Owen v. City of Independence: Municipal Liability, An Evolving Trend

Two decades ago, local governments were only marginally exposed to liability in an action for damages brought under section 1983 of the Civil Rights Act.¹ The prevailing authority at that time was Monroe v. Pape,² which held that municipalities were not "persons" within the ambit of section 1983. In the past three years, however, the Supreme Court has substantially extended the scope of section 1983 with regard to municipal defendants. This extension is evidenced by the determination that municipalities are "persons" to which section 1983 applies,³ and by the denial of a "good faith" defense in the recent case of Owen v. City of Independence.⁴ Monell v. Department of Social Services of the City of New York⁵ marked the turning point in a municipality's exposure

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   Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 was originally enacted as Section 1 of the Civil Rights Act of 1871. In 1871, the states possessed the majority of the governmental power and were largely responsible for the protection of civil rights. Note, Theories of Federalisms and Civil Rights, 75 Yale L.J. 1007, 1018-20 (1966). The Civil Rights Act of 1871 was enacted primarily to deal with the refusal of local government officials in the South to suppress the Ku Klux Klan. See Developments in the Law: Section 1983 and Federalism, 90 Harv. L. Rev. 1133, 1154 (1977) [hereinafter referred to as Developments]; Note, Municipal Liability Under Section 1983: The Meaning of "Policy or Custom", 79 Colum. L. Rev. 304, 308 (1979).

2. 365 U.S. 167 (1961). Plaintiff and his family were forced out of bed in the middle of the night and forced to stand naked while police officers searched their home without a warrant. Monroe was then taken to the police station, interrogated for ten hours and finally released without being charged. Monroe brought a Section 1983 action against thirteen police officers and the City of Chicago for violating his fourth amendment rights under color of state law.


4. ___ U.S. ___, 100 S. Ct. 1398 (1980).

5. 436 U.S. 658 (1978). Petitioners, female employees of the Board of Education and the Department of Social Services of the City of New York, brought this action against respondents for adopting the official policy of a mandatory leave of absence for pregnant employees before such leave was necessary for medical
to liability under section 1983. In Monell, the Court reassessed the position, taken in Monroe v. Pape, that Congress had not intended state political subdivisions to be included within the meaning of "persons" in section 1983. The Court reversed this position in Monell and held that under section 1983 the term "persons" was meant to include state political subdivisions. The Court held, in Owen, that municipalities are not entitled to a qualified immunity against section 1983 damage actions predicated on the good faith acts of their officials.

The Owen decision is significant for the liability it creates as well as the trend it continues. In addition, Owen attempts to answer some of the questions which Monell left unresolved. The Court determined that Congress did not intend to silently incorporate a qualified immunity for municipalities into section 1983 because at common law this good faith immunity was not clearly established. The Court further concluded that public policy considerations also favored holding local governments liable in section 1983 actions despite the good faith acts of their officials. This note will examine the Owen decision and its continuation of the trend which Monell began. Monell was the seminal decision in a now apparent trend of expanding the scope of section 1983 actions to promote the protection and redress of individual plaintiffs' injuries.

On February 20, 1967, George D. Owen was appointed to an indefinite term as police chief of the City of Independence, Missouri. Owen had no employment contract, but was subject to re-
moval at the sole behest of the city manager "when deemed necessary for the good of the service." In 1972, a conflict arose between Owen and City Manager Alberg concerning the administration of the police department, particularly Owen's supervision of the property room. On April 10, 1972, Alberg communicated to Owen his dissatisfaction with Owen's administration of the police department and asked Owen to resign as police chief. Despite Owen's refusal, Alberg apparently decided on April 15, 1972, to replace Owen as chief of police with Lieutenant Lawrence L. Cook of the police department, but did not immediately inform anyone of his decision.

