

pp. 19, 23

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To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

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2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 80-396

City of Newport et al., Petitioners, v. Fact Concerts, Inc. and Marvin Lerman.	} On Writ of Certiorari to the United States Court of Appeals for the First Cir- cuit.
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[June —, 1981]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *Monell v. New York City Dept. of Social Services*, 436 U. S. 658 (1978), this Court for the first time held that a local government was subject to suit as a "person" within the meaning of 42 U. S. C. § 1983. Aside from concluding that a municipal body was not wholly immune from civil liability, the Court had no occasion to explore the nature or scope of any particular municipal immunity under the statute. 436 U. S., at 701. The question presented by this case is whether a municipality may be held liable for punitive damages under § 1983.

I

A

Respondent Fact Concerts, Inc. is a Rhode Island corporation organized for the purpose of promoting musical concerts.<sup>1</sup> In 1975, it received permission from the Rhode Island Department of Natural Resources to present several summer concerts at Fort Adams, a state park located in the city of Newport.

<sup>1</sup> Fact Concerts, Inc. entered into a joint venture with respondent Marvin Lerman, a promoter, to produce the jazz concerts that gave rise to this lawsuit. For convenience, we refer to the corporation as the respondent.



In securing approval for the final concerts, to be held August 30 and 31, respondent sought and obtained an entertainment license from petitioner city of Newport.<sup>2</sup> Under their written contract, respondent retained control over the choice of performers and the type of music to be played while the city reserved the right to cancel the license without liability if "in the opinion of the City the interests of public safety demand." App. 27.

Respondent engaged a number of well-known jazz music acts to perform during the final August concerts. Shortly before the dates specified, the group Blood, Sweat and Tears was hired as a replacement for a previously-engaged performer who was unable to appear. Members of the Newport city council, including the mayor, became concerned that Blood, Sweat and Tears, which they characterized as a rock group rather than as a jazz band, would attract a rowdy and undesirable audience to Newport. Record Appendix (R. A.) 265, 316-317, 325.<sup>3</sup> Based on this concern, the council attempted to have Blood, Sweat and Tears removed from the program.

On Monday, August 25, Mayor Donnelly informed respondent by telephone that he considered Blood, Sweat and Tears to be a rock group, and that they would not be permitted to perform because the city had experienced crowd disturbances at previous rock concerts. *Id.*, at 195. Officials of respondent appeared before the city council at a special meeting the next day, and explained that Blood, Sweat and Tears in fact were a jazz band that had performed at Carnegie Hall in New York City and at similar symphony hall facilities throughout the world. Speaking for the council, the mayor reiterated that the city did not condone rock festivals. With-

<sup>2</sup> The individual petitioners are the mayor of Newport and the other six members of the city council. Because their claims are not before us, we refer to the city as petitioner. See n. 7, *infra*.

<sup>3</sup> Contemporary press accounts attributed to the council members a "fear of attracting 'long-haired hangers-on.'" R. A. 87-A.



out attempting to investigate either the nature of the group's music or the representations made by respondent, the council voted to cancel the license for both days unless Blood, Sweat and Tears were removed from the program. *Id.*, at 267-269. The vote received considerable publicity, and this adversely affected ticket sales. *Id.*, at 248-G.

Later in the same week, respondent was informed by the city solicitor that the council had changed its position and would allow Blood, Sweat and Tears to perform if they did not play rock music. On Thursday, August 28, respondent agreed to attend a second special council meeting the following day.

The second council session convened on the afternoon of August 29, the day before the first scheduled performance. Mayor Donnelly informed the council members that the city had two options—it could either allow Blood, Sweat and Tears to perform subject to the prohibition against rock music, or cancel the concert altogether. Although the city solicitor advocated the first alternative and advised that cancellation would be unlawful, *id.*, at 478, the council did not offer the first option to respondent. Instead, one of the council members inquired whether all provisions of the contract had been fulfilled. The city manager, who had just returned from the concert site, reported that the wiring-together of the spectator seats was not fully completed by 3 p. m., and that the auxiliary electric generator was not in place. Under the contract, respondent had agreed to fulfill these two conditions as part of the overall safety procedures. App. 28.<sup>4</sup> The

<sup>4</sup>Testimony at the trial indicated that in fact substantial compliance had been achieved. R. A. 101-102, 136-137, 141-142, 201. The director of the Rhode Island Department of Natural Resources, who also visited the site on Friday afternoon, stated that respondent's preparations were satisfactory for health and safety purposes. *Id.*, at 159. He said that he informed the city manager that the criticisms offered were "picayune," *id.*, at 157 (although this characterization, upon objection, was stricken by the trial judge, *ibid.*), and "frivolous," *id.*, at 179. The director offered



A

## NEWPORT v. FACT CONCERTS, INC.

council then voted to cancel the contract because respondent had not "lived up to all phases" of the agreement. R. A., vol. IV, p. 10. The council offered respondent a new contract for the same dates, specifically excluding Blood, Sweat and Tears. Respondent, however, indicated that it would take legal action if the original contract was not honored. R. A. 96, 202; vol. IV, p. 11. After the meeting adjourned at 9:30 p. m., the decision to revoke respondent's license was broadcast extensively over the local media. R. A. 97, 204.

