Fordham Urban Law Journal

Volume 36 | Number 5 Article 3

2009

Barring Analogous State Law Claims is No Excuse: Haywood v. Drown and States' Obligation to Enforce Section

David McMillan
Fordham University School of Law

BARRING "ANALOGOUS" STATE LAW CLAIMS IS NO EXCUSE: *HAYWOOD V. DROWN* AND STATES' OBLIGATION TO ENFORCE SECTION 1983

*David McMillan**

INTRODUCTION

In our system of federalism, two judiciaries—state and federal—operate side by side. Congress, through powers conferred by Article III of the

*David McMillan graduated in 2009, cum laude, from Fordham University School of Law, where he served as Senior Notes and Articles Editor on the Urban Law Journal. He offers special thanks to the Urban Law Journal's 2009-2010 staff for their diligent assistance in editing this Note, and to Professor Thomas Lee for his insightful commentary.

United States Constitution,[1] controls the character of the federal judiciary, while state legislatures control the judiciaries in their respective states.[2]

Although state courts derive their authority from state law, the Supremacy Clause[3] and its underlying policies require that state courts share some responsibility for adjudicating federal claims.[4] When Congress passes an Act, for example, it is not only expected but desirable that state courts should aid in its enforcement. The framers, by including a mandate that state judges are bound by federal law, contemplated that state courts would have jurisdiction over federal claims.[5] In fact, the Supreme Court has made concurrent jurisdiction the general rule rather than the exception.[6] Moreover, sound policy suggests that by entertaining federal claims, state courts can help Congress promote the substantive policies underlying federal law[7] while relieving the federal judiciary of the burden of adjudicating all federal claims.[8]

---

1. U.S. CONST. art. III, § 1.

2. *See* U.S. CONST. amend. X; Brown v. Gerdes, 321 U.S. 178, 188 (1944); Martin H. Redish & John Muench, *Adjudication of Federal Causes of Action in State Courts*, 75 MICH. L. REV. 311, 340-46 (1976).

3. The Supremacy Clause of the United States Constitution states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2; *see also* Mondou v. N.Y., New Haven, & Hartford R.R. Co., 223 U.S. 1, 57 (1912); Claflin v. Houseman, 93 U.S. 130, 136-37 (1876); STEVEN STEINGLASS, SECTION 1983 LITIGATION IN STATE COURTS § 9:5 (2007).

4. *See* Patsy v. Bd. of Regents of Fla., 457 U.S. 496, 515 (1982). *But see* Printz v. United States, 521 U.S. 898 (1997); Redish & Muench, *supra* note 2, at 347 ("In giving state courts the power to adjudicate federal causes of action, presumably Congress . . . has decided that the substantive policies embodied in the federal statute creating the cause of action and the federal policies concerning the administration of the federal court system are best advanced by distributing the case burden between the state and federal courts."); STEINGLASS, *supra* note 3, § 9:7.

5. *See* Burt Neuborne, *Toward Procedural Parity in Constitutional Litigation*, 22 WM. & MARY L. REV. 725, 760 (1980) ("[T]he language of the supremacy clause itself obviously contemplates the existence of a broadly based state responsibility over federal claims."); *see also* Howlett v. Rose, 496 U.S. 356, 367 (1990). *See generally Mondou*, 223 U.S. at 57; *Claflin*, 93 U.S. at 140; Martin v. Hunter's Lessee, 14 U.S. 304, 344 (1816); THE FEDERALIST NO. 82 (Alexander Hamilton).

6. Tafflin v. Levitt, 493 U.S. 455, 459 (1990).

7. *See* Redish & Muench, *supra* note 2, at 347; STEINGLASS, *supra* note 3, § 9:7 (noting that Congress has the power to dictate—explicitly or by implication—that state courts exercise concurrent jurisdiction over federal claims).

8. *See* Redish & Muench, *supra* note 2, at 347; Terrance Sandalow, *Henry v. Mississippi and the Adequate State Ground*, 1965 SUP. CT. REV. 187, 207 (1965); Steven Stein-

States, on the other hand, retain considerable discretion to delineate the boundaries of their own courts' jurisdiction,[9] and Congress generally cannot affix an obligation to entertain federal claims on state courts whose jurisdiction is inadequate to the occasion.[10] What's more, states have powerful incentives to keep federal claims out of their court systems. States may, for example, either as a matter of sheer judicial economy[11] or as a way to relieve state court judges from the task of dealing with unfamiliar or complex federal laws,[12] seek to limit the number of federal claims occupying state court dockets. Alternatively, a state may simply disagree with an act's underlying policy and refuse to enforce it in its courts.[13]

Determining exactly when states' interests in keeping federal claims out of their courts should outweigh the policy that states enforce federal law has become a matter of contention. In 2007, New York State's highest court, the New York Court of Appeals, held that the state's trial courts of general jurisdiction, the New York Supreme Court, could decline to entertain a very specific subcategory of claim under 42 U.S.C. § 1983,[14] the federal civil rights statute.[15] The plaintiff was a prisoner in a New York correctional facility who sued employees of the State Department of Correctional Services ("DOCS") in New York Supreme Court over various alleged civil rights infractions. The State argued that the plaintiff's claim was barred based on a New York statute, Correction Law § 24,[16] which removed the court's subject matter jurisdiction over any civil action for

---

glass, *State Court § 1983 Actions: A Procedural Review*, 38 U. MIAMI L. REV. 381, 398 (1983).

9. *Mondou*, 223 U.S. at 58 ("[A] state court derives its existence and functions from the state laws . . . .") (quoting *Claflin*, 93 U.S. at 137).

10. *See, e.g.*, McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 234 (1934); *Mondou*, 223 U.S. at 57.

11. *See, e.g.*, Howlett v. Rose, 496 U.S. 356, 380 (1990) (Amici contending that "suits predicated on federal law are more likely to be frivolous and have less of an entitlement to the State's limited judicial resources").

12. *Mondou*, 223 U.S. at 55.

13. *See, e.g.*, *id.* at 57.

14. 42 U.S.C. § 1983's predecessor was one of five statutes enacted in 1871 to curb widespread violence by the Ku Klux Klan. As it exists today, the statute provides:

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

42 U.S.C. § 1983. *See* Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 665 (1978); Monroe v. Pape, 365 U.S. 167, 171-72 (1961).

15. Haywood v. Drown, 881 N.E.2d 180, 181 (N.Y. 2007).

16. N.Y. CORRECT. LAW § 24 (McKinney 2003).

damages against DOCS personnel for torts committed within the scope of their employment. The statute required, instead, that such claims be brought against the state in the New York Court of Claims.[17] The undisputed purpose of the statute was to transfer liability away from individual DOCS employees and onto the State in order to facilitate the performance of the employees' legitimate prison duties.[18] Nevertheless, since the Court of Claims cannot entertain § 1983 suits,[19] the effect of Correction Law § 24 is to completely extinguish one fact-specific category of § 1983 claims (i.e., damages suits against DOCS employees). This is despite the New York Supreme Court's routine practice of adjudicating both § 1983 suits against other state employees and state tort claims against private defendants.[20]

Recognizing that Correction Law § 24's exclusion of a specific category of § 1983 claim from the New York Supreme Court was questionable under the Supremacy Clause, the Court of Appeals nonetheless held that the statute was a "valid excuse" to decline to hear the suit.[21] In the court's

---

17. *Id.*; *see also* N.Y. CT. CL. ACT § 9 (McKinney 1989), *available at* http://www.nyscourtofclaims.state.ny.us/claimsact.shtml.

18. Arteaga v. New York, 527 N.E.2d 1194, 1200 (N.Y. 1988) (Simons, J., dissenting) (stating that Correction Law § 24 permits correction officers to perform the demanding task of maintaining safety and security within correctional facilities "undeterred by the fear of personal liability and vexatious suits, which could substantially impair the effective performance of a discretionary function"); *see also* Woodward v. State, 805 N.Y.S.2d 670 (N.Y. App. Div. 2005). Additionally,

> the DOCS employee is not named as a defendant in the suit, with the publicity that may attach; the employee is not served with process; the employee does not need to retain counsel or seek representation by the Attorney General under Public Officers Law § 17; the employee does not have to answer the complaint; the employee does not have to seek indemnification by the State under § 17 if damages are ultimately awarded; and there is no threat of attachments or liens on the employee's personal assets. By minimizing the employee's involvement in the suit, the statute markedly diminishes the ways in which a prisoner can harass and inhibit a DOCS employee by the threat of personal damages liability.

Brief for Respondents at 12, Haywood v. Drown, 881 N.E.2d 180 (N.Y. 2007) (No. 05-033917); *see also* N.Y. EXEC. LAW § 259-q(1) (McKinney 2009) (providing that all suits for damages against employees of the Division of Parole must be brought in the Court of Claims against the State).

19. The Court of Claims only hears claims against the State, and the State is not a suable "person" under § 1983. *See* Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989); White v. State, 615 N.Y.S.2d 811, 815 (N.Y. Ct. Cl. 1994).

20. *See, e.g.*, James v. Bd. of Educ. of Cent. Sch. Dist. No. 1, 340 N.E.2d 735 (N.Y. 1975); Young v. Toia, 413 N.Y.S.2d 530 (N.Y. App. Div. 1979); Brody v. Leamy, 393 N.Y.S.2d 243 (N.Y. Sup. Ct. 1977).