At a city council meeting on April 17, 1972, Councilman Roberts read a statement which, in conjunction with Owen's dismissal the following day, produced the injury in this action. The next

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8. CITY OF INDEPENDENCE, MO., CHARTER § 3.3 (1).
9. A handgun which was reported as being in the police department's custody was later found in the possession of a felon. Narcotics and money was alleged to have mysteriously disappeared from police department custody. Alberg therefore instituted an investigation of the property department in mid-March of 1972. The investigation was handled by the City Counselor who reported to Alberg on or before April 12, 1972, that there was no evidence of any criminal acts nor was there any evidence of violation of state or local statutes in the administration of the police department. The auditor, however, reported that there were insufficient police records to make an accurate audit of the contents of the property room. 560 F.2d 925, 928 (5th Cir. 1977).
10. ___ U.S. at ___, 100 S. Ct. at 1403. While Alberg was out of town on the weekend of the 15th and 16th of April, 1972, Assistant City Manager Parley Banks, acting as city manager in Alberg's absence, issued the property room investigation reports to Councilman Paul L. Roberts at Roberts' request. Roberts read the reports and, believing that the contents should be made public, drafted a statement to be read by him at the next city council meeting on April 17, 1972, without prior notice to anyone. In a letter dated April 15, 1972, Owen requested that Alberg furnish him with reasons for his termination and a hearing. Id. Alberg, however, testified that he did not receive the letter until after the discharge was implemented. This demand by Owen was ignored by the city. The city denied a subsequent request for an appeal of the discharge by Owen's attorney, stating that the city charter did not provide for an appellate forum or procedure in the case of the discharge of an administrative official such as Owen. Id. at 1405.
11. The statement is reproduced in full at 421 F. Supp. 1110, 1116 n.2 (W.D. Mo. 1976). In the statement, Roberts alleged that Owen had diverted police department property to his own use, that money and narcotics had disappeared from Owen's office, that traffic tickets were manipulated, that "things have occurred causing the unusual release of felons", and that "the reports show gross inefficiencies on the part of a few high ranking officers of the police department." The city council also passed Roberts' motion that the reports be turned over to the prosecutor for immediate action against those persons "involved in illegal,
day, Owen was discharged for reasons undisclosed to him. Both Roberts' statement at the council meeting and Owen's discharge were given extensive coverage by the media.12

LOWER COURT OPINIONS

Petitioner originally brought his claim in the district court against the city manager, the mayor, the members of the city council in their official capacity, and the city itself.18 The Monroe decision prevented an action against the city under section 1983,14 and although the district court allowed an action to be maintained against the city arising directly under the fourteenth amendment,16 the court dismissed this claim on the merits. The court rejected Owen's claim of a property interest in his employment at the outset.16 The court also rejected Owen's claim of deprivation of a lib-

wrongful, or grossly inefficient activities brought out by the investigative reports."
12. U.S. at , 100 S. Ct. at 1404 n.8.
15. The general federal question statute is 28 U.S.C. § 1331, which requires the jurisdictional amount of $10,000.
The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity. An action on this theory was made possible by the Supreme Court's decision in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Bivens held that a federal court with jurisdiction over the subject matter of a suit (a test which all section 1983 actions, by definition, would meet under section 1331) may grant any traditional judicial remedy which is "necessary" or "appropriate" to the vindication of rights arising from positive law. The fourteenth amendment is clearly such a positive law. In bringing an action directly under the fourteenth amendment, plaintiffs must proceed under section 1331 since courts have refused to allow the use of section 1343(3) (which gives district courts original jurisdiction over any action brought to redress the deprivation of a right guaranteed by any state or federal law providing for equal rights) to secure jurisdiction unless the basis for the suit is a section 1983 action. This is because section 1983 and section 1343(3) were originally part of the same statute, the Civil Rights Act of 1871, and were only separated for the convenience of codification in 1874. See Patterson v. City of Chester, 389 F. Supp. 1093, 1095 n.1 (E.D. Pa. 1975). Under this theory, the plaintiff must therefore meet the jurisdictional amount of $10,000. The district court, in this case, found that Owen satisfied this requirement.
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Property interest. This deprivation was alleged to have resulted from the stigma that the public attached to him when he was discharged after the councilman's defamatory statements.\footnote{Id. at 1117.} After refusing to recognize any interest set forth by Owen, the court discussed the viability of a good faith defense by the city and concluded that the city would be entitled to such a defense.\footnote{Id. at 1124.}

