**United States Supreme Court**

**PACIFIC MUTUAL LIFE INSURANCE CO. v. HASLIP(1991)**

**No. 89-1279**

**Argued: October 3, 1990Decided: March 4, 1991**

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C.J. and WHITE, MARSHALL, and STEVENS, JJ., joined. SCALIA, J., post, p. 24, and KENNEDY, J., post, p. 40 filed opinions concurring in the judgment. O'CONNOR, J., filed a dissenting opinion, post, p. 42. SOUTER, J., took no part in the consideration or decision of the case. [499 U.S. 1, 3]

Justice BLACKMUN delivered the opinion of the Court.

This case is yet another that presents a challenge to a punitive damages award.

**I**

In 1981, Lemmie L. Ruffin, Jr., was an Alabama-licensed agent for petitioner Pacific Mutual Life Insurance Company. He also was a licensed agent for Union Fidelity Life Insurance Company. Pacific Mutual and Union are distinct and nonaffiliated entities. Union wrote group health insurance for municipalities. Pacific Mutual did not.

Respondents Cleopatra Haslip, Cynthia Craig, Alma M. Calhoun, and Eddie Hargrove were employees of Roosevelt City, an Alabama municipality. Ruffin, presenting himself as an agent of Pacific Mutual, solicited the city for both health and life insurance for its employees. The city was interested. Ruffin gave the city a single proposal for both coverages. The city approved and, in August, 1981, Ruffin prepared separate applications for the city and its employees for group health with Union and for individual life policies with Pacific Mutual. This packaging of health insurance with life [499 U.S. 1, 5]   insurance, although from different and unrelated insurers, was not unusual. Indeed, it tended to boost life insurance sales by minimizing the loss of customers who wished to have both health and life protection. The initial premium payments were taken by Ruffin and submitted to the insurers with the applications. Thus far, nothing is claimed to have been out of line. Respondents were among those with the health coverage.

An arrangement was made for Union to send its billings for health premiums to Ruffin at Pacific Mutual's Birmingham office. Premium payments were to be effected through payroll deductions. The city clerk each month issued a check for those premiums. The check was sent to Ruffin or picked up by him. He, however, did not remit to Union the premium payments received from the city; instead, he misappropriated most of them. In late 1981, when Union did not receive payment, it sent notices of lapsed health coverage to respondents in care of Ruffin and Patrick Lupia, Pacific Mutual's agent-in-charge of its Birmingham office. Those notices were not forwarded to respondents. Although there is some evidence to the contrary, see Reply Brief for Petitioner B1-B4, the trial court found, App. to Pet. for Cert. A2, that respondents did not know that their health policies had been canceled.

**II**

Respondent Haslip was hospitalized on January 23, 1982. She incurred hospital and physician's charges. Because the hospital could not confirm health coverage, it required Haslip, upon her discharge, to make a payment upon her bill. Her physician, when he was not paid, placed her account with a collection agency. The agency obtained a judgment against Haslip and her credit was adversely affected.

In May, 1982, respondents filed this suit, naming as defendants Pacific Mutual (but not Union) and Ruffin, individually and as a proprietorship, in the Circuit Court for Jefferson [499 U.S. 1, 6]   County, Ala. It was alleged that Ruffin collected premiums but failed to remit them to the insurers, so that respondents' respective health insurance policies lapsed without their knowledge. Damages for fraud were claimed. The case against Pacific Mutual was submitted to the jury under a theory of respondeat superior.

Following the trial court's charge on liability, the jury was instructed that, if it determined there was liability for fraud, it could award punitive damages. That part of the instructions is set forth in the margin. [1](https://caselaw.findlaw.com/us-supreme-court/499/1.html" \l "f1) Pacific Mutual made no objection on the ground of lack of specificity in the instructions, and it did not propose a more particularized charge. No evidence was introduced as to Pacific Mutual's financial worth. The jury returned general verdicts for respondents against Pacific Mutual and Ruffin in the following amounts: [499 U.S. 1, 7]

Haslip: $1,040,000 [2](https://caselaw.findlaw.com/us-supreme-court/499/1.html" \l "f2) Calhoun: 15,290 Craig: 12,400 Hargrove: 10,288

Judgments were entered accordingly.

On Pacific Mutual's appeal, the Supreme Court of Alabama, by a divided vote, affirmed. 553 So.2d 537 (1989). In addition to issues not now before us, the court ruled that, while punitive damages are not recoverable in Alabama for misrepresentation made innocently or by mistake, they are recoverable for deceit or willful fraud, and that, on the evidence in this case, a jury could not have concluded that Ruffin's misrepresentations were made either innocently or mistakenly. Id., at 540. The majority then specifically upheld the punitive damages award. Id., at 543.

One Justice concurred in the result without opinion. [3](https://caselaw.findlaw.com/us-supreme-court/499/1.html" \l "f3) Ibid. Two Justices dissented in part on the ground that the award of punitive damages violated Pacific Mutual's due process rights under the Fourteenth Amendment. Id., at 544-545.

