seizure of property and the state provided a remedy by which the individual could receive compensation for his seized property, the postdeprivation remedy satisfied due process requirements.¹⁶⁷

The justification for holding that a postdeprivation remedy provides procedural due process for emergency seizures of property also apply when a deprivation of property results from negligent actions of state officials which are in violation of established state procedures.¹⁶⁸ First, if the state has implemented procedures to safeguard an individual's property and a state official negligently violates those procedures and thereby deprives an individual of his property, the state is unable to provide a prior hearing. As long as the official acts in a truly random and negligent manner the state is unable to intervene

an informal opportunity to present his version of the facts prior to a disciplinary suspension from school will substantially reduce the risk of an erroneous deprivation. *Id.* at 583-84.)

¹⁶⁰ 424 U.S. at 355. *See, e.g.,* *Ingraham v. Wright*, 430 U.S. 651 (1977) (Providing a hearing before administering a paddling as a disciplinary measure would greatly interfere with the use of corporal punishment in public schools as a disciplinary measure. *Id.* at 680-82.).

¹⁶¹ 424 U.S. at 333-35. Generally the hearing must be provided at a time when the deprivation can still be prevented. *Fuentes v. Shevin*, 407 U.S. 67, 80-82 (1972). *See* L. TRIBE, *supra* note 5, at 544.

¹⁶² *Goldberg v. Kelly*, 397 U.S. at 266-71. *Goldberg* is the only case in which the Court has required a hearing closely approximating a judicial trial. *Matthews v. Eldridge*, 424 U.S. at 333.

¹⁶³ *See supra* note 161.

¹⁶⁴ 451 U.S. at 539.

¹⁶⁵ *See supra* text and note at note 71.

¹⁶⁶ *E.g.* *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594, 601 (1950); *Bowles v. Willingham*, 321 U.S. 503, 520-21 (1944).

¹⁶⁷ 451 U.S. at 538-39.

¹⁶⁸ *See* note, *Prisoner Property Deprivations*, *supra* note 80, at 269-70.

and provide a prior hearing.¹⁶⁹ Requiring that a state afford an individual a hearing prior to a deprivation which the state cannot reasonably anticipate would impose an impossible standard upon the state. Second, when an individual is deprived of his property, a postdeprivation remedy may be able to compensate the individual for his loss.¹⁷⁰

Application of the *Mathews* formula confirms the adequacy of a postdeprivation hearing in cases like *Parratt*. The state's interest in avoiding an impossible requirement of a predeprivation hearing and the availability of a postdeprivation remedy to minimize the risk of error outweigh the individual's interest in preventing a temporary deprivation of his property. As the Court has stated in the past: "The usual rule has been '[w]here only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.'"¹⁷¹ Therefore, as long as the postdeprivation hearing provides for an adequate determination of the liability of the state for a negligent deprivation of property, the postdeprivation hearing will occur at a meaningful time and in a meaningful manner.

In order for a postdeprivation hearing to provide an adequate determination of liability, it appears two requirements must be met. First, procedural due process requires that an individual be given the opportunity to be heard by an impartial decision maker.¹⁷² Although several commentators have suggested

The Court recently held in *Logan v. Zimmerman Brush Co.*, 50 U.S.L.W. 4247 (U.S. Feb. 23, 1982), that a postdeprivation tort remedy did not satisfy procedural due process requirements for a deprivation of property which occurred as a result of an established state procedure. *Id.* at 4251. In *Logan*, the plaintiff filed an employee discrimination claim with the Illinois Fair Employment Practices Commission. *Id.* at 4248. The Commission was then required by statute to provide the plaintiff with a hearing within 120 days. *Id.* Through the negligence of a Commission employee the hearing was not scheduled within the required time period. The Commission therefore dismissed the claim. *Id.* at 4249. In holding that the established state procedure for dismissing the claim denied the plaintiff procedural due process, the Court noted that once the state provides a cause of action and an individual files a claim according to the filing procedures, the individual has a property interest in the cause of action. *Id.* As a result, the state cannot terminate that property interest without providing the individual with a hearing on the merits of the claim. *Id.* at 4250. Since the established state procedure terminated the plaintiff's claim without providing him with a hearing on the merits, the Court held that the state had deprived the plaintiff of his property without due process of law even though the state provided a postdeprivation tort remedy. *Id.* at 4251.

¹⁶⁹ If the actions of the official are not truly random the state may be able to predict when they will occur in order to provide procedures to prevent the deprivation from occurring. If this is the case, the *Mathews* balancing formula should be used to determine what procedures the state must provide in order to meet procedural due process requirements. See *infra* note 186.

¹⁷⁰ In *Ingraham*, Justice Stevens, in a dissenting opinion, suggested that in the property context a postdeprivation tort remedy may satisfy due process since a damage award can generally make the individual completely whole. 430 U.S. at 701. (Steven, J., dissenting).

Recently, Justice Blackmun, in *Logan v. Zimmerman Brush Co.*, noted that a postdeprivation tort remedy is not able to satisfy procedural due process requirements for the deprivation of an individual's property right in a cause of action for employment discrimination. 50 U.S.L.W. at 4251.

¹⁷¹ *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 611 (1974) (quoting *Phillips v. Commissioner*, 283 U.S. 589, 596-97 (1931)).

¹⁷² *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974) (White, J., concurring in part and

that state court judges possess an inherent bias in favor of state officials and are therefore reluctant to award damages against them,¹⁷³ the Supreme Court has rejected this view.¹⁷⁴ As long as a litigant is unable to point to specific reasons why a state court judge would be biased in deciding a case, a state tort remedy, such as the one present in *Parratt*, should be able to satisfy the procedural due process requirement of an impartial decision maker.¹⁷⁵

In addition to providing a fair opportunity to present one's claim, the postdeprivation tort remedy should also afford the individual adequate compensation for his loss in order to satisfy procedural due process. A determination that the state is liable for the loss of property would be meaningless unless it were accompanied by an appropriate monetary award. Nevertheless, a postdeprivation tort remedy need not provide the aggrieved individual with as much relief as he could obtain under section 1983¹⁷⁶ in order to satisfy procedural due process requirements. While section 1983 provides a remedy for constitutional violations, procedural due process merely requires that the state provide the individual with a meaningful hearing.¹⁷⁷ As long as the state provides a meaningful postdeprivation hearing, procedural due process requirements are satisfied regardless of whether the relief afforded is equal to that obtainable under section 1983. Since under the *Parratt* rationale a constitutional violation has not occurred if the state provides a meaningful hearing, the scope of relief section 1983 provides to redress constitutional violations is irrelevant.

