

Notes

Interest in Judgments Against the Federal Government: The Need for Full Compensation

Sovereign immunity doctrine precludes many plaintiffs who successfully sue the federal government from receiving interest on monetary judgments.¹ This bar does not apply to suits brought under the taking clause of the Fifth Amendment,² nor does it apply to suits based upon statutes or contracts that expressly provide for interest.³ Claims for interest not falling squarely within these exceptions, however, have been rejected with increasing rigor by the courts.⁴

The most recent and politically important example of the rule precluding interest involves Title VII of the Civil Rights Act of 1964.⁵ Under

1. See, e.g., *United States v. Alcea Band of Tillamooks*, 341 U.S. 48, 49 (1951) (rejecting claim for interest by Native American tribe attempting to recover under special act of Congress authorizing "any and all legal and equitable claims" provided by act); *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585, 588 (1947) (rejecting claim for interest under "just compensation" provision in lease cancelled by Secretary of War); *United States v. Goltra*, 312 U.S. 203, 207 (1941) (rejecting claim for interest by private party seeking compensation for tortious acts committed by administrative official).

Federal law provides for interest on final judgments. 28 U.S.C. § 1261 (1976). Interest in final judgments is not allowed, however, in suits against the federal government. *Holly v. Chasen*, No. 79-1492, slip op. at 4 (D.C. Cir. Jan 7, 1981) (traditional rule precluding government liability for interest "makes no distinction between prejudgment and postjudgment awards").

2. See U.S. CONST. amend. V ("[P]rivate property [shall not] be taken for public use, without just compensation."); *United States v. Alcea Band of Tillamooks*, 341 U.S. 48, 49 (1950) ("The only exception [to the traditional rule] arises when the taking entitles the claimant to just compensation under the Fifth Amendment."); *United States v. Klamath Indians*, 304 U.S. 119, 123-26 (1938) (awarding interest for indemnification of Indian tribes for land taken from them by United States under power of eminent domain); *Phelps v. United States*, 274 U.S. 341, 344 (1927) (allowing interest as part of compensation due to plaintiff for government's wartime appropriation of plaintiff's wharf).

3. See, e.g., 28 U.S.C. § 2411(a) (1976) (in any judgment against the United States for any overpayment of internal revenue tax "interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954 upon the amount of the overpayment, from the date of the payment or collection thereof . . ."); 28 U.S.C. § 2516(9) (1976) ("Interest in a claim against the United States shall be allowed in a judgment of the Court of Claims only under a contract or Act of Congress expressly providing for payment thereof.")

4. See pp. 304-06 *infra*.

5. Civil Rights Act of 1964, 42 U.S.C. § 2000e (1976).

Title VII, prevailing plaintiffs may be awarded backpay.⁶ Title VII suits proceed slowly, and it is often several years before plaintiffs receive judgments.⁷ Especially in a period characterized by steady inflation, the time lag between violation and judgment significantly reduces the benefit of a backpay award unless it is augmented by interest. In Title VII suits against private employers and state and local governments, courts have awarded interest on backpay awards.⁸ Prevailing judicial opinion holds, however, that because Title VII does not expressly provide for interest, sovereign immunity bars it in suits against the federal government.⁹

This Note argues that the traditional rule precluding federal government liability for interest is outmoded. The Note traces the history of that rule and concludes that it originally developed in response to conceptions regarding awards of interest in private lawsuits, but that it did not keep pace with changes in those conceptions. The Note proposes an alternative rule that is both sensitive to these changes and to the policies and assumptions underlying the principle of sovereign immunity. Finally, the Note applies the proposed rule to employment discrimination law, and concludes that Title VII should be held to authorize interest liability against the federal government.

I. The Divergence of Interest Doctrine and the Rule Precluding Government Liability for Interest

The traditional rule precluding government liability for interest was based upon the conception, rooted in the English common law, that inter-

6. 42 U.S.C. § 2000e-5(g) (1976); see *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

7. See *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157, 1168 (5th Cir. 1978), *cert. denied*, 439 U.S. 1115 (1979) ("The length of litigation in complex Title VII class actions often rivals that of even the most notorious antitrust cases.") *Pettway* began in 1965 with complaints to the Equal Employment Opportunity Commission. Suit was brought in the district court in 1966. After a series of proceedings, including appellate remands, the district court issued a final judgment, including monetary relief, in 1975. The 1978 circuit court opinion remanded for further proceedings.

