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

From: Mr. Justice Brennan

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1779

George D. Owen, Petitioner, v. City of Independence, Missouri, et al. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Monell v. *New York City Dept. of Social Services*, 436 U. S. 658 (1978), overruled *Monroe* v. *Pape*, 365 U. S. 167 (1961), insofar as *Monroe* held that local governments were not among the "persons" to whom 42 U. S. C. § 1983 applies and were therefore wholly immune from suit under the statute.[1] *Monell* reserved decision, however, on the question whether local governments, although not entitled to an absolute immunity, should be afforded some form of official immunity in § 1983 suits. 436 U. S., at 701. In this action brought by petitioner in the District Court for the Western District of Missouri, the Court of Appeals for the Eighth Circuit held respondent city of Independence, Mo., "is entitled to qualified immunity from liability" based on the good faith of its officials: "We extend the limited immunity the district court applied to the individual defendants to cover the City

David - like this

[1] Title 42 U. S. C. § 1983 provides:

"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."

as well, because its officials acted in good faith and without malice." 589 F. 2d 335, 337–338 (CA8 1978). We granted certiorari. — U. S. — (1979). We reverse.

I

The events giving rise to this suit are detailed in the District Court's findings of fact, 421 F. Supp. 1110 (WD Mo. 1976). On February 20, 1967, Robert L. Broucek, then City Manager of respondent city of Independence, Mo., appointed petitioner George D. Owen to an indefinite term as Chief of Police.[2] In 1972, Owen and a new City Manager, Lyle W. Alberg, engaged in a dispute over petitioner's administration of the police department's property room. In March of that year, a handgun, which the records of the Department's property room stated had been destroyed, turned up in Kansas City in the possession of a felon. This discovery prompted Alberg to initiate an investigation of the management of the property room. Although the probe was initially directed by petitioner, Alberg soon transferred responsibility for the investigation to the City's Department of Law, instructing the City Counselor to supervise its conduct and to inform him directly of its findings.

Sometime in early April 1972, Alberg received a written report on the investigation's progress, along with copies of confidential witness statements. Although the City Auditor found that the police department's records were insufficient to permit an adequate accounting of the goods contained in the property room, the City Counselor concluded that there was no evidence of any criminal acts or of any violation of state or municipal law in the administration of the property

[2] Under § 3.3 (1) of the city's charter, the City Manager has sole authority to "[a]ppoint, and when deemed necessary for the good of the service, lay off, suspend, demote, or remove all directors, or heads of administrative departments and all other administrative officers and employees of the city. . . ."

room. Alberg discussed the results of the investigation at an informal meeting with several City Council members and advised them that he would take action at an appropriate time to correct any problems in the administration of the police department.

On April 10, Alberg asked petitioner to resign as Chief of Police and to accept another position within the department, citing dissatisfaction with the manner in which petitioner had managed the department, particularly his inadequate supervision of the property room. Alberg warned that if petitioner refused to take another position in the department his employment would be terminated, to which petitioner responded that he did not intend to resign.

On April 13, Alberg issued a public statement addressed to the Mayor and the City Council concerning the results of the investigation. After referring to "discrepancies" found in the administration, handling, and security of public property, the release concluded that "[t]here appears to be no evidence to substantiate any allegations of a criminal nature" and offered assurances that "[s]teps have been initiated on an administrative level to correct these discrepancies." *Id.*, at 1115. Although Alberg apparently had decided by this time to replace petitioner as Police Chief, he took no formal action to that end and left for a brief vacation without informing the City Council of his decision.[3]

While Alberg was away on the weekend of April 15 and 16, two developments occurred. Petitioner, having consulted with counsel, sent Alberg a letter demanding written notice of the charges against him and a public hearing with a reason-

[3] Alberg returned from his vacation on the morning of April 17, and immediately met informally with four members of the City Council. Although the investigation of the police department was discussed, and although Alberg testified that he had found a replacement for petitioner by that time, he did not inform the council members of his intention to discharge petitioner.

able opportunity to respond to those charges.[4] At approximately the same time, City Councilman Paul L. Roberts asked for a copy of the investigative report on the police department property room. Although petitioner's appeal received no immediate response, the Acting City Manager complied with Roberts' request and supplied him with the audit report and witness statements.

On the evening of April 17, 1972, the City Council held its regularly scheduled meeting. After completion of the planned agenda, Councilman Roberts read a statement he had prepared on the investigation.[5] Among other allegations,

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[4] The letter, dated April 15, 1972, stated in part:

"My counsel . . . have advised me that even though the City Charter may give you authority to relieve me, they also say you cannot do so without granting me my constitutional rights of due process, which includes a written charge and specifications, together with a right to a public hearing and to be represented by counsel and to cross-examine those who may appear against me.

. . . . . .

"In spite of your recent investigation and your public statement given to the public press, your relief and discharge of me without a full public hearing upon written charges will leave in the minds of the public and those who might desire to have my services, a stigma of personal wrongdoing on my part.

"Such action by you would be in violation of my civil rights as granted by the Constitution and Congress of the United States and you would be liable in damages to me. Further it would be in violation of the Missouri Administrative Procedure Act.

"May I have an expression from you that you do not intend to relieve me or in the alternative give me a written charge and specifications of your basis for your grounds of intention to relieve me and to grant me a public hearing with a reasonable opportunity to respond to the charge and a right to be represented by counsel."

City Manager Alberg stated that he did not receive the letter until after petitioner's discharge.

[5] Roberts' statement, which is reproduced in full at 421 F. Supp., at 1116, n. 2, in part recited:

"On April 2, 1972, the City Council was notified of the existence of an investigative report concerning the activities of the Chief of Police of the

Roberts charged that petitioner had misappropriated police department property for his own use, that narcotics and money had "mysteriously disappeared" from his office, that traffic tickets had been manipulated, that high ranking police officials had made "inappropriate" requests affecting the police court, and that "things have occurred causing the unusual release of felons." At the close of his statement, Roberts moved that the investigative reports be released to the news media and turned over to the prosecutor for presentation to the grand jury, and that the City Manager "take all direct

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City of Independence, certain police officers and activities of one or more other City officials. On Saturday, April 15th for the first time I was able to see these 27 voluminous reports. The contents of these reports are astoundingly shocking and virtually unbelievable. They deal with the disappearance of 2 or more television sets from the police department and signed statement that they were taken by the Chief of Police for his own personal use.

"The reports show that numerous firearms properly in the police department custody found their way into the hands of others including undesirables and were later found by other law enforcement agencies.

"Reports whow [*sic*] that narcotics held by the Independence Missouri Chief of Police have mysteriously disappeared. Reports also indicate money has mysteriously disappeared. Reports show that traffic tickets have been manipulated. The reports show inappropriate requests affecting the police court have come from high ranking police officials. Reports indicate that things have occurred causing the unusual release of felons. The reports show gross inefficiencies on the part of a few of the high ranking officers of the police department.

