

BMW of North America, Inc., Petitioner V. Ira Gore, Jr.

Supreme Court of the United States
517 U.S. 559 (1996)

[Dr. Gore purchased a new BMW. He later discovered the car had been repainted to cover up some minor damage that had occurred during transit from the factory. BMW acknowledged that this was common practice. Gore claimed that he was defrauded because the car was sold as new. A repaired car would sell for less. The jury awarded Gore \$4,000 in compensatory damages and \$4 million in punitive damages. The Alabama Supreme Court reduced the damage award to \$2 million. Whether this award is excessive is the primary concern of this court.

The Supreme Court applies a three-pronged test for excessiveness that includes the degree of reprehensibility, the disparity between compensatory and punitive damages, and the difference between this penalty and civil penalties imposed in similar cases.]

JUDGES: STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, in which O'CONNOR and SOUTER, JJ., joined, post, p. 586. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, post, p. 598. GINSBURG, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined, ...

OPINION BY: STEVENS

The Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a "grossly excessive" punishment on a tortfeasor. ... The wrongdoing involved in this case was the decision by a national distributor of automobiles not to advise its dealers, and hence their customers, of predelivery damage to new cars when the cost of repair amounted to less than 3 percent of the car's suggested retail price. The question presented is whether a \$ 2 million punitive damages award to the purchaser of one of these cars exceeds the constitutional limit.

I

In January 1990, Dr. Ira Gore, Jr. (respondent), purchased a black BMW sports sedan for \$40,750.88 from an authorized BMW dealer in Birmingham, Alabama. After driving the car for approximately nine months, and without noticing any flaws in its appearance, Dr. Gore took the car to "Slick Finish," an independent detailer, to make it look "snazzier than it normally would appear." Mr. Slick, the proprietor, detected evidence that the car had been repainted. ¹¹ Convinced that he had been cheated, Dr. Gore brought suit against petitioner BMW of North America (BMW), the American distributor of BMW automobiles. Dr. Gore alleged, *inter alia*, that the failure to disclose that the car had been

repainted constituted suppression of a material fact. The complaint prayed for \$500,000 in compensatory and punitive damages, and costs.

n1 The top, hood, trunk, and quarter panels of Dr. Gore's car were repainted at BMW's vehicle preparation center in Brunswick, Georgia. The parties presumed that the damage was caused by exposure to acid rain during transit between the manufacturing plant in Germany and the preparation center.

At trial, BMW acknowledged that it had adopted a nationwide policy in 1983 concerning cars that were damaged in the course of manufacture or transportation. If the cost of repairing the damage exceeded 3 percent of the car's suggested retail price, the car was placed in company service for a period of time and then sold as used. If the repair cost did not exceed 3 percent of the suggested retail price, however, the car was sold as new without advising the dealer that any repairs had been made. Because the \$601.37 cost of repainting Dr. Gore's car was only about 1.5 percent of its suggested retail price, BMW did not disclose the damage or repair to the Birmingham dealer.

Dr. Gore asserted that his repainted car was worth less than a car that had not been refinished. To prove his actual damages of \$4,000, he relied on the testimony of a former BMW dealer, who estimated that the value of a repainted BMW was approximately 10 percent less than the value of a new car that had not been damaged and repaired. To support his claim for punitive damages, Dr. Gore introduced evidence that since 1983 BMW had sold 983 refinished cars as new, including 14 in Alabama, without disclosing that the cars had been repainted before sale at a cost of more than \$300 per vehicle.ⁿ⁵ Using the actual damage estimate of \$4,000 per vehicle, Dr. Gore argued that a punitive award of \$4 million would provide an appropriate penalty for selling approximately 1,000 cars for more than they were worth.

n5 Dr. Gore did not explain the significance of the \$ 300 cutoff.

