SUPREME COURT OF THE UNITED STATES

No. 93–644

HONDA MOTOR CO., LTD., ET AL., PETITIONERS *v.* KARL L. OBERG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON

[June 24, 1994]

JUSTICE STEVENS delivered the opinion of the Court.

An amendment to the Oregon Constitution prohibits judicial review of the amount of punitive damages awarded by a jury "unless the court can affirmatively say there is no evidence to support the verdict." The question presented is whether that prohibition is consistent with the Due Process Clause of the Fourteenth Amendment. We hold that it is not.

Petitioner manufactured and sold the three-wheeled all-terrain vehicle that overturned while respondent was driving it, causing him severe and permanent injuries. Respondent brought suit alleging that petitioner knew or should have known that the vehicle had an inherently and unreasonably dangerous design. The jury found petitioner liable and awarded respondent $919,390.39 in compensatory damages and punitive damages of $5,000,000. The compensatory damages, however, were reduced by 20% to $735,512.31, because respondent's own negligence contributed to the accident. On appeal, relying on our then recent decision in *Pacific Mut. Life Ins. Co.* v. *Haslip,* 499 U. S. 1 (1991), petitioner argued that the award of punitive damages violated the Due Process Clause of the Fourteenth Amendment, because the punitive

damages were excessive and because Oregon courts lacked the power to correct excessive verdicts.

The Oregon Court of Appeals affirmed, as did the Oregon Supreme Court. The latter court relied heavily on the fact that the Oregon statute governing the award of punitive damages in product liability actions and the jury instructions in this case[1] contain substantive criteria that provide at least as much guidance to the factfinders as the Alabama statute and jury instructions that we upheld in *Haslip.* The Oregon Supreme Court also noted that Oregon law provides an additional protection by requiring the plaintiff to prove entitlement to punitive damages by clear and convincing evidence rather than a mere preponderance. Recognizing that other state courts had interpreted *Haslip* as including a "clear constitutional mandate for meaningful judicial

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[1]The jury instructions, in relevant part, read: "`Punitive damages may be awarded to the plaintiff in addition to general damages to punish wrongdoers and to discourage wanton misconduct. In order for plaintiff to recover punitive damages against the defendant[s], the plaintiff must prove by clear and convincing evidence that defendant[s have] shown wanton disregard for the health, safety, and welfare of others. . . . If you decide this issue against the defendant[s], you may award punitive damages, although you are not required to do so, because punitive damages are discretionary. In the exercise of that discretion, you shall consider evidence, if any, of the following: First, the likelihood at the time of the sale [of the three-wheeled vehicle] that serious harm would arise from defendants' misconduct. Number two, the degree of the defendants' awareness of that likelihood. Number three, the duration of the misconduct. Number four, the attitude and conduct of the defendant[s] upon notice of the alleged condition of the vehicle. Number five, the financial condition of the defendant[s]. And the amount of punitive damages may not exceed the sum of $5 million." 316 Ore. 263, 282, n. 11, 851 P. 2d 1084, 1095, n. 11 (1993).

scrutiny of punitive damage awards," *Adams* v. *Murakami*, 54 Cal. 3d 105, 813 P. 2d 1348, 1356 (1991); see also *Alexander & Alexander, Inc.* v. *Evander B. Dixon & Assocs., Inc.,* 88 Md. App. 672, 596 A. 2d 687 (1991), the Court nevertheless declined to "interpret *Haslip* to hold that an award of punitive damages, to comport with the requirements of the Due Process Clause, always must be subject to a form of post-verdict or appellate review that includes the possibility of remittitur." 316 Ore. 263, 284, 851 P. 2d 1084, 1096 (1993). It also noted that trial and appellate courts were "not entirely powerless" because a judgment may be vacated if "there is no evidence to support the jury's decision," and because "appellate review is available to test the sufficiency of the jury instructions." *Id.*, at 285, 851 P. 2d, at 1096–1097.

We granted certiorari, 510 U. S. ___ (1994), to consider whether Oregon's limited judicial review of the size of punitive damage awards is consistent with our decision in *Haslip*.