"In view of the contents of these reports, I feel that the information in the reports backed up by signed statements taken by investigators is so bad that the council should immediately make available to the news media access to copies of all of these 27 voluminous investigative reports so the public can be told what has been going on in Independence. I further believe that copies of these reports should be turned over and referred to the prosecuting attorney of Jackson County, Missouri for consideration and presentation to the next Grand Jury. I further insist that the City Manager immediately take direct and appropriate action, permitted under the Charter, against such persons as are shown by the investigation to have been involved."

and appropriate action" against those persons "involved in illegal, wrongful, or gross inefficient activities brought out in the investigative reports." After some discussion, the City Council passed Roberts' motion with no dissents and one abstention.[6]

City Manager Alberg discharged petitioner the very next day. Petitioner was not given any reason for his dismissal; he received only a written notice stating that his employment as Chief of Police was "terminated under the provisions of Section 3.3 (1) of the City Charter."[7] Petitioner's earlier demand for a specification of charges and a public hearing was ignored, and a subsequent request by his attorney for an appeal of the discharge decision was denied by the city on the grounds that "there is no appellate procedure or forum provided by the Charter or ordinances of the City of Independence, Missouri, relating to the dismissal of Mr. Owen." App. 26–27.

The local press gave prominent coverage both to the City Council's action and petitioner's dismissal, linking the discharge to the investigation.[8] As instructed by the City Council, Alberg referred the investigative reports and witness statements to the Prosecuting Attorney of Jackson County, Mo.,

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[6] Ironically, the official minutes of the City Council meeting indicate that concern was expressed by some members about possible adverse legal consequences that could flow from their release of the reports to the media. The City Counselor assured the council that although an action might be maintained against any witnesses who made unfounded accusations, "the City does have governmental immunity in this area . . . and neither the Council nor the City as a municipal corporation can be held liable for libelous slander." App. 20–23.

[7] See n. 2, *supra*.

[8] The investigation and its culmination in petitioner's firing received front-page attention in the local press. See, *e. g.*, "Lid Off Probe, Council Seeks Action," Independence Examiner, April 18, 1972, Tr. 25; "Independence Accusation. Police Probe Demanded," Kansas City Times, April 18, 1972, Tr. 25; "Probe Culminates in Chief's Dismissal," Independence Examiner, April 19, 1972; "Police Probe Continues; Chief Ousted," Community Observer, April 20, 1972, Tr. 27.

for consideration by a grand jury. The results of the audit and investigation were never released to the public, however. The grand jury subsequently returned a "no true bill," and no further action was taken by either the City Council or City Manager Alberg.

II

Petitioner named the city of Independence, City Manager Alberg, and the present members of the City Council in their official capacities as defendants in this suit.[9] Alleging that he was discharged without notice of reasons and without a hearing in violation of his constitutional rights to procedural and substantive due process, petitioner sought declaratory and injunctive relief, including a hearing on his discharge, back-pay from the date of discharge, and attorney's fees. The District Court, after a bench trial, entered judgment for respondents. 421 F. Supp. 1110 (WD Mo. 1976).[10]

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[9] Petitioner did not join former Councilman Roberts in the instant litigation. A separate action seeking defamation damages was brought in state court against Roberts and Alberg in their individual capacities. Petitioner dismissed the state suit against Alberg and reached a financial settlement with Roberts. See 560 F. 2d 925, 930 (CA8 1977).

[10] The District Court, relying on *Monroe* v. *Pape*, 365 U. S. 167 (1961), and *City of Kenosha* v. *Bruno*, 412 U. S. 507 (1973), held that § 1983 did not create a cause of action against the city, but that petitioner could base his claim for relief directly on the Fourteenth Amendment. On the merits, however, the court determined that petitioner's discharge did not deprive him of any constitutionally protected property interest because, as an untenured employee, he possessed neither a contractual nor a *de facto* right to continued employment as Chief of Police. Similarly, the court found that the circumstances of petitioner's dismissal did not impose a stigma of illegal or immoral conduct on his professional reputation, and hence did not deprive him of any liberty interest.

The District Court offered three reasons to support its conclusion: First, because the actual discharge notice stated only that petitioner was "terminated under the provisions of Section 3.3 (1) of the City Charter," nothing in his official record imputed any stigmatizing conduct to him. Second, the court found that the City Council's actions had no causal connection to petitioner's discharge, for City Manager Alberg had apparently made

The Court of Appeals initially reversed the District Court. 560 F. 2d 925 (CA8 1977).[11] Although it agreed with the District Court that under Missouri law petitioner possessed no property interest in continued employment as police chief, the Court of Appeals concluded that the city's allegedly false public accusations had blackened petitioner's name and reputation, thus depriving him of liberty without due process of law. That the stigmatizing charges did not come from the City Manager and were not included in the official discharge notice was, in the court's view, immaterial. What was im-

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his decision to hire a new police chief before the Council's April 17th meeting. Lastly, the District Court determined that petitioner was "completely exonerated" from any charges of illegal or immoral conduct by the City Counselor's investigative report, Alberg's public statements, and the grand jury's return of a "no true bill." 421 F. Supp., at 1121–1122.

As an alternative ground for denying relief, the District Court ruled that the city was entitled to assert, and had in fact established, a qualified immunity against liability based on the good faith of the individual defendants who acted as its agents: "[D]efendants have clearly shown by a preponderance of the evidence that neither they, nor their predecessors, were aware in April 1972, that, under the circumstances, the Fourteenth Amendment accorded plaintiff the procedural rights of notice and a hearing at the time of his discharge. Defendants have further proven that they cannot reasonably be charged with constructive notice of such rights since plaintiff was discharged prior to the publication of the Supreme Court decisions in *Roth* v. *Board of Regents*, [408 U. S. 564 (1972)], and *Perry* v. *Sindermann*, [408 U. S. 593 (1972)]." *Id.*, at 1123.

[11] Both parties had appealed from the District Court's decision. On respondents' challenge to the court's assumption of subject-matter jurisdiction under 28 U. S. C. § 1331, the Court of Appeals held that the city was subject to suit for reinstatement and backpay under an implied right of action arising directly from the Fourteenth Amendment. 560 F. 2d 925, 932–934 (CA8 1977). See *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U. S. 388 (1971). Because the Court of Appeals concluded that petitioner's claim could rest directly on the Fourteenth Amendment, it saw no need to decide whether he could recover backpay under § 1983 from the individual defendants in their official capacities as part of general equitable relief, even though the award would be paid by the city. 560 F. 2d, at 932.

portant, the court explained, was that "the official actions of the city council released charges against [petitioner] contemporaneous and, in the eyes of the public, connected with that discharge." *Id.*, at 937.[12]

Respondents petitioned for review of the Court of Appeals' decision. Certiorari was granted, and the case was remanded for further consideration in light of our supervening decision in *Monell* v. *New York City Dept. of Social Services, supra.* 438 U. S. 902 (1978). The Court of Appeals on the remand

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[12] As compensation for the denial of his constitutional rights, the Court of Appeals awarded petitioner damages in lieu of backpay. The court explained that petitioner's termination without a hearing must be considered a nullity, and that ordinarily he ought to remain on the payroll and receive wages until a hearing is held and a proper determination on his retention is made. But because petitioner had reached the mandatory retirement age during the course of the litigation, he could not be reinstated to his former position. Thus the compensatory award was to be measured by the amount of money petitioner would likely have earned to retirement had he not been deprived of his good name by the city's actions, subject to mitigation by the amounts actually earned, as well as by the recovery from Councilman Roberts in the state defamation suit.