Pacific Mutual, but not Ruffin, then brought the case here. It challenged punitive damages in Alabama as the product of unbridled jury discretion and as violative of its due process rights. We stayed enforcement of the Haslip judgment, 493 U.S. 1014 (1990), and then granted certiorari, 494 U.S. 1065   [499 U.S. 1, 8]   (1990), to review the punitive damages procedures and award in the light of the long-enduring debate about their propriety. [4](https://caselaw.findlaw.com/us-supreme-court/499/1.html" \l "f4)   [499 U.S. 1, 9]

**III**

This Court and individual Justices thereof on a number of occasions in recent years have expressed doubts about the constitutionality of certain punitive damages awards.

. . ..

The constitutional status of punitive damages, therefore, is not an issue that is new to this Court or unanticipated by it. Challenges have been raised before; for stated reasons, they have been rejected or deferred. For example, in Browning-Ferris, supra, we rejected the claim that punitive damages awarded in a civil case could violate the Eighth Amendment, and refused to consider the tardily raised due process argument. But the Fourteenth Amendment due process challenge is here once again.

**IV**

Two preliminary and overlapping due process arguments raised by Pacific Mutual deserve attention before we reach the principal issue in controversy. Did Ruffin act within the scope of his apparent authority as an agent of Pacific Mutual? If so, may Pacific Mutual be held responsible for Ruffin's fraud on a theory of respondeat superior?

Pacific Mutual was held responsible for the acts of Ruffin. . . .

We therefore readily conclude that Ruffin was acting as an employee of Pacific Mutual when he defrauded respondents, and that imposing liability upon Pacific Mutual for Ruffin's fraud under the doctrine of respondeat superior does not, on the facts here, violate Pacific Mutual's due process rights.

**V**

"Punitive damages have long been a part of traditional state tort law." Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 255 (1984). Blackstone appears to have noted their use. 3 W. Blackstone, Commentaries \*137-\*138. See also Wilkes v. Wood, 98 Eng.Rep. 489 (C.P. 1763. . . Under the traditional common law approach, the amount of the punitive award is initially determined by a jury instructed to consider the gravity of the wrong and the need to deter similar wrongful conduct. The jury's determination is then reviewed by trial and appellate courts to ensure that it is reasonable.

This Court more than once has approved the common law method for assessing punitive awards. . . .

So far as we have been able to determine, every state and federal court that has considered the question has ruled that the common law method for assessing punitive damages does not in itself violate due process. But see New Orleans, J. & G.N.R. Co. v. Hurst, 36 Miss. 660 (1859). In view of this consistent history, we cannot say that the common law method for assessing punitive damages is so inherently unfair as to deny due process and be per se unconstitutional. "`If a thing has been practised for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it.'" Sun Oil Co. v. Wortman, 486 U.S. 717, 730 (1988), quoting Jackman v. Rosenbaum Co., 260 U.S. 22, 31 (1922). As the Court in Day v. Woodworth made clear, the common law method for assessing punitive damages was well established before the Fourteenth Amendment was enacted. Nothing in that Amendment's [499 U.S. 1, 18]   text or history indicates an intention on the part of its drafters to overturn the prevailing method. See Burnham v. Superior Court of Cal., County of Marin, 495 U.S. 604 (1990); Snyder v. Massachusetts, 291 U.S. 97, 111 (1934) ("The Fourteenth Amendment has not displaced the procedure of the ages."). [7](https://caselaw.findlaw.com/us-supreme-court/499/1.html#f7)

This, however, is not the end of the matter. It would be just as inappropriate to say that, because punitive damages have been recognized for so long, their imposition is never unconstitutional. See Williams v. Illinois, 399 U.S. 235, 239 (1970) ("[N]either the antiquity of a practice nor the fact of steadfast legislative and judicial adherence to it through the centuries insulates it from constitutional attack. . . ."). We note once again our concern about punitive damages that "run wild." Having said that, we conclude that our task today is to determine whether the Due Process Clause renders the punitive damages award in this case constitutionally unacceptable.

**VI**

One must concede that unlimited jury discretion - or unlimited judicial discretion for that matter - in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities. See Waters-Pierce Oil Co. v. Texas (No. 1), 212 U.S. 86, 111 (1909). [8](https://caselaw.findlaw.com/us-supreme-court/499/1.html#f8) We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus. With these concerns in mind, we [499 U.S. 1, 19]   review the constitutionality of the punitive damages awarded in this case.

We conclude that the punitive damages assessed by the jury against Pacific Mutual were not violative of the Due Process Clause of the Fourteenth Amendment. It is true, of course, that under Alabama law, as under the law of most States, punitive damages are imposed for purposes of retribution and deterrence. Aetna Life Ins. Co. v. Lavoie, 470 So.2d 1060, 1076 (Ala. 1984). They have been described as quasi-criminal. See Smith v. Wade, 461 U.S. 30, 59 (1983) (REHNQUIST, J., dissenting). But this in itself does not provide the answer. We move, then, to the points of specific attack.

