SUPREME COURT OF THE UNITED STATES

No. 92–833

KEVIN ALBRIGHT, PETITIONER *v.* ROGER OLIVER, ETC., ET AL.

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

[January 24, 1994]

JUSTICE KENNEDY, with whom JUSTICE THOMAS joins, concurring in the judgment.

I agree with the plurality that an allegation of arrest without probable cause must be analyzed under the Fourth Amendment without reference to more general considerations of due process. But I write because Albright's due process claim concerns not his arrest but instead the malicious initiation of a baseless criminal prosecution against him.

The State must, of course, comply with the constitutional requirements of due process before it convicts and sentences a person who has violated state law. The initial question here is whether the due process requirements for criminal proceedings include a standard for the initiation of a prosecution.

The specific provisions of the Bill of Rights neither impose a standard for the initiation of a prosecution, see Amdts. 5, 6, nor require a pretrial hearing to weigh evidence according to a given standard, see *Gerstein* v. *Pugh,* 420 U. S. 103, 119 (1975) ("[A] judicial hearing is not prerequisite to prosecution"); *Costello* v. *United States*, 350 U. S. 359, 363 (1956) ("An indictment returned by a legally constituted and unbiased grand jury,

like an information drawn by the prosecutor, . . . is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more"). Instead, the Bill of Rights requires a grand jury indictment and a speedy trial where a petit jury can determine whether the charges are true. Amdts. 5, 6.

To be sure, we have held that a criminal rule or procedure that does not contravene one of the more specific guarantees of the Bill of Rights may nonetheless violate the Due Process Clause if it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Medina* v. *California*, 505 U. S. ___ (1992) (slip op., at 8) (quoting *Patterson* v. *New York*, 432 U. S. 197, 202 (1977)). With respect to the initiation of charges, however, the specific guarantees contained in the Bill of Rights mirror the traditional requirements of the criminal process. The common law provided for a grand jury indictment and a speedy trial; it did not provide a specific evidentiary standard applicable to a pretrial hearing on the merits of the charges or subject to later review by the courts. See *United States* v. *Williams*, 503 U. S. ___ (1992) (slip op., at 17–18); *Costello, supra,* at 362–363; *United States* v. *Reed,* 27 F. Cas. 727, 738 (CC NDNY 1852) (Nelson, J.) ("No case has been cited, nor have we been able to find any, furnishing an authority for looking into and revising the judgment of the grand jury upon the evidence, for the purpose of determining whether or not the finding was founded upon sufficient proof").

Moreover, because the Constitution requires a speedy trial but no pretrial hearing on the sufficiency of the charges (leaving aside the question of extended pretrial detention, see *County of Riverside* v. *McLaughlin*, 500 U. S. 44 (1991)), any standard governing the initiation of charges would be superfluous in providing protection during the criminal process. If the charges are not proved beyond a

reasonable doubt at trial, the charges are dismissed; if the charges are proved beyond a reasonable doubt at trial, any standard applicable to the initiation of charges is irrelevant because it is perforce met. This case thus differs in kind from *In re Winship*, 397 U. S. 358 (1970), and the other criminal cases where we have recognized due process requirements not specified in the Bill of Rights. The constitutional requirements we enforced in those cases ensured fundamental fairness in the determination of guilt at trial. See, *e.g.*, *Mooney* v. *Holohan,* 294 U. S. 103, 112 (1935) (due process prohibits "deliberate deception of court and jury" by prosecution's knowing use of perjured testimony); *ante*, at 7, n. 6.

In sum, the due process requirements for criminal proceedings do not include a standard for the initiation of a criminal prosecution.

That may not be the end of the due process inquiry, however. The common law of torts long recognized that a malicious prosecution, like a defamatory statement, can cause unjustified torment and anguish—both by tarnishing one's name and by costing the accused money in legal fees and the like. See generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on the Law of Torts §119, pp. 870–889 (5th ed. 1984); T. Cooley, Law of Torts 180–187 (1879). We have held, of course, that the Due Process Clause protects interests other than the interest in freedom from physical restraint, see *Michael H.* v. *Gerald D.*, 491 U. S. 110, 121 (1989), and for purposes of this case, we can assume *arguendo* that some of the interests granted historical protection by the common law of torts (such as the interests in freedom from defamation and malicious prosecution) are protected by the Due Process Clause. Even so, our precedents make clear that a state actor's random and unauthorized deprivation of

that interest cannot be challenged under 42 U. S. C. §1983 so long as the State provides an adequate postdeprivation remedy. *Parratt* v. *Taylor*, 451 U. S. 527, 535–544 (1981); see *Hudson* v. *Palmer*, 468 U. S. 517, 531–536 (1984); *Ingraham* v. *Wright,* 430 U. S. 651, 674–682 (1977); *id.,* at 701 (STEVENS, J., dissenting) ("adequate state remedy for defamation may satisfy the due process requirement when a State has impaired an individual's interest in his reputation").

