

**DESHANEY V. WINNEBAGO COUNTY DEPARTMENT  
OF SOCIAL SERVICES**

103 L Ed 2d 249 (1989) 6-3

- + Rehnquist, White, Stevens, O'Connor, Scalia, Kennedy
- Brennan, Marshall, Blackmun



[A four-year-old boy in Winnebago County, Wisconsin, was severely beaten by his natural father, causing brain damage and requiring his placement in an institution for the profoundly retarded for the rest of his life. The boy, Joshua DeShaney, and his mother, Melody DeShaney, brought suit against the County's Department of Social Services (DSS) and individual DSS employees, alleging that they failed to intervene to protect him against a known risk of violence and thus deprived him of his liberty without due process of law. The district court and the Court of Appeals for the Seventh Circuit held that a state agency's failure to render protective services to persons within its jurisdiction does not violate the due process clause of the Fourteenth Amendment. The DeShaneys appealed to the U.S. Supreme Court.]

*Chief Justice Rehnquist delivered the opinion of the Court.*

**I**

The facts of this case are undeniably tragic. Petitioner Joshua DeShaney was born in 1979. In 1980, a Wyoming court granted his parents a divorce and awarded custody of Joshua to his father, Randy DeShaney. The father shortly thereafter moved to Neenah, a city located in Winnebago County, Wisconsin, taking the infant Joshua with him. There he entered into a second marriage, which also ended in divorce.

The Winnebago County authorities first learned that Joshua DeShaney might be a victim of child abuse in January 1982, when his father's second wife complained to the police, at the time of their divorce, that he had previously "hit the boy causing marks and [was] a prime case for child

abuse." . . . The Winnebago County Department of Social Services (DSS) interviewed the father, but he denied the accusations, and DSS did not pursue them further. In January 1983, Joshua was admitted to a local hospital with multiple bruises and abrasions. The examining physician suspected child abuse and notified DSS, which immediately obtained an order from a Wisconsin juvenile court placing Joshua in the temporary custody of the hospital. Three days later, the county convened an ad hoc "Child Protection Team"—consisting of a pediatrician, a psychologist, a police detective, the county's lawyer, several DSS case workers, and various hospital personnel—to consider Joshua's situation. At this meeting, the Team decided that there was insufficient evidence of child abuse to retain Joshua in the custody of the court. The Team did, however, decide to recommend several measures to protect Joshua, including enrolling him in a

preschool program, providing his father with certain counselling services, and encouraging his father's girlfriend to move out of the home. Randy DeShaney entered into a voluntary agreement with DSS in which he promised to cooperate with them in accomplishing these goals.

Based on the recommendation of the Child Protection Team, the juvenile court dismissed the child protection case and returned Joshua to the custody of his father. A month later, emergency room personnel called the DSS caseworker handling Joshua's case to report that he had once again been treated for suspicious injuries. The caseworker concluded that there was no basis for action. For the next six months, the caseworker made monthly visits to the DeShaney home, during which she observed a number of suspicious injuries on Joshua's head; she also noticed that he had not been enrolled in school and that the girlfriend had not moved out. The caseworker dutifully recorded these incidents in her files, along with her continuing suspicions that someone in the DeShaney household was physically abusing Joshua, but she did nothing more. In November 1983, the emergency room notified DSS that Joshua had been treated once again for injuries that they believed to be caused by child abuse. On the caseworker's next two visits to the DeShaney home, she was told that Joshua was too ill to see her. Still DSS took no action.

In March 1984, Randy DeShaney beat 4-year-old Joshua so severely that he fell into a life-threatening coma. Emergency brain surgery revealed a series of hemorrhages caused by traumatic injuries to the head inflicted over a long period of time. Joshua did not die, but he suffered brain damage so severe that he is expected to spend the rest of his life confined to an institution for the profoundly retarded.

Randy DeShaney was subsequently tried and convicted of child abuse. . . .

Because of the inconsistent approaches taken by the lower courts in determining when, if ever, the failure of a state or local governmental entity or its agents to provide an individual with adequate protective services constitutes a violation of the individual's due process rights . . . and the importance of the issue to the administration of state and local governments, we granted certiorari. . . .

