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On June 29th, 1972, the Supreme Court handed down its first decisions directed to the procedural rights of untenured faculty. The results were mixed and not uncomplicated. (The full Opinions are printed at 406 U.S. ——, 92 S. Ct. 2694, 40 U.S.L.W. 5079.) In *Board of Regents* v. *Roth,* by a vote of five to three (Brennan, Douglas, and Marshall dissenting, the three Nixon appointees joining White and Stewart in the majority, Powell taking no part), the Court appeared to hold essentially that untenured faculty members have no constitutional right to any procedural observances in the nonrenewal of their appointments. In *Perry* v. *Sindermann,* however, the Court agreed unanimously that the technical absence of formal tenure was not conclusive of the faculty member's procedural rights and that proof of *de facto* tenure would entitle him to some degree of explanation and opportunity for reconsideration. In between, the Court appears to have left room for a concept of quasi-tenure applicable to significant numbers of regular faculty members, a *terra incognita* that may well raise serious practical questions for general institutional policy in cases of nonrenewal or nonreappointment. The larger implications of both cases may appropriately be pursued in the detailed analyses of the professional law journals. This Comment will confine itself to a brief review of the decisions plus a closing observation about their relevance to the AAUP's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments.*

The Reductionism of Roth: The Untenured Faculty Member as a Limited Appointee Entitled to No Further Consideration

The constitutional issue of pretermination procedural rights was raised most starkly in *Roth,* a case involving an assistant professor of political science at Wisconsin State University-Oshkosh, who received unexplained notice in January of his first year of teaching advising him that he would not be reappointed for the next academic year. The notice came shortly after Professor Roth had made a number of public statements critical of the University administrators and board of regents, and Professor Roth was one of only 4 (of 442) untenured faculty members at the University whose appointments were not renewed that year. In his complaint in the federal district court, Professor Roth alleged that the University's summary action of unexplained notice without opportunity for hearing or reconsideration violated the Fourteenth Amendment provision that no state shall deprive any person of life, liberty, or property, without due process of law.

The district court sustained Professor Roth's position to the extent of holding that *due* process required the University administration to respond to a request for an explanation of its decision to discontinue him and to grant him some opportunity to be heard on reconsideration of the matter, albeit with the burden being his to show that the stated reasons were either "wholly inappropriate as a basis for decision or that they [were] wholly without basis in fact." Only then, the district court added, "would the university administration become obliged to show that the stated reasons are not inappropriate or that they have a basis in fact." (310 F. Supp. 972, 980 [W.D. Wis. 1970]). The University appealed from this decision, but the court of appeals affirmed and the case thereafter went to the Supreme Court where it was consolidated with *Perry* v. *Sindermann* for argument.

The Supreme Court majority found it unnecessary to determine whether the district court had erred in its specification of the particular procedural rights it had determined to be required by *due* process. Rather, the majority held that the clause did not apply at all:

> [R]espondent has not shown that he was deprived of liberty or property protected by the Fourteenth Amendment. The judgment of the Court of Appeals, accordingly, is reversed.

Analytically, the majority treated Professor Roth's situation exactly on the same footing as that which would be appropriate in respect to a special or limited appointment for a single year, the kind of situation where even notice of nonreappointment would itself be anomalous because

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it could only be regarded by the special appointee himself as a gratuitous discourtesy. By placing Professor Roth in this different frame, as though he were not a regular appointee and as though there were no significant distinctions between his situation and that of a special one-year terminal appointment, the majority of the Supreme Court reduced his constitutionally cognizable substantive interests in reappointment to zero. It followed smoothly that the due process clause had not been triggered and thus, in a constitutional sense, no process of law was due Professor Roth at all.

The position of the majority was unaffected by the fact that nonrenewal of untenured faculty members at Oshkosh was apparently highly exceptional at the time, a point the district court had emphasized both in terms of its evidentiary force regarding the real implications of regular appointment at the institution and its relevance in measuring the real burden to the University to provide some opportunity for reconsideration in the occasional case of nonrenewal. That this matter was felt by the Supreme Court majority to be of too little significance, rather than that it might somehow have been overlooked, seems clear from the fact that a footnote in the majority Opinion obliquely refers to it. That the decision is indeed a significant one which will not be easy to distinguish or to limit is further attested by the fact that the majority was also aware of the coincidence that notice of nonrenewal followed shortly after Professor Roth's critical public utterances. (The district court had stressed the coincidence as lending additional weight to some right to explanation and pretermination review as an important means of protecting the faculty member's substantive First Amendment freedom of speech.) Finally, the majority was not inclined to view the case as distinguishable from one of a limited one-year special appointment in spite of the possible far greater difficulty Professor Roth might expect to encounter in finding a position somewhere else after unexplained termination from Oshkosh following his very first year as a regular faculty member, a point also stressed by the district and circuit courts in holding in his favor. The different view of the Supreme Court majority appears in the trailing portion of still another footnote:

> Mere proof . . . that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of "liberty" [sufficient to entitle him to some measure of pretermination procedural due process].

Given the analytic basis of the decision, *Roth* necessarily deals a heavy blow to further claims by untenured faculty members to procedural rights in the consideration of reappointment, at least as a matter of constitutional right. Indeed, the Supreme Court's decision in this case not only reversed the judgment of the seventh circuit, but simultaneously rejected decisions from the fifth and first circuits (with federal appellate jurisdiction in the South and New England respectively) which had previously held that some measure of pretermination procedural due process was constitutionally required in circumstances like those in *Roth*.

Nevertheless, the different result in *Perry* v. *Sindermann* (decided the same day) complicates the picture a good deal and provides room for a number of important second thoughts.

The Realism of Sindermann: De Facto Tenure and the Importance of Collateral Effects

Neither his letter of appointment nor any state statute provided Professor Robert Sindermann with tenure as a regular faculty member at Odessa Junior College when, in May, 1969, the Texas Board of Regents voted not to renew the latest in the series of one-year appointments he had held at the College. A lead sentence in the College's official Faculty Guide itself declared, moreover, that "Odessa College has no tenure system." Professor Sindermann's situation at Odessa might therefore appear to have been indistinguishable from that of Professor Roth at Oshkosh. Accordingly, the same outcome might have been expected in the Supreme Court after the Texas Regents had secured review of the decision of the fifth circuit that had held in favor of Professor Sindermann's claim for some measure of pretermination procedural due process. (The two cases were also similar in the coincidence that Professor Sindermann's unexplained notice of nonrenewal followed shortly on the heels of news reports of his public and political activities.)

Unlike David Roth, however, Professor Sindermann was in his tenth year of full-time faculty service, the last four of which he had served at Odessa (including service for a time as cochairman of the department of government and social science). Notwithstanding the formal disclaimer of any tenure system, moreover, official publications of the College and of the Coordinating Board of the Texas College and University System clearly implied the existence of a *de facto* tenure policy at Odessa, a policy arguably covering Professor Sindermann since it adhered to AAUP standards in providing for credit for three years service at other institutions. Noting that Professor Sindermann alleged that he met the terms of that policy and had relied upon it, the Supreme Court first distinguished *Roth* in holding that here more than "a mere subjective 'expectancy' " of reappointment was involved. Accordingly, it held that proof by Sindermann that tenure protection was implied in fact in his case would be sufficient demonstration of an existing "property interest" in reappointment to trigger the Fourteenth Amendment and thus to require some degree of intramural procedural due process before he could be deprived of that interest.

Up to this point, the Sindermann Opinion is encouraging: dry legalism is not utterly dispositive of professional security and the technical absence of formally conferred *de jure* tenure is not always controlling of one's right to intramural procedural due process in case of nonreappointment. Even where the state may not have adopted a formal tenure system and a faculty member's letter of appointment may itself refer only to a specific term, the existence of an official policy or authoritative practice akin to tenure may imply some degree of intramural procedural due process as a matter of constitutional right.

Nevertheless, in what may be hoped to have been casual *dicta* added at the close of Mr. Justice Stewart's Opinion for the majority, the description of the *kind* of procedural due process constitutionally assured a faculty member under these circumstances is breathtakingly slight:

> Proof of such a property interest would not, of course, entitle him to reinstatement. But such proof would obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency.

Thus, the Court appears to declare that even one with *de facto* tenure may not be entitled as a matter of constitutional right to any pretermination procedural due process. Rather, much like the Queen of Hearts in *Alice in Wonderland,* the administration may declare "sentence first, trial and verdict later." Moreover, the burden would apparently be placed upon the faculty member seeking reinstatement to overcome a presumption of regularity accompanying the statement of grounds for termination presented by the administration in that hearing. While it is very doubtful that the Court meant in any way also to imply that such a *post hoc* procedure with its reversal of the burden of proof is constitutionally sufficient where tenure has been conferred *de jure,* it nonetheless managed by this statement to take away much of the little good it had just done in identifying conditions of *de facto* tenure, by thus immediately eroding its strength in terms of its constitutionally required procedural entitlements.

