

Sec. 1—Judicial Power, Courts, Judges

Judicial Immunity from Suit

Under common law—the Supreme Court has not elevated judicial immunity from suit to a constitutional principle—judges “are responsible to the people alone for the manner in which they perform their duties. If faithless, if corrupt, if dishonest, if partial, if oppressive or arbitrary, they may be called to account by impeachment, and removed from office. . . . But responsible they are not to private parties in civil actions for the judicial acts, however injurious may be those acts, and however much they may deserve condemnation, unless perhaps where the acts are palpably in excess of the jurisdiction of the judges, and are done maliciously or corruptly.”¹⁶⁷ Three years later, the Court qualified this exception to judges’ immunity: the phrase beginning “unless, perhaps,” the Court wrote, was “not necessary to a correct statement of the law, and . . . judges . . . are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter,” with judges subject to liability only in the latter instance.¹⁶⁸

In *Stump v. Sparkman*, the Court upheld the immunity of a judge who approved a petition from the mother of a 15-year-old girl to have the girl sterilized without her knowledge (she was told that she was to have her appendix removed).¹⁶⁹ In a 5-to-3 opinion, the Court found that there was not the “clear absence of all jurisdiction” that is required to hold a judge civilly liable. The judge had jurisdiction “in all cases at law and in equity whatsoever,” except where exclusive jurisdiction is “conferred by law upon some other court, board, or officer,” and no statute or case law prohibited the judge from considering a petition for sterilization.¹⁷⁰ The Court also

¹⁶⁷ *Randall v. Brigham*, 74 U.S. 523, 537 (1869). Judicial immunity “is a general principle of the highest importance to the proper administration of justice Liability . . . would destroy that independence without which no judiciary can be either respectable or useful. . . . Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed.” *Bradley v. Fisher*, 80 U.S. 335, 347 (1872).

¹⁶⁸ *Bradley v. Fisher*, 80 U.S. 335, 351 (1872). The Court offered a hypothetical example of the distinction. A judge of a probate court who held a criminal trial would act in clear absence of all jurisdiction over the subject matter, whereas a judge of a criminal court who held a criminal trial for an offense that was not illegal would act merely in excess of his jurisdiction. *Id.* at 352.

¹⁶⁹ 435 U.S. 349 (1978).

¹⁷⁰ 435 U.S. at 357, 358. The defendant was an Indiana state court judge, but the suit was in federal court under 42 U.S.C. § 1983. The Court noted that it had held in *Pierson v. Ray*, 386 U.S. 547 (1967), that there was no indication that, in enacting this statute, Congress had intended to abolish the principle of judicial immunity established in *Bradley v. Fisher*, *supra*.