## II

The Due Process Clause of the Fourteenth Amendment provides that "[n]o State, shall . . . deprive any person of life, liberty, or property, without due process of law." Petitioners contend that the State deprived Joshua of his liberty interest in "free[dom] from . . . unjustified intrusions on personal security," see *Ingraham v. Wright*, 430 US 651, 673 . . . (1977), by failing to provide him with adequate protection against his father's violence. The claim is one invoking the substantive rather than procedural component of the Due Process Clause; petitioners do not claim that the State denied Joshua protection without according him appropriate procedural safeguards, see *Morrissey v. Brewer*, 408 US 471 . . . (1972).\*

But nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security . . . [I]ts language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text. . . . Its purpose was to protect the people from the State, not to

\*Petitioners also argue that the Wisconsin child protection statutes gave Joshua an "entitlement" to receive protective services in accordance with the terms of the statute, an entitlement which would enjoy due process protection against state deprivation under our decision in *Board of Regents v. Roth*, 408 US 564. . . . (1972). . . . But this argument is made for the first time in petitioners' brief to this Court: it was not pleaded in the complaint, argued to the Court of Appeals as a ground for reversing the District Court, or raised in the petition for certiorari. We therefore decline to consider it here.

ensure that the State protected them from each other. The Framers were content to leave the extent of governmental obligation in the latter area to the democratic political processes.

Consistent with these principles, our cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual. See, e.g., *Harris v. McRae*, 448 US 297 . . . (1980). . . . As we said in *Harris v. McRae*, “[a]lthough the liberty protected by the Due Process Clause affords protection against unwarranted government interference . . . , it does not confer an entitlement to such [governmental aid] as may be necessary to realize all the advantages of that freedom.” 448 US, at 317–318 . . . (emphasis added). If the Due Process Clause does not require the State to provide its citizens with particular protective services, it follows that the State cannot be held liable under the Clause for injuries that could have been averted had it chosen to provide them.\* As a general matter, then, we conclude that a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.

Petitioners contend, however, that even if the Due Process Clause imposes no affirmative obligation on the State to provide the general public with adequate protective services, such a duty may arise out of certain “special relationships” created or assumed by the State with respect to particular individuals. . . . Petitioners argue that such a “special relationship” existed here because the State knew that Joshua faced a special danger of abuse at his father’s hands, and specifically proclaimed, by word and by deed, its intention to protect him against that danger. . . . Having actually undertaken to protect Joshua from this danger—which petitioners concede the State played no part in creating—the State

acquired an affirmative “duty,” enforceable through the Due Process Clause, to do so in a reasonably competent fashion. Its failure to discharge that duty, so the argument goes, was an abuse of governmental power that so “shocks the conscience,” *Rochin v. California*, 342 US 165 . . . (1952), as to constitute a substantive due process violation. . . .

We reject this argument. It is true that in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals. In *Estelle v. Gamble*, 429 US 97 . . . (1976), we recognized that the Eighth Amendment’s prohibition against cruel and unusual punishment, made applicable to the States through the Fourteenth Amendment’s Due Process Clause, *Robinson v. California*, 370 US 660 . . . (1962), requires the State to provide adequate medical care to incarcerated prisoners. . . . We reasoned that because the prisoner is unable “by reason of the deprivation of his liberty [to] care for himself,” it is only “just” that the State be required to care for him. . . .

In *Youngberg v. Romeo*, 457 US 307 . . . (1982), we extended this analysis beyond the Eighth Amendment setting, holding that the substantive component of the Fourteenth Amendment’s Due Process Clause requires the State to provide involuntarily committed mental patients with such services as are necessary to ensure their “reasonable safety” from themselves and others. . . .

But these cases afford petitioners no help. Taken together, they stand only for the proposition that when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. . . . The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself,

---

\*The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause. See *Yick Wo v. Hopkins*, 118 US 356 . . . (1886). But no such argument has been made here.

and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. . . . The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf. . . .