For examples of more typical, but still protracted, Title VII suits, see *EEOC v. Pacific Press Publishing Ass'n*, 482 F. Supp. 1291 (N.D. Cal. 1979) (six years between complaint and judgment); *EEOC v. Lithographers & Photoengravers I.U.*, 412 F. Supp. 530 (D. Md. 1976) (six years between complaint and judgment); *Laffey v. Northwest Airlines, Inc.*, 374 F. Supp. 1382 (D.D.C. 1974), *modified*, 567 F.2d 429 (D.C. Cir. 1976) (seven years between complaint and judgment). Interest was awarded in all of the above cases.

8. See, e.g., *Whiting v. Jackson State Univ.*, 616 F.2d 116 (5th Cir. 1980) (state government); *EEOC v. Pacific Press Publishing Ass'n*, 482 F. Supp. 1291 (N.D. Cal. 1979) *rev'd and remanded*, 535 F.2d 1182 (9th Cir. 1976) (private employer); *Howard v. Ward City*, 418 F. Supp. 494 (D.N.D. 1976) (municipal government). *But see* *Bowe v. Colgate-Palmolive Co.*, 272 F. Supp. 332, 366 (S.D. Ind. 1967), *modified*, 416 F.2d 711 (7th Cir. 1969) (interest denied based upon court's view of "general equities" of case).

9. See, e.g., *Blake v. Califano*, 626 F.2d 891 (D.C. Cir. 1980); *deWeever v. United States*, 618 F.2d 685, 686 (10th Cir. 1980); *Saunders v. Claytor*, No. 79-4373, slip. op. at 4-6 (9th Cir. Oct. 3, 1980); *Fischer v. Adams*, 572 F.2d 406, 411 (1st Cir. 1978); *Richerson v. Jones*, 551 F.2d 918, 925 (3d Cir. 1977).

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est was a penalty. The present trend, however, is to view interest not as a penalty but as compensation for the lost use-value of money.¹⁰ This change in the meaning of interest has eroded the basis for the rule barring interest awards against the federal government.

A. *The Evolution of Interest Doctrine*

Interest doctrine has been characterized by the steady erosion of restrictive categories that have tended to discourage awards of interest.¹¹ Interest was once conceived of solely as a fee for lending money.¹² It was viewed with distaste by Greek philosophers¹³ and condemned as usury in Judeo-Christian religious belief.¹⁴ The English common law reflected this repugnance by prohibiting interest charges on loans.¹⁵ As the commercial needs and political power of business enterprise became more important, however, the law gradually came to view interest more tolerantly.¹⁶ Legal doctrine was manipulated to enlarge the category of situations in which interest could properly be awarded.¹⁷ Interest came to be viewed as a penalty for damages incurred as a result of a debtor's failure to pay back his loan

10. In the context of claims for compensation, interest represents the difference in the value of a certain sum of money at one time and the increased value of that sum at a later time. Interest is required in order to compensate an individual for having forgone a certain sum at an earlier time. The central fact underlying the economic theory of interest is that money itself represents a scarce good that can be put to profitable use. See A. ALCHIAN & W. ALLEN, *UNIVERSITY ECONOMICS* 200-03 (2d ed. 1967).

11. See D. DOBBS, *LAW OF REMEDIES* § 3.5, at 174 ("Courts have moved steadily toward more liberal grants of interest. . . ."); C. MCCORMICK, *LAW OF DAMAGES* § 51, at 206-11 (1935) (award of interest as damages has grown more prevalent, beginning as allowance discretionary with jury but gradually becoming an element of compensation claimable as matter of right); 1 T. SEDGWICK, *MEASURE OF DAMAGES* § 297, at 567-68 (9th ed. 1912) ("The gradual extension of the principles allowing interest as damages is clear.") For a sprightly account of the early development of interest doctrine, see *Marshall v. Beeler*, 104 Kan. 32, 34-37, 178 P. 245, 246-47 (1919).

