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Stephen Tolles

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People v. Ramirez: A New Liberty Interest Expands Due Process Protections

In People v. Ramirez, the California Supreme Court held that under the due process clauses of the California State Constitution, an individual is entitled to notice and a hearing before he may be excluded from a state-administered drug treatment program. In announcing a broader test for analyzing due process claims under the state constitution, the California court discovered the United States Supreme Court’s procedural due process analysis and identified a new liberty right to be free from arbitrary adjudicative procedures.

Part I presents the facts of Ramirez. Part II outlines the United States Supreme Court’s procedural due process analysis. Part III explains why the Ramirez court properly rejected the federal test and suggests several refinements on the state’s new due process analysis. Part IV argues that Ramirez does not support a theory of minimum due process, but instead advocates a flexible approach to satisfy due process requirements. The Note concludes that despite its ambiguities the case represents an important effort to flesh out the elements of fair procedure.

I

The Ramirez Decision

In 1971 Lawrence Ramirez pleaded guilty to possession of heroin. Pursuant to section 3051 of the Welfare and Institutions Code, the su-
perior court adjudged Ramirez to be a narcotics addict, adjourned criminal proceedings, and committed him for treatment in the California Rehabilitation Center (CRC). In 1974, he was granted outpatient status. While still an outpatient of the CRC, Ramirez was arrested, and he subsequently pleaded guilty to a charge of disturbing the peace. The Director of Corrections sent a letter to the superior court recommending that Ramirez be removed from CRC and that criminal proceedings be resumed. Although Ramirez received a copy of the exclusion letter while he was in jail following his arrest for disturbing the peace, he did not have an opportunity to respond to a CRC official before the superior court held a hearing to determine whether there was legal cause for excluding Ramirez. The court has authority to return a defendant to the CRC if it finds that the Director abused his discretion in excluding the person. The superior court found no such abuse and therefore terminated the CRC commitment, reinstated criminal proceedings, and sentenced Ramirez to a state prison and to a period of probation.
On appeal, Ramirez contended that the procedures used by the CRC to exclude him from the program were constitutionally inadequate. He argued that the due process clause of the fourteenth amendment, as interpreted by the United States Supreme Court, requires the Director of Corrections to conduct an evidentiary hearing before sending a letter of exclusion to a superior court.

The California Supreme Court agreed that Ramirez had been denied due process. However, it refused to base its decision on the Federal Constitution and expressly rejected the due process analysis developed by the United States Supreme Court. Instead, the California court announced a new due process test based on the California Constitution. The court held that the state constitution's due process clauses require the following procedural safeguards prior to an exclusion decision by the Director of Corrections: (1) a written statement of the grounds for possible exclusion; (2) access to information considered by the Director; (3) notice of the right to respond and an opportunity to respond before a responsible official; and (4) a written statement of the final decisions and the reasons therefor.

II
THE UNITED STATES SUPREME COURT'S DUE PROCESS ANALYSIS

Due process is constitutionally required only when the government deprives an individual of liberty or property. The Supreme Court's analysis of procedural due process issues uses a two-stage test. First, the Court determines whether the individual's asserted interests are within the scope of the fourteenth amendment's protection of lib-

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13. Ramirez did not claim that he was denied due process rights with respect to the revocation of his outpatient status. Rather he argued that exclusion of an inpatient from CRC required certain due process procedures. Id. at 270-71, 599 P.2d at 628-29, 158 Cal. Rptr. at 322.
14. U.S. Const. amend. XIV, § 1: "[N]or shall any State deprive any person of life, liberty or property, without due process of law."
15. See text accompanying notes 19-42 infra.
16. 25 Cal. 3d at 266, 599 P.2d at 626, 158 Cal. Rptr. at 319.
17. See note 2 supra.
18. 25 Cal. 3d at 275-76, 599 P.2d at 631-32, 158 Cal. Rptr. at 325-26. Chief Justice Bird argued that the CRC inmate also should have rights to present witnesses and documentary evidence and to cross-examine the other side. Id. at 278-82, 599 P.2d at 634-36, 158 Cal. Rptr. at 327-30 (Bird, C.J., concurring and dissenting).
19. See note 14 supra.
erty and property. Second, the Court applies a balancing test to decide what procedures are necessary to protect the claimant’s interests.

Two general classes of liberty and property interests, characterized as “core” and “periphery,” are protected by the fourteenth amendment. Core interests are based on federal constitutional rights or on common law claims of right, such as traditional ownership of real property. Rights implicitly supported by the constitutional text, such as the right of privacy, and the right of association, are also core interests. A claimant who can establish that the state has deprived him of a core interest will receive due process protections, except in extremely rare emergency situations.

The class of core interests does not include many interests and benefits conferred on individuals by state governments. If due process protected only core interests, important governmental activities, including the distribution of welfare payments, the transfer of prisoners, the firing of state employees, and the termination of licenses for regulated activities, would lack procedural safeguards against arbitrary decision-making. Although these activities may not affect traditional liberty and property rights, they represent significant interests to most citizens. The Supreme Court has included many of these state activities within the scope of the due process clause by creating a class of peripheral rights defined by the entitlement theory of property interests. Peripheral rights originate in state law and administrative rules or understandings between government and citizen. These laws, rules, and understandings secure benefits for individuals, and an individual can claim an entitlement to a benefit by invoking the appropriate statute or rule. For example, in Goldberg v. Kelly the Court held that welfare recipients had a legitimate entitlement to payments based on a state statute defining eligibility for such benefits. Two years later, in Perry v. Sindermann, the Court found that under the entitlement doctrine a state college teacher had a property interest in reemployment because an unwritten “common law” in the university system had created an

21. The terms “core” and “periphery” are from L. Tribe, American Constitutional Law 515 (1978).
22. Id. § 10-8.
26. There is some doubt as to how much of the “core” is still protected. Compare L. Tribe, supra note 21, § 10-11 (Court has cut back on the protection of the core) with Glennon, Constitutional Liberty and Property: Federal Common Law and Section 1983, 51 S. Cal. L. Rev. 355, 369-78 (1978) (Court protects the federal core of liberty and property rights).
27. L. Tribe, supra note 21, § 10-14.
informal system of tenure. In those cases, the Court suggested that the state had created an expectation upon which people legitimately relied and that the state could not withdraw such benefits without due process of law. Thus a claimant is entitled to due process if he can establish that his asserted interest involves a legitimate expectation to a state benefit.