On Saturday morning, August 30, respondent obtained in state court a restraining order enjoining the mayor, the city council, and the city from interfering with the performance of the concerts. The 2-day event, including the appearance of Blood, Sweat and Tears, took place without incident. Fewer than half the available tickets were sold.

## B

Respondent instituted the present action in the United States District Court for the District of Rhode Island, naming the city, its mayor, and the six other council members as defendants. Alleging, *inter alia*, that the license cancellation amounted to content-based censorship, and that its constitutional rights to free expression and due process had been violated under color of state law, respondent sought compensatory and punitive damages against the city and its officials under 42 U. S. C. § 1983 and under two pendent state law counts, including tortious interference with contractual relationships. App. 8. At the conclusion of six days of trial, the District Court charged the jury with respect to the § 1983 and tortious interference counts. Included in its charge was an instruction, given without objection, that authorized the jury to award punitive damages against each defendant

to attend the second council meeting to assist in any way possible, but was told by the mayor and the city manager that he was not needed. *Id.*, at 158.



individually, "based on the degree of culpability of the individual defendant." App. 62.<sup>5</sup> The jury returned verdicts for respondent on both counts, awarding compensatory damages of \$72,910 and punitive damages of \$275,000; of the punitive damages, \$75,000 was spread among the seven individual officials and \$200,000 was awarded against the city.<sup>6</sup>

Petitioner moved for a new trial, arguing that punitive damages cannot be awarded under § 1983 against a municipality, and that even if they can, the award was excessive.<sup>7</sup> Because petitioner challenged the punitive damages instruction to which it had not objected at trial, the District Court noted that the challenge was untimely under Fed. Rule Civ. Proc. 51. But the court was determined not to "rest its decision on this procedural ground alone." App. to Pet. for Cert. B-3. Reasoning that "a careful resolution of this novel question is critical to a just verdict in this case," *id.*, at B-7, the court proceeded to consider petitioner's substantive legal arguments on their merits.

<sup>5</sup> See App. 57-58 (instructing on basis for award of punitive damages). Compensatory damages were to be awarded as a single sum against all defendants found liable. *Id.*, at 62.

<sup>6</sup> The jury assessed 75% of the punitive damages upon the § 1983 claim and 25% upon the state-law claim. R. A. 594-595. We do not address the propriety of the punitive damages awarded against petitioner under Rhode Island law.

<sup>7</sup> In addition to challenging the punitive damages award against the city, the defendants sought review of all aspects of the jury verdict as well as numerous rulings made by the District Judge during the trial. Both the District Court and the Court of Appeals determined that respondent had stated valid claims for relief under federal and state law, that the individual defendants were entitled only to qualified good faith immunity, that respondent had proved its case against each individual defendant, and that objections to the cross-examination of one of the council members were without merit. Although petitioners sought certiorari on some of these issues, we granted the writ to consider only the question of the availability of punitive damages against a municipality under § 1983. Thus, in all other respects, the findings and conclusions of the lower courts are left undisturbed.



The District Court recognized, *ibid.*, that *Monell* had left undecided the question whether municipalities may be held liable for punitive damages. 436 U. S., at 701. The court observed, however, that punitive damages often had been awarded against individual officials in § 1983 actions, and it found no clear basis for distinguishing between individuals and municipalities in this regard. Emphasizing the general deterrent purpose served by punitive damages awards, the court reasoned that a municipality's payment of such an award would focus taxpayer and voter attention upon the entity's malicious conduct, and that this in turn might promote accountability at the next election. App. to Pet. for Cert. B-9. Although noting that the burden imposed upon tax-paying citizens warranted judicial caution in this area, the court concluded that in appropriate circumstances municipalities could be held liable for punitive damages in a § 1983 action.\*

The United States Court of Appeals for the First Circuit affirmed. 626 F. 2d 1060 (1980). That court noted, as an initial matter, that the challenge to the punitive damages award was flawed due to petitioner's failure to object to the charge at trial. The court observed that such a failure should be overlooked "only where the error is plain and 'has seriously affected the fairness, integrity or public reputation of a judicial proceeding.'" *Id.*, at 1067. The court found none of these factors present, because the law concerning municipal liability under § 1983 was in a state of flux, and no appellate decision had barred punitive damages awards against a municipality.

The Court of Appeals also expressed a belief that the challenged instruction might well not have been error at all.

\*The court, however, went on to rule that the \$200,000 award against petitioner was excessive and unjust. App. to Pet. for Cert. B-12 to B-13. It ordered a remittitur, reducing the punitive damages award to \$75,000. Respondent accepted the remittitur without objection. App. 68.



626 F. 2d, at 1067. Citing its own prior holdings to the effect that punitive damages are available against § 1983 defendants, and this Court's recent determination in *Monell* that a municipality is a "person" within the meaning of § 1983, the court identified the "distinct possibility that municipalities, like all other persons subject to suit under § 1983, may be liable for punitive damages in the proper circumstances." 626 F. 2d, at 1067.

Because of the importance of the issue, we granted certiorari. — U. S. — (1980).