Our recent cases have recognized that the Constitution imposes a substantive limit on the size of punitive damage awards. *Pacific Mut. Life Ins. Co.* v. *Haslip,* 499 U. S. 1 (1991); *TXO Production Corp.* v. *Alliance Resources, Corp.,* 509 U. S. ___ (1993). Although they fail to "draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable," *id.,* at ___ (slip op., at 13); *Haslip*, 499 U. S., at 18, a majority of the Justices agreed that the Due Process Clause imposes a limit on punitive damage awards. A plurality in *TXO* assented to the proposition that "grossly excessive" punitive damages would violate due process, 509 U. S., at ___ (slip op., at 5–7), while JUSTICE O'CONNOR, who dissented because she favored more rigorous standards, noted that "it is thus common ground that

an award may be so excessive as to violate due process." *Id*., at ___ (slip op. at 8). In the case before us today we are not directly concerned with the character of the standard that will identify unconstitutionally excessive awards; rather we are confronted with the question of what procedures are necessary to ensure that punitive damages are not imposed in an arbitrary manner. More specifically, the question is whether the Due Process Clause requires judicial review of the amount of punitive damage awards.

The opinions in both *Haslip* and *TXO* strongly emphasized the importance of the procedural component of the Due Process Clause. In *Haslip*, the Court held that the common law method of assessing punitive damages did not violate procedural due process. In so holding, the Court stressed the availability of both "meaningful and adequate review by the trial court" and subsequent appellate review. 499 U. S., at 20. Similarly, in *TXO*, the plurality opinion found that the fact that the "award was reviewed and upheld by the trial judge" and unanimously affirmed on appeal gave rise "to a strong presumption of validity." 509 U. S., at ___ (slip op., at 12). Concurring in the judgment, JUSTICE SCALIA (joined by JUSTICE THOMAS) considered it sufficient that traditional common law procedures were followed. In particular, he noted that "`procedural due process' requires judicial review of punitive damages awards for reasonableness . . . ." *Id*., at ___ (slip op., at 2).

All of those opinions suggest that our analysis in this case should focus on Oregon's departure from traditional procedures. We therefore first contrast the relevant common law practice with Oregon's procedure, which that State's Supreme Court once described as "a system of trial by jury in which the judge is reduced to the status of a mere monitor." *Van Lom* v. *Schneiderman*, 187 Ore. 89, 113, 210 P. 2d 461, 471 (1949). We then examine the constitutional implications of Oregon's deviation from

established common law procedures.

Judicial review of the size of punitive damage awards has been a safeguard against excessive verdicts for as long as punitive damages have been awarded. One of the earliest reported cases involving exemplary damages, *Huckle* v. *Money*, 2 Wils. 205, 95 Eng. Rep. 768 (C. P. 1763), arose out of King George III's attempt to punish the publishers of the allegedly seditious *North Briton,* No. 45. The King's agents arrested the plaintiff, a journeyman printer, in his home and detained him for six hours. Although the defendants treated the plaintiff rather well, feeding him "beef-steaks and beer, so that he suffered very little or no damages," 2 Wils., at 205, 95 Eng. Rep., at 768, the jury awarded him £300, an enormous sum almost three hundred times the plaintiff's weekly wage. The defendant's lawyer requested a new trial, arguing that the jury's award was excessive. Plaintiff's counsel, on the other hand, argued that "in cases of tort . . . the Court will never interpose in setting aside verdicts for excessive damages." *Id*., at 206, 95 Eng. Rep., at 768. While the court denied the motion for new trial, the Chief Justice explicitly rejected plaintiff's absolute rule against review of damages amounts. Instead, he noted that when the damages are "outrageous" and "all mankind at first blush must think so," a court may grant a new trial "for excessive damages." *Id*., at, 207, 95 Eng. Rep., at 769. In accord with his view that the amount of an award was relevant to the motion for a new trial, the Chief Justice noted that "[u]pon the whole, I am of opinion the damages are not excessive." *Ibid.*

Subsequent English cases, while generally deferring to the jury's determination of damages, steadfastly upheld the court's power to order new trials solely on the basis that the damages were too high. *Fabrigas* v. *Mostyn*, 2 Black. W. 929, 96 Eng. Rep. 549 (C.P.