Goldberg, along with several other cases decided about the same time, provided the potential for an expansive interpretation of the entitlement doctrine. Under the Goldberg reasoning, any government activity or statute giving rise to a legitimate expectation of a state benefit could create a protected interest. However, by 1976 several cases clearly established a narrower interpretation providing that a valid claim of entitlement must be based on specific statutory language limiting the withdrawal of the state-conferred benefit to the occurrence of a specific event. This construction focuses on statutory drafting, rather than the consequences to the individual. For example, in Meachum v. Fano the Court found that no liberty interest was implicated under the entitlement doctrine in interprison transfers because a state statute gave prison officials wide discretionary power to make such decisions. State law “conferred no right on the prisoner to remain in the prison to which he was initially assigned,” even though a transfer might involve substantial deprivation. Under this approach only the language of the statute can be used as the source of the protected expectation. State benefits not granted by statute or granted by statutes having no

31. Board of Regents of State Colleges v. Roth, 408 U.S. at 577; Perry v. Sindermann, 408 U.S. at 600.
35. Id. at 225.
36. This result is compatible with the notions of expectation and reliance as the basis for an entitlement. A properly worded statute warns individuals against relying on the state not to
express conditions of termination fall outside the scope of the federal due process clause.

But if an individual's asserted interest does fall within the protected core or periphery classes, the Court moves to the second stage of its analysis and balances private interests against government interests to tailor the amount of process to the particular facts of each case.\textsuperscript{37} The balancing test is generally described in terms of three elements:\textsuperscript{38} harm to the individual from losing the benefit; government interest in withdrawing the benefit;\textsuperscript{39} and the potential for reducing the risk of erroneous decisions.\textsuperscript{40} Required predecision procedures may range from a full hearing with rights of confrontation and cross-examination of witnesses\textsuperscript{41} to notice of the charge and an informal opportunity to respond.\textsuperscript{42} A court also may conclude that a postdeprivation hearing is sufficient.\textsuperscript{43}

The analysis developed by the United States Supreme Court has been widely criticized by commentators.\textsuperscript{44} However, until Ramírez, the

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\textsuperscript{38} Mathews v. Eldridge, 424 U.S. 319, 335 (1976); see, e.g., Mackey v. Montrym, 443 U.S. 1, 10 (1979); Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 19 (1978); Ingraham v. Wright, 430 U.S. 651, 675 (1977). The Court sometimes cites Mathews as authority for the proposition that the quantum and quality of required process depends only on the need to serve the purpose of minimizing error. Greenholtz v. Inmates of the Neb. Penal & Correctional Complex, 442 U.S. 1, 13 (1979).

\textsuperscript{39} State interests generally are related to the performance of the government function and include the administrative expenses of additional procedures, Mathews v. Eldridge, 424 U.S. 319, 347 (1976), protecting public interests such as health and safety, Mackey v. Montrym, 443 U.S. 1, 17 (1979), and maintaining operation of public institutions, e.g., Barry v. Barchi, 443 U.S. 55, 65 (1979) (maintaining integrity of horse racing).


\textsuperscript{42} See, e.g., Goss v. Lopez, 419 U.S. 565, 583 (1975) (10-day suspension of student from school).


\textsuperscript{44} See generally L. Tribe, supra note 21, §§ 10-7 to -19; Alexander & Horton, Ingraham v. Wright: A Primer for Cruel and Unusual Jurisprudence, 52 S. Cal. L. Rev. 1305 (1979); Glennon, supra note 26; Karst, The Supreme Court, 1976 Term, Foreword: Equal Citizenship Under the Fourteenth Amendment, 91 Harv. L. Rev. 1 (1977); Mashaw, The Supreme Court's Due Process
California Supreme Court applied the federal two-step analysis to procedural due process claims.  

III
ANALYSIS OF THE OPINION

The California court conceded that the federal due process analysis would offer "some degree of procedural protection" to Ramirez, but then put forward two arguments demonstrating the underlying weakness of the Supreme Court approach. The California court contended that the federal analysis does not give sufficient weight to the


due process values of accuracy and predictability and that it discounts the important due process value of human dignity. The court then established a due process analysis based on the California Constitution, which, according to the court, contains a substantive liberty right to be free from arbitrary adjudicative procedure.

A. Rejection of the Federal Analysis

1. The Federal Analysis Does Not Promote Accuracy and Predictability

The Ramirez court criticized the federal due process analysis on the grounds that the threshold test based on the statutory entitlement doctrine excludes too many state-conferred benefits from the scope of the due process clause. The threshold test protects interests conferred by state law only if a state statute already protects those interests by conditioning their withdrawal on the occurrence of specified events. However, a statute that gives absolute discretion to an administrator does not create a legitimate expectation of a benefit, and thereby creates no protected interest. Hence, no process is constitutionally required. Therefore, if an interest is not one of the traditionally protected "core" class of liberty and property rights, a state may circumvent due process constraints simply by drafting or amending statutes to exclude specific conditions of forfeiture. Thus, under the federal test a state can determine for itself when the due process clause...
will apply to its statutes and thereby defeat the clause’s purpose as an independent restraint against arbitrary state action.\textsuperscript{51}

The Ramirez court concluded that the threshold test seriously undermined two primary values promoted by due process: “accuracy and reasonable predictability in governmental decision making.”\textsuperscript{52} Assuming the potential for inaccurate and inconsistent results increases when government decisionmakers have absolute or even overbroad discretion unchecked by procedural safeguards, the Ramirez court concluded that allowing the state to bypass the constraints of due process would not help to reduce abuses of power. The court reasoned that the interests of accuracy and predictability would be better served if courts “evaluate the extent to which procedural protections can be tailored to promote more accurate and reliable administrative decisions in light of the governmental and private interests at stake,” rather than focus on unhelpful notions of statutory entitlements.\textsuperscript{53}

To the extent that due process promotes accurate and predictable

\textsuperscript{51} “The touchstone of due process is protection of the individual against arbitrary action of the government.” Wolff v. McDonnell, 418 U.S. 539, 558 (1974). The words “due process of law” come to the United States from England where they were “designed to secure the subject against the arbitrary action of the crown. . . .” Dent v. West Virginia, 129 U.S. 114, 123 (1889). See Comment, Entitlement, Enjoyment, and Due Process of Law, supra note 44 at 110-11. The Ramirez court did not discuss the important criticism made by some justices of the United States Supreme Court and by several commentators that the federal test represents a resurgence of the discredited right-privilege doctrine. See Bishop v. Wood, 426 U.S. 341, 354 n.4 (1976) (Brennan, J., dissenting); Arnett v. Kennedy, 416 U.S. 134, 211 (1974) (Marshall, J., dissenting); L. Tribe, supra note 21, at §10-10; Monaghan, supra note 44, at 440; Comment, Entitlement, Enjoyment, and Due Process of Law, supra note 44, at 98-99. That doctrine provided that government may condition the enjoyment of a privilege such as a public benefit as it pleases and that only state action interfering with a right as opposed to a privilege triggered the demands of due process. See Hamilton v. Regents of Univ. of Cal., 293 U.S. 245 (1934); Scopes v. State of Tenn., 154 Tenn. 105, 289 S.W. 363 (1927); Alexander & Horton, supra note 44, at 1322.