## II

At the outset, respondent asserts that the punitive damages issue was not properly preserved for review before this Court. Brief for Respondent 7-9. In light of Rule 51's uncompromising language<sup>9</sup> and the policies of fairness and judicial efficiency incorporated therein, respondent claims that petitioner's failure to object to the charge at trial should foreclose any further challenge to that instruction. The problem with respondent's argument is that the District Court in the first instance declined to accept it. Although the punitive damages question perhaps could have been avoided simply by a reliance, under Rule 51, upon petitioner's procedural default,<sup>10</sup> the judge concluded that the interests of justice required careful consideration of this "novel question" of federal law. Because the District Court reached and fully adjudicated the merits, and the Court of Appeals did not disagree with that

<sup>9</sup> Rule 51 reads in pertinent part:

"No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the ground of his objection."

<sup>10</sup> See J. Moore & J. Lucas, 5A Moore's Federal Practice ¶ 51.04, n. 3 (1980); C. Wright & A. Miller, Federal Practice and Procedure § 2553 (1971).



adjudication, no interests in fair and effective trial administration advanced by Rule 51 would be served if we refused now to reach the merits ourselves.<sup>11</sup>

Nor are we persuaded that our review should be limited to determining whether "plain error" has been committed, an exception to Rule 51 that is invoked on occasion by the Courts of Appeals absent timely objection in the trial court.<sup>12</sup> No "right" to a specific standard of review exists in this setting, any more than a "right" to review existed at all once petitioner failed to except to the charge at trial. But given the special circumstances of this case, limiting our review to a restrictive "plain error" standard would be peculiarly inapt.

"Plain error" review under Rule 51 is suited to correcting obvious instances of injustice or misapplied law. A court's interpretation of the contours of municipal liability under § 1983, as both courts below recognized, hardly could give rise to plain judicial error since those contours are currently in a state of evolving definition and uncertainty. See *Owen v. City of Independence*, 445 U. S. 622 (1980); *Monell*. See also *Maine v. Thiboutot*, 448 U. S. 1 (1980); *Middlesex Cty. Sewerage Authority v. National Sea Clammers Assn.*, — U. S. — (1981). We undertake review here in order to resolve one element of the uncertainty, that is, the availability of punitive damages, and it would scarcely be appropriate or just to confine our review to determining whether any error

<sup>11</sup> The District Court may have been influenced by the unusual nature of the instant situation. Ordinarily, an error in the charge is difficult, if not impossible, to correct without retrial, in light of the jury's general verdict. In this case, however, we deal with a wholly separable issue of law, on which the jury rendered a special verdict susceptible of rectification without further jury proceedings.

<sup>12</sup> See, e. g., *Morris v. Travisono*, 528 F. 2d 856, 859 (CA1 1976); *Williams v. City of New York*, 508 F. 2d 356, 362 (CA2 1974); *Troupe v. Chicago D. & G. Bay Transit Co.*, 234 F. 2d 253, 259-260 (CA2 1956). But cf. *Moore v. Telfon Communications Corp.*, 589 F. 2d 959, 966 (CA9 1978).



that might exist is sufficiently egregious to qualify under Rule 51. The very novelty of the legal issue at stake counsels unconstricted review.

In addition to being novel, the punitive damages question is important and appears likely to recur in § 1983 litigation against municipalities.<sup>13</sup> And here the question was squarely presented and decided on a complete trial record by the court of first resort, was argued by both sides to the Court of Appeals, and has been fully briefed before this Court. In light of all these factors, we conclude that restricting our review to the plain error standard would serve neither to promote the interests of justice nor to advance efficient judicial administration.<sup>14</sup> We therefore turn to the merits of petitioner's claim.<sup>15</sup>

### III

It is by now well settled that the tort liability created by § 1983 cannot be understood in a historical vacuum. In the Civil Rights Act of 1871, Congress created a federal remedy against a person who, acting under color of state law, deprives

<sup>13</sup> The issue already has arisen on several occasions. Compare *Hild v. Bruner*, 496 F. Supp. 93, 99-100 (N. J. 1980) and *Flores v. Hartford Police Dept.*, 25 FEP Cases 180, 193 (Conn. 1981) with *Edmonds v. Dillin*, 485 F. Supp. 722, 729-730 (ND Ohio 1980). See also *Valcourt v. Hyland*, 503 F. Supp. 630, 638-640 (Mass. 1980).

<sup>14</sup> The Court's exercise of power in these circumstances is no more broad than its notice of plain error not presented by the parties, see Sup. Ct. Rule 34.1 (a); *Washington v. Davis*, 426 U. S. 229, 238 (1976); *Silber v. United States*, 370 U. S. 717, 718 (1962), or its deciding a question not raised in the lower federal courts, see *Carlson v. Green*, 446 U. S. 14, 17, n. 2 (1980), or its review of an issue neither decided below nor presented by the parties, see *Wood v. Georgia*, — U. S. — (1981) (slip op. 3-4, n. 5); *Youakim v. Miller*, 425 U. S. 231, 234 (1976).