Owen appealed the denial of his claim, and the city cross-appealed.\footnote{The cross-appeal challenged the district court's finding that the city and individual defendants were amenable to suit directly under the fourteenth amendment by use of section 1331.} In the first of the decisions rendered by the Court of Appeals for the Eighth Circuit, the court affirmed Owen's right to bring a claim against the city arising directly under the fourteenth amendment\footnote{Owen v. City of Independence, 560 F.2d 925, 933-34 (8th Cir. 1977).} and accepted Owen's claim on the merits under his deprivation of liberty interest theory.\footnote{Id. at 935.} Owen's claim was upheld against the defendant's good faith defense.\footnote{Id. at 940.}

Shortly after the city was granted certiorari, the Supreme Court ruled in Monell that a municipality was a "person" within the meaning of section 1983.\footnote{Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978).} The case was then remanded to be decided in light of Monell.\footnote{Owen v. City of Independence, 589 F.2d 335, 337 (8th Cir. 1978).}

The court of appeals, on remand, found that Owen's deprivation of liberty was caused by the city lawmakers' official conduct.\footnote{Id. at 339.} The court also held, in a cursory manner, that the city was not entitled to a good faith defense against Owen's claim.\footnote{____ U.S. at ___, 100 S. Ct. at 1406 n.13. The majority set forth the basis for the constitutional violation. "The Council's accusations received extensive coverage in the press, and even if they did not in point of fact 'cause' petitioner's discharge, the defamatory and stigmatizing charges certainly 'occur[red]..."}

ANALYSIS OF THE SUPREME COURT OPINION

Since the city failed to cross-petition on the issue of Owen's liberty interest, the majority refused to disturb the court of appeals' ruling that Owen was deprived of a liberty interest guaranteed by the fourteenth amendment.\footnote{____ U.S. at ___, 100 S. Ct. at 1406 n.13. The majority set forth the basis for the constitutional violation. "The Council's accusations received extensive coverage in the press, and even if they did not in point of fact 'cause' petitioner's discharge, the defamatory and stigmatizing charges certainly 'occur[red]..."} The Court then examined
whether Congress intended to silently incorporate a qualified immunity for local governments into section 1983 and resolved the issue in the negative. The Court next surveyed the public policy considerations which bear on the question of immunity and found that public policy is best served by holding municipalities liable notwithstanding the good faith acts of the public officials involved. The Court clearly resolved one of the four major questions left open in Monell (whether a municipality should be afforded a qualified immunity defense) and at least narrowed, if not resolved, another (the question of the level of conduct necessary for a municipality to be held liable in a section 1983 action).

To determine whether a municipality should enjoy a qualified immunity, the Court began with a discussion of statutory construction. The fact that the statute "on its face admits of no immunities," the Court determined, was not conclusive proof that a qualified immunity for municipalities had not been silently incorporated into section 1983. Previous decisions of the Court had established that both absolute and qualified immunities for cer-

in the course of the termination of employment." (quoting Paul v. Davis, 424 U.S. 693, 710 (1976)). The dissent took issue with this determination, stating that only the actual discharge should be examined, i.e., City Manager Alberg's statements and conduct. The only public statements Alberg made concerning Owen's discharge exonerated Owen from any criminal conduct. 421 F. Supp. at 1114. The dissent was unwilling to accept a causal connection between the statements at the city council meeting on April 17, 1972, and Owen's discharge the following day. The causal connection, however, was in the recounting of events by the local newspapers. 421 F. Supp. at 1116.