12. See generally C. MCCORMICK, *supra* note 11, § 51, at 207.

13. ARISTOTLE, *POLITICS* 29 (E. Barker trans. 1946) ("[O]f all modes of acquisition, usury is the most unnatural.")

14. Exodus 22:25 ("[I]f thou lend money to any of my people that is poor by thee, thou shall not be to him a usurer, neither shall thou lay upon him usury.") Usury has come to mean excessive interest. In the Old Testament, however, usury denoted any charge for the use of money. See T. DIVING, *INTEREST: AN HISTORICAL & ANALYTIC STUDY IN ECONOMICS & MODERN ETHICS* 4 (1958) ("Only after the repeal of the prohibitions of interest . . . and the establishment of a legal rate, did 'usury' receive its present meaning of an exorbitant charge for a money loan or a charge that exceeds the legal rate.")

15. 8 W. HOLDSWORTH, *HISTORY OF ENGLISH LAW* 100 (2d ed. 1926).

16. See C. MCCORMICK, *supra* note 11, § 51, at 207. ("In the face of . . . economic demand, church and state were powerless to prevent the commercial borrower from bargaining for money that he needed and could only get by offering an inducement in return."); cf. *Marshall v. Beeler*, 104 Kan. 32, 36, 178 P. 245, 247 (1919) ("[T]he Fathers of the Church, realizing that the struggling commerce of the times, as well as the natural laws of trade, demanded the extension of the credit system, and the employment of capital, and that interest was gradually becoming a virtual necessity, advanced the peculiar doctrine that Jews might be allowed to take interest, since they were to be damned in any case, and by giving them the monopoly of the business, the souls of Christians might not be lost.")

17. See C. MCCORMICK, *supra* note 11, § 51, at 207.

on the date specified in the contract. Thus, a fee for merely lending money was considered usurious. But, if the loan was not repaid promptly according to the terms of a contract, a fee for delay was considered appropriate.¹⁸

This characterization of interest as a fault-based penalty for delayed payment also influenced the development of legal doctrine regulating the award of non-contractual interest as an element of damages in lawsuits.¹⁹ This influence has manifested itself in a number of ways. Some jurisdictions have provided that interest serve as an explicitly punitive measure in cases in which the defendant's conduct is willfully or egregiously improper.²⁰ In many jurisdictions, the determination of interest liability was consigned to the discretion of juries.²¹ Because interest was seen as something distinct from compensation, rather than as an element of compensation owed to plaintiffs as a matter of right, it was separated from the principal award and made a gratuity whose award was influenced more by a defendant's conduct than by a plaintiff's condition.²² Further underlining the centrality of fault in interest doctrine was the rule that a court

18. See Note, *Prejudgment Interest as an Element of Damages: New Application of an Old Theory*, 15 STAN. L. REV. 107, 107 (1962) (early cases awarding interest did so "seemingly on the theory that defendant should be penalized for not paying promptly the amount owed"); Comment, *Prejudgment Interest: An Element Not To Be Overlooked*, 8 CUM. L. REV. 521, 522 (1977) (under traditional theory "prejudgment interest is a penalty against the breaching party due to his failure to pay immediately the fixed damages") [hereinafter cited as *Prejudgment Interest*]; Comment, *Interest As Damages in California*, 5 U.C.L.A. L. REV. 262, 263 (1958) (punishment of defendant implicit objective of interest awards under traditional principles of interest doctrine). Cf. Township of Wayne v. Ricmin, Inc., 124 N.J. Super. 509, 308 A.2d 27 (1973) (traditionally interest is in the nature of a penalty); Laycock v. Parker, 103 Wis. 161, 179, 79 N.W. 327, 332 (1899) ("[A] refusal to pay money legally due, like a refusal to perform any other legal duty to another, merited condemnation and punishment from the courts, and the doctrine of interest as damages, in absence of express agreement, became established; but it was allowed as damages and by way of punishment to a wrongdoer.")