<sup>15</sup> Accordingly, we find it unnecessary to determine whether the Court of Appeals relied exclusively on the plain error doctrine in affirming the District Court's judgment. While concluding that in this unusual case, the interest of justice warrants our plenary considerations, see 28 U. S. C. § 2106, we express no view regarding the application of the plain error doctrine by the Courts of Appeals.



another of constitutional rights. See *Monroe v. Pape*, 365 U. S. 167, 172 (1961). Congress, however, expressed no intention to do away with the immunities afforded state officials at common law, and the Court consistently has declined to construe the general language of § 1983<sup>16</sup> as automatically abolishing such traditional immunities by implication. *Procurner v. Navarette*, 434 U. S. 555, 561 (1978); *Imbler v. Pachtman*, 424 U. S. 409, 417 (1976); *Pierson v. Ray*, 386 U. S. 547, 554-555 (1967); *Tenney v. Brandhove*, 341 U. S. 367, 376 (1951). Instead, the Court has recognized immunities of varying scope applicable to different officials sued under the statute.<sup>17</sup> One important assumption underlying the Court's decisions in this area is that members of the 42d Congress were familiar with common law principles, including defenses previously recognized in ordinary tort litigation, and that they likely intended these common law principles to obtain, absent specific provisions to the contrary.

At the same time, the Court's willingness to recognize certain traditional immunities as affirmative defenses has not led it to conclude that Congress incorporated *all* immunities existing at common law. See *Scheuer v. Rhodes*, 416 U. S. 232, 243 (1974). Indeed, because the 1871 Act was designed to expose state and local officials to a new form of liability, it would defeat the promise of the statute to recognize any pre-existing immunity without determining both the policies that

<sup>16</sup> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Rev. Stat. § 1979, 42 U. S. C. § 1983.

<sup>17</sup> E. g., *Imbler v. Pachtman*, 424 U. S. 409 (1976) (state prosecutor); *Scheuer v. Rhodes*, 416 U. S. 232 (1974) (state executive); *Pierson v. Ray*, 386 U. S. 547 (1967) (state judge); *Tenney v. Brandhove*, 341 U. S. 367 (state legislator).



it serves and its compatibility with the purposes of § 1983. See *Imbler v. Pachtman*, 424 U. S., at 424; *id.*, at 434 (concurring opinion); *Owen v. City of Independence*, 445 U. S., 622, 638 (1980). Only after careful inquiry into considerations of both history and policy has the Court construed § 1983 to incorporate a particular immunity defense.

Since *Monell* was decided three years ago, the Court has applied this two-part approach when scrutinizing a claim of immunity proffered by a municipality. In *Owen v. City of Independence*, the Court held that neither history nor policy supported a construction of § 1983 that would allow a municipality to assert the good faith of its officers or agents as a defense to liability for damages. 445 U. S., at 638, 657. *Owen*, however, concerned only compensatory damages, and petitioner contends that with respect to a municipality's liability for punitive damages, an examination of the common law background and policy considerations yields a very different result.

#### A

By the time Congress enacted what is now § 1983, the immunity of a municipal corporation from punitive damages at common law was not open to serious question. It was generally understood by 1871 that a municipality, like a private corporation, was to be treated as a natural person subject to suit for a wide range of tortious activity,<sup>18</sup> but this understanding did not extend to the award of punitive or exemplary damages. Indeed, the courts that had considered the issue prior

<sup>18</sup> Local units of government initially were shielded from tort liability by the doctrine of sovereign immunity. *Russell v. Men of Devon*, 100 Eng. Rep. 359 (1788). See F. Burdick, *The Law of Torts*, § 21 (1926). Subsequently, the municipal entity was bifurcated, for purposes of immunity, into sovereign and proprietary spheres of conduct. *Bailey v. The Mayor of New York*, 3 Hill 531 (N. Y. Sup. 1842), *aff'd*, 2 Denio 433 (1845). See W. Williams, *The Liability of Municipal Corporations for Tort* § 4 (1901). See generally *Owen*, 445 U. S., at 640-650; *Monell*, 436 U. S., at 687-689.



to 1871 were virtually unanimous in denying such damages against a municipal corporation. *E. g.*, *Woodman v. Nottingham*, 49 N. H. 387 (1870); *City of Chicago v. Langlass*, 52 Ill. 256 (1869); *City Council of Montgomery v. Gölmer & Taylor*, 33 Ala. 116 (1858); *Order of Hermits of St. Augustine v. County of Philadelphia*, 4 Clark 120, Brightly N. P. 116 (Pa. 1847); *M'Gary v. President & Council of the City of Lafayette*, 12 Rob. 668, 674 (La. 1846).<sup>19</sup> Judicial disinclination to award punitive damages against a municipality has persisted to the present day in the vast majority of jurisdictions.<sup>20</sup> See generally 18 E. McQuillin, *The Law of Municipal Corporations* § 53.18a (3d rev. ed. 1977); F. Burdick, *The Law of Torts* 245-246 (4th ed. 1926); 4 J. Dillon, *The Law of Municipal Corporations* § 1712 (5th ed. 1911); G. Field, *The Law of Damages* § 80 (1876).

The language of the opinions themselves is instructive as to the reasons behind this common-law tradition. In *M'Gary*, for example, the Louisiana Supreme Court refused to allow

<sup>19</sup> Although occasionally courts have suggested in dictum that punitive damages might be awarded in appropriate circumstances, see *Wallace v. Mayor, etc., of New York*, 18 How. 169, 176 (N. Y. Sup. 1859); *Herfurth v. Corporation of Washington*, 6 Dist. Col. 288, 293 (1868), we have been directed to only one reported decision prior to 1871 in which an award of punitive damages against a municipality was upheld, and that decision was expressly overruled in 1870. *Whipple v. Walpole*, 10 N. H. 130, 132-133 (1839), overruled by *Woodman v. Nottingham*, 49 N. H. 387, 394 (1870).

