Supplementary Material

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

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United States v. Kras, 409 U.S. 434 (1973)

Robert Kras filed for bankruptcy on May 28, 1971. At the time, he was unemployed, married with two children, one of whom needed constant medical attention, and responsible for his mother and six-year-old step sister. The family received public assistance, but all money went for rent, food, and medical expenses. Nevertheless, the local federal district court refused to accept Kras's bankruptcy petition because he could not pay $50 in court costs. Kras then sued the United States claiming that requiring indigents to pay these administrative fees in order to be declared bankrupt violated the due process clause of the Fifth Amendment. After the federal district court accepted this argument, the United States appealed to the Supreme Court of the United States.

Kras *was one of two 1973 cases in which the Burger Court refused to extend* Boddie *to other instances in which indigent persons were required to pay administrative costs in order to obtain hearings on civil legal matters. In the other,* Ortwein v. Schwab, *the same 5–4 majority ruled that Oregon could require persons appealing a reduction in their welfare benefits to pay a $25 filing fee. What explains the difference between the result in* Kras *and the result in* Boddie*? Do you believe Justice Blackmun adequately distinguished the two cases? Are the differences between them explained by the increasing conservatism of the Burger Court?*

JUSTICE BLACKMUN delivered the opinion of the Court.

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We agree with the Government that our decision in *Boddie v. Connecticut* (1971) does not control the disposition of this case, and that the District Court's reliance upon *Boddie* is misplaced.

Boddie was based on the notion that a State cannot deny access, simply because of one's poverty, to a "judicial proceeding [that is] the only effective means of resolving the dispute at hand." . . . Throughout the opinion, there is constant and recurring reference to Connecticut's exclusive control over the establishment, enforcement, and dissolution of the marital relationship. . . .

The appellants in *Boddie,* on the one hand, and Robert Kras, on the other, stand in materially different postures. The denial of access to the judicial forum in *Boddie* touched directly, as has been noted, on the marital relationship and on the associational interests that surround the establishment and dissolution of that relationship. On many occasions, we have recognized the fundamental importance of these interests under our Constitution. . . . Kras' alleged interest in the elimination of his debt burden, and in obtaining his desired new start in life, although important and so recognized by the enactment of the Bankruptcy Act, does not rise to the same constitutional level. . . . If Kras is not discharged in bankruptcy, his position will not be materially altered in any constitutional sense. Gaining or not gaining a discharge will effect no change with respect to basic necessities. We see no fundamental interest that is gained or lost depending on the availability of a discharge in bankruptcy.

Nor is the Government's control over the establishment, enforcement, or dissolution of debts nearly so exclusive as Connecticut's control over the marriage relationship in *Boddie.* In contrast with divorce, bankruptcy is not the only method available to a debtor for the adjustment of his legal relationship with his creditors. . . .

However unrealistic the remedy may be in a particular situation, a debtor, in theory, and often in actuality, may adjust his debts by negotiated agreement with his creditors. . . .

We are also of the opinion that the filing fee requirement does not deny Kras the equal protection of the laws. Bankruptcy is hardly akin to free speech or marriage or to those other rights, so many of which are imbedded in the First Amendment, that the Court has come to regard as fundamental and that demand the lofty requirement of a compelling governmental interest before they may be significantly regulated. . . . Neither does it touch upon what have been said to be the suspect criteria of race, nationality, or alienage. . . . Instead, bankruptcy legislation is in the area of economics and social welfare. . . . This being so, the applicable standard, in measuring the propriety of Congress' classification, is that of rational justification. . .

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The rational basis for the fee requirement is readily apparent. Congressional power over bankruptcy, of course, is plenary and exclusive. . . . Congress, as has been noted, abolished the theretofore existing practices of the pauper petition and of compensating the referee from the fees he collected. It replaced that system with one for salaried referees and for fixed fees for every petition filed and a specified percentage of distributable assets. It sought to make the system self-sustaining and paid for by those who use it, rather than by tax revenues drawn from the public at large. . . .