1773) (Damages "may be so monstrous and excessive, as to be in themselves an evidence of passion or partiality in the jury");[2] *Sharpe* v. *Brice*, 2 Black. W. 942, 96 Eng. Rep. 557 (C. P. 1774) ("It has never been laid down, that the Court will not grant a new trial for excessive damages in any cases of tort"); *Leith* v. *Pope*, 2 Black. W. 1327, 1328, 96 Eng. Rep. 777, 778 (C. P. 1779) ("[I]n cases of tort the Court will not interpose on account of the largeness of damages, unless they are so flagrantly excessive as to afford an internal evidence of the prejudice and partiality of the jury"); *Jones* v. *Sparrow*, 5 T. R. 257, 101 Eng. Rep 144 (K. B. 1793) (new trial granted for excessive damages); *Goldsmith* v. *Lord Sefton*, 3 Anst. 808, 145 Eng. Rep. 1046 (Exch. 1796) (same); *Hewlett* v. *Cruchley*, 5 Taunt. 277, 281, 128 Eng. Rep. 696, 698 (C. P. 1813) ("[I]t is now well acknowledged in all the Courts of *Westminster-hall,* that whether in actions for criminal conversation, malicious prosecutions, words, or any other matter, if the damages are clearly too large, the Courts will send the inquiry to another jury").

Respondent calls to our attention the case of *Beardmore* v. *Carrington*, 2 Wils. 244, 95 Eng. Rep. 790 (C. P. 1764) in which the court asserted that "there is not one single case, (that is law), in all the books to be found, where the Court has granted a new trial for excessive damages in actions for torts."

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[2]As in many early cases, it is unclear whether this case specifically concerns punitive damages or merely ordinary compensatory damages. Since there is no suggestion that different standards of judicial review were applied for punitive and compensatory damages before the twentieth century, no effort has been made to separate out the two classes of case. See Brief for Legal Historians Daniel R. Coquillette et al. as *Amici Curiae* 2, 3, 6–7, 15 (discussing together "punitive damages, personal injury, and other cases involving difficult-to-quantify damages").

Id., at 249, 95 Eng. Rep., at 793. Respondent would infer from that statement that 18th-century common law did not provide for judicial review of damages. Respondent's argument overlooks several crucial facts. First, the *Beardmore* case antedates all but one of the cases cited in the previous paragraph. Even if respondent's interpretation of the case were correct, it would be an interpretation the English courts rejected soon thereafter. Second, *Beardmore* itself cites at least one case which it concedes granted a new trial for excessive damages, *Chambers* v. *Robinson*, 2 Str. 691, 93 Eng. Rep. 787 (K. B. 1726), although it characterizes the case as wrongly decided. Third, to say that "there is not one single case . . . in all the books" is to say very little, because then, much more so than now, only a small proportion of decided cases was reported. For example, for 1764, the year *Beardmore* was decided, only 16 Common Pleas cases are recorded in the standard reporter. 2 Wils. 208–257, 95 Eng. Rep. 769–797. Finally, the inference respondent would draw, that 18th-century English common law did not permit a judge to order new trials for excessive damages, is explicitly rejected by *Beardmore* itself, which cautioned against that very inference: "We desire to be understood that this Court does not say, or lay down any rule that there never can happen a case of such excessive damages in tort where the Court may not grant a new trial." 2 Wils., at 250, 95 Eng. Rep., at 793.

Common law courts in the United States followed their English predecessors in providing judicial review of the size of damage awards. They too emphasized the deference ordinarily afforded jury verdicts, but they recognized that juries sometimes awarded damages so high as to require correction. Thus, in 1822, Justice Story, sitting as Circuit Justice, ordered a new trial unless the plaintiff agreed to a reduction

in his damages.[3] In explaining his ruling, he noted:

> "As to the question of excessive damages, I agree, that the court may grant a new trial for excessive damages. . . . It is indeed an exercise of discretion full of delicacy and difficulty. But if it should clearly appear that the jury have committed a gross error, or have acted from improper motives, or have given damages excessive in relation to the person or the injury, it is as much the duty of the court to interfere, to prevent the wrong, as in any other case." *Blunt* v. *Little*, 3 F. Cas. 760, 761–762 (CC Mass. 1822)

See also *Whipple* v. *Cumberland Mfg. Co.*, 29 F. Cas. 934, 937–938 (CC Me. 1843).

