1-1973

What Price Jurisdiction: The Jurisdictional Amount in Injunctive Suits against Federal Officials

James A. Burke

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal

Part of the Law Commons

Recommended Citation

Available at: https://repository.uchastings.edu/hastings_law_journal/vol24/iss2/2

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.
What Price Jurisdiction?: the Jurisdictional Amount in Injunctive Suits Against Federal Officials

By James A. Burke*

The only thing that money can't buy is poverty.

Jeremiah Mohalley†

The federal court system was created by the Judiciary Act of 1789,¹ pursuant to Congress' power as authorized by the Constitution.² While it was recognized that such federal courts were necessary in our federal system, ideas of comity and respect for state courts dictated that the jurisdiction of the federal courts be restricted to cases in which a court of national character could resolve disputes more effectively than could a state court. State courts, on the other hand, generally are said to have general jurisdiction arising from the sovereign power of the state and, save for a few areas in which federal courts have been granted exclusive jurisdiction,³ are said to have concurrent jurisdiction with the newer federal courts.⁴

Federal question jurisdiction was not granted to the federal courts until 1875.⁵ Prior to that time, the state courts were thought to be

---

* A.B., 1964, Hunter College; J.D., 1972, University of California, Hastings College of the Law; Member, California Bar, Member, New Mexico Bar.
† Crusty, middle-aged construction worker in New York who happens to be the author's stepfather.
1. Act of Sept. 24, 1789, ch. 20, §§ 1-10, 1 Stat. 73.
3. E.g., admiralty, 28 U.S.C. § 1333 (1970); bankruptcy, id. § 1334; patents and copyrights, id. § 1338.
5. Act of March 3, 1875, ch. 137, § 1, 18 Stat. 470, as amended 28 U.S.C. § 1331(a) (1970) now reads: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."
quite capable of adjudicating issues involving federal law. As time passed and the power of the federal government increased, the jurisdiction of the federal courts was greatly expanded. This expansion, by and large, was reflected by enactments of specialized jurisdictional statutes with no minimum financial amount necessary for jurisdiction. While the purview of federal jurisdiction itself expanded, the scope of 28 U.S.C. section 1331, the general federal question statute, with its amount in controversy requirement, remained the same or even diminished. In 1875, $500 in controversy was sufficient to invoke federal question jurisdiction. In 1958, the jurisdictional amount of section 1331 was raised to its present level of $10,000. It was then said that "the only significant categories of 'Federal question' cases subject to the jurisdictional amount are suits under the Jones Act and suits contesting the constitutionality of State statutes." This statement is not correct. Today, cases frequently arise involving jurisdiction under section 1331 which involve the draft, the military, or actions against various federal agencies alleging the violation of statutory or constitutional rights.

In such cases, there is often no special jurisdictional statute, and the jurisdictional amount requirement of section 1331 remains and must be satisfied. Since the issue in such cases is generally the pro-

---


10. Professor Wright notes that Jones Act cases need not meet the monetary requirement. WRIGHT, supra note 4, at 109. Also, most cases contesting the constitutionality of state statutes can be brought under section 1343, the Civil Rights jurisdictional statute. See note 111 and accompanying text infra.

11. Professor Wright notes that "[t]here is no general statutory jurisdiction over actions against federal officers and agencies. Such actions must find independent grounds for jurisdiction." WRIGHT, supra note 4, at 71. See W. BARRON & A. HOLZOFF, FEDERAL PRACTICE AND PROCEDURE § 54, at 301-02 (C. WRIGHT rev. 1960). Similarly, a court has noted that "the constitution itself does not give rise to an inherent injunctive power to prevent its violation by government officials." Brown v. Donelson, 334 F. Supp. 294, 297-98 (S.D. Iowa 1971).

It might also be mentioned that where the plaintiff must initially show that a statutory proscription against jurisdiction does not apply, e.g., 50 App. U.S.C. § 460 (b)(3) (1971) (selective service); 38 U.S.C. § 211(a) (1970) (veterans benefit). The plaintiff still must, in theory and often in practice, find a statute which does afford him jurisdiction.
priety of government action and the extent of a group or individual's alleged personal rights, the presence of the amount requirement leads to the extremely questionable task of pricing the priceless: placing a "price tag" on an intangible personal right in order to gain a federal forum. Thus, while this requirement may seem quite anomalous, the requirement remains. In many actions seeking declaratory or injunctive relief against federal officials, the $10,000 amount in controversy is a jurisdictional necessity; that amount must be alleged in good faith, or the plaintiff stands to be dismissed before a hearing on the merits. This is in spite of plaintiff's request of the court only to define or protect his personal rights, which almost by definition are not susceptible of monetary evaluation.

The amount in controversy generally has been determined by a liberal rule of thumb. The oft-quoted rule is that the good faith claim "must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." Applying this legal certainty test, one court has reiterated recently,

It is well settled that such a formal allegation is sufficient to withstand a motion to dismiss based on the grounds that the amount in controversy is less than the requisite amount.

Plaintiffs seeking injunctions rather than damages may find their position more tenuous with respect to determining the amount in controversy. While in damage cases the plaintiff's anticipated gain matches exactly the defendant's loss, an injunction may cause the defendant great financial harm while not appreciably adding to the plaintiff's fortunes. Several courts have, therefore, taken the amount in controversy from the possible benefit or loss to either party.

12. This article will concern those cases seeking relief of an equitable nature such as injunctions. Damage cases rarely present problems, since the jurisdictional amount will be easily ascertainable. See Bivens v. Six Unknown Named Narcotics Agents, 403 U.S. 388 (1971); Bell v. Hood, 327 U.S. 678 (1946); Bethea v. Reid, 445 F.2d 1163 (3d Cir. 1971) (actions for damages based on alleged violations of plaintiffs' constitutional rights). Also, such cases seeking damages may find another base of jurisdiction, e.g., the Federal Tort Claims Act, 28 U.S.C. § 1346 (1970).


15. "[T]he test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce." Ronzio v. Denver & R.G.W.R. Co., 116 F.2d 604, 606 (10th Cir. 1940). See also Hedberg v. State Farm Mutual Auto Ins. Co., 350 F.2d 924 (8th Cir. 1965) (Blackmun, J.). Professor Wright refers to this as the "preferred view." Wright, supra note 4, at 121.
courts and authorities have maintained that it is solely the plaintiff's possibilities which should be considered, since it is he who has originally brought the action.\textsuperscript{16}

Regardless of which test is applied, determination of jurisdictional amount presents no insurmountable difficulty where a financial stake can be ascertained.\textsuperscript{17} Much more serious difficulties arise, however, when the subject matter of the litigation concerns those personal rights which are guaranteed by the Constitution or by statute, and which bear little or no relation to a financial standard. Obviously, there is no easily ascertainable price tag attached to a draft exemption,\textsuperscript{18} or an alleged right to have the same draft liability as those of more fortunate circumstances,\textsuperscript{19} or an alleged right to freely enter military property.\textsuperscript{20} Yet it has been necessary in these and similar cases to bridge the amount in controversy requirement by diverse attempts to allege that $10,000 is somehow concerned.