21. Haywood v. Drown, 881 N.E.2d 180, 183 (N.Y. 2007) (quoting Howlett v. Rose, 496 U.S. 356, 369 (1990)); *see* Missouri *ex rel* S. v. Mayfield, 340 U.S. 1, 5 (1950); Herb v. Pitcairn, 324 U.S. 117, 120 (1945); *cf.* McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 234 (1934).

view, neither the Supremacy Clause nor its underlying policies were sufficiently pressing to override the State's discretion to establish the jurisdiction of its courts.[22] It held that states are not required to create courts amenable to all types of § 1983 claims, and that if a state decides not to extend jurisdiction over a fact-specific category of state-law claims, it is free to bar enforcement of the federal law analogue.[23] In this case, since Correction Law § 24 applied neutrally to any civil action—state or federal—it did not offend the Supremacy Clause's bar prohibiting discrimination against federal law.[24]

This Note casts doubt on the doctrinal underpinnings of the majority opinion in *Haywood v. Drown*[25] and attempts to offer an affirmative characterization of states' obligation to hear § 1983 claims. Part I summarizes the events of *Haywood* and the positions espoused by the majority and dissenting opinions. Part II briefly describes the antidiscrimination principle—which requires a state court to entertain a federal claim so long as the court would enforce an "analogous" state claim—and offers competing views on how to define the term "analogous" state law claim. Part III then utilizes Supreme Court cases to expose the doctrinal inaccuracies in the New York Court of Appeals' majority opinion in *Haywood*. Part III.A argues that the antidiscrimination principle imposes a far broader obligation on state courts to hear federal claims than the *Haywood* majority believed. It further argues that the court misapplied the principle by concluding that the state court had no obligation to hear the plaintiff's § 1983 suit, despite its authority to hear generic state law tort suits. Part III.B examines the "valid excuse" doctrine and its apparent dual purpose—to preserve states' jurisdiction-setting discretion without undermining the supremacy of federal law—and argues that the *Haywood* court's version of the "analogous"

---

22. *Haywood*, 881 N.E.2d at 184.

23. *See id.* (holding that "if a state does not extend jurisdiction to its courts to litigate a certain type of claim, it may deprive those courts of jurisdiction over a related federal claim").

24. *Id.* at 185; *see also infra* notes 49-56 and accompanying text.

25. All references to *Haywood v. Drown* refer to the New York Court of Appeals' 2007 decision. While this Note was in the final stages of publication, the United States Supreme Court reviewed the decision and reversed. *See* Haywood v. Drown, 129 S. Ct. 2108 (2009). The Court held that Correction Law § 24 conflicted with § 1983's substantive policies and therefore could not operate to bar plaintiff's § 1983 claim. *Haywood*, 129 S. Ct. at 2115 ("The State's policy, whatever its merits, is contrary to Congress' judgment that *all* persons who violate federal rights while acting under color of state law shall be held liable for damages."). It further held that, despite § 24's uniform treatment of state and federal law claims, "equality of treatment does not ensure that a state law will be deemed a neutral rule of judicial administration and therefore a valid excuse for refusing to entertain a federal cause of action . . . . A jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear." *Id.* at 2116.

state law claim excuse fails to fulfill this purpose. The excuse, however, could theoretically exist provided it comported with both the doctrine's implicit balancing and with *Felder v. Casey*. This Note concludes by suggesting a framework for evaluating the legitimacy of a state court's refusal to enforce § 1983 claims, under which a reviewing court should examine both the availability and adequacy of an alternative state forum to hear the § 1983 suit and the state's interest in removing jurisdiction over such suits.

I. *HAYWOOD V. DROWN*

A. The Facts

In 2007, plaintiff Keith Haywood, an inmate at a New York Corrections facility, brought a § 1983 action in New York Supreme Court against DOCS employees alleging various civil rights infractions.[26] Apparently DOCS officers had engaged in several conspiratorial acts—including fabricating the facts of a misbehavior report of which Haywood was the subject and falsifying the results of a urinalysis test—which were designed to thwart the exercise of the plaintiff's due process rights.[27] The State, acting on behalf of the DOCS defendants,[28] moved to dismiss based on New York Correction Law § 24,[29] which states:

> 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

Thus, the State argued, Correction Law § 24 vests the New York Court of Claims with exclusive jurisdiction over all damages suits against DOCS

---

26. *Haywood*, 881 N.E.2d at 180.

27. *Id.* at 183. The plaintiff also alleged that DOCS employees conspired to fabricate the facts of a second misbehavior report.

28. N.Y. EXEC. LAW § 259-q(3) (McKinney 2009) (mandating that the state provide defense and indemnification).

29. N.Y. CORRECT. LAW § 24 (McKinney 2009); *see also* N.Y. EXEC. LAW § 259-q(2) (McKinney 2009) (providing that all suits for damages against employees of the Division of Parole must be brought in the Court of Claims against the state).

employees,[30] and therefore, plaintiff's Supreme Court suit was improper. Moreover, the statute prohibits plaintiff from suing the individual DOCS employees directly; he must instead sue the State in the Court of Claims.

The trial court dismissed Haywood's claim and New York's Appellate Division affirmed.[31] On appeal to the New York Court of Appeals, the plaintiff argued that the Supremacy Clause of the United States Constitution prohibited § 24's application in barring his federal § 1983 suit. He asserted that Congress, by enacting § 1983, set "policy for all,"[32] and that § 24 obstructs that policy by precluding a fact-specific § 1983 suit, namely, damages suits against individual DOCS employees acting within the scope of their employment. Additionally, § 24 discriminated against § 1983 causes of action by barring DOCS-defendant claims only, leaving the New York Supreme Court free to adjudicate § 1983 claims against other state actors and generic state tort suits against private defendants. The State, on the other hand, countered that § 24 was a neutral and valid exercise of the State's prerogative to determine its courts' jurisdictional contours.[33] It contended that § 24 reflects the State's recognition that when a DOCS employee is sued for acts committed within the scope of employment, the state is the real party in interest[34] and that, consistent with the State's conditional waiver of sovereign immunity,[35] New York properly could require plaintiffs to sue in the Court of Claims.[36]

B. Majority vs. Dissent

The four-justice majority sided with the State. While Correction Law § 24's removal of a fact-specific DOCS-defendant § 1983 suit from the New

30. *See* N.Y. CORRECT. LAW § 24 (McKinney 2009); *see also* CT. CL. ACT, art. II §§ 8-9 (McKinney 2009); St. Paul Fire & Marine Ins. Co. v. State, 415 N.Y.S.2d 949 (N.Y. Ct. Cl. 1979).

31. Haywood v. Drown, 826 N.Y.S.2d 542 (N.Y. App. Div. 2006).

32. Haywood v. Drown, 881 N.E.2d at 183 (quoting Mondou v. N.Y., New Haven, & Hartford R.R. Co., 223 U.S. 1, 57 (1912)); *see also* Monroe v. Pape, 365 U.S. 167, 180 (1961) (enunciating § 1983's underlying policies).

33. *Haywood*, 881 N.E.2d at 186.

34. *See id.* at 185-86; *see also* City Const. Dev., Inc. v. Comm'r of N.Y. State Office of Gen. Servs., 575 N.Y.S.2d 595, 596 (N.Y. App. Div. 1991).

35. U.S. CONST. amend. XI; Alden v. Maine 527 U.S. 706 (1999); Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 54 (1996).

36. *See* CT. CL. ACT § 8 (McKinney 2009); *see also* Woodward v. State of New York, 805 N.Y.S.2d 670, 673 (N.Y. App. Div. 2005).

York Supreme Court appeared "questionable" under the Supremacy Clause,[37] the court explained that:

> the policy underlying the Supremacy Clause is to maintain an equilibrium between state and federal causes of action: if a state opens its doors to a state cause of action, it must also allow related federal claims to be heard; but if the state does not hear a particular state claim, it may also decline to consider related federal causes of action in its state courts.[38]

Since Correction Law § 24 removed subject matter jurisdiction over all state law damages claims against DOCS personnel, the New York Supreme Court was at liberty to decline cognizance over a related § 1983 claim. Additionally, the statute was consistent with the Supremacy Clause's anti-discrimination rule. As characterized by the *Haywood* majority, that rule "prohibits . . . refusal by a state court to entertain a suit for the sole reason that the cause of action arises under federal law."[39] Correction Law § 24 met this requirement since it treated both state and federal law claims against DOCS personnel identically.

Finally, the court agreed that Correction Law § 24 reflects the State's assumption of responsibility over DOCS-defendant suits,[40] and concluded that the State merely "exercise[d] its prerogative to establish the subject matter jurisdiction of the state courts in a manner consistent with New York's conditional waiver of sovereign immunity."[41] It affirmed the dismissal and dispatched the plaintiff to the Court of Claims.

The three-justice dissent, recognizing the inherent tension between the Supremacy Clause and New York's prerogative to establish its courts' jurisdiction, struck a different balance. To the dissent, the inquiry should have sidestepped Correction Law § 24's text or purpose. Rather, the relevant analysis should start by identifying the Congressional policies underlying the federal right and, in light of the Supremacy Clause's policy that states enforce federal law, assessing whether New York's excuse interferes with those policies.[42] As for 42 U.S.C. § 1983, the policies of deterring state misconduct and compensating victims of civil rights violations were sufficient to trump the State's asserted interest in limiting the number of

---

37. The court noted that "[c]onduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 . . . cannot be immunized by state law." *Haywood*, 881 N.E.2d at 183 (quoting Martinez v. California, 444 U.S. 277, 284 n.8 (1980)).

38. *Haywood*, 881 N.E.2d at 184 (citing Missouri *ex rel* S. v. Mayfield, 340 U.S. 1, 4 (1950)).

39. *Id.* (citing Howlett v. Rose, 496 U.S. 356, 373 (1990)).

40. *See also* N.Y. PUB. OFF. LAW § 17(2)-(3) (McKinney 2008).

41. *Haywood*, 881 N.E.2d at 186.

42. *See id.* at 188 (Jones, J., dissenting) (citing Felder v. Casey, 487 U.S. 131, 139 (1988)).