29. See Pierson v. Ray, 386 U.S. 547, 555-57 (1967) (police officers entitled to "good faith and probable cause" defense under section 1983 actions); Scheuer v. Rhodes, 416 U.S. 232, 247 (1974) (Governor and other state executive officials enjoyed a qualified immunity that varied with "the scope of discretion and responsibilities of the office"); Wood v. Strickland, 420 U.S. 308, 322 (1975) (local school board members are immune from suit under section 1983 provided they act in good faith in the exercise of their official duties). Wood also set out a two-step test for bad faith containing both a subjective and objective analysis, both of which an official must pass to be free from bad faith. Either acting with a malicious intent to cause a deprivation (subjective), or acting in such disregard of an individual's clearly established constitutional rights (objective), will establish bad faith.
tain officials were impliedly incorporated into section 1983. This implied incorporation of immunity was based on 1) the common-law rule of immunity being well settled at the time section 1983 was enacted, and 2) the policy reasons for the common law immunity also being supportive of its incorporation into section 1983. At common law, municipalities were sued in federal and state court in a variety of contexts and were generally considered, in the absence of one of the immunities discussed below, to owe the same legal duties to private individuals as other individuals or private corporations owed. In 1871, the contract clause was the provision of the Federal Constitution most commonly enforced against municipalities. Federal statutory violations by municipalities were also regularly adjudicated by the courts. Municipalities were consistently required to pay damages for violations of state constitutional and statutory prohibitions such as those proscribing the taking of property without payment of just compensation. Local governments were liable in tort for actions taken pursuant to their proprietary functions as well as their governmental functions for which sovereign immunity had been withdrawn by statute. The

32. Havemeyer v. Iowa County, 3 Wall. 294, 303 (1866); Thompson v. County of Lee, 3 Wall. 327, 330 (1866); Butz v. City of Muscatine, 8 Wall. 575, 584 (1869).
35. T. Cooley, Treatise on the Constitutional Limitations, 240 (1869) [hereinafter cited as Cooley]; Beach, Commentaries on the Law of Public Corporations, § 758, at 770 (1893) [hereinafter cited as Beach].

While local governmental immunity and the eleventh amendment may have been premised on parallel ideas, their scope, purpose, and effect are not equivalent. Counties and municipal corporations may not avail themselves of the eleventh amendment bar to suit in federal courts. See Mount Healthy City Board of Ed. v. Doyle, 429 U.S. 274, 280 (1977); Edelman v. Jordan, 415 U.S. 651, 667 n. 12 (1974); Moore v. County of Alameda, 411 U.S. 693 (1973); Lincoln County v.
Owen majority considered a good faith immunity irrelevant to the governmental-proprietary distinction. More fundamentally, though, since by definition sovereign immunity exists until statutorily abolished by the sovereign, the Court found that the enactment of section 1983 abrogated the use of a sovereign immunity defense in a section 1983 action.

A municipality was also protected at common law from suits challenging "discretionary" decisions. This protection evolved out of a concern for the separation of the coordinate branches of government. The "discretionary function" immunity was inapplicable where the municipality's duty was absolute and imperative, or specific and clearly defined. The majority in Owen held that the Federal Constitution defines absolute and imperative duties which a municipality has no "discretion" to violate. The Court also cited Thayer v. Boston and eight other nineteenth century state cases as supportive of municipal liability despite good faith


37. The question of whether a city's agents reasonably believed that they were conducting themselves in conformance with the law does not derive from nor depend upon whether the city was exercising governmental or proprietary powers when the injury occurred. U.S. at ____, 100 S. Ct. at 1413.

38. Congress is considered the sovereign in regard to violations of federal statutes and the Federal Constitution. Fitzpatrick v. Bitzer, 427 U.S. 445, 455-56 (1976). Congress therefore has the power, which it exercised in section 1983, by the inclusion of local governments as "persons" who can be sued under the statute, to abrogate any previously enjoyed sovereign immunity under state law. U.S. at ____, 100 S. Ct. at 1414 n.30.


40. See Shearman & Redfield, supra note 31, § 308 at 747.

41. E.g., Weightman v. Washington, 1 Black 39, 50 (1862).

42. ___ U.S. at ____ , 100 S. Ct. at 1415.

