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R. Perry Sentell Jr.

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Local Government and Constitutional Torts: In the Georgia Courts

by R. Perry Sentell, Jr.*

I. INTRODUCTION

The concept of governmental immunity from civil responsibility has long troubled many. An ingredient of this country's common law heritage, the concept nevertheless yields the epitome in philosophic face-offs. On the one hand, we inherently disavow governmental divinity: we subscribe to a rule-of-law demand that government restores what it destroys. On the other hand, we recognize that government's essential mission is unique and involuntary: we understand that a strictly private-sector accounting may well imperil government's public

* Carter Professor of Law, University of Georgia School of Law. University of Georgia (A.B., 1956; LL.B., 1958); Harvard University (LL.M., 1961). Member, State Bar of Georgia.
performance. Traditionally, neither position has completely prevailed, and legal history unfolds a striking account of accommodation.

None of the accounts is more striking than that originating with the United States' Forty-Second Congress, a legislature operating against the immediate background of the Civil War. That Congress, on April 20, 1871, enacted legislation casting civil liability upon "persons" who, under state auspices, deprive others of federally granted rights. In this remarkable fashion, the "Civil Rights Act of 1871" amalgamated state tort law and violations of the Federal Constitution.

In 1978, more than a century after the statute's enactment, the United States Supreme Court abruptly applied it to local governments. Since that decision, "constitutional torts" have assumed high profile in efforts to jettison local government immunity. These efforts proceed in all states in both federal and state courts.

Georgia local governments have thus now experienced almost twenty years of "constitutional tort" litigation. The time is appropriate, therefore, for appraising that litigation's impact upon the state's traditional local government tort immunity. Because such appraisals typically emphasize federal law, state cases are often neglected. This Article strives to remedy that neglect by marking the "constitutional tort occasion" in the Georgia appellate courts.

II. BACKGROUND

A. Exposition

The origins are familiar, and the way is well traveled. In 1871 a distraught national Congress, seeking "to enforce the provisions of the Fourteenth Amendment," enacted the genesis legislation. That statute, the "Civil Rights Act of 1871," encompassed the epic declaration later codified as 42 U.S.C. § 1983:

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1. 17 Stat. 13 (1871).
4. See R. Perry Sentell, Jr., Georgia Local Government Law's Assimilation Of Monell: Section 1983 And The New "Persons" (1984). This monograph describes both the background and the immediate progeny of the Civil Rights Act of 1871 and Monell v. Department of Social Services and analyzes the six years of case law in both federal and state courts dealing with Georgia local governments following Monell. This paper employs that discussion of early state court developments as its point of departure and brings the analysis forward to the present.
6. Id.
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, 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 . . . .

Following enactment, however, this declaration of civil responsibility suffered decades of dormancy. Indeed, the United States Supreme Court discovered the statute's viability only in 1961, and then only in a significantly limited context. In the foundational case of *Monroe v. Pape*, the Court declared the statute applicable on behalf of citizens allegedly mistreated by thirteen Chicago police officers. That applicability ran, however, only against the officers themselves; as for the municipality, the Court in *Monroe* was unanimous: "[W]e hold that a municipal corporation is not a 'person' within the meaning of [Section] 1983 . . . ." In 1961, as in 1871, therefore, local governments remained free from Section 1983's imposition of civil responsibility.

Seventeen years later, the Court came full circle. In 1978 in the legendary setting of *Monell v. Department of Social Services*, the Supreme Court reversed its course of 107 years. A majority of the Court in *Monell* upheld complaints charging a municipality with forcing premature leaves of absence upon its pregnant employees. Expressly overruling its decision in *Monroe*, the Court undertook a "fresh
analysis" of Section 1983's legislative history. That analysis, the Court announced, "compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom [Section] 1983 applies."

Basic applicability declared, the Court in Monell turned more particularly to the statute's coverage. On the one hand, Section 1983 covered local government action that "implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated." Likewise covered were "deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." On the other hand, the Court delineated, "a municipality cannot be held liable solely because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under [Section] 1983 on a respondeat superior theory."

In summary, the Court asserted, "it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under [Section] 1983."

As crafted, Monell's precept of coverage plunged American local governments into the fathomless sea of "constitutional torts."

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16. Id. at 665. Actually, the Sherman Amendment rejected by the Forty-Second Congress was offered not in Section 1983 but to another section of the Civil Rights Act, and the obligation proposed by the amendment and rejected by Congress was a different obligation from that imposed by Section 1983. Id. at 683.

17. Id. at 690.

18. Id.

19. Id. at 691.

20. Id.

21. Id. at 694. Even today, some nineteen years later, the Supreme Court continues to struggle with the local government dichotomy it created in Monell: respondeat superior immunity and policy-or-custom liability. Witness the Court's five-to-four division in Board of County Commissioners v. Brown, 117 S. Ct. 1382 (1997), involving county liability for a deputy sheriff's alleged use of excessive force in effecting an arrest. To plaintiff's claim of Section 1983 liability based on the sheriff's "single decision" to hire the deputy without an adequate background review, the majority opinion imposed a requirement of "deliberate indifference'... to... known or obvious consequences." Id. at 1385. Reversing lower court decisions of county liability, the Court reasoned that the lower tribunals had failed to consider whether the deputy's background "made his use of excessive force in making an arrest a plainly obvious consequence of the hiring decision." Id. at 1392. The Court explained its decision as follows: "To prevent [county] liability for a hiring decision from collapsing into respondeat superior liability, a court must carefully test the link between the policymaker's inadequate decision and the particular injury alleged." Id. at 1391.

B. Development

Amidst the confusion wrought by Monell's abrupt repudiation of the past, uncertainty reigned supreme. One resulting doubt revolved around forum—the appropriate court(s) for resolving a Section 1983 "action," "suit," or "proceeding." Neither the statute itself, nor (to this point) the Supreme Court, had identified the judicial site for launching these newly authorized complaints against local governments. Perhaps it was simply assumed that federally declared rights, anchored in the Federal Constitution and "laws," would naturally be pursued in the federal courts. What implications did such a presumption hold for Section 1983 claimants desiring to sue local governments in state courts? The quandary begged for clarification.

Two years following its decision in Monell, the Court paid the forum issue at least passing attention in Martinez v. California. There, the Court referred to a "general rule" that there is no reason why a congressionally-created right "should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a State court." Yet, the Court also conceded that it had never considered "whether a state must entertain a claim under [Section] 1983." Somewhat tentatively, the Court in Martinez concluded as follows: "[W]here the same type of claim, if arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim." In any event, by 1990 the Court could look back upon a general practice that had largely rendered the issue academic. "Virtually every State has expressly or by implication opened its courts to Section 1983 actions and there are no state court systems that refuse to hear Section 1983 cases."
Under both presumption and practice, it thus developed that the once impotent Civil Rights Act of 1871 had worked a unique modern revolution in the law of local government tort liability. Equally impressive, moreover, the progeny of that revolution proceeded in parallel fashion and on dual judicial fronts. The coexistence of those fronts held the promise of continuing analytical intrigue.

Not surprisingly, legal scholarship has largely attended the federal front. Exuding a rather typical preoccupation, that scholarship has relentlessly pursued Section 1983 in both the Supreme Court and in the lower federal courts throughout the country.29 Those courts, the literature confirms, have witnessed a myriad of Section 1983 challenges to the tort immunity traditionally claimed by American local governments. Obviously, lawyers in all states must be aware of that phenomenon.

Each of those lawyers also needs the additional Section 1983 anthology evolved by his or her respective state courts. As a concomitant development, those epochs constitute a necessary part of the Monell progeny. With that progeny now fast approaching its twenty-year milestone, any account omitting the state court perspective offers a grievously incomplete reflection.


Whatever the hesitations over the role of state courts in Section 1983 litigation, Georgia harbored none of them. Although Monell promptly racked complete dissention upon the Georgia Court of Appeals, none of the disagreement went to jurisdiction. In City of Atlanta v. Fry,30 former police officers “alluded” to Monell in complaining of demotions resulting from their exercise of First Amendment rights.31 In response,
a bare majority of the court summarily foreclosed the issue: there simply was "no evidence that the appellees' demotion came about as the result of the enforcement of an official city policy." Taking strong issue, a four-judge dissent urged plaintiffs' "civil rights" to protect against "being capriciously transferred without cause to a less attractive and lower paying job from one in which they were paid at least partly by federal funds." As for evidence of municipal "policy," the dissent was equally adamant: "Whatever 'official city policy' there may be in demoting policemen for undue relationships with newspaper reporters, it can only be surmised through the actions of the officer in charge of these departments.

Fry thus constituted Georgia's initial, and immediate, state court fallout from Monell. Divided as closely as possible, the court of appeals came to analytical blows over the Supreme Court's "policy or custom" concept. "Policy," the majority insisted, must trigger plaintiffs' deprivations and must appear in plaintiffs' evidence. "Deprivation," the dissent countered, was clear, and execution by a city department necessarily manifested municipal "policy." The conceptual standoff was substantial; it promised a Georgia evolution of substantive, and independent, significance.

