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The Financial Responsibility Laws: A Timely Reappraisal of a Discriminatory Scheme

George Peterson

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THE FINANCIAL RESPONSIBILITY LAWS: A TIMELY REAPPRAISAL OF A DISCRIMINATORY SCHEME

The uncompensated victim of highway negligence has been a constant source of state legislative concern for almost fifty years.¹ In California, where almost ten percent of the nation's highway fatalities occur, this concern has been understandably acute.² Appropriately, in order to protect its residents from drivers who are both careless and judgment-proof, California enacted the Financial Responsibility Laws in 1929.³


² U.S. Bureau of the Census, Dep't of Commerce, 1970 Statistical Abstract of the United States 540. Based on figures from 1968, total deaths from motor vehicle accidents in the nation amounted to 54,862, 5,048 of which deaths occurred in California. Statistics compiled for the years 1950, 1955, 1960, 1965 and 1968 show California traffic deaths to be approximately ten percent of the nation's total. Id.


Briefly, the Code requires a report to be made to the Department of Motor Vehicles by drivers involved in accidents resulting in property damage in excess of $200 or in personal injuries. Cal. Veh. Code Ann. § 16000 (West 1971). Unless the driver was operating his employer's vehicle or can otherwise qualify for one of the exemptions specifically provided, the driver must deposit security in the amount which, in the opinion of the Department, will satisfy any judgments which may be recovered against him. Id. §§ 16002 (vehicle of employer), 16020 (security deposit), 16050-60 (exemptions). This security deposit is then made available for payment of final judgments or settlement agreements. Id. § 16026.

Exemptions to the security requirement are available if the vehicle involved is publicly owned (Id. § 16051), if the vehicle was parked at the time of the accident, or if no damage or injury was caused (Id. § 16052), if a release from liability, adjudication of nonliability, or settlement agreement is shown (Id. § 16053), or if the owner of the vehicle qualifies as a self-insurer by obtaining a certificate of self-insurance upon a showing that the person owns twenty-five or more vehicles. Id. § 16055. Usually, however, exemptions will be established by showing evidence of either insurance coverage or a bond with respect to liability arising from operation of the vehicle. Id. § 16057.

Failure of a driver to deposit security as required or to qualify for an exemption will result in suspension of his driving privileges, auto registration and license plates. Id. §§ 16080, 16100. This suspension will continue until security is deposited, or the driver establishes his exemption from the security requirement, or the suspension has been in
Similar legislative schemes are now found in all but three states.4

The California statutes are designed to encourage drivers to prepare themselves financially against potential tort liability. For most persons, however, such financial preparation necessitates the procurement of automobile liability insurance. Although liability insurance is not required as a condition to the issuance of a driver's license, if a driver becomes involved in an auto accident, he will be ordered to produce proof of insurance coverage or some other form of financial security.5 If he is unable to produce evidence of financial security, the driver will suffer the suspension of his operator's license, auto registration and license plates.6 Similarly, if the issue of liability is adjudicated, failure to satisfy a judgment will result in the suspension of license, registration and plates.7

effect for one year without an action being filed against the driver. Id. § 16105. In the latter event, the driver's license will not be reinstated until the driver can also establish his future ability to respond in damages. Id. § 16082.

Judgments obtained on a cause of action for damages to property in excess of $200 or for personal injuries in any amount which are left unsatisfied for thirty days will result in a mandatory suspension of the judgment-debtor's driver's license and the registration and license plates of all motor vehicles registered in his name. Id. § 16370. This suspension will remain in effect until the judgment is satisfied and the judgment-debtor gives proof of future ability to respond in damages. Id. § 16371. A discharge in bankruptcy does not relieve a judgment-debtor of any of the requirements of the Act. Id. § 16372. See text accompanying notes 15-47 for a discussion relating to the infirmities of this section.

Suspension for failure to satisfy a judgment may be avoided if the judgment-debtor can prove his financial responsibility for future damages and the trial court orders the judgment to be paid in installments. Id. § 16379. A default in an installment payment, however, will result in the suspension "forthwith" of driver's license, auto registration and license plates until the judgment is satisfied. Id. § 16381.

Suspension penalties for failure to satisfy judgments will be terminated and privileges restored after three years, even though the judgment remains unsatisfied, provided the judgment-debtor files proof of ability to respond in damages. Id. § 16482.

Persons required to furnish proof of ability to respond in damages may be released from that requirement after three years, provided they have not had their license suspended during that period. Id. § 16480.

6. Id. §§ 16080, 16100.
7. Id. § 16370.
Not surprisingly, the suspension of driver's licenses has inspired a variety of challenges to the constitutionality of several state statutes. Arguments have been couched in terms of denial of due process, denial of equal protection on the basis of wealth, bill of attainder, self-incrimination and improper delegation of judicial authority. With very few exceptions, however, the state courts have resisted the persuasion of these arguments and have upheld the suspension provisions. In so doing, the courts have emphasized that the police power, when exercised to provide compensation for victims of auto accidents, serves a legitimate state purpose. This judicial accentuation on the valid exercise of the police power in the area of automobile accident compensation, however, must now be reevaluated in light of the California Supreme Court's recent expansion of due process protections in areas other than financial responsibility. Two recent decisions of the United States Supreme Court similarly compel a reappraisal of the constitutionality of various provisions of state financial responsibility laws. Specifically, a statute commonly employed to reinforce the suspension of licenses for failure to satisfy judgments was recently ruled invalid under the Supremacy Clause after the Supreme Court determined that the state

8. See, e.g., Perez v. Campbell, 421 F.2d 619 (9th Cir. 1970), rev'd on other grounds, 402 U.S. 637 (1971) (suspension of license for failure to satisfy judgments arising out of automobile accidents does not constitute a bill of attainder); Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950) (suspension of license following an accident is not a denial of due process; authority of the Department of Motor Vehicles to determine the amount of security to be deposited does not constitute an improper delegation of judicial power); Watson v. Division of Motor Vehicles, 212 Cal. 279, 298 P. 481 (1931) (suspension of license for failure to satisfy judgments arising out of automobile accidents does not discriminate against the poor); Surtman v. Secretary of State, 309 Mich. 270, 15 N.W.2d 471 (1944) (financial responsibility laws are not invalid on grounds that they require self-incrimination); Commonwealth v. Koczwara, 78 Pa. D. & C. 6 (1951) (suspension of license for failure to deposit security following an accident is not a denial of due process).


10. See note 8 supra.


statute conflicted with the Federal Bankruptcy Act. In addition, the Court has held that the summary nature of the suspension for failure to provide security following an accident must be revised to accommodate a hearing prior to suspension.

The issues discussed herein will include the impact which these recent decisions will have upon state financial responsibility laws in general, and the California statutes in particular. An examination of the contention that financial responsibility laws deny equal protection to the poor will also be made. Finally, the latest California Supreme Court decision on the requirements of procedural due process in this area will be contrasted with a subsequent decision of the United States Supreme Court.

I. Perez v. Campbell: State Statutory Conflict With Federal Law

In Perez v. Campbell, the Supreme Court recently invalidated an Arizona statute which authorized the suspension of a judgment-debtor's driver's license and auto registration where the judgment was left unsatisfied, despite a discharge of the judgment in bankruptcy. Under the provisions of the Arizona Motor Vehicle Safety Responsibility Act, a discharge in bankruptcy does not relieve a judgment-debtor from the requirements of the Act. Thus, when a judgment against a discharged debtor remains unsatisfied for sixty days, the license and registration of a judgment-debtor is automatically suspended. This suspension is to remain in effect until both the judgment is satisfied and proof is shown of financial responsibility for a future period. Petitioners, husband and wife, were Arizona residents. Both had confessed judgment in an action arising out of the husband's negligent operation of their community property automobile. Although Mr. and Mrs. Perez each filed

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18. 402 U.S. at 638. Although Mrs. Perez was not present at the time of the accident and was not at fault in any manner, under Arizona community property laws she was a proper nominal party defendant in the action and a nominal judgment-debtor with respect to the community property. Donato v. Fishburn, 90 Ariz. 210, 367 P.2d 245 (1961).
a petition in bankruptcy and subsequently were discharged from the judgment against them, both were served with notice that their driver's licenses and auto registration were suspended for failure to pay the judgment.  