In defense of its disclosure policy, BMW argued that it was under no obligation to disclose repairs of minor damage to new cars and that Dr. Gore's car was as good as a car with the original factory finish. It disputed Dr. Gore's assertion that the value of the car was impaired by the repainting and argued that this good-faith belief made a punitive award inappropriate. BMW also maintained that transactions in jurisdictions other than Alabama had no relevance to Dr. Gore's claim.

The jury returned a verdict finding BMW liable for compensatory damages of \$4,000. In addition, the jury assessed \$4 million in punitive damages, based on a determination that the nondisclosure policy constituted "gross, oppressive or malicious" fraud.

BMW filed a post-trial motion to set aside the punitive damages award. The company introduced evidence to establish that its nondisclosure policy was consistent with the laws of roughly 25 States defining the disclosure obligations of automobile manufacturers, distributors, and dealers. The most stringent of these statutes required disclosure of repairs costing more than 3 percent of the suggested retail price; none mandated disclosure of less costly repairs. Relying on these statutes, BMW contended that its conduct was lawful in these States and therefore could not provide the basis for an award of punitive damages.

BMW also drew the court's attention to the fact that its nondisclosure policy had never been adjudged unlawful before this action was filed. Just months before Dr. Gore's case went to trial, the jury in a similar lawsuit filed by another Alabama BMW purchaser found that BMW's failure to disclose paint repair constituted fraud. *Yates v. BMW of North America, Inc.*, 642 So. 2d 937 (Ala. 1993).ⁿ⁸ Before the judgment in this case, BMW changed its policy by taking steps to avoid the sale of any refinished vehicles in Alabama and two other States. When the \$4 million verdict was returned in this case, BMW promptly instituted a nationwide policy of full disclosure of all repairs, no matter how minor.

n8 While awarding a comparable amount of compensatory damages, the *Yates* jury awarded no punitive damages at all. In *Yates*, the plaintiff also relied on the 1983 nondisclosure policy, but instead of offering evidence of 983 repairs costing more than \$300 each, he introduced a bulk exhibit containing 5,856 repair bills to show that petitioner had sold over 5,800 new BMW vehicles without disclosing that they had been repaired.

In response to BMW's arguments, Dr. Gore asserted that the policy change demonstrated the efficacy of the punitive damages award. He noted that while no jury had held the policy unlawful, BMW had received a number of customer complaints relating to undisclosed repairs and had settled some lawsuits. Finally, he maintained that the disclosure statutes of other States were irrelevant because BMW had failed to offer any evidence that the disclosure statutes supplanted, rather than supplemented, existing causes of action for common-law fraud.

The trial judge denied BMW's post-trial motion, holding, *inter alia*, that the award was not excessive. On appeal, the Alabama Supreme Court also rejected BMW's claim that the award exceeded the constitutionally permissible amount. Based on its analysis, the court concluded that BMW's conduct was "reprehensible"; the nondisclosure was profitable for the company; the judgment "would not have a substantial impact upon [BMW's] financial position"; the litigation had been expensive; no criminal sanctions had been imposed on BMW for the same conduct; the award of *no* punitive damages in *Yates* reflected "the inherent uncertainty of the trial process"; and the punitive award bore a "reasonable relationship" to "the harm that was likely to occur from [BMW's] conduct as well as . . . the harm that actually occurred." ...

The Alabama Supreme Court did, however, rule in BMW's favor on one critical point: The court found that the jury improperly computed the amount of punitive damages by multiplying Dr. Gore's compensatory damages by the number of similar sales in other jurisdictions. Having found the verdict tainted, the court held that "a constitutionally reasonable punitive damages award in this case is \$2,000,000," ..., and therefore ordered a remittitur in that amount. ⁿ¹⁰ The court's discussion of the amount of its remitted award expressly disclaimed any reliance on "acts that occurred in other jurisdictions"; instead, the court explained that it had used a "comparative analysis" that considered Alabama cases, "along with cases from other jurisdictions, involving the sale of an automobile where the seller misrepresented the condition of the vehicle and the jury awarded punitive damages to the purchaser." ⁿ¹¹

n10 The Alabama Supreme Court did not indicate whether the \$2 million figure represented the court's independent assessment of the appropriate level of punitive damages, or its determination of the maximum amount that the jury could have awarded consistent with the Due Process Clause.