While the scope of relief available under the state's postdeprivation hearing need not mirror that of section 1983, the requirement that the hearing be a meaningful one does mandate that a certain minimum level of relief be available through the state forum. In *Parratt*, the Court determined that since the Nebraska postdeprivation remedy could have fully compensated Taylor for his property loss, the remedy satisfied due process requirements.¹⁷⁸ The Court held that a remedy which allows the individual to collect the value of the lost property is sufficient to compensate him fully for the deprivation which he has suffered.¹⁷⁹ The Court, however, failed to note that the Nebraska tort remedy

dissenting in part).

Since due process only requires that the individual be heard by an impartial decision maker, the Court in *Parratt* stated that it is irrelevant whether the postdeprivation hearing is before the judge or jury. 451 U.S. 544.

¹⁷³ See, e.g., Chevingly, *Section 1983 Jurisdiction: A Reply*, 83 HARV. L. REV. 1352, 1358 (1970); Glennon, *Constitutional Liberty and Property: Federal Common Law and Section 1983*, 51 S. CAL. L. REV. 355, 394 (1978); Neuborne *The Myth of Parity*, 90 HARV. L. REV. 1105, 1127-28 (1977). But see Aldisert, *supra* note 25, at 558.

¹⁷⁴ *Allen v. McCurry*, 449 U.S. at 105.

¹⁷⁵ In *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), the Court held that when a contempt citation for slandering a judge was issued after a trial, due process required that the subsequent contempt hearing be before a judge other than the one who was slandered. *Id.* at 466.

¹⁷⁶ See *supra* text and notes at notes 40-42.

¹⁷⁷ *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

¹⁷⁸ 451 U.S. at 544. Since due process requires only that the individual be compensated for an erroneous deprivation, it is irrelevant that the Nebraska remedy provided a cause of action against the state and not against the offending officials.

¹⁷⁹ *Id.*

does not allow for the recovery of attorney's fees.¹⁸⁰ Even though a tort remedy may compensate an individual for his lost property, he may have expended large sums of money in attorney's fees in order to bring the action in state court. Thus, full compensation for the value of the property may not compensate him for the total loss suffered as a result of the actions of state officials.

In the absence of a provision for the award of attorney's fees, then, the state's postdeprivation hearing cannot truly be said to compensate the individual fully. In addition, procedural due process should do more than merely provide the opportunity for an injured party to replenish his resources. The postdeprivation remedy should convey to the individual the feeling that the state is treating him justly.¹⁸¹ If an individual is required to bear the expense of litigating his claim in state court after the state has wrongfully deprived him of his property, it is unlikely that the individual will feel he is being treated fairly. Because of the importance of *fully* compensating the individual as well as treating him fairly, it is suggested that the due process requirements be considered satisfied only by postdeprivation remedies which allow a plaintiff who prevails on the merits of a claim to recover for both the value of lost property and attorney's fees.¹⁸² It is undoubtedly true that under this approach it would be rare that a postdeprivation tort remedy would satisfy procedural due process requirements since most tort remedies do not allow recovery for attorney's fees.¹⁸³ This difference, however, should not be reason to disregard the due process requirement that the hearing must occur at a meaningful time and in a meaningful manner.

Although attorney's fees should be required for a postdeprivation remedy to satisfy procedural due process requirements, punitive damages should not be considered necessary for a remedy to be adequate. When allowed, punitive damages supplement compensatory damages and serve to deter further abuses.¹⁸⁴ As the *Parratt* Court noted, procedural due process requires only that the individual be fully compensated for his loss.¹⁸⁵ Punitive damages bear no relation to the individual's loss and therefore should not be a necessary element for postdeprivation tort remedy to satisfy procedural due process requirements.

In addition to a meaningful determination of liability, procedural due process may require the state to provide other procedural safeguards to reduce

¹⁸⁰ The Nebraska tort remedy provides:

The court rendering a judgment for the claimant under this act, or the State Claims Board making an award under section 81-8,211, or the Attorney General settling a claim under section 81-8,218, shall determine and allow reasonable attorneys' fees and expenses to be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant.

NEB. REV. STAT. § 81-8,228 (Reissue 1976).

¹⁸¹ See *supra* text and note 151.

¹⁸² But see *Bonner v. Coughlin*, 517 F.2d at 1319 n.25 (A state tort remedy satisfies the fourteenth amendment as long as the "recovery includes compensation for the use as well as the value of the property.").

¹⁸³ See *supra* note 42.

¹⁸⁴ RESTATEMENT (SECOND) OF TORTS § 908 (1979).

¹⁸⁵ 451 U.S. at 544.

the risk of an erroneous deprivation.¹⁸⁶ As the *Parratt* Court noted, however, Taylor did not contend that the procedures for safeguarding the prisoners' mail were inadequate or that the state could have provided other procedures to reduce the risk of the negligent loss of his property.¹⁸⁷ If Taylor had raised such arguments the Court might have applied the *Matthews* balancing formula to determine whether the state was required to provide procedural safeguards, in addition to the postdeprivation remedy, in order to satisfy procedural due process. Therefore, although a postdeprivation remedy alone was found to meet due process requirements in *Parratt*, if the state is able to provide specific predeprivation procedures to reduce the risk of an erroneous deprivation of property, due process may require the state to institute such procedures.¹⁸⁸

Since the *Parratt* Court relied on the availability of a state remedy to deny Taylor's section 1983 claim, it is necessary to consider whether *Parratt* is inconsistent with the purpose of section 1983, as interpreted by the Court in *Monroe v. Pape*. In *Monroe*, the Court maintained that section 1983 is a remedy which is supplementary to whatever remedies are provided by the state.¹⁸⁹ The Court stated: "It is no answer that the state has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy and the latter need not be first sought and refused before the federal one is invoked."¹⁹⁰ Since the Court denied Taylor his section 1983 cause of action because of the existence of a state remedy, *Parratt* at first glance appears inconsistent with the *Monroe* view of section 1983 as a supplementary remedy. Yet, upon a closer examination, it is evident that the due process approach taken in *Parratt* does not conflict with the supplementary role of section 1983.¹⁹¹ In *Parratt* the Court did not find that the plaintiff could not pursue a 1983 cause of action simply

¹⁸⁶ *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 618-20 (1974). In *Mitchell*, the Court upheld a Louisiana sequestration statute which provided for a hearing after an individual's property was seized. *Id.* at 619-20. Although the Court had previously struck down similar statutes as violating due process, *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 602-05 (1975); *Fuentes v. Shevin*, 407 U.S. 67, 96 (1972); *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 342 (1969), the Court emphasized that the Louisiana statute provided specific predeprivation procedures to minimize the risk of an erroneous deprivation. 416 U.S. at 605-10. The Louisiana statute provided for (1) approval of the repossession by a judge, LA. CODE CIV. PROC. ANN. arts. 281-283 (West 1960); (2) approval only when specific facts were presented indicating the repossession was justified, *id.* at art. 3501; (3) a bond furnished by a creditor, *id.* at arts. 3501, 3574; (4) the opportunity for the debtor to regain possession by furnishing his own bond, *id.* at arts. 3507-3508; (5) an immediate post-repossession hearing at which the debtor could obtain compensation for economic and reputational damage as well as attorney's fees if the repossession proved to be erroneous, *id.* at art. 3506.