1. We have carefully reviewed the instructions to the jury

These instructions, we believe, reasonably accommodated Pacific Mutual's interest in rational decisionmaking and Alabama's interest in meaningful individualized assessment of appropriate deterrence and retribution. . . .The discretion allowed under Alabama law in determining punitive damages is no greater than that pursued in many familiar areas of the law as, for example, deciding "the best interests of the child," or "reasonable care," or "due diligence," or appropriate compensation for pain and suffering or mental anguish. [9](https://caselaw.findlaw.com/us-supreme-court/499/1.html#f9) As long as the discretion is exercised within reasonable constraints, due process is satisfied. See, e.g., Schall v. Martin, 467 U.S. 253, 279 (1984); Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 16 (1977). See also McGautha v. California, 402 U.S. 183, 207 (1971).

2. Before the trial in this case took place, the Supreme Court of Alabama had established post-trial procedures for scrutinizing punitive awards. In Hammond v. City of Gadsden, 493 So.2d 1374 (1986), it stated that trial courts are "to. . .. The Hammond test ensures meaningful and adequate review by the trial court whenever a jury has fixed the punitive damages.

3. By its review of punitive awards, the Alabama Supreme Court provides an additional check on the jury's or trial [499 U.S. 1, 21]   court's discretion. It first undertakes a comparative analysis. See, e.g., Aetna Life Ins. Co. v. Lavoie, 505 So.2d 1050, 1053 (1987). It then applies the detailed substantive standards it has developed for evaluating punitive awards. [10](https://caselaw.findlaw.com/us-supreme-court/499/1.html#f10) In particular, it makes its review to ensure that the award does "not exceed an amount that will accomplish society's goals of punishment and deterrence." Green Oil Co. v. Hornsby, 539 So.2d 218, 222 (1989); Wilson v. Dukona Corp., 547 So.2d 70, 73 (1989). This appellate review makes certain that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition.

Also before its ruling in the present case, the Supreme Court of Alabama had elaborated and refined the Hammond criteria for determining whether a punitive award is reasonably related to the goals of deterrence and retribution. Hornsby, 539 So.2d, at 223-224; Central Alabama, 546 So.2d, at 376-377. It was announced that the following could be taken into consideration in determining whether the award was excessive or inadequate: (a) whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred; (b) the degree of reprehensibility of the defendant's conduct, the duration of that conduct, the defendant's awareness, any concealment, and the existence and frequency of similar past conduct; [499 U.S. 1, 22]   (c) the profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; (d) the "financial position" of the defendant; (e) all the costs of litigation; (f) the imposition of criminal sanctions on the defendant for its conduct, these to be taken in mitigation; and (g) the existence of other civil awards against the defendant for the same conduct, these also to be taken in mitigation.

The application of these standards, we conclude, imposes a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages. The Alabama Supreme Court's post-verdict review ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages. While punitive damages in Alabama may embrace such factors as the heinousness of the civil wrong, its effect upon the victim, the likelihood of its recurrence, and the extent of defendant's wrongful gain, the factfinder must be guided by more than the defendant's net worth. Alabama plaintiffs do not enjoy a windfall because they have the good fortune to have a defendant with a deep pocket.

These standards have real effect when applied by the Alabama Supreme Court to jury awards. For examples of their application in trial practice, see Hornsby, 539 So.2d, at 219, and Williams v. Ralph Collins Ford-Chrysler, Inc., 551 So.2d 964, 966 (1989). And post-verdict review by the Alabama Supreme Court has resulted in reduction of punitive awards. See, e.g., Wilson v. Dukona Corp., 547 So.2d 70, 74 (1989); United Services Automobile Assn. v. Wade, 544 So.2d 906, 917 (1989). The standards provide for a rational relationship in determining whether a particular award is greater than reasonably necessary to punish and deter. They surely are as specific as those adopted legislatively in Ohio Rev. Code [499 U.S. 1, 23]   Ann. 2307.80(B) (Supp. 1989) and in Mont.Code Ann. 27-1-221 (1989). [11](https://caselaw.findlaw.com/us-supreme-court/499/1.html#f11)

Pacific Mutual thus had the benefit of the full panoply of Alabama's procedural protections. The jury was adequately instructed. The trial court conducted a post-verdict hearing that conformed with Hammond. The trial court specifically found the conduct in question "evidenced intentional malicious, gross, or oppressive fraud," App. to Pet. for Cert. A14, and found the amount of the award to be reasonable in light of the importance of discouraging insurers from similar conduct, id., at A15. Pacific Mutual also received the benefit of appropriate review by the Supreme Court of Alabama. It applied the Hammond standards and approved the verdict thereunder. It brought to bear all relevant factors recited in Hornsby.

We are aware that the punitive damages award in this case is more than 4 times the amount of compensatory damages, is more than 200 times the out-of-pocket expenses of respondent Haslip, see n. 2, supra, and, of course, is much in excess of the fine that could be imposed for insurance fraud under Ala. Code 13A-511 and 13A-5-12(a) (1982), and 27-1-12, 27-12-17, and 27-12-23 (1986). Imprisonment, however, could also be required of an individual in the criminal context. While the monetary comparisons are wide and, indeed, may be close to the line, the award here did not lack objective criteria. We conclude, after careful consideration, [499 U.S. 1, 24]   that in this case it does not cross the line into the area of constitutional impropriety. [12](https://caselaw.findlaw.com/us-supreme-court/499/1.html#f12) Accordingly, Pacific Mutual's due process challenge must be, ad is, rejected.