If the $50 filing fees are paid in installments over six months as General Order No. 35(4) permits on a proper showing, the required average weekly payment is $1.92. If the payment period is extended for the additional three months as the Order permits, the average weekly payment is lowered to $1.28. . . . This is a sum less than the payments Kras makes on his couch of negligible value in storage, and less than the price of a movie and little more than the cost of a pack or two of cigarettes. If, as Kras alleges in his affidavit, a discharge in bankruptcy will afford him that new start he so desires, and the Metropolitan then no longer will charge him with fraud and give him bad references, and if he really needs and desires that discharge, this much available revenue should be within his able-bodied reach when the adjudication in bankruptcy has stayed collection and has brought to a halt whatever harassment, if any, he may have sustained from creditors.

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CHIEF JUSTICE BURGER, concurring.

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JUSTICE STEWART, with whom JUSTICE DOUGLAS, JUSTICE BRENNAN, and JUSTICE MARSHALL join, dissenting.

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Boddie v. Connecticut (1971) held that a Connecticut statute requiring the payment of an average $60 fee as a prerequisite to a divorce action was unconstitutional under the Due Process Clause of the Fourteenth Amendment, as applied to indigents unable to pay the fee. The Court reasoned that due process protections are traditionally viewed as safeguards for a defendant because, at the point when a plaintiff invokes the governmental power of a court, the judicial proceeding is "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."

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The violation of due process seems to me equally clear in the present case. It is undisputed that Kras is making a good faith attempt to obtain a discharge in bankruptcy, and that he is, in fact, indigent. . . .

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[I]n the unique situation of the indigent bankrupt, the Government provides the only effective means of his ever being free of these Government-imposed obligations. As in *Boddie,* there are no "recognized, effective alternatives." . . . While the creditors of a bankrupt with assets might well desire to reach a compromise settlement, that possibility is foreclosed to the truly indigent bankrupt. With no funds and not even a sufficient prospect of income to be able to promise the payment of a $50 fee in

weekly installments of $1.28, the assetless bankrupt has absolutely nothing to offer his creditors. And his creditors have nothing to gain by allowing him to escape or reduce his debts; their only hope is that eventually he might make enough income for them to attach. . . .

The Government contends that the filing fee is justified by the congressional decision to make the bankruptcy system self-supporting. But, in *Boddie,* we rejected this same "pay as you go" argument, finding it an insufficient justification for excluding the poor from the only available process to dissolve a marriage. . . . The argument is no more persuasive here. The Constitution cannot tolerate achievement of the goal of self-support for a bankruptcy system, any more than for a domestic relations court, at the price of denying due process of law to the poor. . . .

. . . The Court today holds that Congress may say that some of the poor are too poor even to go bankrupt. I cannot agree.

JUSTICE DOUGLAS and JUSTICE BRENNAN, dissenting.

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The invidious discrimination in the present case is a denial of due process because it denies equal protection within our decisions which make particularly "invidious" discrimination based on wealth or race.

JUSTICE MARSHALL, dissenting.

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I cannot agree with the majority that it is so easy for the desperately poor to save $1.92 *each week* over the course of six months. The 1970 Census found that over 800,000 families in the Nation had annual incomes of less than $1,000 or $19.23 a week. . . .

I see no reason to require that families in such straits sacrifice over 5% of their annual income as a prerequisite to getting a discharge in bankruptcy.

It may be easy for some people to think that weekly savings of less than $2 are no burden. But no one who has had close contact with poor people can fail to understand how close to the margin of survival many of them are. A sudden illness, for example, may destroy whatever savings they may have accumulated, and, by eliminating a sense of security, may destroy the incentive to save in the future. A pack or two of cigarettes may be, for them, not a routine purchase, but a luxury indulged in only rarely. The desperately poor almost never go to see a movie, which the majority seems to believe is an almost weekly activity. They have more important things to do with what little money they have—like attempting to provide some comforts for a gravely ill child, as Kras must do.

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