In the 19th century, both before and after the ratification of the Fourteenth Amendment, many American courts reviewed damages for "partiality" or "passion and prejudice." Nevertheless, because of the difficulty of probing juror reasoning, passion and prejudice review was, in fact, review of the amount of awards. Judges would infer passion, prejudice, or partiality from the size of the award.[4] *Coffin* v. *Coffin*,

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[3]While Justice Story's grant of a new trial was clearly in accord with established common law procedure, the remittitur—withdrawal of new trial if the plaintiff agreed to a specific reduction of damages—may have been an innovation. See *Dimick* v. *Schiedt*, 293 U. S. 474, 482–485 (1935). On the other hand, remittitur may have a better historical pedigree than previously thought. See *King* v. *Watson*, 2 T. R. 199–200, 100 Eng. Rep. 108 (K. B. 1788) ("[O]n a motion in the Common Pleas to set aside the verdict for excessive damages . . . the Court recommended a compromise, and on *Hurry's* agreeing to accept 1500 [pounds] they discharged the rule").

[4]This aspect of passion and prejudice review has been recognized in many opinions of this Court. *Industries of Vt., Inc.* v. *Kelco Disposal, Inc., Browning-Ferris,* 257, 492 U. S. 272 (1989); *Pacific Mut. Life Ins. Co.* v. *Haslip,* 499

4 Mass. 1, 41 (1808) (In cases of personal injury, "a verdict may be set aside for excessive damages" when "from the exorbitancy of them the court must conclude that the jury acted from passion, partiality, or corruption"); *Taylor* v. *Giger*, 3 Ky. 586, 587 (1808) ("In actions of tort . . . a new trial ought not to be granted for excessiveness of damages, unless the damages found are so enormous as to shew that the jury were under some improper influence, or were led astray by the violence of prejudice or passion"); *McConnell* v. *Hampton*, 12 Johns. 234, 235 (N. Y. 1815) (granting new trial for excessive damages and noting: "That Courts have a legal right to grant new trials, for excessive damages in actions for *tort*, is no where denied. . . ."); *Belknap* v. *Boston & Maine R. Co.*, 49 N. H. 358, 374 (1870) (setting aside both compensatory and punitive damages, because "[w]e think it evident that the jury were affected by some partiality or prejudice . . .").

Nineteenth century treatises similarly recognized judges' authority to award new trials on the basis of the size of damage awards. 1 D. Graham, A Treatise on the Law of New Trials 442 (2d ed. 1855) ("[E]ven in personal torts, where the jury find *outrageous damages*, clearly evincing partiality, prejudice and passion, the court will interfere for the relief of the defendant, and order a new trial"); T. Sedgwick, A Treatise on the Measure of Damages 707 (5th ed. 1869) ("The court again holds itself at liberty to set aside verdicts and grant new trials . . . whenever the damages are so excessive as to create the belief that the jury have been misled either by passion, prejudice, or ignorance"); 3 J. Sutherland, A Treatise on the Law of Damages 469 (1883) (When punitive

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U. S. 1, 21, n. 10 (1991); *id.*, at 27 (SCALIA, J., concurring); *TXO Production Corp.* v. *Alliance Resources Corp.,* 509 U. S. ___, ___ (1993) (slip op., at 1) (KENNEDY, J., concurring); *id.*, ___ (slip. op., at 3–7) (O'CONNOR, J., dissenting).

damages are submitted to the jury, "the amount which they may think proper to allow will be accepted by the court, unless so exorbitant as to indicate that they have been influenced by passion, prejudice or a perverted judgment").