n11 Other than *Yates v. BMW of North America, Inc.*, 642 So. 2d 937 (Ala. 1993), in which no punitive damages were awarded, the Alabama Supreme Court cited no such cases. In another portion of its opinion, ..., the court did cite five Alabama cases, none of which involved either a dispute arising out of the purchase of an automobile or an award of punitive damages. ... All of these cases support the proposition that appellate courts in Alabama presume that jury verdicts are correct. In light of the Alabama Supreme Court's conclusion that (1) the jury had computed its award by multiplying \$4,000 by the number of refinished vehicles sold in the United States and (2) that the award should have been based on Alabama conduct, respect for the error-free portion of the jury verdict would seem to produce an award of \$ 56,000 (\$4,000 multiplied by 14, the number of repainted vehicles sold in Alabama).

Because we believed that a review of this case would help to illuminate "the character of the standard that will identify unconstitutionally excessive awards" of punitive damages, ... we granted certiorari...

II

Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition. In our federal system, States necessarily have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases and in any particular case. Most States that authorize exemplary damages afford the jury similar latitude, requiring only that the damages awarded be reasonably necessary to vindicate the State's legitimate interests in

punishment and deterrence. Only when an award can fairly be categorized as "grossly excessive" in relation to these interests does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment. For that reason, the federal excessiveness inquiry appropriately begins with an identification of the state interests that a punitive award is designed to serve. We therefore focus our attention first on the scope of Alabama's legitimate interests in punishing BMW and deterring it from future misconduct.

No one doubts that a State may protect its citizens by prohibiting deceptive trade practices and by requiring automobile distributors to disclose presale repairs that affect the value of a new car. But the States need not, and in fact do not, provide such protection in a uniform manner. Some States rely on the judicial process to formulate and enforce an appropriate disclosure requirement by applying principles of contract and tort law. Other States have enacted various forms of legislation that define the disclosure obligations of automobile manufacturers, distributors, and dealers. The result is a patchwork of rules representing the diverse policy judgments of lawmakers in 50 States.

That diversity demonstrates that reasonable people may disagree about the value of a full disclosure requirement. Some legislatures may conclude that affirmative disclosure requirements are unnecessary because the self-interest of those involved in the automobile trade in developing and maintaining the goodwill of their customers will motivate them to make voluntary disclosures or to refrain from selling cars that do not comply with self-imposed standards. Those legislatures that do adopt affirmative disclosure obligations may take into account the cost of government regulation, choosing to draw a line exempting minor repairs from such a requirement. In formulating a disclosure standard, States may also consider other goals, such as providing a "safe harbor" for automobile manufacturers, distributors, and dealers against lawsuits over minor repairs.ⁿ¹⁴

n14 Also, a state legislature might plausibly conclude that the administrative costs associated with full disclosure would have the effect of raising car prices to the State's residents.

We may assume, *arguendo*, that it would be wise for every State to adopt Dr. Gore's preferred rule, requiring full disclosure of every presale repair to a car, no matter how trivial and regardless of its actual impact on the value of the car. But while we do not doubt that Congress has ample authority to enact such a policy for the entire Nation, it is clear that no single State could do so, or even impose its own policy choice on neighboring States. ... Similarly, one State's power to impose burdens on the interstate market for automobiles is not only subordinate to the federal power over interstate commerce, ... but is also constrained by the need to respect the interests of other States, ...