<sup>20</sup> *E. g.*, *Lauer v. Young Men's Christian Assn. of Honolulu*, 57 Haw. 390, 557 P. 2d 1334 (1976); *Ranella v. City of Cleveland*, 41 Ohio St. 2d 1, 321 N. E. 2d 885 (1975); *Smith v. District of Columbia*, 336 A. 2d 831 (D. C. App. 1975); *Fisher v. City of Miami*, 172 So. 2d 455 (Fla. 1965); *Brown v. Village of Deming*, 56 N. M. 302, 243 P. 2d 609 (1952); *Town of Newton v. Wilson*, 128 Miss. 726, 91 So. 419 (1922); *Willett v. Village of St. Albans*, 69 Vt. 330, 38 A. 72 (1897). See 19 A. L. R. 2d 903-920 (1951); 38 Am. Jur. § 663 (1941). The general rule today is that no punitive damages are allowed unless expressly authorized by statute. 18 E. McQuillin, *The Law of Municipal Corporations*, § 53.18a (3d rev. ed. 1977); Hines, *Municipal Liability for Exemplary Damages*, 15 Clev.-Mar. L. Rev. 304 (1966).



punitive damages against the city of Lafayette despite the malicious acts of its municipal officers, who had violated an injunction by ordering the demolition of plaintiff's house. Reasoning that the officials' malice should not be attributed to the taxpaying citizens of the community, the court explained its holding:

"Those who violate the laws of their country, disregard the authority of courts of justice, and wantonly inflict injuries, certainly become thereby obnoxious to vindictive damages. These, however, can never be allowed against the innocent. Those which the plaintiff has recovered in the present case . . . , being evidently vindictive, cannot, in our opinion, be sanctioned by this court, as they are to be borne by widows, orphans, aged men and women, and strangers, who, admitting that they must repair the injury inflicted by the Mayor on the plaintiff, cannot be bound beyond that amount, which will be sufficient for her indemnification." 12 Rob., at 677.

Similarly, in *Hunt v. City of Boonville*, 65 Mo. 620 (1877), the Missouri Supreme Court held that a municipality could not be found liable for treble damages under a trespass statute, notwithstanding the statute's authorization of such damages against "any person." After noting the existence of "respectable authority" to the effect that municipal corporations "can not, as such, do a criminal act or a willful or malicious wrong and they cannot therefore be made liable for exemplary damages," *id.*, at 624, the court continued:

"[T]he relation which the officers of a municipal corporation sustain toward the citizens thereof for whom they act, is not in all respects identical with that existing between the stockholders of a private corporation and their agents; and there is not the same reason for holding municipal corporations, engaged in the performance of acts for the public benefit, liable for the willful or



malicious acts of its officers, as there is in the case of private corporations." *Id.*, at 625.

Of particular relevance to our current inquiry is *Order of Hermits of St. Augustine v. County of Philadelphia*, *supra*, which involved a Pennsylvania statute that authorized property owners within the county to bring damage actions against it for the destruction of their property by mob violence.<sup>21</sup> The court observed that the "persons" against whom the statute authorized recovery included the county corporation, and it held that plaintiffs were entitled to compensatory damages as part of the county's duty to make reparation to its citizens for injuries sustained as a result of lawless violence. While noting that punitive damages would have been available against the rioters themselves, the court nonetheless held that such exemplary damages were not recoverable against the county.

The rationale of these decisions was reiterated in numerous other common law jurisdictions. *E. g.*, *Wilson v. City of Wheeling*, 19 W. Va. 323, 350 (1882) ("The city is not a spoliator and should not be visited by vindictive or punitive damages."); *City of Chicago v. Langlass*, 52 Ill., at 259 ("But in fixing the compensation the jury have no right to give vindictive or punitive damages, against a municipal corporation. Against such a body they should only be compensatory, and not by way of punishment."); *City Council of Montgomery v. Gilmer & Taylor*, 33 Ala., at 132 ("The [municipal] corporation can not, upon any principle known to us, be responsible for the malice of its officers towards the plaintiffs."). In general, courts viewed punitive damages as contrary to sound public policy, because such awards would burden the very taxpayers and citizens for whose benefit the

<sup>21</sup> This statute is strikingly similar to the Sherman amendment to the Civil Rights Act of 1871, discussed *infra*. See Cong. Globe, 42d Cong., 1st Sess., 663, 749, 755 (1871) (Globe). The Pennsylvania statute was cited as a model during the legislative debates. Globe, at 777 (Sen. Frelinghuysen).



wrongdoer was being chastised. The courts readily distinguished between liability to compensate for injuries inflicted by a municipality's officers and agents, and vindictive damages appropriate as punishment for the bad faith conduct of those same officers and agents. Compensation was an obligation properly shared by the municipality itself, whereas punishment properly applied only to the actual wrongdoers. The courts thus protected the public from unjust punishment, and the municipalities from undue fiscal constraints.<sup>22</sup>

Given that municipal immunity from punitive damages was well established at common law by 1871, we proceed on the familiar assumption that "Congress would have specifically so provided had it wished to abolish the doctrine." *Pierson v. Ray*, 386 U. S. 547, 555 (1967). Nothing in the legislative debates suggests that, in enacting § 1 of the Civil Rights Act, the 42d Congress intended any such abolition. Indeed, the limited legislative history relevant to this issue suggests the opposite.