(often frivolous) lawsuits against individual DOCS employees.[43] The State's claim that Correction Law § 24 was a neutral rule of judicial administration[44] was simply too generous. The statute was far from neutral since it singled out a fact-specific cause of action for adverse treatment, leaving the state law remedy intact in the Court of Claims while extinguishing the analogous § 1983 remedy.[45] And the assertion that Correction Law § 24 was merely an exercise of the State's prerogative to determine state court jurisdiction was irrelevant insofar as it conflicted with federal law.[46] Jurisdictional or not, the statute embodied a substantive policy decision to transfer liability from individual DOCS employees to the State,[47] which plainly conflicted with § 1983's policies.[48]

II. DEFINING "ANALOGOUS" STATE LAW CLAIMS

The *Haywood* majority and dissent agreed on the basic formulation of the antidiscrimination rule: state courts are prohibited from singling out federal causes of action simply because they emanate from Congress and not from the states' respective legislatures. Stated in the affirmative, the antidiscrimination rule imposes an obligation on state courts to entertain those federal claims which are "analogous" to the types of state law claims the court is already enforcing.[49] There remains some difficulty, however, in determining how to characterize the term "analogous" state law claim.[50]

There are two sides to the doctrinal battle. On the one hand, the term could refer to pairs of state and federal claims that arise from identical or closely related sets of facts. For example, Correction Law § 24 bars one fact-specific category of state law claim: damages suits against DOCS employees acting within the scope of employment. Thus, it is possible to ar-

---

43. *Id.*

44. *See infra* notes 90-102 and accompanying discussions (discussing the policy behind immunity statutes).

45. *See Haywood*, 881 N.E.2d at 192 (Jones, J., dissenting).

46. *Id.* at 191. In fact, the Supreme Court noted that § 24 was more akin to an "immunity-from-damages provision" rather than a jurisdictional rule. As such, the State interest was irrelevant. Haywood v. Drown, 129 S. Ct. 2108, 2115 (2009).

47. *Haywood*, 881 N.E.2d at 191.

48. *Id.* at 191-92; *see also* Rogers v. Saylor, 760 P.2d 232, 238 (Or. 1988) (stating that the state law damages cap is inapplicable in state court § 1983 actions, because it conflicted with § 1983's goal of providing monetary relief for civil rights violations and provided partial immunity for certain state officials).

49. STEINGLASS, *supra* note 3, § 9:9.

50. In reviewing the Haywood decision, the Supreme Court noted that it was unnecessary to decide whether states can be compelled to hear suits pursuant to § 1983. In fact, the ruling likely hinged on the fact that N.Y. courts "routinely sit to hear analogous § 1983 actions." Haywood v. Drown, 129 S. Ct. 2108, 2116 (2009).

gue that since the New York Supreme Court is powerless to hear such claims, the antidiscrimination rule imposes no obligation to entertain § 1983 damages suits against DOCS employees.[51]

On the other hand, "analogous" could mean "generically similar," in which case Correction Law § 24 is irrelevant to whether the New York Supreme Court can hear "analogous" state law claims. Because the New York Supreme Court is one of general jurisdiction that hears tort suits of all shapes and sizes against all types of defendants,[52] carving away its jurisdiction over a narrow subcategory of tort does not affect its power to hear "analogous" state law claims. Under this view, *any* tort suit for damages is "analogous" to the claim which Correction Law § 24 prohibits, and thus the antidiscrimination rule should apply and require that the state court entertain the § 1983 claim.

As Parts III.A and III.B show, *Haywood*'s acceptance of the fact-specific rendition of "analogous" overlooks at least two important threads in the Supreme Court's Supremacy Clause jurisprudence. The more accurate view is that a state court's jurisdiction over "analogous" state law claims arises by virtue of its authority to hear claims that are structurally comparable to § 1983 actions—specifically tort suits for damages[53]—and that once the state legislature creates a court capable of hearing generic tort suits for damages, it obligates itself to entertain the full range of claims under § 1983.[54] Since the New York Supreme Court routinely hears such claims under state and federal law—including § 1983 claims against other state employees and tort suits against private defendants[55]—New York should not be permitted to "selectively refuse to enforce"[56] a particular species of § 1983 claim.

---

51. *See, e.g.*, Blount v. Stroud, 877 N.E.2d 49, 61-62 (Ill. App. Ct. 2007); *cf.* Howlett v. Rose, 496 U.S. 356, 378-79 (1990) (rejecting the argument that a Florida immunity statute excluded § 1983 claims from the category of tort claims that the state court could hear).

52. *See* N.Y. CONST. art. VI § 7; *Haywood*, 881 N.E.2d at 191 (Jones., J., dissenting); De Hart v. Hatch, 3 Hun 375, 380 (1875).

53. *See supra* notes 50-52 and accompanying text (explaining the expanding conception of the antidiscrimination rule).

54. *See, e.g.*, Neuborne, *supra* note 5, at 747-66 (proposing an affirmative model under which state courts of general jurisdiction would be obligated to entertain all § 1983 claims).

55. *Cf. id.*; *see also* James v. Bd. of Cent. Sch. Dist. No. 1, 340 N.E.2d 735, 737 (N.Y. 1975) (Fuchsberg, J., dissenting); Young v. Toia, 413 N.Y.S.2d 530 (N.Y. App. Div. 1979) (deciding a United States Code issue); Brody v. Leamy 393 N.Y.S.2d 243, 256-57 (N.Y. Sup. Ct. 1977) (holding that state courts have concurrent jurisdiction with federal courts).

56. *Haywood*, 881 N.E.2d at 191 (Jones, J., dissenting).

III. STATES' OBLIGATION TO ENFORCE SECTION 1983

A. What Triggers the Obligation?

As some commentators have pointed out,[57] the Supreme Court has never endeavored to clarify, at least in the context of a state's obligation to enforce § 1983,[58] exactly what constitutes an "analogous" state law claim.[59] Part III.A adds clarity in this area. First, Part III.A argues that, by impliedly equating "analogous" with "generically similar," the Court has propounded a far more onerous obligation to hear § 1983 claims than the *Haywood* majority appreciated. Second, while the Court has continuously heeded the principle that state legislatures retain discretion to determine state court jurisdiction, it has suggested that by creating courts amenable to generic tort suits, all state legislatures have already created courts competent to hear § 1983 suits. The Court's refusal to address whether states must create forums amenable to § 1983 indicates its belief that states have already locked themselves into the antidiscrimination rule by creating courts capable of hearing generic tort suits.

1. The Broad Scope of the Antidiscrimination Rule

The New York Court of Appeals held that Correction Law § 24 was a "valid excuse" to decline cognizance over the plaintiff's federal § 1983 suit in part because the statute applied to both the federal and state law components of a narrow subclass of DOCS-defendant tort suits.[60] This type of jurisdictional maneuvering, dubbed by some commentators as the "analogous state-created [claim]" excuse, has meager support in Supreme Court cases.[61] The Supreme Court has never actually approved of a state court's selective exclusion of a particular federal claim based on a facially neutral jurisdictional limitation such as Correction Law § 24.[62] The only apparent

57. STEINGLASS, *supra* note 3, § 9:2 (noting that the Supreme Court could have clarified states' obligation to enforce § 1983 by explaining what specifically is meant by similar state law claims).

58. *See* Wilson v. Garcia, 471 U.S. 261, 272-76 (1985) (describing the proper characterization of § 1983 claims for the purposes of finding a state law analogue, whose statute of limitations would apply to § 1983 suits in that court).

59. *See* Haywood v. Drown, 129 S. Ct. 2108, 2117 (2009) ("[W]e have never equated 'analogous claims' with 'identical claims.'").

60. *Haywood*, 881 N.E.2d at 183-85.

61. *See Haywood* 129 S. Ct. at 2116 ("[W]e now make clear that equality of treatment does not ensure that a state law will be deemed a neutral law of judicial administration and therefore a valid excuse for refusing to entertain a federal cause of action."); Redish & Muench, *supra* note 2, at 350-51; Neuborne, *supra* note 5, at 747-66.

62. STEINGLASS, *supra* note 3, § 9:9.

support for such maneuvering lies in the Court's failure to squarely reject it.[63]

In *Mondou v. New York, New Haven, & Hartford Railroad Co.*, for example, a Connecticut court refused to take cognizance over a claim under the Federal Employer Liability Act ("FELA").[64] The Connecticut court did not claim that its jurisdiction was inadequate to hear the type of claim at issue—a personal injury suit for damages—but simply disagreed with the Act's pro-liability policies and believed that it was under no obligation to hear the claim since it originated from a foreign legislative body.[65] In response, the Supreme Court declared:

> [t]he suggestion that the act of Congress is not in harmony with the policy of the state, and therefore that the courts of the state are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the states, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the state.[66]

Thus, the Supremacy Clause ties federal law and state courts together by requiring that Congressional policy be incorporated into state policy; once a state court receives authority to entertain certain causes of action under state law, it must proceed to enforce all similar federal law claims.[67] In *Mondou*, since the Connecticut court had general jurisdiction over FELA-type actions under both Connecticut and out-of-state law, it had an obligation to entertain the FELA claim.[68]

But in *Mondou*, the Connecticut court's authority to hear "analogous" state law claims was conceded. The issue, instead, was whether the court could nonetheless dismiss the federal claim solely because it disagreed with the Act's underlying policy (to which the Supreme Court answered in the negative). Thus, the case could be read for a rather narrow proposition: state courts that have opened their doors to certain state law claims are prohibited from dismissing "analogous" federal claims on grounds of policy disagreement. What remained unanswered was whether a state may delib-

---

63. *See* Redish & Muench, *supra* note 2, at 351-53.

64. 223 U.S. 1 (1912).

65. *Id.* at 4-5.

66. *Id.* at 57.

67. *Id.* at 58 ("The existence of the jurisdiction creates an implication of duty to exercise it.").