The Jurisdictional Amount in Practice

The number of cases experiencing difficulty with the jurisdictional amount apparently has increased in the past few years. This is due, in part, to the current unfortunate combination of an unpopular war and massive draft calls of often unwilling young men, as well as an increasing sensitivity to federal police activity among domestic dissident groups. Such cases often find no basis for jurisdiction in any of the specialized statutes and, therefore, must predicate jurisdiction upon

\textsuperscript{16} The plaintiff oriented view has been espoused by Dean (later Judge) Dobie in Dobie, Jurisdictional Amount in the United States District Court, 38 \textsc{Harv. L. Rev.} 733 (1925). See also Comment, Federal Jurisdiction: Amount in Controversy in Suits for Nonmonetary Remedies, 46 \textsc{Calif. L. Rev.} 601 (1958); Note, Federal Jurisdictional Amount Requirement in Injunction Suits, 49 \textsc{Yale L.J.} 274 (1939). The controversy is discussed in an excellent footnote in Tatum v. Laird, 444 F.2d 947, 951 n.6 (D.C. Cir. 1971), rev'd on other grounds, 405 U.S. 985 (1972). After discussing both sides, the Tatum court concluded that the Supreme Court has not yet expressed a preference.

\textsuperscript{17} See, e.g., City of Inglewood v. City of Los Angeles, 451 F.2d 948 (9th Cir. 1972) (alleged damage done to property by airport noise, not insufficient); Opelika Nursing Home Inc. v. Richardson, 448 F.2d 658 (5th Cir. 1971) (allegation that plaintiff "may or may not" suffer the requisite amount of damage held not so speculative as to require dismissal); Bethea v. Reid, 445 F.2d 1163 (3d Cir. 1971) (action against federal officers for damage arising from illegal seizure of $4,200 worth of goods not insufficient). See also n.12 \textit{supra}.


\textsuperscript{20} Goldsmith v. Sutherland, 426 F.2d 1395 (6th Cir. 1970).
section 1331 in order to gain a federal forum. There are, however, several earlier cases which have alleged improper conduct on behalf of the federal government which were dismissed for failure to satisfy the jurisdictional amount requirement.

During the New Deal, a carpenter who worked for the Works Progress Administration attacked the constitutional validity of a regulation which required the signing of a noncommunist loyalty oath.\(^2\) The case was dismissed, with the court finding that there was “a question arising under the constitution and laws of the United States. But, absent the jurisdictional minimum . . . this court is without jurisdiction.”\(^2\) Likewise, in a pre-World War II draft case,\(^2\) an absence of the jurisdictional amount precluded a discussion of the merits. In that case, a plaintiff who sought declaratory and injunctive relief alleged potential loss of salary and consortium. Despite such allegations, the case was dismissed for lack of sufficient amount in controversy.\(^2\)

One of the first cases in more recent years to run afoul of the monetary requirement involved a reputed gangster’s attempt to enjoin surveillance and harassment of himself by the Federal Bureau of Investigation.\(^2\) Such conduct by the defendants, the petitioner argued, denied him various constitutional protections, mostly founded upon the right to privacy. Despite his apparently valid claims, the case was dismissed without reaching the merits on the ground that the plaintiff had not satisfied the jurisdictional amount requirement of section 1331, as he had not alleged that such constitutional rights were worth $10,000.\(^2\) This holding prompted a vigorous dissent by Judge Swy-

---


\(^{22}\) Id.


\(^{26}\) Giancana v. Johnson, 335 F.2d 366 (7th Cir. 1964), cert. denied, 379 U.S. 1001 (1965).

\(^{26}\) 335 F.2d at 368. The suggestion that the result in Giancana and other cases may have been different had the jurisdictional amount been alleged, is made in Note, A Federal Question Question: Does Priceless Mean Worthless?, 14 St. Louis U.L.J. 268 (1969). This suggestion finds support in cases, although when the amount in controversy is alleged it may still be challenged. See, e.g., Walsh v. Local Bd. No. 10, 305 F. Supp. 1274 (S.D.N.Y. 1969); Cortright v. Resor, 325 F. Supp. 797 (E.D.N.Y.), rev’d, 447 F.2d 245 (2d Cir. 1971), cert. denied, 405 U.S. 965 (1972).
gergert, who protested that such homage to the jurisdictional amount resulted in the "exaltation of form over substance." 27

In another case, four draft age young men of poor economic backgrounds sought to have the granting of draft deferments to college and graduate school students declared invalid. They claimed that such deferments constituted an invidious discrimination against those who, by reason of poverty and poor education, are unlikely to attend college and, hence, are more likely to be inducted. 28 A three judge court dismissed the action on the grounds that the courts were precluded from judicial review by the Selective Service Act and that the plaintiffs had not shown that the increased likelihood of induction caused them the requisite $10,000 damage.

This holding by the majority of the court prompted perhaps the most perceptive and articulate dissent in response to a decision of this nature. Citing Judge Swygert's dissent in Giancana, Judge Edelstein railed against a point of view that equated federal jurisdiction with monetary value. After noting that the case "clearly does not involve any notions of federalism, [since] it is apparent that a state court would be powerless to act against the federal Selective Service System," he continued:

Although it might be said that human rights are incapable of valuation and hence valueless, it is better to view them as incapable of valuation but only because they are of infinite value. The latter view is, in my humble opinion, the only view compatible with the commitment of our nation to a belief in the dignity of man and the inherent worth of a free individual in a free society. 29

Despite such vigorous objections, the propensity of courts to financially evaluate subject matter jurisdiction in personal rights cases is still present. In 1967, a draft board illegally revoked the draft exemption of a divinity student in response to his participation in an antiwar demonstration. Seeking to have the revocation of his exemption declared void and to restrain his induction, the student filed suit in federal district court. The case was dismissed on the grounds that the amount in controversy requirement had not been met, since, in the words of the court, his "complaint and argument are concerned with intellectual freedom rather than with economic loss. 30

In a somewhat similar claim for preinduction judicial review, the

27. 335 F.2d 371.
29. Id. at 568 (emphasis added).
Court of Appeals for the Second Circuit arrived at a similar result. While the majority opinion held that such suits were precluded by the Selective Service Act, Judge Hays felt it incumbent to add in a concurring opinion that the suit was also precluded by the petitioner's failure to satisfy the amount in controversy requirement of section 1331. This prompted a vehement dissent from Chief Judge Lumbard, who, after disputing the majority opinion, noted that the petitioner could easily satisfy that requirement, since he stood to lose two years of medical practice. Even if no such allegation could be made, Judge Lumbard was of the opinion that the rule should not be applied, considering "[t]he poor man who stands to lose nothing but his most precious personal liberties if the unconstitutional actions of the federal government are beyond the reach of the courts." In such a case, Judge Lumbard forecast, "I have grave doubts that the . . . rule requiring the claimed deprivation be capable of monetary valuation would long endure."