Constitutional torts then broke with full fury upon the Georgia Supreme Court. The preliminary event, Davis v. City of Roswell, featured a police officer's conduct in delaying transportation of plaintiff's critically ill wife to a hospital. The supreme court, via a four-justice majority opinion, reversed the trial court's judgment of municipal immunity. The court emphasized plaintiff's reliance upon Section 1983: "It is a federal right of action asserted here, and it is controlled by federal law." The court recalled Monell's distinction between "negligence or respondeat superior" and deprivations visited under

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32. Id., 251 S.E.2d at 90.
33. Id. at 271, 251 S.E.2d at 92 (Deen, P.J., dissenting).
34. Id. at 271-72, 251 S.E.2d at 92.
35. Id. at 270, 251 S.E.2d at 91.
36. Id. at 271, 251 S.E.2d at 91 (Deen, P.J., dissenting).
38. Id. at 8, 295 S.E.2d at 318. Plaintiff alleged that the officer stopped him, detained him for approximately an hour without charging him, and refused to allow his wife to proceed to the hospital until an ambulance was called. Plaintiff's wife died at the hospital some hours later. Id.
39. Id. at 10, 295 S.E.2d at 319. The trial court had rendered that judgment for the municipality on the pleadings. Id. at 8, 295 S.E.2d at 318.
40. Id. at 9, 295 S.E.2d at 318. "The supremacy clause of the Constitution prevents us from construing the federal rule to permit a state immunity defense." Id.
governmental "policy or custom."\textsuperscript{41} Police detention and delay, the court concluded, may entitle plaintiff "to relief under some state of facts involving the City . . . which could be proved in support of his claim under . . . Section 1983."\textsuperscript{42}

Having postponed the day of reckoning to the day of proof, the supreme court's \textit{Davis} opinion shed little additional light.\textsuperscript{43} Its indicated receptiveness to the federal statute, as a viable limitation on local government immunity, awaited future fruition.

Less than six months later, \textit{Baranan v. Fulton County}\textsuperscript{44} reflected a far more thoughtful, and considerably more cautious, supreme court. The plaintiff in \textit{Baranan} employed Section 1983 to complain of the county's "continuing nuisance" in diverting drainage water across his land. That nuisance, plaintiff asserted, violated his rights under the Fourth, Fifth, and Fourteenth Amendments to the Federal Constitution.\textsuperscript{45}

The supreme court not only rejected plaintiff's position but also tendered an original substantive analysis.\textsuperscript{46} The court recognized that county "nuisances" might precipitate eminent domain liability under the Georgia Constitution.\textsuperscript{47} "This," however, "does not necessarily mean that the same facts raise a valid cause of action under parallel provisions of the United States Constitution."\textsuperscript{48} True, the court conceded, "[t]here is probably a potential federal constitutional issue in every suit against the state or its agents."\textsuperscript{49} However, Section 1983 is not a "vehicle" for litigating "all simple tort suits (traditionally state protected rights) as federal constitutional violations."\textsuperscript{50} Abuses of governmental power do not raise "‘ordinary tort[s]’ to the “‘stature’” of constitutional

\textsuperscript{41} Id., 295 S.E.2d at 318-19. "In order to state a claim under 42 U.S.C. § 1983 the plaintiff must allege that the defendant is a person who deprived him of a constitutional right while acting under color of state law or custom." Id., 295 S.E.2d at 318.

\textsuperscript{42} Id., 295 S.E.2d at 319.

\textsuperscript{43} The three dissenting justices filed no written opinion. See id. at 10, 295 S.E.2d at 319.

\textsuperscript{44} 250 Ga. 531, 299 S.E.2d 722 (1983).

\textsuperscript{45} Id. at 532, 299 S.E.2d at 723-24. Plaintiff alleged the county's rerouting of the surface waters across his property and the continuation of that practice until the date of the litigation. Id. at 531, 299 S.E.2d at 723.

\textsuperscript{46} Id. at 532, 299 S.E.2d at 724.

\textsuperscript{47} Id.

\textsuperscript{48} Id. at 533, 299 S.E.2d at 724. The court observed that "the states may offer their citizens greater protection through their own constitutions than is provided in the federal constitution." Id.

\textsuperscript{49} Id.

\textsuperscript{50} Id., 299 S.E.2d at 724-25. This was true, the court reasoned, though "the broad purpose of 42 U.S.C. § 1983 is to guarantee protection of federal rights." Id.
violations. Affirming denial of plaintiff's claim, the court announced its future resolve: "We do not intend to expand the scope of Section 1983 actions beyond the limits set forth by the federal courts."

In its initial substantive reflections upon Monell, therefore, the Georgia Supreme Court revealed concerns on several fronts. One front touched upon the delineation of similar rights assured by both state and federal constitutions. The court appeared resolute in its refusal automatically to embrace state violations as valid federal claims. Moreover, the court manifested its determination to preserve traditional distinctions between "simple tort suits" and "federal constitutional violations." An ordinary tort, even one savoring of governmental abuse and violative of the Georgia Constitution, failed to attain federal stature. Federal decisions counseled against Monell's misuse, and the Georgia Supreme Court accepted (with demonstrative fervor) the counsel.

The supreme court's final decision of the "formative" epoch, City of Cave Spring v. Mason, followed Baranan by only a few months. Cave Spring presented an action for malicious arrest and prosecution with the court of appeals applying Section 1983 against the defendant municipality. Granting certiorari, the supreme court proceeded to "reconcile" the federal statute with Georgia's "traditional, constitutional, and statutory doctrine of sovereign immunity." That reconciliation pivoted upon the court's analytical alarm over the "meaning of the terms 'acting under color of state law or custom.'" On their face, those terms would ensnare the conduct of "every servant, agent, or employee of a governmental body, while in the course of employment." Such a

52. 250 Ga. at 533, 299 S.E.2d at 725.
53. Id., 299 S.E.2d at 724-25 (asserting that this was the message of York and the United States Supreme Court decision in Parratt v. Taylor, 451 U.S. 527 (1981)).
54. Id.
56. Id. at 3, 310 S.E.2d at 892. Defendant municipality and officials had structured a "notice of charges" against plaintiff based on third-party reports of wrongful appropriation of city water. The charges were subsequently dismissed. Id.
58. 252 Ga. at 4, 310 S.E.2d at 893. The clear message of Monell, the court asserted, is that Section 1983 "assuredly . . . is not a federally imposed doctrine of respondeat superior." Id.
59. Id.
60. Id. "'State law' is the progenitor of all public activity conducted within the bounds of our Georgia Constitution; 'custom' is 'state action,' lacking the express direction of 'state law,' and 'under color of' is the equivalent of 'in pursuit of.'" Id.
prospect, obviously incompatible with the orderly conduct of government, mandated an exercise in judicial construction.

The court expressly "centered" upon "the nature of the 'state law or custom' as formulated" by the local government's "policy-making apparatus."\(^{61}\) So focused, the interpretative exercise bypassed Monell's analysis and ran exclusively to the federal statute itself: "We interpret 42 U.S.C. § 1983 to create a cause of action, cognizable by the courts of this state, based upon acts which are in implementation of an intentional policy, adopted or ratified by the governing body of a public agency, which acts work deprivation of a constitutional right."\(^{62}\) The requisite "intentional policy," the court elaborated, "may be formal or informal, acknowledged or vigorously denied, persistent or intermittent, or implemented by but one single act."\(^{63}\) In sum, future claimants must prove "that a governing body has worked constitutional deprivation of a citizen pursuant to an impermissible or corrupt policy which is intentional and deliberate."\(^{64}\) With Georgia's approach to Section 1983 finally formulated, the court remanded Cave Spring for appropriate reconsideration.\(^{65}\)

Six years removed from its inception, therefore, Monell's revolution required adaptation to the traditional context of Georgia local government law. Proceeding under a self-announced theme of "reconciliation," and seemingly oblivious to Monell itself, the Georgia Supreme Court imposed its own independent interpretation upon Section 1983. Translating the statute's "policy or custom" concept into the parlance of local government administration, the court envisioned action by the local "governing body." That action need be neither formal nor continuous, but it must intentionally yield an official "policy." The operative "intent" thus referred not to deliberate deprivation of rights, but rather the local government's adoption or ratification of policy as "policy." Finally, the

61. Id. The court defined that "apparatus" as "the appointed or elected members of the several branches of state government, or the elected members of the governing body of a county or municipality, or the appointed governing body of any other agency of state, county, or municipal government." Id.
62. Id.
63. Id. at 4-5, 310 S.E.2d at 893.
64. Id. at 5, 310 S.E.2d at 894.
65. Id. In forceful dissent, a single justice insisted that under federal law "there is clearly no requirement . . . that conduct violative of the Constitution be either intentional or formally adopted by the governing body of a public agency" and that "[a] reckless disregard or indifference to violation of these rights, which need not amount to implementation of an intentional policy, is sufficient." Id. at 7, 310 S.E.2d at 895 (Smith, J., dissenting). The dissent continued: "No formula for misconduct need be shown by the claimant, and no wilfulness or specific intent to deprive him or others of protected rights is required." Id.
governing body’s “implementation” of that policy must actually cause the complainant’s deprivation. As thus “reconciled,” Section 1983 created a civil cause of action cognizable in Georgia courts.

The formative period appropriately concluded with the court of appeals decision in *City of College Park v. Grunden*. The case featured a claim for damages to plaintiff’s automobile while being towed by a wrecker service operating under municipal contract. Although rejecting the claim, the trial court also denied the municipality’s motion for attorney fees. The city’s appeal from that denial presented a Section 1983 issue of first impression.

The majority opinion emphasized the municipality’s burdens on the issue. As “prevailing party,” defendant may recover attorney fees “only upon a showing that the plaintiff’s action in filing the suit was unreasonable, frivolous, meritless, or vexatious.” Moreover, the trial judge’s discretion in deciding the issue “will not be upset unless abused.”