The Court of Appeals rejected the municipality's assertion of a good-faith defense, relying upon a footnote in *Wood* v. *Strickland,* 420 U. S. 308, 314–315, n. 6 (1975) ("immunity from damages does not ordinarily bar equitable relief as well"), and two of its own precedents awarding backpay in § 1983 actions against school boards. See *Wellner* v. *Minnesota State Jr. College,* 487 F. 2d 153 (CA8 1973); *Cooley* v. *Board of Educ. of Forrest City School Dist.,* 453 F. 2d 282 (CA8 1972). The court concluded that the primary justification for a qualified immunity—the fear that public officials might hesitate to discharge their duties if faced with the prospect of personal monetary liability—simply did not exist where the relief would be borne by a governmental unit rather than the individual officeholder. In addition, the Court of Appeals seemed to take issue with the District Court's finding of good faith on the part of the City Council: "The city officials may have acted in good faith in refusing the hearing, but lack of good faith is evidenced by the nature of the unfair attack made upon the appellant by Roberts in the official conduct of the City's business. The District Court did not address the good faith defense in light of Roberts' defamatory remarks." 590 F. 2d, at 941.

reaffirmed its original determination that the city had violated petitioner's rights under the Fourteenth Amendment, but held that all respondents, including the city, were entitled to qualified immunity from liability. 589 F. 2d 335 (CA8 1978).

Monell held that "a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." 436 U. S., at 694. The Court of Appeals held in the instant case that the municipality's official policy was responsible for the deprivation of petitioner's constitutional rights: "[T]he stigma attached to [petitioner] in connection with his discharge was caused by the official conduct of the City's lawmakers, or by those whose acts may fairly be said to represent official policy. Such conduct amounted to official policy causing the infringement of [petitioner's] constitutional rights, in violation of Section 1983." 589 F. 2d, at 337.[13]

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[13] Although respondents did not cross-petition on this issue, they have raised a belated challenge to the Court of Appeals' ruling that petitioner was deprived of a protected "liberty" interest. See Brief for Respondents 45–46. We find no merit in their contention, however, and decline to disturb the determination of the court below.

Wisconsin v. *Constantineau*, 400 U. S. 433, 437 (1971), held that "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." In *Board of Regents* v. *Roth*, 408 U. S. 564, 573 (1972), we explained that the dismissal of a government employee accompanied by a "charge against him that might seriously damage his standing and associations in his community" would qualify as something "the government is doing to him," so as to trigger the due process right to a hearing at which the employee could refute the charges and publicly clear his name. In the present case, the city—through the unanimous resolution of the City Council—released to the public an allegedly false statement impugning petitioner's honesty and integrity. Petitioner was discharged

Nevertheless, the Court of Appeals affirmed the judgment of the District Court denying petitioner any relief against the respondent city, stating:

> "The Supreme Court's decisions in *Board of Regents* v. *Roth*, 408 U. S. 564 (1972), and *Perry* v. *Sindermann*, 408 U. S. 593 (1972), crystallized the rule establishing the right to a name-clearing hearing for a government employee allegedly stigmatized in the course of his discharge. The Court decided those two cases two months after the discharge in the instant case. Thus, officials of the City of Independence could not have been aware of [petitioner's] right to a name-clearing hearing in connection with the discharge. The City of Independence should not be charged with predicting the future course of constitutional law. . . . We extend the limited immunity the district court applied to the individual defendants to cover the City as well, because its officials acted in good faith and without malice. We hold the City not liable for actions it could not reasonably have known violated [petitioner's] constitutional rights." *Id.*, at 338 (footnote and citations omitted).[14]

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the next day. The Council's accusations received extensive coverage in the press, and even if they did not in point of fact "cause" petitioner's discharge, the defamatory and stigmatizing charges certainly "occur[red] in the course of the termination of employment." Cf. *Paul* v. *Davis*, 424 U. S. 693, 710 (1976). Yet the city twice refused petitioner's request that he be given written specification of the charges against him and an opportunity to clear his name. Under the circumstances, we have no doubt that the Court of Appeals correctly concluded that the city's actions deprived petitioner of liberty without due process of law.

[14] Cf. *Wood* v. *Strickland*, 420 U. S. 308, 322 (1975) ("Therefore, in the specific context of school discipline, we hold that a school board member is not immune from liability for damages under § 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.").

We turn now to the reasons for our disagreement with this holding.[14]

III

Because the question of the scope of a municipality's immunity from liability under § 1983 is essentially one of statutory construction, see *Wood* v. *Strickland*, 420 U. S. 308, 314, 316 (1975); *Tenney* v. *Brandhove*, 341 U. S. 367, 376 (1951), the starting point in our analysis must be the language of the statute itself. *Andrus* v. *Allard*, — U. S. —, — (1979); *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 756 (1975) (POWELL, J., concurring). By its terms, § 1983 "creates a species of tort liability that on its face admits of no immunities." *Imbler* v. *Pachtman*, 424 U. S. 409, 417 (1976). Its language is absolute and unqualified; no mention is made of any privileges, immunities, or defenses that may be asserted. Rather, the act imposes liability upon *"every person"* who, under color of state law or custom, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."[15] And *Monell* held that these words were intended to encompass municipal corporations as well as natural "persons."

Moreover, the congressional debates surrounding the passage of § 1 of the Civil Rights Act of 1871, 17 Stat. 13—the forerunner of § 1983—confirm the expansive sweep of the statutory language. Representative Shellabarger, the author and

Leg. history of 1983

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[14] The Courts of Appeals are divided on the question whether local governmental units are entitled to a qualified immunity based on the good faith of their officials. Compare *Bertot* v. *School Dist. No. 1*, — F. 2d — (CA10 1979) (en banc), *Hostrop* v. *Board of Junior College Dist. No. 515*, 523 F. 2d 569 (CA7 1975), and *Handler* v. *San Jacinto Jr. College*, 519 F. 2d 273, rehearing denied, 522 F. 2d 204 (CA5 1975), all refusing to extend a qualified immunity to the governmental entity, with *Pazman* v. *Campbell*, — F. 2d — (CA4 1980) (en banc) and *Sala* v. *County of Suffolk*, 604 F. 2d 207 (CA2 1979), granting defendants a "good-faith" immunity.

[15] See n. 1, *supra*.

manager of the bill in the House, explained in his introductory remarks the breadth of construction that the act was to receive:

> "I have a single remark to make in regard to the rule of interpretation of those provisions of the Constitution under which all the sections of the bill are framed. This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such statutes are liberally and beneficiently construed. It would be most strange and, in civilized law, monstrous were this not the rule of interpretation. As has been again and again decided by your own Supreme Court of the United States, and everywhere else where there is wise judicial interpretation, the largest latitude consistent with the words employed is uniformly given in construing such statutes and constitutional provisions as are meant to protect and defend and give remedies for their wrongs to all the people." Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871) (hereinafter Globe App.).

Similar views of the act's broad remedy for violations of federally protected rights were voiced by its supporters in both Houses of Congress. See *Monell* v. *New York City Dept. of Social Services*, 436 U. S., at 683–687.[17]

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[17] As we noted in *Monell* v. *New York City Dept. of Social Services*, see 436 U. S., at 685–686, n. 45, even the opponents of § 1 acknowledged that its language conferred upon the federal courts the entire power that Congress possessed to remedy constitutional violations. The remarks of Senator Thurman are illustrative:

> "[This section's] whole effect is to give to the Federal Judiciary that which now does not belong to it—a jurisdiction that may be constitutionally conferred upon it, I grant, but that has never yet been conferred upon it. It authorizes any person who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrong-doer in the Federal courts, and that without any limit whatsoever as to the amount in controversy. . . .
>
> * * * * *

However, notwithstanding § 1983's expansive language and the absence of any express incorporation of common-law immunities, we have, on several occasions, found that a tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that "Congress would have specifically so provided had it wished to abolish the doctrine." *Pierson* v. *Ray*, 386 U. S. 547, 555 (1967). Thus in *Tenney* v. *Brandhove*, 341 U. S. 367 (1951), after tracing the development of an absolute legislative privilege from its source in 16th-century England to its inclusion in the Federal and State Constitutions, we concluded that Congress "would [not] impinge on a tradition so well grounded in history and reason by covert inclusion in the general language" of § 1983. *Id.*, at 376.