The Response to Section 1331

The necessity of meeting the jurisdictional amount in federal question cases has been recognized by commentators as well as judges. Despite the relatively small number of such cases in earlier years, the problem was recognized in 1948 by Professor Wechsler, who noted that "the amount in controversy has no place in judging the propriety of the original jurisdiction in any case involving rights asserted under federal law." Ten years later, Professor Friedenthal perceptively pointed out the overly simplistic statement in the legislative history of the amendment which raised the jurisdictional minimum to its present level of $10,000, stating "[a]lthough it is true that many cases are covered by special jurisdictional statutes, there are a number of isolated cases involving federal questions which for one reason or another can only be brought under 1331." Professor Wright is similarly critical:

It is difficult to understand why there should be a monetary re-

33. 430 F.2d at 380.
34. Id. at 385.
quirement in federal question cases. The requirement is of extremely limited application, and when it does apply the effect is to deny a federal forum in cases in which the amount involved is small but for which the federal courts have a special expertise and special interest.38

In 1969, the American Law Institute issued its final draft on The Study of the Division of Jurisdiction Between State and Federal Courts.39 Citing the “unfortunate gap in the statutory jurisdiction of our federal courts,”40 the study remarks: “Where the right relied upon is federal, the national government should bear the burden of providing a forum for parties who wish to be heard in federal court.”41 Apparently aware of the difficulty of evaluating intangible personal rights and not overly concerned with offending principles of federal comity, the study expressly recommends that “federal question suits be allowed without regard to amount in controversy.”42 The study appears to have gained legislative43 as well as judicial44 attention, raising hopes of congressional amendment. Such amendment of section 1331 is obviously the preferred means of ending the often irrational and inequitable amount requirement in federal question cases. Whether it will occur in the near future is questionable, and pending such action the jurisdictional amount requirement remains and must be satisfied.

In the absence of congressional amendment, the situation could easily be clarified by case law, which might adopt one of the various

38. WRIGHT, supra note 4, at 110.
39. Hereinafter cited as ALI STUDY.
41. ALI STUDY, supra note 39, at 174.
42. Id. at 24. Section 1311 provides: “(a) Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction without regard to amount in controversy of all civil actions, including those for a declaratory judgment, in which the initial pleading sets forth a substantial claim arising under the Constitution, laws or treaties of the United States.”
43. Senator Edward Kennedy has introduced S. 598, 92d Cong., 1st Sess. (1972), which amends section 1331 by deleting any mention of jurisdictional amount and leaving the other language untouched: “The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.” The bill also allows for a liberalization of the Administrative Procedure Act to facilitate suits against the federal government.

Senator Burdick has also introduced S. 1876, 92d Cong. 1st Sess. (1972), which incorporates all of the ALI proposals, including section 1311, which is quoted at note 42 supra.
44. The United States Judicial Conference’s Committee on Court Administration has recommended that the ALI study be sent to the chief judges of each federal circuit, under a cover letter signed by the Chief Justice, for comment and consideration. ANNUAL REPORT OF THE UNITED STATES COURTS 14 (1970).
methods of liberal assessment of the amount in controversy. Among these is the rationale employed by Judge Edelstein. That is, as a jurisdictional matter, intangible personal rights are to be assigned a monetary value above the jurisdictional amount. 45 Such a liberal definition of the amount in controversy in these cases ought not to be considered unusual. The Supreme Court has previously interpreted jurisdictional statutes so as to require no jurisdictional amount in cases alleging the deprivation of federal personal or proprietary rights by state officials. 46 Thus where state officials have acted, the Court has declined to raise the financial barriers to federal court when redress of a constitutional right is sought. 47

Alternatively, the judiciary could adopt the approach employed by the court in West End Neighborhood Corporation v. Stans 48 that such cases need not satisfy the amount requirement, at least where there is no monetary benefit directly sought. Finally, and least likely, the court could accept a direct constitutional attack and declare the section unconstitutional. 49

The Supreme Court Fails to Respond

Any of the above approaches are to be strongly recommended, as such changes would, for the majority of the cases discussed, remove a vexatious barrier to adjudication of controversies involving basic and fundamental federal rights. Unfortunately, the Supreme Court has passed up several opportunities to effect such change.

In one example of such failure, Oestereich v. Selective Service Board No. 11, 50 the Court reversed the two lower courts on the merits, holding that a draft board was not authorized to deny a registrant an exemption because of conduct unrelated to that exemption, noting that "[w]e deal with conduct of a local Board that is basically lawless." 51 The case then was remanded to the district court, where the plaintiff could attempt "to prove the facts alleged and also to demonstrate that he meets the jurisdictional requirements of 28 U.S.C. 1331." 52 This

45. See text accompanying note 29 supra.
50. 393 U.S. 233 (1968).
51. Id. at 237.
52. Id. at 239.
treatment is unusual in that it runs counter to the established practice of deciding the question of jurisdiction before deciding the merits.\textsuperscript{53} Furthermore, the case below had been dismissed on jurisdictional grounds and had not been decided on the merits.\textsuperscript{64} A more consistent approach would have been to have found jurisdiction and remanded to the district court for a decision on the merits. Finally, since the district court had already decided that Oestereich could not satisfy the $10,000 requirement, a fact not contested by the plaintiff, the Court had, in effect, decided the case without jurisdiction.