Against those burdens, however, the court posited Monell’s requirement of injury “from the execution of an official governmental policy or custom.” “Obviously,” the court asserted, “it was not the city’s official policy or custom to cause towing damage to automobiles which had been involved in collisions.” Additionally, plaintiff had possessed “a full and complete remedy against the towing company under simple tort principles.” Accordingly, “[u]nder no construction could [plaintiff] have prevailed against the city in the Section 1983 action,” and the

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67. *Id.* at 814, 321 S.E.2d at 372. Plaintiff’s automobile was involved in an accident inside the municipality, the municipal police officer summoned the “city wrecker,” and the wrecker allegedly caused further damage to the car while transporting it. *Id.*
68. *Id.*
69. *Id.* at 817, 321 S.E.2d at 374 (Benham, J., dissenting).
70. 42 U.S.C. § 1988(b) (1996): “In any action to enforce a provision of sections 1981(a), 1982, 1983, 1985, and 1986 of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs . . . .”
71. 171 Ga. App. at 814, 321 S.E.2d at 372 (relying upon *Carrion v. Yeshiva Univ.*, 535 F.2d 722 (1976)).
72. *Id.*
73. *Id.* at 815, 321 S.E.2d at 372.
74. *Id.*
75. *Id.* “Indeed, the appellee was duly informed prior to filing this suit that the towing company was an independent contractor and that it was fully insured.” *Id.*
76. *Id.*
trial court had abused its discretion in denying municipal attorney fees.

Grunden thus concluded the era upon a typically restrictive note. First, the court sought official "policy or custom" by focusing upon infliction of the damage rather than the governmental context producing the damage. Thus, the municipal policy of towing wrecked automobiles did not encompass damage to the towed vehicles. From this restrictive vista, however, plaintiff will rarely prevail upon the policy issue. Few municipalities, it seems safe to suggest, will decide upon a policy of damaging automobiles. Second, the court maintained, plaintiff should have appreciated the weakness of his policy claim and the strength of his "simple tort" case against a third party. Indeed, plaintiff's dual failures of appreciation constituted "unreasonable, frivolous, meritless, or vexatious" conduct. Finally, the trial judge's failure to recognize this conduct amounted to an abuse of discretion. With those conclusions, the court of appeals also concluded a novel issue under Section 1983.

IV. GEORGIA: SETTLING IN

A. The Middle Ages (1985-1990)

The supreme court opened Georgia's next round of Section 1983 jurisprudence with a return to City of Roswell v. Davis. Davis featured the claim that an inadequately trained police officer delayed transportation of plaintiff's critically ill wife to a hospital. Rebuffing the charge, the court could find no causal connection between the alleged training deficiency and plaintiff's deprivation. First, the crucial delay

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77. Id. A dissenting opinion for two judges urged as follows:
The area of civil rights is still virgin territory for the appellate courts of this State, and we should proceed with extreme caution in interpreting the civil rights statutes using federal guidelines. Since this is a matter of first impression in this court, the majority opinion may well have a 'chilling effect' on civil rights actions and will pose a roadblock to the bringing of legitimate claims.

Id. at 817, 321 S.E.2d at 374 (Benham, J., dissenting).

78. 255 Ga. 158, 335 S.E.2d 582 (1985).

79. See Davis v. City of Roswell, 250 Ga. 8, 295 S.E.2d 317 (1982), supra text accompanying notes 37-43. There, the court had concluded that plaintiff "may be entitled to relief under some state of facts involving the City . . . which could be proved in support of his claim under 42 U.S.C. § 1983." Id. at 9, 295 S.E.2d at 317.

80. 255 Ga. at 163, 335 S.E.2d at 586.

In sum, what the evidence as a whole shows is that a police officer legitimately stopped a car only to discover that it bore a critically ill woman. He then decided that, rather than allow the driver to proceed or to transport [the woman] in his patrol car, the better course of action was to call for emergency help to render aid and for an ambulance to transport the patient to the hospital, which was over 8
resulted from extended ambulance response time, an occurrence the evidence failed to show "that the officer should have anticipated." Second, the officer promptly called his supervisor whose immediate arrival on the scene broke "the causal link" between the officer's training and plaintiff's harm. In sum, the court concluded, "[w]e find that the evidence did not establish that a 'policy' of inadequate training sufficient to support liability under . . . [Section] 1983 was the cause of the harm suffered by [plaintiff]."

Tort law's venerable "causation" requirement, Davis revealed, occupies a universal presence. It perpetuates that presence, moreover, in both its "cause in fact" and "proximate cause" doctrinal attires. In both guises, the requirement reaches beyond the boundaries of negligence law to dominate the theater of "constitutional torts" as well.

Davis aside, it was at this early juncture that the "transitional era" radiated a marked transfer of judicial responsibility. Increasingly, the supreme court found fewer and fewer occasions for deciding Section 1983 controversies. For extended periods, therefore, continued evolution fell largely to the Georgia Court of Appeals. That court, in a myriad of litigated contexts, confronted the statute's unfolding assault upon local government tort immunity.

The statute's "policy or custom" component proved a persistently problematic item for the court. It operated across an illustrative span of judicially perceived governmental scenarios. First, there is the instance in which the court perceives claimant's failure to establish any local government policy or custom. This was the court's view of Dinsmore v. Cherokee County, a wrongful death action for a collapsing wall at the county landfill. Once it sustained dismissal of plaintiff's miles away. In addition, he called a supervising officer to the scene as he had been instructed to do . . . [Plaintiff] bore the burden of showing not only the existence of an official policy of inadequate medical emergency training, but also a causal connection between the policy and the constitutional deprivation.

Id.

81. Id. "Liability was not predicated on the response time of these personnel but on alleged inadequate training because of which the officer allegedly mishandled the emergency." Id.

82. Id.

83. Id. at 164, 335 S.E.2d at 586. The court thus reversed the court of appeals decision in Davis v. Ramey, 174 Ga. App. 417, 330 S.E.2d 130 (1985), and affirmed the trial court's grant of the municipality's motion for j.n.o.v. Id. Only one justice dissented, without opinion. See id.


85. Id. at 93, 338 S.E.2d at 524. Plaintiff's decedent was dumping rubbish at the county landfill and was killed when the dirt wall to the waste trench caved in. Id.
negligence count, the court could discern no remaining basis for Section 1983. "The alleged operative facts hardly qualify as an implementation of an intentional policy or a constitutional deprivation resulting from an intentionally corrupt or impermissible policy." The larger thus included the lesser: in the absence of any established landfill policy, necessarily there was none substantiating a constitutional tort claim. Noticeably, the court failed to extract a deficient "policy" from the county's policy of formulating "no policy" in operating its landfill.

In a second instance, claimant's evidence apparently reveals a governmental policy, but the court refuses to credit the revelation. In City of Marietta v. Kelly, an action for illegal arrest, the arresting officer testified "that the practice of placing shoplifting suspects under arrest in lieu of the complainant securing a city warrant for shoplifting was the police department's 'routine procedure.'" Reversing claimant's summary judgment, the court found "no evidence conclusively showing that such arrest was pursuant to any official [municipal] policy or custom." On the one hand, "routine procedure" existed; on the other hand, "official policy" was lacking.

A third, and substantial, variation completes the circle. The setting is one in which the court finds governmental policy but also expressly approves it. Mills v. City of Atlanta featured plaintiff's collision with a police officer responding to an emergency. As for policy, the city tendered its instructions to police trainees on statutory requirements for operating emergency vehicles. The court plumbed the substantive

86. Id., 338 S.E.2d at 523-24. The court rejected plaintiff's attempt to use provisions of the Georgia Solid Waste Management Act (O.C.G.A. § 12-8-1 to -52.2 (1996 & Supp. 1997)) to show negligence, finding no statutory authorization for a negligence action based on a breach of duty. Id.

87. Id. at 94, 338 S.E.2d at 525. "In the instant case, the unmistakable gravamen of the appellants' complaint was negligence." Id.

88. Id. The court relied upon the supreme court's formulation in Cave Spring. Id.


90. Id. at 418, 334 S.E.2d at 9.

91. Id. A dissenting opinion forcefully differed on the custom or policy issue: "[T]he only evidence of that issue" is the officer's testimony, and "[i]t is clear, therefore, that the liability here does not stem from the activity of a single city employee but from an established practice." Id. (Benham, J., dissenting).


93. Id. at 8, 332 S.E.2d at 320. Although the officer was treating the call as an emergency, the evidence conflicted as to whether she was using both her emergency lights and siren. Id.

94. Id. at 9, 332 S.E.2d at 321.

The record establishes that the city instructed its police trainees as follows with regard to the meaning of the statute [O.C.G.A. § 40-6-6 (1997)]: "These
accuracy of those instructions and characterized them "an acceptable interpretation of the statute." Consequently, "the city satisfactorily negated the essential allegations of [plaintiff's] Section 1983 claim." Local government "policy" thus clearly existed; it received, however, the court's express analytical endorsement as valid governmental operation.

The statute's "deprivation" component likewise proved troublesome for the court of appeals. In an assortment of contexts, Section 1983 claimants discovered, this component barred their way.