Proceeding in forma pauperis, Mr. and Mrs. Perez filed for injunctive and declaratory relief in the United States district court. Although the petitioners challenged the Arizona Act on several constitutional grounds, their complaint was dismissed for failure to state a claim under which relief could be granted, and the court of appeals affirmed. Petition for a writ of certiorari to the Supreme Court was subsequently granted.

Justice White's majority opinion considered only whether the Arizona Act was in conflict with the Bankruptcy Act and thus invalid under the Supremacy Clause insofar as it denied the effect of a discharge in bankruptcy. Specifically, the question presented was whether a state has the power, as part of a statutory scheme intended for the financial protection of auto accident victims, to suspend the driving privileges of a judgment-debtor, despite a discharge of the debt in bankruptcy.

It would appear beyond dispute that the Arizona Act was directly in conflict with the Federal Bankruptcy Act. The Supreme Court has described the power of Congress to establish uniform laws on bankruptcies as "unrestricted and paramount," excluding by clear implication any state laws which interfere with or complement federal regulation. The Bankruptcy Act is intended to give debtors "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." Since it is well settled that a judgment for tort is a provable debt dischargeable in bankruptcy, a tort

21. The petitioners asserted (1) that the Arizona statute was in conflict with the Federal Bankruptcy Act and thus invalid under the Supremacy Clause, (2) that it operated discriminatorily on the poor, and (3) that it unfairly penalized an innocent spouse in a community property state. 421 F.2d at 621-23.
22. Id. at 621.
24. 402 U.S. at 643.
27. Id. at 244. Accord, Stellwagen v. Clum, 245 U.S. 605, 617 (1918).
judgment-debtor clearly is encompassed within the scope and purpose of the Act.

Nevertheless, as recently as 1962 the Supreme Court upheld a Utah statute similar to the Arizona provision in question in Perez.29 In Kesler v. Department of Public Safety30 the Court found that the state statute in question was an appropriate measure for promoting highway safety and was not intended to subvert the purposes of the Bankruptcy Act.31 The Kesler Court noted the precedent established in Reitz v. Mealy,32 where a financial responsibility law was viewed as a safety measure intended to prevent injury from careless and irresponsible drivers. This public policy would be frustrated if a reckless driver were permitted to escape judgments obtained against him by “the simple expedient of voluntary bankruptcy.”33 The Kesler Court recognized that states are not forbidden from attaching any consequences whatsoever to debts discharged in bankruptcy,34 and concluded that where the police power of the state was exerted to protect life and limb it should not be frustrated because of a tangential bearing on the purposes of the Bankruptcy Act.35 Thus, under Reitz and Kesler, an expeditious finding that state statutes were intended to be safety measures would suffice to prevent their invalidation under the Supremacy Clause.

In Perez, however, the Court was no longer inclined to denominate a financial responsibility act as a “safety measure.” Both Kesler and Reitz had divined the purpose of the statutes in question without citing state court authority and, to this extent, these decisions omitted a basic step in the proper analysis of Supremacy Clause issues.36 Recognizing these prior omissions, the Perez Court employed a two-step approach to the resolution of the Supremacy Clause issue. First, the proper construction of the Arizona statute was ascertained through an examination

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30. Id.
32. 314 U.S. 33 (1941).
33. 369 U.S. at 169, citing Reitz v. Mealey, 314 U.S. at 37.
34. 369 U.S. at 170-71, citing Zavelo v. Reeves, 227 U.S. 625, 629 (1913) (despite a discharge in bankruptcy, a moral obligation to pay a debt remains, and is sufficient to permit enforcement of a new promise subsequent to discharge even though the promise is not supported by new consideration); Spalding v. New York ex rel. Backus, 45 U.S. (4 How.) 21 (1846) (bankruptcy does not prevent a state from collecting and turning over to a creditor a fine for contempt of an injunction issued to aid in the execution of a judgment debt).
35. 369 U.S. at 172.
of relevant Arizona decisions. The Bankruptcy Act was similarly considered in light of Supreme Court decisions. The two statutes were then compared to determine whether a conflict existed. If the state statute was found to stand as “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress . . .”, it would fail the constitutional test.

Arizona decisional law revealed that the primary purpose of the Arizona Act was to assure compensation for accident victims, rather than to deter highway negligence. When this purpose was compared with the purposes underlying the Federal Bankruptcy Act, it was clear that the federal law and the Arizona statute were irreconcilable. Since the statute operated as an impediment to the accomplishment of the purposes and objectives of Congress, it was rendered invalid under the Supremacy Clause.

California's Vehicle Code section 16372 is substantively identical to the Arizona statute which was held invalid in Perez. The Cali-

37. Id. at 644.
38. Id. at 649, quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941).
   The Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons.
   to give monetary protection to that ever changing and tragically large group of persons who while lawfully using the highways themselves suffer grave injury through the negligent use of those highways by others.
   Even under the rationale of Kesler and Reitz, the Arizona statute could not be upheld. 402 U.S. at 654. The statute does not have merely a tangential bearing on the purposes of the Bankruptcy Act, but is in direct conflict with that Act. Id. Further, it appears that the enactment was not primarily a result of the exercise of the pervasive police power to protect life and limb. The Perez Court was persuaded that the many avenues available for avoidance of suspension under the Arizona Act supported the construction in Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963), that the legislation was not intended primarily as a safety measure. 402 U.S. at 646-48.
40. The major purpose underlying the Bankruptcy Act is noted in Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (to give debtors a new opportunity in life unencumbered by the pressure and discouragement of preexisting debt).
41. 402 U.S. at 652.
42. See note 16 supra.
fornia financial responsibility laws have also been construed as a compensatory measure for the protection of accident victims rather than as a safety measure directed at deterring negligent drivers. In the leading case of *Continental Casualty Co. v. Phoenix Construction Co.*,\(^4\) the California Supreme Court determined that the purpose of the financial responsibility laws was “to give monetary protection to that ever changing and tragically large group of persons who while lawfully using the highways themselves suffer grave injury through the negligent use of those highways by others.”\(^4\) As such, under the mandate of *Perez*, section 16372 is clearly violative of the Supremacy Clause.

The holding in *Perez*, however, is not limited in application to similar sections of financial responsibility laws which, as in Arizona and California, are intended to provide compensation rather than deter highway negligence. The *Kesler* and *Reitz* decisions were aberrational not only in the manner in which they assumed the safety purpose of the statutes but also in their basic approach to the Supremacy Clause issue. In both cases, state enactments which denied effect to a discharge in bankruptcy were upheld on the ground that the purpose of the state legislature was not to frustrate the federal law but rather to promote safety.\(^4\) In *Perez*, the Court commented that

such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law.\(^4\)

Thus, regardless of the purpose of the legislation, state enactments are invalid under the Supremacy Clause if they have the effect of frustrating the operation of federal law.\(^4\)

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\(^43\). 46 Cal. 2d 423, 296 P.2d 801 (1956).

\(^44\). *Id.* at 434, 296 P.2d at 808.

The Statute before us is Utah's Motor Vehicle Safety Responsibility Act—a measure directed towards promoting safety in automobile traffic by administrative and compensatory remedies calculated to restrain careless driving. Its purpose is wholly unrelated to the purposes of the Bankruptcy Act.

The penalty which § 94-b [of the New York financial responsibility law] imposes for injury due to careless driving is not for the protection of the creditor merely, but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. . . . Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety.