19. See C. MCCORMICK, *supra* note 11, § 51, at 210.

20. See, e.g., CAL. CIV. CODE § 3288 (West 1970) (originally enacted in 1872) ("In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury."); N.D. CENT. CODE § 32-03-05 (Supp. 1979) (originally enacted in 1877) (interest may be given at discretion of court and jury); ILL. ANN. STAT. ch. 74, § 2 (Smith-Hurd 1966) (originally enacted in 1845) (interest may be awarded "on money withheld by an unreasonable and vexatious delay of payment"). See generally C. MCCORMICK, *supra* note 11, § 57a (interest award, except when pursuant to contract, must be based upon unjustifiable withholding of money due as debt or money recoverable as damages); 1 T. SEDGWICK, MEASURE OF DAMAGES § 294 (9th ed. 1912) ("Many states by statute allow interest when money is vexatiously withheld."); T. SEDGWICK, MEASURE OF DAMAGES 402 (1st ed. 1847) (interest allowable in cases involving unliquidated damages only "if the conduct of the defendant was improper, i.e., where fraud or gross misconduct could be imputed to him"); 1 J. SUTHERLAND, LAW OF DAMAGES § 323 (4th ed. 1912) (interest generally allowable in cases in which payment is unreasonably and vexatiously delayed).

21. C. MCCORMICK, *supra* note 11, § 51, at 206 ("[T]he practice of giving interest as damages . . . comes in first as allowance discretionary with the jury and only gradually finds its place as an element of compensation which can be claimed as a matter of right."); 1 T. SEDGWICK, MEASURE OF DAMAGES § 297 (9th ed. 1912) ("[T]he law first gave discretion to the jury to give interest as damages, and then allowed it as a matter of law in a constantly increasing number of cases.")

22. C. MCCORMICK, *supra* note 11, § 57a (interest awards, except when pursuant to contract, must be based upon unjustifiable withholding of money due as debt or recoverable as damages).

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should disallow interest awards if a defendant could not be blamed for delay in payment.²³

The most prominent feature of the penalty theory of interest was its distinction between liquidated and unliquidated damages. Courts usually refused to award interest on a claim unless it was liquidated.²⁴ A classic liquidated claim is one in which the measure of injury is a fixed sum payable on a specified date.²⁵ The requirement that a claim be for liquidated damages stemmed from the courts' insistence upon assessing whether a defendant was at fault in delaying payment of debt or damages.²⁶ If a claim was unliquidated a defendant could not reasonably be expected to know how much to pay a plaintiff in order to avoid incurring interest. Because a defendant could not be expected to pay an obligation of uncertain magnitude, it was thought improper to penalize him for withholding payment pending adjudication.²⁷

Courts in the United States in the early nineteenth century strictly interpreted the liquidated-unliquidated distinction; in order for a court to award prejudgment interest the amount of damages had to be uncontested or of a definite fixed amount.²⁸ Courts soon recognized, however, that stringent application of the liquidated damages requirement would se-

23. 1 T. SEDGWICK, MEASURE OF DAMAGES § 340 (9th ed. 1912) (interest for delay not chargeable if payment is forbidden by law or impeded by legal proceedings); W. HALE, LAW OF DAMAGES § 72 (2d ed. 1912) (“[W]here the defendant is not responsible for the delay in making compensation, he is not chargeable with interest.”)

24. T. SEDGWICK, MEASURE OF DAMAGES 395 (1st ed. 1847). (“It is also a general rule, that interest is not recoverable on unliquidated demands.”)

25. C. MCCORMICK, *supra* note 11, § 54 (claim is liquidated if amount that satisfies it can be computed exactly without reliance upon opinion or discretion). For an example of liquidated damages, see *Aurora City v. West*, 74 U.S. 82, 105 (1868) (allowing interest payment on failure to pay fixed sum at fixed time as required by contract).

For examples of damages traditionally viewed as unliquidated, see *Mobile & O. R.R. v. Williams*, 219 Ala. 238, 121 So. 722 (1929) (no interest allowed in wrongful death action); *Farrelly v. Heuacker*, 118 Fla. 342, 159 So. 24 (1935) (interest precluded in actions for personal injuries). See also C. MCCORMICK, *supra* note 11, § 57 (interest not allowed for claim based upon pain, humiliation or similar damages for which there is no standard of measurement available).