The judgment of the Supreme Court of Alabama is affirmed.

It is so ordered.

Justice SCALIA, concurring in the judgment.

In Browning-Ferris Industries v. Kelco Disposal, Inc., 492 U.S. 257 (1989), we rejected the argument that the Eighth Amendment limits punitive damages awards, but left for "another day" the question whether "undue jury discretion to award punitive damages" violates the Due Process Clause of the Fourteenth Amendment, id., at 277. That day has come, the due process point has been thoroughly briefed and argued, but the Court chooses to decide only that the jury discretion in the present case was not undue. It says that Alabama's particular procedures (at least as applied here) are not so "unreasonable" as to "cross the line into the area of constitutional impropriety," ante this page. This jury-like verdict provides no guidance as to whether any other procedures are sufficiently "reasonable," and thus perpetuates the uncertainty that our grant of certiorari in this case was intended to resolve. Since it has been the traditional practice of American courts to leave punitive damages (where the evidence satisfies the legal requirements [499 U.S. 1, 25]   for imposing them) to the discretion of the jury; and since in my view a process that accords with such a tradition and does not violate the Bill of Rights necessarily constitutes "due" process; I would approve the procedure challenged here without further inquiry into its "fairness" or "reasonableness." I therefore concur only in the judgment of the Court.

**I**

As the Court notes, punitive or "exemplary" damages have long been a part of Anglo-American law. They have always been controversial. As recently as the mid-19th century, treatise writers sparred over whether they even existed. One respected commentator, Professor Simon Greenleaf, argued that no doctrine of authentically "punitive" damages could be found in the cases; he attempted to explain judgments that ostensibly included punitive damages as, in reality, no more than full compensation. 2 S. Greenleaf, Law of Evidence 235, n. 2 (13th ed. 1876). This view was not widely shared. In his influential treatise on the law of damages, Theodore Sedgwick stated that "the rule" with respect to the "salutary doctrine" of exemplary damages is that "where gross fraud, malice, or oppression appears, the jury are not bound to adhere to the strict line of compensation, but may, by a severer verdict, at once impose a punishment on the defendant and hold up an example to the community." T. Sedgwick, Measure of Damages 522 (4th ed. 1868). The doctrine, Sedgwick noted, "seems settled in England, and in the general jurisprudence of this country," id., at 35. See also G. Field, Law of Damages 66 (1876) ("[The] doctrine [of punitive damages] seems to be sustained by at least a great preponderance of authorities, both in England and this country"); J. Sutherland, Law of Damages 721-722, 726-727, n. 1 (1882) ("The doctrine that [punitive] damages may be allowed for the purpose of example and punishment, in addition to compensation, in certain cases, is held in nearly all the states of the Union and in England." "Since the time of the controversy between Professor [499 U.S. 1, 26]   Greenleaf and Mr. Sedgwick (1847) on this subject, a large majority of the appellate courts in this country have followed the doctrine advocated by Mr. Sedgwick . . ."). In Day v. Woodworth, 13 How. 363, 371 (1852), this Court observed:

"It is a well established principle of the common law, that in actions of trespass and all actions on the case for torts, a jury may inflict what are called exemplary, punitive, or vindictive damages upon a defendant, having in view the enormity of his offence rather than the measure of compensation to the plaintiff. We are aware that the propriety of this doctrine has been questioned by some writers; but, if repeated judicial decisions for more than a century are to be received as the best exposition of what the law is, the question will not admit of argument."

Even fierce opponents of the doctrine acknowledged that it was a firmly established feature of American law. Justice Foster of the New Hampshire Supreme Court, in a lengthy decision disallowing punitive damages, called them "a perversion of language and ideas so ancient and so common as seldom to attract attention," Fay v. Parker, 53 N.H. 342, 343 (1873). The opinion concluded, with more passion than even petitioners in the present case could muster:

"Undoubtedly this pernicious doctrine has become so fixed in the law . . . that it may be difficult to get rid of it. But it is the business of courts to deal with difficulties; and this heresy should be taken in hand without favor, firmly and fearlessly.

". . . [N]ot reluctantly should we apply the knife to this deformity, concerning which every true member of the sound and healthy body of the law may well exclaim - "I have no need of thee." Id., at 397 (internal quotations omitted).