Subsequent cases have required that we consider the personal liability of various other types of government officials. Noting that "[f]ew doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction," *Pierson* v. *Ray*, *supra*, at 553–554, held that the absolute immunity traditionally accorded judges was preserved under § 1983. In that same case, local police officers were held to enjoy a "good faith and probable cause" defense to § 1983 suits similar to that which existed in false arrest actions at common law. *Id.*, at 555–557. Several more recent decisions have found immunities of varying scope appropriate for different state and local officials sued under § 1983. See *Procunier* v. *Navarette*, 434 U. S. 555 (1978) (qualified immunity for prison officials and officers); *Imbler* v. *Pachtman*, 424 U. S. 409 (1976) (absolute immunity for prosecutors in initiating and presenting the State's case); *O'Connor* v. *Donaldson*, 422 U. S. 563 (1975) (qualified immunity for super-

"That is the language of this bill. Whether it is the intent or not I know not, but it is the language of the bill; for there is no limitation whatsoever upon the terms that are employed, and they are as comprehensive as can be used." Globe App. 216–217.

intendent of state hospital); *Wood* v. *Strickland*, 420 U. S. 308 (1975) (qualified immunity for local school board members); *Scheuer* v. *Rhodes*, 416 U. S. 232 (1974) (qualified "good-faith" immunity for state Governor and other executive officers for discretionary acts performed in the course of official conduct).

In each of these cases, our finding of § 1983 immunity "was predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Imbler* v. *Pachtman*, *supra*, at 421. Where the immunity claimed by the defendant was well-established at common law at the time § 1983 was enacted, and where its rationale was compatible with the purposes of the Civil Rights Act, we have construed the statute to incorporate that immunity. But there is no tradition of immunity for municipal corporations, and neither history nor policy support a construction of § 1983 that would justify the qualified immunity accorded the city of Independence by the Court of Appeals. We hold, therefore, that the municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983.[18]

A

Since colonial times, a distinct feature of our Nation's system of governance has been the conferral of political power upon public and municipal corporations for the management of matters of local concern. As *Monell* recounted, by 1871, municipalities—like private corporations—were treated as natural persons for virtually all purposes of constitutional and statutory analysis. In particular, they were routinely

[18] The governmental immunity at issue in the present case differs significantly from the official immunities involved in our previous decisions. In those cases, various government officers had been sued in their individual capacities, and the immunity served to insulate them from personal liability for damages. Here, in contrast, only the liability of the municipality itself is at issue, not that of its officers, and in the absence of an immunity, any recovery would come from public funds.

sued in both federal and state courts. See 436 U. S., at 687–688. Cf. *Coules* v. *Mercer County*, 7 Wall. 118 (1869). Local governmental units were regularly held to answer in damages for a wide range of statutory and constitutional violations, as well as for common-law actions for breach of contract.[19] And although, as we discuss below,[20] a municipality was not subject to suit for all manner of tortious conduct, it is clear that at the time § 1983 was enacted, local govern-

[19] Primary among the constitutional suits heard in federal court were those based on a municipality's violation of the Contract Clause, and the courts' enforcement efforts often included "various forms of 'positive' relief, such as ordering that taxes be levied and collected to discharge federal-court judgments, once a constitutional infraction was found." *Monell* v. *New York City Dept. of Social Services*, *supra*, at 681. Damages actions against municipalities for federal statutory violations were also entertained. See, *e. g.*, *Levy Court* v. *Coroner*, 2 Wall. 501 (1864); *Corporation of New York* v. *Ransom*, 23 How. 487 (1860); *Bliss* v. *Brooklyn*, 3 Fed. Cases 706 (EDNY 1871). In addition, state constitutions and statutes, as well as municipal charters, imposed many obligations upon the local governments, the violation of which typically gave rise to damages actions against the city. See generally Note, Streets, Change of Grade, Liability of Cities for, 30 Am. St. Rep. 835 (1893) and cases cited therein. With respect to authorized contracts—and even unauthorized contracts that are later ratified by the corporation—municipalities were liable in the same manner as individuals for their breaches. See generally 1 J. Dillon, The Law of Municipal Corporations §§ 385, 394 (2d ed. 1873) (hereinafter Dillon). Of particular relevance to the instant case, included within the class of contract actions brought against a city were those for the wrongful discharge of a municipal employee, and where the claim was adjudged meritorious, damages in the nature of backpay were regularly awarded. See, *e. g.*, *Richardson* v. *School Dist. No. 10*, 38 Vt. 602 (1866); *Paul* v. *School Dist. No. 2*, 28 Vt. 573 (1856); *Searmont* v. *Farwell*, 3 Me. *450 (1825); see generally F. Burke, A Treatise on the Law of Public Schools 81–85 (1880). The most frequently litigated "breach of contract" suits, however, at least in federal court, were those for failure to pay interest on municipal bonds. See, *e. g.*, *The Supervisors* v. *Durant*, 9 Wall. 415 (1869); *Commissioners of Knox County* v. *Aspinwall*, 21 How. 539 (1859).

[20] See *infra*, at 21–26.

mental bodies did not enjoy the sort of "good-faith" qualified immunity extended to them by the Court of Appeals.

As a general rule, it was understood that a municipality's tort liability in damages was identical to that of private corporations and individuals:

> "There is nothing in the character of a municipal corporation which entitles it to an immunity from liability for such malfeasances as private corporations or individuals would be liable for in a civil action. A municipal corporation is liable to the same extent as an individual for any act done by the express authority of the corporation, or of a branch of its government, empowered to act for it upon the subject to which the particular act relates, and for any act which, after it has been done, has been lawfully ratified by the corporation." T. Shearman & A. Redfield, A Treatise on the Law of Negligence § 120, at 139 (1869) (hereinafter Shearman & Redfield).

Accord, 2 Dillon § 764, at 875 ("But as respects *municipal corporations proper*, . . . it is, we think, universally considered, even in the absence of statute giving the action, that they are liable for acts of *misfeasance* positively injurious to individuals, done by their authorized agents or officers, in the course of the performance of corporate powers constitutionally conferred, or in the execution of corporate duties.") (emphasis in original). See 18 E. McQuillin, Municipal Corporations § 53.02 (3d rev. ed. 1977) (hereinafter McQuillin). Under this general theory of liability, a municipality was deemed responsible for any private losses generated through a wide variety of its operations and functions, from personal injuries due to its defective sewers, thoroughfares, and public utilities, to property damage caused by its trespasses and uncompensated takings.[11]

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[11] See generally C. Rhyne, Municipal Law 729–789 (1957); Shearman & Redfield §§ 143–152; W. Williams, The Liability of Municipal Corporations for Tort (1901) (hereinafter Williams).