Oestereich is not unique in its ambiguous approach to the jurisdictional minimum when suits are brought against federal officers or agencies. In \textit{Boyd v. Clark},\textsuperscript{55} the Court affirmed the judgment of the lower court \textit{per curiam}, though noting that it reached its decision "without reaching the jurisdictional question raised under 28 U.S.C. 1331."\textsuperscript{56} Also, the Court was recently asked to decide a case which contested the right of military officials to prevent a person from distributing leaflets on military property.\textsuperscript{57} The Sixth Circuit had affirmed the dismissal by the district court on the grounds that the plaintiff had not shown the presence of a legal certainty that the case placed the requisite $10,000 in controversy.\textsuperscript{58} Despite the unsatisfying use of a monetary standard to determine a First Amendment claim and despite the fact that the court of appeals had clearly reversed the burden of proving the presence or absence of the amount in controversy under the traditional test,\textsuperscript{59} the Court chose not to hear the matter and consequently denied certiorari.\textsuperscript{60} It is interesting to note that in its next term, the Court decided the identical issue, holding that military authorities could not refuse admittance to an otherwise open military facility.\textsuperscript{61} This time, however, the case arose on appeal from a criminal

\footnotesize{
\begin{itemize}
  \item[53.] "In the federal tandem jurisdiction takes precedence over the merits. Unless and until jurisdiction is found, both appellate and trial courts should eschew substantive adjudication." Opelika Nursing Home v. Richardson, 448 F.2d 658, 667 (5th Cir. 1971).
  \item[54.] 280 F. Supp. 78 (D. Wyo. 1968).
  \item[56.] \textit{Id.}
  \item[57.] Goldsmith v. Sutherland, 400 U.S. 960 (1970), \textit{denying cert. to} 426 F.2d 1395 (6th Cir. 1970).
  \item[58.] 426 F.2d 1395 (6th Cir. 1970).
  \item[59.] The court of appeals claimed lack of jurisdiction because "it does not appear to a legal certainty that the amount in controversy is present." 426 F.2d at 1398. This holding was contrary to the liberal burden of proof rule set down by Saint Paul Mercury Indemn. Co. v. Red Cab Co., 303 U.S. 283 (1938).
  \item[60.] 400 U.S. 960 (1970) (Douglas, J., dissenting).
  \item[61.] Flower v. United States, 407 U.S. 197 (1972).
\end{itemize}
}
conviction and thus the issue of jurisdictional amount effectively was avoidance.

Finally, it had been hoped that the Court might offer some guidance as to the amount requirement when it decided Fein v. Selective Service Board No. 87, since two Second Circuit judges had seen fit to write separate opinions on the matter. Again the question was avoided, the Court making fleeting note of Judge Hays' concurrence and ignoring Chief Judge Lumbard's vehement statements on the question.

These cases illustrate the Supreme Court's equivocal attitude toward the question of the applicability of the $10,000 requirement of section 1331 when personal constitutional or statutory rights are claimed to have been violated by federal officials and injunctive relief is sought. It therefore is not surprising that the lower federal courts, which are not so insulated from the threshold question of jurisdiction over the subject matter as is the Supreme Court, have shown a lack of clarity and consistency when called upon to apply a monetary standard to rights plainly incapable of pecuniary evaluation. Due to this "unfortunate gap," a monetary requirement still must be satisfied when suit is brought against the federal government alleging the deprivation of a personal right. The remainder of this article will discuss some of those cases where the jurisdictional amount question has been raised and will suggest alternative methods of analyzing section 1331 in order to avoid the necessity of placing a price tag upon personal, and often fundamental, rights.

**Avoiding Dismissal: Alternative Approaches**

The lower federal courts have utilized five approaches to avoid dismissing a complaint basing jurisdiction on section 1331 when injunctive relief is sought against a federal officer. These approaches are: (1) ignoring jurisdictional amount, (2) assessing the amount in controversy liberally, (3) deferring a decision on dismissal until after a hearing on the merits, (4) ascertaining the possible damages to the defendant if the plaintiff should prevail, and (5) outright rejection of the monetary requirements of section 1331.

**Judicial Omission**

The easiest method of dealing with the problem is to ignore it. This

---

63. 405 U.S. at 372.
64. See text accompanying note 40 supra.
method appears to be employed by many courts potentially faced with the problem. These courts eschew the fiction of assessing the financial value of one's personal rights and assume that in cases of a peculiarly federal nature, the federal court is the best, if not the only, forum available to the claimant. That this practice is apparently widespread appears to evidence the reluctance of many judges to dismiss a case upon an inequitable and unrealistic technicality. It may be that many judges do not even consider that one's personal rights must be assigned a monetary value. Thus, in the companion case\textsuperscript{65} to \textit{Oestereich}, involving a similar issue of preinduction review, no mention was made of the jurisdictional amount in the lower courts.\textsuperscript{66} In another case, the plaintiff alleged that his constitutional and statutory rights had been violated by the racial imbalance of his draftboard.\textsuperscript{67} Since this was an attack upon a widespread practice by the Selective Service System, there was a close parallel to \textit{Boyd v. Clark}.\textsuperscript{68} Unlike \textit{Boyd}, however, this case was dismissed upon the merits with no question being made of the jurisdictional amount. Arguably, this is the better approach. To find that jurisdiction exists certainly is not to find on the merits for the plaintiff.\textsuperscript{69} Not only could the court in \textit{Boyd} have proceeded to the merits and found that the college deferment policy did not deprive the plaintiffs of a protected interest, but it also could have dismissed on such traditional grounds, more rationally tied to the merits, as ripeness or standing.\textsuperscript{70} Such procedure would have avoided the inequitable effect of denying the plaintiffs their claim without a considered analysis of the merits.


\textsuperscript{66} See 287 F. Supp. 369 (N.D. Cal. 1968). See also Fein v. Selective Serv. Bd., 405 U.S. 365 (1972), \textit{aff'd} 430 F.2d 376 (2d Cir. 1970), where the Supreme Court went to the merits without reference to the jurisdictional question.


\textsuperscript{68} 393 U.S. 316 (1969) (per curiam). See text accompanying notes 55, 28 and 18 \textit{supra}.

\textsuperscript{69} See, e.g., Mow Sun Wong v. Hampton, 333 F. Supp. 527 (N.D. Cal. 1971) (action by noncitizens to have the Civil Service Commission's prohibition against employment of aliens declared invalid). The court considered the jurisdictional question briefly and then turned to the merits, finding against the plaintiffs. For another case which granted a federal forum and came to a decision despite an apparent absence of the jurisdictional amount, see Faulkner v. Clifford, 289 F. Supp. 895 (E.D.N.Y. 1968), which involved a draft deferment.

\textsuperscript{70} See, e.g., Bauer v. McLaren, 332 F. Supp. 723 (S.D. Iowa 1971), in which the plaintiff attempted to enjoin his being compelled to testify under a grant of immunity. After a discussion of the jurisdictional question the suit was dismissed as not ripe. While such action impedes a decision on the merits, it does not generally prevent a later decision, as does a finding of lack of jurisdiction over the subject matter.
Of course, if the jurisdictional question is raised by the defense, the question must be faced, and courts generally have shown a lack of confidence and consistency when called upon to determine if a personal right is of sufficient value to invoke federal jurisdiction. Several approaches, of varying validity, have been employed by the courts, often testing their imagination and ingenuity.

