Supplementary Material

Chapter 9: Liberalism Divided—Individual Rights/Property/Due Process

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Boddie v. Connecticut, 401 U.S. 371 (1971)

Gladys Boddie sought to obtain a divorce from her husband. On March 13, 1968, she filed the appropriate papers in a Connecticut court, but was told she could not proceed until she paid between $45 and $60 in administrative fees. Ms. Boddie, who was on welfare, could not afford these costs. With the assistance of several public interest groups, she and other indigent persons filed a class action suit against Connecticut, claiming that the fee requirement for divorce violated the due process clause of the Fourteenth Amendment. After a federal district court rejected the lawsuit, Boddie appealed to the Supreme Court of the United States. Several states filed amicus briefs urging the justices to sustain Connecticut's practices. The brief for Maryland asserted,

> *removing discriminations against the poor usually requires governmental expenditures, and decisions affecting the fisc are ordinarily considered a uniquely legislative responsibility. The legislature, unlike a court, can consider alternative uses for public moneys, and it can better compare the costs and benefits of different techniques for aiding the poor. Furthermore, only the legislature can alleviate poverty by redistributing income through shifting the tax burden. The courts have often wisely deferred to the legislature on all questions relating to the fairness of income distribution, for they have accepted the proposition that such decisions should be made by an institution amenable to political pressures and responsible to the electorate.*

The Center on Social Welfare Policy and Law and the National Legal Aid and Defender Association filed amicus briefs urging the justices to declare Connecticut's policy unconstitutional. The brief for the latter declared,

> *Statutes . . . that refuse to waive fees and other court costs effectively bar poor persons from the courts and the legal process. It is a self-defeating proposition for states to profess equality for all citizens but to deny the poor those fundamental rights that persons with money can enjoy.*

Justice Harlan's majority opinion found that Connecticut could not require indigent persons to pay court costs in order to obtain a divorce. On what basis does he reach this conclusion? In your judgment, does Boddie *belong in the line of cases discussion the rights of indigents in the criminal process, the line of cases protecting certain rights to marriage and procreation, or is the case a hybrid? How does your classification of* Boddie *influence what you think about the outcome of the case?*

JUSTICE HARLAN delivered the opinion of the Court.

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[G]iven the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship, due process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.

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American society . . . bottoms its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on custom or the will of strategically placed individuals, but on

the common law model. It is to courts, or other *quasi*-judicial official bodies, that we ultimately look for the implementation of a regularized, orderly process of dispute settlement. Within this framework, those who wrote our original Constitution, in the Fifth Amendment, and later those who drafted the Fourteenth Amendment, recognized the centrality of the concept of due process in the operation of this system. Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things. Only by providing that the social enforcement mechanism must function strictly within these bounds can we hope to maintain an ordered society that is also just. . . .

Such litigation has, however, typically involved rights of defendants—not, as here, persons seeking access to the judicial process in the first instance. This is because our society has been so structured that resort to the courts is not usually the only available, legitimate means of resolving private disputes. Indeed, private structuring of individual relationships and repair of their breach is largely encouraged in American life, subject only to the caveat that the formal judicial process, if resorted to, is paramount. Thus, this Court has seldom been asked to view access to the courts as an element of due process. The legitimacy of the State's monopoly over techniques of final dispute settlement, even where some are denied access to its use, stands unimpaired where recognized, effective alternatives for the adjustment of differences remain. But the successful invocation of this governmental power by plaintiffs has often created serious problems for defendants' rights. For at that point, the judicial proceeding becomes the only effective means of resolving the dispute at hand, and denial of a defendant's full access to that process raises grave problems for its legitimacy.

Recognition of this theoretical framework illuminates the precise issue presented in this case. As this Court on more than one occasion has recognized, marriage involves interests of basic importance in our society. . . . It is not surprising, then, that the States have seen fit to oversee many aspects of that institution. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or dissolve marriages without state approval. Even where all substantive requirements are concededly met, we know of no instance where two consenting adults may divorce and mutually liberate themselves from the constraints of legal obligations that go with marriage, and, more fundamentally, the prohibition against remarriage, without invoking the State's judicial machinery.

Thus, although they assert here due process rights as would-be plaintiffs, we think appellants' plight, because resort to the state courts is the only avenue to dissolution of their marriages, is akin to that of defendants faced with exclusion from the only forum effectively empowered to settle their disputes. Resort to the judicial process by these plaintiffs is no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court. For both groups, this process is not only the paramount dispute settlement technique, but, in fact, the only available one. In this posture, we think that this appeal is properly to be resolved in light of the principles enunciated in our due process decisions that delimit rights of defendants compelled to litigate their differences in the judicial forum.

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Prior cases establish, first, that due process requires, at a minimum, that, absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. . . .

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Just as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard. The State's obligations under the Fourteenth Amendment are not simply generalized ones; rather, the State owes to each individual that process which, in light of the values of a free society, can be characterized as due.

Drawing upon the principles established by the cases just canvassed, we conclude that the State's refusal to admit these appellants to its courts, the sole means in Connecticut for obtaining a divorce, must be regarded as the equivalent of denying them an opportunity to be heard upon their claimed right to a

dissolution of their marriages, and, in the absence of a sufficient countervailing justification for the State's action, a denial of due process.