Because the distinction offered no solid basis for separating rights from privileges, the United States Supreme Court resorted to several doctrines to avoid or mitigate its harshness. Professor Van Alstyne listed five such doctrines: (1) unconstitutional conditions, (2) unconstitutional indirect effects, (3) procedural due process, (4) equal protection, and (5) bills of attainder. Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 HARV. L. REV. 1439, 1445-58 (1968). Eventually the exceptions all but swallowed the rule, and in the early entitlement cases, the Court explicitly rejected the right-privilege distinction as a wooden and invalid doctrine. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 571 (1972); Bell v. Burson, 402 U.S. 535, 539 (1971). Nevertheless, its spirit apparently lives on in the hearts of at least some members of the Court; in arguing against requiring additional procedures in a federal employee dismissal case, Justice Rehnquist said, “where the grant of a substantive right is inextricably intertwined with the limitations on the procedures which are to be employed in determining that right, a litigant . . . must take the bitter with the sweet.” Arnett v. Kennedy, 416 U.S. 134, 153-54 (1974) (plurality opinion by Rehnquist, J., joined by Burger, C.J., and Stewart, J.).

\textsuperscript{52} 25 Cal. 3d at 267, 599 P.2d at 626, 158 Cal. Rptr. at 320. See Greenholtz v. Inmates of Neb. Penal & Correctional Complex, 442 U.S. 1, 13 (1979) (“The function of legal process . . . is to minimize the risk of erroneous decisions.”).

\textsuperscript{53} 25 Cal. 3d at 267, 599 P.2d at 626, 158 Cal. Rptr. at 320.
decisions\textsuperscript{54} the Ramirez court's analysis validly criticizes the Supreme Court's approach to due process issues. However, the Supreme Court's reliance on the entitlement doctrine could be defended on the grounds that due process must be "flexible and calls for such procedural protections as the particular situation demands"\textsuperscript{55} to maintain the flow of state benefits to the citizenry. The need for flexibility may arise from two related concerns. First, the United States Supreme Court may feel that the federal courts should refrain from interfering with the distribution and termination of state-granted benefits. Since the state is not constitutionally required to provide state-granted benefits, the Court may worry that additional administrative burdens imposed by due process requirements will hamper the state's ability to continue to provide the same level of benefits.\textsuperscript{56} Under the entitlement doctrine the state decides whether it can bear the costs of additional due process guarantees and drafts its statutes accordingly. Second, the Court may fear that imposing extensive due process requirements on the denial or withdrawal of state-conferred benefits will stifle development of new state programs.\textsuperscript{57} The legislature may hesitate to scrap ineffective programs or experiment with new solutions to social problems, if every program commits the state to costly administrative procedures.

The Ramirez court's rejection of the United States Supreme Court's analysis is consistent with the federalism theory that may underlie the Supreme Court's statutory entitlement doctrine. By developing an independent due process test based on the state constitution, the California court appears to have accepted the United States Supreme

\textsuperscript{54} A test that focuses solely on minimizing errors "conceives of the values of procedure too narrowly" and ignores "process values" based on individual dignity, equality, and tradition. Mashaw, supra note 44, at 48-54; Note, supra note 44, at 1523-27. In Professor Tribe's scheme, "process values" are those "intrinsic values" that focus on the right to be heard as an expression of human dignity and are just as important as "instrumental values" that consist of accuracy and consistency. L. Tribe, supra note 21, § 10-7. For a defense of the federal balancing test, see Note, Mathews v. Eldridge Reviewed: A Fair Test on Balance, supra note 39.

\textsuperscript{55} Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

\textsuperscript{56} "Our system of federalism encourages this state experimentation. If parole determinations are encumbered by procedures that states regard as burdensome and unwarranted, they may abandon or curtail parole." Greenholtz v. Inmates of Neb. Penal & Correctional Complex, 442 U.S. at 13 (due process as applied to discretionary parole hearings).

\textsuperscript{57} Mathews v. Eldridge, 424 U.S. 319, 347 (1976); Wheeler v. Montgomery, 397 U.S. 280, 284 (1970) (Burger, C.J., dissenting) ("new layers of procedural protection may become an intolerable drain on the very funds earmarked for food, clothing, and other living essentials."); see Friendly, Some Kind of Hearing, supra note 32, at 1275-76 & nn.51-54 (e.g., in 1972 more than 13 million persons received government assistance; increased hearing costs for only a small percentage would involve large sums of money). However, no court has accepted the proposition that all state actions are necessarily subject to due process requirements. See, e.g., O'Bannon v. Town Court Nursing Center, 100 S. Ct. 2467, 2480 (1980) (Blackmun, J., concurring) ("The Court never has held that any substantive restriction upon removal of any governmental benefit gives rise to a generalized property interest in its continued enjoyment.") (emphasis in original).
Court’s implicit invitation to the states to experiment with due process procedures. By broadening the scope of the protections and identifying a new interest for the claimant, the California court has established a test that extends procedural safeguards to many more state actions depriving an individual of a state-conferred benefit than are covered by the federal test. Ramirez, however, represents more than a policy decision by the California Supreme Court that protection of state-conferred benefits will prevent administrative abuse. The majority in Ramirez announced that due process is a positive command to the state to treat its citizens with respect and dignity whenever a benefit is threatened by state action.

2. The Federal Test Undervalues Dignity Values

The California Supreme Court also criticized the federal analysis for undervaluing the “dignity and worth of the individual.” The Ramirez court did not formally define dignity, but it asserted that government should treat its citizens as “fully participating” persons, even where “participation is unlikely to affect the outcome of the decision.” Thus, citizen participation in a hearing is a valuable end in itself as well as a means of promoting accurate decisions. According to Ramirez, the United States Supreme Court’s analysis is deficient because the threshold test focuses on traditional property and liberty rights and ignores dignity values that encompass a citizen’s right to participate. The Ramirez court also criticized the federal analysis for not explicitly including dignity values in the balancing test. However, the importance of this criticism depends on whether dignity values should be included in and promoted by due process.