Liberal Assessment of Amount in Controversy

The most commonly used method of finding jurisdictional amount where it is challenged by the defendant is a liberal application of the criteria by which the amount in controversy is determined. A high monetary evaluation is placed upon the “priceless” right allegedly infringed, and a favorable application of the legal certainty test is made by the court. The advantage of such procedure to the plaintiff is obvious: the defendant faces the metaphysical burden of disproving the unprovable. This was the method used to justify jurisdiction in a case in which the plaintiff sought to enjoin his induction and to have his position in the Peace Corps reinstated. The same rationale was used where a soldier sought to enjoin his court martial for an offense unconnected with his military service. With little discussion, both courts found that no legal certainty existed that the amount in controversy was less than the requisite amount.

Another court followed a logical extension of the above approach, and found, in an action to reinstate a law student's draft deferment, that a “present probability” that the value of the matter in controversy would exceed the jurisdictional minimum existed. Similarly, a court faced with a college student’s claim for a draft deferment took “judicial

71. FED. R. Civ. P. 12(b)(1) states that a party may, at any time, object to jurisdiction over the subject matter. The issue may also be raised for the first time on appeal. Tatum v. Laird, 444 F.2d 946, 949 n.1 (D.C. Cir. 1971); the issue may be raised by the court, sua sponte. Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908).
74. 300 F. Supp. at 694; 305 F. Supp. at 553.
75. Armendariz v. Hershey, 295 F. Supp. 1351 (W.D. Tex. 1969). See also Williams v. Rogers, 449 F.2d 513 (8th Cir. 1971) (a serviceman's planned transfer to the Philippines to stand trial was held to present sufficient possible damage to satisfy the amount requirement); Friedman v. International Ass'n of Machinists, 220 F.2d 808 (D.C. Cir. 1955), in which the court stated: "Absolute certainty of this value is not essential.... Present probability that damages will exceed that sum is enough." Id. at 810. Friedman involved the loss of union membership and cited in its support the International Bhd. of Locomotive Firemen v. Pinkston, 295 U.S. 96 (1934) (future payments of a widow's pension can be estimated to satisfy the amount requirement, in spite of the contingent termination of those payments upon her remarriage).
notice of the pecuniary advantages of a college education.” The same rationale of finding a potential $10,000 loss to the plaintiff has been used to entertain a parent’s claim that saluting the flag by his children at their school violated their First Amendment rights and to entertain a medical student’s claim that he had been unjustly dismissed from medical school. Perhaps the most extreme example of using liberal criteria to support a finding of jurisdiction occurred when a soldier sought to enjoin his transfer to Vietnam. In finding that the amount in controversy had been satisfied, the court concluded that the plaintiff’s earning capacity might well suffer the requisite $10,000 damage if he were forced to go to Vietnam and if, once there, he were killed. Such reasoning is doubtless realistic but hardly would stand as a model for the application of principles of legal causation or the usual jurisdictional concept of present probability.

Courts have also followed the suggestion of Judge Edelstein in his Boyd dissent and have determined that the invaluable personal rights of a plaintiff can be treated for jurisdictional purposes as having infinite value, rather than no value at all. Thus, in an action to compel the Federal Bureau of Investigation to discontinue intimidation and harassment of a peace group, a court responded to a challenge to its jurisdiction by stating that the “better and modern” view is toward a liberal interpretation of the amount controversy. Considering that the fundamental rights of assembly and petition were involved, the court

77. Gobitis v. Minersville School Dist., 24 F. Supp. 271 (E.D. Pa. 1938). After speculation that such rights were priceless, the court found that the requisite amount was present by estimating the possible expense if the plaintiff had transferred his children to a private school. Today, the case could be brought under the civil rights jurisdictional statute. 28 U.S.C. § 1343(3) (1970).
78. Connelly v. University of Vermont and State Agric. College, 244 F. Supp. 156 (D. Vt. 1965). As in Gobitis, this case could have been brought more properly under section 1343, since the defendant was acting under state law. See note 77 supra. There had been, however, a distinction between “personal” rights, such as First Amendment cases, which were allowed under section 1343, and “property” rights, which were thought to have to be assessed under section 1331 in order to gain federal jurisdiction. Hague v. CIO, 307 U.S. 496 (1939). See also Johnson v. Karder, 438 F.2d 7 (2d Cir. 1971). This distinction was erased in Lynch v. Household Fin. Corp., 405 U.S. 538 (1972), where the Supreme Court noted: “This Court has never adopted the distinction between personal liberties and proprietary rights as a guide to the contours of § 1343 jurisdiction. Today we expressly reject that distinction.” Id. at 542. See also the discussion of Hague at note 112 infra.
was "reluctant to conclude that [they were] worth less than $10,000 to plaintiff." As is evident, this method can be used in cases where economic damage is extremely remote or speculative, e.g., First Amendment cases.

Deferring a Decision
These approaches noted in the preceding paragraphs to the jurisdictional problem posed by section 1331 seem to be consistent with a strong policy of avoiding dismissal on grounds of failure to satisfy the jurisdictional minimum. In unliquidated damage cases, the legal certainty test has been held to require trial to proceed if the jurisdictional amount cannot be ascertained to be $10,000 or less before a trial on the merits. At least one court has suggested that proof of the jurisdictional amount in suits against federal officials could be deferred until the hearing on the merits. This approach also could be successful in avoiding dismissal without a substantive decision, since courts may, if they refrain from preliminary dismissals for lack of jurisdiction, be more disposed to issue a decision on the merits of the case. If a case is found to have merit, a court, having once defined a right, would be unlikely to refuse to vindicate it. A synthesis of jurisdiction and merits is already found in the mandamus provision of the Judicial Code.

Assessing Damage to Defendant
Another method which may be used to satisfy the amount requirement is to accept the theory that the amount in controversy may be determined by the possible damage the defendant stands to suffer. This method will probably suffice in cases in which the defendant would be subject to extensive organizational changes should the plaintiff prevail. In an excellent footnote discussion, the Tatum court examined the two prevailing theories and surmised that the Supreme Court's treatment of Flast v. Cohen, a taxpayer's suit to enjoin the federal

---

83. See Jones v. Landry, 387 F.2d 102 (5th Cir. 1967) and cases cited therein. Cf. Opelika Nursing Home v. Richardson, 448 F.2d 658 (5th Cir. 1971).
85. 28 U.S.C. § 1361 (1970) grants jurisdiction if a duty is owed by a federal officer to the petitioner. The section has been held not to have enlarged the traditional scope of mandamus and, generally, a clear ministerial duty must be shown. See note 14 supra.
87. 444 F.2d at 951 n.6.
government's allocation of taxes to church supported institutions, may indicate that the Court has accepted the defendant oriented view.\textsuperscript{90} A word of caution should accompany this point. While a government agency might be subject to large expense caused by the agency's loss of a suit and its subsequent change of policy or procedure, the expense possibly may be traceable to an ascertainable class or group of persons. If that be the case, it may be that the plaintiff would only be able to allege the amount of damage which he would personally cause the defendant. Otherwise, he may run afoul of the prohibition against aggregation of class damages to meet the jurisdictional amount.\textsuperscript{91}