A similar qualification characterized still another portion of the Opinions that otherwise acknowledged a limited constitutional right to procedural due process under special circumstances of nonrenewal. In *Roth,* the Court was careful to distinguish what it deemed to be the ordinary and foreseeable hardship of an unexplained nonrenewal at the end of an initial one-year academic appointment from other kinds of collateral consequences which would be sufficient to require procedural due process insofar as the university might itself be *directly* responsible for those collateral consequences. Specifically, Mr. Justice Stewart laid considerable stress on the fact that in declining to rehire Professor Roth "[t]he State . . . did not make any charge against him that might seriously damage his standing and association in his community":

> Had it done so, this would be a different case. For "[w]here a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential."

Mr. Justice Stewart also stressed that the decision of nonrenewal in Roth did not itself *authoritatively* foreclose Professor Roth from any other employment opportunities, *i.e.,* it did not operate as a matter of law to bar him from consideration elsewhere even assuming that other institutions might regard the fact of his nonreappointment at Oshkosh as a matter of some practical significance. He was quick to add, moreover, that the collateral effect of a larger legal consequence accompanying nonrenewal would describe a different case and might well require the observance of procedural due process.

Even so, the character of intramural procedural due process which the presence of either of these collateral effects beyond *per se* nonrenewal may make available to the distressed faculty member is evidently limited to the possibility of securing relief only from the effects themselves. Success in refuting the institution's discrediting public statements in the course of a university hearing would still not entitle the faculty member to reinstatement. Again, the point is discoverable in a footnote:

> In such a case, due process would accord an opportunity to refute the charge before University officials.[12]

[12] The purpose of such notice and hearing is to provide the person an opportunity to clear his name. Once a person has cleared his name at a hearing, his employer, of course, may remain free to deny him future employment for other reasons.

The logic of this position is perfectly straightforward, namely, that water cannot rise higher than its source: since a *post hoc* hearing is constitutionally required only because of collateral injury to reputation resulting from damaging public statements by the institution and not at all because of nonrenewal *per se,* the relief it provides is solely for the benefit of reputation and not in contemplation of reinstatement. Although the Court did not expressly say so (and quoted *dicta* from other cases implying the contrary), moreover, the logic of its position may likewise imply that the only required purpose of providing a hearing where the decision of nonrenewal would authoritatively foreclose other employment would be to provide an opportunity to rescind that particular collateral effect without, however, securing reinstatement within the institution itself.

Even so, the result suggested above is very much open to doubt and subject to reasonable dispute. If a public institution failed to renew a faculty member's appointment solely because it originally believed certain things to be true which a fair hearing subsequently established to be false (even assuming that the opportunity to have proved them false would not have been provided except that it was constitutionally required because the institution made a public statement about the matter), continued refusal to renew the appointment might then be successfully challenged on the basis that it can only be explained as an arbitrary reaction, *i.e.,* as an arbitrary refusal to treat the faculty member on equal terms with others whose appointments were renewed, discriminating against him solely on the basis of an earlier belief of unfitness since refuted in a fair hearing. As the hearing itself was a matter of constitutional right, moreover, the institution could not hope to defend itself on the basis that the faculty member's decision to press for a hearing was itself sufficient evidence of lack of trust or temperamental incompatibility to decline to reinstate him.

The Terra Incognita of Quasi-Tenure and the Better Position of AAUP Policy

With all of this uncertainty stemming from the Opinions in *Roth* and *Sindermann,* there is yet another complexity that warrants examination. Between the ten-year instance of termination under an alleged policy of

de facto tenure (as in *Sindermann*) and the first-year instance of nonreappointment under circumstances where the Court found that neither an explanation nor an opportunity for reconsideration is constitutionally required (as in *Roth*), there is a great deal of *terra incognita* where the majority of untenured faculty members and official institutional policies are actually to be found.

In *Roth,* Mr. Justice Stewart (writing for the majority) may well have been troubled by the lack of sufficient substance to David Roth's claim of any *officially* encouraged expectation of reappointment to fit it by analogy to a qualified or contingent "property" right, suitably to distinguish it from the claim of a disappointed first-time applicant or special appointee. The record in the *Roth* case, judged by Mr. Justice Stewart's characterization of it, left some things to be desired to the extent that it may not have indicated that there were official statements of criteria for reappointment and progress toward tenure consideration—statements which might have helped David Roth to provide a line of *constitutional* distinction in either of the two respects the majority of the Court evidently believed to be important. Designation of his appointment as a regular member of the faculty coupled with official assurances objectively encouraging him to anticipate reappointment upon satisfactory service as defined in reasonably attainable standards might have generated more substance to the view that he possessed a contingent property interest of which he could not be deprived without some measure of intramural due process. Similarly, official provision of standards contemplating reappointment in the absence of professional shortcoming or immoral conduct might have rendered an otherwise unexplained nonrenewal decision so great a slur upon the appointee's professional or personal standing as to be viewed as a deprivation of "liberty" (of reputation or contract) triggering the Fourteenth Amendment's guarantee of due process. It may not parse phrases too closely to aggregate all of Mr. Justice Stewart's qualifying observations about the record in the *Roth* case, for instance, in suggesting that the decision may yet permit meaningful distinctions to be made in the future:

> [O]n the record before us, all that clearly appears is that the respondent was not rehired for one year at one University. . . . [The terms of his appointment] did not provide for contract renewal absent "sufficient cause." Indeed, they made no provision for renewal whatsoever. . . . Nor, significantly, was there any state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it. . . . In the present case . . . there is no suggestion whatever that the respondent's interest in his "good name, reputation, honor or integrity" is at stake. . . . The District Court made an *assumption* "that non-retention by one university or college creates concrete and practical difficulties for a professor in his subsequent academic career. . . . But even assuming *arguendo* that such a "substantial adverse effect" under these circumstances would constitute a state imposed restriction on liberty, the record contains no support for these assumptions.

Given the overall conservative cast of the balance of the Opinion, it may read too much into these qualifying observations to suggest that they mark out obvious possibilities sharply to limit and to distinguish the basic holding. Nevertheless, they may imply that on a better record, under more compelling circumstances where the faculty member is well along the tenure track under policies explicitly encouraging reliance and practices consistent with that reliance, peremptory notice of nonreappointment may not be enough to quench the constitutional claim to more specific consideration than none at all.

Accordingly, the set of Opinions in *Roth* and *Sindermann* together with their full implications may now confront institutions of higher learning with a sharper choice: to avoid the "hazard" of even minimum constitutional procedures by strategically withdrawing any official encouragement of professional security for the faculty and retreating behind the ironplate of seried, short-term terminal contracts, thus to reserve a prerogative of procedural arbitrariness; or to systematize instead a policy of positive incentives with a willingness to provide some explanation and opportunity for reconsideration when so requested. It may be significant in this regard that in closing his Opinion, Mr. Justice Stewart went out of his way to note that the Court's decision was confined to a construction of the Constitution itself and that not all that the Constitution tolerates is necessarily "appropriate or wise in public colleges and universities." And again there is a footnote, by no means disapproving, comparing as an example the AAUP's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments.*

A Postscript on the Substantive Constitutional Freedoms of the Faculty

Nothing in either *Roth* or *Sindermann* at all impairs the statutory right of a faculty member to secure full redress in an appropriate federal court upon proof of his allegation that his nonreappointment was significantly influenced by considerations foreclosed by the Bill of Rights or the Fourteenth Amendment. In both *Roth* and *Sindermann,* the Supreme Court remanded the cases to the federal district courts to consider the merits of each faculty member's first amendment claim that the decision of nonreappointment was in retaliation for critical public utterances which the faculty member alleged to be protected by the First Amendment. With no dissent to this proposition, Mr. Justice Stewart observed:

> The first question presented is whether the respondent's lack of a contractual or tenure right to re-employment, taken alone, defeats his claim that the nonrenewal of his contract violated the First and Fourteenth Amendments. We hold that it does not.

In this respect, the decision fully confirmed prior holdings of Supreme Court cases that lack of tenure has no effect upon the substantive equal protection of First Amendment rights, and it wholly lays to rest inconsistent *dicta* which had appeared in certain lower court decisions (*e.g., Jones* v. *Hopper,* 110 F.2d 1323 [10th Cir. 1970]). The problem does remain as a result of *Roth,* however, that the practical risk of retaliatory nonreappointment is doubtless enhanced insofar as no explanation or intramural hearing of any kind need be provided.

APPENDIX

[*The following is reprinted from* The United States Law Week, *Vol. 40,* pp. 5079-5091, June 27, 1972.]