58. In Greenholtz v. Inmates of Neb. Penal & Correctional Complex, the Court stated: “Since respondents elected to litigate their due process claim in federal court, we are denied the benefit of the Nebraska courts’ interpretation of the scope of the interest, if any, its statute was intended to afford to inmates.” 442 U.S. 1, 12 (1979). By expressing this preference for state courts to resolve due process claims and by asserting in the same opinion the need for state experimentation, the Court implied that state courts should build their own due process analysis. Id. Justice Brennan for one has interpreted the recent cutbacks in federal remedies as a “clear call to states courts to step into the breach.” Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489, 503 (1977). The language in Greenholtz, however, is equally consistent with the view that state legislatures should take the primary role in initiating the desired experimentation. Id. at 13.

59. See text accompanying note 74 infra.
60. See text accompanying notes 76-77 infra.
61. 25 Cal. 3d at 267, 599 P.2d at 626, 158 Cal. Rptr. at 320.
62. Id. at 275, 599 P.2d at 632, 158 Cal. Rptr. at 325.
63. Id. at 266-68, 599 P.2d at 626-27, 158 Cal. Rptr. at 319-20.
64. Id. at 267-68, 599 P.2d at 626-27, 158 Cal. Rptr. at 320. The only due process value explicitly mentioned in the federal test is the goal of promoting accuracy. Mathews v. Eldridge, 424 U.S. at 337.
Courts have used the word "dignity" in nonprocedural contexts to signify the basic values of the United States Constitution and its system of government. But references to dignity values in procedural due process cases are rare. The most famous statement linking due process to dignity values comes from Justice Frankfurter's eloquent defense of fair notice and adequate hearings: "Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done." In recent entitlement cases, the clearest pro-dignity statements appear in Justice Steven's dissent in Meachum v. Fano in which he argues that prison inmates retain "at the very minimum the right to be treated with dignity." And in Carey v. Piphus, the Court recognized that the mental and emotional distress related to unfair treatment by government could be compensated, if proved, in a section 1983 action for damages.

The Ramirez court, citing several recent law review articles reasoned that if people are not allowed to participate in adjudicative decisions affecting their interests, they may feel that the government is treating them as objects rather than as human beings. Only if government interacts with its citizens "with understanding, respect, and even compassion" will its behavior be perceived as fair. Drawing on values central to western moral and legal traditions, the court concluded that dignity and respect lie at the heart of government-citizen interaction. Consequently, the court said, due process, which structures government-citizen relations, should promote dignity values.

65. Human dignity is one of the basic values underlying the Bill of Rights. See, e.g., Trop v. Dulles, 356 U.S. 86, 100 (1958) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man."); Bloom v. Municipal Court, 16 Cal. 3d 71, 95, 545 P.2d 229, 245, 127 Cal. Rptr. 317, 333 (1976) (Tobriner, J., dissenting) (free speech comports "with the premise of individual dignity and choice upon which our political system rests.").
69. 25 Cal. 3d at 267-68, 599 P.2d at 626-27, 158 Cal. Rptr. at 320. The lead opinion cited Karst, supra note 44; Mashaw, supra note 44; Saphire, supra note 44.
70. 25 Cal. 3d at 267-68, 599 P.2d at 626-27, 158 Cal. Rptr. at 320 (quoting Karst, supra note 44, at 30).
71. Id. (quoting Saphire, supra note 44, at 159).
72. See, e.g., Karst, supra note 44, at 8 ("earliest writings in the Western political tradition define citizenship as a right to participate in society's formal processes of decision"); Saphire, supra note 44, at 118 ("government action which conflicts with or disregards fundamental notions of human dignity is morally unacceptable.") (citing John Locke, Peter Strawson, and John Rawls among others).
Constitutional Law

B. The California Due Process Analysis

1. A New Right to Due Process

The Ramirez court announced that due process issues are controlled by the "principle that freedom from arbitrary adjudicative procedure is a substantive element of personal liberty." With the establishment of this liberty right, any individual subject to "deprivatory governmental action," has a "due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." By positing a liberty interest that automatically arises when the government takes action against an individual, the court no longer needs to search for a protected property or liberty right as the initial step in its due process analysis. Thus, the court can abandon the statutory entitlement doctrine, which identified protected rights. More important, the scope of due process is broadened to include statutory benefits falling outside the property and liberty interests protected under the United States Supreme Court's analysis. With the elimination of the statutory entitlement doctrine, no statutorily conferred benefit or interest is automatically excluded from due process considerations, although the amount of process due may vary according to the fact situation and significance of the interest.

The court found this new liberty right in the California Constitution, but did not present an argument based on the language or structure of the text. However, the court indicated that the liberty right to due process is solidly grounded in dignity values based on an individual's interest in being treated with concern and respect by the government, and that dignity interests are threatened whenever an individual is subject to "deprivatory state action." The court also indicated it will no longer characterize these interests as incidental to an individ-

73. 25 Cal. 3d at 268, 599 P.2d at 627, 158 Cal. Rptr. at 320 quoting Van Alstyne, supra note 33, at 487. "Adjudicative" refers to decisions by one person or a small group of people which affect important interests of only one person or a small group of people. Procedural due process is not required for legislative acts that are generally applicable rules of conduct affecting large groups of people. Horn v. County of Ventura, 24 Cal. 3d 605, 612-13, 596 P.2d 1134, 1137-38, 156 Cal. Rptr. 718, 721-22 (1979). See also Sinaiko, Due Process Rights of Participation in Administrative Rulemaking, 63 CALIF. L. REV. 886 (1975).

An arbitrary decision is one made without regard to the facts or one based on unreasonable requirements. Dotson v. International Alliance of Theatrical Stage Employes [sic], 34 Cal. 2d 362, 369, 210 P.2d 5, 9 (1949). See also Subrin & Dykstra, supra note 44, at 455.

74. 25 Cal. 3d at 268, 599 P.2d at 627, 158 Cal. Rptr. at 320.

75. The court simply asserted the existence of this new liberty. Professor Van Alstyne argued that the idea of freedom from procedural arbitrariness as an element of liberty did not lack "text, logic, flexibility, or precedent." Van Alstyne, supra note 44, at 488. He noted its congruence with the social contracts theories that formed the background of the Constitution and with the history of liberty itself. Id. at 487-88.