Yet in the hundreds of cases from that era awarding damages against municipal governments for wrongs committed by them, one searches in vain for much mention of a qualified immunity based on the good-faith of municipal officers. Indeed, where the issue was discussed at all, the courts had rejected the proposition that a municipality should be privileged where it reasonably believed its actions to be lawful. In the leading case of *Thayer* v. *Boston*, 19 Pick. 511, 515–516 (Mass. 1837), for example, Chief Justice Shaw explained:

> "There is a large class of cases, in which the rights of both the public and of individuals may be deeply involved, in which it cannot be known at the time the act is done, whether it is lawful or not. The event of a legal inquiry, in a court of justice, may show that it was unlawful. Still, if it was not known and understood to be unlawful at the time, if it was an act done by the officers having competent authority, either by express vote of the city government, or by the nature of the duties and functions with which they are charged, by their offices, to act upon the general subject matter, and especially if the act was done with an honest view to obtain for the public some lawful benefit or advantage, reason and justice obviously require that the city, in its corporate capacity, should be liable to make good the damages sustained by an individual, in consequence of the acts thus done.

The *Thayer* principle was later reiterated by courts in several jurisdictions, and numerous decisions awarded damages against municipalities for violations expressly found to have been committed in good faith. See, *e. g., Town Council of Akron* v. *McComb*, 18 Ohio 229, 230–231 (1849); *Horton* v. *Ipswich*, 66 Mass. 488, 489, 492 (1853); *Elliot* v. *Concord*, 27 N. H. 204 (1853); *Hurley* v. *Town of Texas*, 20 Wis. 634, 637–638 (1866); *Lee* v. *Village of Sandy Hill*, 40 N. Y. 442, 448–451 (1869); *Billings* v. *Worcester*, 102 Mass. 329, 332–333 (1869);

Squiers v. *Village of Neenah*, 24 Wis. 588, 593 (1869); *Hawks* v. *Charlemont*, 107 Mass. 414, 417–418 (1871).[22]

That municipal corporations were commonly held liable for damages in tort was also recognized by the 42d Congress. See *Monell* v. *New York City Dept. of Social Services*, *supra*, at 688. For example, Senator Stevenson, in opposing the Sherman amendment's creation of a municipal liability for the riotous acts of its inhabitants, stated the prevailing law: "Numberless cases are to be found where a statutory liability has been created against municipal corporations for injuries resulting from a neglect of corporate duty." Globe 762.[23]

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[22] Accord, *Bunker* v. *City of Hudson*, 122 Wis. 43, 54, 99 N. W. 448, 452 (1904); *City of Oklahoma City* v. *Hill Bros.*, 6 Okla. 114, 137–139, 50 P. 242, 249–250 (1897); *Schussler* v. *Board of Comm'rs of Hennepin County*, 67 Minn. 412, 417, 70 N. W. 6, 7 (1897); *McGraw* v. *Town of Marion*, 98 Ky. 673, 680–683, 34 S. W. 18, 20–21 (1896). See generally Note, The Liability of Cities for the Negligence and Other Misconduct of Their Officers and Agents, 30 Am. St. Rep. 376, 405–411 (1893).

Even in England, where the doctrine of official immunity followed by the American courts was first established, no immunity was granted where the damages award was to come from the public treasury. As Baron Bramwell stated in *Ruck* v. *Williams*, 3 Hurlstone & Norman's 308, 320 (1858):

"I can well understand if a person undertakes the office or duty of a Commissioner, and there are no means of indemnifying him against the consequences of a slip, it is reasonable to hold that he should not be responsible for it. I can also understand that, if one of several Commissioners does something not within the scope of his authority, the Commissioners as a body are not liable. But where Commissioners, who are a quasi corporate body, are not affected [*i. e.*, personally] by the result of an action, inasmuch as they are authorized by act of parliament to raise a fund for payment of the damages, on what principle is it that, if an individual member of the public suffers from an act *bona fide* but erroneously done, he is not to be compensated? It seems to me inconsistent with actual justice, and not warranted by any principle of law."

See generally Shearman & Redfield §§ 133, 178.

[23] Senator Stevenson proceeded to read from the decision in *Prather* v. *Lexington*, 13 Monroe's Ky. Reports 559, 560 (1852):

"Where a particular act, operating injuriously to an individual, is

Nowhere in the debates, however, is there a suggestion that the common law excused a city from liability on account of the good faith of its authorized agents, much less an indication of a congressional intent to incorporate such an immunity into the Civil Rights Act.[24] The absence of any allusion to a municipal immunity assumes added significance in light of the objections raised by the opponents of § 1 of the Act that its unqualified language could be interpreted to abolish the traditional good-faith immunities enjoyed by legislators, judges, governors, sheriffs, and other public officers.[25] Had there been a similar common-law immunity for municipalities,

absence of any allusion!

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authorized by a municipal corporation, by a delegation of power either general or special, it will be liable for the injury in its corporate capacity, where the acts done would warrant a like action against an individual. But as a general rule a corporation is not responsible for the unauthorized and unlawful acts of its officers, although done under the color of their office; to render it liable it must appear that it expressly authorized the acts to be done by them, or that they were done in pursuance of a general authority to act for the corporation, on the subject to which they relate. (*Thayer* v. *Boston*, 19 Pick., 511.) It has also been held that cities are responsible to the same extent, and in the same manner, as natural persons for injuries occasioned by the negligence or unskillfulness of their agents in the construction of works for their benefit." Globe 762.

[24] At one point in the debates, Sen. Stevenson did protest that the Sherman amendment would, for the first time, "create a corporate liability for personal injury which no prudence or foresight could have prevented." *Ibid.* As his later remarks made clear, however, Stevenson's objection went only to the novelty of the amendment's creation of vicarious municipal liability for the unlawful acts of private individuals, "even if a municipality did not know of an impending or ensuing riot or did not have the wherewithal to do anything about it." *Monell* v. *New York City Dept. of Social Services*, *supra*, at 692–693, n. 57.

[25] See, *e. g.*, Globe 365 (remarks of Rep. Arthur) ("But if the Legislature enacts a law, if the Governor enforces it, if the judge upon the bench renders a judgment, if the sheriff levy an execution, execute a writ, serve a summons, or make an arrest, all acting under a solemn, official oath, though as pure in duty as a saint and as immaculate as a seraph, for a mere error in judgment, they are liable . . . ."); *id.*, at 385 (remarks of Rep. Lewis); Globe App. 217 (remarks of Sen. Thurman).

the bill's opponents doubtless would have raised the spectre of its destruction, as well.

To be sure, there were two doctrines that afforded municipal corporations some measure of protection from tort liability. The first sought to distinguish between a municipality's "governmental" and "proprietary" functions; as to the former, the city was held immune, whereas in its exercise of the latter, the city was held to the same standards of liability as any private corporation. The second doctrine immunized a municipality for its "discretionary" or "legislative" activities, but not for those which were "ministerial" in nature. A brief examination of the application and the rationale underlying each of these doctrines demonstrates that Congress could not have intended them to limit a municipality's liability under § 1983.

governmental vs proprietary

demonstrates how?