The Best Alternative: Outright Rejection

Despite obvious difficulty with the requirement of jurisdictional amount, the lower courts generally have elected to follow Judge Learned Hand's disciplined counsel regarding the role of the lower courts in judicial innovation\textsuperscript{92} and have remained content to ignore or avoid the issue rather than suffer a direct confrontation. Only one court has come to the desired result, when its jurisdiction was challenged, and found that the amount in controversy does not apply in suits against federal officers when injunctive or other equitable relief is sought. This case was \textit{West End Neighborhood Corp. v. Stans},\textsuperscript{93} in which a black community organization alleged that an improper count during the 1970 census had resulted in disproportionate electoral representation for the community. In answer to the government's motion to dismiss because the plaintiff could allege no monetary amount in controversy, the court bluntly replied:

Since no other court can remedy plaintiffs' grievances, they must be heard here or nowhere; and it seems clear that their entry to the only available forum should not be barred by a dollar sign. Any other interpretation would raise serious constitutional questions.

... I question the wisdom of hanging price tags on constitu-

\textsuperscript{90} On the other hand, it could merely be indicative of the already mentioned reluctance of the Supreme Court to dispose of an otherwise valid case upon such a formalistic ground. See note 65 and accompanying text supra.


\textsuperscript{92} "Nor is it desirable for a lower court to embrace the exhilarating opportunity of anticipating a doctrine which may be in the womb of time, but whose birth is distant..." \textit{Spector Motor Service v. Walsh}, 139 F.2d 809 (2d Cir. 1943) (Hand, J., dissenting). \textit{Compare id. with Post v. Payton}, 323 F. Supp. 799, 804 (E.D.N.Y. 1971): "However unwise the $10,000 requirement may seem to be... it nevertheless remains in the statute and we find no exception based upon the reason that the alleged damages be incapable of measurement."

tional rights and therefore reject the challenge to the court's juris-
diction.94

The *Stans* court should be commended for its handling of a diffi-
cult situation in such a direct manner. Clearly, personal intangible rights
cannot be readily assigned a monetary value. Yet, because of an ap-
parently thoughtless or anachronistic statute, litigants with claims
against the federal government, unable to predicate jurisdiction on any
other jurisdictional statute, are forced into the meaningless formality of
alleging an amount in controversy. Unhappily, as these cases have
shown, the formality may well turn out to present a substantial barrier
to timely adjudication on the merits and may even prevent the merits
from ever being decided. Whatever the case, the requirement of a
jurisdictional amount is unacceptable in these cases, as it often be-
comes a vehicle for haphazard or uneven application of the law and an
excuse for the failure to make a full inquiry into unpopular causes. This
in turn results in the indignity of forcing a claimant to fix a price upon
his precious personal rights in order to gain a federal forum.

**Alternative Routes to Outright Rejection**

There are two possible routes to the outright rejection of the jurisdic-
tional amount requirement of section 1331 as that requirement re-
lates to equitable relief against federal officials. First, congressional
correction would be the simplest and most direct approach. The de-
sired rejection could be achieved by limiting the jurisdictional amount
requirement to diversity cases. Jurisdiction for cases alleging violations
of federal statutory or constitutional rights which otherwise cannot be
maintained under a specialized federal jurisdictional statute thus could
be brought without monetary restrictions. A second approach is judi-
cial rejection of 1331's jurisdictional amount requirement. Such reform
is possible even without congressional action. Attempts by courts to
avoid the requirement, as in *Stans* and *Murray*,95 are to be commended
and encouraged. Moreover, such efforts are not inimical to good judicial
principles or contrary to the intent of Congress. The liberal interpre-
tation of the amount requirement of section 1331 is supported by sound
legal and rational grounds.

The 1958 amendment to the section increased the amount in con-
troversy to $10,000 for both federal question and diversity cases. The
legislative history of this amendment notes that the amount sought was
to be "not so high as to convert the federal courts into courts of big busi-

94. *Id.* at 1068.
95. See text accompanying notes 72 and 93 *supra*.
ness nor so low as to fritter away their time in trial of petty controversies."\textsuperscript{96} This language, at first glance, seems to indicate an acceptable purpose. Closer examination, however, shows that little thought was given to the effect of the amount in controversy in federal question cases; twenty-five of the twenty-six pages of legislative history are devoted to the effect of the increase on the diversity provision.\textsuperscript{97} With respect to the federal question cases, it was stated that the only significant categories of cases affected by the jurisdictional amount requirement are suits under the Jones Act and cases challenging the constitutionality of state statutes.\textsuperscript{98} Arguably, Congress did not intend to affect other significant categories of cases invoking jurisdiction under 1331, such as actions alleging a violation of statutory or constitutional rights by a federal official.

Similarly, congressional concerns that the federal courts not be overburdened with petty controversies would not apply to the vindication of individual rights claimed under statutory or constitutional authority. The jurisdictional amount requirement of section 1331 nonetheless affects these nonpetty suits since individual claimants with otherwise viable issues involving such rights may be unable to base jurisdiction on another statute. As to Congress' concern that federal courts not be turned into "courts of big business," it will be noted that other jurisdictional statutes confer federal jurisdiction without regard to the amount in controversy in cases involving commerce,\textsuperscript{99} securities regulation,\textsuperscript{100} and the like.

The Mistaken Analogy Between Diversity and Federal Question Jurisdiction

The requirement of a minimum monetary amount in cases not covered by specific jurisdictional statutes often is justified by citation to \textit{Barry v. Mercein}.\textsuperscript{101} That decision stated that "[t]he matter in dispute must be money, or some right, the value of which, in money, can be calculated and ascertained."\textsuperscript{102} \textit{Barry} was a child custody case based on diversity and was decided twenty-eight years before Congress granted federal jurisdiction for federal questions. Although no court

\textsuperscript{96} S. REP. NO. 1830, 85th Cong., 2d Sess. (1958).
\textsuperscript{97} See id.
\textsuperscript{98} See note 10 supra.
\textsuperscript{101} 46 U.S. (5 How.) 103 (1847).
\textsuperscript{102} Id. at 120.
appears to have made this distinction, a proper understanding of this jurisdictional issue shows that a diversity case cannot be cited as authoritative when discussing jurisdictional requirements in federal question cases. Diversity of citizenship has no similarity to federal questions, other than an apparent accidental assignment of a jurisdictional minimum; discussion of one in terms of the other shows a basic misconception.

This misconception is demonstrated by the fact that the ultimate difference between the two bases of jurisdiction is the presence or absence of an effective alternative forum. Unquestionably, a plaintiff, denied a federal forum in a diversity case, can bring an action in state court. It is questionable whether a state court may afford a plaintiff relief when he seeks to enjoin a federal official. Thus, the dismissal of a diversity case for failure to meet the jurisdictional minimum is generally nothing more than an inconvenience; in federal question cases, however, a like dismissal may well be fatal.