<sup>22</sup> In the face of this history, respondent acknowledged at oral argument that in 1871 the common law did not contemplate the imposition of punitive damages against municipalities, but contended that the functional equivalent was achieved through the *respondeat superior* liability to which municipalities were, and still are, exposed. Tr. of Oral Arg. 29. Apparently, respondent argues that because municipalities were liable for the conduct of their agents, including conduct over which their executive officials had no actual responsibility or knowledge, it would have been unnecessary to expose them to punitive damages with regard to the same conduct. This argument, however, does not alter the persuasiveness of the prevalent common-law immunity; if anything, it goes to the soundness of the common-law defense at that time and now. Moreover, the *respondeat superior* doctrine did not cover all instances in which the municipality could assert immunity in its own capacity. *E. g.*, *City Council of Montgomery v. Gilmer & Taylor*; *McGary v. President & Council of Lafayette*. See G. Field, *The Law of Damages*, § 80 (1876) ("[Municipal corporations] cannot, as such, be supposed capable of doing a criminal act, or a willful and malicious wrong, and therefore cannot be liable for exemplary damages. . . .").



Because there was virtually no debate on § 1 of the Act, the Court has looked to Congress' treatment of the amendment to the Act introduced by Senator Sherman as indicative of congressional attitudes toward the nature and scope of municipal liability. *Monell*, 436 U. S., at 692, n. 57.<sup>23</sup> Initially, it is significant that the Sherman amendment as proposed contemplated the award of no more than compensatory damages for injuries inflicted by mob violence. The amendment would not have exposed municipal governments to punitive damages; rather, it proposed that municipalities "shall be liable to pay full compensation to the person or persons damaged" by mob violence. Cong. Globe, 42d Cong., 1st Sess., 749, 755 (1871) (Globe) (emphasis added).<sup>24</sup> That the exclusion of

<sup>23</sup> The legislative background of § 1983 is exhaustively addressed in *Monell*, 436 U. S., at 664-695. Briefly, the Sherman amendment was a proposed addition to the statute, and was defended by its sponsor as an attempt to enlist the aid of persons of property in suppressing the lawless violence of the Ku Klux Klan. See Globe, at 760-761. In its initial form, the amendment imposed liability on any inhabitant of a municipality for damage inflicted by persons "riotously or tumultuously assembled." *Id.*, at 663. That version was passed by the Senate but overwhelmingly rejected by the House. *Id.*, at 704-705, 725. A first conference substitute was then proposed. *Id.*, at 749, 755. The substitute version placed liability directly on the local government, regardless of whether the municipality had had notice of the impending riot, had made reasonable efforts to stop it, or was even authorized under state law to exercise police power. See *Monell*, 436 U. S., at 668. The conference substitute also created a lien which ran against "all moneys in the treasury," thus permitting execution against public property such as jails and courthouses. It was generally understood that the extent of the proposed public liability went beyond what was contemplated under § 1. After much debate, the amendment passed the Senate but was again rejected by the House. Globe, at 779, 800-801. It is from the debate over the first conference substitute that we glean "clue[s]" as to Congress' views on municipal liability. *Monell*, 436 U. S., at 692, n. 57.

<sup>24</sup> The same language appears in the original version of the amendment, Globe, at 663, although there it was the inhabitants and not the government that were made liable. See n. 23, *supra*.



punitive damages was no oversight was confirmed by Rep. Butler, one of the amendment's chief supporters, when he responded to a critical inquiry on the floor of the House:

"The invalidity of the gentleman's argument is that he looks upon [the amendment] as a punishment for the county. Now, we do not look upon it as a punishment at all. It is a mutual insurance. We are there a community, and if there is any wrong done by our community, or by the inhabitants of our community, we will indemnify the injured party for that wrong. . . ." *Globe*, at 792.

We doubt that a Congress having no intention of permitting punitive awards against municipalities in the explicit context of the Sherman amendment would have meant to expose municipal bodies to such novel liability *sub silentio* under § 1 of the Act.

Notwithstanding the compensatory focus of the amendment, its proposed extension of municipal liability met substantial resistance in Congress, resulting in its defeat on two separate occasions.<sup>25</sup> In addition to the constitutional reservations broached by legislators, which the Court has discussed at some length in *Monell*, 436 U. S., at 669-683, members of both chambers also expressed more practical objections. Notably, supporters as well as opponents of § 1 voiced concern that this extension of public liability might place an unmanageable financial burden on local governments.<sup>26</sup> Legislators

<sup>25</sup> See n. 23, *supra*. In its final version, the amendment abandoned all specific references to municipal liability. *Globe*, at 804. See *Monell*, 436 U. S., at 668-669. See generally, Avins, *The Ku Klux Klan Act of 1871: Some Reflected Light on State Action and the Fourteenth Amendment*, 11 St. Louis U. L. J. 331, 368-376 (1967).