The Court balanced the interests of both the creditor and the debtor in the property and the low risk of a wrongful seizure of property under the statute. 416 U.S. at 607-10. As a result of this balancing, the Court held that the advance procedural safeguards, in conjunction with a prompt postdeprivation hearing, satisfied procedural due process requirements. *Id.* at 618-20.

¹⁸⁷ 451 U.S. at 543.

¹⁸⁸ Justice Blackmun noted in his concurrence in *Parratt* that "[w]hen it is possible for a state to institute procedures to contain and direct the intentional actions of its officials, it should be required as a matter of due process, to do so." *Id.* at 546 (Blackmun, J., concurring).

¹⁸⁹ 365 U.S. at 172.

¹⁹⁰ *Id.*

¹⁹¹ See note, *Prisoner Property Deprivations*, *supra* note 80 at 273-76.

because a supplementary remedy was available. Rather, the Court found that the state's postdeprivation remedy satisfied the requirements of procedural due process. Therefore, since the case involved no constitutional violation, no viable section 1983 claim existed. By finding no constitutional violation present, the *Parratt* Court avoided any conflict with *Monroe's* ruling that when constitutional violations do exist, the plaintiff need not pursue available state remedies before employing section 1983.¹⁹²

The *Parratt* Court, then, denied Taylor's section 1983 claim by finding that he had not been deprived of his property without due process of law. The holding of *Parratt* is consistent with prior case law which held that a postdeprivation remedy can satisfy due process requirements for a deprivation of property when the state is unable to afford a prior hearing and the postdeprivation remedy provides a meaningful determination of liability. In addition, application of the *Matthews* balancing formula indicates that an adequate postdeprivation remedy satisfies due process requirements for a negligent loss of property. The *Parratt* Court, however, failed to consider that the state tort claim available to Taylor may not have afforded a meaningful determination of liability since it did not provide for attorney's fees. In spite of this, by finding that Taylor was not deprived of his property without due process of law, the Court denied Taylor's section 1983 claim without interfering with the role of section 1983 as a supplementary remedy. Since the *Parratt* Court denied Taylor's section 1983 claim based on the availability of a state postdeprivation remedy, it is necessary to consider whether this approach may be applied to other types of deprivations in order to preclude them from a section 1983 cause of action.

2. Possible Extensions of the Due Process Approach Employed in *Parratt*

Although the holding of *Parratt* applies only to negligent, unauthorized deprivations of property by state officials, some of the language in Justice Rehnquist's opinion suggests that a postdeprivation remedy may satisfy due process requirements for other types of deprivations as well. For example, Justice Rehnquist indicated that the due process approach employed in *Parratt* may apply to intentional deprivation of property.¹⁹³ From an examination of the separate opinions written in *Parratt*, it appears that a majority of the Court

¹⁹² Several lower courts have interpreted *Monroe* as indicating that § 1983 is only supplementary to state judicial remedies and therefore require exhaustion of all adequate administrative remedies prior to bringing a § 1983 claim. See *supra* note 124.

¹⁹³ 451 U.S. at 543. The Court described the deprivation of the hobby kit as the result of an "unauthorized failure . . . to follow established state procedure." *Id.* The Court also referred to *Ingraham v. Wright*, 430 U.S. 651 (1977), which involved an intentional deprivation of liberty and stated that *Parratt* was consistent with the approach taken in *Ingraham*. 451 U.S. at 542-43.

Prior to *Parratt* lower courts generally held that intentional, unauthorized deprivations gave rise to a § 1983 claim without considering the availability of a subsequent tort remedy. See, e.g., *Kimbrough v. O'Neill*, 523 F.2d 1057, 1059 (7th Cir. 1975), *aff'd en banc*, 545 F.2d 1059 (7th Cir. 1976); *Carter v. Estelle*, 519 F.2d 1136, 1136 (5th Cir. 1975).

would follow this approach.¹⁹⁴ Lower courts, however, have divided on the issue of whether the *Parratt* due process approach applies to intentional unauthorized deprivations of property.¹⁹⁵ In addition, Justice Rehnquist's opinion suggests that a postdeprivation remedy may provide procedural due process for deprivations of liberty.¹⁹⁶ The separate opinions again indicate that a majority of the Court would agree to extend the due process approach employed in *Parratt* to deprivations of liberty.¹⁹⁷ A number of lower courts, however, have divided on this issue as well.¹⁹⁸ This section of the casenote will

¹⁹⁴ Justice Rehnquist was joined without reservation by three other Justices in suggesting that a postdeprivation remedy can satisfy procedural due process requirements for an intentional deprivation. Though Justice Powell did not directly address the issue, he noted that state tort remedies provide adequate procedural protection for a deprivation of property. 451 U.S. at 547 n.1. To support his position, Justice Powell cited *Ingraham*, a case involving an intentional deprivation. Thus, it appears that Justice Powell would allow a postdeprivation remedy to satisfy due process requirements for an intentional, unauthorized deprivation. *Id.* Justice Blackmun, joined by Justice White, explicitly rejected this approach *Id.* at 545-46. It is unclear from the opinions written by Justices Stewart and Marshall which position they would take. It appears therefore that five Justices would be willing to find that a postdeprivation remedy will meet due process requirements for an intentional unauthorized deprivation.

In addition, Justice Stevens, while sitting as a judge on the Seventh Circuit Court of Appeals, explicitly stated in *Kimbrough v. O'Neil*, 523 F.2d at 1066, that an intentional, unauthorized deprivation of property should not constitute a violation of the fourteenth amendment as long as the State provides an adequate remedy. *Id.* at 1066 (Stevens, J., concurring).

¹⁹⁵ Several lower courts have indicated that a postdeprivation remedy may satisfy procedural due process for an intentional, unauthorized deprivation of property. While one court has expressly stated that it will follow the *Parratt* approach for an intentional unauthorized deprivation, *Sheppard v. Moore*, 514 F. Supp. 1372, 1375-76 (M.D.N.C. 1981), other courts have allowed a postdeprivation remedy to satisfy procedural due process without deciding whether the deprivation was negligent or intentional. *See, e.g., Steffen v. Housewright*, 665 F.2d 245, 247-48 (8th Cir. 1981).

In spite of the language in *Parratt*, however, several courts have expressly rejected the view that a postdeprivation remedy can satisfy procedural due process for an intentional, unauthorized deprivation of property. *Ragusa v. Streton Police Dept.*, 530 F. Supp. 814, 816-17 (N.D. Ill. 1981); *Parker v. Rockefeller*, 521 F. Supp. 1013, 1016 (N.D. W. Va. 1981).