The governmental-proprietary distinction [20] owed its existence to the dual nature of the municipal corporation. On the one hand, the municipality was a corporate body, capable of performing the same "proprietary" functions as any private corporation, and liable for its torts in the same manner and to the same extent, as well. On the other hand, the munici-

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[20] In actuality, the distinction between a municipality's governmental and proprietary functions is better characterized not as a line, but as a succession of points. In efforts to avoid the often-harsh results occasioned by a literal application of the test, courts frequently created highly artificial and elusive distinctions of their own. The result was that the very same activity might be considered "governmental" in one jurisdiction, and "proprietary" in another. See 18 McQuillin § 53.02, at 105. See also W. Prosser, Handbook of the Law of Torts § 131, at 979 (4th ed. 1971) (hereinafter Prosser). As this Court stated, in reference to the "'non-governmental'-'governmental' quagmire that has long plagued the law of municipal corporations":

"A comparative study of the cases in the forty-eight States will disclose an irreconcilable conflict. More than that, the decisions in each of the States are disharmonious and disclose the inevitable chaos when courts try to apply a rule of law that is inherently unsound." *Indian Towing Co.* v. *United States*, 350 U. S. 61, 65 (1955) (on rehearing).

pality was an arm of the State, and when acting in that "governmental" or "public" capacity, it shared the immunity traditionally accorded the sovereign.[37] But the principle of sovereign immunity—itself a somewhat arid fountainhead for municipal immunity[38]—is necessarily nullified when the

[37] "While acting in their governmental capacity, municipal corporations proper are given the benefit of that same rule which is applied to the sovereign power itself, and are afforded complete immunity from civil responsibility for acts done or omitted, unless such responsibility is expressly created by statute. When, however, they are not acting in the exercise of their purely governmental functions, but are performing duties that pertain to the exercise of those private franchises, powers, and privileges which belong to them for their own corporate benefit, or are dealing with property held by them for their own corporate gain or emolument, then a different rule of liability is applied and they are generally held responsible for injuries arising from their negligent acts or their omissions to the same extent as a private corporation under like circumstances." Williams § 4, at 9. See generally 18 McQuillin §§ 53.02, 53.04, 53.24; Prosser § 131, at 977–983; James, Tort Liability of Governmental Units and Their Officers, 22 U. Chi. L. Rev. 610, 611–612, 622–629 (1955).

[38] Although it has never been understood how the doctrine of sovereign immunity came to be adopted in the American democracy, it apparently stems from the personal immunity of the English monarch as expressed in the maxim, "The King can do no wrong." It has been suggested, however, that the meaning traditionally ascribed to this phrase is an ironic perversion of its original intent: "The maxim merely meant that the King was not privileged to do wrong. If his acts were against the law, they were *injuriae* (wrongs). Bracton, while ambiguous in his several statements as to the relation between the King and the law, did not intend to convey the idea that he was incapable of committing a legal wrong." Borchard, Government Liability in Tort, 34 Yale L. J. 1, 2, n. 2 (1924). See also Kates & Kouba, Liability of Public Entities Under Section 1983 of the Civil Rights Act, 45 S. Cal. L. Rev. 131, 142 (1972).

In this country, "[t]he sovereign or governmental immunity doctrine, holding that the state, its subdivisions and municipal entities, may not be held liable for tortious acts, was never completely accepted by the courts, its underlying principle being deemed contrary to the basic concept of the law of torts that liability follows negligence, as well as foreign to the spirit of the constitutional guarantee that every person is entitled to a legal remedy for injuries he may receive in his person or property. As a

State expressly or impliedly allows itself, or its creation, to be sued. Municipalities were therefore liable not only for their "proprietary" acts, but also for those "governmental" functions as to which the State had withdrawn their immunity. And, by the end of the 19th century, courts regularly held that in imposing a specific duty on the municipality either in its charter or by statute, the State had impliedly withdrawn the city's immunity from liability for the nonperformance or misperformance of its obligation. See, *e. g.*, *Weightman* v. *Washington*, 1 Black 39, 50–52 (1862); *City of Providence* v. *Clapp*, 17 How. 161, 167–169 (1855). See generally Shearman & Redfield §§ 122–126; Note, Liability of Cities for the Negligence and Other Misconduct of Their Officers and Agents, 30 Am. St. Rep. 376, 385 (1893). Thus, despite the nominal existence of an immunity for "governmental" functions, municipalities were found liable in damages in a multitude of cases involving such activities.

That the municipality's common-law immunity for "governmental" functions derives from the principle of sovereign immunity also explains why that doctrine could not have served as the basis for the qualified privilege respondent claims

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result, the trend of judicial decisions was always to restrict, rather than to expand, the doctrine of municipal immunity." 18 McQuillin § 53.02, at 104 (footnotes omitted). See also Prosser § 131, at 984 ("For well over a century the immunity of both the state and the local governments for their torts has been subjected to vigorous criticism, which at length has begun to have its effect.") The seminal opinion of the Florida Supreme Court in *Hargrove* v. *Town of Cocoa Beach*, 96 So. 2d 130 (1957), has spawned "a minor avalanche of decisions repudiating municipal immunity," Prosser § 131, at 985, which, in conjunction with legislative abrogation of sovereign immunity, has resulted in the consequence that only a handful of States still cling to the old common-law rule of immunity for governmental functions. See K. Davis, Administrative Law of the Seventies § 25.00 (1976 & Supp. 1978) (only two States adhere to the traditional common-law immunity from torts in the exercise of governmental functions); Harley & Wasinger, Government Immunity: Despotic Mantle or Creature of Necessity, 16 Washburn L. Rev. 12, 34–53 (1976).

under § 1983. First, because sovereign immunity insulates the municipality from unconsented suits altogether, the presence or absence of good faith is simply irrelevant. The critical issue is whether injury occurred while the city was exercising governmental, as opposed to proprietary, powers or obligations—not whether its agents reasonably believed they were acting lawfully in so conducting themselves.[29] More fundamentally, however, the municipality's "governmental" immunity is obviously abrogated by the sovereign's enactment of a statute making it amenable to suit. Section 1983 was just such a statute. By including municipalities within the class of "persons" subject to liability for violations of the Federal Constitution and laws, Congress—the supreme sovereign on matters of federal law[30]—abolished whatever vestige of the State's sovereign immunity the municipality possessed.

The second common-law distinction between municipal functions—that protecting the city from suits challenging "discretionary" decisions—was grounded not on the principle of sovereign immunity, but on a concern for separation of powers. A large part of the municipality's responsibilites

[29] The common-law immunity for governmental functions is thus more comparable to an absolute immunity from liability for conduct of a certain character, which defeats a suit at the outset, than to a qualified immunity, which "depends on the circumstances and motivations of [the official's] actions, as established by the evidence at trial." *Imbler* v. *Pachtman*, 424 U. S., at 419, n. 13.

[30] Municipal defenses—including an assertion of sovereign immunity—to a federal right of action are, of course, controlled by federal law. See *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 455–456 (1976); *Hampton* v. *City of Chicago*, 484 F. 2d 602, 607 (CA7 1973) (Stevens, J.) ("Conduct by persons acting under color of state law which is wrongful under 42 U. S. C. § 1983 or § 1985 (3) cannot be immunized by state law. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced.").

What?!