<sup>26</sup> Representative Blair, a strong proponent of § 1, argued that the obligations imposed by the amendment might "utterly destroy the municipality." *Globe*, at 795. Representative Bingham, who had drafted § 1 of the Fourteenth Amendment, feared that the burden upon the local treasury under the Sherman amendment would "deprive the county of



also expressed apprehension that innocent taxpayers would be unfairly punished for the deeds of persons over whom they had neither knowledge nor control.<sup>27</sup> Admittedly, both these objections were raised with particular reference to the threat of the expansive municipal liability embodied in the Sherman amendment. The two concerns are not without relevance to the present inquiry, however, in that they reflect policy considerations similar to those relied upon by the common-law courts in rejecting punitive damages awards. We see no reason to believe that Congress' opposition to punishing innocent taxpayers and bankrupting local governments would have been less applicable with regard to the novel specter of punitive damages against municipalities.

### B

Finding no evidence that Congress intended to disturb the settled common-law immunity, we now must determine whether considerations of public policy dictate a contrary result. In doing so, we examine the objectives underlying punitive damages in general, and their relationship to the goals of § 1983.

Punitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor whose wrongful action was intentional or malicious, and to deter him and others from similar extreme conduct. See

the means of administering justice." *Id.*, at 798. See also *id.*, at 762 (Sen. Stevenson); *id.*, at 763-764 (Sen. Casserly); *id.*, at 772 (Sen. Thurman); *id.*, at 789 (Rep. Kerr).

<sup>27</sup> Senator Stevenson declared that the amendment "undertakes to create a corporate liability for personal injury which no prudence or foresight could have prevented." *Globe*, at 762. Senator Frelinghuysen objected to the proposed liability, observing that "the town or the county has committed no crime." *Id.*, at 777. Representatives Poland and Willard also referred to the injustice of such liability, *id.*, at 791 (Rep. Willard); *id.*, at 794 (Rep. Poland). See also *id.*, at 771 (Sen. Thurman); *id.*, at 775 (Sen. Bayard); *id.*, at 788 (Rep. Kerr).



Restatement (Second) of Torts, § 908 (1979); W. Prosser, Handbook of the Law of Torts 9-10 (4th ed. 1971). Regarding retribution, it remains true that an award of punitive damages against a municipality "punishes" only the taxpayers, who took no part in the commission of the tort. These damages are assessed over and above the amount necessary to compensate the injured party. Thus, there is no question here of equitably distributing the losses resulting from official misconduct. Cf. *Owen v. City of Independence*, 445 U. S., at 657. Indeed, punitive damages imposed on a municipality are in effect a windfall to a fully compensated plaintiff, and are likely accompanied by an increase in taxes or a reduction of public services for the citizens footing the bill. Neither reason nor justice suggests that such retribution should be visited upon the shoulders of blameless or unknowing taxpayers.<sup>28</sup>

Under ordinary principles of retribution, it is the wrongdoer himself who is made to suffer for his unlawful conduct. If a government official acts knowingly and maliciously to deprive others of their civil rights, he may become the appropriate object of the community's vindictive sentiments. See generally *Silver v. Cormier*, 529 F. 2d 161, 163 (CA10 1976); *Bucher v. Krause*, 200 F. 2d 576, 586-588 (CA7 1952), cert. denied, 345 U. S. 997 (1953). A municipality, however, can have no malice independent of the malice of its officials. Damages awarded for punitive purposes, therefore, are not sensibly assessed against the governmental entity itself.

To the extent that the purposes of § 1983 have any bearing on this punitive rationale, they do not alter our analysis. The Court previously has indicated that punitive damages might be awarded in appropriate circumstances in order to

<sup>28</sup> It is perhaps possible to imagine an extreme situation where the taxpayers are directly responsible for perpetrating an outrageous abuse of constitutional rights. Nothing of that kind is presented by this case. Moreover, such an occurrence is sufficiently unlikely that we need not anticipate it here.



punish violations of constitutional rights, *Carey v. Phipus*, 435 U. S. 247, 257, n. 11 (1978), but it never has suggested that punishment is as prominent a purpose under the statute as are compensation and deterrence. See, e. g., *Owen v. City of Independence*, 445 U. S., at 651; *Robertson v. Wegmann*, 436 U. S. 584, 590-591 (1978); *Carey v. Phipus*, 435 U. S., at 256-257. Whatever its weight, the retributive purpose is not significantly advanced, if it is advanced at all, by exposing municipalities to punitive damages.

The other major objective of punitive damages awards is to prevent future misconduct. Respondent argues vigorously that deterrence is a primary purpose of § 1983, and that because punitive awards against municipalities for the malicious conduct of their policymaking officials will induce voters to condemn official misconduct through the electoral process, the threat of such awards will deter future constitutional violations. Brief for Respondent 9-11. Respondent is correct in asserting that the deterrence of future abuses of power by persons acting under color of state law is an important purpose of § 1983. *Owen v. City of Independence*, 445 U. S., at 651; *Robertson v. Wegmann*, 436 U. S., at 591. It is in this context that the Court's prior statements contemplating punitive damages "in 'a proper' § 1983 action" should be understood. *Carlson v. Green*, 446 U. S. 14, 22 (1980); *Carey v. Phipus*, 435 U. S., at 257, n. 11. For several reasons, however, we conclude that the deterrence rationale of § 1983 does not justify making punitive damages available against municipalities.