The court touched upon the deprivation issue in City of Marietta v. Kelly, an action for illegal arrest. There, focusing upon events related to the arrest, the court preliminarily observed that "[v]iolation of state law alone does not give rise to an action under Section 1983." Although plaintiff's arrest "involved a failure to fully comply with Georgia law," this "does not necessarily imply a deprivation of federal constitutional rights." Reversing claimant's summary judgment, the court emphasized conflicting evidence on whether a probable cause determination could have been obtained during claimant's warrantless detention. If not, the court reasoned, "it does not follow that a deprivation of federal constitutional rights occurred."

Id.

exemptions can be used when answering an emergency or when pursuing a suspect. The law says that you can use these exemptions— but—you had better not become involved in an accident. If you are involved in an accident, be ready to justify your actions well enough that twelve (12) citizens (not police officers) will be ready for the safety of others. You have to prove both."

Id. 95. Id.

96. Id.


99. Id. at 416, 334 S.E.2d at 7. Plaintiff had been arrested for shoplifting under an invalid warrant. Id.

100. Id.

101. Id.

102. Id. at 416-17, 334 S.E.2d at 8. "As incident to a lawful arrest without a warrant the arrestee may be held for a reasonable time pending a judicial determination of probable cause." Id. at 418, 334 S.E.2d at 9.

103. Id. For yet another, and later, court of appeals analysis along these lines, see Jarrett v. Butts, 190 Ga. App. 703, 379 S.E.2d 583 (1989), pertaining to a student's action against a county school board for a teacher's having photographed plaintiff against her will. Id. at 703-04, 379 S.E.2d at 584-85. The court rejected plaintiff's claim under Section 1983 for violation of her right to privacy as protected by the Federal Constitution. Id. at 705, 379 S.E.2d at 586. The court reasoned as follows:

We find no authority for [plaintiff's] assertions that the alleged invasion of privacy at issue here is encompassed within the "fundamental," personal rights "implicit in the concept of "ordered liberty," that are included within the zone of privacy
Deprivation likewise foreclosed plaintiff's effort in *Evans v. Clayton County*\(^{104}\) to recover for injuries inflicted by a dog released from the county pound.\(^{106}\) The release, the court emphasized, followed the county's "good faith" determination that the dog was not vicious and assurances that the adopting owner possessed proper facilities.\(^{106}\) Under no circumstances, the court implied, could the evidence show more than county negligence. "Where a government official's act causing injury to life, liberty or property is merely negligent, "no procedure for compensation is *constitutionally* required."\(^{107}\) Accordingly, "plaintiff has no basis for any recovery pursuant to . . . [Section] 1983."\(^{108}\)

As with "mere" violations of state law, so with "mere" negligence, the statute's "deprivation" hurdle proved insurmountable.

Could the governmental immunity doctrine itself sufficiently "deprive?" This issue surfaced in *Sisson v. Douglas County School District*,\(^ {109}\) a student's action for injuries incurred in a fall on school premises.\(^{110}\) Essentially, plaintiff contended, "he was denied a property right without due process of law, because under Georgia law 'no state remedy exists' for a party injured by the acts of a county employee."\(^{111}\) In response, the court disputed plaintiff's premise rather than his conclusion. Recognizing a cause of action as "property protected by the Fourteenth Amendment's due process clause,"\(^ {112}\) the court nevertheless deemed "the states . . . free to create substantive defenses or 'immuni-\[\]

\(^{105}\) Id. at 613, 356 S.E.2d at 553. Plaintiff alleged the county's "'corrupt and negligent' policy of releasing vicious dogs to their owners or others rather than destroying them." Id. at 613-14, 356 S.E.2d at 553.
\(^{106}\) Id. at 614, 356 S.E.2d at 553-54. The evidence, the court reasoned, "unequivocally" established these circumstances. Id., 356 S.E.2d at 553.
\(^{107}\) Id. (quoting Daniels v. Williams, 474 U.S. 327, 333 (1986)).
\(^{108}\) Id. The court thus affirmed the trial court's grant of summary judgment in favor of the county. Id., 356 S.E.2d at 554.
\(^{110}\) Id. at 77-78, 351 S.E.2d at 272-73. Plaintiff alleged various acts and failures to act resulting in his fall on a rain-slicked gymnasium floor. Id.
\(^{111}\) Id. at 80, 351 S.E.2d at 274.
\(^{112}\) Id. (relying upon Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)).
ties." The Georgia legislature "has provided due process of law in its consideration of potential claims during enactment of the state's overall tort scheme of law." Any resulting immunities, the court maintained, could scarcely qualify as fatal deprivations. "[N]o segment of the Fourteenth Amendment's due process clause . . . protects against all deprivations of life, liberty, or property by the State." Consequently, plaintiff had suffered "no deprivation of any constitutional right . . . without due process of law." There are deprivations, it turns out, and there are Section 1983 "deprivations."

A remaining variation on the concept emerged in Henderson v. Sherrington, an action for the county's termination of plaintiff's employment. Having obtained reinstatement and back pay, plaintiff appealed denial of her Section 1983 claim for damages. Upon review, the court of appeals delineated plaintiff's alleged due process violations. Adequate state remedies satisfied procedural due process, and "the adequacy of the state remedy . . . has been conclusively established by the fact that it resulted in [plaintiff's] reinstatement with back pay and benefits." Although those results may not equal the relief that Section 1983 would have afforded, they nevertheless precluded the federal claim. As for substantive due process, "[N]ot every wrong committed by a state actor rises to the level of a "constitutional tort." Indeed, "an administrative or personnel action of [this] type," the court held, "cannot be considered so brutal or shocking as to constitute a substantive due process violation." On both deprivation fronts, therefore, plaintiff's Section 1983 efforts proved futile.

Aside from the substantive impediments, Section 1983 claimants also confronted litigation time bars. The constitutional violations charged in

113. Id.
114. Id., 351 S.E.2d at 275.
115. Id.
116. Id. at 81, 351 S.E.2d at 275. The court affirmed the trial court's grant of summary judgment for the county school district. Id.
118. Id. at 498, 376 S.E.2d at 398. The termination resulted from the abolition of plaintiff's position, the position of county tag agent, which the plaintiff had held for 19 years. Id.
119. Id. at 499, 376 S.E.2d at 398-99.
120. Id., 376 S.E.2d at 399 (relying on Parratt v. Taylor, 451 U.S. 527 (1981)).
121. Id. (relying on Parratt, 451 U.S. 527).
122. Id. (quoting Lee v. Hudson, 810 F.2d 1030, 1032 (11th Cir. 1987)).
123. Id. at 500, 376 S.E.2d at 399.
124. The court thus affirmed the trial court's summary judgment denying plaintiff's Section 1983 claim for damages. Id.
Freeman v. City of Brunswick\textsuperscript{125} indisputably occurred more than two years prior to plaintiff's complaint.\textsuperscript{126} For that reason, the court summarily dismissed the action: "Even viewing plaintiff's claim as arising under . . . [Section] 1983, the applicable statute of limitation remains the two-year period provided by [the Georgia statute]."\textsuperscript{127}

Notably, the "transition era" was not completely bereft of claimant success. City of Athens v. McGahee\textsuperscript{128} featured a complaint by police officers to the repeal of retirement benefits.\textsuperscript{129} Alluding to both state and federal decisional guidelines, the court of appeals approved the claimants' efforts.\textsuperscript{130} First, the court found both an "intentional [municipal] policy"\textsuperscript{131} and an interest "safeguarded by procedural due process."\textsuperscript{132} Moreover, the court reasoned, "by virtue of its charter, and its governing authority thereunder," the city obviously acted under "color of state law."\textsuperscript{133} Finally, the court concluded, "the benefits sought by plaintiffs were of a class of property protected against arbitrary and unilateral cancellation without cause by the city, and the city's action in attempting to do so created a cause of action under . . . [Section] 1983."\textsuperscript{134}

Georgia's transitional evolution of Section 1983 thus continued the expositional themes of caution and reconciliation. Although claimants continued their press for constitutional tort responsibility, the state's heritage of local government immunity loomed large. A meshing of those


\textsuperscript{126} \textit{Id.} The events occurred in 1985, and the complaint was filed in 1988. \textit{Id.}

\textsuperscript{127} \textit{Id.} at 635-36, 388 S.E.2d at 747 (relying on O.C.G.A. § 9-3-33 (1982)). The court thus affirmed the trial court's grant of summary judgment for the municipality. \textit{Id.} at 636, 388 S.E.2d at 747.

\textsuperscript{128} 178 Ga. App. 76, 341 S.E.2d 856 (1986).

\textsuperscript{129} \textit{Id.} at 76-77, 341 S.E.2d at 856. The plan provided for severance pay upon retirement, based on number of years of service, and all plaintiff police officers had obtained at least the minimum service time when the plan was repealed. The plan had been adopted in 1970 and was then repealed in 1980. \textit{Id.}

\textsuperscript{130} \textit{Id.} at 80, 341 S.E.2d at 859.


\textsuperscript{134} 178 Ga. App. at 80, 341 S.E.2d at 859.
concepts proved a delicate judicial undertaking. The Georgia Supreme Court, early fashioning a doctrinal prerequisite of causation, promptly entrusted the era to the Georgia Court of Appeals. That court subjected Section 1983 claimants to obstacles of policy or custom, deprivation, adequate state remedies, and statutory time limitations. It was a rare plaintiff who successfully maneuvered this maze of litigational impediments.

The era's conclusion, however, left the distinct impression that Georgia's appellate courts were yet to confront the full brunt of the Monell progeny. The dawn of a new decade promptly and conclusively projected that impression to full fruition.