In 1868, therefore, when the Fourteenth Amendment was adopted, punitive damages were undoubtedly an established part of the American common law of torts. It is just as clear [499 U.S. 1, 27]   that no particular procedures were deemed necessary to circumscribe a jury's discretion regarding the award of such damages, or their amount. As this Court noted in Barry v. Edmunds, 116 U.S. 550, 565 (1886), "nothing is better settled than that, in cases such as the present, and other actions for torts where no precise rule of law fixes the recoverable damages, it is the peculiar function of the jury to determine the amount by their verdict." See also Missouri Pacific R. Co. v. Humes, 115 U.S. 512, 521 (1885) ("The discretion of the jury in such cases is not controlled by any very definite rules"). Commentators confirmed that the imposition of punitive damages was not thought to require special procedural safeguards, other than - at most - some review by the trial court. "[I]n cases proper for exemplary damages, it would seem impracticable to set any bounds to the discretion of the jury, though in cases where the wrong done, though with malicious intent, is greatly disproportioned to the amount of the verdict, the court may exercise the power it always possesses to grant a new trial for excessive damages." Sedgwick, supra, at 537-538, n. 1. See also Field, supra, at 65 ("[T]he amount of damages by way of punishment or example, are necessarily largely within the discretion of the jury; the only check . . . being the power of the court to set aside the verdict where it is manifest that the jury were unduly influenced by passion, prejudice, partiality, or corruption, or where it clearly evinces a mistake of the law or the facts of the case"); Sutherland, supra, at 742 ("Whether [punitive damages] shall be allowed, and their amount, are left to the discretion of the jury, but subject to the power of the court to set aside the verdict if it is so excessive that the court may infer that the jury have been influenced by passion or prejudice"). (footnote omitted)).

Although both the majority and the dissenting opinions today concede that the common law system for awarding punitive damages is firmly rooted in our history, both reject the proposition that this is dispositive for due process purposes. [499 U.S. 1, 28]   Ante, at 17-18; post, at 60. I disagree. In my view, it is not for the Members of this Court to decide from time to time whether a process approved by the legal traditions of our people is "due" process, nor do I believe such a rootless analysis to be dictated by our precedents.

**II**

Determining whether common law procedures for awarding punitive damages can deny "due process of law" requires some inquiry into the meaning of that majestic phrase. . . .

We have expended much ink upon the due process implications of punitive damages, and the fact-specific nature of the Court's opinion guarantees that we and other courts will expend much more in the years to come. Since jury-assessed punitive damages are a part of our living tradition that dates [499 U.S. 1, 40]   back prior to 1868, I would end the suspense and categorically affirm their validity.

Justice KENNEDY, concurring in the judgment.

Historical acceptance of legal institutions serves to validate them not because history provides the most convenient rule of decision, but because we have confidence that a long-accepted legal institution would not have survived if it rested upon procedures found to be either irrational or unfair. For this reason, Justice SCALIA's historical approach to questions of procedural due process has much to commend it. I cannot say with the confidence maintained by Justice SCALIA, however, that widespread adherence to a historical practice always forecloses further inquiry when a party challenges an ancient institution or procedure as violative of due process. But I agree that the judgment of history should govern the outcome in the case before us. Jury determination of punitive damages has such long and principled recognition as a central part of our system that no further evidence of its essential fairness or rationality ought to be deemed necessary.

Our legal tradition is one of progress from fiat to rationality. The evolution of the jury illustrates this principle. From the 13th or 14th century onward, the verdict of the jury found gradual acceptance not as a matter of ipse dixit, the basis for verdicts in trials by ordeal which the jury came to displace, but instead because the verdict was based upon rational procedures. See Plucknett, A Concise History of the Common Law 120-131 (5th ed. 1956). Elements of whim and caprice do not predominate when the jury reaches a consensus based upon arguments of counsel, the presentation of evidence, and instructions from the trial judge, subject to review by the trial and appellate courts. There is a principled justification too in the composition of the jury, for its representative character permits its verdicts to express the sense of the community. [499 U.S. 1, 41]

These features of the jury system for assessing punitive damages discourage uniform results, but nonuniformity cannot be equated with constitutional infirmity. As we have said in the capital sentencing context:

"It is not surprising that such collective judgments often are difficult to explain. But the inherent lack of predictability of jury decisions does not justify their condemnation. On the contrary, it is the jury's function to make the difficult and uniquely human judgments that defy codification and that "buil[d] discretion, equity, and flexibility into a legal system." McCleskey v. Kemp, 481 U.S. 279, 311 (1987) (quoting H. Kalven & H. Zeisel, The American Jury 498 (1966)).

This is not to say that every award of punitive damages by a jury will satisfy constitutional norms. A verdict returned by a biased or prejudiced jury no doubt violates due process, and the extreme amount of an award compared to the actual damage inflicted can be some evidence of bias or prejudice in an appropriate case. One must recognize the difficulty of making the showing required to prevail on this theory. In my view, however, it provides firmer guidance and rests on sounder jurisprudential foundations than does the approach [499 U.S. 1, 42]   espoused by the majority. While seeming to approve the common law method for assessing punitive damages, ante, at 17-18, the majority nevertheless undertakes a detailed examination of that method as applied in the case before us, ante, at 18-24. It is difficult to comprehend on what basis the majority believes the common law method might violate due process in a particular case after it has approved that method as a general matter, and this tension in its analysis now must be resolved in some later case.