Modern practice is consistent with these earlier authorities. In the federal courts and in every State, except Oregon, judges review the size of damage awards. See *Dagnello* v. *Long Island R. Co.*, 289 F. 2d 797, 799–800 n. 1 (CA2 1961) (citing cases from all 50 States except Alaska, Maryland, and Oregon); *Nome* v. *Ailak*, 570 P. 2d 162, 173–174 (Alaska 1977); *Alexander & Alexander, Inc.* v. *B. Dixon Evander & Assocs., Inc.*, 88 Md. App. 596 A. 2d 687, 709–711 672, 716–722, (1991), cert. denied, 605 A.2d 137 (Md. 1992); *Texaco, Inc.* v. *Pennzoil, Co.*, 729 S. W. 2d 768 (Tex. App. 1987); *Grimshaw* v. *Ford Motor Co.*, 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (1981); Draper, Excessiveness or Inadequacy of Punitive Damages Awarded in Personal Injury or Death Cases, 12 A. L. R. 5th 195 (1993); Schapper, Judges Against Juries—Appellate Review of Federal Civil Jury Verdicts, 1989 Wis. L. Rev. 237.

There is a dramatic difference between the judicial review of punitive damages awards under the common law and the scope of review available in Oregon. An Oregon trial judge, or an Oregon Appellate Court, may order a new trial if the jury was not properly instructed, if error occurred during the trial, or if there is no evidence to support any punitive damages at all. But if the defendant's only basis for relief is the *amount* of punitive damages the jury awarded, Oregon provides no procedure for reducing or setting aside that award. This has been the law in Oregon at least since 1949 when the State Supreme Court announced its opinion in *Van Lom* v. *Schneiderman*, 187 Ore. 89, 210 P. 2d 461 (1949),

definitively construing the 1910 Amendment to the Oregon Constitution.[5]

In that case the court held that it had no power to reduce or set aside an award of both compensatory and punitive damages that was admittedly excessive.[6] It recognized that the constitutional amendment placing a limitation on its power was a departure from the traditional common law approach.[7] That opinion's characterization of

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[5]The amended Article VII, §3, of the Oregon Constitution provides: "In actions at law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this State, unless the court can affirmatively say there is no evidence to support the verdict."

[6]"The court is of the opinion that the verdict of $10,000.00 is excessive. Some members of the court think that only the award of punitive damages is excessive; others that both the awards of compensatory and punitive damages are excessive. Since a majority are of the opinion that this court has no power to disturb the verdict, it is not deemed necessary to discuss the grounds for these divergent views." *Van Lom* v. *Schneiderman*, 187 Ore. 89, 93, 210 P. 2d 461, 462 (1949).

[7]"The guaranty of the right to jury trial in suits at common law, incorporated in the Bill of Rights as one of the first ten amendments of the Constitution of the United States, was interpreted by the Supreme Court of the United States to refer to jury trial as it had been theretofore known in England; and so it is that the federal judges, like the English judges, have always exercised the prerogative of granting a new trial when the verdict was clearly against the weight of the evidence, whether it be because excessive damages were awarded or for any other reason. The state courts were conceded similar powers. . . . [U]p to 1910, when the people adopted Art. VII, § 3, of our Constitution, there was no state in the union, so far as we

Oregon's "lonely eminence" in this regard, *id.*, at 113, 210 P. 2d, at 471, is still an accurate portrayal of its unique position. Every other State in the Union affords post-verdict judicial review of the amount of a punitive damages award, see *supra,* at 10, and subsequent decisions have reaffirmed Oregon judges' lack of authority to order new trials or other relief to remedy excessive damages. *Fowler* v. *Courtemanche*, 202 Ore. 413, 448, 274 P. 2d 258, 275 (1954) ("If this court were authorized to exercise its common law powers, we would unhesitatingly hold that the award of $35,000 as punitive damages was excessive . . ."); *Tenold* v. *Weyerhaeuser Co.*, 127 Ore. App. 511 (1993) (Oregon court cannot examine jury award to ensure compliance with $500,000 statutory limit on noneconomic damages).