76. 25 Cal. 3d at 268, 599 P.2d at 627, 158 Cal. Rptr. at 320.
ual's claim for protection of traditional property and liberty rights. Further, the court emphasized the importance of human dignity in its due process analysis by expressly naming dignity interests as a factor to be considered in its balancing test to determine how much process is due.77

The Ramirez court, however, did not need to find a new liberty right to due process to expand the scope of due process protections. Instead, the California Supreme Court could have rejected the narrow statutory entitlement doctrine and substituted a broad notion of what constitutes a legitimate expectation on the part of a claimant that state benefits will not be withdrawn arbitrarily. Several United States Supreme Court cases immediately following Goldberg v. Kelly seemed to adopt this broad view of legitimate expectations.78 If the California court had chosen to adopt this expanded view within the traditional federal analysis rather than to identify a new liberty right, it could have found liberty and property interests implied from specific interactions between individuals and government, even those not governed by statutory language. All individual interests and state benefits, not merely those meriting treatment as traditional property and liberty rights, could have been considered in the first stage of due process analysis. The court then would have had to decide whether due process was required—and if so, what measures were necessary—by moving to the second stage of the analysis and balancing the individual's interests against the government's interests.79 Individual interests arising from traditional property or liberty rights could have been assigned a greater weight in the balance than individual interests not reaching the property rights status. Under this reasoning, individual interests not qualifying for due process consideration under the entitlement doctrine would have required protective procedures if they had outweighed the government's interests. On the other hand, interests of little weight or significance would have received few or no procedural safeguards.

As another alternative to identifying a new liberty interest, the court could have construed California statutes as including implicit

77. Id. at 269, 599 P.2d at 627-28, 158 Cal. Rptr. at 321.
78. Perry v. Sindermann, 408 U.S. 593, 601-02 (1972). In the most expansive opinion following Goldberg, the Court in Bell v. Burson, 402 U.S. 535 (1971), sustained a due process objection to a state automobile license suspension statute without discussion of the threshold issue of whether the due process clause was applicable at all. It simply noted that a license might be "essential in the pursuit of a livelihood" without labeling the interest as one of property or liberty. Id. at 539. However, this broad approach was an aberration and subsequent cases quickly narrowed the scope of liberty and property interests. Monaghan, supra note 44, at 407-08. See note 32 and accompanying text supra.
79. See Comment, Entitlement, Enjoyment, and Due Process of Law, supra note 44, at 120-22.
limitations on the state's power to terminate benefits. However, that
tactic might have stretched the language of statutes beyond credibility.
Moreover, lower courts might have had difficulty in applying the Cali-
ifornia Supreme Court's analysis to other statutes.

The Ramirez court, however, chose to identify a distinct liberty
right to due process rather than to modify the current test by broadening
the concept of legitimate expectations beyond those directly related
to traditional liberty and property rights. Although the identification of
a new liberty interest in the state constitution raises serious questions of
constitutional interpretation, it nevertheless offers some clear advan-
tages. The new liberty interest keeps the court's analysis at least super-
ficially consistent with the state constitutional language: "A person
may not be deprived of life, liberty, or property without due process of
law . . . ." If the court had eliminated the requirement of a pro-
tected property or liberty interest, it would have departed radically
from the constitutional language. Similarly, if the court had signifi-
cantly expanded the concepts of property and liberty interests beyond
their present definitions to include all state-conferred benefits, it may
have raised expectations of property rights, thereby creating undesir-
able effects in other areas of the law. By positing a new liberty interest
automatically involved in any state action to deprive an individual
of a benefit, the court always will find a threatened liberty interest re-
quiring further due process analysis. Thus, while the California court
has not formally eliminated the traditional property or liberty interest
requirement, Ramirez renders the requirement ineffective as a limit on
the scope of due process.

The new liberty interest in due process identified in the state con-
stitution also quiets charges that the court has usurped the legislature's
role in determining policy. One advantage of the statutory entitle-
ment doctrine may have been its reservation to the legislature of the

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80. If the Supreme Court insists on limiting the content of due process to the rights
created by state law, state courts can breathe new life into the federal due process clause
by interpreting their common law, statutes and constitutions to guarantee a "property"
and "liberty" that even federal courts must protect.

Brennan, State Constitutions and the Protection of Individual Rights, 90 HARV. L. REV. 489, 503

81. See note 75 supra. The difficulties of constitutional interpretation have generated an
enormous amount of critical literature. See generally, R. Berger, Government by Judiciary:
The Transformation of the Fourteenth Amendment (1977); J. Ely, Democracy and
Distrust (1980); L. Tribe, supra note 21.

82. CAL. CONST. art. I, § 7(a).

83. For example, if a claimant could establish a full-blooded "property" right in a state
benefit such as welfare, he might be able to claim compensation for the "taking" of his property
when the government terminates his welfare benefits. See Reich, The New Property, 73 YALE L.J.
733, 771-86 (1964).

84. See text accompanying note 57 supra.
power to experiment with new benefits and to shape state actions according to local needs. In broadening the scope of due process, California courts may be requiring that the withholding or denial of virtually all state benefits be safeguarded by procedural protections. This result will constrain the state legislature's ability to experiment with new programs because of the added costs of implementing procedural mechanisms. However, the analysis developed in Ramirez permits courts to claim that they are enforcing an individual constitutional right rather than second-guessing the legislature's judgment on the necessity and desirability of providing procedural protections with state benefits.

Finally, the identification of a liberty interest in due process in the state constitution insulates the Ramirez court's decision from constitutional review by the United States Supreme Court. 85

2. The California Due Process Test

The occurrence of a "deprivatory governmental action" 86 triggers the California court's due process analysis. However, the Ramirez court did not expressly define "deprivatory governmental action" other than to state that the loss of a statutorily conferred benefit entitles a person to due process protection. 87 This Note suggests that "deprivatory governmental action" should be defined as any government action causing harm to the individual. Under this definition, when an individual can show some loss due to the government's action, the court should move immediately to the balancing test. Although this definition appears so broad as to include any possible form of harm, it can be defended on two grounds. First, the balancing test should ultimately deny due process claims based on insubstantial individual interests. 88 Second, a narrower interpretation of "deprivatory governmental action" permitting the government to determine what counts as a deprivation would suffer from the same defect as the federal threshold test: the state could limit

85. Justice Richardson questioned the need for and desirability of the majority's use of the state constitution. 25 Cal. 3d at 277-78, 599 P.2d at 633-34, 158 Cal. Rptr. at 327 (Richardson, J., concurring). However, the court has several times noted that the state constitution is a document of independent force and significance. See Robins v. Pruneyard Shopping Center, 23 Cal. 3d 899, 908-09, 592 P.2d 341, 346, 153 Cal. Rptr. 854, 859 (1979), aff'd, 100 S. Ct. 2035 (1980); Fox v. City of Los Angeles, 22 Cal. 3d 792, 587 P.2d 663, 150 Cal. Rptr. 867 (1978); Note, Fox v. City of Los Angeles: Preference of Religion and the Use of Independent State Constitutional Grounds, 68 CALIF. L. REV. 666, 676-77 (1980). Indeed, the state constitution itself provides: "Rights guaranteed by this constitution are not dependent on those guaranteed by the United States Constitution." CAL. CONST. art. I, § 24.