¹⁹⁶ 451 U.S. at 542. The *Parratt* Court noted that its decision was consistent with the approach previously taken by the Court in *Ingraham v. Wright*. *Id.* In *Ingraham*, the Court, confronted with a deprivation of liberty, held that postdeprivation remedies satisfied due process requirements. 430 U.S. 651, 682 (1977).

¹⁹⁷ The Rehnquist opinion was joined without reservation by Chief Justice Burger and Justices Brennan and Stevens. In addition, Justice Powell, in his separate opinion, referred to *Ingraham* in stating that a postdeprivation remedy is able to satisfy due process requirements. 451 U.S. at 547 n.1. Thus it appears Justice Powell may also be willing to find that a postdeprivation remedy is able to satisfy due process requirements. Justices Blackmun and White expressly rejected this view, *id.* at 545, and Justices Stewart and Marshall failed to state how they would decide the issue.

¹⁹⁸ Some courts have held that a postdeprivation tort remedy satisfies procedural due process for an unauthorized deprivation of a liberty interest. *Ellis v. Hamilton*, 669 F.2d 510, 515-16 (7th Cir. 1982); *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1352 (9th Cir. 1981); *Perry v. Davis*, 524 F. Supp. 107, 108 (E.D. Va. 1981).

Other courts have refused to extend *Parratt* to deprivations of liberty. *Wakinekona v. Olim*, 664 F.2d 708, 715 (9th Cir. 1981); *Haygood v. Younger*, 527 F. Supp. 808, 815 (E.D. Cal. 1981). *Cf. Watson v. McGee*, 527 F. Supp. 234, 240-41 (S.D. Ohio 1981) (finding that plaintiff had a § 1983 claim for a deprivation of liberty without due process without considering whether a state tort remedy was available).

examine whether a postdeprivation remedy satisfies procedural due process requirements for an intentional unauthorized deprivation of property, and whether a postdeprivation remedy may satisfy procedural due process requirements for both negligent and intentional, unauthorized deprivations of life and liberty.

In determining whether a postdeprivation remedy satisfies procedural due process requirements for an unauthorized deprivation of property, the state of mind of the offending official should be irrelevant.¹⁹⁹ The appropriate analysis for an intentional, unauthorized deprivation of property should be, as it is with negligent deprivations, whether the postdeprivation remedy occurs at a meaningful time and in a meaningful manner. When a state official deliberately violates established procedures in a random manner and deprives an individual of his property, it is as impossible for the state to anticipate the intentional deprivation as it is when an official acts negligently. The individual is no more deprived of his property as a result of the state of mind of the state official.²⁰⁰ As long as the state provides compensation for the loss, the postdeprivation remedy arguably occurs at a meaningful time and in a meaningful manner. Although an official may be acting intentionally, the official's state of mind should not alter the due process requirements imposed upon the state for a deprivation of property.

In addition to intentional deprivations of property, the due process approach utilized in *Parratt* also may apply to deprivations of life and liberty. In determining whether a postdeprivation tort remedy satisfies procedural due process for a deprivation of life, it is apparent that a difference does exist between a deprivation of life and property. Once an individual has been deprived of his life, a tort remedy will not occur at a meaningful time. In applying the *Matthews* balancing formula, the individual's interest in avoiding an erroneous deprivation of his life, no matter how small the risk, outweighs the state's interest in not providing a prior hearing. Although the state may be unable to predict when an unauthorized deprivation of life will occur in order to provide a prior hearing, an individual's interest in preserving his life is sufficiently great to find that the deprivation was without due process of law and a section 1983 cause of action exists. Therefore, for a deprivation of life, a postdeprivation tort remedy should never satisfy procedural due process requirements.

Since a postdeprivation remedy will not satisfy procedural due process requirements for a deprivation of life, the remaining question is whether it may satisfy procedural due process requirements for a deprivation of liberty. The Court had the opportunity to examine this issue in *Ingraham v. Wright*.²⁰¹ The Court held in *Ingraham* that a postdeprivation remedy provided sufficient procedural due process for a deprivation of the liberty interest of public school students to be free from excessive corporal punishment.²⁰² In *Ingraham*, school

¹⁹⁹ See note *Prisoner Property Deprivations*, *supra* note 80, at 272.

²⁰⁰ *Id.*

²⁰¹ 430 U.S. 651 (1977).

²⁰² *Id.* at 682.

authorities severely paddled several public school students as a disciplinary measure without providing the students with any type of prior hearing.²⁰³ The Court recognized that the school authorities were authorized by common law and statute to administer reasonable corporal punishment for disciplinary measures²⁰⁴ and that the state provided both criminal and civil penalties against the school authorities if the punishments were later found excessive.²⁰⁵ Conceding that the students had a liberty interest in being free from excessive corporal punishment,²⁰⁶ the Court held that the subsequent remedies guaranteed that procedural due process requirements were met.²⁰⁷ In applying the *Matthews* balancing formula, the Court noted that although the students had been severely paddled,²⁰⁸ the risk of an erroneous deprivation was small²⁰⁹ and a prior hearing would interfere with the use of corporal punishment in public schools.²¹⁰ After balancing these factors, the Court held that a prior hearing was not required and the subsequent state remedies were adequate for procedural due process requirements.²¹¹

In addition to holding that a postdeprivation remedy may satisfy procedural due process requirements for a deprivation of liberty in *Ingraham*, the Court in *Baker v. McCollan* held that under some circumstances an ex parte judicial hearing may be all that is necessary to provide procedural due process for a deprivation of liberty.²¹² In *Baker*, the Court held that a deprivation of liberty for three days did not violate due process when the deprivation occurred pursuant to a valid arrest warrant.²¹³ In *Baker*, the respondent was arrested and confined to jail because the warrant intended for his brother contained the wrong name.²¹⁴ Although the respondent insisted that the police had arrested the wrong man, the sheriff detained the respondent in jail for three days before checking respondent's story and releasing him.²¹⁵ The Court held that even though the respondent had been deprived of his liberty for three days, the arrest warrant, issued upon a showing of probable cause, provided due process

²⁰³ *Id.* at 656-57.

²⁰⁴ *Id.* at 674, 676. The Florida statute then in effect authorized public school authorities to inflict reasonable corporal punishment after consulting with the principal or teacher in charge of the school. *Id.* at 655.

²⁰⁵ *Id.* at 677 & n.45.

²⁰⁶ *Id.* at 674.

²⁰⁷ *Id.* at 682.

²⁰⁸ One of the students suffered a hematoma which required medical attention and kept him out of school for several weeks. *Id.* at 657. Another student was struck on his arms so severely that he was deprived of the full use of his arm for a week. *Id.*

²⁰⁹ *Id.* at 677-78.

²¹⁰ *Id.* at 681-82.

²¹¹ *Id.* at 682.

²¹² 443 U.S. at 144-47.

²¹³ *Id.* at 144-45.