Respondent argues that Oregon's procedures do not deviate from common law practice, because Oregon judges have the power to examine the size of the award to determine whether the jury was influenced by passion and prejudice. This is simply incorrect. The earliest Oregon cases interpreting the 1910 amendment squarely held that Oregon courts lack precisely that power. *Timmins* v. *Hale*, 122 Ore. 22, 43–44, 256 P. 770, 776 (1927); *McCulley* v. *Homestead Bakery, Inc.,* 141 Ore. 460, 465–466, 18 P. 2d 226, 228 (1933). Although dicta in later cases have suggested that the issue might eventually be revisited, see *Van Lom*, 187 Ore., at 106, 210 P. 2d, at 468, the earlier holdings remain Oregon law. No Oregon court for more than half a century has inferred passion and prejudice from the size of a damages award, and no court in more than a decade has even hinted that courts might possess the power to do so.[8] Finally, if Oregon courts could evaluate the

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are advised, where this method of control of the jury did not prevail." *Id.,* at 112–113, 210 P. 2d, at 471.

[8]The last reported decision to suggest that a new trial

excessiveness of punitive damage awards through passion and prejudice review, the Oregon Supreme Court would have mentioned that power in this very case. Petitioner argued that Oregon procedures were unconstitutional precisely because they failed to provide judicial review of the size of punitive damage awards. The Oregon Supreme Court responded by rejecting the idea that judicial review of the size of punitive damage awards was required by *Haslip*. 316 Ore., at 263, 851 P. 2d, at 1084. As the Court noted, two state appellate courts, including the California Supreme Court, had reached the opposite conclusion. *Id.*, at 1096, n. 13. If, as respondent claims, Oregon law provides passion and prejudice review of excessive verdicts, the Oregon Supreme Court would have had a more obvious response to petitioner's argument.

Respondent also argues that Oregon provides adequate review, because the trial judge can overturn a punitive damage award if there is no substantial evidence to support an award of punitive damages. See *Fowler* v. *Courtemanche*, 202 Ore. 413, 274 P. 2d 258, 275 (1954). This argument is unconvincing, because the review provided by Oregon courts ensures only that there is evidence to support *some* punitive damages, not that there is evidence to support the amount actually awarded. While

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might be ordered because the size of the award suggested passion and prejudice was *Trenery* v. *Score*, 45 Ore. App. 611, 615, 609 P. 2d 388, 389 (1980) (noting that "it is doubtful" that passion and prejudice review continues to be available); see also *Foley* v. *Pittenger*, 264 Ore. 310, 503 P. 2d 476 (1972). More recent decisions suggest that the type of passion and prejudice review envisioned by the common law and former Ore. Rev. Stat. §17.610 (repealed by 1979 Ore. Laws, ch. 284, §199) is no longer available. See *Tenold* v. *Weyerhaeuser Co.*, 127 Ore. App. 511 (1993).

Oregon's judicial review ensures that punitive damages are not awarded against defendants entirely innocent of conduct warranting exemplary damages, Oregon, unlike the common law, provides no assurance that those whose conduct is sanctionable by punitive damages are not subjected to punitive damages of arbitrary amounts. What we are concerned with is the possibility that a guilty defendant may be unjustly punished; evidence of guilt warranting some punishment is not a substitute for evidence providing at least a rational basis for the particular deprivation of property imposed by the State to deter future wrongdoing.

Oregon's abrogation of a well-established common law protection against arbitrary deprivations of property raises a presumption that its procedures violate the Due Process Clause. As this Court has stated from its first Due Process cases, traditional practice provides a touchstone for constitutional analysis. *Murray* v. *Hoboken Land & Improvement Co.*, 18 How. 272 (1856); *Tumey* v. *Ohio*, 273 U. S. 510 (1927); *Brown* v. *Mississippi*, 297 U. S. 278 (1936); *In re Winship*, 397 U. S. 358, 361 (1970); *Burnham* v. *Superior Court of Cal., County of Marin,* 495 U. S. 604 (1990); *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1 (1991). Because the basic procedural protections of the common law have been regarded as so fundamental, very few cases have arisen in which a party has complained of their denial. In fact, most of our Due Process decisions involve arguments that traditional procedures provide too little protection and that additional safeguards are necessary to ensure compliance with the Constitution. *Ownbey* v. *Morgan*, 256 U. S. 94 (1921); *Burnham* v. *Superior Court of Cal., County of Marin,* 495 U. S. 604 (1990); *Pacific Mut. Life Ins.,* v. *Haslip*, 499 U. S. 1 (1991).