Perhaps the modern era's most impressive feature is sheer volume of Section 1983 litigation against local governments. Unpromising background to the contrary, constitutional tort quests abound in the Georgia appellate courts.

1. The Georgia Supreme Court. Although perpetuating its developmental deference to the court of appeals, the Georgia Supreme Court periodically reappears upon the evolutionary scene. At the decade's inception, the court decided City of Atlanta v. J.A. Jones Construction Co., 136 a lowest timely bidder's challenge to municipal acceptance of a late construction bid. Plaintiff sued the city under state law for lost profits and under Section 1983 for denial of due process. The latter claim targeted the municipality's failure to afford plaintiff a protest hearing. At trial plaintiff received a jury verdict and judgment on both counts, victories subsequently affirmed by the court of appeals. 137

Granting certiorari only "to consider the measure of damages," the supreme court first formulated "the purpose of the bid requirement" as "protect[ing] the public coffers from waste" and "assur[ing] that taxpayers receive quality work and goods for the lowest possible

136. Id. at 658, 398 S.E.2d at 370. "The deadline for submitting bids was set at 2:00 p.m., April 10, 1985. Appellees' bid was the lowest timely bid submitted, but the contract was awarded to Interstate Construction, whose bid was lower but was submitted three minutes after the 2:00 p.m. deadline." Id.
139. Id.
Municipal frustration of that purpose deprived plaintiff of the contract, and "the permissible recovery for that wrong is the reasonable expense of bid preparation." Because plaintiff having recovered those expenses under state law, "the award based on the Section 1983 claim constituted an impermissible double recovery." Its concern in J.A. Jones Construction Co. focused exclusively on damages, the supreme court took no issue with the finding of a Section 1983 "wrong" itself. The protection's peculiar origin did, however, limit the worth of the harm inflicted. The court adopted that limitation from the United States Supreme Court: "[T]he abstract value of a constitutional right may not form the basis of Section 1983 damages . . . . [S]uch damages must always be designed "to compensate injuries caused by the constitutional deprivation." Yet another inhibition thus levied its toll upon the Monell progeny in Georgia's Section 1983 jurisprudence.

By 1992, the supreme court was prepared explicitly to articulate its philosophy of restricted review. In Kroupa v. Cobb County, the court instructed that jurisdiction of Section 1983 appeals "generally lies in the Court of Appeals." This was "because such claims ordinarily involve the application of unquestioned and unambiguous provisions of the state or federal constitutions." Hereafter, the court advised future litigants, "unless jurisdiction lies in this court for some other reason,

140. Id. "Approval of a process which favors the acceptance of the lowest bid is a constant theme expressed in cases decided by this court . . . ." Id.
141. Id. at 659, 398 S.E.2d at 371. Those expenses were the sole items recoverable under the state law claim.

[W]e adopt the reasoning of S & W Mechanical Co. v. City of Homerville, 682 F. Supp. 546 (M.D. Ga. 1988), and specifically disallow the recovery of lost profits. To permit the recovery of lost profits would unduly punish the tax-paying public while compensating the plaintiffs for effort they did not make and risks they did not take.

260 Ga. at 659, 398 S.E.2d 370.
145. Id. at 452, 421 S.E.2d at 284. In Kroupa the court summarily dismissed a Section 1983 claim against county police officers who investigated plaintiff's traffic accident and gave her a ticket: "The trial court properly granted summary judgment to the defendants because none of [plaintiff's] allegations, even if true, shows a deprivation of any rights secured under 42 U.S.C. § 1983." Id.
146. Id.
appeals raising claims under...[Section] 1983 should be filed in the Court of Appeals.

Following Kroupa's admonition, four years elapsed before the supreme court's first significant reentry upon Georgia's Section 1983 anthology. In Atlanta City School District v. Dowling, the court granted certiorari to review the municipal school system's termination of an employee. The issue was whether plaintiff's Section 1983 claim survived her "reinstate[ment] in her job with back pay as a result of state remedies." In response, the court fashioned the following delineation: "Unlike a substantive due process claim, a constitutional violation of procedural due process is not complete 'unless and until the State fails to provide due process.'" Thus, "the state may cure a procedural deprivation by providing a later procedural remedy." This claimant had received both administrative and judicial review, and "the trial court granted the equitable relief...sought." That disposition provided "an adequate remedy under state law" and "redressed any procedural due process deprivations that [plaintiff] suffered." Consequently, the court dismissed plaintiff's Section 1983 claim for damages.

In summary, the supreme court's current treatment of Section 1983 is both limited and limiting. In ordinary instances, the court cautions statutory litigants, it will not render appellate review. True to its counsel, the court granted certiorari in only two significant instances within the last six years. It utilized both occasions, moreover, to emphasize restrictions inherent in a Section 1983 proceeding. First, the protected claim avails only for compensating concrete injuries. Once state law renders that compensation, Section 1983 offers no additional...
balm for "the abstract value of a constitutional right."157 Second, when based upon a procedural deprivation, a Section 1983 claim exists subject to subsequent state-law correction. Once adequately effected, the correction precludes an additional award of damages under Section 1983.158

Most Section 1983 evolution presently occurs in the Georgia Court of Appeals.

2. The Georgia Court of Appeals. The court of appeals' current treatment of Section 1983 litigation can be viewed in several subject-matter composites. Some are common to earlier discussion; some present novel issues.

a. Procedure. At the decade's inception, the court took Allen v. Bergman159 as the opportunity to announce a procedural correction. There, focusing upon a teacher's handicap discrimination complaint against the county school board, the court declared immaterial the teacher's failure to exhaust her administrative remedies. The court explained that two years earlier, the United States Supreme Court "held that states may no longer require litigants to exhaust administrative remedies before asserting [Section 1983] claims ... in state courts."160 An obstacle of considerable difficulty thus disappeared from the procedural path of Section 1983 claimants in Georgia courts.161

The court likewise freed Section 1983 claimants from Georgia's "ante litem notice" mandate.162 That statute requires plaintiffs seeking damages from municipalities to furnish notice of claim within six months of the injury's occurrence.163 In City of Atlanta v. J.A. Jones Construc-
tion Co., the court simply pronounced the notice requirement inapplicable to claimant’s “[Section] 1983 count.” Two years later, in *Armour v. Davidson*, the court reemphasized the point: “[T]he trial court erred in holding that plaintiff’s action against the City is barred by plaintiff’s failure to give ante litem notice pursuant to [statute].” Again, “the notice provisions of that statute do not apply to actions filed pursuant to . . . [Section] 1983.”

b. Policy or Custom. “Policy or custom” continues as the most problematic prerequisite for Section 1983 claimants in the Georgia courts. Currently, the issue arises across the spectrum of local government law enforcement activities. *Pinkston v. City of Albany* illustrated the matter at the threshold activity of arrest. There, the court summarily dismissed the claim of one who “by [his] own statement, . . . was at a fire in a public place, with alcohol, displaying a weapon, and . . . refused to put out the fire.” The court deemed it sufficient to emphasize that claimant “has not even alleged that any of the asserted wrongs committed against him resulted from the enforcement or implementation of an intentionally corrupt or impermissible policy on the part of the city.”

Striving to craft the essential charge, claimant in *Armour v. Davidson* alleged it “the custom of the City to allow for warrantless arrest and then to detain the arrestee for a period of time until a warrant can be obtained.” However, when the municipality denied the alleged

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165. 195 Ga. App. at 78, 392 S.E.2d at 570.
167. *Id.* at 12, 416 S.E.2d at 93.
168. *Id.*
170. *Id.* at 43-44, 395 S.E.2d at 588. Municipal police officers had taken plaintiff into protective custody and ultimately charged him with “disorderly while intoxicated,” a charge eventually nolle prossed. *Id.*
171. *Id.* at 46, 395 S.E.2d at 590. Plaintiff had sued the municipality and its employees for false arrest, slander, false imprisonment, and violation of his federal civil rights. *Id.* at 44, 395 S.E.2d at 588.
172. *Id.* at 47, 395 S.E.2d at 590 (emphasis added). “It follows that he has asserted no basis for a recovery of damages against the city, with the result that the city was properly granted summary judgment.” *Id.* The court cited for authority the United States Supreme Court decision in *Monell* and the Georgia Supreme Court decision in *City of Cave Spring*. *Id.*
174. *Id.* at 13, 416 S.E.2d at 93.
custom and moved for summary judgment, the court held claimant failed to meet his burden by filing an “affidavit only alleging proof of a single incident of errant behavior.” Under the policy or custom requirement, the affidavit “cannot constitute a sufficient basis for imposing liability on the City.”

The court tendered a similar analysis in Bell v. City of Albany, an arrestee’s claim for injuries suffered while intoxicated and struggling with an officer at the police station. Claimant asserted a municipal policy authorizing the use of excessive force and “permitting a single police officer to handle and escort highly intoxicated and handcuffed arrestees despite a high risk of injury to the arrestee.” Once again, however, plaintiff’s only supporting evidence was that of his own injury while struggling with “a non-policymaking employee of the City.” The court denied Section 1983 liability “for a single incident of unconstitutional conduct by a municipal employee without proof that the conduct was taken pursuant to a municipal policy or custom.”

The court stressed the paucity of evidence on excessive force, on injuriously handling intoxicated arrestees, and on other similar instances.

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175. Id. at 12, 416 S.E.2d at 93. The municipality submitted an affidavit by its City Manager to the effect that the city’s policy was to comply with the arrest requirements of the Fourth Amendment and that “this policy is made known to all police officers who are trained in said policy and expected to abide therewith.” Id. at 13, 416 S.E.2d at 93 (citations omitted).