\(^47\). *Id.*
II. FOURTEENTH AMENDMENT INFIRMITIES

A. Equal Protection

While the holding in *Perez* dealt only with the invalidity of a single provision in Arizona's financial responsibility laws, it is submitted that the very foundation of those and similar laws rests on constitutionally infirm grounds. For example, California Vehicle Code section 16020, though subject to various exemptions, requires a security deposit or other demonstration of financial responsibility by all persons involved in an auto accident which may result in a judgment in excess of two hundred dollars for property damage or in any amount for bodily injury. On its face the statute affects all persons equally. However, its potential invalidity lies in the manner and method in

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48. The remaining focus of this Comment is primarily devoted to pre-judgment procedure and suspension. However, it should be noted that in California, as well as in Arizona, unsatisfied judgments arising from the operation of a motor vehicle will result in suspension of the judgment-debtor's license and registration. CAL. VEH. CODE ANN. § 16370 (West 1971); ARIZ. REV. STAT. ANN. § 28-1162(A) (1956). The statutes have been construed to apply to judgment-debtors who, though not personally at fault, are nonetheless vicariously liable. See Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200, 35 P.2d 359 (1934); accord, Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963). The result is particularly odious if invoked against the innocent wife named as a party defendant. Although the Supreme Court did not adjudicate the issue, this in fact was the case in *Perez*, 402 U.S. at 653 n.14.

While liability does not attach to the wife in California if the automobile is community property, should the vehicle be held in tenancy-in-common or in joint tenancy the wife co-owner may be liable for the imputed negligence of her spouse. Wilcox v. Berry, 32 Cal. 2d 189, 195 P.2d 414 (1948). See CAL. VEH. CODE ANN. § 17150 (West 1971). The innocent wife's driver's license may thus be suspended as a result of her husband's negligence. See Cooke v. Tsiouraglou, 59 Cal. 2d 660, 381 P.2d 940, 31 Cal. Rptr. 60 (1963); Charles, Ending the Separate Property Presumption in Auto Accident Cases, 40 CAL. ST. B.J. 715 (1965).

To impute the husband's negligence to the wife on the basis of the statutory legal fiction of implied consent, and thus to subject her to license suspension under these circumstances, would constitute an arbitrary policy denying the wife fundamental fairness required by due process. Furthermore, suspension without fault in this situation would be unreasonable and would serve no purpose. The wife has not been adjudged negligent, and thus the public interest in highway safety would not be promoted by punishing the innocent spouse. Nor is she generally able to procure insurance for the financial protection of the victims of her husband's automotive accidents, since the managerial power over community assets is left to the husband. CAL. CIV. CODE § 5125 (West 1970). In this factual context, vicarious liability coupled with license suspension would serve no substantial relation to the objects purported to be served by the statutory application and fundamental principles of due process would thus be put in potential jeopardy. See Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969); Commonwealth v. Bates, 17 Pa. D. & C. 626 (1932).

49. CAL. VEH. CODE ANN. §§ 16050-60 (West 1971); see note 3 supra.

50. CAL. VEH. CODE ANN. § 16020 (West 1971).
which it is applied.\textsuperscript{51} The lower financial stratum of society will be the class most likely to feel the weight of the security requirement. Not being in a position to deposit security, this class will effectively be penalized under the suspension provisions, which provide that the failure of a driver to deposit security or to qualify for an exemption will result in the suspension of his driver’s license, auto registration, and license plates.\textsuperscript{52}

While the suspension for failure to deposit security following an accident has been upheld by various state courts against the challenge that such statutes deny equal protection of the laws to the poor,\textsuperscript{53} it is doubtful that the reasoning in those decisions remains valid in light of subsequent United States Supreme Court rulings regarding discriminatory line-drawing by the states on the basis of wealth.\textsuperscript{54}

\begin{itemize}
\item \textsuperscript{51} See Yick Wo v. Hopkins, 118 U.S. 356 (1886) (holding that an otherwise valid statute is invalid if unconstitutionally applied).
\item \textsuperscript{52} Cal. Veh. Code Ann. \S 16080, 16100 (West 1971). The harsh manner in which the financial responsibility laws operate against the poor was recognized in California as early as 1930. In \textit{In re Lindley}, 108 Cal. App. 258, 260-61, 291 P. 638, 639 (1930), \textit{overruled on other grounds}, Watson v. State Div. of Motor Vehicles, 212 Cal. 279, 298 P. 481 (1931), the court stated:

\begin{quote}
The provision for cancellation of license to drive based upon the ability to satisfy a money damage judgment gives to the person of means a distinct advantage which has no connection whatsoever with his ability to drive, and deprives another person of a valuable property right because of his lack of means, thus unfairly discriminating against him. This is in the nature of providing a penalty and amounts to a denial of the equal protection of the laws, and should not be tolerated.
\end{quote}

The statutes in 1930 are as do the present statutes, permitted those drivers capable of paying judgments against them to retain their operator’s licenses and registration, regardless of how careless they were, while those too poor to satisfy judgments against them suffered the loss of driving privileges. California Vehicle Act of 1929, \S 73(g), \[1929\] Cal. Stat. 561, \textit{as amended}, Cal. Veh. Code Ann. \S 16370 (West 1971). Although in 1931 the California Supreme Court denied the contention that the statute discriminated unfairly on the basis of wealth (Watson v. State Div. of Motor Vehicles, 212 Cal. 279, 284, 298 P. 481, 483 (1931)), the legislature headed off further challenges on those grounds by adding section 16379 to the Vehicle Code. \textit{See} Vehicle Code of 1935, ch. 27, \S 416, (1935) Cal. Stat. 159-60 (codified at Cal. Veh. Code Ann. \S 16379 (West 1971)). Section 16379 permits judgment-debtors who have either insufficient insurance or no insurance at all to satisfy judgments in installments without losing their license. Although the section has not been challenged in the court on an equal protection theory, it would appear that little strength remains in the argument that the impoverished judgment-debtor may lose his license because of line-drawing by the state on the basis of wealth. However, no provision similar to the installment plan for judgment-debtors exists to relieve the license suspension of those who cannot provide security.

\item \textsuperscript{53} See, e.g., Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 822 P.2d 1 (1950); Doyle v. Kahl, 242 Iowa 153, 46 N.W.2d 52 (1951); State v. Finley, 198 Kan. 585, 426 P.2d 251 (1967); Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952).
\item \textsuperscript{54} See, e.g., Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Douglas v.
reappraisal of the operational effect of such suspension provisions and their impact on persons of meager financial means is in order. Consideration must be given both to the legislative purpose which the statutes purport to serve and to the nature of the individual interest affected.

In California, the security provision of section 16020 has a substantial impact only upon those persons financially unable to meet the security requirements. Upper and middle class drivers generally may choose the means to avoid license suspension—whether by obtaining liability insurance, by depositing security or possibly by qualifying as self-insurers. Since a self-insurer has to be the registered owner of at least twenty-five cars, or post a $15,000 to $30,000 security bond in lieu thereof, it is doubtful that a lower-middle class driver could qualify. The only available alternative, therefore, is liability insurance. Nevertheless, even this alternative may be unattainable in light of the practical circumstances of poverty which increase the cost of liability insurance simply as a consequence of being poor. Persons in the lowest income stratum often find housing avail-


In Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950), the court relied upon Watson v. State Div. of Motor Vehicles, 212 Cal. 279, 298 P. 480 (1931), in affirming the validity of the financial responsibility laws. The Watson court had stated:

The fallacy in this argument [that suspension discriminates against the poor] lies in the failure to distinguish between equality of opportunity and ability to take advantage of the opportunity which is offered to all. . . . The equality of the Constitution is the equality of right and not of enjoyment. A law that confers equal rights on all citizens of the state, or subjects them to equal burdens, is an equal law. Id. at 284, 298 P. at 483 (citation omitted).

The Watson court was persuaded to this position by the advisory opinion of the Massachusetts Supreme Court to the legislature of that state in In re Opinion of the Justices, 251 Mass. 617, 618, 147 N.E. 680, 680-81 (1925), wherein it was stated:

We think that the Legislature may declare that no person shall have a license to operate a motor vehicle upon public ways until he has satisfied any outstanding judgment against him founded on previous operation of a motor vehicle. A statute of that nature may have a tendency to prevent conduct by a licensee capable of being the basis of such a judgment, and thus promote the public safety. It would have a tendency to keep off the highway those shown by their conduct to be dangerous to other travellers. It may be thought by the Legislature that such a judgment debtor . . . was not a fit person to be intrusted again with the responsibility of operating a motor vehicle on the public ways.