Nevertheless, there are a handful of cases in which a party has been deprived of liberty or property without the safeguards of common law procedure. *Hurtado* v. *California*, 110 U. S. 516 (1884); *Tumey* v. *Ohio*, 273 U. S. 510 (1927); *Brown* v. *Mississippi*, 297 U. S. 278 (1936); *In re Oliver*, 333 U. S. 257 (1948); *In re Winship*, 397 U. S., at 361. When the absent procedures would have provided protection against arbitrary and inaccurate adjudication, this Court has not hesitated to find the proceedings violative of Due Process. *Tumey* v. *Ohio*, 273 U. S. 510 (1927); *Brown* v. *Mississippi*, 297 U. S. 278 (1936); *In re Oliver*, 333 U. S. 257 (1948); *In re Winship*, 397 U. S., at 361. Of course, not all deviations from established procedures result in constitutional infirmity. As the Court noted in *Hurtado*, to hold all procedural change unconstitutional "would be to deny every quality of the law but its age, and to render it incapable of progress or improvement." 110 U. S., at 529. A review of the cases, however, suggests that the case before us is unlike those in which abrogations of common law procedures have been upheld.

In *Hurtado*, for example, examination by a neutral magistrate provided criminal defendants with nearly the same protection as the abrogated common law grand jury procedure. 110 U. S., at 538. Oregon, by contrast, has provided no similar substitute for the protection provided by judicial review of the amount awarded by the jury in punitive damages. Similarly, in *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945), this Court upheld the extension of state-court jurisdiction over persons not physically present, in spite of contrary well-established prior practice. That change, however, was necessitated by the growth of a new business entity, the corporation, whose ability to conduct business without physical presence had created new problems not envisioned by rules developed in another era. See *Burnham,* 495 U. S., at 617. In addition, the dramatic improvements in

communication and transportation made litigation in a distant forum less onerous. No similar social changes suggest the need for Oregon's abrogation of judicial review, nor do improvements in technology render unchecked punitive damages any less onerous. If anything, the rise of large, interstate and multinational corporations has aggravated the problem of arbitrary awards and potentially biased juries.[9]

Punitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences. Judicial review of the amount awarded was one of the few procedural safeguards which the common law provided against that danger. Oregon has removed that safeguard without providing any substitute procedure and without any indication that the danger of arbitrary awards has in any way subsided over time. For these reasons, we hold that Oregon's denial of judicial review of the size of punitive damage awards violates the Due Process Clause of the Fourteenth Amendment.[10]

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[9]Respondent cites as support for its argument *Chicago, R. I. & P. R. Co.* v. *Cole*, 251 U. S. 54 (1919) (Holmes, J.). In that case, the Court upheld a provision of the Oklahoma Constitution providing that "`the defense of contributory negligence . . . shall . . . be left to the jury.'" *Chicago, R. I.* provides little support for respondent's case. Justice Holmes' reasoning relied on the fact that a State could completely abolish the defense of contributory negligence. This case, however, is different, because the *TXO* and *Haslip* opinions establish that States cannot abolish limits on the award of punitive damages.

[10]This case does not pose the more difficult question of

Respondent argues that Oregon has provided other safeguards against arbitrary awards and that, in any event, the exercise of this unreviewable power by the jury is consistent with the jury's historic role in our judicial system.

Respondent points to four safeguards provided in the Oregon courts: the limitation of punitive damages to the amount specified in the complaint, the clear and convincing standard of proof, pre-verdict determination of maximum allowable punitive damages, and detailed jury instructions. The first, limitation of punitive damages to the amount specified, is hardly a constraint at all, because there is no limit to the amount the plaintiff can request, and it is unclear whether an award exceeding the amount requested could be set aside. See *Tenold* v. *Weyerhaeuser Co.*, 127 Ore. App. 511 (1993) (Oregon Constitution bars court from examining jury award to ensure compliance with $500,000 statutory limit on noneconomic damages). The second safeguard, the clear and convincing standard of proof, is an important check against unwarranted imposition of punitive damages, but, like the "no substantial evidence" review discussed above, *supra,* at 13, it provides no assurance that those whose conduct is sanctionable by punitive damages are not subjected to punitive