Petitioners concede that the harms Joshua suffered did not occur while he was in the State's custody, but while he was in the custody of his natural father, who was in no sense a state actor. While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. That the State once took temporary custody of Joshua does not alter the analysis, for when it returned him to his father's custody, it placed him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individual's safety by having once offered him shelter. Under these circumstances, the State had no constitutional duty to protect Joshua.

It may well be that, by voluntarily undertaking to protect Joshua against a danger it concededly played no part in creating, the State acquired a duty under state tort law to provide him with adequate protection against that danger. . . . But the claim here is based on the Due Process Clause of the Fourteenth Amendment, which, as we have said many times, does not transform every tort committed by a state actor into a constitutional violation. . . .

Judges and lawyers, like other humans, are moved by natural sympathy in a case like this to find a way for Joshua and his mother to receive adequate compensation for the grievous harm inflicted upon them. But before yielding to that impulse, it is well to remember once again that the harm was inflicted not by the State of Wisconsin, but by Joshua's father. The most that can be said of the state functionaries

in this case is that they stood by and did nothing when suspicious circumstances dictated a more active role for them. In defense of them it must also be said that had they moved too soon to take custody of the son away from the father, they would likely have been met with charges of improperly intruding into the parent-child relationship, charges based on the same Due Process Clause that forms the basis for the present charge of failure to provide adequate protection.

The people of Wisconsin may well prefer a system of liability which would place upon the State and its officials the responsibility for failure to act in situations such as the present one. They may create such a system, if they do not have it already, by changing the tort law of the State in accordance with the regular law-making process. But they should not have it thrust upon them by this Court's expansion of the Due Process Clause of the Fourteenth Amendment.

Affirmed.

*Justice Brennan, with whom Justice Marshall and Justice Blackmun join, dissenting.*

"The most that can be said of the state functionaries in this case," the Court today concludes, "is that they stood by and did nothing when suspicious circumstances dictated a more active role for them." . . . Because I believe that this description of respondents' conduct tells only part of the story and that, accordingly, the Constitution itself "dictated a more active role" for respondents in the circumstances presented here, I cannot agree that respondents had no constitutional duty to help Joshua DeShaney.

It may well be, as the Court decides . . . that the Due Process Clause as construed by our prior cases creates no general right to basic governmental services. That, however, is not the question presented here; indeed, that question was not raised in the complaint, urged on appeal, presented in the petition for certiorari, or addressed in the briefs on the merits. No one, in short, has asked the Court to proclaim that, as a general matter, the

Constitution safeguards positive as well as negative liberties.

This is more than a quibble over dicta; it is a point about perspective, having substantive ramifications. In a constitutional setting that distinguishes sharply between action and inaction, one's characterization of the misconduct alleged under § 1983 may effectively decide the case. Thus, by leading off with a discussion (and rejection) of the idea that the Constitution imposes on the States an affirmative duty to take basic care of their citizens, the Court foreshadows—perhaps even preordains—its conclusion that no duty existed even on the specific facts before us. This initial discussion establishes the baseline from which the Court assesses the DeShaneys' claim . . .

The Court's baseline is the absence of positive rights in the Constitution and a concomitant suspicion of any claim that seems to depend on such rights. From this perspective, the DeShaneys' claim is first and foremost about inaction (the failure, here, of respondents to take steps to protect Joshua), and only tangentially about action (the establishment of a state program specifically designed to help children like Joshua). And from this perspective, holding these Wisconsin officials liable . . . would seem to punish an effort that we should seek to promote.

I would begin from the opposite direction. I would focus first on the action that Wisconsin has taken with respect to Joshua and children like him rather than on the actions that the State failed to take. Such a method is not new to this Court. Both *Estelle v. Gamble* and *Youngberg v. Romeo* began by emphasizing that the States had confined J. W. Gamble to prison and Nicholas Romeo to a psychiatric hospital. This initial action rendered these people helpless to help themselves or to seek help from persons unconnected to the government. . . . Cases from the lower courts also recognize that a State's actions can be decisive in assessing the constitutional significance of subsequent inaction . . .