The Board of Regents of State Colleges et al., Petitioners,
v.
David F. Roth, Etc.

MR. JUSTICE STEWART delivered the opinion of the Court.

In 1968 the respondent, David Roth, was hired for his first teaching job as assistant professor of political science at Wisconsin State University-Oshkosh. He was hired for a fixed term of one academic year. The notice of his faculty appointment specified that his employment would begin on September 1, 1968, and would end on June 30, 1969.[1] The respondent completed that term. But he was informed that he would not be rehired for the next academic year.

The respondent had no tenure rights to continued employment. Under Wisconsin statutory law a state university teacher can acquire tenure as a "permanent" employee only after four years of year-to-year employment. Having acquired tenure, a teacher is entitled to continued employment "during efficiency and good behavior." A relatively new teacher without tenure, however, is under Wisconsin law entitled to nothing beyond his one-year appointment.[2] There are no statutory or administrative standards defining eligibility for re-employment. State law thus clearly leaves the decision whether to rehire a nontenured teacher for another year to the unfettered discretion of University officials.

The procedural protection afforded a Wisconsin State University teacher before he is separated from the University corresponds to his job security. As a matter of statutory law, a tenured teacher cannot be "discharged except for cause upon written charges" and pursuant to certain procedures.[3] A nontenured teacher, similarly, is protected to some extent *during* his one-year term. Rules promulgated by the Board of Regents provide that a nontenured teacher "dismissed" before the end of the year may have some opportunity for review of the "dismissal." But the Rules provide no real protection for a nontenured teacher who simply is not re-employed for the next year. He must be informed by February first "concerning retention or non-retention for the ensuing year." But "no reason for non-retention need be given. No review or appeal is provided in such case." [4]

In conformance with these Rules, the President of Wisconsin State University-Oshkosh informed the respondent before February 1, 1969, that he would not be rehired for the 1969–1970 academic year. He gave the respondent no reason for the decision and no opportunity to challenge it at any sort of hearing.

The respondent then brought this action in a federal district court alleging that the decision not to rehire him for the next year infringed his Fourteenth Amendment rights. He attacked the decision both in substance and procedure. First, he alleged that the true reason for the decision was to punish him for certain statements critical of the University administration, and that it therefore violated his right to freedom of speech.[5] Second, he alleged that the failure of University officials to give him notice of any reason for nonretention and an opportunity for a hearing violated his right to procedural due process of law.

The District Court granted summary judgment for the respondent on the procedural issue, ordering the University officials to provide him with reasons and a hearing. 310 F. Supp. 972. The Court of Appeals, with one judge dissenting, affirmed this partial summary judgment. 446 F. 2d 806. We granted certiorari. 404 U. S. 909. The only question presented to us at this stage in the case is whether the respondent had a constitutional right to a statement of reasons and a hearing on the University's decision not to rehire him for another year.[6] We hold that he did not.

I

The requirements of procedural due process apply only to the deprivation of interests encompassed within the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated the right to some kind of prior hearing is paramount.[7] But the range of interests protected by procedural due process is not infinite.

The District Court decided that procedural due process guarantees apply in this case by assessing and balancing the weights of the particular interests involved. It concluded that the

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[1] The respondent had no contract of employment. Rather, his formal notice of appointment was the equivalent of an employment contract.

The notice of his appointment provided that: "*David F. Roth* is hereby appointed to the faculty of the Wisconsin State University Position number 0262. (Location:) *Oshkosh* as (Rank:) *Assistant Professor* of (Department:) *Political Science* this (Date:) *first* day of (Month:) *September* (Year:) *1968*." The notice went on to specify that the respondent's "appointment basis" was for the "academic year." And it provided that "[r]egulations governing tenure are in accord with Chapter 37.31, Wisconsin Statutes. The employment of any staff member for an academic year shall not be for a term beyond June 30th of the fiscal year in which the appointment is made." See n. 2, *infra*.

[2] Wisconsin Statutes 1967, c. 37.31 (1), in force at the time, provided in pertinent part that:

"All teachers in any state university shall initially be employed on probation. The employment shall be permanent, during efficiency and good behavior, after 4 years of continuous service in the state university system as a teacher."

[3] Wisconsin Statutes 1967, c. 37.31, in force at the time, provided in pertinent part that:

"No teacher who has become permanently employed as herein provided shall be discharged except for cause upon written charges. Within 30 days of receiving the written charges, such teacher may appeal the discharge by a written notice to the president of the board of regents of state colleges. The board shall cause the charges to be investigated, hear the case and provide such teacher with a written statement as to their decision."

[4] The Rules, promulgated by the Board of Regents in 1967, provide:

"RULE I—February 1st is established throughout the State University system as the deadline for written notification of non-tenured faculty concerning retention or non-retention for the ensuing year. The President of each University shall give such notice each year on or before this date."

"RULE II—During the time a faculty member is on probation, no reason for non-retention need be given. No review or appeal is provided in such case.

"RULE III—'Dismissal' as opposed to 'Non-Retention' means termination of responsibilities during an academic year. When a non-tenured faculty member is dismissed he has no right under Wisconsin Statutes to a review of his case or to appeal. The President may, however, in his discretion, grant a request for a review within the institution, either by a faculty committee or by the President, or both. Any such review would be informal in nature and would be advisory only.

"RULE IV—When a non-tenured faculty member is dismissed he may request a review by or hearing before the Board of Regents. Each such request will be considered separately and the Board will, in its discretion, grant or deny same in each individual case."

[5] While the respondent alleged that he was not rehired because of his exercise of free speech, the petitioners insisted that the non-retention decision was based on other, constitutionally valid grounds. The District Court came to no conclusion whatever regarding the true reason for the University President's decision. "In the present case," it stated, "it appears that a determination as to the actual bases of [the] decision must await amplification of the facts at trial. . . . Summary judgment is inappropriate." 310 F. Supp., at 982.

[6] The courts that have had to decide whether a nontenured public employee has a right to a statement of reasons or a hearing upon nonrenewal of his contract have come to varying conclusions. Some have held that neither procedural safeguard is required. *E. g., Orr* v. *Trinter*, 444 F. 2d 128 (CA6); *Jones* v. *Hopper*, 410 F. 2d 1323 (CA10); *Freeman* v. *Gould Special School District*, 405 F. 2d 1153 (CA8). At least one court has held that there is a right to a statement of reasons but not a hearing. *Drown* v. *Portsmouth School District*, 435 F. 2d 1182 (CA1). And another has held that both requirements depend on whether the employee has an "expectency" of continued employment. *Ferguson* v. *Thomas*, 430 F. 2d 852, 856 (CA5).

[7] Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing, "except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Boddie* v. *Connecticut*, 401 U. S. 371, 379. "While '[m]any controversies have raged about . . . the Due Process Clause,' . . . it is fundamental that except in emergency situations [and this is not one] due process requires that when a State seeks to terminate [a protected] interest . . . , it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective." *Bell* v. *Burson*, 402 U. S. 535, 542. For the rare and extraordinary situations in which we have held that deprivation of a protected interest need not be preceded by opportunity for some kind of hearing, see, *e. g., Central Union Trust Co.* v. *Garvan* 254 U. S. 554, 566; *Phillips* v. *Commissioner*, 283 U. S. 589, 597; *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594.

respondent's interest in re-employment at the Wisconsin State University-Oshkosh outweighed the University's interest in denying him re-employment summarily. 310 F. Supp., at 977–979. Undeniably, the respondent's re-employment prospects were of major concern to him—concern that we surely cannot say was insignificant. And a weighing process has long been a part of any determination of the *form* of hearing required in particular situations by procedural due process.[8] But, to determine whether due process requirements apply in the first place, we must look not to the "weight" but to the *nature* of the interest at stake. See *Morrissey* v. *Brewer*, — U. S. —, —. We must look to see if the interest is within the Fourteenth Amendment's protection of liberty and property.

"Liberty" and "property" are broad and majestic terms. They are among the "[g]reat [constitutional] concepts . . . purposely left to gather meaning from experience. . . . [T]hey relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged." *National Ins. Co.* v. *Tidewater Co.*, 337 U. S. 582, 646 (Frankfurter, J., dissenting). For that reason the Court has fully and finally rejected the wooden distinction between "rights" and "privileges" that once seemed to govern the applicability of procedural due process rights.[9] The Court has also made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money.[10] By the same token, the Court has required due process protection for deprivations of liberty beyond the sort of formal constraints imposed by the criminal process.[11]

Yet, while the Court has eschewed rigid or formalistic limitations on the protection of procedural due process, it has at the same time observed certain boundaries. For the words "liberty" and "property" in the Due Process Clause of the Fourteenth Amendment must be given some meaning.