There is grossly circular reasoning. The argument is that immunities had not ceased when 1983 was adopted. This is to be proved by relying on 1983 to 'abrogate' immunity

involved broad discretionary decisions on issues of public policy—decisions that affected large numbers of persons and called for a delicate balancing of competing considerations. For a court or jury, in the guise of a tort suit, to review the reasonableness of the city's judgment on these matters would be an infringement upon the powers properly vested in a coordinate and coequal branch of government. *See Johnson* v. *State*, 69 Cal. 2d 782, 794, n. 8, 447 P. 2d 352, 361, n. 8 (1968) (en banc) ("Immunity for 'discretionary' activities serves no purpose except to assure that courts refuse to pass judgment on policy decisions in the province of coordinate branches of government."). In order to ensure against any invasion into the legitimate sphere of the municipality's policymaking processes, courts therefore refused to entertain suits against the city "either for the non-exercise of, or for the manner in which in good faith its exercises, discretionary powers of a public or legislative character." 2 Dillon § 753, at 862.[31]

Although many, if not all, of a municipality's activities would seem to involve at least some measure of discretion, the influence of this doctrine on the city's liability was not as significant as might be expected. For just as the courts implied an exception to the municipality's immuntiy for its "governmental" functions, here, too, a distinction was made that had the effect of subjecting the city to liability for much of its tortious conduct. While the city retained its immunity for decisions as to whether the public interest required acting in one manner or another, once any particular decision was made, the city was fully liable for any injuries incurred in the

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[31] See generally 18 McQuillin § 53.04a; Shearman & Redfield §§ 127–130; Williams § 6, at 15–16. Like the governmental/proprietary distinction, a clear line between the municipality's "discretionary" and "ministerial" functions was often hard to discern, a difficulty which has been mirrored in the federal courts' attempts to draw a similar distinction under the Federal Tort Claims Act, 28 U. S. C. § 2680 (a). See generally 3 K. Davis, Administrative Law Treatise § 25.08 (1958 & Supp. 1970).

execution of its judgment. See, *e. g.*, *Hill* v. *Boston*, 122 Mass. 344, 358–359 (1877) (dicta) (municipality would be immune from liability for damages resulting from its decision where to construct sewers, since that involved a discretionary judgment as to the general public interest; but city would be liable for neglect in the construction or repair of any particular sewer, as such activity is ministerial in nature). See generally C. Rhyne, Municipal Law § 30.4, at 736–737 (1957); Williams § 7. Thus municipalities remained liable in damages for a broad range of conduct implementing its discretionary decisions.

Once again, an understanding of the rationale underlying the common-law immunity for "discretionary" functions explains why that doctrine cannot serve as the foundation for a good-faith immunity under § 1983. That common-law doctrine merely prevented courts from substituting their own judgment on matters within the lawful discretion of the municipality. But a municipality has no "discretion" to violate the Federal Constitution; its dictates are absolute and imperative. And when a court passes judgment on the municipality's conduct in a § 1983 action, it does not seek to second-guess the "reasonableness" of the city's decision nor to interfere with the local government's resolution of competing policy considerations. Rather, it looks only to whether the municipality has conformed to the requirements of the Federal Constitution and statutes. As was stated in *Sterling* v. *Constantin*, 287 U. S. 378, 398 (1932), "When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression."

In sum, we can discern no "tradition so well grounded in history and reason" that would warrant the conclusion that in enacting § 1 of the Civil Rights Act, the 42d Congress

sub silentio extended to municipalities a qualified immunity based on the good faith of their officers. Absent any clearer indication that Congress intended so to limit the reach of a statute expressly designed to provide a "broad remedy for violations of federally protected civil rights," *Monell* v. *New York City Dept. of Social Services*, 436 U. S., at 685, we are unwilling to suppose that injuries occasioned by a municipality's unconstitutional conduct were not also meant to be fully redressable through its sweep.[22]

B

Our rejection of a construction of § 1983 that would accord municipalities a qualified immunity for their good-faith constitutional violations is compelled both by the legislative purpose in enacting the statute and by considerations of public policy. The central aim of the Civil Rights Act was to provide protection to those persons wronged by the " '[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.' " *Monroe* v. *Pape*, 365 U. S. 167, 184 (1961) (quoting *United States* v. *Classic*, 313 U. S. 299, 326 (1941)). By creating an express federal remedy, Congress sought to "enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." *Monroe* v. *Pape*, *supra*, at 172.

How "uniquely amiss" it would be, therefore, if the government itself—"the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for

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[22] Cf. P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 336 (2d ed. 1973) ("[W]here constitutional rights are at stake the courts are properly astute, in construing statutes, to avoid the conclusion that Congress intended to use the privilege of immunity . . . in order to defeat them.")

social conduct"—were permitted to disavow liability for the injury it has begotten. *See Adickes* v. *Kress & Co.*, 398 U. S. 144, 190 (1970) (opinion of BRENNAN, J.). A damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees, and the importance of assuring its efficacy is only accentuated when the wrongdoer is the institution that has been established to protect the very rights it has transgressed. Yet owing to the qualified immunity enjoyed by most government officials, see *Scheuer* v. *Rhodes*, 416 U. S. 232 (1974), many victims of municipal malfeasance would be left remediless if the city were also allowed to assert a good-faith defense. Unless countervailing considerations counsel otherwise, the injustice of such a result should not be tolerated.[33]

Moreover, § 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well. See *Carlson* v. *Green*, — U. S. —, —, n. 5 (1980); *Carey* v. *Piphus*, 435 U. S. 247, 256–257 (1978). The knowledge that a municipality will be liable for all of its injurious conduct, whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights.[34] Furthermore, the threat

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[33] The absence of any damages remedy for violations of all but the most "clearly established" constitutional rights, see *Wood* v. *Strickland*, 420 U. S., at 322, could also have the deleterious effect of freezing constitutional law in its current state of development, for without a meaningful remedy, aggrieved individuals will have little incentive to seek vindication of those constitutional deprivations that have not previously been clearly defined.

[34] For example, given the discussion that preceded the Independence City Council's adoption of the allegedly slanderous resolution impugning petitioner's integrity, see n. 6, *supra*, one must wonder this entire litigation would have been necessary had the council members thought that the city might be liable for their misconduct.

that damages might be levied against the city may encourage those in a policymaking position to institute internal rules and programs designed to minimize the likelihood of unintentional infringements on constitutional rights.[35] Such procedures are particularly beneficial in preventing those "systemic" injuries that result not so much from the conduct of any single individual, but from the interactive behavior of several government officials, each of whom may be acting in good faith. Cf. Note, Developments in the Law: Section 1983 and Federalism, 90 Harv. L. Rev. 1133, 1218–1219 (1977).[36]

Our previous decisions conferring qualified immunities on various government officials, see *supra*, at 13–15, are not to be read as derogating the significance of the societal interest in compensating the innocent victims of governmental misconduct. Rather, in each case we concluded that overriding considerations of public policy nonetheless demanded that the official be given a measure of protection from personal liability. The concerns that justified those decisions, however, are less

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[35] Cf. *Albermarle Paper Co.* v. *Moody*, 422 U. S. 405, 417–418 (1975):

"If employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality. It is the reasonably certain prospect of a backpay award that 'provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history.' *United States* v. *N. L. Industries, Inc.*, 479 F. 2d 354, 379 (CA8 1973)."

[36] In addition, the threat of liability against the city ought to increase the attentiveness with which officials at the higher levels of government supervise the conduct of their subordinates. The need to institute system-wide measures in order to increase the vigilance with which otherwise indifferent municipal officials protect citizens' constitutional rights is, of course, particularly acute where the front-line officers are judgment-proof in their individual capacities.

compelling, if not wholly inapplicable, when the liability of the municipal entity is at issue."[37]

In *Scheuer* v. *Rhodes*, *supra*, at 240, THE CHIEF JUSTICE identified the two "mutually dependent rationales" on which the doctrine of official immunity rested:

> "(1) the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discre-

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[37] On at least two previous occasions, this Court has expressly recognized that different considerations come into play when governmental rather than personal liability is threatened. *Hutto* v. *Finney*, 437 U. S. 678 (1978), affirmed an award of attorney's fees out of state funds for a deprivation of constitutional rights, holding that such an assessment would not contravene the Eleventh Amendment. In response to the suggestion, adopted by the dissent, that any award should be borne by the government officials personally, the Court noted that such an allocation would not only be "manifestly unfair," but would "def[y] this Court's insistence in a related context that imposing personal liability in the absence of bad faith may cause state officers to 'exercise their discretion with undue timidity.' *Wood* v. *Strickland*, 420 U. S. 308, 321." *Id.*, at 699, n. 32. The Court thus acknowledged that imposing personal liability on public officials could have an undue chilling effect on the exercise of their decision-making responsibilities, but that no such pernicious consequences were likely to flow from the possibility of a recovery from public funds.