It is questionable whether this reasoning would be valid today in the light of the United States Supreme Court decisions, supra, holding state line-drawing on the basis of wealth invalid as a denial of equal protection of the laws.


56. See CAL. VEH. CODE ANN. §§ 16050-60 (West 1971) (exemptions from the security requirement).
able only in high density urban areas. As a result, they are required to pay much higher premiums than are those who live in a suburban community.\textsuperscript{57} The frequent inability of the poor to come forward with insurance policies increases the probability that they will ultimately suffer license and registration suspension. Thus, in its practical effect, section 16020 inescapably discriminates on the basis of wealth.\textsuperscript{58}

The security and suspension provisions are not invalid merely because they weigh more heavily on the poor than on persons of financial means. While the Equal Protection Clause of the Fourteenth Amendment does not require absolute equality, state enactments may not impose special burdens on certain groups unless the laws serve legitimate legislative purposes and do not discriminate invidiously.\textsuperscript{59} The traditional equal protection standard requires a reasonable relationship between classifications created by state line-drawing and the purpose for which the classifications are made.\textsuperscript{60} The validity of the financial responsibility laws, therefore, depends upon whether there exists a reasonable relationship between the legislative purpose of providing a pre-judgment fund for possible compensation of victims of negligent

\textsuperscript{57} FTC, Division of Industry Analysis, Report on Price Variability in the Automobile Insurance Market 97 (1970): “Exceptionally high prices overall result from the combination of high loss potential buyers in high density territories.” Whether an individual “lives in squalor or in attractive and orderly surroundings; how he dresses and acts; whether he changes jobs frequently or is vocationally stable” are all factors which are considered in insurance underwriting. \textit{Id. See also} Olson, The Price and Availability of Automobile Liability Insurance in the Nonstandard Market (1971).

Judicial notice of the plight of the poor in the insurance market was taken in Miller v. Anckaitis, 436 F.2d 115, 120 (3d Cir. 1970), where the court stated:

[O]ne cannot ignore the facts of present-day urban existence. A combination of public and private policies have made use of an automobile an actual necessity for virtually everyone who must work for a living. For the urban poor, in particular, remoteness from the thriving suburban segment of the industrial economy and a deteriorating public transportation system often make use of an automobile the only practical alternative to welfare. There is, of course, the option of insuring adequately. But for the same urban poor the skyrocketing cost of automobile insurance, for which they pay higher premiums than their more affluent suburban neighbors, often makes that alternative impractical.


drivers and the adopted means of suspending driver's licenses for failure to provide security following an accident. In order to justify these means, there must appear a sufficiently rational correlation between an individual's lack of insurance or inability to deposit security, and financial irresponsibility.\textsuperscript{61}

The purpose of the financial responsibility laws generally is to provide a fund from which the victim of a negligent driver may be compensated after judgment.\textsuperscript{62} The security requirement, however, is merely supplemental to the accomplishment of this general purpose.\textsuperscript{63} Whether the security provision is successful in accomplishing its purpose is dependent upon the effectiveness of the threat of suspension as an inducement to the voluntary purchase of liability insurance. And whether the threatened suspension will actually be invoked is determined by the financial means of those who become involved in auto accidents and who must therefore comply with the requirements of the financial responsibility laws. As has been shown, the suspension provision will be invoked primarily against those persons who are financially unable to post security or to obtain liability insurance. While the threat of suspension encourages persons of means to voluntarily insure or to take other financial precautions against the possibility of having to deposit security, the same provision has no such effect upon the poor. As it applies to them, the suspension provision has no relation to the

\textsuperscript{61} See Wood v. Public Utilities Comm'n, 4 Cal. 3d 288, 301, 480 P.2d 823, 832, 93 Cal. Rptr. 455, 464 (1971) (dissenting opinion).


\textsuperscript{63} Initially the purposes of financial responsibility laws were achieved by the threat of suspension of license and registration where judgments were left unsatisfied. Future victims of a negligent driver were protected by the further requirement that proof of future ability to respond in damages be shown before a suspended license would be reinstated. \textit{See} CAL. VEH. CODE ANN. § 16379 (West 1971). \textit{See generally} Kesler v. Department of Pub. Safety, 369 U.S. 153 (1962); Feinsinger, \textit{The Operation of Financial Responsibility Laws}, 3 LAW & CONTEMP. PROB. 519 (1936). The earlier financial responsibility laws, however, were generally considered to be inadequate for the protection of a negligent driver's first victim. Careless drivers who were financially irresponsible were given "one free bite" because of the victim's lack of incentive to bring an action or to enforce a judgment. By the adoption of security requirements, the first victim of a negligent driver was given some assurance that an action against a potential defendant would be worth pursuing. Once the action was commenced, the amount deposited as security or the existing insurance coverage would be available to satisfy a judgment. Thus, the security requirement supplements the threat of suspension for failure to satisfy a judgment, and provides the first victim of a careless driver with a financially responsible defendant. \textit{See} Hayes, \textit{Are the Financial Responsibility Laws in Need of Revision?}, 4 INS. COUNSEL J. 617, 618 (1971).
purpose of providing a fund for compensation. In fact, the suspension provision when invoked against the poor often has the adverse effect of decreasing the probability of victim recovery after judgment since the licensee is denied a mode of transportation that may be essential to his continued employment.\textsuperscript{64}

Additionally, an individual's inability to procure insurance or to provide a bond for security prior to the institution of a legal action against him does not relate to that person's ability to satisfy a potential judgment. While poverty may prevent some persons from voluntarily paying insurance premiums—the amounts of which may be entirely out of proportion to their income—this fact does not necessarily indicate that they will be unable to pay a judgment under the installment provision of the Vehicle Code.\textsuperscript{65} Since the installment section does not specify a minimum amount for an installment payment, the trial judge may set an amount which may be less burdensome than insurance premiums.\textsuperscript{66}

If the suspension for failure to deposit security is to be upheld against the challenge that it operates unfairly against a particular class, it may be essential that the particular provision bear more than a reasonable relation to the legislative purpose of providing compensation. Indeed, the provision may be scrutinized to determine whether it represents a "compelling state interest" in order to withstand the challenge. The applicability of the test in resolving an equal protection issue is dependent upon the subject matter being regulated and the nature of the regulation. Where the implicit classification of persons against whom a statute will operate is drawn on the basis of wealth,\textsuperscript{67} and where the interest involved may be described as "fundamental",\textsuperscript{68} the provision will be subjected to the rigid compelling state interest test.\textsuperscript{69}


\textsuperscript{65} CAL. VEH. CODE ANN. §§ 16379-81 (West 1971).

\textsuperscript{66} Id. § 16380. Even though a judgment may be paid in very small installments, this does not necessarily mean that the judgment-creditor will have to wait for his award to be delivered to him piecemeal. If the judgment-creditor was covered by a policy of liability insurance at the time of the accident he may obtain prompt compensation from his insurance carrier under the terms of the mandatory uninsured motorist coverage. CAL. INS. CODE ANN. § 11580.2 (West Supp. 1971). See generally Chadwick & Poche, California's Uninsured Motorist Statute: Scope and Problems, 13 HAST. L.J. 194 (1961).

\textsuperscript{67} E.g., cases cited note 58 supra.


\textsuperscript{69} E.g., McDonald v. Board of Elections Comm'rs, 394 U.S. 802 (1969); Skinner v. Oklahoma, 316 U.S. 535 (1942).
other hand, the traditional reasonable relationship test is usually applied in the area of economic regulation.\textsuperscript{70}

The financial responsibility laws clearly discriminate on the basis of wealth.\textsuperscript{71} However, it is not yet settled whether this classification alone, in the absence of a fundamental interest, will invoke the compelling state interest test.\textsuperscript{72} As such, in testing the validity of the financial responsibility laws it is necessary to determine whether a fundamental interest is infringed by their enforcement.