II

"While this Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fourteenth Amendment] the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men." *Meyer* v. *Nebraska*, 262 U. S. 390, 399. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. See, *e. g.*, *Bolling* v. *Sharpe*, 347 U. S. 497, 499–500; *Stanley* v. *Illinois*, — U. S. —.

There might be cases in which a State refused to re-employ a person under such circumstances that interests in liberty would be implicated. But this is not such a case.

The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case. For "[w]here a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin* v. *Constantineau*, 400 U. S. 433, 437. *Wieman* v. *Updegraff*, 344 U. S. 183, 191; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123; *United States* v. *Lovett*, 328 U. S. 303, 316–317; *Peters* v. *Hobby*, 349 U. S. 331, 352 (concurring opinion). See *Cafeteria Workers* v. *McElroy*, 367 U. S. 886, 898. In such a case, due process would accord an opportunity to refute the charge before University officials.[12] In the present case, however, there is no suggestion whatever that the respondent's interest in his "good name, reputation, honor or integrity" is at stake.

Similarly, there is no suggestion that the State, in declining to re-employ the respondent, imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. The State, for example, did not invoke any regulations to bar the respondent from all other public employment in State universities. Had it done so, this, again, would be a different case. For "[t]o be deprived not only of present government employment but of future opportunity for it is no small injury. . . ." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, *supra*, at 185 (Jackson, J., concurring). See *Truax* v. *Raich*, 239 U. S. 33, 41. The Court has held, for example, that a State, in regulating eligibility for a type of professional employment, cannot foreclose a range of opportunities "in a manner . . . that contravene[s] due process," *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 238, and, specifically, in a manner that denies the right to a full prior hearing. *Willner* v. *Committee on Character*, 373 U. S. 96, 103. See *Cafeteria Workers* v. *McElroy*, *supra*, at 898. In the present case, however, this principle does not come into play.[13]

To be sure, the respondent has alleged that the nonrenewal of his contract was based on his exercise of his right to freedom of speech. But this allegation is not now before us. The District Court stayed proceedings on this issue, and the respondent has yet to prove that the decision not to rehire him was, in fact, based on his free speech activities.[14]

Hence, on the record before us, all that clearly appears is that the respondent was not rehired for one year at one University. It stretches the concept too far to suggest that a person is deprived of "liberty" when he simply is not rehired in one job but remains as free as before to seek another. *Cafeteria Workers* v. *McElroy*, *supra*, at 895–896.

[8] "The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." *Boddie* v. *Connecticut*, 401 U. S. 371, 378. See, *e. g.*, *Goldberg* v. *Kelly*, 397 U. S. 254, 263; *Hannah* v. *Larche*, 363 U. S. 420. The constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend upon such a narrow balancing process. See n. 7, *supra*.

[9] In a leading case decided many years ago, the Court of Appeals for the District of Columbia Circuit held that public employment in general was a "privilege," not a "right," and that procedural due process guarantees therefore were inapplicable. *Bailey* v. *Richardson*, 182 F. 2d 46, aff'd by an equally divided Court, 341 U. S. 918. The basis of this holding has been thoroughly undermined in the ensuing years. For, as MR. JUSTICE BLACKMUN wrote for the Court only last year, "this Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.' " *Graham* v. *Richardson*, 403 U. S. 365, 374. See, *e. g.*, *Morrissey* v. *Brewer*, — U. S. —, —; *Bell* v. *Burson*, 402 U. S. 535, 539; *Goldberg* v. *Kelly*, 397 U. S. 254, 262; *Shapiro* v. *Thompson*, 394 U. S. 618, 627 n. 6; *Pickering* v. *Board of Education*, 391 U. S. 563, 568; *Sherbert* v. *Verner*, 374 U. S. 398, 404.

[10] See, *e. g.*, *Connell* v. *Higgenbotham*, 403 U. S. 207, 208; *Bell* v. *Burson*, 402 U. S. 535; *Goldberg* v. *Kelly*, 397 U. S. 254.

[11] "Although the Court has not assumed to define 'liberty' [in the Fifth Amendment's Due Process Clause] with any great precision, that term is not confined to mere freedom from bodily restraint." *Bolling* v. *Sharpe*, 347 U. S. 497, 499. See, *e. g.*, *Stanley* v. *Illinois*, — U. S. —.

[12] The purpose of such notice and hearing is to provide the person an opportunity to clear his name. Once a person has cleared his name at a hearing, his employer, of course, may remain free to deny him future employment for other reasons.

[13] The District Court made an *assumption* "that non-retention by one university or college creates concrete and practical difficulties for a professor in his subsequent academic career." 310 F. Supp., at 979. And the Court of Appeals based its affirmance of the summary judgment largely on the premise that "the substantial adverse effect non-retention is likely to have upon career interests of an individual professor" amounts to a limitation on future employment opportunities sufficient to invoke procedural due process guarantees. 446 F. 2d, at 809. But even assuming *arguendo* that such a "substantial adverse effect" under these circumstances would constitute a state imposed restriction on liberty, the record contains no support for these assumptions. There is no suggestion of how nonretention might affect the respondent's future employment prospects. Mere proof, for example, that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employers would hardy establish the kind of foreclosure of opportunities amounting to a deprivation of "liberty." Cf. *Schware* v. *Board of Bar Examiners*, *supra*.

[14] See n. 5, *infra*. The Court of Appeals, nonetheless, argued that opportunity for a hearing and a statement of reasons were required here "as a *prophylactic* against non-retention decisions improperly motivated by exercise of protected rights." 446 F. 2d, at 810 (emphasis supplied). While the Court of Appeals recognized the lack of a finding that the respondent's nonretention was based on exercise of the right of free speech, it felt that the respondent's interest in liberty was sufficiently implicated here because the decision not to rehire him was made "with

III

The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. These interests—property interests—may take many forms.

Thus the Court has held that a person receiving welfare benefits under statutory and administrative standards defining eligibility for them has an interest in continued receipt of those benefits that is safeguarded by procedural due process. *Goldberg* v. *Kelly*, 397 U. S. 254.[15] See *Fleming* v. *Nestor*, 363 U. S. 603, 611. Similarly, in the area of public employment, the Court has held that a public college professor dismissed from an office held under tenure provisions, *Slochower* v. *Board of Education*, 350 U. S. 551, and college professors and staff members dismissed during the terms of their contracts, *Wieman* v. *Updegraff*, 344 U. S. 183, have interests in continued employment that are safeguarded by due process. Only last year, the Court held that this principle "proscribing summary dismissal from public employment without a hearing or inquiry required by due process" also applied to a teacher recently hired without tenure or a formal contract, but nonetheless with a clearly implied promise of continued employment. *Connell* v. *Higgenbotham*, 403 U. S. 207, 208.

Certain attributes of "property" interests protected by procedural due process emerge from these decisions. To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus the welfare recipients in *Goldberg* v. *Kelly*, *supra*, had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. The recipients had not yet shown that they were, in fact, within the statutory terms of eligibility. But we held that they had a right to a hearing at which they might attempt to do so.

Just as the welfare recipients' "property" interest in welfare payments was created and defined by statutory terms, so the respondent's "property" interest in employment at the Wisconsin State University-Oshkosh was created and defined by the terms of his appointment. Those terms secured his interest in employment up to June 30, 1969. But the important fact in this case is that they specifically provided that the respondent's employment was to terminate on June 30. They did not provide for contract renewal absent "sufficient cause." Indeed, they made no provision for renewal whatsoever.

Thus the terms of the respondent's appointment secured absolutely no interest in re-employment for the next year. They supported absolutely no possible claim of entitlement to re-employment. Nor, significantly, was there any state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it.[16] In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a *property* interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment.

IV

Our analysis of the respondent's constitutional rights in this case in no way indicates a view that an opportunity for a hearing or a statement of reasons for nonretention would, or would not, be appropriate or wise in public colleges and universities.[17] For it is a written Constitution that we apply. Our role is confined to interpretation of that Constitution.

We must conclude that the summary judgment for the respondent should not have been granted, since the respondent has not shown that he was deprived of liberty or property protected by the Fourteenth Amendment. The judgment of the Court of Appeals, accordingly, is reversed and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE POWELL took no part in the decision of this case.

MR. JUSTICE DOUGLAS, dissenting.

Respondent Roth, like Sindermann in the companion case, had no tenure under Wisconsin law and, unlike Sindermann, he had had only one year of teaching at Wisconsin State University-Oshkosh—where from 1968–1969 he had been Assistant Professor of Political Science and International Studies. Though Roth was rated by the faculty as an excellent teacher, he had publicly criticized the administration for suspending an entire group of 94 Black students without determining individual guilt. He also criticized the University's regime as being authoritarian and autocratic. He used his classroom to discuss what was being done about the Black episode; and one day, instead of meeting his class, he went to the meeting of the Board of Regents.