43. Thayer v. Boston, 36 Mass. 511 (1837) (municipality is liable for an official's acts which are within his authority or which are later ratified by the municipal corporation). The dissent in Owen attacked the majority's reliance on Thayer and stated that Hill v. Boston, 122 Mass. 344, 359 (1877), "squarely repudiated the broad holding of Thayer and limited municipal liability to acts performed in the proprietary interest of the municipality." U.S. at ____, 100 S. Ct. at 1430. While Hill v. City of Boston does distinguish Thayer on the basis of the proprietary function of the government challenged therein, it does not thereby diminish Thayer's validity, as the dissent's statement implies.
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conduct on the part of the public officials involved. The Owen majority concluded that since a good faith defense for municipalities did not exist at the time section 1983 was enacted, Congress could not have intended that section 1983 silently incorporate such a qualified immunity.

In addition to finding the congressional intent supportive of municipal liability, the Owen court held that public policy considerations also favor holding municipalities liable despite the good faith conduct of their officials. The Supreme Court had previously recognized that entity liability did not raise the same concerns as did personal liability of government officials. Government officials' immunity from liability for their good faith acts is based on three rationales:

1) the injustice, particularly in the absence of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion; 2) the danger that the threat of such liability would deter an official's willingness to execute his office with the decisiveness and the judgment required by

44. See Billings v. Worcester, 102 Mass. 329, 332-33 (1869) (under statute which specifically created the duty, a town was held liable for injuries resulting from defects in highways regardless of whether the town "exercised reasonable care, or even the utmost diligence to make it very safe, if they are in fact not so"); Horton v. Ipswich, 66 Mass. 488, 491 (1853) (same); Town Council of Akron v. McComb, 18 Ohio 229 (1849) (although officials were free from negligence and malice, the municipal corporation was held liable to property owner when grading on the street in front of his property diminished the value of his property); Lee v. Sandy Hill, 40 N.Y. 442, 451 (1869) (because a city was under a duty to open a particular street, the city was held liable for damages produced by the street-opening); Hurley v. Town of Texas, 20 Wis. 634 (1866) (liability for error in tax collecting); Hawks v. Charlemont, 107 Mass. 414 (1871) (city removed materials from plaintiff's property to effect repairs to a bridge); Squiers v. Village of Neenah, 24 Wis. 588, 593 (1869) (village was liable where trustees, acting on their good faith belief that the landowner had given his consent, opened a road over his property which resulted in a trespass). While the dissent contended that seven of the eight "reiterating" cases "involved thoroughly unremarkable exceptions to municipal immunity, as provided by state or common law", — U.S. at —, 100 S. Ct. at 1430 n.19, the dissent failed to produce any authority which clearly adopted an immunity predicated on the good faith acts of municipal officials.

45. See Hutto v. Finney, 437 U.S. 678 (1978) (allowed recovery for attorney's fees from public funds instead of holding officials personally liable since there was no bad faith on their part); Lake County Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979) (upheld absolute immunity for individual members of regional planning agency, but suggested that if the agency had enacted unconstitutional legislation, the governmental entity itself should bear the liability).
the public good;"  
and 3) the fear that the risk of personal liability may keep qualified citizens from seeking public office.  

The primary risk of injustice is not to the local governmental entity, but to the citizen who either cannot show that a particular official caused the violation or is met with a good faith defense by the errant official. To prevent injustice to the citizen who suffers a constitutional deprivation due to the good faith acts of one or more officials, liability must be placed upon the governmental entity, concluded the Court. This policy will also promote internal rules to protect against “systemic” violations not attributable to a single individual official. In addition, the majority recognized principles of equitable cost-spreading as a legitimate policy consideration.  

According to the majority, Owen, along with the existing body of law concerning section 1983, properly allocated the risks and losses among the three parties involved. The innocent victim will receive compensation for his injuries. The official will be made to pay damages when he acts in bad faith, the vigor with which he pursues his job not being diminished. Finally, the local government shall be held liable only when its official policy or custom causes the violation.  