²¹⁴ *Id.* at 140-41. Respondent's brother was arrested on narcotics charges and produced a driver's license containing his picture and the respondent's name. *Id.* Respondent's brother was then released on bail under the respondent's name. *Id.* at 140. The bondsman received an order allowing him to surrender his principal and a warrant was issued under the respondent's name. *Id.*

²¹⁵ *Id.*

for the deprivation.²¹⁶ In reaching its decision, the Court emphasized that respondent's claim amounted to a tort claim for false imprisonment and not a claim for a constitutional violation.²¹⁷ Procedural due process, the Court found, does not require that the individual be afforded a hearing before or after the deprivation when he suffers a pretrial detainment of three days pursuant to a valid arrest warrant.²¹⁸ In the Court's view, a probable cause determination by a neutral magistrate provides adequate protection against an erroneous arrest and pretrial detention.²¹⁹ The Court, noted however, that if the detention had continued for longer than three days in spite of repeated protests of innocence, the arrest warrant may not have satisfied procedural due process requirements.²²⁰

In light of the holdings in *Ingraham* and *Baker*, it is apparent that the Court is willing to allow postdeprivation remedies, as well as ex parte judicial hearings, to satisfy procedural due process requirements for erroneous deprivations of liberty by the state. Notwithstanding the holdings of *Ingraham* and *Baker*, however, a postdeprivation remedy may not always provide a hearing at a meaningful time and in a meaningful manner for a deprivation of liberty. By its very nature, a deprivation of liberty may cause serious consequences for the individual. In addition, once the deprivation of liberty occurs, the deprivation is final and the individual cannot be placed in the same position he was in prior to the deprivation.²²¹ As a result, when an individual has been deprived of his liberty, a monetary award may not sufficiently compensate the individual for his loss.²²²

In applying the *Mathews* balancing formula to determine what process is

²¹⁶ *Id.* at 144-45.

²¹⁷ *Id.* at 142, 144, 145.

²¹⁸ *Id.* at 144-47.

²¹⁹ *Id.* at 142-43 (citing *Gerstein v. Pugh*, 420 U.S. 103, 120 (1975)).

²²⁰ *Id.* at 145. "[D]etention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of 'liberty . . . without due process of law.' " *Id.*

²²¹ Justice White, dissenting in *Ingraham*, noted that a "student cannot be made whole [by the state tort remedy] for the infliction of wrongful punishment." 430 U.S. at 696 n.14 (White, J., dissenting). Justice Stevens, also dissenting, stated:

[W]hen only an invasion of a property interest is involved, there is a greater likelihood that a damages award will make a person completely whole than when an invasion of the individual's interest in freedom from bodily restraint and punishment has occurred. In the property context, therefore, frequently a postdeprivation state remedy may be all the process that the fourteenth amendment requires.

Id. at 701 (Stevens, J., dissenting).

²²² In *Haygood v. Younger*, 527 F. Supp. 808 (E.D. Cal. 1981), the plaintiff was detained in prison 4½ years longer than was necessary. *Id.* at 809. In holding that a postdeprivation remedy did not satisfy due process the court stated:

It should go without saying that money is not the equivalent of months of one's life spent in prison Money is compensation for liberty denied; money is not liberty itself. It seems clear, therefore, that the tort action supplied by the state simply will not satisfy due process when what was required was the timely release of the plaintiff.

Id. at 814.

required for a deprivation of liberty, it is necessary to weigh not only the risk of an erroneous deprivation and the interest of the state in providing specific procedures, but also, the interest of the individual in avoiding the erroneous deprivation. Therefore, that the state may be unable to provide a prior hearing should not be a controlling factor. At some point the individual interest will become so commanding and the risk of an erroneous deprivation so high that the impossibility of the state providing a prior hearing will not be a sufficient reason for allowing a postdeprivation remedy to satisfy procedural due process requirements.

Since the individuals in *Ingraham* and *Baker* were deprived of minor liberty interests, the risk of erroneous deprivations was small and the state had a strong interest in not providing a prior hearing, a postdeprivation remedy and an arrest warrant satisfied procedural due process.²²³ If the deprivation has a more serious impact on the individual, however, courts should be reluctant to find that a postdeprivation remedy provides due process. Even though the state may be unable to predict when an unauthorized deprivation of liberty will occur in order to provide a prior hearing, the state's interest in avoiding an impossible standard may not outweigh the individual's interest in retaining his liberty. Since a postdeprivation remedy may not occur at a meaningful time or in a meaningful manner for the individual who has been deprived of a liberty interest, the approach taken in *Ingraham* and *Baker* should be limited by lower courts to apply only when the deprivation is of minor consequence to the individual.

Although the Court has previously expressed dissatisfaction with a rigid dichotomy between property rights and personal rights,²²⁴ courts would not have to decide whether a particular interest was a property or a liberty interest under the approach suggested here. Rather than adhere to a rigid distinction, courts could deal with life, liberty and property interests on a continuum with relatively minor property and liberty interests on one end and more serious liberty interests and life on the other end. Courts would then be free to apply the *Mathews* balancing formula, without having to decide whether a particular interest is categorized as a property or liberty interest. Although placing individual interests on a continuum may not be an easy task, it will enable the court to determine what constitutes a meaningful hearing in a given situation

²²³ See *supra* text and notes at notes 201-20.

²²⁴ As the Court stated in *Lynch v. Household Fin. Corp.*, 405 U.S. 538 (1972), the distinction between property and personal interests is not a clear one. *Id.* at 551-52. In *Lynch*, the Court rejected any distinction between liberty and property interests for purposes of federal jurisdiction under §§ 1983 and 1343(3). *Id.* at 542. In rejecting this distinction, the Court noted the difficulty in determining whether a particular interest is a property or a liberty interest, stating:

[T]he dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights . . . In fact, a fundamental interdependence exists between the personal right to liberty and the personal right to property. Neither could have meaning without the other.

Id. at 552.

without being constrained by distinctions between liberty and property interests.

The reasoning of *Parratt*, then, may be applied to more than just negligent deprivations of property by the state. A close examination of due process requirements indicates that for an intentional unauthorized deprivation of property by the state, a postdeprivation remedy may also provide procedural due process. For deprivations of life and serious deprivations of liberty, however, the availability of a state tort claim should not satisfy due process requirements. It is suggested that courts adopt a continuum approach and decide whether a postdeprivation remedy provides procedural due process for an unauthorized deprivation based on the importance to the individual of avoiding an erroneous deprivation of the particular interest at stake. Even if courts do find that procedural due process requirements have been satisfied, they must still address whether the deprivation has violated any of the substantive due process rights guaranteed by the fourteenth amendment.