In my view, the principles mentioned above and the usual protections given by the laws of the particular State must suffice until judges or legislators authorized to do so initiate system-wide change. We do not have the authority, as do judges in some of the States, to alter the rules of the common law respecting the proper standard for awarding punitive damages and the respective roles of the jury and the court in making that determination. Were we sitting as state court judges, the size and recurring unpredictability of punitive damages awards might be a convincing argument to reconsider those rules or to urge a reexamination by the legislative authority. We are confined in this case, however, to interpreting the Constitution, and from this perspective I agree that we must reject the arguments advanced by petitioner.

For these reasons I concur in the judgment of the Court.

Justice O'CONNOR, dissenting.

Punitive damages are a powerful weapon. Imposed wisely and with restraint, they have the potential to advance legitimate state interests. Imposed indiscriminately, however, they have a devastating potential for harm. Regrettably, common law procedures for awarding punitive damages fall into the latter category. States routinely authorize civil juries to impose punitive damages without providing them any meaningful instructions on how to do so. Rarely is a jury told anything more specific than "do what you think best." See Browning-Ferris Industries v. Kelco Disposal, Inc., 492 U.S. 257, 281 (1989) (Brennan, J., concurring). [499 U.S. 1, 43]

In my view, such instructions are so fraught with uncertainty that they defy rational implementation. Instead, they encourage inconsistent and unpredictable results by inviting juries to rely on private beliefs and personal predilections. Juries are permitted to target unpopular defendants, penalize unorthodox or controversial views, and redistribute wealth. Multi-million dollar losses are inflicted on a whim. While I do not question the general legitimacy of punitive damages, I see a strong need to provide juries with standards to constrain their discretion so that they may exercise their power wisely, not capriciously or maliciously. The Constitution requires as much.

The Court today acknowledges that dangers may lurk, but holds that they did not materialize in this case. See ante, at 18-24. They did materialize, however. They always do, because such dangers are part-and-parcel of common law punitive damages procedures. As is typical, the trial court's instructions in this case provided no meaningful standards to guide the jury's decision to impose punitive damages or to fix the amount. Accordingly, these instructions were void for vagueness. Even if the Court disagrees with me on this point, it should still find that Pacific Mutual was denied procedural due process. Whether or not the jury instructions were so vague as to be unconstitutional, they plainly offered less guidance than is required under the due process test set out in Mathews v. Eldridge, 424 U.S. 319, 335 (1976). The most modest of procedural safeguards would have made the process substantially more rational without impairing any legitimate governmental interest. The Court relies heavily on the State's mechanism for post-verdict judicial review, ante, at 20-23, but this is incapable of curing a grant of standardless discretion to the jury. Post hoc review tests only the amount of the award, not the procedures by which that amount was determined. Alabama's common law scheme is so lacking in fundamental fairness that the propriety of any specific award is irrelevant. Any award of punitive damages [499 U.S. 1, 44]   rendered under these procedures, no matter how small the amount, is constitutionally infirm.

Notwithstanding its recognition of serious due process concerns, the Court upholds Alabama's punitive damages scheme. Unfortunately, Alabama's punitive damages scheme is indistinguishable from the common law schemes employed by many States. The Court's holding will therefore substantially impede punitive damages reforms. Because I am concerned that the Court today sends the wrong signal, I respectfully dissent.

**I**

Due process requires that a State provide meaningful standards to guide the application of its laws. See Kolender v. Lawson, 461 U.S. 352, 358 (1983). A state law that lacks such standards is void for vagueness. The void-for-vagueness doctrine applies not only to laws that proscribe conduct, but also to laws that vest standardless discretion in the jury to fix a penalty. See United States v. Batchelder, 442 U.S. 114, 123 (1979). I have no trouble concluding that Alabama's common law scheme for imposing punitive damages is void for vagueness.

**A**

Alabama's punitive damages scheme requires a jury to make two decisions: (1) whether or not to impose punitive damages against the defendant, and (2) if so, in what amount. On the threshold question of whether or not to impose punitive damages, the trial court instructed the jury as follows: "Imposition of punitive damages is entirely discretionary with the jury, that means you don't have to award it unless this jury feels that you should do so." App. 105-106 (emphasis added).

This instruction is as vague as any I can imagine. It speaks of discretion, but suggests no criteria on which to base the exercise of that discretion. Instead of reminding the jury that its decision must rest on a factual or legal predicate, the instruction suggests that the jury may do whatever [499 U.S. 1, 45]   it "feels" like. It thus invites individual jurors to rely upon emotion, bias, and personal predilections of every sort. As I read the instruction, it as much permits a determination based upon the toss of a coin or the color of the defendant's skin as upon a reasoned analysis of the offensive conduct.

This is not a case where more precise standards are either impossible or impractical. See Kolender, 461 U.S., at 361 . Just the opposite. The Alabama Supreme Court has already formulated a list of seven factors that it considers relevant to the size of a punitive damages award:

"`(1) Punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct, as well as to the harm that actually has occurred. If the actual or likely harm is slight, the damages should be relatively small. If grievous, the damages should be much greater.

"`(2) The degree of reprehensibility of the defendant's conduct should be considered. The duration of this conduct, the degree of the defendant's awareness of any hazard which his conduct has caused or is likely to cause, and any concealment or `cover-up' of that hazard, and the existence and frequency of similar past conduct should all be relevant in determining this degree of reprehensibility.