176. Id.

To meet its burden of showing such a policy, when the municipality has moved for summary judgment on the basis that the City has no such custom or policy, the plaintiff must allege a “series of incidents of unconstitutional conduct suggesting the existence of a widespread practice that ... constitute[s] a “custom or usage” with the force of law.’”

Id. (quoting City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988)).

177. Id.


179. Id. at 371-72, 436 S.E.2d at 89. The injury occurred as the officer attempted to walk the intoxicated plaintiff from the booking station to the adjacent jail when plaintiff suddenly resisted and struggled with the officer, resulting in a fall through the open doorway. Id.

180. Id. at 372-73, 436 S.E.2d at 90.

181. Id. at 373, 436 S.E.2d at 90.

182. Id. The court distinguished instances in which “a single decision by municipal policymakers, or a single implementation of a municipal policy or custom by a municipal employee, may be sufficient to establish that a municipal policy or custom caused the alleged deprivation.” Id. The court relied upon Pembaur v. Cincinnati, 475 U.S. 469 (1986). 210 Ga. App. at 373, 436 S.E.2d at 90.

183. 210 Ga. App. at 373, 436 S.E.2d at 90. The court said that nothing suggested “any widespread informal policy or practice constituting a custom or usage with the force of law.” Id. (citing City of St. Louis v. Praprotnik, 485 U.S. 112 (1988)).
Rather, "[t]he evidence showed that City police officers received appropriate training in dealing with intoxicated arrestees" and authorized summary judgment.\footnote{184}

The policy issue may also attach prior to the arrest, as in Poss \textit{v.} City of North Augusta.\footnote{185} There, decedents were killed in a car wreck while being pursued by municipal police for various illegal acts.\footnote{186} Summarily rejecting plaintiffs' Section 1983 complaint,\footnote{187} the court found it "undisputed that each [municipality] had promulgated guidelines which defined and regulated the circumstances and manner under which a high speed chase would be authorized."\footnote{188} The court declared "[t]he

\footnote{184. Id. "'[I]nadequate training of police officers [can] be characterized as the cause of the constitutional tort if—and only if—the failure to train amounted to deliberate indifference to the rights of persons with whom the police come into contact." Id. (quoting Collins \textit{v.} Harker Heights, 503 U.S. 115, 123-24 (1992)). Said the Georgia Court of Appeals: "Even assuming that there was evidence to support a factual issue as to whether the training was completely adequate, there was certainly no evidence of a failure to train amounting to deliberate indifference." Id.

In a case similarly involving a "jailhouse occurrence," Alford \textit{v.} Osei-Kuasi, 203 Ga. App. 716, 418 S.E.2d 79 (1992), a county police officer subdued a prisoner by shooting her with a taser. \textit{Id.} at 716, 418 S.E.2d at 80-81. Summarily disposing of the Section 1983 claim against the county, the court reasoned that "'[t]he record is barren of any evidence of "implementation of an intentional policy or a constitutional deprivation resulting from an intentionally corrupt or impermissible policy" so as to find a cause of action under 42 U.S.C. § 1983.'" \textit{Id.} at 722, 418 S.E.2d at 85 (quoting Holloway \textit{v.} Rogers, 181 Ga. App. 11, 351 S.E.2d 240, 243 (1986)).

Finally, Watson \textit{v.} Mayor of Savannah, 223 Ga. App. 399, 477 S.E.2d 667 (1996), featured an action for injuries suffered by plaintiff in an altercation with an off-duty police officer. \textit{Id.} at 399, 477 S.E.2d at 668. Sustaining the trial court's grant of summary judgment for the municipality, the court reasoned as follows:

Pretermitting the issue of whether or not the trial court correctly found that [the officer] was acting under color of law, there is simply no evidence in the record sufficient to show that [the officer's] off-duty altercation with [plaintiff] . . . was the result of an impermissible or corrupt policy which was intentional and deliberate.

\textit{Id.} at 402, 477 S.E.2d at 670.


186. \textit{Id.} at 895, 424 S.E.2d at 73-74. Plaintiff's decedent was riding in the car driven by an underage friend that was being chased by municipal police officers from two states when the driver lost control and crashed. The Section 1983 wrongful death action was brought against the police officers of both municipalities. \textit{Id.}

187. \textit{Id.}, 424 S.E.2d at 74. "In order to state a claim pursuant to 42 U.S.C. § 1983, however, it is necessary to allege that the plaintiff was deprived of a constitutional right by one who was acting under color of state law or custom." \textit{Id.}

188. \textit{Id.}
very existence of these regulations ... to rebut any unsubstantiated allegation" of authorized unconstitutional conduct.169

The court followed its decision in Poss in yet another high-speed chase scenario, Tillman v. Mastin.190 In Tillman plaintiff sued for a death arising from decedent's collision with a county police officer responding to an emergency call.191 Sustaining the county's summary judgment, the court emphasized the absence of "a showing that [the] County intentionally or deliberately promulgated or even tolerated an impermissible or corrupt policy in its training of police officers."192

Clearly, Section 1983's "policy or custom" prerequisite renders the bar of summary judgment a considerable hurdle for Georgia claimants. Conspicuously, therefore, Mayor of Savannah v. Wilson193 encompasses a notable instance of success on the issue. The case featured claimants' charges of unconstitutional municipal arrest procedures. The city countered with its motion for summary judgment, asserting insufficient evidence of policy or custom.194 Preliminarily, the court of appeals framed the issue as follows:

If the municipality's failure to train its employees demonstrates a "deliberate indifference" to the rights of its inhabitants, as where a deliberate choice is made to follow a course of action from among various alternatives, then it can be thought of as a "policy or custom" and municipal liability attaches.195

Proceeding then to delineate claimants' respective circumstances, the court held each to successfully surmount summary judgment.196

One of the claimants asserted a municipal policy of making warrantless arrests and of a conscious indifference by failing "to promulgate a written policy to guide police officers in making warrantless arrests."197 To substantiate the assertion, claimant produced "uncontroverted

189. Id. The court thus sustained the trial judge's grant of summary judgment for the municipalities. Id.
191. Id. at 3, 453 S.E.2d at 86. Decedent was attempting to make a left turn off a highway when struck by the officer responding to a "crime in progress" call. Id.
192. Id. at 4, 453 S.E.2d at 87.
194. Id. at 171, 447 S.E.2d at 126. One claimant alleged arrest without warrant for robbery of a pharmacy and detention for sixty-six hours. The other claimant alleged conviction for a robbery to which another person later confessed, a person who was being investigated for the robbery prior to claimant's accusation. Id. at 170-71, 447 S.E.2d at 126.
195. Id. (citing City of Canton v. Harris, 489 U.S. 378 (1989)).
196. Id. at 174, 447 S.E.2d at 128.
197. Id.
evidence that [plaintiff] was not brought before a court for a probable cause hearing within 48 hours of his arrest, as required by statute, and "that it was at least the de facto policy of the city not to comply with that statutory mandate on weekends." This evidence, the court held, "and the inferences drawn from it, precluded summary adjudication of [plaintiff's Section] 1983 claim."

The other claimant alleged "that the city deliberately withheld exculpatory information from the district attorney's office in spite of his Brady motion, which constituted a policy subjecting the city to liability." Here, the court observed that liability could attach to "a policy of failing to properly train employees about Brady material[s]" and that municipal guidelines "for its employees to 'follow the law' amounted to no guidance at all." Accordingly, the court held this claimant as well had stated a jury issue.

Although conspicuous by its presence, Mayor of Savannah v. Wilson holds tantalizing promise for weary Section 1983 claimants in Georgia courts.

c. Respondeat Superior. In Monell itself, the United States Supreme Court explicitly qualified its imposition of Section 1983 responsibility. Liability, the Court delineated, did not attach "solely because [the local government] employs a tortfeasor—or, in other words, a [local government] cannot be held liable under [Section] 1983 on a respondeat superior theory." Yet another issue descended for implementation by the lower courts.