In California, the nature of the interest involved in a driver's license has been recognized as fundamental upon the theory that the right to use the highways is inalienable.\textsuperscript{73} Other courts have determined that since a license is often essential for employment, it is inextricably bound to the right of the individual to earn a livelihood.\textsuperscript{74} Further, a

\begin{footnotesize}
\begin{enumerate}
\item In Wood v. Public Utilities Comm'n, 4 Cal. 3d 288, 481 P.2d 823, 93 Cal. Rptr. 455 (1971), the California Supreme Court found equal protection of the law was not denied petitioners who were required to establish credit by a cash deposit as a condition to receipt of utility services, while property owners, persons with continued two-year employment, and others were exempt from such credit requirements. In so holding, the court deemed the "field" to be one of economic regulation, and applied the reasonable relationship test in scrutinizing the Public Utilities Commissions' rules. \textit{Id.} at 294, 481 P.2d at 827, 93 Cal. Rptr. at 459.
\item The financial responsibility laws, however, were not enacted in the "field of economic regulation"; rather, their primary purpose is to compensate victims of negligent drivers. \textit{See} note 62 and accompanying text \textit{supra}. Thus, should it be established that they classify on the basis of wealth and infringe upon a fundamental interest, the courts, in examining their validity, would subject them to the compelling state interest test. \textit{See} note 69 \textit{supra}.
\item See text accompanying notes 54-58 \textit{supra}.
\item In McDonald v. Board of Election Comm'rs, 394 U.S. 802 (1969), Chief Justice Warren noted in dictum that:
\begin{quote}
[A] careful examination on our part is especially warranted where lines are drawn on the basis of wealth or race, . . . two factors which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny. \textit{Id.} at 807 (emphasis added).
\end{quote}
However, an examination of those cases involving suspect classifications based upon wealth reveals that a fundamental interest has always been involved. \textit{See}, e.g., Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1971) (right to vote); Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel). Further, in James v. Valtierra, 402 U.S. 137 (1971), the Court, in upholding a low-income housing referendum requirement under the traditional reasonable relationship test, ignored the apparent discrimination on the basis of wealth.
\item Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950). A similar construction has been afforded in at least one other jurisdiction. People v. Nothaus, 363 P.2d 180 (Colo. 1961).
\end{enumerate}
\end{footnotesize}
license may be considered to be an inherent part of the constitutionally protected right to travel. Thus, where social conditions have made reliance upon the privately-owned automobile an economic imperative, it would be unrealistic to insist that the suspension provision merely deprives persons of a single mode of transport. At a time when a premium is placed on personal mobility and when the manner of transportation appears varied, it is perhaps easy to overlook the fact that, for the poor, the automobile is often the sole means of mobility. Further, when statistics verify the fact that in the overwhelming majority of cases the private automobile is a necessary incident to all personal travel, it seems apparent that the suspension provision operates as an impediment to the free exercise of the right to travel.

It is not necessary that a questioned statute directly obstructs the right to travel in order to invoke the compelling state interest standard. Rather, it is sufficient that the statute pose merely an indirect infringe-
ment upon the free exercise of the right.\textsuperscript{78} Though the Supreme Court has not yet indicated what would constitute a compelling state interest where retention of a driver's license is involved, it seems clear that the state's interest in providing a solvent defendant for persons involved in auto accidents cannot be considered so compelling as to warrant the suspension of an allegedly negligent person's driver's license. Further, while providing compensation for victims of highway accidents is a legitimate goal of the police power,\textsuperscript{79} this goal may not be achieved by legislative means which broadly deny individuals their fundamental interests when the ends can be more narrowly attained.\textsuperscript{80}

A less onerous alternative to suspension for failure to provide security is available in the form of a state unsatisfied judgment fund. Such a fund has been adopted in other states\textsuperscript{81} and would function in the same manner as the current suspension provision, without the harsh penalty of suspension. Judgment-creditors would be guaranteed prompt payment from the fund, which would then be subrogated to the rights of the judgment-creditor. The fund would be reimbursed by the negligent driver, who would be permitted to make payments under the installment section of the Vehicle Code.\textsuperscript{82} Additionally, the state might also consider a form of risk distribution similar to workmen's compensation as a substitute for the current financial responsibility scheme.\textsuperscript{83}


80. Shapiro v. Thompson, 394 U.S. 618, 637 (1969) (a one-year waiting period initiated as a safeguard against fraudulent receipt of welfare benefits was held invalid because less drastic means were available). The Court stated in \textit{Shapiro} that "it is unreasonable to accomplish this objective by the blunderbuss method of denying assistance to all indigent newcomers for an entire year." \textit{Id.} at 637. Shelton v. Tucker, 364 U.S. 479, 488 (1960) (governmental purposes, even though legitimate and substantial, may not be pursued by means that broadly stifle fundamental personal liberties when less drastic means are available); Dean Milk Co. v. City of Madison, 340 U.S. 349, 354 (1951) (a discriminatory statute is invalid, even though enacted in exercise of state or local power to protect health and safety, if reasonable nondiscriminatory alternatives are available).


82. See notes 65-66 supra.

83. See COLUMBIA UNIVERSITY COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES, REPORT BY THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS
B. Due Process and Summary Suspension

The California Vehicle Code provides a summary procedure for determining whether an operator's license and an owner's registration should be suspended for failure to deposit security following an accident.\textsuperscript{84} The normal administration of the suspension provisions eliminates any hearing or determination of fault prior to suspension. In \textit{Escobedo v. Department of Motor Vehicles},\textsuperscript{85} the California Supreme Court upheld this summary proceeding, recognizing that the Code does not "necessarily" provide a hearing prior to suspension for failure to provide security.\textsuperscript{86} Rather, what was contemplated under the Code was a summary suspension subject to subsequent judicial review.\textsuperscript{87} Although the court described the use of the public highways for travel as a fundamental right,\textsuperscript{88} and not merely a privilege,\textsuperscript{89} it nevertheless determined

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\textsuperscript{84} CAL. VEH. CODE ANN. §§ 16080, 16100 (West 1971).
\textsuperscript{85} 35 Cal. 2d 870, 222 P.2d 1 (1950).
\textsuperscript{86} Id. at 870, 222 P.2d at 1. In \textit{Escobedo}, the court noted that while CAL. VEH. CODE ANN. § 315, as amended, CAL. VEH. CODE ANN. §§ 13950-53 (West 1971), provided a pre-suspension hearing upon written request, such hearings were expressly denied where suspension was mandatory. Since suspension for failure to deposit security following an accident was mandatory, the court determined that "it was not contemplated that the department necessarily should give an operator opportunity to be heard before it determined the amount of security required and notified him that his license would be suspended unless he deposited such sum." 35 Cal. 2d at 875, 222 P.2d at 4-5.
\textsuperscript{87} Id. at 877, 222 P.2d at 5.
\textsuperscript{88} Id. at 875, 222 P.2d at 5.
\textsuperscript{89} Id. Earlier decisions, generally dealing with the suspension of license and registration for failure to pay judgments arising out of auto accidents, justified the suspension as a legitimate exercise by the state of its power to revoke a conditional privilege. By denoting the operator's license as a privilege, the state could subject the grant to conditions with little or no regard for the interests of the licensee. \textit{E.g.}, Watson v. Division of Motor Vehicles, 212 Cal. 279, 283, 298 P. 481, 483 (1931); Serenko v. Bright, 263 Cal. App. 2d 682, 70 Cal. Rptr. 1 (1968); La Plante v. State Bd. of Pub. Rds., 47 R.I. 258, 260-61, 131 A. 641, 642-43 (1926), disapproved in Berberian v. Lussier, 139 A.2d 869, 873 (R.I. 1958).