In striking down a filing fee as applied to divorce cases brought by indigents, see *Boddie v. Connecticut*, 401 US 371 . . . (1971), and in deciding

that a local government could not entirely foreclose the opportunity to speak in a public forum, see, e.g., *Schneider v. State*, 308 US 147 . . . (1939); *Hague v. CIO*, 307 US 496, (1939); *United States v. Grace*, 461 US 171 . . . (1983), we have acknowledged that a State's actions—such as the monopolization of a particular path of relief—may impose upon the State certain positive duties. Similarly, *Shelley v. Kraemer*, 334 US 1 . . . (1948), and *Burton v. Wilmington Parking Authority*, 365 US 715 . . . (1961), suggest that a State may be found complicit in an injury even if it did not create the situation that caused the harm . . .

. . . To put the point more directly, these cases signal that a State's prior actions may be decisive in analyzing the constitutional significance of its inaction. I thus would locate the DeShaneys' claims within the framework of cases like *Youngberg* and *Estelle*, and more generally, *Boddie* and *Schneider*, by considering the actions that Wisconsin took with respect to Joshua.

Wisconsin has established a child-welfare system specifically designed to help children like Joshua. Wisconsin law places upon the local departments of social services such as respondent . . . a duty to investigate reported instances of child abuse. . . . While other governmental bodies and private persons are largely responsible for the reporting of possible cases of child abuse, . . . Wisconsin law channels all such reports to the local departments of social services for evaluation and, if necessary, further action. . . . Even when it is the sheriff's office or police department that receives a report of suspected child abuse, that report is referred to local social services departments for action, . . . the only exception to this occurs when the reporter fears for the child's immediate safety. . . . In this way, Wisconsin law invites—indeed, directs—citizens and other governmental entities to depend on local departments of social services such as respondent to protect children from abuse.

The specific facts before us bear out this view of Wisconsin's system of protecting children. Each time someone voiced a suspicion that Joshua was being abused, that information was relayed to the Depart-

ment for investigation and possible action. . . . (As to the extent of the social worker's involvement in and knowledge of Joshua's predicament, her reaction to the news of Joshua's last and most devastating injuries is illuminating: "I just knew the phone would ring some day and Joshua would be dead." 812 F2d 298, 300 (CA7 1987).)

Even more telling than these examples is the Department's control over the decision whether to take steps to protect a particular child from suspected abuse. While many different people contributed information and advice to this decision, it was up to the people at DSS to make the ultimate decision . . . whether to disturb the family's current arrangements. . . . When Joshua first appeared at a local hospital with injuries signaling physical abuse, for example, it was DSS that made the decision to take him into temporary custody for the purpose of studying his situation—and it was DSS, acting in conjunction with the Corporation Counsel, that returned him to his father. . . . Unfortunately for Joshua DeShaney, the buck effectively stopped with the Department. . . .

. . . Through its child-welfare program, . . . the State of Wisconsin has relieved ordinary citizens and governmental bodies other than the Department of any sense of obligation to do anything more than report their suspicions of child abuse to DSS. If DSS ignores or dismisses these suspicions, no one will step in to fill the gap. Wisconsin's child-protection programs thus effectively confined Joshua DeShaney within the walls of Randy DeShaney's violent home until such time as DSS took action to remove him. Conceivably, then, children like Joshua are made worse off by the existence of this program when the persons and entities charged with carrying it out fail to do their jobs.

It simply belies reality, therefore, to contend that the State "stood by and did nothing" with respect to Joshua. . . . Through its child-protection program, the State actively intervened in Joshua's life and, by virtue of this intervention, acquired ever more certain knowledge that Joshua was in grave danger. These circumstances, in my view, plant this case solidly within the tradition of cases like *Youngberg* and *Estelle* . . .

I would allow Joshua and his mother the opportunity to show that respondents' failure to help him arose, not out of the sound exercise of professional judgment that we recognized in *Youngberg* as sufficient to preclude liability, . . . but from the kind of arbitrariness that we have in the past condemned. See, e.g., *Daniels v. Williams*, 474 US 327 . . . (1986).