68. *Id.*

erately remove jurisdiction over state claims in an effort to defeat enforcement of their "analogous" federal counterparts.[69]

Furthermore, as Professor Sandalow has pointed out, *Mondou*'s wide-sweeping admonishment that federal policy is "policy for all" would have supported a much broader obligation than that which actually resulted from the facts of the case.[70] Indeed, the Court probably did not have to declare that federal policy and state policy are one and the same in order to reverse the Connecticut court, since that court routinely recognized factually identical rights under state law and thus the discrimination against FELA claims was blatant.[71] Therefore, *Mondou* could be read narrowly to condemn discrimination only where there exists a precisely identical state-based right that the state court *is* enforcing.

Nonetheless, the Court in *Testa v. Katt*[72] and, more recently, *Felder v. Casey*,[73] applied the antidiscrimination rule to prohibit a state court from dismissing a federal claim even where the state court would not have enforced a factually identical state-based right. In *Testa*, a car purchaser sued under the Federal Emergency Price Control Act in Rhode Island state court after buying a car for $210 more than the price limit. The state court dismissed and held that since the federal claim emanated from a foreign legislative body, the state court had no obligation to entertain it. The Supreme Court relied on *Mondou* and reversed. Since Rhode Island would have enforced "the same type of claim arising under Rhode Island law," the Rhode Island court was bound to enforce the plaintiff's federal claim.[74] Curiously, the only evidence that the state court could hear similar claims was the court's routine enforcement of claims under a similar *federal* statute—the Fair Labor Standards Act—as well as other state penal laws (the Emergency Price Control Act was considered a penal statute since it allowed treble damage recovery). In fact, the Rhode Island court did not recognize any state-based right to recover for high car prices (because the legislature had not created such a right).[75] Thus, when the court declared that Rhode Island would have heard the "same type of claim," it meant this: as long as the state court recognizes state law rights that are generically similar—not

69. Even the Supreme Court's opinion in *Haywood* declined to address this issue. *See* Haywood v. Drown, 129 S. Ct. 2108, 2116 (2009) ("[T]his case does not require us to decide whether Congress may compel a State to offer a forum, otherwise unavailable under state law, to hear suits brought pursuant to § 1983.").

70. Sandalow, *supra* note 8, at 205; Redish & Muench, *supra* note 2, at 356-57 n.195.

71. Neuborne, *supra* note 5, at 757 n.140.

72. 330 U.S. 386, 392-94 (1947).

73. 487 U.S. 131, 153 (1988).

74. *Testa*, 330 U.S. at 392-93.

75. *Id.* at 394; *see* Neuborne, *supra* note 5, at 757 n.140.

merely factually identical—to the federal right at issue, the antidiscrimination rule imposes an obligation on the state court to take cognizance over the federal claim.[76]

The Supreme Court in *Felder v. Casey* further expanded the antidiscrimination rule by finding discrimination even where a state law applied identically to both state and federal claims.[77] There, the plaintiff sued Milwaukee police officers under § 1983 in Wisconsin state court. Wisconsin had a notice-of-claim statute that required all plaintiffs suing state officials to provide notice of intent to sue and a detailed claim for relief within a certain time period after the incident.[78] After the state court dismissed plaintiff's claim for failure to comply with this requirement,[79] the Supreme Court granted certiorari to consider whether such rules should ever apply to § 1983 claims in state court.[80]

While most of the *Felder* case was framed in terms of preemption (i.e., whether the notice-of-claim was incompatible with § 1983's purpose and thus preempted), Justice Stevens, writing for the majority, explained that the statute discriminated against § 1983 claims even though it would also have applied to a state-law tort suit arising from the same incident.[81] The Court reasoned that, because it applied only to governmental-defendant suits and thus "condition[ed] the right to bring suit against the very persons and entities Congress intended to subject to liability,"[82] it "most emphatically does discriminate in a manner detrimental to the federal right."[83] In the Court's view, the statute's flaw was that it embodied a substantive policy goal of minimizing liability and the expenses associated therewith; yet this goal was "patently incompatible with the compensatory goals of the federal legislation . . . ."[84] It also placed a burden on state-court § 1983 claimants that was wholly absent in both federal court § 1983 actions and in state court tort suits against private defendants.[85]

Felder's analysis is crucial because it seems to stand the antidiscrimination rule on its head. The Court found discrimination, not based on any

---

76. *See* Neuborne, *supra* note 5, at 757 n.140. *But see* Alden v. Maine, 527 U.S. 706 (1999) (rejecting expansion of *Testa* to include selective waivers of state sovereign immunity); Steinglass, *supra* note 8, at 445.

77. 487 U.S. at 153.

78. *Id.* at 136; WIS. STAT. ANN. § 893.80(1)(a)-(b) (West 2009).

79. Felder v. Casey, 408 N.W.2d 19 (Wis. 1987).

80. *Felder*, 487 U.S. at 138.

81. *Id.* at 145.

82. *Id.* at 144.

83. *Id.* at 146.

84. *Id.* at 143.

85. *Id.* at 141.

disparate treatment between state-based rights and their federal counterparts, but based on the state rule's particular impact on the § 1983 cause of action.[86] It was irrelevant that the notice-of-claim imposed an identical burden on state law claims against police officers; the fact that the statute obstructed § 1983's policies of deterrence and compensation by conditioning the right to recover was sufficient justification to conclude that it offended the Supremacy Clause's mandate that federal law reign supreme.[87] Therefore, post-*Felder* analysis begins by examining the federal right at stake, identifying its policies, and then asking whether the state rule obstructs those policies—regardless of the extent to which it impairs any "analogous" state law right.[88]

Given the Court's increasingly holistic treatment of the antidiscrimination principle, the practice of selectively excluding fact-specific federal causes of action from trial courts of general jurisdiction appears difficult to justify.[89] The discrimination condemned in *Testa* and *Felder* extended far

---

86. *Id.* at 139-40. Justice O'Connor, in dissent, admonished the majority's adoption of "a new theory of discrimination, under which the challenged statute is said to 'condition the right to bring suit against the very person and entities [viz., local governments and officials] Congress intended to subject to liability.'" *Id.* at 160 (O'Connor, J., dissenting). Justice O'Connor believed that it was sufficient that the notice-of-claim requirement applied to both federal and state claims of action. O'Connor's dissent notwithstanding, the antidiscrimination rule as it currently exists appears to involve a comparison between the state court's treatment of general classes of causes of action—tort, breach of contract, etc.—to the specific right embodied in § 1983.

87. *See* Dice v. Akron, 342 U.S. 359 (1952). The Court held that federal law governs whether plaintiff waived his right to sue under FELA. The state's waiver law substantially disfavored FELA plaintiffs and was, thus,

> incongruous with the general policy of the Act . . . because the federal rights affording relief to injured railroad employees under a federally declared standard could be defeated if states were permitted to have the final say as to what defenses could and could not be properly interposed to suits under the act.

Id. at 362; *see also* Rosa v. Cantrell, 705 F.2d 1208, 1221 (10th Cir. 1982) (holding invalid a Wyoming statute that required plaintiffs accepting settlements in connection with employment-related disputes to waive all claims against employees because the statute "interfere[d] with the policy of preventing abuses of power by those acting under color of state law").

88. *Felder*, 487 U.S. at 138 ("The question . . . is [whether] the application of the State's notice-of-claim provision to § 1983 actions brought in state courts [is] consistent with the goals of the federal civil rights laws, or [whether] the enforcement of such a requirement instead stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.") (internal quotation marks omitted) (citing Perez v. Campbell, 402 U.S. 637 (1971)).

89. Steinglass, *supra* note 8, at 381 n.293 ("Because a categorical exclusion of a federally created cause of action [from state courts discriminates] against that cause of action, even if the [analogous] state-created [actions are also] excluded, it is possible to use the nondiscrimination framework to impose a duty on state courts that goes beyond [their obli-

beyond mere disparate treatment between fact-specific state and federal causes of action. After *Testa*, a state court should be obligated to hear federal claims so long as its jurisdiction extends over generically similar state law claims. After *Felder*, a state statute purporting to bar or condition the right to recover under § 1983 will be preempted whenever it conflicts substantially with the Act's underlying policies. Thus, the antidiscrimination rule requires not only that a state who opens its courts to generic tort suits provide forums amenable to § 1983, but that such forums remain as hospitable to § 1983 claims as federal courts would be.

2. *The Rule: Triggered by Jurisdictional Grant Over Generic Tort Suits*

a. States' Discretion to Create State Forums

While *Felder* seemed to close the door on any chance that a state may selectively exclude a subspecies of § 1983 from its courts, the New York Court of Appeals somehow managed to manufacture its own justification for upholding Correction Law § 24 in *Haywood*. It did so by impliedly distinguishing the statute from the notice-of-claim at issue in *Felder* in a seemingly important way. While the notice-of-claim was merely a procedural rule governing the treatment of § 1983 claims already in state court, Correction Law § 24 dealt with the state courts' authority to hear them in the first instance.[90] The importance of this distinction, however, is spurious.

It is true that the Supreme Court has made efforts to sustain the concept of a far-reaching and unimpeded authority of state legislatures to control the jurisdictional qualities of their courts.[91] As early as *Mondou*, for instance, the Court went out of its way to note that nothing in FELA purports "to enlarge or regulate the jurisdiction of the state courts."[92] Even though the Connecticut court's jurisdiction was already adequate to the occasion, the State would have been free to organize the jurisdiction of its courts in a

---

gation] to refrain from treating [actions to enforce federal law differently than actions to enforce state law.]").