"`(3) If the wrongful conduct was profitable to the defendant, the punitive damages should remove the profit and should be in excess of the profit, so that the defendant recognizes a loss.

"`(4) The financial position of the defendant would be relevant.

"`(5) All the costs of litigation should be included, so as to encourage plaintiffs to bring wrongdoers to trial.

"`(6) If criminal sanctions have been imposed on the defendant for his conduct, this should be taken into account in mitigation of the punitive damages award.

"`(7) If there have been other civil actions against the same defendant based on the same conduct, this should be taken into account in mitigation of the punitive damages [499 U.S. 1, 52]   award." Green Oil Co. v. Hornsby, 539 So.2d 218, 223-224 (1989), quoting Aetna Life Ins. Co. v. Lavoie, 505 So.2d 1050, 1062 (Ala. 1987) (Houston, J., concurring specially).

In my view, these standards - the "Green Oil factors" - could assist juries to make fair, rational decisions. Unfortunately, Alabama courts do not give the Green Oil factors to the jury. See 539 So.2d, at 224 (Maddox, J., concurring specially). Instead, the jury has standardless discretion to impose punitive damages whenever and in whatever amount it wants. The Green Oil factors play a role only after the jury has rendered its verdict. The trial court and other reviewing courts may - but are not required to - take these factors into consideration in determining whether a punitive damages award is excessive. Id., at 223.

Obviously, this post hoc application of the Green Oil factors does not cure the vagueness of the jury instructions. Cf. Baggett v. Bullitt, 377 U.S. 360, 373 (1964) ("[J]udicial safeguards do not neutralize the vice of a vague law"). See also Roberts v. United States Jaycees, 468 U.S. 609, 629 (1984). As respondents candidly admit, judicial review in Alabama is limited to the amount of the award. The void-for-vagueness doctrine, on the other hand, is concerned with the procedures by which the amount is determined. After-the-fact review of the amount in no way diminishes the fact that the State entrusts its juries with standardless discretion. It thus does not matter that the amount settled upon by the jury might have been permissible under a rational system. Even a wholly irrational process may, on occasion, stumble upon a fair result. What is crucial is that the existing system is not rational. "[P]rocedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions." Mathews v. Eldridge, 424 U.S., at 344 . The state court justice who devised the Green Oil factors, Justice Houston, has recognized this. Addressing a vagueness challenge [499 U.S. 1, 53]   to the State's punitive damages procedures, he wrote: "We have attempted to deal with the issue of the reliability of punitive damages assessments by post-trial review only. That attempt does not really address the issue." Charter Hospital, 558 So.2d, at 915 (Houston, J., concurring specially) (emphasis added; citations omitted). . . .

**II**

For the reasons stated above, I would hold that Alabama's common law punitive damages scheme is void for vagueness. But the Court need not agree with me on this point in order to conclude that Pacific Mutual was denied procedural due process. Whether or not the Court agrees that the jury instructions were so vague as to be unconstitutional, there can be no doubt but that they offered substantially less guidance than is possible. Applying the test of procedural due process set out in Mathews v. Eldridge, supra, more guidance was required. Modest safeguards would make the process significantly more rational without impairing any legitimate governmental interest.

. . . Reviewing courts are thus required to uphold the jury's exercise of unbridled, unchanneled, standardless discretion unless the amount happened upon by the jury cannot be reconciled with even the most generous application of the Green Oil factors.

That is precisely what happened here. When Pacific Mutual challenged the State's procedures governing awards of punitive damages, the trial court simply deferred to the jury. . . .

This strong deference is troubling, given that the Alabama Supreme Court has explicitly acknowledged that its current procedures provide for "`unguided discretion,'" Green Oil, 539 So.2d, at 222, and in no way dictate a rational jury verdict: . . .

Similarly, the suggested procedural safeguards do not impair the State's punishment objectives. Admittedly, the State has a strong interest in punishing wrongdoers, but it has no legitimate interest in maintaining in pristine form a common law system that imposes disproportionate punishment and that subjects defendants guilty of similar misconduct to wholly different punishments. Due process requires, at some level, that punishment be commensurate with the wrongful conduct. See Solem v. Helm, 463 U.S. 277, 284 -290 (1983); id., at 311, n. 3 (Burger, C.J., dissenting). The State can therefore have no valid objection to procedural measures that merely ensure that punitive damages awards [499 U.S. 1, 60]   are based on some factual or legal predicate, rather than the personal predilections and whims of individual jurors.

**B**

In his concurrence, Justice SCALIA offers a very different notion of what due process requires. He argues that a practice with a long historical pedigree is immune to reexamination. . .

Due process is not a fixed notion. Procedural rules, "even ancient ones, must satisfy contemporary notions of due process." Burnham v. Superior Court of Cal., County of Marin, 495 U.S. 604, 630 (1990) (Brennan, J., concurring in judgment). Although history creates a strong presumption of continued validity, "the Court has the authority under the [Fourteenth] Amendment to examine even traditionally accepted procedures and declare them invalid." Id., at 628 (WHITE, J., concurring in part and concurring in judgment), citing Shaffer v. Heitner, 433 U.S. 186 (1977).