We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States. Before this Court Dr. Gore argued that the large punitive damages award was necessary to induce BMW to change the nationwide policy that it adopted in 1983.ⁿ¹⁸ But by attempting to alter BMW's nationwide policy, Alabama would be infringing on the policy choices of other States. To avoid such encroachment, the economic penalties that a State such as Alabama inflicts on those who transgress its laws, whether the penalties take the form of legislatively authorized fines or judicially imposed punitive damages, must be supported by the State's interest in protecting its own consumers and its own economy. Alabama may insist that BMW adhere to a particular disclosure policy in that State. Alabama does not have the power, however, to punish BMW for conduct that was lawful where it occurred and that had no impact on Alabama or its residents. Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions.

n18 Brief for Respondent 11-12, 23, 27-28; Tr. of Oral Arg. 50-54. Dr. Gore's interest in altering the nationwide policy stems from his concern that BMW would not (or could not) discontinue the policy in Alabama alone. "If Alabama were limited to imposing punitive damages based only on BMW's gain from fraudulent sales in Alabama, the resulting award would have no prospect of protecting Alabama consumers from fraud, as it would provide no incentive for BMW to alter the unitary, national policy of nondisclosure which yielded BMW millions of dollars in profits." The record discloses no basis for Dr. Gore's contention that BMW could not comply with Alabama's law without changing its nationwide policy.

In this case, we accept the Alabama Supreme Court's interpretation of the jury verdict as reflecting a computation of the amount of punitive damages "based in large part on conduct that happened in other jurisdictions.... As the Alabama Supreme Court noted, neither the jury nor the trial court was presented with evidence that any of BMW's out-of-state conduct was unlawful. "The only testimony touching the issue showed that approximately 60% of the vehicles that were refinished were sold in states where failure to disclose the repair was not an unfair trade practice." ... The Alabama Supreme Court therefore properly eschewed reliance on BMW's out-of-state conduct, ..., and based its remitted award solely on conduct that occurred within Alabama. The award must be analyzed in the light of the same conduct, with consideration given only to the interests of Alabama consumers, rather than those of the entire Nation. When the scope of the interest in punishment and deterrence that an Alabama court may appropriately consider is properly limited, it is apparent -- for reasons that we shall now address -- that this award is grossly excessive.

III

Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a

person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose. Three guideposts, each of which indicates that BMW did not receive adequate notice of the magnitude of the sanction that Alabama might impose for adhering to the nondisclosure policy adopted in 1983, lead us to the conclusion that the \$2 million award against BMW is grossly excessive: the degree of reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered by Dr. Gore and his punitive damages award; and the difference between this remedy and the civil penalties authorized or imposed in comparable cases. We discuss these considerations in turn.

Degree of Reprehensibility

Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct. As the Court stated nearly 150 years ago, exemplary damages imposed on a defendant should reflect "the enormity of his offense." ... This principle reflects the accepted view that some wrongs are more blameworthy than others. Thus, we have said that "nonviolent crimes are less serious than crimes marked by violence or the threat of violence." ... Similarly, "trickery and deceit," ..., are more reprehensible than negligence. ...

In this case, none of the aggravating factors associated with particularly reprehensible conduct is present. The harm BMW inflicted on Dr. Gore was purely economic in nature. The presale refinishing of the car had no effect on its performance or safety features, or even its appearance for at least nine months after his purchase. BMW's conduct evinced no indifference to or reckless disregard for the health and safety of others. To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct, ..., or when the target is financially vulnerable, can warrant a substantial penalty. But this observation does not convert all acts that cause economic harm into torts that are sufficiently reprehensible to justify a significant sanction in addition to compensatory damages.

...

Because this case exhibits none of the circumstances ordinarily associated with egregiously improper conduct, we are persuaded that BMW's conduct was not sufficiently reprehensible to warrant imposition of a \$ 2 million exemplary damages award.

Ratio

The second and perhaps most commonly cited indicium of an unreasonable or excessive punitive damages award is its ratio to the actual harm inflicted on the plaintiff. ... The principle that exemplary damages must bear a "reasonable relationship" to compensatory damages has a long pedigree. ...