In this case, as in *Sindermann*, an action was started in a Federal District Court under 42 U. S. C. § 1983 [1] claiming in

a background of controversy and unwelcome expressions of opinion." *Ibid.*

When a State would directly impinge upon interests in free speech or free press, this Court has on occasion held that opportunity for a fair adversary hearing must precede the action, whether or not the speech or press interest is clearly protected under substantive First Amendment standards. Thus we have required fair notice and opportunity for an adversary hearing before an injunction is issued against the holding of rallies and public meetings. *Carroll* v. *Princess Anne*, 393 U. S. 175. Similarly, we have indicated the necessity of procedural safeguards before a State makes a large-scale seizure of a person's allegedly obscene books, magazines and so forth. *A Quantity of Books* v. *Kansas*, 378 U. S. 205; *Marcus* v. *Search Warrant*, 367 U. S. 717. See *Freedman* v. *Maryland*, 380 U. S. 51; *Bantam Books* v. *Sullivan*, 372 U. S. 58. See generally Monaghan, First Amendment "Due Process," 83 Harv. L. Rev. 518.

In the respondent's case, however, the State has not directly impinged upon interests in free speech or free press in any way comparable to a seizure of books or an injunction against meetings. Whatever may be a teacher's rights of free speech, the interest in holding a teaching job at a state university, *simpliciter*, is not itself a free speech interest.

[15] *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117, is a related case. There, the petitioner was a lawyer who had been refused admission to practice before the Board of Tax Appeals. The Board had "published rules for admission of persons entitled to practice before it, by which attorneys at law admitted to courts of the United States and the States, and the District of Columbia, as well as certified public accountants duly qualified under the law of any State or the District, are made eligible. . . . The rules further provided that the Board may in its discretion deny admission to any applicant, or suspend or disbar any person after admission." *Id.*, at 119. The Board denied admission to the petitioner under its discretionary power, without a prior hearing and a statement of the reasons for the denial. Although this Court disposed of the case on other grounds, it stated, in an opinion by Mr. Chief Justice Taft, that the existence of the Board's eligibility rules gave the petitioner an interest and claim to practice before the Board to which procedural due process requirements applied. It said that the Board's discretionary power "must be construed to mean the exercise of a discretion to be exercised after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process." *Id.*, at 123.

[16] To be sure, the respondent does suggest that most teachers hired on a year-to-year basis by the Wisconsin State University-Oshkosh are, in fact, rehired. But the District Court has not found that there is anything approaching a "common law" of re-employment, see *Perry* v. *Sindermann*, *post*, at —, so strong as to require University officials to give the respondent a statement of reasons and a hearing on their decision not to rehire him.

[17] See, *e. g.*, Report of Committee A on Academic Freedom and Tenure, "Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments," 56 AAUP Bulletin 21 (Spring 1970).

[1] Section 1983 reads as follows:

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

part that the decisions of the school authorities not to rehire was in retaliation for his expression of opinion. The District Court, in partially granting Roth's motion for summary judgment, held that the Fourteenth Amendment required the University to give a hearing to teachers whose contracts were not to be renewed and to give reasons for its action. 310 F. Supp. 972, 983. The Court of Appeals affirmed. 446 F. 2d 806.

Professor Will Herberg of Drew University in writing of "academic freedom" recently said:

> . . . it is sometimes conceived as a basic constitutional right guaranteed and protected under the First Amendment.
>
> But, of course, this is not the case. Whereas a man's right to speak out on this or that may be guaranteed and protected, he can have no imaginable human or constitutional right to remain a member of a university faculty. Clearly, the right to academic freedom is an acquired one, yet an acquired right of such value to society that in the minds of many it has verged upon the constitutional. [*Washington Evening Star*, Jan. 23, 1972.]

There may not be a constitutional right to continued employment if private schools and colleges are involved. But Prof. Herberg's view is not correct when public schools move against faculty members. For the First Amendment, applicable to the States by reason of the Fourteenth Amendment, protects the individual against state action when it comes to freedom of speech and of press and the related freedoms guaranteed by the First Amendment; and the Fourteenth protects "liberty" and "property" as stated by the Court in *Sindermann*.

No more direct assault on academic freedom can be imagined than for the school authorities to be allowed to discharge a teacher because of his or her philosophical, political, or ideological beliefs. The same may well be true of private schools also, if through the device of financing or other umbilical cords they become instrumentalities of the State. Mr. Justice Frankfurter stated for constitutional theory in *Sweezy* v. *New Hampshire*, 354 U. S. 234, 261–262 (concurring opinion):

> Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities. For society's good—if understanding be an essential need of society—inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling.

We repeated that warning in *Keyishian* v. *Board of Regents*, 385 U. S. 589, 603:

> Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.

When a violation of First Amendment rights is alleged, the reasons for dismissal or for nonrenewal of an employment contract must be examined to see if the reasons given are only a cloak for activity or attitudes protected by the Constitution. A statutory analogy is present under the National Labor Relations Act, 29 U. S. C. § 151 *et seq.* While discharges of employees for "cause" are permissible (*Fibreboard Corp.* v. *Labor Board*, 379 U. S. 203, 217), discharge because of an employee's union activities is banned by § 8(a)(3), 29 U. S. C. § 158 (c)(3). So the search is to ascertain whether the stated ground was the real one or only a pretext. See *J. P. Stevens & Co.* v. *Labor Board*, 380 F. 2d 292, 300.

In the case of teachers whose contracts are not renewed, tenure is not the critical issue. In the *Sweezy* case, the teacher, whose First Amendment rights we honored, had no tenure but was only a guest lecturer. In the *Keyishian* case, one of the petitioners (Keyishian himself) had only a "one-year-term contract" that was not renewed. 385 U. S., at 592. In *Shelton* v. *Tucker*, 364 U. S. 479, one of the petitioners was a teacher whose "contract for the ensuing school year was not renewed" (*id.*, at 483) and two others who refused to comply were advised that it made "impossible their re-employment as teachers for the following school year." *Id.*, at 484. The oath required in *Keyishian* and the affidavit listing memberships required in *Shelton* were both, in our view, in violation of First Amendment rights. Those cases mean that conditioning renewal of a teacher's contract upon surrender of First Amendment rights is beyond the power of a State.

There is sometimes a conflict between a claim for First Amendment protection and the need for orderly administration of the school system, as we noted in *Pickering* v. *Board of Education*, 391 U. S. 563, 569. That is one reason why summary judgments in this class of cases are seldom appropriate. Another reason is that careful fact finding is often necessary to know whether the given reason for nonrenewal of a teacher's contract is the real reason or a feigned one.

It is said that since teaching in a public school is a privilege, the State can grant it or withhold it on conditions. We have, however, rejected that thesis in numerous cases, *e. g.*, *Graham* v. *Richardson*, 403 U. S. 365, 374. See Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439 (1968). In *Hannegan* v. *Esquire*, 327 U. S. 146, 156, we said that Congress may not by withdrawal of mailing privileges place limitations on freedom of speech which it could not do constitutionally if done directly. We said in *American Communications Assn.* v. *Douds*, 339 U. S. 382, 402, that freedom of speech was abridged when the only restraint on its exercise was withdrawal of the privilege to invoke the facilities of the National Labor Relations Board. In *Wieman* v. *Updegraff*, 344 U. S. 183, we held that an applicant could not be denied the opportunity for public employment because he had exercised his First Amendment rights. And in *Speiser* v. *Randall*, 357 U. S. 513, we held that a denial of a tax exemption unless one gave up his First Amendment rights was an abridgement of Fourteenth Amendment rights.

As we held in *Speiser* v. *Randall, supra*, when a State proposes to deny a privilege to one who it alleges has engaged in unprotected speech, Due Process requires that the State bear the burden of proving that the speech was not protected. "The protection of the individual against arbitrary action . . . [is] the very essence of due process," *Slochower* v. *Board of Higher Education*, 350 U. S. 551, 559 (1956), but where the State is allowed to act secretly behind closed doors and without any notice to those who are affected by its actions, there is no check against the possibility of such "arbitrary action."

Moreover, where "important interests" of the citizen are implicated (*Bell* v. *Burson*, 402 U. S. 535, 539) they are not to be denied or taken away without Due Process. *Id.*, at 539. *Bell* v. *Burson* involved a driver's license. But also included are disqualification for unemployment compensation (*Sherbert* v. *Verner*, 374 U. S. 398), discharge from public employment (*Slochower* v. *Board of Education, supra*), denial of tax exemption (*Speiser* v. *Randall, supra*), or withdrawal of welfare benefits. *Goldberg* v. *Kelly*, 397 U. S. 254. And see *Wisconsin* v. *Constantineau*, 400 U. S. 433. We should now add that nonrenewal of a teacher's contract, whether or not he has tenure, is an entitlement of the same importance and dignity.