Although the "right" vs. "privilege" dichotomy still persists, it is no longer widely held that the individual's interest, whether described as a "privilege," "property right," "entitlement" or "necessary incident to the right to travel," may be terminated without observance of due process of law. \textit{See} Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963) (license interwoven with right to use highways); \textit{Escobedo v. Department of Motor Vehicles}, 35 Cal. 2d 870, 222 P.2d 1 (1950) (license interwoven with the right to use highways); Hughes v. Department of Pub. Safety, 79 So. 2d 129 (La. 1955) (license held to be a privilege, though it may not be terminated capriciously); Berberian v. Lussier, 139 A.2d 869 (R.I. 1958) (use of highways held to be a right in the nature of a liberty and a necessary adjunct to the earning of a livelihood.
that this "primary right of the individual" could be abrogated without a hearing. A summary suspension was not inconsistent with the demands of procedural due process where the denial of a hearing was reasonably justified by a compelling public interest.\textsuperscript{90} The court found a compelling public interest appeared from the obvious carelessness and financial irresponsibility of a substantial number of drivers as well as from the administrative burdens which the court foresaw if the state was required to provide hearings for all persons failing to meet the security requirements.\textsuperscript{91}

\textsuperscript{90} Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 876, 222 P.2d 1, 5 (1950).

\textsuperscript{91} Id. at 877, 222 P.2d at 5-6. In support of its contention that the denial of a hearing would not violate due process if reasonably justified by a compelling public interest, the court cited Bourjois v. Chapman, 301 U.S. 183 (1937), and Phillips v. Commissioner, 283 U.S. 589 (1931). In Phillips, a public interest was found in the immediate collection of revenues by the federal government. \textit{Id.} at 598. In \textit{Bourjois}, immediate protection of the public health was the compelling public interest, justifying regulation or prohibition of injurious cosmetic preparations without prior hearing. 301 U.S. at 189. The public interest in guaranteeing the eventual indemnification of judgment-creditors in automobile cases, however, certainly appears to be of a less urgent nature. In Greene v. McElroy, 360 U.S. 474, 507 (1959), the Court, by way of dicta, questioned whether the national security justified revocation of an engineer's security clearance without a full hearing. People v. Noggle, 7 Cal. App. 2d 14, 45 P.2d 430 (1935), involved a situation where the suspension of a driver's license was due to the licensee's physical disability. The court held that the statute should be construed to require notice and a hearing prior to revocation despite "the urgency of unusual circumstances." \textit{Id.} at 20, 45 P.2d at 433. Hearings and notice were required in spite of the threat to public safety.

A contrary construction . . . would be in conflict with the established rule of law and good reason requiring all quasi-judicial boards possessing a sound discretion in passing upon facts to act fairly and impartially in so doing after notice and an opportunity has been afforded the licensee to present evidence with relation thereto for the consideration of the board. \textit{Id.} at 17-18, 45 P.2d at 432.

\textit{Accord}, Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950); Opp Cotton Mills v. Administrator, 312 U.S. 126 (1941) (due process does not require a hearing at any particular point in an administrative proceeding so long as a hearing is held before the final order becomes effective).
The denial of a hearing prior to suspension did not, the court contended, necessarily subject the innocent as well as the negligent operator to the statutory penalty.

The statute did not require security of every operator who might be involved in an accident, but only of those against whom, in the opinion of the department, a judgment might be recovered. Inasmuch as the recovery of a judgment depends, in theory at least, upon culpability, it would seem that the statute, presumptively properly administered, was not open to the objection that under it the non-culpable were subject to arbitrary discrimination.\(^9\)

If, in the Department's opinion, a driver involved in an accident was not at fault, he would be spared the necessity of depositing security. Nevertheless, the court failed to explain how, in the absence of a hearing, the "proper administration" of the statute would enable the Department to make a fair determination of the fault issue.

In *Orr v. Superior Court of City & County of San Francisco*,\(^93\) the

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Other factors asserted to be "compelling public interests" in past cases have included (1) providing immediate compensation for victims of negligent drivers, (2) encouraging the voluntary purchase of liability insurance, and (3) prompt removal of negligent drivers from the highways. *See generally Feinsinger, The Operation of Financial Responsibility Laws, 3 LAW & CONTEMP. PROB. 519 (1936).* Presently, none of these factors are widely regarded as constituting a "compelling public interest," although the safety consideration was hotly debated and still has some support from the bench. *See Perez v. Campbell, 402 U.S. 637, 657 (1971) (Blackmun, J., concurring in part and dissenting in part).*

In California, providing "immediate compensation" to the victim of negligent drivers is the least substantial of the above considerations. The amount deposited as security may not be disbursed to injured victims unless there is a final judgment rendered against the driver on whose behalf the security is deposited or a settlement agreement is entered into. *CAL. VEH. CODE ANN. § 16026 (West 1971).* Where the amount deposited as security may remain untouched for years until there is an adjudication of liability, it can hardly be argued that the speed of compensation is either "immediate" or constitutes a compelling public interest justifying curtailment of procedural due process. *Schechter v. Killingsworth, 93 Ariz. 273, 282, 380 P.2d 136, 142 (1963).*

Although many of the early decisions justified provisions of financial responsibility statutes on grounds that the statutory scheme was a proper exercise of police power to promote highway safety, it is no longer widely held that safety is the purpose of such statutes. Rather, the function of financial responsibility laws is to provide a fund from which victims of highway accidents may eventually be compensated. "[T]he only purpose of the [Georgia financial responsibility] provisions before us is to obtain security from which to pay judgments against the licensee resulting from the accident..." *Bell v. Burson, 402 U.S. 535, 540 (1971).* *Accord, Schechter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963); Continental Casualty Co. v. Phoenix Constr. Co., 46 Cal. 2d 423, 296 P.2d 801 (1956); Mission Ins. Co. v. Feldt, 62 Cal. 2d 97, 396 P.2d 709 (1964); Williams v. Sills, 55 N.J. 178, 260 A.2d 505 (1970).*

\(^92\) 35 Cal. 2d 870, 878, 222 P.2d 1, 6 (1950).

Department of Motor Vehicles sought to prohibit and restrain the superior court from taking further action against the Department in a suit brought by a group of uninsured motorists who sought the restoration of driving privileges and licenses and the declaration that certain Vehicle Code sections were unconstitutional. The drivers contended that the suspension provisions were unconstitutional as applied to them in the absence of a prior finding of probable fault. They further sought a reappraisal of the Escobedo holding in regard to the issue of procedural due process. The Department, on the other hand, argued that the issue of culpability was irrelevant to the security requirement, and that mere involvement in an accident was sufficient basis for applying the statute. Reaffirming the construction given the statute in Escobedo, the Orr court ruled that a license and registration suspension must be preceded by a departmental determination that there exists a "reasonable possibility" of a judgment being obtained against the driver. As outlined by the court, however, the nature of the inquiry regarding fault nowhere approximated a hearing with the usual procedural safeguards—notice of an impending state action and the reasons therefor, and a hearing with the right to confront the accuser, to cross-examine witnesses, and to produce evidence on one's own behalf. Rather, the Department is required only to arrive at its conclusion on the basis of accident reports which must be submitted by the drivers involved and by reviewing other evidence submitted in accordance with sections 16020 and 16024 of the Vehicle Code. The Department is not required to make a finding allocating fault where conflicting claims are made.