The availability of an alternative forum goes to the basic theory which justifies restrictions on federal jurisdiction. This theory is premised on the fact that state courts have concurrent power with the federal courts. While this may have been the case in the early history of the United States, the power of state courts has been steadily limited as the federal government expanded its power. Furthermore, state courts probably never held injunctive power over federal officials.

103. See, e.g., Goldsmith v. Sutherland, 426 F.2d 1395, 1397 (6th Cir. 1970). But see Kiernan v. Lindsay, 334 F. Supp. 588, 595 (S.D.N.Y. 1971); Marquez v. Hardin, 339 F. Supp. 1364, 1370 (N.D. Cal. 1969). These two courts are among the few to consider the presence of an alternative state forum in deciding the jurisdictional question.

104. The legislative history of the original Act of 1875 is unclear. See Note, A Federal Question Question: Does Priceless Mean Worthless?, 14 St. Louis U.L.J. 268, 269 (1969). The lack of a clarifying legislative history has recently been noted by the Supreme Court in Lynch v. Household Fin. Corp., 405 U.S. 538, 548 n.14 (1972): "[A] study of the history of the bill as revealed by the Congressional Record yields no reason for its enactment at that time, and may even be said to raise a strong presumption that it was 'sneak' legislation. It was originally introduced in the House of Representatives in the form of a bill to amend the removal statute." This quote is from Chadbourn & Levin, Original Jurisdiction of Federal Questions, 90 U. Pa. L. Rev. 639, 642-43 (1942), which in turn often relied on F. Frankfurter & J. Landis, The Business of the Supreme Court (1928).


106. There is some question as to the state's original power to rule upon laws...
This lack of power is illustrated by a line of cases which includes \textit{Tarble's Case}.\textsuperscript{107} Relying upon military necessity and the supremacy clause, that case held that the Supreme Court of Wisconsin could not discharge a state citizen held under the authority of a federal officer in a habeas corpus proceeding. Other federal-state conflicts have been resolved in a similar fashion.\textsuperscript{108} Such resolutions may not be the final word. One study suggests that the assumption that no state court can enjoin a federal agency perhaps is accepted too easily.\textsuperscript{109} However, the courts which note that state jurisdiction in this area is doubtful appear to be substantially correct.\textsuperscript{110}

\textit{Section 1343(3) as an Example}

Despite a lack of express congressional intent and the probable absence of an alternative forum, section 1331's jurisdictional amount requirement continues to be applied in suits seeking to enjoin federal officials from infringing certain constitutional and statutory rights. When these rights cannot be assigned a monetary value, the individual may be denied relief. This denial could be avoided by a judicial recognition that the jurisdictional question in such a suit is more closely related to civil rights jurisdiction under 28 U.S.C. 1343(3) than to diversity jurisdiction. This recognition would result in a clearer understanding of federal question jurisdiction and its efficient and equitable exercise. A contrary interpretation results in a situation where a federal court can enjoin a state official more easily than a federal official who commits the same act.

Section 1343(3) allows federal jurisdiction in cases alleging violation of civil rights under color of state law.\textsuperscript{111} Unlike section 1331,
such jurisdiction is conferred without any consideration of amount in controversy. The reason for this is obvious: since the section deals with rights of an intangible nature—for example, the right to vote or the right to equal protection of the laws—an amount in controversy requirement would be meaningless. A second reason for the lack of jurisdictional amount under 1343(3) is that federal jurisdiction in this area was created because Congress thought that state courts might be remiss in vindicating civil rights. As noted, a diversity plaintiff who fails to satisfy the jurisdictional requirement simply turns to a state court. In the civil rights area such recourse to state courts might not be feasible or desirable. Since actions seeking equitable relief against federal defendants might not be maintainable at all in state courts, the same reasons which dictate the lack of jurisdictional amount in civil rights cases certainly seem to apply to similar federal question cases. In fact, under present law, this allegation of the violation of a federal right under the color of state law will more easily gain a federal forum than will an allegation of the same violation under color of federal law.

“(3) To redress the deprivation, under color of any State law, statute, ordinance, custom or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States . . . .”

112. See Hague v. CIO, 307 U.S. 496 (1939), where the issue was whether the plaintiffs had to satisfy the jurisdictional minimum of the predecessor of section 1331, when a state official was alleged to have violated their First Amendment rights. A loosely knit 5-2 majority held, in three opinions, that jurisdiction could be predicated upon the predecessor of section 1343 and did not have to meet the jurisdictional requirement of the newer federal question section. As Justice Stone's often quoted concurring opinion states: “[W]henever a right or immunity is one of personal liberty, not dependent for its existence upon property rights, there is jurisdiction under [the civil rights section].” Id. at 531-32 (Stone, J., concurring).

The lack of clarity in the majority's concurring opinions in Hague has caused confusion, and the case has been cited as authority for the converse proposition that the jurisdictional amount is still necessary when personal rights are alleged to have been infringed upon by federal, rather than state, officials. See Goldsmith v. Sutherland, 426 F.2d 1395, 1397 (6th Cir.), cert. denied, 400 U.S. 960 (1970). See generally Note, Draft Reclassification for Political Demonstrations—Jurisdictional Amounts in Suits Against Federal Officers, 53 CORNELL L. REV. 916 (1968); Note, A Federal Question Question: Does Priceless Mean Worthless?, 14 ST. LOUIS U.L.J. 268, 278-79 (1969).

113. In the field of civil rights, the federal government must assume ultimate responsibility for the protection of individuals when state and local enforcement of such rights fail. H.R. REP. No. 291, 85th Cong., 1st Sess., 1974-76 (1957).

114. See Williams v. Rogers, 449 F.2d 513 (8th Cir. 1971) where the court unequivocally found that a federal forum would be available under section 1343(3) where a state official is alleged to have acted. Since the defendant was a federal official, however, the court had to assure itself that the jurisdictional amount of section 1331 was satisfied. After the court had satisfied itself of the presence of the requisite
The situation becomes even more unbalanced when it is realized that the original assumption behind section 1343(3) that an impartial state forum was unavailable may be to some extent out of date. At any rate, the "state" plaintiff has two courts in which he may be heard. The "federal" plaintiff, asserting a peculiarly federal cause of action against a federal official but lacking the jurisdictional minimum may well have no forum at all.