Cafeteria Workers v. *McElroy*, 367 U.S. 886, is not opposed. It held that a cook employed in a cafeteria in a military installation was not entitled to a hearing prior to the withdrawal of her access to the facility. Her employer was prepared to employ her at another of its restaurants, the withdrawal was not likely to injure her reputation, and her employment opportunities elsewhere were not impaired. The Court held that the very limited individual interest in this one job did not outweigh the Government's authority over an important federal military establishment. Nonrenewal of a teacher's contract is tantamount in effect to a dismissal and the consequences may be enormous. Nonrenewal can be a blemish that turns into a permanent scar and effectively limits any chance the teacher has of being rehired as a teacher at least in his State.

If this nonrenewal implicated the First Amendment, then Roth was deprived of constitutional rights (a) because his employment was conditioned on a surrender of First Amendment rights and (b) because he received no notice and hearing of the adverse action contemplated against him. Without a statement of the reasons for the discharge and an opportunity to rebut those reasons—both of which were refused by petitioners—there is no means short of a lawsuit to safeguard the right not to be discharged for the exercise of First Amendment guarantees.

The District Court held, 310 F. Supp. 972, 979–980:

> Substantive constitutional protection for a university professor against non-retention in violation of his First Amendment rights or arbitrary non-retention is useless without procedural safeguards. I hold that minimal procedural due process includes a statement of the reasons why the university intends not to retain the professor, notice of a hearing at which he may respond to the stated reasons, and a hearing if the professor appears at the appointed time and place. At such a hearing the professor must have a reasonable opportunity to submit evidence relevant to the stated reasons. The burden of going forward and the burden of proof rests with the professor. Only if he makes a reasonable showing that the stated reasons are wholly inappropriate as a basis for decision or that they are wholly without basis in fact would the university administration become obliged to show that the stated reasons are not inappropriate or that they have a basis in fact.

It was that procedure that the Court of Appeals approved. 446 F. 2d 806, 809–810. The Court of Appeals also concluded that though the § 1983 action was pending in court, the court should stay its hand until the academic procedures had been completed.[2] As stated by the Court of Appeals in *Sindermann:*

> School-constituted review bodies are the most appropriate forums for initially determining issues of this type, both for the convenience of the parties and in order to bring academic expertise to bear in resolving the nice issues of administrative discipline, teacher competence and school policy, which so frequently must be balanced in reaching a proper determination. [430 F. 2d, at 944–945.]

That is a permissible course for District Courts to take, though it does not relieve them of the final determination whether nonrenewal of the teacher's contract was in retaliation of the exercise of First Amendment rights.

Accordingly I would affirm the judgment of the Court of Appeals.

MR. JUSTICE MARSHALL, dissenting.

Respondent was hired as an assistant professor of political science at Wisconsin State University-Oshkosh for the 1968–1969 academic year. During the course of that year he was told that he would not be rehired for the next academic term, but he was never told why. In this case he asserts that the Due Process Clause of the Fourteenth Amendment to the United States Constitution entitled him to a statement of reasons and a hearing on the University's decision not to rehire him for another year.[1] This claim was sustained by the District Court which granted respondent summary judgment, 310 F. Supp. 972, and by the Court of Appeals which affirmed the judgment of the District Court. 446 F. 2d 806. This Court today reverses the judgment of the Court of Apeals and rejects respondent's claim. I dissent.

While I agree with Part I of the Court's opinion, setting forth the proper framework for consideration of the issue presented, and also with those portions of Parts II and III of the Court's opinion that assert that a public employee is entitled to procedural due process whenever a State stigmatizes him by denying employment, or injures his future employment prospects severely, or whenever the State deprives him of a property interest, I would go further than the Court does in defining the terms of "liberty" and "property."

The prior decisions of this Court, discussed at length in the opinion of the Court, establish a principle that is as obvious as it is compelling— *i. e.*, federal and state governments and governmental agencies are restrained by the Constitution from acting arbitrarily with respect to employment opportunities that they either offer or control. Hence, it is now firmly established that whether or not a private employer is free to act capriciously or unreasonably with respect to employment practices, at least absent statutory [2] or contractual [3] controls, a government employer is different. The government may only act fairly and reasonably.

This Court has long maintained that "the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure." *Truax* v. *Raich,* 239 U. S. 33, 41 (1915) (Hughes, J.). See also *Meyer* v. *Nebraska,* 262 U. S. 390, 399 (1923). It has also established that the fact that an employee has no contract guaranteeing work for a specific future period does not mean that as the result of action by the government he may be "discharged at any time for any reason or for no reason." *Truax* v. *Raich,* 239 U. S., at 38.

In my view, every citizen who applies for a government job is entitled to it unless the government can establish some reason for denying the employment. This is the "property" right that I believe is protected by the Fourteenth Amendment and that cannot be denied "without due process of law." And it is also liberty—liberty to work—which is the "very essence of the personal freedom and opportunity" secured by the Fourteenth Amendment.

This Court has often had occasion to note that the denial of public employment is a serious blow to any citizen. See, *e. g., Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S. 123, 185 (1951) (Jackson, J., concurring); *United States* v. *Lovett,* 328 U. S. 303, 316–317 (1946). Thus, when an application for public employment is denied or the contract of a government employee is not renewed, the government must say why, for it is only when the reasons underlying government action are known that citizens feel secure and protected against arbitrary government action.

Employment is one of the greatest, if not the greatest, benefits that governments offer in modern-day life. When something as valuable as the opportunity to work is at stake, the government may not reward some citizens and not others without demonstrating that its actions are fair and equitable. And it is procedural due process that is our fundamental guarantee of fairness, our protection against arbitrary, capricious, and unreasonable government action.

MR. JUSTICE DOUGLAS has written that

> It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law. [*Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U. S., at 179.]

And Mr. Justice Frankfurter has said that "[t]he history of American freedom is, in no small measure, the history of procedure." *Malinski* v. *New York,* 324 U. S. 401, 414 (1945). With respect to occupations controlled by the government one lower court has said that "[t]he public has the right to expect its officers . . . to make adjudications on the basis of merit. The first step toward insuring that these expectations are

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[1] Respondent has also alleged that the true reason for the decision not to rehire him was to punish him for certain statements critical of the University. As the Court points out, this issue is not before us at the present time.

[2] Such a procedure would not be contrary to the well-settled rule that § 1983 actions do not require exhaustion of other remedies. See, *e. g., Wilwording v. Swenson,* 404 U. S. 249 (1971); *Damico* v. *California,* 389 U. S. 416 (1967); *McNeese* v. *Board of Education,* 373 U. S. 668 (1963); *Monroe* v. *Pape,* 365 U. S. 167 (1961). One of the allegations in the complaint was that respondent was denied any effective state remedy and the District Court's staying its hand thus furthered than thwarted the purposes of § 1983.

[2] See, *e. g., Griggs* v. *Duke Power Co.,* 401 U. S. 424 (1971); 42 U. S. C. § 2000e.

[3] Cf. Note, Procedural "Due Process" in Union Disciplinary Proceedings, 57 Yale L. J. 1302 (1948).

realized is to require adherence to the standards of due process; absolute and uncontrolled discretion invites abuse." *Hornsby* v. *Allen*, 326 F. 2d 610 (CA5 1964).

We have often noted that procedural due process means many different things in the numerous contexts in which it applies. See, *e. g.*, *Goldberg* v. *Kelly*, 397 U. S. 262 (1970); *Bell* v. *Burson*, 402 U. S. 535 (1971). Prior decisions have held that an applicant for admission to practice as an attorney before the United States Board of Tax Appeals may not be rejected without a statement of reasons and a chance for a hearing on disputed issues of fact; [4] that a tenured teacher could not be summarily dismissed without notice of the reasons and a hearing; [5] that an applicant for admission to a state bar could not be denied the opportunity to practice law without notice of the reasons for the rejection of his application and a hearing; [6] and even that a substitute teacher who had been employed only two months could not be dismissed merely because she refused to take a loyalty oath without an inquiry into the specific facts of her case and a hearing on those in dispute.[7] I would follow these cases and hold that respondent was denied due process when his contract was not renewed and he was not informed of the reasons and given an opportunity to respond.

It may be argued that to provide procedural due process to all public employees or prospective employees would place an intolerable burden on the machinery of government. Cf. *Goldberg* v. *Kelly, supra.* The short answer to that argument is that it is not burdensome to give reasons when reasons exist. Whenever an application for employment is denied, an employee is discharged, or a decision not to rehire an employee is made, there should be some reason for the decision. It can scarcely be argued that government would be crippled by a requirement that the reason be communicated to the person most directly affected by the government's action.