86. 25 Cal. 3d at 268, 59 P.2d at 627, 158 Cal. Rptr. at 320. The court has made up a new word: "deprivatory" is not in the OXFORD ENGLISH DICTIONARY (2nd ed. & Supp. 1972).

87. 25 Cal. 3d at 264, 599 P.2d at 624, 158 Cal. Rptr. at 318.

88. See text accompanying notes 93-99 infra.
unilaterally the scope of the due process clause. The *Ramirez* court denounced this precise failing in the federal due process test.\(^{89}\)

The "harm to the individual" interpretation is broad enough to include a claim based on the denial of a government benefit not yet enjoyed by an individual but available to at least some people as well as the withdrawal of a benefit currently received by the claimant. The *Ramirez* court did not foreclose this interpretation because it referred to a deprivation in terms of loss of a statutorily conferred benefit. A "conferring benefit" might be defined narrowly to mean a benefit already enjoyed. It also might be defined broadly as a benefit "conferred" on the public in the sense that a statutory benefit is conferred by being passed by the legislature. The first definition limits due process to those already receiving a benefit,\(^{90}\) while the second also covers persons applying for a benefit. By using the past tense of "confere," the *Ramirez* court may have intended to include only persons already receiving a benefit.\(^{91}\)

No compelling logic supports excluding applicants for a government benefit from due process protection. An arbitrary exclusion can harm someone just as much as an arbitrary termination. Reliance on the availability of a benefit by an applicant is not as immediate as reliance by a recipient. But by discarding the entitlement approach in analyzing due process claims, the California court declared that reliance is not necessary to trigger due process consideration. A practical argument for excluding claims by applicants may be based on the tremendous potential costs that would fall on government if every rejected applicant were entitled to a hearing before a final denial. This argument ignores the balancing test described by the court that explicitly includes these costs. Less costly procedures, such as providing post hoc explanations, might be sufficient if the government interest is strong.\(^{92}\)

Once a court determines that a claimant has suffered a deprivation, the California analysis moves immediately to the question of

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89. See notes 33-34 and accompanying text supra.

90. The federal test is restricted to the present enjoyment approach. See Comment, Entitlement, Enjoyment, and Due Process of Law, supra note 44, at 101-02.

91. One court has held that *Ramirez* did not extend to applicants for a state program. People v. Broun, 109 Cal. App. 3d 328, 167 Cal. Rptr. 169, 171 (2d Dist. 1980) (rejecting defendant's claim that the California Youth Authority should have given him a hearing before denying him admission, thereby causing him to go to prison). The Supreme Court, in other contexts, has defined "deprivation" to include both "a taking away from" and a "prevention of access to." See Hale v. Morgan, 22 Cal. 3d 388, 405-06, 584 P.2d 512, 523, 149 Cal. Rptr. 375, 386 (1978) (construing a landlord-tenant statute making a landlord liable for money damages when tenant is "deprived" of utility service). See also In re Prewitt, 8 Cal. 3d 470, 472, 503 P.2d 1326, 1330, 105 Cal. Rptr. 318, 322 (1972) ("no significant distinction between the deprivation of the right to conditional liberty enjoyed by a parolee after release and the deprivation of the right to achieve such liberty after a grant thereof but before the date fixed for release").

92. See 25 Cal. 3d at 269, 599 P.2d at 672, 158 Cal. Rptr. at 321; Part IV infra.
The Ramirez court held that due process must be flexible in order to apply to a wide range of state actions, and therefore a court must engage in "a careful and clearly articulated balancing of interests at stake" in each case. The court outlined a balancing test with four elements: (1) the private interest to be affected by government action; (2) the governmental interest; (3) the risk of an erroneous deprivation; and (4) "the dignitary interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official." The first three elements are identical to those in the United States Supreme Court's due process analysis. The fourth element orient toward due process dignity values.

Applying the new test to the facts in Ramirez, the court first considered the CRC inmate's private interests. The court found that he lost little, if any, liberty from being transferred to a prison, since he already was incarcerated in a walled facility. The court recognized that an inmate addicted to narcotics has an important interest in receiving treatment; however, it discounted this interest by noting that Ramirez had already experienced withdrawal before commitment to CRC, thereby making his need for medical treatment less immediate.

93. 25 Cal. 3d at 268, 599 P.2d at 627, 158 Cal. Rptr. at 320.
94. Id. (citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).
95. Id. at 268-69, 599 P.2d at 627, 158 Cal. Rptr. at 321. In support of this proposition the lead opinion relied exclusively on United States Supreme Court cases: Goss v. Lopez, 419 U.S. 565 (1975) (informal talk with school official required prior to 10-day suspension of high school student); Wolff v. McDonnell, 418 U.S. 539 (1973) (prior evidentiary hearing required before revocation of prisoner's good-time credits); Morrissey v. Brewer, 408 U.S. 471 (1972) (formal hearing with rights of confrontation and cross-examination required before parole revocation); Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961) (no hearing for civilian employee dismissed from job on military installation).
96. 25 Cal. 3d at 269, 599 P.2d at 627, 158 Cal. Rptr. at 321.
97. Id., 599 P.2d at 627-28, 158 Cal. Rptr. at 321.
98. See text accompanying note 38 supra; notes 39-40 and accompanying text supra.
99. The court did not suggest any reasons for adding dignity interests to the balancing test. The majority's earlier emphasis on the importance of dignity values came during its analysis of the federal threshold test. In applying the new balancing test, the court emphasized that the dignity factor was crucial for both parts of the analysis. See 25 Cal. 3d at 275, 599 P.2d 631, 158 Cal. Rptr. at 325; text accompanying notes 105-08 supra.
100. The court emphasized that the CRC is essentially a penal security institution as treated by statute. 25 Cal. 3d at 272, 599 P.2d at 629, 158 Cal. Rptr. at 323. Proceedings for commitment to the CRC must be conducted with the same procedural due process safeguards of proof beyond a reasonable doubt and unanimous jury verdict required in criminal cases. People v. Thomas, 19 Cal. 3d 630, 632-33, 566 P.2d 228, 229, 139 Cal. Rptr. 594, 595 (1977). Termination of outpatient status requires a formal hearing identical to that given in parole revocation cases. In re Bye, 12 Cal. 3d 96, 524 P.2d 854, 115 Cal. Rptr. 382, cert. denied, 420 U.S. 996 (1974).