The Georgia Court of Appeals, in two recent opinions, has illustrated that implementation continues. Brayman v. Deloach featured a claim against the county for a "lesbian sexual relationship" that developed between a minor and an employee of the county recreation department. Summarily affirming summary judgment for the
county, the court understood plaintiff’s action to rest “solely upon the county’s alleged ‘responsibility for the acts, omissions, wilful indifference to consequences, and callous disregard of the consequences of its agents and employees.” So perceived, the cause was flawed: “[G]overnmental entities cannot be held vicariously liable for the actions of their employees . . . .” A subsequent instance, Gwinnett County v. King, yielded a similar result. There, claimant alleged unconstitutional confinement as a result of improper termination from the county’s work release program. Reversing denial of summary judgment for the county, the court emphasized that claimant “has identified no policy of [the county] which was responsible for any of the alleged deprivations.” Once again, the court asserted, “Under the law applicable to actions under . . . [Section] 1983 against local governments, the doctrine of respondeat superior is not a basis for imposing liability.

d. Deprivation. The federal statute’s “deprivation” requirement continues to draw the Georgia Court of Appeals’ sustained attention. In declaring deprivation insufficient, the court frequently seizes upon the basic tort concept of “duty.” A conclusion of “no duty owing” often equates a determination of no “deprivation” done. Illustrative of the exercise, Cleveland v. Fulton County sought county responsibility for delay in servicing a “911” call. Installing “deprivation” as the action’s “threshold element,” the court then emphasized the absence

208. Id. at 493, 439 S.E.2d at 712. “It is undisputed that the actions of [the county employee] were not done under the direction of or ratified by the county.” Id. at 491, 439 S.E.2d at 711.
209. Id. at 492, 439 S.E.2d at 711.
210. Id.
212. Id. at 800-01, 463 S.E.2d at 512. Following conviction and a sentence allowing service in the work release program, plaintiff reported for work drunk and, under the terms of the court order, was terminated from the program without credit for the time previously served in the program. Id.
213. Id. at 802, 463 S.E.2d at 513. “To impose liability, it must be shown that some policy of [the county] was responsible for the violation of [claimant’s] federally protected rights.” Id.
214. Id.
217. Id. at 168-69, 396 S.E.2d at 2-3. Plaintiff’s decedent, a diagnosed alcohol dependent, was a patient at a state facility. When decedent suffered seizures, facility personnel placed the “911” call that was received by the defendant adjoining county but improperly delayed before transfer. Id.
218. Id. at 169, 396 S.E.2d at 3.
Neither, the court asserted, was there a duty-engendering "special relationship" between the parties to the case. The county did not cause decedent's condition, nor was decedent under county dominion or control. As for the actual undertaking to provide medical care services, "it would be anomalous indeed to hold [the county] liable for providing limited services which happen to be less extensive than a particular citizen may desire." Accordingly, the court equated absence of a constitutional emergency care "duty" with a failure of Section 1983 "deprivation."

The duty issue again facilitated a disavowal of deprivation in Green v. Moreland. There, decedent's employer contracted with a county to replace a bridge located within a municipality, and decedent was killed while working on the project. Plaintiff charged both local governments with due process violations in failing "to enact any safety methods or procedures for construction projects." In appraising plaintiff's claim, the court expressed conceptual difficulty in fitting facts to theory. Although due process serves to limit state power, the court reasoned, it imposes no affirmative obligation to protect against harms from other means. The purpose of due process "was to protect the
people from the State, not to ensure that the State protected them from each other. 227 Additionally, the court found no "special relationship" between the parties giving rise to the contested duty. The local governments had exercised no "coercion, dominion, or restraint" over the decedent. 228

The "duty-deprivation" exercise also controlled Washington v. Jefferson County, 229 a mother's claim for the death of her son. The death having resulted from the son's fight with an arrestee who was then out on bail, 230 plaintiff charged the county with breaching its duty of public protection. 231 Once again, the court scored claimant's failure "to show a nexus between [the son's] injury and any [local government] action." 232 Without a "special relationship" between them, the county was under no duty to protect the decedent "any more than any other member of the general public." 233 Decedent was not within the county's custody and "did not face any special danger of assault by [the arrestee], as distinguished from the danger to the general public." 234 Accordingly, the absence of "duty" sealed the fate of "deprivation" and suffered plaintiff's Section 1983 claim to adverse summary judgment. 235

fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means." Id. (quoting DeShaney, 489 U.S. at 195-96).

227. Id. at 169-70, 407 S.E.2d at 122.

228. Id. at 170, 407 S.E.2d at 122 (quoting Cleveland v. Fulton County, 196 Ga. App. 168, 169, 396 S.E.2d 2 (1990)). Additionally, the court reasoned, state statutes provided safeguards against contact with high-voltage wires and thus the city or county could not be held deliberately indifferent to the need. The court thus affirmed summary judgments for the county and municipality. Id. at 170, 407 S.E.2d at 122-23.


230. Id. at 81, 470 S.E.2d at 715. The arrestee had been arrested by the county sheriff some four months previously and, while out on bond on charges of aggravated assault and terroristic threats, got into a fight with plaintiff's son, shooting the son in the head. Although the parties had also fought the previous weekend, the son had sought no assistance from the sheriff. Id.

231. Id. "The gravamen of [plaintiff's] complaint is that [the arrestee] should not have been released from jail because he was too dangerous. Specifically, [plaintiff] alleged that [the county] negligently allowed bail for [the arrestee], breached a duty to protect the public from [the arrestee], and failed to properly train personnel." Id.

232. Id. at 82, 470 S.E.2d at 716. "Section 1983 imposes liability where persons acting under color of state law have deprived a person of a federal constitutional or statutory right." Id. at 82-83, 470 S.E.2d at 716.

233. Id. at 83, 470 S.E.2d at 716.

234. Id. (citing DeShaney, 489 U.S. 189).

235. Id. The court observed that once the sheriff testified no assurances of protection to the decedent:
As the absence of duty undermines a claim in tort, therefore, so the deficiency of deprivation devastates a claim in constitutional tort. The Georgia courts' assimilation of the two elements can work disastrously against the Section 1983 claimant.

e. Negligence. The Georgia Supreme Court, in its foundational analysis of City of Cave Spring v. Mason, fashioned its interpretation of Section 1983. As elaborated, the precept requires claimant's demonstration of deprivation “pursuant to an impermissible or corrupt policy which is intentional and deliberate.”

The court of appeals seized upon the element in Poss v. City of North Augusta to dismiss a wrongful death claim resulting from a high speed chase by police officers. Pointing to “undisputed” municipal chase guidelines, the court discounted claimant's “unsubstantiated allegations” of deliberate indifference or gross negligence.

In reliance upon the Cave Spring formulation, the court asserted that “automobile negligence actions . . . do not rise to a level of a constitutional deprivation.”

Plaintiff's collision with a police officer suffered a similar disposition in Banks v. Mayor of Savannah. There, the court rejected a claim that the city's driving instructions to its police officers violated plaintiff's constitutional rights. Claimant's allegation of other collisions, the court maintained, indicated no more than municipal negligence. A

[plaintiff] could no longer rest upon the mere allegations of his pleading but was required to set forth specific facts showing a genuine issue for trial . . . . This he did not do. Because [plaintiff] failed to offer any specific facts which would give rise to a triable issue, we find that summary judgment was properly granted as to the 42 U.S.C. § 1983 claim.

237. Id. at 4-5, 310 S.E.2d at 893-94.
239. Id. at 895, 424 S.E.2d at 74. Plaintiff's son was killed while riding in a car driven by an unlicensed minor who was being pursued for failing to pay for gasoline, speeding, and violating traffic signals. The driver lost control of the car, and both occupants were killed in the crash. Id. at 894, 424 S.E.2d at 73-74.
240. Id. at 895, 424 S.E.2d at 74. The court said the "very existence" of the guidelines rebutted the allegations. Id.
241. Id. (quoting Martin v. Georgia Dep't of Public Safety, 257 Ga. 300, 305, 357 S.E.2d 569, 573 (1987)).
243. Id. at 63, 435 S.E.2d at 70. Apparently, plaintiff had collided with a police car in pursuit of police duties. Id. at 62, 435 S.E.2d at 70.
244. Id. "Moreover, evidence that other collisions have occurred involving city police cars is not evidence of improper training of police officers, and does not create an inference
claim under Section 1983 “is not a means to circumvent sovereign immunity in cases involving negligence.”\textsuperscript{245} Rather, the court concluded, Section 1983 “applies only to acts of a governing body which deprive a citizen of constitutional rights pursuant to an impermissible or corrupt policy which is intentional and deliberate.”\textsuperscript{246}

The Georgia lesson is thus apparent: When the Section 1983 claim rises only to an assertion of “mere” negligence, that claim cannot withstand the local government’s motion for summary judgment.

V. GEORGIA LOCAL GOVERNMENTS AND CONSTITUTIONAL TORTS: A SYNOPSIS

At this concluding juncture, the preceding chronological treatment might be restructured into a topical synopsis. Indeed, a “Georgia annotation” to the federal statute offers an enlightening frame of reference.

(1) \textbf{Every person} \ldots From inception to the present, the Georgia courts have evidenced no conceptual qualms over the inclusion of municipalities and counties within Section 1983’s coverage of “persons.”\textsuperscript{247} Thus, what assuredly constituted \textit{Monell’s} most controversial analytical feat has gone uncriticized and unrefined in Georgia.

(2) \ldots \textbf{who, under color} \ldots The statute’s “color” concept early evoked analytical alarm in the Georgia evolution as facially capable of ensnaring the conduct of every governmental employee while in the course of employment.\textsuperscript{248} The supreme court indicated an approach conscious of those overbreadth prospects and dedicated to precluding them. Thereafter, “color” appears to have played no overshadowing role in the Georgia courts’ analyses; neither the successes nor the failures of Section 1983 turn upon a peculiar “color” perspective. Rather, the Georgia exercise appears fairly straightforward, finding sufficient “color” when the local governing authority takes action under the provisions of its charter or statutes.\textsuperscript{249}

(3) \ldots \textbf{of any statute, ordinance, regulation, custom, or usage} \ldots The “custom or usage” issue has drawn a major amount of the Georgia courts’ attention. The supreme court early converted the issue

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\textsuperscript{245} \textit{Id. at} 63, 435 S.E.2d at 70.

\textsuperscript{246} \textit{Id.}\ (quoting City of Cave Spring v. Mason, 252 Ga. 3, 5, 310 S.E.2d 892, 894 (1984)).


\textsuperscript{248} \textit{See City of Cave Spring v. Mason, 252 Ga. 3, 310 S.E.2d 892 (1984).}

to that of "policy or custom," requiring specifically "an impermissible or corrupt policy which is intentional and deliberate." On occasion, moreover, the Georgia search for "policy" narrows to whether it was governmental policy to cause the damage, rather than to the governmental context in which damage resulted.

