

The Court also appeared to have expanded the notion of “liberty” to include the right to be free of official stigmatization, and found that such threatened stigmatization could in and of itself require due process.⁷⁹⁷ Thus, in *Wisconsin v. Constantineau*,⁷⁹⁸ the Court invalidated a statutory scheme in which persons could be labeled “excessive drinkers,” without any opportunity for a hearing and rebuttal, and could then be barred from places where alcohol was served. The Court, without discussing the source of the entitlement, noted that the governmental action impugned the individual’s reputation, honor, and integrity.⁷⁹⁹

But, in *Paul v. Davis*,⁸⁰⁰ the Court appeared to retreat from recognizing damage to reputation alone, holding instead that the liberty interest extended only to those situations where loss of one’s reputation also resulted in loss of a statutory entitlement. In *Davis*, the police had included plaintiff’s photograph and name on a list of “active shoplifters” circulated to merchants without an opportunity for notice or hearing. But the Court held that “Kentucky law does not extend to respondent any legal guarantee of present enjoyment of reputation which has been altered as a result of petitioners’ actions. Rather, his interest in reputation is simply one of a number which the State may protect against injury by virtue of its tort law, providing a forum for vindication of those interest by means of damage actions.”⁸⁰¹ Thus, unless the government’s official defamation has a specific negative effect on an entitlement, such as the denial to “excessive drinkers” of the right to obtain alcohol that occurred in *Constantineau*, there is no protected liberty interest that would require due process.

A number of liberty interest cases that involve statutorily created entitlements involve prisoner rights, and are dealt with more

⁷⁹⁷ *Board of Regents v. Roth*, 408 U.S. 564, 569–70 (1972); *Goss v. Lopez*, 419 U.S. 565 (1975).

⁷⁹⁸ 400 U.S. 433 (1971).

⁷⁹⁹ *But see* *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003) (posting of accurate information regarding sex offenders on state Internet website does not violate due process as the site does not purport to label the offenders as presently dangerous).

⁸⁰⁰ 424 U.S. 693 (1976).

⁸⁰¹ Here the Court, 424 U.S. at 701–10, distinguished *Constantineau* as being a “reputation-plus” case. That is, it involved not only the stigmatizing of one posted but it also “deprived the individual of a right previously held under state law—the right to purchase or obtain liquor in common with the rest of the citizenry.” 424 U.S. at 708. How the state law positively did this the Court did not explain. But, of course, the reputation-plus concept is now well-settled. *See* discussion below. *See also* *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972); *Siebert v. Gilley*, 500 U.S. 226 (1991); *Paul v. Davis*, 424 U.S. 693, 711–12 (1976). In a later case, the Court looked to decisional law and the existence of common-law remedies as establishing a protected property interest. *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9–12 (1978).