Our decision in *Lake Country Estates, Inc.* v. *Tahoe Planning Agency*, 440 U. S. 391 (1979), also recognized that the justifications for immunizing officials from personal liability have little force when suit is brought against the governmental entity itself. Petitioners in that case had sought damages under § 1983 from a regional planning agency and the individual members of its governing agency. Relying on *Tenney* v. *Brandhove*, 341 U. S. 367 (1951), the Court concluded that "to the extent the evidence discloses that these individuals were acting in a capacity comparable to that of members of a state legislature, they are entitled to absolute immunity from federal damages liability." 440 U. S., at 406. At the same time, however, we cautioned: "If the respondents have enacted unconstitutional legislation, there is no reason why relief against TRPA itself should not adequately vindicate petitioners' interests. See *Monell* v. *New York City Dept. of Social Services*, 436 U. S. 658." *Id.*, at 405, n. 29.

tion; (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good." [18]

The first consideration is simply not implicated when the damage award comes not from the official's pocket, but from the public treasury. It hardly seems unjust to require a municipal defendant which has violated a citizen's constitutional rights to compensate him for the injury suffered thereby. Indeed, Congress enacted § 1983 precisely to provide a remedy for such abuses of official power. See *Monroe* v. *Pape*, *supra*, at 171–172. Elemental notions of fairness dictate that one who causes a loss should bear the loss.

It has been argued, however, that revenue raised by taxation for public use should not be diverted to the benefit of a single or discrete group of taxpayers, particularly where the municipality has at all times acted in good faith. On the contrary, the accepted view is that stated in *Thayer* v. *Boston*, *supra*—"that the city, in its corporate capacity, should be liable to make good the damages sustained by an [unlucky] individual, in consequence of the acts thus done." 19 Pick., at 516. After all, it is the public at large which enjoys the benefits of the government's activities, and it is the public at large which is ultimately responsible for its administration. Thus, even where some constitutional development could not have been foreseen by municipal officials, it is fairer to allocate any resulting financial loss to the inevitable costs of govern-

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[18] *Wood* v. *Strickland*, 420 U. S. 308 (1975), mentioned a third justification for extending a qualified immunity to public officials: the fear that the threat of personal liability might deter citizens from holding public office. See *id.*, at 320 ("The most capable candidates for school board positions might be deterred from seeking office if heavy burdens upon their private resources from monetary liability were a likely prospect during their tenure."). Such fears are totally unwarranted, of course, once the threat of personal liability is eliminated.

ment borne by all the taxpayers, than to allow its impact to be felt solely by those whose rights, albeit newly recognized, have been violated. See generally 3 K. Davis, Administrative Law Treatise § 25.17 (1958 and Supp. 1970); Prosser § 131, at 978; Michelman, Property, Utility, and Fairness: Some Thoughts on the Ethical Foundations of "Just Compensation" Law, 80 Harv. L. Rev. 1165 (1967).[39]

The second rationale mentioned in *Scheuer* also loses its force when it is the municipality, in contrast to the official, whose liability is at issue. At the heart of this justification for a qualified immunity for the individual official is the concern that the threat of *personal* monetary liability will introduce an unwarranted and unconscionable consideration into the decisionmaking process, thus paralyzing the governing official's decisiveness and distorting his judgment on matters of public policy.[40] The inhibiting effect is significantly reduced, if not eliminated, however, when the threat of personal

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[39] *Monell* v. *New York City Dept. of Social Services*, *supra*, indicated that the principle of loss-spreading was an insufficient justification for holding the municipality liable under § 1983 on a *respondeat superior* theory. 436 U. S., at 693–694. Here, of course, quite a different situation is presented. Petitioner does not seek to hold the city responsible for the unconstitutional actions of an individual official "solely because it employs a tortfeasor." *Id.*, at 691. Rather, liability is predicated on a determination that "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Id.*, at 690. In this circumstance—when it is the local government itself that is responsible for the constitutional deprivation—it is perfectly reasonable to distribute the loss to the public as a cost of the administration of government, rather than to let the entire burden fall on the injured individual.

[40] "The imposition of monetary costs for mistakes which were not unreasonable in the light of all the circumstances would undoubtedly deter even the most conscientious school decisionmaker from exercising his judgment independently, forcefully, and in a manner best serving the long-term interest of the school and the students." *Wood* v. *Strickland*, *supra*, at 319–320.

liability is removed. First, as an empirical matter, it is questionable whether the hazard of municipal loss will deter a public officer from the conscientious exercise of his duties; city officials routinely make decisions that either require a large expenditure of municipal funds or involve a substantial risk of depleting the public fisc. See *Kostka* v. *Hogg*, 560 F. 2d 37, 41 (CA1 1977). More important, though, is the realization that consideration of the *municipality's* liability for constitutional violations is quite properly the concern of its elected or appointed officials. Indeed, a decisionmaker would be derelict in his duties if, at some point, he did not consider whether his decision comports with constitutional mandates and did not weigh the risk that a violation might result in an award of damages from the public treasury. As one commentator aptly put it, "Whatever other concerns should shape a particular official's actions, certainly one of them should be the constitutional rights of individuals who will be affected by his actions. To criticize section 1983 liability because it leads decisionmakers to avoid the infringement of constitutional rights is to criticize one of the statute's *raisons d'être*." [41]

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[41] Note, Developments in the Law: Section 1983 and Federalism, 90 Harv. L. Rev. 1133, 1224 (1977). See also *Johnson* v. *California*, 69 Cal. 2d 782, 792–793, 447 P. 2d 352, 359–360 (1968):

"Nor do we deem an employee's concern over the potential liability of his employer, the governmental unit, a justification for an expansive definition of 'discretionary,' and hence immune, acts. As a threshold matter, we consider it unlikely that the possibility of government liability will be a serious deterrent to the fearless exercise of judgment by the employee. . . . In any event, however, to the extent that such a deterrent effect takes hold, it may be wholesome. An employee in a private enterprise naturally gives some consideration to the potential liability of his employer, and this attention unquestionably promotes careful work; the potential liability of a governmental entity, to the extent that it affects primary conduct at all, will similarly influence public employees." (Citation and footnote omitted.)

IV

In sum, our decision holding that municipalities have no immunity from damages liability flowing from their constitutional violations harmonizes well with developments in the common law and our own pronouncements on official immunities under § 1983. Doctrines of tort law have changed significantly over the past century, and our notions of governmental responsibility should properly reflect that evolution. No longer is individual "blameworthiness" the acid test of liability; the principle of equitable loss-spreading has joined fault as a factor in distributing the costs of official misconduct.

We believe that today's decision, together with prior precedents in this area, properly allocates these costs among the three principles in the scenario of the § 1983 cause of action: the victim of the constitutional deprivation; the officer whose conduct caused the injury; and the public, as represented by the municipal entity. The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury. The offending official, so long as he conducts himself in good faith, may go about his business secure in the knowledge that a qualified immunity will protect him from personal liability for damages that are more appropriately chargeable to the populace as a whole. And the public will be forced to bear only the costs of injury inflicted by the "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy." *Monell* v. *New York City Dept. of Social Services*, 436 U. S., at 694.

Reversed.