The commonsense teaching of *Parratt* is that some questions of property, contract, and tort law are best resolved by state legal systems without resort to the federal courts, even when a state actor is the alleged wrongdoer. As we explained in *Parratt*, the contrary approach "would almost necessarily result in turning every alleged injury which may have been inflicted by a state official acting under `color of law' into a violation of the Fourteenth Amendment cognizable under §1983. . . . Presumably, under this rationale any party who is involved in nothing more than an automobile accident with a state official could allege a constitutional violation under §1983. Such reasoning `would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States.'" 451 U. S., at 544 (quoting *Paul* v. *Davis*, 424 U. S. 693, 701 (1976)). The *Parratt* principle respects the delicate balance between state and federal courts and comports with the design of §1983, a statute that reinforces a legal tradition in which protection for persons and their rights is afforded by the common law and the laws of the States, as well as by the Constitution. See *Parratt, supra,* at 531–532.

Yet it is fair to say that courts, including our own, have been cautious in invoking the rule of *Parratt*. See *Mann* v. *Tucson*, 782 F. 2d 790, 798 (CA9 1986) (Sneed, J., concurring). That hesitancy is in part a

recognition of the important role federal courts have assumed in elaborating vital constitutional guarantees against arbitrary or oppressive state action. We want to leave an avenue open for recourse where we think the federal power ought to be vindicated. Cf. *Screws* v. *United States*, 325 U. S. 91 (1945).

But the price of our ambivalence over the outer limits of *Parratt* has been its dilution and, in some respects, its transformation into a mere pleading exercise. The *Parratt* rule has been avoided by attaching a substantive rather than procedural label to due process claims (a distinction that if accepted in this context could render *Parratt* a dead letter) and by treating claims based on the Due Process Clause as claims based on some other constitutional provision. See *Taylor* v. *Knapp*, 871 F. 2d 803, 807 (CA9 1989) (Sneed, J., concurring). It has been avoided at the other end of the spectrum by construing complaints alleging a substantive injury as attacks on the adequacy of state procedures. See *Zinermon* v. *Burch*, 494 U. S. 113, 139–151 (1990) (O'CONNOR, J., dissenting); *Easter House* v. *Felder*, 910 F. 2d 1387, 1408 (CA7 1990) (Easterbrook, J., concurring). These evasions are unjustified given the clarity of the *Parratt* rule: In the ordinary case where an injury has been caused not by a state law, policy, or procedure, but by a random and unauthorized act that can be remedied by state law, there is no basis for intervention under §1983, at least in a suit based on "the Due Process Clause of the Fourteenth Amendment *simpliciter*." 451 U. S., at 536.

As *Parratt*'s precedential force must be acknowledged, I think it disposes of this case. Illinois provides a tort remedy for malicious prosecution; indeed, Albright brought a state law malicious prosecution claim, albeit after the statute of limitations had expired. (That fact does not affect the adequacy of the remedy under *Parratt*. See *Daniels* v. *Williams,* 474 U. S. 327, 342 (1986) (STEVENS, J.,

concurring).) Given the state remedy and the holding of *Parratt*, there is neither need nor legitimacy in invoking §1983 in this case. See 975 F. 2d 343, 347 (CA7 1992).

That said, if a State did not provide a tort remedy for malicious prosecution, there would be force to the argument that the malicious initiation of a baseless criminal prosecution infringes an interest protected by the Due Process Clause and enforceable under §1983. Compare *Ingraham* v. *Wright,* 430 U. S., at 676, *id.,* at 701–702 (STEVENS, J., dissenting), and *Board of Regents of State Colleges* v. *Roth*, 408 U. S. 564, 573 (1972), with *Paul* v. *Davis*, 424 U. S. 693, 711–712 (1976); see *PruneYard Shopping Center* v. *Robins*, 447 U. S. 74, 93–94 (1980) (Marshall, J., concurring); *Martinez* v. *California,* 444 U. S. 277, 281–282 (1980); *Munn* v. *Illinois,* 94 U. S. 113, 134 (1877). But given the state tort remedy, we need not conduct that inquiry in this case.

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For these reasons, I concur in the judgment of the Court holding that the dismissal of petitioner Albright's complaint was proper.