In *Haslip* we concluded that even though a punitive damages award of "more than 4 times the amount of compensatory damages" might be "close to the line," it did not "cross

the line into the area of constitutional impropriety." ...[I]n *TXO*, we relied on the difference between that figure and the harm to the victim that would have ensued if the tortious plan had succeeded. That difference suggested that the relevant ratio was not more than 10 to 1.

The \$ 2 million in punitive damages awarded to Dr. Gore by the Alabama Supreme Court is 500 times the amount of his actual harm as determined by the jury.ⁿ³⁵ Moreover, there is no suggestion that Dr. Gore or any other BMW purchaser was threatened with any additional potential harm by BMW's nondisclosure policy. The disparity in this case is thus dramatically greater than those considered in *Haslip* and *TXO*.

n35 Even assuming each repainted BMW suffers a diminution in value of approximately \$4,000, the award is 35 times greater than the total damages of all 14 Alabama consumers who purchased repainted BMW's.

Of course, we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award. ... Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine.... In most cases, the ratio will be within a constitutionally acceptable range, and remittitur will not be justified on this basis. When the ratio is a breathtaking 500 to 1, however, the award must surely "raise a suspicious judicial eyebrow." ...

Sanctions for Comparable Misconduct

Comparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct provides a third indicium of excessiveness. ... In *Haslip*, 499 U.S. at 23, the Court noted that although the exemplary award was "much in excess of the fine that could be imposed," imprisonment was also authorized in the criminal context. In this case the \$2 million economic sanction imposed on BMW is substantially greater than the statutory fines available in Alabama and elsewhere for similar malfeasance.

... Significantly, some statutes draw a distinction between first offenders and recidivists; thus, in New York the penalty is \$50 for a first offense and \$250 for subsequent offenses. None of these statutes would provide an out-of-state distributor with fair notice that the first violation -- or, indeed the first 14 violations -- of its provisions might subject an offender to a multimillion dollar penalty. Moreover, at the time BMW's policy was first challenged, there does not appear to have been any judicial decision in Alabama or elsewhere indicating that application of that policy might give rise to such severe punishment.

The sanction imposed in this case cannot be justified on the ground that it was necessary to deter future misconduct without considering whether less drastic remedies could be expected to achieve that goal. The fact that a multimillion dollar penalty prompted a change in policy sheds no light on the question whether a lesser deterrent would have adequately protected the interests of Alabama consumers. In the absence of a history of noncompliance with known statutory requirements, there is no basis for assuming that a more modest sanction would not have been sufficient to motivate full compliance with the disclosure requirement imposed by the Alabama Supreme Court in this case.

IV

We assume ... that the undisclosed damage to the new BMW's affected their actual value. Notwithstanding the evidence adduced by BMW in an effort to prove that the repainted cars conformed to the same quality standards as its other cars, we also assume that it knew, or should have known, that as time passed the repainted cars would lose their attractive appearance more rapidly than other BMW's. Moreover, we of course accept the Alabama courts' view that the state interest in protecting its citizens from deceptive trade practices justifies a sanction in addition to the recovery of compensatory damages. We cannot, however, accept the conclusion of the Alabama Supreme Court that BMW's conduct was sufficiently egregious to justify a punitive sanction that is tantamount to a severe criminal penalty.

The fact that BMW is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business. Indeed, its status as an active participant in the national economy implicates the federal interest in preventing individual States from imposing undue burdens on interstate commerce. While each State has ample power to protect its own consumers, none may use the punitive damages deterrent as a means of imposing its regulatory policies on the entire Nation.

As in *Haslip*, we are not prepared to draw a bright line marking the limits of a constitutionally acceptable punitive damages award. Unlike that case, however, we are fully convinced that the grossly excessive award imposed in this case transcends the constitutional limit. Whether the appropriate remedy requires a new trial or merely an independent determination by the Alabama Supreme Court of the award necessary to vindicate the economic interests of Alabama consumers is a matter that should be addressed by the state court in the first instance.

The judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CONCUR: JUSTICE BREYER, with whom JUSTICE O'CONNOR and JUSTICE SOUTER join, concurring.

...

Legal standards need not be precise in order to satisfy this constitutional concern. But they must offer some kind of constraint upon a jury or court's discretion, and thus protection against purely arbitrary behavior. The standards the Alabama courts applied here are vague and open ended to the point where they risk arbitrary results. In my view, although the vagueness of those standards does not, by itself, violate due process, ... it does invite the kind of scrutiny the Court has given the particular verdict before us. ... This is because the standards, as the Alabama Supreme Court authoritatively interpreted them here, provided no significant constraints or protection against arbitrary results.

First, the Alabama statute that permits punitive damages does not itself contain a standard that readily distinguishes between conduct warranting very small, and conduct warranting very large, punitive damages awards. That statute permits punitive damages in cases of "oppression, fraud, wantonness, or malice ... The statute thereby authorizes punitive damages for the most serious kinds of misrepresentations, say, tricking the elderly out of their life savings, for much less serious conduct, such as the failure to disclose repainting a car, at issue here, and for a vast range of conduct in between.

Second, the Alabama courts, in this case, have applied the "factors" intended to constrain punitive damages awards in a way that belies that purpose. But, as the Alabama courts have authoritatively interpreted them, and as their application in this case illustrates, they impose little actual constraint.

...

Third, the state courts neither referred to, nor made any effort to find, nor enunciated any other standard that either directly, or indirectly as background, might have supplied the constraining legal force that the statute and *Green Oil* standards (as interpreted here) lack. Dr. Gore did argue to the jury an economic theory based on the need to offset the totality of the harm that the defendant's conduct caused. Some theory of that general kind might have provided a significant constraint on arbitrary awards Some economists, for example, have argued for a standard that would deter illegal activity causing solely economic harm through the use of punitive damages awards that, as a whole, would take from a wrongdoer the total cost of the harm caused. See, e. g., S. Shavell, *Economic Analysis of Accident Law* 162 (1987) ("If liability equals losses caused multiplied by . . . the inverse of the probability of suit, injurers will act optimally under liability rules despite the chance that they will escape suit"); Cooter, *Punitive Damages for Deterrence: When and How Much*, 40 *Ala. L. Rev.* 1143, 1146-1148 (1989). My understanding of the intuitive essence of some of those theories, which I put in crude form (leaving out various qualifications), is that they could permit juries to punitive damages by making a rough estimate of global harm, dividing that estimate by a similarly rough estimate of the number of successful calculate lawsuits that would likely be brought, and adding

generous attorney's fees and other costs. Smaller damages would not sufficiently discourage firms from engaging in the harmful conduct, while larger damages would "over-deter" by leading potential defendants to spend more to prevent the activity that causes the economic harm, say, through employee training, than the cost of the harm itself. ... Larger damages might also "double count" by including in the punitive damages award some of the compensatory, or punitive, damages that subsequent plaintiffs would also recover.

The record before us, however, contains nothing suggesting that the Alabama Supreme Court, when determining the allowable award, applied *any* "economic" theory that might explain the \$2 million recovery. ... Therefore, reference to a constraining "economic" theory, which might have counseled more deferential review by this Court, is lacking in this case.

Fourth, I cannot find any community understanding or historic practice that this award might exemplify and which, therefore, would provide background standards constraining arbitrary behavior and excessive awards. A punitive damages award of \$2 million for intentional misrepresentation causing \$56,000 of harm is extraordinary by historical standards, and, as far as I am aware, finds no analogue until relatively recent times. And, as the majority opinion makes clear, the record contains nothing to suggest that the extraordinary size of the award in this case is explained by the extraordinary wrongfulness of the defendant's behavior, measured by historical or community standards, rather than arbitrariness or caprice.