Where there are numerous applicants for jobs, it is likely that few will choose to demand reasons for not being hired. But, if the demand for reasons is exceptionally great, summary procedures can be devised that would provide fair and adequate information to all persons. As long as the government has a good reason for its actions it need not fear disclosure. It is only where the government acts improperly that procedural due process is truly burdensome. And that is precisely when it is most necessary.

It might also be argued that to require a hearing and a statement of reasons is to require a useless act, because a government bent on denying employment to one or more persons will do so regardless of the procedural hurdles that are placed in its path. Perhaps this is so, but a requirement of procedural regularity at least renders arbitrary action more difficult. Moreover, proper procedures will surely eliminate some of the arbitrariness that results not from malice, but from innocent error. "Experience teaches . . . that the affording of procedural safeguards, which by their nature serve to illuminate the underlying facts, in itself operates to prevent erroneous decisions on the merits from occurring." *Silver* v. *New York Stock Exchange*, 377 U. S. 341, 366 (1963). When the government knows it may have to justify its decisions with sound reasons, its conduct is likely to be more cautious, careful, and correct.

Professor Gellhorn put the argument well:

> In my judgment, there is no basic division of interest between the citizenry on the one hand and officialdom on the other. Both should be interested equally in the quest for procedural safeguards. I echo the late Justice Jackson in saying: "Let it not be overlooked that due process of law is not for the sole benefit of the accused. It is the best assurance for Government itself against those blunders which leave lasting strains on a system of justice"—blunders which are likely to occur when reasons need not be given and when the reasonableness and indeed legality of judgments need not be subjected to any appraisal than one's own. [6 J. Soc. Pub. Teachers of L. 70 (1961).]

Accordingly, I dissent.

[4] *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117 (1926).
[5] *Slochower* v. *Board of Higher Education*, 350 U. S. 551 (1956).
[6] *Willner* v. *Committee on Character*, 373 U. S. 96 (1963).
[7] *Connell* v. *Higgenbotham*, 403 U. S. 207 (1972).

Charles R. Perry et al., Petitioners,
v.
Robert P. Sindermann, etc.

MR. JUSTICE STEWART delivered the opinion of the Court.

From 1959 to 1969 the respondent, Robert Sindermann, was a teacher in the state college system of the State of Texas. After teaching for two years at the University of Texas and for four years at San Antonio Junior College, he became a professor of Government and Social Science at Odessa Junior College in 1965. He was employed at the college for four successive years, under a series of one-year contracts. He was successful enough to be appointed, for a time, the cochairman of his department.

During the 1968–1969 academic year, however, controversy arose between the respondent and the College administration. The respondent was elected president of the Texas Junior College Teachers Association. In this capacity, he left his teaching duties on several occasions to testify before committees of the Texas Legislature, and he became involved in public disagreements with the policies of the college's Board of Regents. In particular, he aligned himself with a group advocating the elevation of the College to four-year status—a change opposed by the Regents. And, on one occasion, a newspaper advertisement appeared over his name that was highly critical of the Regents.

Finally, in May 1969, the respondent's one-year employment contract terminated and the Board of Regents voted not to offer him a new contract for the next academic year. The Regents issued a press release setting forth allegations of the respondent's insubordination.[1] But they provided him no official statement of the reasons for the nonrenewal of his contract. And they allowed him no opportunity for a hearing to challenge the basis of the nonrenewal.

The respondent then brought this action in a federal district court. He alleged primarily that the Regents' decision not to rehire him was based on his public criticism of the policies of the college administration and thus infringed his right to freedom of speech. He also alleged that their failure to provide him an opportunity for a hearing violated the Fourteenth Amendment's guarantee of procedural due process. The petitioners—members of the Board of Regents and the president of the College—denied that their decision was made in retaliation for the respondent's public criticism and argued that they had no obligation to provide a hearing.[2] On the basis of these bare pleadings and three brief affidavits filed by the respondent,[3] the District Court granted summary judgment for the petitioners. It concluded that the respondent had "no cause of action against the [petitioners] since his contract of employment terminated May 31, 1969, and Odessa Junior College has not adopted the tenure system."[4]

The Court of Appeals reversed the judgment of the District Court. *Sindermann* v. *Perry*, 430 F. 2d 939. First, it held that, despite the respondent's lack of tenure, the nonrenewal of his contract would violate the Fourteenth Amendment if it in fact was based on his protected free speech. Since the actual reason for the Regents' decision was "in total dispute" in the pleadings, the court remanded the case for a full hearing on this contested issue of fact. *Id.*, at 942–943. Second, the Court of Appeals held that, despite the respondent's lack of tenure, the failure to allow him an opportunity for a hearing would violate the constitutional guarantee of procedural due process if the respondent could show that he had an "expectancy" of re-employment. It, therefore, ordered that

[1] The press release stated, for example, that the respondent had defied his superiors by attending legislative committee meetings when college officials had specifically refused to permit him to leave his classes for that purpose.
[2] The petitioners claimed, in their motion for summary judgment, that the decision not to retain the respondent was really based on his insubordinate conduct. See n. 1, *supra*.
[3] The petitioners for whom summary judgment was granted, submitted no affidavits whatever. The respondent's affidavits were very short and essentially repeated the general allegations of his complaint.
[4] The findings and conclusions of the District Court—only several lines long—are not officially reported.

this issue of fact also be aired upon remand. *Id.*, at 943–944. We granted a writ of certiorari, 403 U.S. 917, and we have considered this case along with *Board of Regents* v. *Roth*, *ante*.

I

The first question presented is whether the respondent's lack of a contractual or tenure right to re-employment, taken alone, defeats his claim that the nonrenewal of his contract violated the First and Fourteenth Amendments. We hold that it does not.

For at least a quarter century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not act. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." *Speiser* v. *Randall*, 357 U. S. 513, 526. Such interference with constitutional rights is impermissible.

We have applied this general principle to denials of tax exemptions, *Speiser* v. *Randall*, *supra*, unemployment benefits, *Sherbert* v. *Verner*, 374 U. S. 398, 404–405, and welfare payments, *Shapiro* v. *Thompson*, 394 U. S. 618, 627 n. 6; *Graham* v. *Richardson*, 403 U. S. 365, 374. But, most often, we have applied the principle to denials of public employment. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 100; *Wieman* v. *Updegraff*, 344 U. S. 183, 192; *Shelton v. Tucker*, 364 U. S. 479, 485–486; *Torasco* v. *Watkins*, 367 U. S. 488, 495–496; *Cafeteria Workers* v. *McElroy*, 367 U. S. 886, 894; *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 288; *Baggett* v. *Bullitt*, 377 U. S. 360; *Elfbrandt* v. *Russell*, 384 U. S. 17; *Keyishian* v. *Board of Regents*, 385 U. S. 589, 605–606; *Whitehill* v. *Elkins*, 389 U. S. 54; *United States* v. *Robel*, 389 U. S. 258; *Pickering* v. *Board of Education*, 391 U. S. 563, 568. We have applied the principle regardless of the public employee's contractual or other claim to a job. Compare *Pickering* v. *Board of Education*, *supra*, with *Shelton* v. *Tucker*, *supra*.

Thus the respondent's lack of a contractual or tenure "right" to re-employment for the 1969–1970 academic year is immaterial to his free speech claim. Indeed, twice before, this Court has specifically held that the nonrenewal of a nontenured public school teacher's one-year contract may not be predicated on his exercise of First and Fourteenth Amendment rights. *Sheldon* v. *Tucker*, *supra*; *Keyishian* v. *Board of Regents*, *supra*. We reaffirm those holdings here.

In this case, of course, the respondent has yet to show that the decision not to renew his contract was, in fact, made in retaliation for his exercise of the constitutional right of free speech. The District Court foreclosed any opportunity to make this showing when it granted summary judgment. Hence, we cannot now hold that the Board of Regents' action was invalid.

But we agree with the Court of Appeals that there is a genuine dispute as to "whether the college refused to renew the teaching contract on an impermissible basis—as a reprisal for the exercise of constitutionally protected rights." 430 F. 2d, at 943. The respondent has alleged that his nonretention was based on his testimony before legislative committees and his other public statements critical of the Regents' policies. And he has alleged that this public criticism was within the First and Fourteenth Amendment's protection of freedom of speech. Plainly, these allegations present a *bona fide* constitutional claim. For this Court has held that a teacher's public criticism of his superiors on matters of public concern may be constitutionally protected and may, therefore, be an impermissible basis for termination of his employment. *Pickering* v. *Board of Education*, *supra*.

For this reason we hold that the grant of summary judgment against the respondent, without full exploration of this issue, was improper.