94. Id. at 222, 224, 454 P.2d at 714, 77 Cal. Rptr. at 817, 819.
95. Id. at 222-23, 454 P.2d at 713-14, 77 Cal. Rptr. at 817-18.
96. Id. at 226, 454 P.2d at 716, 77 Cal. Rptr. at 820. It is noteworthy that the same reasoning applied by the Escobedo and Orr courts was utilized by the Supreme Court of New Jersey to require a pre-suspension hearing. The New Jersey court held, however, that the department merely had to find a reasonable possibility of fault and that the hearing was required only upon request by the licensee. Williams v. Sills, 55 N.J. 178, 181, 260 A.2d 505, 509 (1970).
97. See Goldberg v. Kelly, 397 U.S. 254 (1970). The extent to which these protections must be available in any given case depends upon the nature of both the governmental function and the private interests involved. Id. at 263.
99. 71 Cal. 2d at 227, 454 P.2d at 716, 77 Cal. Rptr. at 820; Cal. Veh. Code Ann. §§ 16020, 16024 (West 1971). Section 16020 refers to evaluation of evidence submitted by a party or on his behalf within fifty days following the accident. Apparently the purpose of the section is to enable persons involved in automobile accidents to submit evidence to the Department tending to establish the substance of their claims and the extent of their injuries. Section 16024 refers to reduction of the amount ordered to be deposited if, in the judgment of the Department, the amount is excessive.
If there is any credible evidence on the basis of which [the driver] could reasonably be considered culpable, such evidence, which could be believed by the trier of fact in a lawsuit, will suffice to support a determination that it is reasonably possible that a judgment may be recovered against the driver. 100

The availability of an affirmative defense, such as contributory negligence or last clear chance, “if at all close or intricate,” will not serve as a basis for challenging the Department's determination. 101 In the subsequent review of the order for security, the reviewing court is limited to the issue of whether the evidence before the Department supports an implied finding that there exists a reasonable possibility that a judgment for damages may result. 102 In summary, Escobedo and Orr hold that, while fault is a relevant issue in determining whether suspension should be invoked for failure to deposit security, a hearing on this issue may justifiably be denied due to the administrative burdens involved. 103

It is questionable whether the California summary suspension procedure is consonant with the holding of the United States Supreme Court in Bell v. Burson. 104 There, the suspension provision of the Georgia financial responsibility laws was challenged on the ground that the statute denied procedural due process. 105 The Georgia Act is substantially the same as the California enactment with respect to the requirement of depositing security following an accident. In the absence of a deposit, or unless the driver can qualify for an exemption by showing insurance coverage, bond or otherwise, the license, registration and license plates of the driver and of the owner of any motor vehicle involved in an accident will be suspended. 106 Unlike the California statute,
Georgia provides an administrative hearing prior to involving the suspension provisions. However, the Georgia Department of Public Safety assumed a position similar to the contention of the California Department of Motor Vehicles in Orr and maintained that fault was a completely irrelevant issue at the hearing. The Bell Court noted that regardless of whether a license is described as a right or a privilege, once it is issued the license becomes a personal interest of such importance that it cannot be taken away without observance of the protections of procedural due process. The sole issue before the Court, therefore, was whether procedural due process was afforded by a pre-suspension hearing which excluded a consideration of fault.

It is fundamental that the requirements of due process must remain malleable in order to provide greater or lesser protection, depending upon the nature of the case. In deciding whether due process standards have been adhered to, the courts must determine the precise nature of both the policy behind the governmental action and the individual interest which will be affected, and then balance the interests, one against the other. In Bell, the Court observed that a pre-suspension hearing which excluded issues of fault would have been proposed, however, if the owner or operator had in effect at the time of the accident an insurance policy or bond covering liability, or if the owner or operator qualifies as a self-insurer. Id. § 92A-605(a) & (c). Nor will suspension be imposed if only the owner or operator was injured, if the vehicle was parked legally at the time of the accident, if the vehicle was being operated without the consent of the owner, or if satisfactory evidence is filed with the Director showing a release from liability, a settlement agreement providing for installment payments, or an adjudication of nonliability. Id. § 92A-606 (1958).

109. Id. at 539:

Once licenses are issued ... their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. Id., citing Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969) (wage garnishment) and Goldberg v. Kelly, 397 U.S. 254 (1970) (termination of welfare benefits).


[A]s a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950); Moyer v. Peabody, 212 U.S. 78, 84 (1908).

priate to the nature of the case if fault and liability were irrelevant to
the statutory scheme.112 However, since the Georgia statute did not
operate against those persons who obtained either a release from liability
or an adjudication on nonliability prior to suspension, fault remained an
important factor in the Georgia Act.113 It is well settled that where a
hearing is required by the Due Process Clause, it must be a "meaning-
ful" hearing.114 This standard of the Fourteenth Amendment is not
met where a hearing to determine whether a license shall be suspended
fails to consider the essential factor of fault. While due process does not
demand that in such cases a court trial with the "full panoply of judicial
procedures" be provided,115 more than the hearing offered under the
Georgia statute is called for. As stated by the Bell Court:

Clearly . . . the inquiry into fault or liability requisite to afford the
licensee due process need not take the form of a full adjudication of the
question of liability. That adjudication can only be made in litigation
between the parties involved in the accident. Since the only purpose
of the provisions before us is to obtain security from which to pay any
judgments against the licensee resulting from the accident, we hold
that procedural due process will be satisfied by an inquiry limited to the
determination whether there is a reasonable probability of judgments
in the amounts claimed being rendered against the licensee.116

The language of the holding in Bell appears to substantiate the hold-
ing of the California Supreme Court in Orr: Prior to the suspension of a
driver's license there must be an "inquiry" concerning the driver's culpa-
bility.117 Consideration of this issue does not amount to an adjudication
of liability, but rather is limited to a determination of whether there
exists a reasonable possibility of liability. However, two factors in Bell
distinguish that case from the Orr decision. In Bell, the Supreme Court
reviewed a statutory scheme which expressly made provision for a hear-
ing. At issue was the scope of the hearing demanded by procedural due
process. It was assumed by all parties that at least some form of hearing
would be provided to the petitioner. Thus, while the holding of the
Court naturally did not emphasize the right to a hearing prior to sus-
pension, it is apparent from the language of the opinion that a pre-
suspension hearing was an element of due process.118

112. 402 U.S. at 541.
113. Id.
114. Id. at 541, citing Armstrong v. Manzo, 380 U.S. 545, 552 (1965).
116. 402 U.S. at 540 (emphasis added).
117. See text accompanying notes 108-09 supra.
118. The fact that the Court considered an expanded hearing of some variety to be
It is fundamental that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" before the termination becomes effective. 119

The Orr court, on the other hand, reaffirmed the earlier California ruling in Escobedo that a hearing was not required, 120 and determined that the Department's inquiry on the issue of fault could be made on the basis of accident reports and other submitted evidence. 121

A second point of contrast between Bell and Orr exists in the different weight afforded by each court to the increased administrative expenses necessarily involved in providing pre-suspension hearings. In Orr, the California court ruled that this burden constituted a compelling public interest justifying the denial of a hearing. 122 On the other hand, the Bell Court expressly rejected the application of such reasoning to the circumstances involved in license suspensions, finding that the administrative burden involved in providing procedural due process is not a valid ground for denial of a hearing. 123 While the protections of due process may be abridged in an emergency, the Court found that an emergency did not exist in the enforcement of Georgia's financial responsibility laws. 124 Thus, despite a superficial consistency between Bell and Orr, the necessary implication of the former decision is that a pre-suspension hearing is required by the Due Process Clause. As such,
Bell compels a fresh evaluation of the validity of the financial responsibility laws by the California courts.

The Escobedo and Orr decisions represent something of an anomaly in the California courts' historical approach to similar due process issues outside the area of the financial responsibility laws. In Escobedo, the majority opinion found it necessary to distinguish a series of past decisions invalidating summary procedures similar to the procedure authorized in California Vehicle Code sections 16080 and 16100. Although these cases had uniformly required a hearing prior to the suspension of a license, and thus appeared to disapprove of the denial of a hearing under the financial responsibility laws, the Escobedo court nevertheless declined to regard the cases as controlling. However, in light of the current expansive judicial application of the Due Process Clause, the apparent wisdom of those earlier decisions cannot now be denied.

In Sniadach v. Family Finance Corp., the Supreme Court held that a prejudgment wage garnishment statute violated a debtor's right to due process by sanctioning the taking of his property without notice and prior hearing. Subsequently, a series of Supreme Court decisions have applied the Sniadach rationale to invalidate the denial of fault inquiries prior to the suspension of a license, the refusal of a state to admit indigents to its courts for divorce purposes, the public identification of an individual as being an excessive drinker, and the withdrawal of welfare benefits. The expansive reach of the Due Process Clause, however, does not stop short of the financial responsibility laws. The effect of the security provision in the financial responsibility laws is

127. 35 Cal. 2d at 877, 222 P.2d at 6 (1950).
129. Id. at 342.
closely akin to that of the garnishment statute invalidated in *Sniadach*—while both are directed to assure the creditor some recovery, their net effect is to deprive the debtor of the use of his property until there is an adjudication on liability. As such, the failure of the laws to provide a meaningful opportunity to be heard is clearly violative of the prevailing standards of due process.