3. Substantive Due Process

In addition to imposing procedural requirements on the state when it deprives an individual of his life, liberty or property, the due process clause may impose substantive limits as well.²²⁵ Therefore, although a postdeprivation remedy may satisfy procedural due process requirements for a authorized deprivation of liberty or property, the individual may still have a section 1983 due process claim for a violation of his substantive rights. Substantive due process protects certain fundamental rights of the individual against interference by the state regardless of whether the state provides a hearing, unless the state has a compelling reason to intrude.²²⁶ Substantive due process guarantees include the right to engage in activities related to abortion,²²⁷ contraception,²²⁸ marriage,²²⁹ divorce,²³⁰ child rearing and education,²³¹ and family relationships.²³² In addition to these specific rights, substantive due process also protects individuals against deprivations by the state which "shock the conscience" or are "offensive to human dignity" in spite of any procedures the state may provide.²³³

The difference between a substantive and procedural due process analysis for section 1983 purposes is well illustrated in the Supreme Court's decision in *Ingraham v. Wright*. In *Ingraham*, the Court held that a postdeprivation remedy

²²⁵ See *Roe v. Wade*, 410 U.S. 113, 152-53 (1972).

²²⁶ *Id.* at 155.

²²⁷ *Id.* at 154.

²²⁸ *Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972).

²²⁹ *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

²³⁰ *Boddie v. Connecticut*, 401 U.S. 371, 380-81 (1971).

²³¹ *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

²³² *Moore v. City of East Cleveland*, 431 U.S. 49, 502-06 (1977).

²³³ *Rochin v. California*, 342 U.S. 165, 172, 174 (1952) (seizure of illegal drugs by means of stomach pumping violated substantive due process).

provided procedural due process for excessive corporal punishment in schools, but explicitly did not address whether any substantive rights under the due process clause had been violated.²³⁴ The Fourth Circuit Court of Appeals subsequently acknowledged that the infliction of excessive corporal punishment may constitute a violation of substantive due process guarantees.²³⁵ It is therefore submitted that when a state official acts without a compelling reason and takes an individual's life, detains him for a prolonged period of time,²³⁶ or subjects him to excessive physical force without a compelling reason,²³⁷ the state may have violated the individual's substantive due process rights even if the state has provided adequate procedures pursuant to the deprivation.²³⁸ Although a postdeprivation tort remedy was sufficient to insure procedural due process under *Parratt*, certain deprivations may be so offensive as to amount to a violation of the individual's substantive due process rights²³⁹ and a section 1983 claim would exist.

In summary, *Parratt* will aid lower courts in defining the boundaries of a section 1983 cause of action both in terms of what state of mind the offending state official must possess and what types of procedures will satisfy procedural due process. In light of *Parratt* it is apparent that negligent actions by state officials may be actionable under section 1983. *Parratt* has also made it clear that an adequate postdeprivation remedy may preclude a section 1983 claim for an unauthorized deprivation of liberty. Even when procedural due process is satisfied, however, a section 1983 claim may still be available based on a violation of substantive due process rights. Although *Parratt* helps to clarify the parameters of section 1983 it is necessary to examine whether *Parratt* will exclude a substantial number of section 1983 claims from federal court.

IV. IMPLICATION OF *PARRATT* FOR SECTION 1983

The Court's decision in *Parratt* serves simultaneously to expand and limit the role of section 1983. In order to examine the impact of *Parratt*, this section of

²³⁴ 430 U.S. at 682. The Court in *Ingraham* took care to point out that they were not deciding "whether or under what circumstances corporal punishment of a public school child may give rise to an independent federal cause of action to vindicate substantive rights under the due process clause." 430 U.S. at 697 n.47.

²³⁵ *Hall v. Tawney*, 621 F.2d 607, 614 (4th Cir. 1980).

²³⁶ See discussion of *Haygood v. Younger* *supra* at note 222.

²³⁷ See *Jenkins v. Averette*, 424 F.2d 1228, 1232 (4th Cir. 1970); *Johnson v. Glick*, 481 F.2d 1028, 1033 (3d Cir. 1973), *cert. denied sub nom. John v. Johnson*, 414 U.S. 1033 (1974); *Bellows v. Dainack*, 555 F.2d 1105, 1106-07 (2d Cir. 1977).

²³⁸ Judge Swygert, in his concurring opinion in *Kimbrough v. O'Neil*, suggested that an intentional taking of property by a state official without justification also violates substantive due process. 523 F.2d at 1061.

²³⁹ Justice Powell, in his concurring opinion in *Parratt*, maintained that an unauthorized deprivation by a state official would have to be intentional in order to violate substantive due process rights. 451 U.S. 553. Although most unauthorized deprivations would have to be intentional to be so offensive as to "shock the conscience" a deprivation which results from gross negligence may "shock the conscience" as well and thus would constitute a violation of substantive due process.

the casenote will first examine the effect the decision is likely to have on the section 1983 caseload. Then, the casenote suggests an additional approach which courts may use to further limit the number of section 1983 claims while preserving the statute's purpose of protecting constitutional rights.

Since lower courts were divided on the question of whether negligence is actionable under section 1983,²⁴⁰ the *Parratt* Court clarified the issues by implicitly holding that negligent deprivations of property by state officials are actionable under section 1983. As a result, many procedural due process claims involving negligent deprivations which were previously excluded from section 1983 will be heard in federal court. Since the language in both *Monroe* and *Baker* suggested that negligence was actionable under section 1983,²⁴¹ *Parratt*, in determining that a negligent deprivation is a constitutional violation, serves to expand the role of section 1983 in a manner which is consistent with prior cases.

Although *Parratt* expands 1983 by implicitly holding that negligent actions can give rise to a section 1983 claim, *Parratt* should not be interpreted as indicating that negligence will support a section 1983 claim for *all* constitutional violations. Whether a section 1983 cause of action exists will depend on the particular constitutional violation alleged. While *Parratt* held that 1983 has no state of mind requirement, the constitutional provisions actionable under the statute may require that the defendant act with a specific intent.²⁴² *Parratt* indicated that a negligent deprivation of property constitutes a violation of the fourteenth amendment procedural due process guarantees. The Court has held, however, that the equal protection clause and the eighth amendment prohibition against cruel and unusual punishment require an intentional act by a state official in order to be actionable.²⁴³ It is an open question whether negligence will suffice for other constitutional violations.²⁴⁴

Although *Parratt* increases the scope of section 1983, the decision simultaneously limits the number of claims which can come under section 1983. While the Court found no state of mind requirement for section 1983 claims, it also held that an adequate postdeprivation tort remedy satisfies pro-

²⁴⁰ See *supra* notes 144-145.

²⁴¹ See *supra* text and notes at notes 127-28.

²⁴² The Court in *Baker v. McCollan* noted that: the State of mind of the defendant may be relevant on the issue of whether a constitutional violation has occurred in the first place, quite apart from the issue of whether § 1983 contains some additional qualification of that nature before a defendant may be held to respond in damages under its provisions. 443 U.S. at n.1.

