AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 9: Liberalism Divided – Individual Rights/Personal Freedom and Public Morality

**O’Connor v. Donaldson, 422 U.S. 563 (1975)**

*Kenneth Donaldson was involuntarily civilly committed by his father in 1957. He was determined by a country judge to be suffering from paranoid schizophrenia. In 1971, he filed suit in federal district court against the superintendent, J.B. O’Connor, of the state hospital seeking release. He argued that he was being unconstitutionally detained because he was not in fact a danger to others, but O’Connor had continued to detain Donaldson on the grounds that he would be unable to make a “successful adjustment outside the institution.” When O’Connor retired, the hospital staff helped secure Donaldson’s release through a judicial competency hearing. After a jury trial on his suit for unlawful detention, Donaldson was awarded both compensatory and punitive damages, and a federal circuit court affirmed that verdict. The hospital superintendent appealed to the U.S. Supreme Court, which unanimously vacated the judgment and remanded the case for a new trial.*

JUSTICE STEWART, delivered the opinion of the Court.

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. . . . [T]here is no reason now to decide whether mentally ill persons dangerous to themselves or to others have a right to treatment upon compulsory confinement by the State, or whether the State may compulsorily confine a nondangerous, mentally ill individual for the purpose of treatment. As we view it, this case raises a single, relatively simple, but nonetheless important question concerning every man's constitutional right to liberty.

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A finding of "mental illness" alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement. Assuming that that term can be given a reasonably precise content and that the "mentally ill" can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.

May the State confine the mentally ill merely to ensure them a living standard superior to that they enjoy in the private community? That the State has a proper interest in providing care and assistance to the unfortunate goes without saying. But the mere presence of mental illness does not disqualify a person from preferring his home to the comforts of an institution. Moreover, while the State may arguably confine a person to save him from harm, incarceration is rarely if ever a necessary condition for raising the living standards of those capable of surviving safely in freedom, on their own or with the help of family or friends. *Shelton v. Tucker* (1960).

May the State fence in the harmless mentally ill solely to save its citizens from exposure to those whose ways are different? One might as well ask if the State, to avoid public unease, could incarcerate all who are physically unattractive or socially eccentric. Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty. *Cohen v. California* (1971).

In short, a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. Since the jury found, upon ample evidence, that O'Connor, as an agent of the State, knowingly did so confine Donaldson, it properly concluded that O'Connor violated Donaldson's constitutional right to freedom.

O'Connor contends that in any event he should not be held personally liable for monetary damages because his decisions were made in "good faith." Specifically, O'Connor argues that he was acting pursuant to state law which, he believed, authorized confinement of the mentally ill even when their release would not compromise their safety or constitute a danger to others, and that he could not reasonably have been expected to know that the state law as he understood it was constitutionally invalid. A proposed instruction to this effect was rejected by the District Court.

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Under *Wood v. Strickland* (1975), the relevant question for the jury is whether O'Connor "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of [Donaldson], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to [Donaldson]." . . .

*Vacate and remand*.

CHIEF JUSTICE BURGER, concurring.

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There can be no doubt that involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law. *Specht v. Patterson* (1967). Commitment must be justified on the basis of a legitimate state interest, and the reasons for committing a particular individual must be established in an appropriate proceeding. Equally important, confinement must cease when those reasons no longer exist. *McNeil v. Director, Patuxent Institution* (1972).

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. . . . Historically, and for a considerable period of time, subsidized custodial care in private foster homes or boarding houses was the most benign form of care provided incompetent or mentally ill persons for whom the States assumed responsibility. Until well into the 19th century the vast majority of such persons were simply restrained in poorhouses, almshouses, or jails. . . .

As the trend toward state care of the mentally ill expanded, eventually leading to the present statutory schemes for protecting such persons, the dual functions of institutionalization continued to be recognized. While one of the goals of this movement was to provide medical treatment to those who could benefit from it, it was acknowledged that this could not be done in all cases and that there was a large range of mental illness for which no known "cure" existed. In time, providing places for the custodial confinement of the so-called "dependent insane" again emerged as the major goal of the States' programs in this area and remained so well into this century.

In short, the idea that States may not confine the mentally ill except for the purpose of providing them with treatment is of very recent origin, and there is no historical basis for imposing such a limitation on state power. Analysis of the sources of the civil commitment power likewise lends no support to that notion. There can be little doubt that in the exercise of its police power a State may confine individuals solely to protect society from the dangers of significant antisocial acts or communicable disease. *Jacobsohn v. Massachusetts* (1905). Additionally, the States are vested with the historic *parens patriae* power, including the duty to protect "persons under legal disabilities to act for themselves." The classic example of this role is when a State undertakes to act as "`the general guardian of all infants, idiots, and lunatics.'" *Hawaii v. Standard Oil Co.* (1972).

Of course, an inevitable consequence of exercising the *parens patriae* power is that the ward's personal freedom will be substantially restrained, whether a guardian is appointed to control his property, he is placed in the custody of a private third party, or committed to an institution. Thus, however the power is implemented, due process requires that it not be invoked indiscriminately. At a minimum, a particular scheme for protection of the mentally ill must rest upon a legislative determination that it is compatible with the best interests of the affected class and that its members are unable to act for themselves. . . .

However, the existence of some due process limitations on the *parens patriae* power does not justify the further conclusion that it may be exercised to confine a mentally ill person only if the purpose of the confinement is treatment. Despite many recent advances in medical knowledge, it remains a stubborn fact that there are many forms of mental illness which are not understood, some which are untreatable in the sense that no effective therapy has yet been discovered for them, and that rates of "cure" are generally low. There can be little responsible debate regarding "the uncertainty of diagnosis in this field and the tentativeness of professional judgment." *Greenwood v. United States* (1956). Similarly, as previously observed, it is universally recognized as fundamental to effective therapy that the patient acknowledge his illness and cooperate with those attempting to give treatment; yet the failure of a large proportion of mentally ill persons to do so is a common phenomenon. It may be that some persons in either of these categories, and there may be others, are unable to function in society and will suffer real harm to themselves unless provided with care in a sheltered environment. At the very least, I am not able to say that a state legislature is powerless to make that kind of judgment.

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It is too well established to require extended discussion that due process is not an inflexible concept. Rather, its requirements are determined in particular instances by identifying and accommodating the interests of the individual and society. *Morrissey v. Brewer* (1972). . . . Where claims that the State is acting in the best interests of an individual are said to justify reduced procedural and substantive safeguards, this Court's decisions require that they be "candidly appraised." However, in so doing judges are not free to read their private notions of public policy or public health into the Constitution. *Olsen v. Nebraska* (1941).

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In sum, I cannot accept the reasoning of the Court of Appeals and can discern no basis for equating an involuntarily committed mental patient's unquestioned constitutional right not to be confined without due process of law with a constitutional right to *treatment*. Given the present state of medical knowledge regarding abnormal human behavior and its treatment, few things would be more fraught with peril than to irrevocably condition a State's power to protect the mentally ill upon the providing of "such treatment as will give [them] a realistic opportunity to be cured." Nor can I accept the theory that a State may lawfully confine an individual thought to need treatment and justify that deprivation of liberty solely by providing some treatment. . . .