. . . *Youngberg's* deference to a decisionmaker's professional judgment ensures that once a caseworker has decided, on the basis of her professional training and experience, that one course of protection is preferable for a given child, or even that no special protection is required, she will not be found liable for the harm that follows . . . Moreover, that the Due Process Clause is not violated by merely negligent conduct . . . means that a social worker who simply makes a mistake of judgment under what are admittedly complex and difficult conditions will not find herself liable in damages under § 1983. . . .

. . . My disagreement with the Court arises from its failure to see that inaction can be every bit as abusive of power as action, that oppression can result when a State undertakes a vital duty and then ignores it. Today's opinion construes the Due Process Clause to permit a State to displace private sources of protection and then, at the critical moment, to shrug its shoulders and turn away from the harm that it has promised to try to prevent. Because I cannot agree that our Constitution is indifferent to such indifference, I respectfully dissent.

#### *Justice Blackmun, dissenting*

Today, the Court purports to be the dispassionate oracle of the law, unmoved by "natural sympathy." . . . But, in this pretense, the Court itself retreats into a sterile formalism which prevents it from recognizing either the facts of the case before it or the legal norms that should apply to those facts. As Justice Brennan demonstrates, the facts here involve not mere passivity, but active state intervention in the life of Joshua DeShaney—intervention that triggered a fundamental duty to aid the boy once the State learned of the severe danger to which he was exposed.

The Court fails to recognize this duty because it attempts to draw a sharp and rigid line between

action and inaction. But such formalistic reasoning has no place in the interpretation of the broad and stirring clauses of the Fourteenth Amendment. Indeed, I submit that these clauses were designed, at least in part, to undo the formalistic legal reasoning that infected antebellum jurisprudence, which the late Professor Robert Cover analyzed so effectively in his significant work entitled *Justice Accused* (1975).

Like the antebellum judges who denied relief to fugitive slaves, . . . the Court today claims that its decision, however harsh, is compelled by existing legal doctrine. On the contrary, the question presented by this case is an open one, and our Fourteenth Amendment precedents may be read more broadly or narrowly depending upon how one chooses to read them. Faced with the choice, I would adopt a "sympathetic" reading, one which comports with dictates of fundamental justice and recognizes that compassion need not be exiled from the province of judging. . . .

Poor Joshua! Victim of repeated attacks by an irresponsible, bullying, cowardly, and intemperate father, and abandoned by respondents who placed him in a dangerous predicament and who knew or learned what was going on, and yet did essentially nothing except, as the Court revealingly observes, ante, at —, 103 L Ed 2d 257, "dutifully recorded these incidents in [their] files." It is a sad commentary upon American life, and constitutional principles—so full of late of patriotic fervor and proud proclamations about "liberty and justice for all," that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded. Joshua and his mother, as petitioners here, deserve—but now are denied by this Court—the opportunity to have the facts of their case considered in the light of the constitutional protection that 42 USC § 1983 [42 USCS § 1983] is meant to provide.

## COUNTY OF SACRAMENTO V. LEWIS

523 U.S. 833 (1998) 9–0

+ Souter, Rehnquist, O'Connor, Kennedy,  
Ginsburg, Breyer, Stevens, Scalia, Thomas



[After petitioner James Smith, a county sheriff's deputy, responded to a call along with another officer, Murray Stapp, the latter returned to his patrol car and saw a motorcycle approaching at high speed, driven by Brian Willard, and carrying Philip Lewis, respondents' decedent, as a passenger. Stapp turned on his rotating lights, yelled for the cycle to stop, and pulled his car closer to Smith's in an attempt to pen the cycle in, but Willard maneuvered between the two cars and sped off. Smith immediately switched on his own emergency lights and siren and began a high-speed chase. The chase ended after the cycle tipped over. Smith slammed on his brakes, but his car skidded into Lewis, causing massive injuries and death. The District Court granted summary judgment for Smith, but the Ninth Circuit reversed, holding that the appropriate degree of fault for substantive due process liability for high-speed police pursuits is deliberate indifference to, or reckless disregard for, a person's right to life and personal security.]