

The Court has required greater protection from property deprivations resulting from operation of established state procedures than from those resulting from random and unauthorized acts of state employees,<sup>840</sup> and presumably this distinction still holds. Thus, the Court has held that post-deprivation procedures would not satisfy due process if it is “the state system itself that destroys a complainant’s property interest.”<sup>841</sup> Although the Court briefly entertained the theory that a negligent (*i.e.*, non-willful) action by a state official was sufficient to invoke due process, and that a post-deprivation hearing regarding such loss was required,<sup>842</sup> the Court subsequently overruled this holding, stating that “the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.”<sup>843</sup>

In “rare and extraordinary situations,” where summary action is necessary to prevent imminent harm to the public, and the private interest infringed is reasonably deemed to be of less importance, government can take action with no notice and no opportunity to defend, subject to a later full hearing.<sup>844</sup> Examples are seizure

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<sup>840</sup> *Logan v. Zimmerman Brush Co.*, 455 U.S. at 435–36 (1982). The Court emphasized that a post-deprivation hearing regarding harm inflicted by a state procedure would be inadequate. “That is particularly true where, as here, the State’s only post-termination process comes in the form of an independent tort action. Seeking redress through a tort suit is apt to be a lengthy and speculative process, which in a situation such as this one will never make the complainant entirely whole.” 455 U.S. 422, 436–37.

<sup>841</sup> 455 U.S. at 436.

<sup>842</sup> More expressly adopting the tort remedy theory, the Court in *Parratt v. Taylor*, 451 U.S. 527 (1981), held that the loss of a prisoner’s mail-ordered goods through the negligence of prison officials constituted a deprivation of property, but that the state’s post-deprivation tort-claims procedure afforded adequate due process. When a state officer or employee acts negligently, the Court recognized, there is no way that the state can provide a pre-termination hearing; the real question, therefore, is what kind of post-deprivation hearing is sufficient. When the action complained of is the result of the unauthorized failure of agents to follow established procedures and there is no contention that the procedures themselves are inadequate, the Due Process Clause is satisfied by the provision of a judicial remedy which the claimant must initiate. 451 U.S. at 541, 543–44. It should be noted that *Parratt* was a property loss case, and thus may be distinguished from liberty cases, where a tort remedy, by itself, may not be adequate process. See *Ingraham v. Wright*, 430 U.S. at 680–82.

<sup>843</sup> *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (involving negligent acts by prison officials). Hence, there is no requirement for procedural due process stemming from such negligent acts and no resulting basis for suit under 42 U.S.C. § 1983 for deprivation of rights deriving from the Constitution. Prisoners may resort to state tort law in such circumstances, but neither the Constitution nor § 1983 provides a federal remedy.

<sup>844</sup> *Board of Regents v. Roth*, 408 U.S. 564, 570 n.7 (1972); *Bell v. Burson*, 402 U.S. 535, 542 (1971). See *Parratt v. Taylor*, 451 U.S. 527, 538–40 (1981). Of course, one may waive his due process rights, though as with other constitutional rights, the waiver must be knowing and voluntary. *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972). See also *Fuentes v. Shevin*, 407 U.S. 67, 94–96 (1972).