The majority found that the threat of municipal liability would not have the same effect on an official's discretion as would

48. ___ U.S. at ___, 100 S. Ct. at 1416.  
49. See generally 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 25.17 (1958 and Supp. 1970); PROSSER, TORTS § 131 at 978 (4th ed. 1971); Michelman, Property, Utility, and Fairness: Some Thoughts on the Ethical Formation of “Just Compensation” Law, 80 HARv. L. REV. 1165 (1967) (cited by majority, Id., at 1417-18). The dissent, however, argued that placing financial responsibility on local governments may subject municipalities to potentially ruinous judgments. ___ U.S. at ___, 100 S. Ct. at 1425. Accord, City of Kenosha v. Bruno, 412 U.S. 507, 517-20 (1973); but see Moore v. County of Alameda, 411 U.S. 693, 708 (1973). The dissent also contended that the Forty-Second Congress' rejection of the Sherman Amendment's version of strict liability was evidence that the strict liability (dissent's categorization) which the majority imposed was not intended by the framers of section 1983. The Sherman Amendment, an amendment to the bill which became the Civil Rights Act of 1871, 17 Stat. 13, proposed a curious type of strict liability which proposed to hold municipalities liable for the wrongs of private citizens. Monell, 436 U.S. at 692 n.57. The Court in Monell admitted that rejection of this anomalous form of strict liability does not conclusively establish that the Forty-Second Congress opposed all forms of strict liability for municipalities. Id.
personal liability. In support of this proposition, the majority made several observations. Section 1983 violations are appropriately categorized with other decisions involving exposure of public funds. This is a problem with which public officials are routinely faced. The threat of municipal liability, instead of diminishing the vigor and decisiveness with which a public official performs his duties, would have a general beneficial effect, i.e., broader protection of an individual's constitutional rights. Public officials, aware of the municipality's exposure to liability regardless of their good faith acts, should thus be motivated to err in favor of the protection of an individual's constitutional rights.

The *Owen* Court's denial of a "good faith" immunity conclusively answers one of the major questions left unresolved by *Monell*. Three other significant issues were left open in *Monell* as well: 1) What constitutes official policy and who are the official policy makers? 2) What is the scope of "custom and usage"? and 3) What level of conduct is necessary on the part of a municipal defendant to trigger a section 1983 violation? While *Owen* is silent on the first two questions, some progress was made toward a resolution of the question of the level of conduct required for a section 1983 violation.

*Owen* appears to rule out intent as the requisite standard of conduct in a section 1983 action. In *Owen*, individual city officials did not intend to commit a constitutional violation. In fact, they sought guidance on the matter from the city attorney. The city attorney advised the officials that their conduct was lawful. Armed

50. ___ U.S. at ___, 100 S. Ct. at 1416.

51. The dissent, however, contends that entity liability will have much the same effect on officials as personal liability; "the resulting degree of governmental paralysis will be little different from that caused by fear of personal liability." ___ U.S. at ___, Id. at 1425.

52. Commentators, however, have drawn some conclusions. Policy makers are those who have final authority over a decision, or those to whom authority is clearly delegated. Schnapper, *Civil Rights Litigation After Monell*, 79 Colum. L. Rev. 213, 217-23 (1979) [hereinafter Schnapper]. A statute unconstitutional on its face is obviously an example of official policy which violates section 1983. A local government, however, is not free from liability merely by adopting a statute which is constitutionally neutral on its face. Official tolerance of an unconstitutional application of an otherwise constitutionally valid official policy will also trigger a section 1983 violation. This would be an example of a "custom or usage." See Note, *Municipal Liability Under Section 1983: The Meaning of "Policy or Custom"*, 79 Colum. L. Rev. 304, 305 (1979); Schnapper, supra, at 215-34.

53. 421 F. Supp. at 1118.
with this advice, the city officials had no reason to anticipate that the conduct surrounding Owen's discharge would be adjudged unconstitutional. Knowledge, therefore, must also be eliminated as a necessary element in a section 1983 prima facie case. The requisite level of conduct must therefore be either some form of negligence or strict liability, excluding a pure respondeat superior theory which was rejected in Monell. 54

At the time Owen was discharged, the prevailing test for deprivation of a liberty interest under the Supreme Court's decision in Wisconsin v. Constantineau 55 was "where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." 56 The position might be advanced that Owen's discharge could reasonably be construed as coming within the Constantineau test. The Owen decision may therefore support a negligence standard. The majority, however, did not concern itself with the foreseeability of the violation, but rather determined the city's liability based on the prevailing standards at the time the case was decided. 57 This indicates, as the dissent concluded, 58 that the standard imposed by the Owen majority is one of strict liability.