90. *See* Haywood v. Drown, 881 N.E.2d 180, 185-86 (N.Y. 2007) ("By restricting the forum for a certain type of claim to a particular state court, the Legislature did nothing more than exercise its prerogative to establish the subject matter jurisdiction of state courts in a manner consistent with New York's conditional waiver of sovereign immunity . . . ."); *cf.* Janda v. Detroit, 437 N.W.2d 326 (Mich. Ct. App. 1989); Rogers v. Saylor, 760 P.2d 232 (Or. 1988) (en banc); *see also* Smith v. Wade, 461 U.S. 30 (1983); Carey v. Piphus, 435 U.S. 247 (1978).

91. *See generally* Neuborne, *supra* note 5, at 747-66; Redish & Muench, *supra* note 2, at 340-59; Sandalow, *supra* note 8, at 205.

92. Mondou v. N.Y., New Haven, & Hartford R.R. Co., 223 U.S. 1, 56 (1912).

manner that could conceivably render the Act unreachable. Later, in *McKnett v. St. Louis & San Francisco Railway Co.*,[93] another FELA case, the Court adopted a similar analysis and held that an Alabama court was obligated to entertain the federal claim because the state had already "granted to its circuit courts general jurisdiction of the class of actions to which that here brought belongs . . . ."[94] In so holding, the Court carefully noted that "Congress has not attempted to compel states to provide courts for the enforcement of [FELA]."[95]

Nonetheless, in the recent case of *Howlett v. Rose*, the Court signaled that the Supremacy Clause must necessarily limit the principle that states retain wide latitude in administering their judiciaries.[96] There, a high school student brought a § 1983 action in Florida state court against a school board alleging Fourth and Fourteenth Amendment violations stemming from an alleged illegal search of his car.[97] By statute, Florida had waived sovereign immunity, thus allowing the State to be sued with respect to state law—but not federal law—claims. This resultant partial immunity also applied to public entities like the defendant school board, which would otherwise be subject to § 1983 liability in federal court. The result: a Florida school board was immune from § 1983 claims brought in state but not federal court. The Florida District Court of Appeals upheld this statutory scheme and dismissed the federal claim.[98]

The State had argued that federal law "takes the state courts as it finds them" and that the Florida legislature was therefore within its rights to remove state court jurisdiction over certain § 1983 claims.[99] But the U.S. Supreme Court rejected this assertion and found that despite the jurisdic-

---

93. 292 U.S. 230 (1934).

94. *Id.* at 233; *see also* Howlett v. Rose, 496 U.S. 356, 380 (1990); Boyd v. Robeson County, 621 S.E.2d 1, 8 (N.C. 2005) ("[Petitioners] would have us hold that, although a superior court has jurisdiction over sheriffs for tort claims because a sheriff is a local governmental officer, it does not have authority to hear a § 1983 claim against the sheriff because, for the federal claim, he is part of 'the State.' This constitutes discrimination against § 1983 claims in violation of the Supremacy Clause.") (citing *McKnett*, 292 U.S. at 234).

95. *McKnett*, 292 U.S. at 233.

96. 496 U.S. 356 (1990).

97. *Id.* at 359.

98. *Id.* at 359-60.

99. In *Howlett v. Rose*, the Court explained:

> The requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent to hear the case in which the federal claim is presented. The general rule, 'bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them.'

Howlett, 496 U.S. at 372 (quoting Henry M. Hart, Jr., *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489, 508 (1954)).

tional tack, Florida's selective immunity statutes were grounded in substantive policy and did not reflect "the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect."[100] Since the Florida court would have enforced state law tort suits against the school board and even § 1983 suits against individual school officials, there was no state interest (aside from shielding school boards from § 1983 liability) that could pass muster under the Supremacy Clause. Florida's statutory scheme blatantly conflicted with § 1983's remedial and deterrent purposes, and despite the State's attempt to characterize the statute as jurisdictional, the Supreme Court admonished that "the force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'"[101]

Thus, after *Howlett*, merely characterizing a state law as "jurisdictional" will not, by itself, transform that law into a legitimate excuse to dismiss a § 1983 claim. Rather, *Felder*'s preemption analysis still stands: state statutes purporting to excuse a state court from asserting cognizance over a federal claim—even jurisdictional limitations—must be scrutinized for the extent to which they interfere with the federal law's underlying substantive policies—policies which, by virtue of the Supremacy Clause, are policies of each of the states.[102]

b. Adequate Forum Creation

The notion that states retain broad discretion to control the reach of their own courts remains important as a doctrinal matter. While the Court in *Howlett* dispelled the notion that a state law dubbed "jurisdictional" should trump the Supremacy Clause, it specifically noted that an open question remains as to whether states must create forums to hear § 1983 claims in the first instance.[103] Indeed, in every case in which the Court struck down a state's refusal to entertain the federal claim, the state courts' adequacy to hear analogous state law claims was conceded and thus the must-create-forums question was never squarely addressed.[104] The same is true for §

---

100. *Id.* at 381.

101. *Id.* at 382-83.

102. *See supra* note 88 and accompanying text.

103. *See Howlett*, 496 U.S. at 378 n.20; Steinglass, *supra* note 8, at 439-40; *see also supra* note 69.

104. Steinglass, *supra* note 8, at 434 ("[*Testa* and *Howlett*] make the minimalist assumption that the state has already created courts with ordinary jurisdiction to hear such cases and neither case reaches the theoretically interesting (but never likely to be addressed directly) issue of whether states were required to create courts that could hear federal causes of action."); *see, e.g.*, *Howlett*, 496 U.S. at 356; Testa v. Katt, 330 U.S. 386 (1947); McKnett v.

1983: since virtually every state has opened its doors to § 1983 claims,[105] there has never been a need to consider whether states must create forums in which to hear them. If this question is truly open, then states should at least try to argue that stripping a state court of jurisdiction over § 1983 claims is really just a decision to refrain altogether from creating a forum amenable to such claims. But this begs the question: when should a state be considered to have *already* created a forum adequate to hear § 1983 claims? There are at least two answers—one broad, one narrow—but the Supreme Court's declarations support the broader view: an adequate forum is one that hears claims that are generally analogous in structure to § 1983 claims.

Consider first the narrow view. Under this view, a forum is adequate to hear § 1983 claims only if it hears a state law claim arising from an identical set of facts as the federal claim. Under this view, it could be argued that New York Correction Law § 24, by removing subject matter jurisdiction over state law damages suits against DOCS employees acting within the scope of employment, has merely failed to create a forum amenable to any § 1983 damages suit alleging a DOCS employee committed a tort.[106] This is also what happened in *Blount v. Stroud*,[107] which dealt with an Illinois statute that removed the state trial courts' jurisdiction over human rights claims—state and federal—and vested a specialized tribunal with exclusive authority to adjudicate them.[108] The court explained that the situation was the converse of *Howlett*, because to impose an obligation on the trial court to hear the plaintiff's federal claim would have required the state to create a court amenable to it.[109] But *Howlett* imposed no such require-

---

St. Louis & S.F. Ry. Co., 292 U.S. 230 (1934); Mondou v. N.Y., New Haven, & Hartford R.R. Co., 232 U.S. 1 (1912).

105. *See* Maine v. Thiboutot, 448 U.S. 1, 10-11 (1980); Martinez v. California, 444 U.S. 277, 283 n.7 (1980); *see also Mondou*, 223 U.S. at 56; Claflin v. Houseman, 93 U.S. 130, 140-41 (1876); THE FEDERALIST NO. 82 (Alexander Hamilton).

106. STEINGLASS, *supra* note 3, § 9.9 (noting that, by failing to address the must-create-forums question, the Court has "been able to maintain the fiction that states make the voluntary decision to hear federal causes of action even though this approach effectively requires state courts to hear federal causes of action").

107. 877 N.E.2d 49, 61-62 (Ill. App. Ct. 2007).

108. 775 ILL. COMP. STAT. ANN. 5/8-111(c) (West 2009).

109. *See also* Meehan v. Ill. Power Co., 808 N.E.2d 555, 559 (Ill. App. Ct. 2004); Faulkner-King v. Wicks, 590 N.E.2d 511, 518 (Ill. App. Ct. 1992). The Illinois Supreme Court recently abrogated these decisions and held that the Illinois Circuit courts had jurisdiction over federal claims under 42 U.S.C. § 1981. Blount v. Stroud, 904 N.E.2d 1, 18 (Ill. 2009). The opinion, however, was one of statutory construction. The state statute applied to civil rights violations, which the court held to encompass only violations of state—but not federal—law. Thus, the court avoided deciding whether the Supremacy Clause would have

ment. Rather, the Illinois Supreme Court endorsed the view that the state courts were inadequate to hear the federal claim because they lacked authority to hear factually identical state law claims.[110]

This view is attractive because it allows states' rights proponents to argue that because the state has failed to create an adequate forum, the principle that "federal law takes state courts as it finds them"[111] should prevail. If creation occurs only through a jurisdictional grant over a fact-specific claim, then the question of the state court's obligation to hear a federal claim, which began as "is the court adequate to the occasion" (a question the Court has a much easier time answering in the affirmative), transforms into "can Congress compel states to re-open their courthouse doors" (a question the Court has stayed away from, and in any event would likely answer in the negative). The latter analysis provides a far more persuasive weapon in the state's defense arsenal.

Yet a contrary, and better, approach holds that the must-create-forums question is triggered at a much earlier stage in the analysis. Under this view, a state court's authority—especially a trial court of general jurisdiction such as the New York Supreme Court—cannot be described as a catalogue of every fact-specific state cause of action it entertains.[112] Such jurisdiction, instead, ought to be characterized in terms of general causes of action the court adjudicates,[113] the remedies the court is capable of furnishing, and whether the court can assert personal jurisdiction over the defendants.[114] Under this view, a state creates a court amenable to § 1983 claims by setting up a court capable of: a) hearing tort suits,[115] b) awarding damages or other relief authorized under the statute,[116] and c) exercising personal jurisdiction over the defendants.[117] In setting up such a court—which New York has in the state Supreme Court—a state locks itself into the anti-discrimination rule; it must enforce all "analogous" § 1983 claims,[118] which, practically speaking, means *any* § 1983 claim.