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what standard of review is constitutionally required. Although courts adopting a more deferential approach use different verbal formulations, there may not be much practical difference between review which focuses on "passion and prejudice," "gross excessiveness," or whether the verdict was "against the great weight of the evidence." All of these may be rough equivalents of the standard this Court articulated in *Jackson* v. *Virginia*, 443 U. S. 307, 324 (1979) (whether "no rational trier of fact could have" reached the same verdict).

damages of arbitrary amounts. Regarding the third purported constraint, respondent cites no cases to support the idea that Oregon courts do or can set maximum punitive damage awards in advance of the verdict. Nor are we aware of any court which implements that procedure. Respondent's final safeguard, proper jury instruction, is a well-established and, of course, important check against excessive awards. The problem that concerns us, however, is the possibility that a jury will not follow those instructions and may return a lawless, biased, or arbitrary verdict.[11]

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[11]Respondent also argues that empirical evidence supports the effectiveness of these safeguards. It points to the analysis of an *amicus* showing that the average punitive damage award in a products liability case in Oregon is less than the national average. Brief for Trial Lawyers for Public Justice as *Amicus Curiae*. While we welcome respondent's introduction of empirical evidence on the effectiveness of Oregon's legal rules, its statistics are undermined by the fact that the Oregon average is computed from only two punitive damage awards. It is well known that one cannot draw valid statistical inferences from such a small number of observations.

Empirical evidence, in fact, supports the importance of judicial review of the size of punitive damage awards. The most exhaustive study of punitive damages establishes that over half of punitive damage awards were appealed, and that more than half of those appealed resulted in reductions or reversals of the punitive damages. In over 10 percent of the cases appealed, the judge found the damages to be excessive. Rustad, In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data, 78 Iowa L. Rev. 1, 57 (1992). The above statistics understate the importance of judicial review, because they consider only appellate review, rather than review by the trial court, which may be even more significant, and because they ignore the

In support of his argument that there is a historic basis for making the jury the final arbiter of the amount of punitive damages, respondent calls our attention to early civil and criminal cases in which the jury was allowed to judge the law as well as the facts. See *Johnson* v. *Louisiana*, 406 U. S. 356, 374, n. 11 (1972) (Powell, J., concurring). As we have already explained, in civil cases, the jury's discretion to determine the amount of damages was constrained by judicial review.[12] The criminal cases do establish—as does our practice today—that a jury's arbitrary decision to acquit a defendant charged with a crime is completely unreviewable. There is, however, a vast difference between arbitrary grants of freedom and arbitrary deprivations of liberty or property. The Due Process Clause has nothing to say about the

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fact that plaintiffs often settle for less than the amount awarded because they fear appellate reduction of damages. See *ibid*.

[12]Judicial deference to jury verdicts may have been stronger in 18th century America than in England, and judges' power to order new trials for excessive damages more contested. See Nelson, The Eighteenth-Century Background of John Marshall's Constitutional Jurisprudence, 76 Mich. L. Rev. 893, 904–917 (1978); M. Horwitz, The Transformation of American Law, 1780–1860, p. 142 (1977). Nevertheless, because this case concerns the Due Process Clause of the Fourteenth Amendment, 19th century American practice is the "crucial time for present purposes." *Burnham* v. *Superior Court of Cal., County of Marin,* 495 U. S. 604, 611 (1990). As demonstrated above, *supra,* at 7–10, by the time the Fourteenth Amendment was ratified in 1868, the power of judges to order new trials for excessive damages was well established in American courts. In addition, the idea that jurors can find law as well as fact is not inconsistent with judicial review for excessive damages. See *Coffin* v. *Coffin*, 4 Mass. 1, 25, 41 (1808).

former, but its whole purpose is to prevent the latter. A decision to punish a tortfeasor by means of an exaction of exemplary damages is an exercise of state power that must comply with the Due Process Clause of the Fourteenth Amendment. The common law practice, the procedures applied by every other State, the strong presumption favoring judicial review that we have applied in other areas of the law, and elementary considerations of justice, all support the conclusion that such a decision should not be committed to the unreviewable discretion of a jury.

The judgment is reversed, and the case is remanded to the Oregon Supreme Court for further proceedings not inconsistent with this opinion.

It is so ordered.