The issue in Ramirez was exclusion of a patient-inmate from CRC, not revocation of outpatient status. 25 Cal. 3d at 270 n.2, 599 P.2d 628 n.2, 158 Cal. Rptr. at 322 n.2.
101. 25 Cal. 3d at 272, 599 P.2d at 630, 158 Cal. Rptr. at 323.
Therefore, his remaining interest lay in receiving psychological counseling. The court did not specify how much weight to assign this interest in the balancing process.\textsuperscript{102}

Against these private interests, the court found an important government interest in conducting group therapy treatment in a cooperative environment with inmates suitable for a minimum security setting.\textsuperscript{103} Furthermore, the court stressed that the Director's evaluation of an inmate's suitability for continued participation in the program was "not so readily adapted to procedural due process safeguards as are decisions that turn on specific factual question."\textsuperscript{104} Not only was the government interest fairly strong, but the risk of an erroneous decision was not great because subjective evaluations by definition imply that officials must have more discretion than in factual determinations. Thus, the court seemed to be heading for the conclusion that CRC inmates could not expect much due process.

Instead of finding that the government interests outweighed the inmate's interests, however, the court found that a person challenging the Director's decision had an important interest in presenting his case in person. The court reasoned that oral participation by the inmate in a pre-exclusion hearing could explain conflicting information, especially if the inmate had access to the Director's information. Furthermore, an inmate-patient could introduce subjective factors that the Director might not otherwise consider. The court stressed that the oral hearing was "the best method to promote the feeling that, notwithstanding the substantive result, one has been treated humanely and with dignity by one's government."\textsuperscript{105} However, the court did not go so far as to require more formal hearing rights, such as confrontation and cross-examination, since the evaluative decision in this case depended "on consideration of a host of intangible factors rather than on the existence of particular and contestable facts."\textsuperscript{106}

The protections ordered by the court focused on Ramirez' dignity interests, and not on his nondignity individual interest in remaining in the CRC drug treatment program. The program provides twice-a-day group therapy with psychologists and counselors to teach patient-in-
mates to understand and resolve personal problems.\textsuperscript{107} Marital and family counseling are also available.\textsuperscript{108} Although the court identified an interest in treatment, it chose to emphasize Ramirez’ dignity interest in having an opportunity to participate in the decision to exclude him. By stressing Ramirez’ dignity interests as a key factor in its decision, the court created the possibility of a minimum due process requirement, a possibility it could have avoided by giving more weight to Ramirez’ nondignity interest. Part IV examines some implications of the court’s strong emphasis on dignity values for due process analysis in California.

IV

FLEXIBLE VERSUS MINIMUM DUE PROCESS

The application of the balancing test in Ramirez raises the possibility that the court is implicitly adopting a theory of minimum due process requiring at least notice and an informal hearing in every case. Although the court expressly advocated that procedural requirements be tailored to the fact situation, it indicated that a hearing was necessary to satisfy Ramirez’ dignity interests in participating in government decisions affecting him. But that interest is not unique to CRC exclusion cases; similar dignity interests are implicated whenever the government takes action affecting an individual’s interests. Therefore, the court probably is willing to promote dignity interests that encompass a right to participate in future due process cases.

The significance of dignity values dominates the Ramirez decision: Dignity interests form part of the basis of the liberty right to be free from arbitrary adjudicative procedures. They also are one of the key elements in the balancing test. If dignity interests are to dominate all due process analysis, the government’s interests rarely will outweigh an individual’s dignity interests.\textsuperscript{109} Even if the harm from the loss of a benefit is insignificant, a person still would want to be treated with respect and concern by the government, and therefore would have a dignity interest at stake. Indeed, a claimant willing to litigate his right to due process indicates a belief in the importance of fair treatment from government. But rather than announcing a mandatory hearing requirement\textsuperscript{110} based on a pervasive dignity interest, the Ramirez court


\textsuperscript{108} Wood, supra note 107, at 122-24.

\textsuperscript{109} Summary action by the state has been allowed to protect consumers from impure food and misbranded drugs, to seize articles used in the commission of crimes, to permit emergency bank management, and to protect public institutions from serious disruption. L. Tribe, supra note 21, § 10-14.

\textsuperscript{110} Some commentators have insisted that balancing will “inevitably dilute or eliminate dig-
retained the balancing test for the express purpose of determining what procedures are required to protect an individual's interests. However, if dignity interests are always assigned a significant weight by the court, then the balancing process will determine only what additional procedures _beyond_ the minimum of notice and hearing are necessary.\(^{111}\) This Note argues that _Ramirez_ should not be interpreted as the harbinger of minimum due process. Instead, it suggests that the dignity values can be integrated into the balancing test without eliminating flexible due process.

Procedural due process claims arise in a wide variety of contexts involving government actions.\(^{112}\) Different situations require different procedures to achieve the goals of due process: accurate decisionmaking and promotion of dignity values. Establishing a minimum set of procedures would run the risk of requiring unnecessary procedures for future cases involving new issues when other, less expensive procedures can achieve equally accurate results and satisfy dignity interests. Ordering unnecessary procedures simply will make society bear additional costs without gaining any additional benefits.\(^{113}\)

These costs may be avoided by tailoring procedures to the situation. Narrow factual determinations, such as whether an overpayment has been made or a bill has been collected, can be readily decided

\(^{111}\) Procedural costs affect a range of individuals, including benefit recipients, taxpayers who fund the programs, and government employees who run them. Besides the monetary costs of holding a hearing, a theory of minimum due process will generate at least two social costs. First, management of existing government programs could become more cumbersome and time-consuming if formal hearings are required for every withdrawal or denial of a benefit. Officials might deviate from otherwise correct actions solely to avoid procedural red tape. The imposition of a hearing in every case in which benefits are denied or withdrawn also may pressure state officials to grant and to continue benefits for more persons for a longer time than intended by the legislature. Second, the aggregate sum of funds to be distributed as government benefits might be cut by increases in administrative costs. The extent of these costs is a function of the difference between the old and the new procedures: a change in the timing of an existing hearing is relatively costless, but adding requirements of access to documentation and of written explanations could be very costly in a program affecting many persons.

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through notice and comment procedures, submission of affidavits and other documents, and written explanations by concerned parties without sacrificing accurate decisionmaking. Oral participation does not facilitate these determinations because they neither involve issues of witness credibility or evaluation nor application of broad policies to factual situations.