The arguments for this kind of fee and cost requirement are that the State's interest in the prevention of frivolous litigation is substantial, its use of court fees and process costs to allocate scarce resources is rational, and its balance between the defendant's right to notice and the plaintiff's right to access is reasonable.

In our opinion, none of these considerations is sufficient to override the interest of these plaintiff appellants in having access to the only avenue open for dissolving their allegedly untenable marriages. Not only is there no necessary connection between a litigant's assets and the seriousness of his motives in bringing suit, but it is here beyond present dispute that appellants bring these actions in good faith. Moreover, other alternatives exist to fees and cost requirements as a means for conserving the time of courts and protecting parties from frivolous litigation. . . .

We are thus left to evaluate the State's asserted interest in its fee and cost requirements as a mechanism of resource allocation or cost recoupment. Such a justification was offered and rejected in *Griffin v. Illinois* . . . (1956). In *Griffin,* it was the requirement of a transcript beyond the means of the indigent that blocked access to the judicial process. While, in *Griffin,* the transcript could be waived as a convenient but not necessary predicate to court access, here the State invariably imposes the costs as a measure of allocating its judicial resources. Surely, then, the rationale of *Griffin* covers this case.

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JUSTICE DOUGLAS, concurring in the result.

I believe this case should be decided upon the principles developed in the line of cases marked by *Griffin v. Illinois* (1956). . . . There, we considered a state law which denied persons convicted of a crime full appellate review if they were unable to pay for a transcript of the trial. JUSTICE BLACK's opinion announcing the judgment of the Court stated:

> Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law. There can be no equal justice where the kind of a trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts.

The power of the States over marriage and divorce is, of course, complete except as limited by specific constitutional provisions. But could a State deny divorces to domiciliaries who were Negroes and grant them to whites?

Deny them to resident aliens and grant them to citizens? Deny them to Catholics and grant them to Protestants? Deny them to those convicted of larceny and grant them to those convicted of embezzlement?

Here, the invidious discrimination is based on one of the guidelines: poverty.

An invidious discrimination based on poverty is adequate for this case. While Connecticut has provided a procedure for severing the bonds of marriage, a person can meet every requirement save court fees or the cost of service of process and be denied a divorce. . . .

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Just as denying . . . appellate counsel in *Douglas v. California* (1963), and a transcript in *Griffin v. Illinois,* created an invidious distinction based on wealth, so, too, does making the grant or denial of a divorce to turn on the wealth of the parties. Affluence does not pass muster under the Equal Protection Clause for determining who must remain married and who shall be allowed to separate.

JUSTICE BRENNAN, concurring in part.

I join the Court's opinion to the extent that it holds that Connecticut denies procedural due process in denying the indigent appellants access to its courts for the sole reason that they cannot pay a required fee.

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But I cannot join the Court's opinion insofar as today's holding is made to depend upon the factor that only the State can grant a divorce, and that an indigent would be locked into a marriage if unable to pay the fees required to obtain a divorce. A State has an ultimate monopoly of all judicial process and attendant enforcement machinery. . . . I see no constitutional distinction between appellants' attempt to enforce this state statutory right and an attempt to vindicate any other right arising under federal or state law. If fee requirements close the courts to an indigent, he can no more invoke the aid of the courts for other forms of relief than he can escape the legal incidents of a marriage. The right to be heard in some way at some time extends to all proceedings entertained by courts. The possible distinctions suggested by the Court today will not withstand analysis.

In addition, this case presents a classic problem of equal protection of the laws. . . .

. . . The rationale of *Griffin v. Illinois* (1956) covers the present case. Courts are the central dispute-settling institutions in our society. They are bound to do equal justice under law to rich and poor alike. They fail to perform their function in accordance with the Equal Protection Clause if they shut their doors to indigent plaintiffs altogether. Where money determines not merely "the kind of trial a man gets," . . . but whether he gets into court at all, the great principle of equal protection becomes a mockery. A State may not make its judicial processes available to some but deny them to others simply because they cannot pay a fee. . . .

JUSTICE BLACK, dissenting.

. . . The power of the States over marriage and divorce is complete except as limited by specific constitutional provisions. . . .

. . . Criminal defendants are brought into court by the State or Federal Government to defend themselves against charges of crime. They go into court knowing that they may be convicted, and condemned to lose their lives, their liberty, or their property, as a penalty for their crimes. Because of this great governmental power, the United States Constitution has provided special protections for people charged with crime. . . . With all of these protections safeguarding defendants charged by government with crime, we quite naturally and quite properly held in *Griffin* that the Due Process and Equal Protection Clauses both barred any discrimination in criminal trials against poor defendants who are unable to defend themselves against the State. Had we not so held, we would have been unfaithful to the explicit commands of the Bill of Rights, designed to wrap the protections of the Constitution around all defendants upon whom the mighty powers of government are hurled to punish for crime.

Civil lawsuits, however, are not like government prosecutions for crime. Civil courts are set up by government to give people who have quarrels with their neighbors the chance to use a neutral governmental agency to adjust their differences. In such cases, the government is not usually involved as a party, and there is no deprivation of life, liberty, or property as punishment for crime. Our Federal Constitution, therefore, does not place such private disputes on the same high level as it places criminal trials and punishment. There is consequently no necessity, no reason, why government should in civil trials be hampered or handicapped by the strict and rigid due process rules the Constitution has provided to protect people charged with crime.

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