II

The respondent's lack of formal contractual or tenure security in continued employment at Odessa Junior College, though irrelevant to his free speech claim, is highly relevant to his procedural due process claim. But it may not be entirely dispositive.

We have held today in *Board of Regents* v. *Roth*, *ante*, that the Constitution does not require opportunity for a hearing before the nonrenewal of a nontenured teacher's contract, unless he can show that the decision not to rehire him somehow deprived him of an interest in "liberty" or that he had a "property" interest in continued employment, despite the lack of tenure or a formal contract. In *Roth* the teacher had not made a showing on either point to justify summary judgment in his favor.

Similarly, the respondent here has yet to show that he has been deprived of an interest that could invoke procedural due process protection. As in *Roth*, the mere showing that he was not rehired in one particular job, without more, did not amount to a showing of a loss of liberty.[5] Nor did it amount to a showing of a loss of property.

But the respondent's allegations—which we must construe most favorably to the respondent at this stage of the litigation—do raise a genuine issue as to his interest in continued employment at Odessa Junior College. He alleged that this interest, though not secured by a formal contractual tenure provision, was secured by a no less binding understanding fostered by the College administration. In particular, the respondent alleged that the College had a *de facto* tenure program, and that he had tenure under that program. He claimed that he and others legitimately relied upon an unusual provision that had been in the College official Faculty Guide for many years:

> *Teacher Tenure:* Odessa College has no tenure system. The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy in his work.

Moreover, the respondent claimed legitimate reliance upon guidelines promulgated by the Coordinating Board of the Texas College and University System that provided that a person, like himself, who had been employed as a teacher in the state college and university system for seven years or more has some form of job tenure.[6] Thus the respondent offered to

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[5] The Court of Appeals suggested that the respondent might have a due process right to some kind of hearing simply if he *asserts* to college officials that their decision was based on his constitutionally protected conduct. 430 F. 2d, at 944. We have rejected this approach in *Board of Regents* v. *Roth*, *ante*, at — n. 14.

[6] The relevant portion of the guidelines, adopted as "Policy Paper 1" by the Coordinating Board on October 16, 1967, reads:

"A. Tenure

"Tenure means assurance to an experienced faculty member that he may expect to continue in his academic position unless adequate cause for dismissal is demonstrated in a fair hearing, following established procedures of due process.

"A specific system of faculty tenure undergirds the integrity of each academic institution. In the Texas public colleges and universities, this tenure system should have these components:

"(1) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period for a faculty member shall not exceed seven years, including within this period appropriate full-time service in all institutions of higher education. This is subject to the provision that when, after a term of probationary service of more than three years in one or more institutions, a faculty member is employed by another institution, it may be agreed in writing that his new appointment is for a probationary period of not more than four years (even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years).

. . . . . .

"(3) Adequate cause for dismissal for a faculty member with tenure may be established by demonstrating professional incompetence, moral turpitude, or gross neglect of professional responsibilities."

The respondent alleges that, because he has been employed as a "full-time instructor" or professor within the Texas College and University System for 10 years, he should have "tenure" under these provisions.

prove that a teacher, with his long period of service, at this particular State College had no less a "property" interest in continued employment than a formally tenured teacher at other colleges, and had no less a procedural due process right to a statement of reasons and a hearing before college officials upon their decision not to retain him.

We have made clear in *Roth, ante,* at —, that "property" interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, "property" denotes a broad range of interests that are secured by "existing rules or understandings." *Id.,* at —. A person's interest in a benefit is a "property" interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing. *Ibid.*

A written contract with an explicit tenure provision clearly is evidence of a formal understanding that supports a teacher's claim of entitlement to continued employment unless sufficient "cause" is shown. Yet absence of such an explicit contractual provision may not always foreclose the possibility that a teacher has a "property" interest in re-employment. For example, the law of contracts in most, if not all, jurisdictions long has employed a process by which agreements, though not formalized in writing, may be "implied." 3 Corbin on Contracts, §§ 561–672A. Explicit contractual provisions may be supplemented by other agreements implied from "the promisor's words and conduct in the light of the surrounding circumstances." *Id.,* at § 562. And, "[t]he meaning of [the promisor's] words and acts is found by relating them to the usage of the past." *Ibid.*

A teacher, like the respondent, who has held his position for a number of years, might be able to show from the circumstances of this service—and from other relevant facts—that he has a legitimate claim of entitlement to job tenure. Just as this Court has found there to be a "common law of a particular industry or of a particular plant" that may supplement a collective-bargaining agreement, *Steelworkers* v. *Warrior & Gulf Co.,* 363 U. S. 574, 579, so there may be an unwritten "common law" in a particular university that certain employees shall have the equivalent of tenure. This is particularly likely in a college or university, like Odessa Junior College, that has no explicit tenure system even for senior members of its faculty, but that nonetheless may have created such a system in practice. See Byse & Joughin, Tenure in American Higher Education 17–28.[7]

In this case, the respondent has alleged the existence of rules and understandings, promulgated and fostered by state officials, that may justify his legitimate claim of entitlement to continued employment absent "sufficient cause." We disagree with the Court of Appeals insofar as it held that a mere subjective "expectancy" is protected by procedural due process, but we agree that the respondent must be given an opportunity to prove the legitimacy of his claim of such entitlement in light of "the policies and practices of the institution." 430 F. 2d, at 943. Proof of such a property interest would not, of course, entitle him to reinstatement. But such proof would obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency.

Therefore, while we do not wholly agree with the opinion of the Court of Appeals, its judgment remanding this case to the District Court is

Affirmed.

[7] We do not now hold that the respondent has any such legitimate claim of entitlement to job tenure. For "[p]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as State law. . . ." *Board of Regents* v. *Roth, ante,* at —. If it is the law of Texas that a teacher in the respondent's position has no contractual or other claim to job tenure, the respondent's claim would be defeated.

MR. JUSTICE POWELL took no part in the decision of this case.

MR. CHIEF JUSTICE BURGER, concurring.

I concur in the Court's judgments and opinions in *Perry* and *Roth,* but there is one central point in both decisions that I would like to underscore since it may have been obscured in the comprehensive discussion of the cases. That point is that the relationship between a state institution and one of its teachers is essentially a matter of state concern and state law. The Court holds today only that a state-employed teacher who has a right to re-employment under state law, arising from either an express or implied contract, has, in turn, a right guaranteed by the Fourteenth Amendment to some form of prior administrative or academic hearing on the cause for nonrenewal of his contract. Thus whether a particular teacher in a particular context has any right to such administrative hearing hinges on a question of state law. The Court's opinion makes this point very sharply:

> Property interests . . . are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law. . . ." *Board of Regents* v. *Roth, ante,* at pp. 12–13.

Because the availability of the Fourteenth Amendment right to a prior administrative hearing turns in each case on a question of state law, the issue of abstention will arise in future cases contesting whether a particular teacher is entitled to a hearing prior to nonrenewal of his contract. If relevant state contract law is unclear, a federal court should, in my view, abstain from deciding whether he is constitutionally entitled to a prior hearing, and the teacher should be left to resort to state courts on the questions arising under the state law.

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting in No. 71–162 and dissenting in part in No. 70–36.

Although I agree with Part I of the Court's opinion in No. 70–36, I also agree with my Brother MARSHALL "that respondent[s] [were] denied due process when [their] contract[s] [were] not renewed and [they were] not informed of the reasons and given an opportunity to respond." *Post,* at —. Since respondents were entitled to summary judgment on that issue, I would affirm the judgment of the Court of Appeals in No. 71–162, and, to the extent indicated by my Brother MARSHALL, I would modify the judgment of the Court of Appeals in No. 70–36.

MR. JUSTICE MARSHALL, dissenting in part.

Respondent was a teacher in the state college system of the State of Texas for a decade before the Board of Regents of Odessa Junior College decided not to renew his contract. He brought this suit in Federal District Court claiming that the decision not to rehire him was retaliation for his public criticism of the policies of the college administration in violation of the First Amendment, and that because the decision was made without giving him a statement of reasons and a hearing, it denied him the due process of law guaranteed by the Fourteenth Amendment. The District Court granted summary judgment for petitioners, but the Court of Appeals reversed and remanded the case for further proceedings. This Court affirms the judgment of the Court of Appeals.

I agree with Part I of the Court's opinion holding that respondent has presented a bona fide First Amendment claim that should be considered fully by the District Court. But, for the reasons stated in my dissenting opinion in *Board of Regents* v. *Roth,* No. 71–162, *ante,* at —, I would modify the judgment of the Court of Appeals to direct the District Court to enter summary judgment for respondent entitling him to a statement of reasons why his contract was not renewed and a hearing on disputed issues of fact.