Commencing in 1970, the California Supreme Court effectuated the *Sniadach* rule in a series of cases dealing with creditor-protective devices of a summary nature. Wage garnishment,²³⁴ claim and delivery,²³⁶ and attachment procedures²³⁸ were all found to be constitutionally defective because the alleged debtor was denied a hearing prior to the taking of his property. In *Randone v. Appellate Department of the Superior Court of Alameda County,*²³⁷ the court invalidated California Code of Civil Procedure section 537(1), which authorized the attachment of a debtor's property without affording him notice or prior hearing. In so doing, the court recognized that the principles underlying *Sniadach* demand that individuals be afforded notice and an opportunity for a hearing before they can be deprived of life, liberty or property.²³⁸ These same principles are applicable to "the entire domain of prejudgment remedies."²³⁹ Exceptions to this principle can only be justified in "extraordinary circumstances."²⁴⁰ Although "extraordinary circumstances" could not be defined, the court listed five queries which are generally relevant in evaluating the validity of summary procedures: (1) is the procedure intended to benefit the general public or to serve the interests of a private individual; (2) is the procedure only initiated by an authorized government official who could be expected to act only for the general welfare; (3) would a delay occasioned by a prior hearing have caused serious harm to the public; (4) is the property affected by the procedure of vital importance in the individual's life or livelihood; and (5) is the summary proceeding available only when great necessity arises²⁴¹.

None of these queries can be answered in the affirmative regarding

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²³⁷. *Id.*
²³⁸. *Id.* at 547, 488 P.2d at 19, 96 Cal. Rptr. at 715.
²³⁹. *Id.*
²⁴⁰. *Id.* at 541, 488 P.2d at 15, 96 Cal. Rptr. at 711.
²⁴¹. *Id.* at 554, 488 P.2d at 24-25, 96 Cal. Rptr. at 720-21.
the security suspension provision in the financial responsibility laws. The suspension provision was implemented and is administered for the benefit of individuals on grounds that they may be potential judgment-creditors. The procedure has its impact only upon individuals and, accordingly, the grant of a pre-suspension hearing would no more affect the public than does the present procedure. The suspension deprives an individual of the use of property which may be essential to his livelihood and to the exercise of his right to travel. And finally, suspension is imposed without regard to the degree of necessity. Under the mandate of _Randone_, the summary suspension provision appears constitutionally invalid.

### III. Conclusion

A majority of the constitutional objections to the financial responsibility laws could be remedied with relative ease by minor amendments to the Vehicle Code. _Perez_ demands the repeal of section 16370 which directly conflicts with the Bankruptcy Act's relief from discharged judgments. The clear implications of _Bell, Sniadach_, and _Randone_ require that suspension for failure to provide security following an accident be construed to include a pre-suspension hearing.

Curing the security-suspension provision's unfair impact on the poor, however, poses a problem of a different nature. The invalidity of this section would seem to affect the continued viability of the financial responsibility scheme as a device for providing compensation for accident victims. Security provisions were adopted originally in the hope of ending what is, in effect, the virtual immunity from legal action enjoyed by the judgment-proof defendant. If the state can ensure a defendant who is solvent, then the victim would no longer lack the incentive to commence what otherwise would be a hopeless lawsuit.

How far the present law goes toward accomplishing this goal, however,

142. See Miller v. Anckaitis, 436 F.2d 115, 120 (3d Cir. 1970): "A combination of public and private policies have made use of an automobile an actual necessity for virtually everyone who must work for a living."); Schecter v. Killingsworth, 93 Ariz. 273, 280, 380 P.2d 136, 140 (1963): "[T]he use of the [motor] vehicle is so essential to both a livelihood and the enjoyment of life . . . that the use of the highways is a right which all qualified citizens possess. . . ."

143. See text accompanying notes 76-78 supra.

144. CAL. VEH. CODE ANN. §§ 16020, 16100 (West 1971).

is open to question. A financially irresponsible motorist will not likely acquire sudden wealth simply because he is faced with suspension, nor will he be deterred from careless driving by the threat of potential suspension. Therefore, while the more economically advantaged classes are encouraged to purchase insurance, the effect of the security requirement on the poor is simply to advance the possibility of suspension to a date prior to judgment.

Although compulsory insurance would appear to offer a solution to the problem of the judgment-proof motorist, legislative proposals for adoption of this measure have succeeded in only three states. In California, the objections which have been raised to a compulsory insurance program include the inadequacy of coverage amounts, the absence of protection for victims of out-of-state uninsured motorists, the inevitability of higher premium payments and, eventually, political rate-fixing. Notwithstanding the validity of these objections, however, the fact remains that financial responsibility laws have not provided a successful alternative. As presently administered, the financial responsibility program falls far short of accomplishing its purported purpose of assuring compensation to highway accident victims. And without the security-suspension provision, these statutes are likely to be even less effective. Therefore, rather than attempt to revise the financial responsibility scheme, it would be more prudent to formulate new programs which would be both constitutionally sound and efficient in their administration.

No-fault compulsory insurance plans have been suggested as a sub-
stitute for financial responsibility laws. Today, automobile accident and medical malpractice suits are the only statistically significant areas of the law wherein traditional negligence principles continue to restrict personal injury relief. The premium which modern society places on personal mobility makes a certain number of auto accidents inevitable. Rather than occurring as the result of fault, accidents on the highways often occur simply because of the enormous number of automobiles and the conditions which accompany this growing increase in traffic upon the highways. The burgeoning need for providing compensation has manifestly outgrown the inherent limitations of a system which conditions compensation upon fault, and the sole viable alternative seems to be some form of compulsory no-fault insurance. Distribution of risk under a no-fault plan would not only expedite recovery for the victim but would also maximize the number of victims compensated.

However, compulsory insurance of any variety would necessarily restrict the use of the automobile to those persons who are financially capable of paying the insurance premium. And though the increased efficiency of a no-fault compulsory insurance system would conceivably reduce the cost of insurance, unless current underwriting principles were also altered, the various proposed plans would not likely reduce the burden imposed by the present system on disadvantaged persons. Notwithstanding the increased compensation which would be provided to accident victims, the poor would arguably be in a worse position under compulsory insurance than under the current financial responsibility laws.

Legislative proposals for automobile insurance reform should consider possible means of accommodating the needs of accident compensation for victims with the necessity of driver's license retention until negligence is judicially determined. In this respect, the "Full Aid" insurance


159. Id. at 273-98.


162. Id. at 273.
plan proposed by Professor Ehrenzweig in 1954 might be reconsidered. Although the “Full Aid” plan is no longer in the forefront of auto-accident compensation systems presently being considered, the plan avoids certain problems apparently not considered under the other programs. Insurance coverage is not compulsory under Ehrenzweig’s proposal, but motorists are encouraged to purchase a variety of no-fault insurance in statutory minimum amounts. Persons injured by uninsured drivers may be compensated by a fund similar to the unsatisfied-judgment fund in effect in four states. Presumably, the fund would be subrogated to the rights of the injured party against the wrongdoer, and would seek reimbursement. The negligent driver would be permitted to satisfy a judgment in installments, and the economic burden would accordingly not be as great as that imposed by compulsory insurance. In effect, the victim would be provided with immediate compensation, while the burden on the poor would be substantially lessened.

George Peterson

164. Id. at 37:
(1) Any owner or operator of an automobile who carries “full aid” accident insurance in statutory minimum amounts for all injuries inflicted by the operation of his vehicle would, under a new Automobile Insurance Law, be relieved from his common-law liability for ordinary (in contrast to criminal) negligence.
(2) Any person, except a member of the injurer’s own family, injured by a car not so insured, and otherwise unable to recover for his harm (because the injurer is either not liable or insolvent), would be entitled to recover the same amounts from an uncompensated-injury fund which would be administered by the automobile insurers licensed in the state.
165. See note 81 supra.
166. See, e.g., CAL. VEH. CODE ANN. §§ 16379-81 (West 1971).