²⁴³ *Washington v. Davis*, 426 U.S. 229, 234-42 (1976) (proof of discriminatory purpose is required for an equal protection claim); *Estelle v. Gumbel*, 429 U.S. 97, 105 (1976) (deliberate indifference to a prisoner's illness or injury is required for a claim of cruel and unusual punishment).

²⁴⁴ For example, the question still remains open as to what state of mind will be required for a violation of substantive due process. Justice Powell, in his concurrence in *Parratt* suggests that negligent actions should not give rise to a substantive due process claim. 451 U.S. at 553 (Powell, J., concurring in the result).

cedural due process for a negligent, unauthorized deprivation of property by state officials. As a result of the *Parratt* decision, federal courts have denied a numbers section 1983 claims on the grounds that the state remedy satisfies due process requirements.²⁴⁵ The overall effect of *Parratt* therefore probably will be a reduction in the number of section 1983 claims.

Nevertheless, the *Parratt* decision may not alleviate the section 1983 caseload to any great extent.²⁴⁶ First, an adequate postdeprivation remedy will only preclude a section 1983 cause of action when the claimant is alleging a violation of his right to procedural due process. The challenged conduct may violate other constitutional rights which would give rise to a section 1983 claim.²⁴⁷ Second, a postdeprivation remedy will satisfy procedural due process only when it is impossible or impracticable for the state to provide a hearing or other procedures prior to the deprivation to preclude the risk of an erroneous deprivation. Third, there will be instances when the state provides no cause of action for the claimant²⁴⁸ or when the state's postdeprivation remedy is inadequate for procedural due process requirements and therefore a section 1983 claim will exist. The state remedy will be inadequate for precluding a section 1983 claim when the state remedy does not fully compensate the claimant for his loss²⁴⁹ or when it can be shown that the state remedy, although adequate in theory, is inadequate in practice.²⁵⁰ Therefore, although *Parratt* may signify an attempt by the Court to reduce the number of section 1983 claims, many will continue to be heard in federal court.

Although the procedural due process approach adopted in *Parratt* will exclude certain section 1983 claims which involve no constitutional violations, courts may continue to seek additional ways of preventing section 1983 from encompassing ordinary tort claims. As the *Parratt* Court observed, the two

²⁴⁵ *E.g.*, *Fiallo v. DeBatista*, 666 F.2d 729, 733 (1st Cir. 1981); *Steffen v. Housewright*, 665 F.2d 245, 247-48 (8th Cir. 1981); *Franklin v. Oregon*, 662 F.2d 1337, 1345 (9th Cir. 1981); *Rutledge v. Arizona*, 660 F.2d 1345, 1352 (9th Cir. 1981); *Graham v. Mitchell*, 529 F. Supp. 622, 624-25 (E.D. Va. 1982).

²⁴⁶ "[D]espite the breadth of state tort remedies [due process] claims will be more numerous than might at first be supposed." 451 U.S. at 550-51. (Powell, J., concurring in the result).

²⁴⁷ For example, a deprivation of property or liberty may also give rise to a violation of fourteenth amendment substantive due process guarantees, *see supra* text and notes at notes 225-39; first amendment rights, *see Nickens v. White*, 536 F.2d 802, 804 (8th Cir. 1976); fourth amendment rights, *Bonner v. Coughlin*, 517 F.2d at 1317; or eighth amendment rights, *Finney v. Arkansas Bd. of Correction*, 505 F.2d 194, 207-08 (8th Cir. 1974).

²⁴⁸ *See, e.g.*, *Carter v. Carlson*, 447 F.2d 358, 365 (D.C. Cir. 1971) (official immunity under common law), *rev'd on other grounds sub nom.* *District of Columbia v. Carter*, 409 U.S. 418 (1973); *Kent v. Prasse*, 385 F.2d 406, 407 (3d Cir. 1967) (no remedy provided by the state).

²⁴⁹ This would occur if the state has a limitation of liability which bars complete recovery by the plaintiff. Also under the approach suggested earlier it would occur when the remedy fails to provide recovery for attorney's fees.

²⁵⁰ It may be difficult to determine whether a state remedy is inadequate in practice. An example of this would be the tort remedy in *Ingraham* since there had never been a case brought under the statute providing for a civil cause of action against teacher for excessive corporal punishment. 430 U.S. at 694 n.11.

elements of any section 1983 claim are whether a constitutional violation has occurred and whether it was committed by a person acting "under color of" state law.²⁵¹ It is therefore suggested that an appropriate analysis of the phrase "under color of" state law may aid courts in further defining the appropriate scope of section 1983.

In *Parratt*, the Court did not need to explore the scope of the requirement that state officials must act "under color of" state law for a section 1983 claim since the Prison Warden and Hobby Manager possessed considerable authority in the prison.²⁵² A clarification of the meaning of the phrase, however, may alleviate some of the grounds for the Court's concern that section 1983 is becoming a "font of tort law."²⁵³ The Court has frequently emphasized the need to place appropriate limits on section 1983.²⁵⁴ To highlight the types of trivial situation that section 1983 could cover, the Court has maintained that unless the statute is limited appropriately an individual whose property has been damaged by a police officer negligently driving his automobile could have a cause of action under section 1983.²⁵⁵ The Court's desire to prevent such deprivations from being actionable under section 1983 can be accomplished by a reasonable construction of "under color of" state law.

Originally, "under color of" state law was interpreted to mean that section 1983 only applied to actions of state officials which were authorized by state law.²⁵⁶ Then, in *Monroe v. Pape*, the Court extended section 1983 to apply to actions of state officials which were in violation of state law as well.²⁵⁷ In *Monroe*, thirteen police officers, without warrants, broke into the petitioner's home in the early morning, ransacked his house, took him to the police station, and interrogated him for ten hours.²⁵⁸ In determining that the officers had acted under color of state law for purposes of section 1983, the Court adopted the meaning it had previously given "under color of" in 18 U.S.C. § 242,²⁵⁹ the criminal counterpart of section 1983.²⁶⁰ The Court ruled that actions of officials are "under color of" state law when they are based on "misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law."²⁶¹ Since the policemen in *Monroe* were able to violate the petitioner's rights by virtue of their authority as policemen, they were acting "under color of" state law and therefore both the individual officers and the City of Chicago could be held liable under section 1983.²⁶²

²⁵¹ 451 U.S. at 535.

²⁵² *Id.* at 535-36.

²⁵³ 451 U.S. at 544; *Paul v. Davis*, 424 U.S. 693, 701 (1976).

²⁵⁴ 451 U.S. at 544; *Paul v. Davis*, 424 U.S. at 698.

²⁵⁵ 451 U.S. at 544; *Paul v. Davis*, 424 U.S. at 698.

²⁵⁶ *Developments, supra* note 4, at 1160 & n.138.

²⁵⁷ 365 U.S. at 172.