First, it is far from clear that municipal officials, including those at the policymaking level, would be deterred from wrongdoing by the knowledge that large punitive awards could be assessed based on the wealth of their municipality. Indemnification may not be available to the municipality under local law, and even if it were, officials likely will not be able themselves to pay such sizable awards. Thus, assum-



ing *arguendo* that the responsible official is not impervious to shame and humiliation, the impact on the individual tortfeasor of this deterrence in the air is at best uncertain.

There also is no reason to suppose that corrective action, such as the discharge of offending officials who were appointed and the public excommunication of those who were elected, will not occur unless punitive damages are awarded against the municipality. The Court recently observed in a related context: "The more reasonable assumption is that responsible superiors are motivated not only by concern for the public fisc but also by concern for the Government's integrity."<sup>28</sup> *Carlson v. Green*, 446 U. S., at 21. This assumption is no less applicable to the electorate at large. And if additional protection is needed, the compensatory damages that are available against a municipality may themselves induce the public to vote the wrongdoers out of office.

Moreover, there is available a more effective means of deterrence. By allowing juries and courts to assess punitive damages in appropriate circumstances against the offending official, based on his personal financial resources, the statute directly advances the public's interest in preventing repeated constitutional deprivations.<sup>29</sup> In our view, this provides sufficient protection against the prospect that a public official may

<sup>28</sup> A number of state statutes requiring municipal corporations to indemnify their employees for adverse judgments rendered as a result of performance of governmental duties specifically exclude indemnification for malicious or willful misconduct by the employees. *E. g.*, N. Y. Gen. Mun. Law § 50-k (3) (McKinney) (Supp. 1980-1981); Pa. Stat. Ann., Tit. 42, § 8550 (Purdon) (Supp. 1981); Cal. Gov't Code Ann. § 825 (West) (1980); Conn. Gen. Stat. § 7-465 (Supp. 1981); Nev. Rev. Stat. § 41.0349 (1979). See *Karas v. Snell*, 11 Ill. 2d 233, 142 N. E. 2d 46 (1957). See generally *Messersmith v. American Fidelity Co.*, 232 N. Y. 161, 165, 133 N. E. 432, 433 (1921) (Cardozo, J.) ("[N]o one shall be permitted to take advantage of his own wrong. . ."). Commentators have encouraged this development. See G. Calabresi, *The Costs of Accidents*, 269-270 (student ed. 1970); Project, *Suing the Police in Federal Court*, 88 Yale L. J. 780, 818 (1979).



commit recurrent constitutional violations by reason of his office. The Court previously has found, with respect to such violations, that a damages remedy recoverable against individuals is more effective as a deterrent than the threat of damages against a government employer. *Carlson v. Green*, 446 U. S., at 21. We see no reason to depart from that conclusion here, especially since the imposition of additional penalties would most likely fall upon the citizen-taxpayer.

Finally, although the benefits associated with awarding punitive damages against municipalities under § 1983 are of doubtful character, the costs may be very real. In light of the Court's decision last Term in *Maine v. Thiboutot*, 448 U. S. 1 (1980), the § 1983 damages remedy may now be available for violations of federal statutory as well as constitutional law. But cf. *Middlesex Cty. Sewerage Authority v. National Sea Clammers Assn.*, — U. S. — (1981). Under this expanded liability, municipalities and other units of state and local government face the possibility of having to assure compensation for persons harmed by abuses of governmental authority covering a large range of activity in everyday life. To add the burden of exposure for the malicious conduct of individual government employees may create a serious risk to the financial integrity of these governmental entities.

The Court has remarked elsewhere on the broad discretion traditionally accorded to juries in assessing the amount of punitive damages. *Electrical Workers v. Foust*, 442 U. S. 42, 50-51 (1979); *Gertz v. Robert Welch, Inc.*, 418 U. S. 323, 349-350 (1974). Because evidence of a tortfeasor's wealth is traditionally admissible as a measure of the amount of punitive damages that should be awarded,<sup>30</sup> the unlimited taxing power of a municipality may have a prejudicial impact on the jury, in effect encouraging it to impose a sizable award. The

<sup>30</sup> See Restatement (Second) of Torts, § 908 (2) (1979); D. Dobbs, *Handbook on the Law of Remedies*, § 3.9, pp. 218-219 (1973).



impact of such a windfall recovery is likely to be both unpredictable and, at times, substantial, and we are sensitive to the possible strain on local treasuries and therefore on services available to the public at large.<sup>21</sup> Absent a compelling reason for approving such an award, not present here, we deem it unwise to inflict the risk.

## IV

In sum, we find that considerations of history and policy do not support exposing a municipality to punitive damages for the bad faith actions of its officials. Because absolute immunity from such damages obtained at common law and was undisturbed by the 42d Congress, and because that immunity is compatible with both the purposes of § 1983 and general principles of public policy, we hold that a municipality is immune from punitive damages under 42 U. S. C. § 1983. Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

<sup>21</sup> The case at bar appears to be an example of undue and substantial impact, since the jury award of \$200,000 was more than twice the total amount of punitive damages assessed against all the defendant city officials individually. In reducing the award, the District Judge said that this verdict "is excessive, against the weight of the evidence, and fails to comport with substantial justice," and that it "was both unreasonable and devoid of firm support in the record." App. to Pet. for Cert. B-10.