---

required the Illinois courts to take cognizance over the federal claim had the state statute purported to remove such jurisdiction.

110. *Blount*, 904 N.E.2d at 16.

111. Howlett v. Rose, 496 U.S. 356, 372 (1990).

112. *See, e.g.*, De Hart v. Hatch, 3 Hun 375, 380 (1875). The New York Supreme Court's jurisdiction is so expansive that there is in fact some question as to whether Correction Law § 24 violates the New York Constitution, which states that it cannot be limited by legislative action.

113. *See* N.Y. CONST. art. VI, § 7.

114. *See Howlett*, 496 U.S. at 378-79.

115. *See* Wilson v. Garcia, 471 U.S. 261 (1985).

116. *Howlett*, 496 U.S. at 356, 373-74.

117. *Id.* at 373.

118. *See, e.g.*, McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 234 (1934).

To illustrate why this view makes sense in light of Supreme Court case law, imagine a state statute that barred *all* New York courts from hearing *any* claim against state officials, leaving no forum for any claim whatsoever against these defendants. Assuming this would comport with the state's own constitution, the question then arises whether such a statute could constitutionally be applied to bar a § 1983 action in a state court of general jurisdiction (i.e., the New York Supreme Court) that routinely hears, for example, slip-and-falls or intentional assault claims against private defendants under state law.

By blocking an entire class of state and federal claims—rather than one fact-specific subcategory—this hypothetical statute presents a much more compelling case for considering the must-create-forums argument.[119] Instead of picking and choosing among causes of action, the statute removes the entire category of state-defendant claims and thus it is much easier to accept the notion that the entire state court system might be inadequate to adjudicate such claims. Further, it is unlikely that the legislature would use such a statute to discriminate against § 1983 actions, since many claims against state officials fail to rise to a sufficient level of Constitutional importance to warrant § 1983 redress.[120]

Nonetheless, a close reading of Supreme Court cases would support a holding that even this type of across-the-board jurisdictional limit would be an insufficient basis to decline cognizance over the § 1983 claim. This is because each time the Court approaches the question of whether states must fashion forums amenable to federal claims, it tends to treat the question as having already been answered by the State's decision to grant the state court power to hear generic tort suits. In other words, the Court's persistent declaration that the must-create-forums question is open evinces the Court's belief that states, by setting up courts to hear generic tort claims, are *already creating such forums*.

In *Mondou*, for example, the Court pointed out that in FELA, there is "not . . . any attempt by Congress to enlarge or regulate the jurisdiction of state courts."[121] Thus, the Court never reached the must-create-forums question. Rather, the Court apparently believed that the question was obviated by the fact that the Connecticut court's "ordinary jurisdiction, as pre-

119. *Cf.* STEINGLASS, *supra* note 3, § 9:8 ("To exclude § 1983 cases, states would have to close their courts to similar actions authorized by state and federal law against state and local governmental bodies and their employees.").

120. *See, e.g.*, Parratt v. Taylor, 451 U.S. 527, 544 (1981) (finding some minor state actor misconduct unactionable under § 1983; to hold otherwise would "make . . . the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States") (quoting Paul v. Davis, 424 U.S. 693, 701 (1976)).

121. Mondou v. N.Y., New Haven, & Hartford R.R. Co., 223 U.S. 1, 56 (1912).

scribed by local laws, is appropriate to the occasion."[122] Specifically, the Connecticut court was "empowered to take cognizance of actions to recover for personal injuries and for death . . . ."[123]

Then, in *Testa*, the Court traced *Mondou* and found that the Rhode Island court was obligated to take cognizance of an Emergency Price Control Act claim because "this same type of claim" would have been enforced in that court.[124] And again, by citing to *Mondou*, the Court apparently recognized that it was not purporting to answer the must-create-forums question.[125] So we must ask: how do we know that Rhode Island had already created such a forum? *Testa*'s answer—because the court could enforce similar claims including state-law penal claims and those arising under a similar federal statute—evinces the Court's belief that the State had already created an adequate forum by granting the court jurisdiction over generically similar state and federal law claims.[126]

And in *Howlett*, the Court explicitly stated, "[t]his case does not present the questions whether Congress can require the states to create a forum with the capacity to enforce federal statutory rights or to authorize service of process on parties who would not otherwise be subject to the court's jurisdiction."[127] Thus, as in *Mondou* and *Testa*, the Court recognized that the must-create-forums question was not ripe. How, though, was the Court able to avoid the question? Because the Florida court was one of general jurisdiction that hears:

> tort claims by private citizens against state entities (including school boards), of the size and type of petitioner's claim here, and it can enter judgment against them. That court also exercises jurisdiction over § 1983 actions against individual officers and is fully competent to provide the remedies the federal statute requires.[128]

---

122. *Id.* at 56-57.

123. *Id.* at 57.

124. Testa v. Katt, 330 U.S. 386, 394 (1947).

125. *See id.* at 392.

126. *See also* McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 233 (1934) ("Congress has not attempted to compel states to provide courts for [FELA enforcement] . . . .") Thus, the Court recognized that the case was not about whether states are obligated to create forums amenable to federal claims. Rather, in the Court's view, the issue was whether the state had already created such a forum. Reasoning that the state court had "general jurisdiction of the class of actions to which that here brought belongs, in cases between litigants situated like those in the case at bar," including factually identical claims arising within the state, out-of-state accidents where one party was a domestic corporation, and out-of-state accidents involving interstate commerce, the Court found that the state court was indeed an adequate forum. *Id.* at 232.

127. Howlett v. Rose, 496 U.S. 356, 378 (1990).

128. *Id.* at 378-79.

Thus, by referencing tort claims instead of claims against school boards for certain fact-specific infractions, the Court was principally concerned with the general subject matter of the claim at issue and whether the court can furnish the remedies sought—not with the specific facts underlying the claim.[129] Furthermore, the Florida court's ability to exercise personal jurisdiction over the individual defendants—despite the immunity statute which purported to carve away such jurisdiction—provided additional evidence of the court's adequacy.

Because the Court has never seen the need to answer the must-create-forums question, and because it believes a state court is adequate to hear § 1983 claims by virtue of its authority to hear generic tort suits, a state's obligation to enforce § 1983 should be unaffected by any state statute limiting subject matter jurisdiction over the entire range of state-defendant suits. A state's obligation arises as soon as it creates a court capable of hearing tort suits, awarding the relief sought, and exercising personal jurisdiction over the defendants.[130]

B. What is the Nature of the Obligation?

Part III.A raised and answered an important question about the obligation of states to entertain claims arising under § 1983. The antidiscrimination principle, which requires that states treat "analogous" federal and state law claims identically, is triggered as soon as a state creates a court amenable to generic torts suits. Part III.B moves away from the obligation itself and discusses how that obligation should be carried out. As explained below, several principles discerned from Supreme Court cases—including the so-called "valid excuse" doctrine and *Felder v. Casey*'s prohibition against burdening federal rights—set the parameters of states' duty to enforce § 1983. This Part argues that the New York Court of Appeals misinterpreted these principles in refusing to enforce a fact-specific § 1983 claim based on a jurisdictional barrier that completely extinguished the § 1983 remedy

---

129. *Id.* (The Florida court "also exercises jurisdiction over § 1983 actions against individual officers and is fully competent to provide the remedies the federal statute requires"); *see also* STEINGLASS, *supra* note 3, § 9:9.

130. Note that personal jurisdiction is a geographical and contact-related concept. A state court cannot assert lack of personal jurisdiction on substantive policy grounds (such as to immunize state actors) when it would otherwise be able to reach the defendant had he not been acting on behalf of the State. *Howlett*, 496 U.S. at 381 ("The fact that a rule is denominated jurisdictional does not provide a court an excuse to avoid the obligation to enforce federal law if the rule does not reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect."); *see also* Martinez v. California, 444 U.S. 277, 284 n.8 (1980) ("Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 . . . cannot be immunized by state law.") (internal quotations marks omitted).

while leaving the state remedy intact. These principles do, however, leave open the possibility that a state may remove jurisdiction over specific § 1983 claims, so long as it provides an equally-accessible alternative forum to hear them.

Once a state submits to the antidiscrimination rule and thereby obligates itself to entertain the full range of claims under § 1983, a wholly separate question arises regarding how states must administer their judiciaries in order to fulfill that obligation. Indeed, there is a line of Supreme Court cases suggesting that, even if a state has a duty to provide forums for § 1983, an individual state court may decline to entertain a § 1983 claim by presenting a "valid excuse."[131] This practice has been equated with a "neutral state rule regarding the administration of courts."[132] The *Haywood* majority, drawing on these cases, held that Correction Law § 24 was a valid exercise of the State's discretion to determine state court jurisdiction,[133] and that the Court of Claims' inability to hear § 1983 suits did not amount to any significant level of discrimination.[134]

1. The "Valid Excuse" Balancing

To understand this so-called "valid excuse" doctrine and its underlying function, it is helpful to revisit *Douglas v. New York, New Haven & Hartford Railroad Co.*,[135] the case credited with the doctrine's genesis. There, the Supreme Court upheld a New York court's refusal to enforce a claim under FELA based on a New York statute granting trial judges discretion to dismiss transitory actions between two non-resident corporations.[136] The Court, recognizing the balance to be struck between the federal policy of having state courts enforce federal law and states' discretion to set their courts' jurisdiction, held that "[FELA] does not purport to require [s]tate [c]ourts to entertain suits arising under it . . . as against an otherwise valid excuse."[137] Apparently, New York's asserted interest in giving New York residents priority in access to its "often overcrowded" courts[138] was pressing enough that requiring the state court to enforce out-of-state FELA

131. *See Howlett*, 496 U.S. at 357; Missouri *ex rel* S. v. Mayfield, 340 U.S. 1, 5 (1950); Herb v. Pitcairn, 324 U.S. 117, 120 (1945); Douglas v. N.Y., New Haven & Hartford R.R. Co., 279 U.S. 377, 388 (1929); *cf.* McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 233 (1934).