The Court's decision in Williams v. Illinois, 399 U.S. 235 (1970), is also instructive. In Williams, the Court invalidated on equal protection grounds the time-honored practice of extending prison terms beyond the statutory maximum [499 U.S. 1, 61]   when a defendant was unable to pay a fine or court costs. The Court's language bears repeating:

"[N]either the antiquity of a practice nor the fact of steadfast legislative and judicial adherence to it through the centuries insulates it from constitutional attack . . . .

"The need to be open to reassessment of ancient practices other than those explicitly mandated by the Constitution is illustrated by the present case, since the greatly increased use of fines as a criminal sanction has made nonpayment a major cause of incarceration in this country." Id., at 239-240.

Punitive damages are similarly ripe for reevaluation. In the past, such awards "merited scant attention," because they were "rarely assessed and likely to be small in amount." Ellis, Fairness and Efficiency in the Law of Punitive Damages, 56 S.Cal.L.Rev. 1, 2 (1982). When awarded, they were reserved for the most reprehensible, outrageous, or insulting acts. See F. Pollock, Law of Torts (1887); Huber 119. Even then, they came at a time when compensatory damages were not available for pain, humiliation, and other forms of intangible injury. Punitive damages filled this gap. See K. Redden, Punitive Damages 2.3(A) (1980); Note, Exemplary Damages in the Law of Torts, 70 Harv.L.Rev. 517, 519-520 (1957).

Recent years, however, have witnessed an explosion in the frequency and size of punitive damages awards. See RAND Institute for Civil Justice, M. Peterson, S. Sarma, & M. Shanley, Punitive Damages - Empirical Findings iii (1987) (hereinafter RAND). A recent study by the RAND Corporation found that punitive damages were assessed against one of every ten defendants who were found liable for compensatory damages in California. Id. at viii. The amounts can be staggering. Within nine months of our decision in Browning-Ferris, there were no fewer than six punitive damages awards of more than $20 million Medians as well as averages are skyrocketing, meaning that even routine awards are growing in size. RAND vi, ix, 65. The amounts "seem to be limited only by the ability of lawyers to string zeros together in drafting a complaint." …

Much of this is attributable to changes in the law. For 200 years, recovery for breach of contract has been limited to compensatory damages. In recent years, however, a growing number of States have permitted recovery of punitive damages where a contract is breached or repudiated in bad faith. See, e.g., Seaman's Direct Buying Serv., Inc. v. Standard Oil Co., 36 Cal.3d 752, 206 Cal.Rptr. 354, 686 P.2d 1158 (1984). Unheard of only 30 years ago, bad faith contract actions now account for a substantial percentage of all punitive damages awards. See RAND iv. Other significant legal developments include the advent of product liability and mass tort litigation. "As recently as a decade ago, the largest award of punitive damages affirmed by an appellate court in a products liability case was $250,000. . . . Since then, awards more than 30 times as high have been sustained on appeal." Browning-Ferris, 492 U.S., at 282 (opinion concurring in part and dissenting in part). "Today, hardly a month goes by without a multi-million-dollar punitive damages verdict in a product liability case." Wheeler, A Proposal for Further Common Law Development of the Use of Punitive Damages in Modern Product Liability Litigation, 40 Ala.L.Rev. 919 (1989). . . .

The Due Process Clause demands that we possess some degree of confidence that the procedures employed to deprive persons of life, liberty, and property are capable of producing fair and reasonable results. When we lose that confidence, a change must be made.

**III**

. . . I would require Alabama to adopt some method, either through its legislature or its courts, to constrain the discretion of juries in deciding whether or not to impose punitive damages and in fixing the amount of such awards. As a number of effective procedural safeguards are available, we need not dictate to the States the precise manner in which [499 U.S. 1, 64]   they must address the problem. We should permit the States to experiment with different methods and to adjust these methods over time.

This conclusion is neither ground-breaking nor remarkable. It reflects merely a straightforward application of our Due Process Clause jurisprudence. Given our statements in recent cases such as Browning-Ferris, supra, and Bankers Life, supra, the parties had every reason to expect that this would be the Court's holding. Why, then, is it consigned to a dissent rather than a majority opinion? It may be that the Court is reluctant to afford procedural due process to Pacific Mutual because it perceives that such a ruling would force us to evaluate the constitutionality of every State's punitive damages scheme. I am confident, though, that if we announce what the Constitution requires and allow the States sufficient flexibility to respond, the constitutional problems will be resolved in time without any undue burden on the federal courts. Indeed, it may have been our hesitation that has inspired a flood of petitions for certiorari. For more than 20 years, this Court has criticized common law punitive damages procedures, see supra at 54-55, but has shied away from its duty to step in, hoping that the problems would go away. It is now clear that the problems are getting worse, and that the time has come to address them squarely. The Court does address them today. In my view, however, it offers an incorrect answer. [499 U.S. 1, 65]

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