AN EVOLVING TRENDS

Owen is illustrative of a continuing trend which first emerged in Monell. Even before Monell, however, commentators criticized the Monroe holding (that local governments were not "persons" amenable to suit under section 1983) 59 as well as devised methods for circumventing its restrictiveness. 60 In Monell, the Court re-

54. 436 U.S. at 691.
55. 400 U.S. 433 (1971).
56. Id. at 437.
57. The city officials could not have predicted the holding of Board of Regents v. Roth, 408 U.S. 564, 573 (1972), which was decided approximately two months after Owen's discharge. In Roth, the Court held that discharge of an employee simultaneous with a "charge against him that might seriously damage his standing and associations in his community" would qualify as something "the government is doing to him", under Wisconsin v. Constantineau.
58. ___ U.S. at ___, 100 S. Ct. at 1423.
60. Blum, From Monroe to Monell: Defining the Scope of Municipal Liability in Federal Courts, 51 TEMP. L.Q. 409, 412 (1978); Note, Damage Remedies
versed its position taken in *Monroe* and held that municipalities are "persons" within the meaning of section 1983. The *Monell* Court reevaluated the legislative history surrounding the enactment of the Civil Rights Act of 1871," and found that *Monroe* had misconstrued the meaning of the section.\(^6\) The denial of a qualified immunity to local governments in *Owen* continues the *Monell* trend by increasing an individual plaintiff's opportunity for redress of a section 1983 violation. *Owen* extends the protection of section 1983 to situations where the violation is "systemic" and not the result of a single official's conduct and to cases where the violation is caused by one or more officials acting in good faith.

Two cases decided after *Owen* further expand the availability of section 1983 actions to citizens who are harmed by conduct or official involvement of a local government. The Supreme Court, in *Gomez v. Toledo*,\(^6\) held that the good faith of a government official must be pleaded and proved as an affirmative defense by the defendant. Plaintiff need only prove 1) that a person deprived him of a federal right, and 2) that such deprivation occurred while that person was acting under color of state law.\(^6\) In *Maine v. Thiboutot*,\(^6\) the Court allowed an individual to challenge the deprivation of welfare benefits guaranteed by the Federal Social Security Act in a section 1983 action. The novelty of this approach is that previously, the language "secured by the Constitution and laws" had been construed to include only federal statutes which provide for equal rights of persons. Because of the *Thiboutot* decision, federal rights other than those of a civil rights nature may now be vindicated under section 1983.\(^6\) Although the majority's support for section 1983 beyond civil rights cases in *Thiboutot* is

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61. 436 U.S. at 664-90.
62. *Id.* at 700.
63. ___ U.S. ___, ___, S. Ct. ___, 64 L. Ed. 2d 572 (1980).
64. ___ U.S. ___, ___, S. Ct. ___, *Id.* at 577.
65. ___ U.S. ___, 100 S. Ct. 2502 (1980).
66. This will, however, produce section 1983 actions for which the federal courts may not obtain jurisdiction under 28 U.S.C. § 1343(3), which provides federal jurisdiction for rights "secured by the Constitution of the United States or by Act of Congress providing for equal rights of citizens." For these actions, the jurisdictional amount of $10,000 must be met under 28 U.S.C. § 1331, the general federal question statute.
not particularly persuasive, both Gomez and Thiboutot are further evidence that the scope of section 1983 is being rapidly expanded.

CONCLUSION

The Court in Owen concluded that both congressional intent and public policy considerations support holding municipalities liable in section 1983 actions despite the good faith acts of their officials. Owen also resolved some of the questions left open in Monell. Owen, however, is most notable as a significant development in a rapidly evolving trend, albeit only recently set by the Court, of employing section 1983 as a vehicle for increasing citizens' access to the federal courts when in pursuit of municipal defendants.

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