132. *Howlett*, 496 U.S. at 372.

133. Haywood v. Drown, 881 N.E.2d 180, 185 (N.Y. 2007).

134. *Id.* at 186.

135. 279 U.S. 377 (1929).

136. *Id.* at 387-88.

137. *Id.*

138. *Id.* at 387.

claims would be unfair. This was especially true since a) New York courts would still entertain in-state FELA claims, and b) other states were available—and presumably more appropriate venues—to enforce the plaintiff's claim.[139] Recognizing that an adequate state forum was available to hear the federal claim and that there existed no serious threat to the policy that states share responsibility for adjudicating federal claims, the Court accepted New York's interest and approved of the state court's decision to decline jurisdiction.[140]

The Court cited *Douglas* a few years later in *McKnett v. St. Louis & San Francisco Railway Co.*,[141] but held that an Alabama statute construed as barring federal—but not state—claims arising from out-of-state accidents could not be applied to dismiss a FELA claim.[142] The Court noted that the Alabama court had "general jurisdiction of the class of actions to which that here brought belongs,"[143] and that its decision to dismiss the FELA claim was "based solely upon the source of law sought to be enforced."[144] Thus, there was no justifiable state interest in judicial administration that would have supported the dismissal. And since the Alabama court was one of general jurisdiction, the dismissal would likely have rendered the federal claim completely unenforceable in any Alabama forum.

The Court in *Herb v. Pitcairn*[145] distinguished *McKnett* and held that an Illinois city court, whose jurisdiction as construed by the Illinois Supreme Court, extended only to causes of action arising within city borders, was powerless to enforce plaintiff's out-of-city FELA claim.[146] It would seem that the Illinois legislature made a deliberate policy decision to create specialized tribunals with authority over local causes of action only. Forcing the city court to entertain federal causes of action arising in other cities would have flouted this locally-calibrated allocation of judicial resources and seriously hindered the city court's smooth functioning.[147] Meanwhile, imposing such an obligation was unnecessary in order to advance the policy that otherwise competent state courts enforce federal law, since an al-

139. *See id.* at 386.

140. *See id.* at 386-87.

141. 292 U.S. 230 (1934).

142. *Id.* at 234.

143. *Id.* at 232.

144. *Id.* at 234.

145. 324 U.S. 117 (1945).

146. *Id.* at 123. An important qualification to the Court's holding, however, was that there was no indication that Illinois had "construed the state jurisdiction and venue laws in a discriminatory fashion." *Id.*

147. *See id.* at 120-21.

ternative state court—Illinois trial courts of general jurisdiction—would have been available to hear the FELA claim.[148]

Also, in *Missouri* ex rel *Southern Railway Co. v. Mayfield*,[149] the Supreme Court condoned a state court's application of *forum non conveniens* to dismiss a FELA claim, so long as the state "enforces its policy impartially."[150] Such approval is consistent with the balancing underlying the "valid excuse" cases.[151] The doctrine of *forum non conveniens* allows states to mitigate the "inconvenience and hardship" of entertaining transitory claims between non-residents and thereby protects the court from overcrowded dockets.[152] Yet, it does not afford states a means to dismiss federal claims that arise *within the state*.[153] Successful application of *forum non conveniens* also implies that the action may—indeed should—be brought in a different state.[154]

2. Haywood *Applied*

These cases reveal that the "valid excuse" doctrine promotes dual purposes: to protect state judiciaries from the added costs of adjudicating foreign causes of action without undermining the substantive policies underlying the Act or the general policy that state courts enforce federal law.[155] This formulation is consistent with several features of Supreme Court case law, but inconsistent with the New York Court of Appeals' application of the "analogous" state claim excuse.

First, the dual-purpose characterization accounts for *Mondou*'s original admonishment that dismissing a federal claim solely because it is federal is "quite inadmissible."[156] A state court whose doors are already open to state tort claims suffers little added administrative cost when it is forced to entertain "analogous" § 1983 claims.[157] The only burdens that arguably exist arise either from the state's unfamiliarity with the § 1983 cause of ac-

148. *See generally* Redish & Muench, *supra* note 2, at 349-50 (explaining that the court of limited jurisdiction validly dismissed a FELA claim).

149. 340 U.S. 1 (1950).

150. *Id.* at 4.

151. *See, e.g.*, McKnett v. St. Louis S.F. Ry. Co., 292 U.S. 230 (1934).

152. Missouri, Kansas-Texas R.R. Co. v. Dist. Ct. of Creek County, 294 P.2d 579, 582 (Okla. 1956); *see* 36 AM. JUR. 2D *Foreign Corporations* § 468 (2009).

153. *See* Redish & Muench, *supra* note 2, at 353-54.

154. *See id.* at 354.

155. *See id.* at 340-59.

156. Mondou v. N.Y., New Haven, & Hartford R.R. Co., 223 U.S. 1, 57 (1912); *see* Redish & Muench, *supra* note 2, at 355.

157. *See* Redish & Muench, *supra* note 2, at 355.

tion,[158] or from the fact that many § 1983 claims are frivolous.[159] Yet *Howlett*, along with other cases, firmly found both assertions inadequate to trump the Supremacy Clause.[160]

Moreover, the New York Supreme Court stands to benefit little in the way of cost-saving by removing its jurisdiction over a narrow set of fact-specific claims. Obligating the court to entertain such claims would not impose any added burdens,[161] since the court routinely adjudicates claims that vary only minutely from those Correction Law § 24 prohibits, such as claims for injunctive or declaratory relief against DOCS employees and DOCS-defendant suits for torts committed *outside* the scope of employment.[162] Meanwhile, because it extinguishes the § 1983 remedy in *all* New York courts while leaving a state law remedy intact in the Court of Claims, Correction Law § 24 threatens to undermine the Supremacy Clause by allowing the State to completely avoid enforcing the federal right.

Finally, as Professor Redish has noted, selectively barring "analogous" pairs of state and federal claims is inconsistent with the limits the Supreme Court has placed on the valid excuse doctrine, specifically, that any "valid

---

158. *Id.* at 355 n.191. It has also been contended that the Supremacy Clause does not require state courts to afford special treatment to § 1983 claims. *See* Dice v. Akron, Canton, & Youngstown R.R. Co., 342 U.S. 359, 365 (1952) (Frankfurter, J., dissenting) ("[S]imply because there is concurrent jurisdiction in Federal and State courts over actions under [FELA], a State is under no duty to treat actions arising under that Act differently from the way it adjudicates local actions for negligence . . . .").

159. *See, e.g.*, Brody v. Leamy, 393 N.Y.S.2d 243, 255 (N.Y. Sup. Ct. 1977) (accepting jurisdiction over § 1983 suits meant state courts would have to "assume the burden of trying causes of action of federal origin, incorporate into the state legal system alien concepts of jurisprudence that could wreak havoc upon orderly common law disciplines, and inject into the state judicial system the potential for an onerous burden of a rapidly expanding caseload of civil rights claims that could not possibly be managed without substantial trial delay to equally meritorious state oriented actions in the absence of an increase in judicial manpower, the overall effect of which would necessarily lead to exacerbation of federal-state court relationships").

160. Howlett v. Rose, 496 U.S. 356, 380 (1990) ("A state may not . . . relieve congestion in its courts by declaring a whole category of federal claims to be frivolous."); *see Mondou*, 223 U.S. at 58-59 ("[T]hat its exercise may be onerous does not militate against that implication. . . . [I]t is neither new nor unusual in judicial proceedings to apply different rules of law to different situations and subjects . . . . [I]t has never been supposed that courts are at liberty to decline cognizance of cases of a particular class merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.").

161. In *Dice v. Akron, Canton, & Youngstown R.R. Co.*, the dissent argued that forcing a state court to adopt a different jury procedure for federal claims in its courts would create undesirable "judicial hybridization." 342 U.S. at 368 (Frankfurter, J., dissenting). However, no such hybridization would occur by forcing the New York Supreme Court to entertain DOCS-defendant § 1983 suits, so long as the procedure followed in such suits would in no way differ from that followed in similar state law and § 1983 suits.

162. *See, e.g.*, Ismail v. Singh, 776 N.Y.S.2d 166, 169 (N.Y. Sup. Ct. 2003); *see also* Neuborne, *supra* note 5, at 747-66.

excuse" must not violate federal law.[163] By extinguishing an "analogous" federal right through state-wide removal of subject matter jurisdiction, the New York legislature has apparently decided that the right to sue DOCS employees for violating the federal constitution is wholly unworthy of enforcement. But Congress, in enacting § 1983, has created that right; the Supremacy Clause should thus prohibit New York from declaring that no such right exists. Moreover, this limitation should encompass the state legislature's *failure* to create a precisely analogous state-based right in the first place. That no such right exists cannot be a "valid excuse": the antidiscrimination rule applies as soon as the State sets up a court capable of hearing generically similar state causes of action and federal policy, "policy for all."[164]

3. *The "Valid Excuse" Balancing Should Permit Selective Exclusion, so Long as an Alternative State Forum is Provided*

As explained in Part III.A the antidiscrimination rule obligates states to enforce all § 1983 actions as soon as it creates a court amenable to generic tort claims for damages. The "valid excuse" balancing, however, leaves room for states to decide in which *forum* to place such actions.