Since procedures other than hearings can satisfy interests in accurate decisionmaking, the case for a theory of minimum due process turns on the proposition that only a hearing can achieve the second goal of due process: promotion of dignity values. This proposition assumes that dignity interests are strongly felt in every situation involving a denial or withdrawal of a benefit. However, dignity interests vary

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116. Factual determinations based in part on witness credibility, sincerity, or fault require oral participation to ensure accurate findings. Goldberg v. Kelly, 397 U.S. 254, 269 (1970) ("Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision.").

Where a person is threatened with a serious loss, such as revocation of parole, accurate evaluation of witness testimony requires the familiar protections of adversary judicial proceedings: an opportunity to confront and cross-examine witnesses and a right to be represented by counsel. See Morrissey v. Brewer, 408 U.S. 471, 487 (1972).

Chief Justice Bird, in advocating the full panoply of due process protections for Ramirez, including the right to confront and cross-examine witnesses, stressed the fact-finding aspect of the Director's exclusion decision. 25 Cal. 3d at 281, 599 P.2d at 635, 158 Cal. Rptr. at 329 (Bird, C.J., concurring and dissenting).

The lead opinion argued that these additional procedures were not justified because the focus of the Director's decision was not on the resolution of "contestable facts." Rather, the lead opinion urged, Ramirez' oral participation would contribute to the Director's assessment of Ramirez' suitability for remaining in the program. Therefore, the oral hearing was justified because it would aid the Director in making an evaluative decision (Ramirez' fitness for the program), not because it aided in a factual determination (his commission of criminal acts). Id. at 275-76, 599 P.2d at 631-32, 158 Cal. Rptr. at 325-26. The court indicated that the Director could in his discretion allow Ramirez to confront and cross-examine witnesses over specific factual matters relevant to the exclusion decision. Id. at 276 n.6, 599 P.2d at 632 n.6, 158 Cal. Rptr. at 326 n.6. But oral hearings may not be suitable for some specialized evaluations. See Board of Curators of the Univ. of Mo. v. Horowitz, 435 U.S. 78, 90 (1978) (no hearing for academic evaluation of medical student).
with the situation, and other procedures may satisfy some dignity interests. Although an individual may always want to be treated with concern and respect by government, fair and evenhanded procedures other than a hearing may satisfy the reasonable citizen in some situations.

Dignity values should be analyzed as a function of the nature and weight of the private interest affected by government action. The more important the individual interest, the more care and attention people expect the government to take. Arbitrary government actions affront human dignity and add to the harm suffered by the individual. By linking the dignity component to other private interests involved, dignity interests can be integrated into the balancing test without establishing a theory of minimum due process. Under this less dramatic interpretation of Ramirez, dignity still plays a major, but not necessarily dominant, role in defining due process.

For example, for very minor deprivations where the individual interest is relatively insignificant, dignity interests could be met by providing access to the rules employed by decisionmakers. If no articulated rules exist, a court could require their formulation. A person who knows the rules of decision can verify whether certain criteria have been properly applied. Furthermore, the chance of arbitrary behavior by government decreases when officials know the public can evaluate their conduct according to set rules or guidelines. For more complicated decisions that cannot be easily analyzed by the public in relation to a set of rules, protection of dignity interests may require that a reasoned explanation for a decision be provided. Officials are more likely to think and act carefully when their reasoning is documented. A written record explaining the government's action also reassures individuals that government acted with some measure of care.

Even postdeprivation hearings may be consistent with protecting dignity interests in certain situations. Before Ramirez was decided, the court held in Civil Service Association v. City and County of San Francisco that a postdeprivation hearing satisfied due process requirements for employees suspended five days or less.\(^{117}\) The court reasoned that the employees' interests were protected by having a hearing either dur-

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\(^{117}\) See Civil Service Ass'n v. City and County of San Francisco, 22 Cal. 3d 552, 564, 586 P.2d 162, 169, 150 Cal. Rptr. 129, 136 (1978); cf. Kash Enterprises v. City of Los Angeles, 19 Cal. 3d 294, 308, 562 P.2d 1302, 1311, 138 Cal. Rptr. 53, 62 (1977) (United States Supreme Court decisions have recognized that in particular circumstances important government interests may justify the postponement of notice and hearing until after the initial deprivation has occurred).

Postdeprivation hearings can eliminate unnecessary costs because some people may feel that the government's decision—although adverse to their interest—is not erroneous. For example, a temporary job suspension due to disciplinary problems clearly might be justified under certain circumstances. Persons who do not feel that they have been treated arbitrarily will not feel the need to ask for the hearing to satisfy their dignity interests.
ing the suspension or within a reasonable time thereafter at which lost wages might be recovered and the employees' "reputation, honor, and integrity" protected. If dignity values are viewed as a function of the underlying private interest in earning five days salary and keeping an unblemished record, then the Civil Service Association result is compatible with Ramirez. As long as the loss is small and easily repaired at a quick hearing, a suspended person may feel that treatment has been fair. Thus a flexible approach to dignity values leaves open the timing issue for hearings and therefore postdeprivation procedure may still be appropriate under Ramirez.

The concept of dignity values is useful for the due process balancing test only if the courts make specific connections between the kind of loss suffered and the precise dignity interest affected. Any test based on an elusive concept such as dignity is subject to misapplication, but potential for misuse is not sufficient reason to reject the approach altogether. At the very least, specifying dignity values as one of the four elements in the balancing test will remind decisionmakers that the structure of procedures must encourage government to treat its citizens with dignity and respect.

**Conclusion**

In People v. Ramirez the California Supreme Court made an important contribution to the adaptation of due process values to the modern bureaucratic state. The case has added a new dimension to the meaning of procedural due process by holding that individuals have a liberty right to be free from arbitrary adjudicative conduct. This Note agrees that government should not be allowed to act arbitrarily under the guise of applying a statutory entitlement doctrine or under any other theory. However, the ideal set out in Ramirez is not easily translated into specific procedural requirements. This Note argues that the new test should not be read as requiring a minimum of notice and a hearing in every case, which the court, by emphasizing dignity values, seems to imply. Instead, courts should tailor procedures to the fact situation to promote accurate and predictable decisionmaking, yet not impose unnecessary costs that could hamper experimentation with new programs and curtail existing benefits. The need for flexible due process is even more critical now that more claims will receive due process scrutiny. Therefore, the court should emphasize in subsequent cases

118. 22 Cal. 3d at 564, 586 P.2d at 169, 150 Cal. Rptr. at 136.
that dignity values do not mandate oral participation in every situation to satisfy the California due process clauses.

*Stephen Tolles*