Fifth, there are no other legislative enactments here that classify awards and impose quantitative limits that would significantly cabin the fairly unbounded discretion created by the absence of constraining legal standards. ...

The upshot is that the rules that purport to channel discretion in this kind of case, here did not do so in fact. That means that the award in this case was both (a) the product of a system of standards that did not significantly constrain a court's, and hence a jury's, discretion in making that award; and (b) grossly excessive in light of the State's legitimate punitive damages objectives.

....

To the extent that neither clear legal principles nor fairly obvious historical or community-based standards (defining, say, especially egregious behavior) significantly constrain punitive damages awards, is there not a substantial risk of outcomes so arbitrary that they become difficult to square with the Constitution's assurance, to every citizen, of the law's protection? The standards here, as authoritatively interpreted, in my view, make this threat real and not theoretical. And, in these unusual circumstances, where legal standards offer virtually no constraint, I believe that this lack of constraining standards warrants this Court's detailed examination of the award.

The second reason -- the severe disproportionality between the award and the legitimate

punitive damages objectives -- reflects a judgment about a matter of degree. I recognize that it is often difficult to determine just when a punitive award exceeds an amount reasonably related to a State's legitimate interests, or when that excess is so great as to amount to a matter of constitutional concern. Yet whatever the difficulties of drawing a precise line, once we examine the award in this case, it is not difficult to say that this award lies on the line's far side. The severe lack of proportionality between the size of the award and the underlying punitive damages objectives shows that the award falls into the category of "gross excessiveness" set forth in this Court's prior cases.

These two reasons *taken together* overcome what would otherwise amount to a "strong presumption of validity." ... And, for those two reasons, I conclude that the award in this unusual case violates the basic guarantee of nonarbitrary governmental behavior that the Due Process Clause provides.

...

* * *

DISSENTBY: SCALIA; GINSBURG

DISSENT: JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

Today we see the latest manifestation of this Court's recent and increasingly insistent "concern about punitive damages that 'run wild.'" ... Since the Constitution does not make that concern any of our business, the Court's activities in this area are an unjustified incursion into the province of state governments.

In earlier cases that were the prelude to this decision, I set forth my view that a state trial procedure that commits the decision whether to impose punitive damages, and the amount, to the discretion of the jury, subject to some judicial review for "reasonableness," furnishes a defendant with all the process that is "due." ... I do not regard the Fourteenth Amendment's Due Process Clause as a secret repository of substantive guarantees against "unfairness" -- neither the unfairness of an excessive civil compensatory award, nor the unfairness of an "unreasonable" punitive award. What the Fourteenth Amendment's procedural guarantee assures is an opportunity to contest the reasonableness of a damages judgment in state court; but there is no federal guarantee a damages award actually *be* reasonable. ...

...

Because today's judgment represents the first instance of this Court's invalidation of a state-court punitive assessment as simply unreasonably large, I think it a proper occasion to discuss these points at some length.

I

...

At the time of adoption of the Fourteenth Amendment, it was well understood that punitive damages represent the assessment by the jury, as the voice of the community, of the measure of punishment the defendant deserved. ...Today's decision, though dressed up as a legal opinion, is really no more than a disagreement with the community's sense of indignation or outrage expressed in the punitive award of the Alabama jury, as reduced by the State Supreme Court. It reflects not merely, as the concurrence candidly acknowledges, "a judgment about a matter of degree," ...; but a judgment about the appropriate degree of indignation or outrage, which is hardly an analytical determination.

There is no precedential warrant for giving our judgment priority over the judgment of state courts and juries on this matter...

...
II

One might understand the Court's eagerness to enter this field, rather than leave it with the state legislatures, if it had something useful to say. In fact, however, its opinion provides virtually no guidance to legislatures, and to state and federal courts, as to what a "constitutionally proper" level of punitive damages might be.