The State of New York, for example, created the New York Supreme Court—capable of hearing generic tort suits—and thus brought itself under the ambit of the antidiscrimination rule. Correction Law § 24 then remits all damages claims against DOCS employees to the Court of Claims, a specialized tribunal that only hears claims against the State. But since the United States Supreme Court has held that states cannot be sued under § 1983,[165] a plaintiff who initially sues a DOCS employee under § 1983 in the New York Supreme Court is forced to surrender his § 1983 claim against the individual and accept, as a substitute, a claim against the State.[166] By extinguishing the § 1983 claim while leaving the "analogous" state remedy intact, the statute gives the State a means to avoid enforcing federal law and thus undermines the notion that federal law reigns supreme. Also, since the practical effect of § 24 is to force plaintiffs to file their claims in federal court, the statute poses a substantial threat to Congress's

163. Redish & Muench, *supra* note 2, at 355-56.

164. *See, e.g.*, McKnett v. St. Louis & S.F. Ry. Co., 292 U.S. 230, 234 (1934).

165. Will v. Mich. Dep't of State Police, 491 U.S. 58, 87 (1989); *see also* White v. New York, 615 N.Y.S.2d 811, 815 (N.Y. Ct. Cl. 1994).

166. This discriminatory impact was no object for the *Haywood* majority. 881 N.E.2d 180, 185-86 (N.Y. 2007). Since it was *Congress* who decided to exempt states from the purview of § 1983, it cannot be said that the New York state legislature, in enacting Correction Law § 24, was *deliberately* discriminating against federal law.

chosen distribution of judicial resources among the state and federal judiciaries.

It is possible, however, that the New York legislature could remove the state Supreme Court's jurisdiction over all claims—state and federal—against DOCS employees and vest them in a separate tribunal that *can* hear § 1983 claims.[167] In such an instance, there is little danger that the State would be trying to discriminate against federal law, since it would not foreclose the § 1983 cause of action but merely dictate where it should be filed. For that same reason, such a maneuver would presumably be based not on substantive policy concerns but on the valid administrative goal of putting all such claims—which are voluminous and often frivolous—into specialized tribunals with lighter caseloads and better-informed judges.[168] Moreover, such a statutory scheme would be consistent with *Felder v. Casey*—so long as it deals with venue only and does not condition the right to recover in any significant way.[169] *Felder* was primarily concerned that civil rights plaintiffs were disadvantaged as compared with ordinary tort claimants, a circumstance that frustrated § 1983's remedial and deterrent goals.[170] But by providing an equally-accessible state forum for § 1983 redress, the State could ensure that § 1983 plaintiffs would enjoy the full extent of rights and remedies § 1983 provides.

Thus, the obligation to hear § 1983 claims does not encompass a duty on the part of trial courts of general jurisdiction to hear all "non-analogous" claims. Rather, the "valid excuse" cases and *Felder* should permit removal of jurisdiction over discrete pairs of state and federal claims from a court that would, absent the state statute, be fully competent to entertain such

---

167. *Cf.* Herb v. Pitcairn, 324 U.S. 117 (1945). Professor Neuborne argues that the "court of limited jurisdiction" excuse illustrated by *Herb* is essentially the only "valid excuse" the Supreme Court would have contemplated. *See* Redish & Muench, *supra* note 2, at 357 n.196 (*forum non conveniens* also a possible "valid excuse"). I advance the broader proposition that trial courts of general, unlimited jurisdiction could avoid the obligation to entertain § 1983 by citing a neutral jurisdictional barrier that comports with the "valid excuse" balancing—even where the court would, absent the statute, be fully competent to entertain the federal claim and serve process on the defendants. This is distinguishable from the case where the court's ordinary jurisdiction is, due to geographical limitations, inadequate from the outset.

168. *Cf.* Howlett v. Rose, 496 U.S. 356, 380 (1990) (noting that a state can neither assert unfamiliarity or inconvenience as an excuse for not enforcing federal law nor declare an entire category of claims to be frivolous). In my hypothetical, however, the State is asserting these interests not as a basis to avoid enforcing § 1983, but merely to enforce it in a particular state court.

169. Felder v. Casey, 487 U.S. 131, 144 (1988).

170. *See id.*

claims and to serve process on the defendants.[171] A state court of general jurisdiction could, by citing a state statutory bar against "analogous" state law claims, circumvent its obligation to enforce § 1983 so long as the state rule leaves an alternative forum for enforcement of the federal right, which interferes neither with the substantive policies embodied in the federal act or with the policy that state courts bear some responsibility for enforcing the federal right.[172]

CONCLUSION: A FRAMEWORK FOR EVALUATING STATES' OBLIGATION TO ENFORCE SECTION 1983

Part III argued two seemingly conflicting points about the states' obligation to enforce § 1983 and the means by which such an obligation must be carried out. Part III.A argued that states who have opened their doors to generic tort suits have an affirmative obligation to enforce all § 1983 claims. Yet Part III.B argued that a state could strip its courts of general jurisdiction—which have jurisdiction over such suits—from hearing certain fact-specific pairs of "analogous" state and federal law claims without violating the Supremacy Clause.

These points can be reconciled by characterizing a state court's obligation to hear § 1983 claims as stemming not from the jurisdictional qualities of any one particular court but from a state's judicial structure as a whole.[173] Put differently, whether a state court may decline cognizance

171. Professor Redish argues that such courts have an obligation to hear all federal causes of action, even those for which no precisely identical state-based analogue exists, and that a state cannot selectively remove jurisdiction to hear specific classes of state claims and thereby defeat enforcement of the federal right. Even if both the state and federal law rights are barred from the state court, Redish argues, that court would still have to hear the analogous federal claim. *See* Redish & Muench, *supra* note 2, at 359 (analogous state right excuse should not be recognized because in most cases it would reflect the state's unwillingness to enforce laws and policies similar to those chosen by Congress). I argue, however, that the obligation is not so absolute. Barring "analogous" state law claims may still provide a "valid excuse" to dismiss a § 1983 claim so long as *another* state court is available to hear them. *Id.* at 347-51. Under such circumstances the State would still be providing an avenue for enforcement of the federal right, and the type of evasive maneuvering condemned in *Mondou* would therefore be absent.

172. *Id.* at 357 n.195 (noting that the Supreme Court has only struck down excuses that "are based on reasons inimical to the federal substantive policy expressed by the federal cause of action of those that unduly impinge on the federal jurisdictional policy of having a state forum available to hear the federal cause of action").

173. Professor Neuborne argues that "[b]ecause each state will continue to enforce state and federal constitutional claims in their respective courts, *no state may decline to afford a similar judicial forum* to § 1983 plaintiffs." Neuborne, supra note 5, at 758 (emphasis added). Thus, Neuborne would likely agree that a state satisfies its obligation by providing *some* forum for § 1983 redress—even if that forum is distinct from that which hears state and federal constitutional claims.

over a § 1983 claim should center on how the legislature has chosen to distribute judicial business as a statewide matter.

In determining whether a state court has an obligation to entertain a § 1983 claim, the first question is whether the state should be obligated to enforce § 1983 at all. To answer this, a reviewing court must decide whether the state legislature has set up a court capable of entertaining tort suits for damages. If yes, the antidiscrimination rule imposes a state-wide obligation to provide some means for plaintiffs to assert their rights under § 1983. The next question is whether the particular court in which the claim has been filed should hear the claim. Assuming the State is arguing that the court is an inappropriate forum, a reviewing court should examine a number of factors, including:

The extent to which an alternative state court forum exists for § 1983 enforcement;[174]

The extent to which filing in such an alternative forum carries with it certain burdens or conditions that non-§ 1983 tort claimants would not otherwise have to bear (including any discrepancies in available remedies);[175] and

The state's interests in remitting the § 1983 claim to such an alternative forum, [176] and whether such interests are hostile to the § 1983's underlying policies.

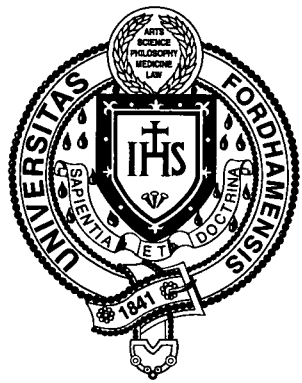
Thus, the "analogous" state law claim excuse stands on weak doctrinal footing but retains some hypothetical vitality. Any state statute purporting to bar "analogous" state law claims must allow for enforcement of the federal right without imposing any special burdens or conditions that claimants in the original forum would not have to bear, and must further legitimate administrative concerns without offending the substantive policies underlying the Act or the general policy that state courts share in the burden of adjudicating federal causes of action.

---

174. *See generally* Herb v. Pitcairn, 324 U.S. 117 (1945) (holding that a city court of limited jurisdiction was under no obligation to enforce federal claims arising from out-of-state accidents, but other state forums were available to hear such claims). If no alternative forum exists, then this is the end of the inquiry and the court must hear the § 1983 claim. That is the situation created by Correction Law § 24. Haywood v. Drown, 881 N.E.2d 180, 192 (N.Y. 2007) (Jones, J., dissenting).

175. *See* Johnson v. Fankell, 520 U.S. 911, 914, 920, 922 (1997) (holding that a state rule denying a right to interlocutory appeal from denial of qualified immunity-based motions for summary judgment is applicable in state court § 1983 actions); Felder v. Casey, 487 U.S. 131, 144-45 (1988) (holding that notice-of-claim requirements are inapplicable in state court § 1983 actions).

176. Missouri *ex rel* S. v. Mayfield, 340 U.S. 1, 4 (1950) (*forum non conveniens*); *see Herb*, 324 U.S. at 123 (geographic distribution of judicial business); Douglas v. N.Y., New Haven & Hartford R.R. Co., 279 U.S. 377, 387-88 (1929) (resident preference in access).


ARTS
SCIENCE
PHILOSOPHY
MEDICINE
LAW
IHS
SAPIENTIA
ET
DOCTRINA
1841
UNIVERSITAS
FORDHAMENSIS