The Constitution and Section 1331

The appropriateness of the judicial rejection of the monetary jurisdictional limitation in injunctive suits against federal officials is supported by the canon of statutory construction that requires adoption of the interpretation of a statute by which constitutional questions are avoided. The Supreme Court frequently has declared that if there is a possible interpretation which avoids a constitutional question, the Court will adopt it.116 This principle is applicable even when a contrary literal meaning exists, particularly when there is evidence of congressional intent for the interpretation which raises no constitutional objections. For example, in United States v. CIO,117 the Court stated: "The obligation rests also upon this Court in construing congressional enactments to take care to interpret them so as to avoid a danger of unconstitutionality."118 In that case, the language of the Federal Corrupt Practices Act was construed in such a manner as to salvage the statute and still preserve the constitutional rights of the individual. Similarly, in United States v. Rumeley,119 the Court narrowly construed a statutory phrase in order to avoid passing upon the statute's validity. In that decision the Court observed that restricting the meaning of the questionable statutory phrase is not barred by intellectual honesty, but is in "the candid service of avoiding a serious constitutional doubt."120

This principle can be applied in suits for injunctions against federal officials under section 1331. Consideration of the legislative intent, plus recognition of the possible unconstitutionality of section 1331 amount, it denied the plaintiff's claim. See also Cortright v. Resor, 325 F. Supp. 797, 811 (E.D.N.Y. 1971).

116. See Elizabeth Arden, Inc. v. FTC, 156 F.2d 132, 134 (2d Cir. 1946).
117. 335 U.S. 106 (1948).
118. Id. at 120-21.
119. 345 U.S. 41 (1953).
120. Id. at 47.
if read literally, would justify a finding that section 1331 should be reinterpreted. For example, section 1331 could be read as requiring satisfaction of the $10,000 monetary minimum only in cases involving monetary damages. Alternatively, the statute might be construed to require this minimum only in cases where there is an alternative forum available. Both constructions would accomplish two important objectives: outright rejection of the restrictive monetary requirement for federal injunctive cases, while avoiding a finding that section 1331 is unconstitutional.

As the above analysis has shown, there are sufficient grounds for rejecting the jurisdictional amount requirement in suits against federal officials without ever reaching a constitutional question. The use of the jurisdictional minimum in federal question cases may well be unconstitutional. This questioning of section 1331's constitutionality has its basis in the due process clause of the Fifth Amendment. For example, in a context other than jurisdictional amount, the Court of Appeals for the Second Circuit stated:

[While Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law. . . .]

Senator Ervin has stated the issue even more forcefully: "To give people a constitutional right and then deny them the opportunity to vindicate that right is certainly making a hollow mockery of the Constitution." 122

The due process clause's impact on the jurisdictional amount requirement of section 1331 may be foreshadowed by the recent case of *Boddie v. Connecticut*. 123 In that case, the Supreme Court ruled that a state could not use a filing fee to deny poor persons access to a state divorce court, since that court was "the only forum effectively empowered to settle their disputes." 124 Despite the fact that the holding was expressly limited to cases involving "basic human relationships," and that the holding did not decide whether access to the courts was a basic

121. Battaglia v. General Motors Corp., 169 F.2d 254, 257 (2d Cir. 1948), which concerned a section of a federal labor law statute which precluded judicial review. After analysis, the section in question was found to be constitutional. See also Peterson v. Clark, 285 F. Supp. 700, 705 (N.D. Cal. 1968), rev'd on other grounds, 411 F.2d 1217 (9th Cir. 1969), for a discussion of Congress' power to limit judicial review.


124. Id. at 376.
right under all circumstances, this case can provide the impetus for a constitutional attack on the monetary minimum established by section 1331. When the federal government has allegedly violated an individual's constitutional or statutory rights, the due process clause of the Fifth Amendment should demand an effective forum for the vindication of these rights. Because of the serious questions raised by a state's enjoining a federal official, the only effective forum is the federal court.

Although this analysis of section 1331 is based on due process principles similar to those applied in Boddie, the wealth of the claimant is not directly relevant. Rather, the issue is the value of his cause of action and not his personal wealth. However, the two factors often coincide. In Fein, the plaintiff alleged that the violation of his rights would postpone a lucrative medical career. Citing the coincidence of the plaintiff's wealth and the value of his cause of action, Chief Judge Lumbard noted in a forceful dissent:

Since Fein clearly can sustain his jurisdictional allegation, I need not consider the case of a poor man who stands to lose nothing but his most precious personal liberties if the unconstitutional actions of the federal government are beyond the reach of the courts. But if that case ever comes before us, I have grave doubts that the old rule requiring the claimed deprivation be capable of monetary valuation would long endure.

Despite this coincidence of the value of the cause of action and the claimant's wealth, the Court's pronouncements in Boddie appear to raise a substantial constitutional question as to the validity of section 1331. This question arises because the monetary requirement operates to deprive the claimant of the only effective forum available, and can be avoided by adopting a limiting construction of the statute. This limiting construction would provide for the complete rejection of jurisdictional amount in suits brought to enjoin a federal official or agency from violating an individual's federal constitutional or statutory rights.

Conclusion

The jurisdictional amount requirement of section 1331 presents a serious impediment to the vindication of an individual's rights. These rights are difficult to value, particularly when the claimant is seeking to enjoin the acts of federal officers or agencies. Recognizing these

125. See id. at 383.
127. Id. at 385.
difficulties and the resultant unfairness, the lower federal courts have in some instances adopted one of five approaches to avoid the requirements of section 1331. All of these approaches other than outright rejection are unwise or unseemly to varying degrees. Ignoring the problem risks dismissal upon appeal. Deferring the decision also may lead to wasted effort. Liberal assessment can lead to outlandish acrobatics. The damage to the defendant approach is still questionable and, in any event, is not always applicable. In view of these problems, section 1331 is best read as requiring $10,000 in controversy except in cases where equitable relief is sought against federal officials. This limiting construction is sufficiently founded upon the fact that legislative history does not show an intent to encompass such injunctive suits under section 1331, the policy of refusing to deny the only effective forum for cases involving federal rights, and the possible unconstitutionality of the statute as presently interpreted.

Realization of the extent and nature of the problem posed by the amount requirement in injunctive cases against federal officials to preserve personal rights is the first step necessary to alleviate that problem.128 "This is not the 19th Century," stated Judge Edelstein, "where property rights were valued over human rights. If a man can sue in federal court on the allegation that the government is injuring his property, he certainly must be allowed to sue on the allegation that the government is oppressing him personally."129 Not only is the necessity of valuing personal and fundamental rights demeaning to their inherent worth, but courts also have yielded to the temptation to use the jurisdictional amount requirement as a judicial short cut to avoid a thorough examination of the merits. Certainly, such materialistic treatment of fundamental rights must be avoided lest those rights be reduced to the callous appraisal of a Shylock:

A Pound of man's flesh, taken from a man,
Is not so estimable, profitable neither
As flesh of muttons, beefs, or goats. . . .130

130. W. SHAKESPEARE, THE MERCHANT OF VENICE ACT I, SCENE III.