²⁵⁸ *Id.* at 169.

²⁵⁹ 18 U.S.C. § 242 (1976).

²⁶⁰ 365 U.S. at 187. *See, e.g., Williams v. United States*, 341 U.S. 97, 99-100 (1951); *Screws v. United States*, 325 U.S. 91, 109-12 (1945); *United States v. Classic*, 313 U.S. 299, 326 (1941).

²⁶¹ 365 U.S. at 184 (citing *United States v. Classic*, 313 U.S. at 326.).

²⁶² 365 U.S. at 187. The complaint against the City of Chicago was dismissed, however,

Based on the definition given to "under color of" state law in *Monroe*, a distinction can be drawn between actions of state officials which should give rise to a tort claim and those which should give rise to a section 1983 claim for violation of a constitutional right. It is only when an official is able to inflict harm by virtue of his position of authority that a section 1983 cause of action should be available. When an official causes harm in a way which is equally available to a private citizen the act should not be viewed as "under color of" state law. A state tort action should be the only appropriate remedy.²⁶³ For example, if a policeman negligently passes through a stop sign and damages another car, he should be treated as a private citizen. His position of authority does not make it more likely that this type of harm will occur than if he were a private citizen. Yet, if a policeman is involved in a high speed chase, his actions should be viewed as "under color of" state law since it is by virtue of his position that he is more likely to be involved in this type of activity. Under this approach, all harms inflicted by prison officials would be "under color of" state law.²⁶⁴ By virtue of their authority, prison officials are in a position to deprive prisoners of their property. A taking of a prisoner's property is not the type of harm which could be inflicted by a private citizen. Following this approach, the Court's fear that "any party who is involved in nothing more than an automobile accident with a state official could allege a constitutional violation under § 1983"²⁶⁵ would be unfounded.

Defining "under color of" state law to include only official actions made possible by virtue of a position of authority would be consistent with the purposes of section 1983. The legislative debates prior to the enactment of section 1983 indicate that Congress wanted to provide a federal remedy for abuses of state power.²⁶⁶ Various legislators expressed their concerns that state officials were failing to enforce state laws against members of the Ku Klux Klan.²⁶⁷ The ability to enforce state laws depends on the authority which state officials possess; an ordinary citizen does not have the authority to enforce them. Nothing in the debates suggests that Congress intended section 1983 to reach conduct of state officials that did not depend upon their position of authority.

The Court has increasingly expressed its concern that the purpose of section 1983 is to protect constitutional rights and not to provide a tort action for all injuries inflicted by state officials.²⁶⁸ By requiring an act to be accomplished by virtue of the official's authority to be "under color of" state law, lower

based on municipal immunity under § 1983. *Id.* at 191-92. Municipal immunity was subsequently overruled in *Monell v. Department of Social Servs.*, 436 U.S. 658, 691 (1978).

²⁶³ 451 U.S. at 552 n.10 (Powell, J., concurring in the result); *Bonner v. Coughlin*, 545 F.2d at 574-75 (Swygert, J., dissenting); *Whitman*, *supra* note 5, at 33 n.144.

²⁶⁴ *Contra* *Kimbrough v. O'Neil*, 545 F.2d at 575 (Swygert, J., dissenting). The actions of prison officials, according to Judge Swygert, can be divided into two categories: those which are inherently governmental such as providing security and discipline and those which are purely custodial such as supplying food. *Id.* Swygert suggests that only the former should be viewed as "under color of" state law. *Id.*

²⁶⁵ 451 U.S. at 544.

²⁶⁶ *Monroe v. Pape*, 365 U.S. at 180.

²⁶⁷ *Id.*

²⁶⁸ *See, e.g., Baker v. McCollan*, 443 U.S. at 146; *Paul v. Davis*, 424 U.S. at 700-01.

courts can prevent section 1983 from becoming a cause of action which encompasses all wrongful acts committed by state officials. If courts employ the suggested approach in order to determine which actions are committed "under color of" state law, section 1983 will remain available only for those acts which Congress intended it to apply — those which involve abuse of state authority.

The impact of the *Parratt* decision will be a reduction in the section 1983 caseload. Although *Parratt* serves to expand the scope of section 1983 by implicitly holding that negligent deprivations are actionable, the decision simultaneously reduces the scope of the statute by finding that a postdeprivation remedy may satisfy procedural due process requirements for an unauthorized deprivation by the state. In spite of the holding of *Parratt*, however, many due process cases will continue to be heard under section 1983 if the postdeprivation remedy fails to satisfy procedural due process requirements or if a violation of substantive due process rights is alleged. Therefore, in addition to the due process approach adopted by the *Parratt* Court, a proper construction of the "under color of" state law requirement may be a useful approach in the continuing attempt by courts to prevent section 1983 from developing into a cause of action which encompasses ordinary tort claims.

CONCLUSION

Prior to *Parratt*, federal courts were overburdened by an increasing section 1983 caseload and were divided on whether negligence was actionable under the statute. Then, in *Parratt*, the Supreme Court clarified the scope of section 1983 by implicitly holding that negligence is actionable under a section 1983 procedural due process claim. More significantly, the *Parratt* Court held that a postdeprivation hearing can satisfy the procedural due process requirements of the fourteenth amendment and therefore preclude a section 1983 claim.

The *Parratt* Court, however, left open the question of whether postdeprivation remedies also can satisfy procedural due process requirements for intentional deprivations of property and deprivations of life and liberty. For an intentional deprivation of property the state of mind of the defendant should be irrelevant and a postdeprivation remedy should satisfy procedural due process guarantees. A postdeprivation remedy, however, can never meet due process requirements for a deprivation of life. While a postdeprivation remedy may satisfy procedural due process requirements for a deprivation of liberty, courts should consider carefully the serious consequences of an erroneous deprivation of liberty. Since an individual can never be compensated adequately for a deprivation of liberty, a postdeprivation remedy should only satisfy procedural due process requirements for minor liberty deprivations. Assuming that a court does find that a state tort remedy satisfies procedural due process guarantees, the court must consider whether the deprivation violated the substantive due process guarantees of the fourteenth amendment. If substantive due process guarantees have been violated, the individual will have a section 1983 claim regardless of the existence of state remedies.

Although the *Parratt* decision will preclude certain claims from section 1983, the section 1983 caseload will continue to burden the federal judiciary. In the aftermath of *Parratt*, it is clear that any attempts to reduce the scope of section 1983 should focus on whether the conduct complained of violated a constitutional provision and whether it was committed "under color of" state law. Therefore, in addition to focusing on the elements of the underlying constitutional violation, courts should also look to the requirement that an act be committed "under color of" state law in order to prevent section 1983 from developing into a cause of action for ordinary tort claims. Although the burgeoning section 1983 caseload is cause for concern, the desire to reduce the caseload must be balanced with the mandate of section 1983 — to protect constitutional rights.

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