We are instructed at the outset of Part II of the Court's opinion -- the beginning of its substantive analysis -- that "the federal excessiveness inquiry . . . begins with an identification of the state interests that a punitive award is designed to serve." ... The thought that each assessment of punitive damages, as to each offense, must be examined to determine the precise "state interests" pursued, is most unsettling. Moreover, if those "interests" are the most fundamental determinant of an award, one would think that due process would require the assessing jury to be *instructed* about them.

...
III

In Part III of its opinion, the Court identifies "three guideposts" that lead it to the conclusion that the award in this case is excessive: degree of reprehensibility, ratio between punitive award and plaintiff's actual harm, and legislative sanctions provided for comparable misconduct. The legal significance of these "guideposts" is nowhere explored, but their necessary effect is to establish federal standards governing the hitherto exclusively state law of damages. By effectively requiring state reviewing courts to concoct rationalizations -- whether within the "guideposts" or through the loophole -- to justify the intuitive punitive reactions of state juries, the Court accords neither category of institution the respect it deserves.

Of course it will not be easy for the States to comply with this new federal law of damages, no matter how willing they are to do so. In truth, the "guideposts" mark a road to nowhere; they provide no real guidance at all. As to "degree of reprehensibility" of the defendant's conduct, we learn that "nonviolent crimes are less serious than crimes

marked by violence or the threat of violence," ..., and that "trickery and deceit" are "more reprehensible than negligence," As to the ratio of punitive to compensatory damages, we are told that a "general concer[n] of reasonableness . . . enter[s] into the constitutional calculus," though even "a breathtaking 500 to 1" will not necessarily do anything more than "raise a suspicious judicial eyebrow," ... And as to legislative sanctions provided for comparable misconduct, they should be accorded "'substantial deference,' One expects the Court to conclude: "To thine own self be true."

...

The relationship between judicial application of the new "guideposts" and jury findings poses a real problem for the Court, since as a matter of logic there is no more justification for ignoring the jury's determination as to *how* reprehensible petitioner's conduct was (*i. e.*, how much it deserves to be punished), than there is for ignoring its determination that it was reprehensible *at all* (*i. e.*, that the wrong was willful and punitive damages are therefore recoverable). That the issue has been framed in terms of a constitutional right against unreasonably *excessive* awards should not obscure the fact that the logical and necessary consequence of the Court's approach is the recognition of a constitutional right against unreasonably *imposed* awards as well. The elevation of "fairness" in punishment to a principle of "substantive due process" means that every punitive award unreasonably imposed is unconstitutional; such an award is by definition excessive, since it attaches a penalty to conduct undeserving of punishment. Indeed, if the Court is correct, it must be that every claim that a state jury's award of *compensatory* damages is "unreasonable" (because not supported by the evidence) amounts to an assertion of constitutional injury. ... And the same would be true for determinations of liability. By today's logic, *every* dispute as to evidentiary sufficiency in a state civil suit poses a question of constitutional moment, subject to review in this Court. That is a stupefying proposition.

For the foregoing reasons, I respectfully dissent.

JUSTICE GINSBURG, with whom THE CHIEF JUSTICE joins, dissenting.

The Court, I am convinced, unnecessarily and unwisely ventures into territory traditionally within the States' domain, and does so in the face of reform measures recently adopted or currently under consideration in legislative arenas. The Alabama Supreme Court, in this case, endeavored to follow this Court's prior instructions; and, more recently, Alabama's highest court has installed further controls on awards of punitive damages ... I would therefore leave the state court's judgment undisturbed, and resist unnecessary intrusion into an area dominantly of state concern.

...

Questions

1. Should punitive damages only reserved for cases in which the defendant was grossly negligent?
2. What was the implicit damage multiplied in the jury's verdict? How might this multiplier have been rationalized?
3. What are the advantages and disadvantages of a jury determining public policy?