Numerous Section 1983 complaints have failed on grounds of omitting, or insufficiently alleging, the necessary "policy." Proving particularly vulnerable on this score are complaints of single incidents of unconstitutional conduct by nonpolicy-making employees. In the litigation prone context of law enforcement, the local government generally prevails on the issue by demonstrating the existence of promulgated guidelines. The government's position is all the stronger when the guidelines consist of instructions to employees that the court approves as acceptable interpretations of material statutes.

Claimants' relatively rare successes on the issue encompass instances in which the local government's offending policy is manifested in explicit and unquestioned fashion. Examples include a discriminatory retirement plan adopted by local legislative action and an uncontradicted failure to follow statutory probable cause procedures.

The Georgia "intentional and deliberately corrupt policy" formulation also spills over to Section 1983's basis of liability. The formulation, that is, leads to a continuing emphasis upon the element of "intent." Repeatedly, the courts stress that "merely negligent" local government conduct does not trigger applicability. That the conduct may imperil life, liberty, or property is not the controlling concern. Rather, the courts are determined that claims may not be advanced under cover of Section 1983 in order to circumvent sovereign immunity in negligence cases. The federal statute, the courts steadfastly assert, does not

250. *Cave Spring*, 252 Ga. at 5, 310 S.E.2d at 894.
260. *Id.*
elevate negligence actions to the realm of constitutional deprivations.\textsuperscript{262}

(4) \ldots of any State or Territory \ldots The conduct to which Section 1983 attaches is that of the local government and not the conduct "solely" of local government employees. Georgia thus convincingly perpetuates Monell's distinction between local government liability for "policy or custom" and immunity from "vicarious responsibility." A claimant's allegations or evidence of employees' offending acts, omissions, or even "callous disregard" do not justify recovery from the local government.\textsuperscript{263} Claimants rendering such offerings in the Georgia courts come promptly to understand that Section 1983 imposes no local government liability on a theory of respondeat superior.\textsuperscript{264}

(5) \ldots subjects, or causes to be subjected \ldots As in other tort domains, "causation" also casts its shadow across the province of constitutional torts. For success under Section 1983, the Georgia courts insist upon a sufficiently precipitating nexus between the government's conduct and the claimant's injury. The mere concurrence of the two elements will not suffice.

In exacting the "causation" requirement in a constitutional tort case, Georgia elaborates the concept in both its negligence senses: (1) "cause in fact" and (2) "proximate cause." As for the former, if claimant's injury would have occurred even in the absence of government's "policy or custom" violation, then the causal connection is missing and Section 1983 liability is denied.\textsuperscript{265} As for the "proximate cause" analysis, if claimant's injury did not fall within the reasonably foreseeable ambit of risk created by government's offending conduct, then the causal link is broken and no Section 1983 liability is imposed.\textsuperscript{266}

An intriguing phenomenon thus emerges. Although the Georgia courts may adamantly deny "mere negligence" as a basis of Section 1983 liability, their Section 1983 "causation" elaborations borrow heavily and decisively from the negligence context.

(6) \ldots any citizen of the United States or other person within the jurisdiction thereof \ldots Georgians, and other persons within the jurisdiction of Georgia, assuredly qualify for Section 1983 protections against local governments. More broadly, however, several other "jurisdictional" aspects also dot the constitutional tort landscape. Those

\textsuperscript{265} E.g., City of Roswell v. Davis, 255 Ga. 158, 335 S.E.2d 582 (1985).
\textsuperscript{266} Id.
aspects work both to the advantage and to the disadvantage of Section 1983 claimants in the Georgia courts.

Advantageously, Section 1983 claimants are relieved from the traditional procedural requirement that prior to litigation, they must first exhaust available administrative remedies. Additionally, Section 1983 claims against Georgia municipalities are free from the ante litem notice mandate, the statutory prerequisite of notice to the city within six months of the offending event. In both these “jurisdictional” respects, therefore, constitutional tort claimants enjoy pronounced preferences over other Georgia litigants.

Disadvantageously, Section 1983 plaintiffs are held to Georgia’s general two-year statute of limitation on actions for personal injury. Additionally, claimants must accept the Georgia Supreme Court’s unrelenting aloofness to Section 1983 appeals. Except in special instances, these claimants must recognize, the Georgia Court of Appeals constitutes their appropriate appellate repository. In both these “jurisdictional” respects, therefore, constitutional tort claimants enjoy no peculiar advancement over other Georgia litigants.

(7) ... to the deprivation ... As treated by the Georgia courts, “deprivation” assumes a term-of-art countenance. In one setting, the courts employ deprivation language when inquiring into the nature of claimants’ alleged rights. For “annotation” purposes, however, those instances are treated under discussion of Section 1983’s protected “rights and privileges.”

The more relevant examination of “deprivation” proceeds under analytical cover of “duty.” A popular instance of the exercise arises when the court casts the Section 1983 issue as local government’s duty to provide protective services. At that juncture, negligence law’s “no duty of affirmative action” emerges with decisive impact. Indeed, the no-duty precept may operate even more restrictively under Section 1983 than in the negligence context. For example, in a Section 1983 case, it appears immaterial that government actually undertook to

provide the service, thereby creating citizen reliance upon it. Absent a "special relation" between government and claimant, the courts insist, a conclusion of "no duty" is mandated. That conclusion, in turn, frequently equals a determination that the local government has subjected the claimant to no Section 1983 "deprivation."  

(8) . . . of any rights, privileges, or immunities secured by the Constitution and laws . . . The Georgia courts forthrightly confess conceptual difficulties with the precise reach of this statutory language. Early in the saga, the supreme court acknowledged the tension: on the one hand, every lawsuit against a local government potentially encompasses a federal constitutional issue; on the other hand, governmental abuses do not elevate ordinary torts to federal constitutional violations. Such abuses, even violations of Georgia's constitution and statutes, do not necessarily trigger Section 1983's protections. 

The courts continue their struggles with the delineations. For example, local government arrest procedures in violation of state law do not necessarily imply the deprivation of federal constitutional rights. The same is true in respect to state law's creation of local government tort immunities: No segment of due process protects against all deprivations of life, liberty, or property. Conversely, local government employee retirement benefits do claim the status of constitutionally protected property. The government's unilateral cancellation of these benefits gives rise to an employee's sustainable claim in constitutional tort.

(9) . . . shall be liable to the party injured . . . Obviously, Section 1983's civil relief against local government operates only for claimants exhibiting sufficient "injury." This point assumes crucial significance when, as they often do, state court plaintiffs proceed concurrently in state and federal law. On those occasions, the "sufficient injury"

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Recently, on a certified question from the Eleventh Circuit, the Georgia Supreme Court, in respect to a state law negligence claim against a municipality, held that the "public duty doctrine," under which the local government may not be held liable for its failure to provide police protection based on a general duty to protect the public, does not apply outside the police protection context. Hamilton v. Cannon, 267 Ga. 655, 482 S.E.2d 370 (1997). This decision may operate to confine the "no duty, no deprivation" restriction in Section 1983 cases to the police protection context as well.

275. Id.
requirement may relegate plaintiff’s Section 1983 claim to a status of nullity.

The illustrative scenario may arise, for example, when plaintiff’s charges include alleged violations of procedural due process. Should those violations be assuaged under the proceeding’s state law count, plaintiff may then be deemed in receipt of “adequate state remedies.” Remedies so designated, the Georgia courts maintain, negate injury entitled to further redress under Section 1983. This is true, moreover, even though the state remedies admittedly fall short of what the federal statute might have afforded the claimant. As a result, plaintiff’s Section 1983 count of the proceeding suffers preclusion, the courts deeming it an impermissible effort at double recovery.

The above scenario may unfold in the context of a local government employee’s challenge to his or her termination. Should complainant’s state law proceeding for equitable relief yield reinstatement and back pay, those remedies are deemed “adequate.” As such, they preclude the employee’s claim for damages under Section 1983.

(10) ... in an action at law, suit in equity, or other proper proceeding for redress. The Georgia courts have issued at least two important cautions concerning the nature of remedies obtainable in constitutional tort. From a general perspective, recoverable damages are strictly limited to compensatory purposes. Consequently, the courts emphasize, a claim under Section 1983 simply does not contemplate damages for “the abstract value of a constitutional right.”

More concretely, Section 1983 proceedings may encompass the familiar issue of attorney fees for the “prevailing party” in the proceeding. Should the local government prove to be that party, it may then recover attorney fees only when plaintiff’s Section 1983 claim was unreasonable, frivolous, meritless, or vexatious. The claim falls prey to this stigma when a governmental “policy or custom” is clearly absent from the case and when claimant fails to pursue an obviously available tort remedy against a private party.

VI. CONCLUSION

Since 1978, constitutional tort litigation against municipalities and counties has occupied inordinate space in the jurisprudence of local

government liability. Intriguingly, that jurisprudence has unfolded along dual judicial tracks. With claimants proceeding in both federal and state courts, the system produces two-tier elaborations of the same "law."

Given academe's innate fascination with all things federal, extensive analytical attention rarely devolves to the state elaborations. It falls the individual lot of each lawyer, therefore, to monitor the Section 1983 cases in his or her own state's appellate judiciary.

When the Georgia activity is monitored, both chronologically and topically, and then "annotated" to the language of the federal statute, it reveals a jurisprudence highly deserving of independent reflection.