26. See *Laycock v. Parker*, 103 Wis. 161, 179, 79 N.W. 327, 332 (1899) (“The allowance of interest as damages was . . . confined to strictly liquidated demands. Being punishment, it should not be imposed if there were any uncertainty as to defendant’s duty to excuse nonperformance of it.”); Comment, *Interest As Damages In California*, *supra* note 18, at 262-63 (rule requiring liquidated damages suggests that primary concern of courts has not been compensation for plaintiff but either punishment of defendant for his fault in failing to pay definite obligation or protection of defendant from liability for withholding payment of uncertain amount); Note, *supra* note 18, at 107-08 (1962) (liquidated claim allowed on theory that defendant should be penalized for not promptly paying amount owed).

27. See *Developments in the Law—Damages*, 61 HARV. L. REV. 113, 137 (1947) (rationale for not awarding interest on unliquidated claims was that defendant “has no means available for determining the extent of his obligations and so should not be penalized for failure to make prompt payment”); Smedley, *Interest as Damages in Virginia*, 28 VA. L. REV. 1138, 1143 (1942) (“[T]he element of fairness to the defendant, not that of the need of the plaintiff, may lead to the refusal to allow interest on verdicts in non-liquidated damages claims.”)

28. See T. SEDGWICK, *supra* note 24, at 394-96 (1st ed. 1847).

verely curtail the incidence of allowable interest awards because the exact amount owed by a defendant to a plaintiff is seldom completely certain.²⁹ As concern for the full compensation of plaintiffs began to supersede concern with defendant's fault, courts moderated the liquidated damages requirement. Courts have regularly held, for instance, that a claim for interest need not be liquidated in the classic sense but need only be of such a nature that its value can be ascertained by reference to generally recognized standards.³⁰ Moreover, a development strongly backed by commentators³¹ is to award interest on damages as a matter of right in practically all cases.³² By awarding interest as a matter of right, courts recognize that it is an integral component of the relief sought in the principal claim for compensation.

B. *The Rule Precluding Government Liability for Interest*

The rule precluding interest awards against the federal government in the absence of contractual or statutory authorization is based upon sovereign immunity doctrine and the conception of interest as a penalty. Sovereign immunity bars suit against the government without government consent.³³ Because interest was originally viewed as a penalty, distinct from

29. C. MCCORMICK, *supra* note 11, § 51. One leading commentator suggested that American courts "practically obliterate[d]" the liquidated-unliquidated distinction. HALE, *supra* note 23, at 241. This characterization, however, goes too far. The liquidated-unliquidated distinction, interpreted with varying degrees of strictness, is still recognized by most states. See, e.g., CAL. CIV. CODE § 3287(a) (West 1979) (interest awarded on damages that are certain or capable of being made certain by calculation); OR. REV. STAT. § 82.010(1)(a) (1968) (same); S.D. COMP. LAWS ANN. § 21-1-11 (1967) (same). The liquidated-unliquidated distinction is also applied by federal courts looking to state law in diversity cases. See, e.g., *Moutsopoulos v. American Mut. Ins. Co.*, 607 F.2d 1185, 1190 (7th Cir. 1979) (interest denied on claim for unliquidated damages, applying Wisconsin law); *Mann & Parker Lumber Co. v. We Dri*, 579 F.2d 973, 980 (6th Cir. 1978) (interest denied on claim for unliquidated damages, applying Tennessee law). The liquidated-unliquidated distinction is also recognized by federal common law. *Barrios v. Louisiana Construction Materials Co.*, 465 F.2d 1157, 1168 (5th Cir. 1972) (interest denied on claim for pain and suffering).

30. See D. DOBBS, *supra* note 11, § 3.5, at 166-168; C. MCCORMICK, *supra* note 11, § 51, at 210, §§ 54-56, at 213-15; 1 T. SEDGWICK, *supra* note 23, §§ 299-300 (9th ed. 1912).

31. See, e.g., 1 T. SEDGWICK, *supra* note 23, § 300, at 571 ("[O]nce admit that interest is the natural fruit of money, it would seem that wherever a verdict liquidates a claim and fixes it as of a prior date, interest should follow from that date."); Note, *supra* note 18, at 109 ("[T]he inherent income-producing ability of money cannot be separated from the money itself. . . . [D]enial of interest would be denial of an inexorable economic fact.")

32. The tendency is strongest in cases involving contracts, see D. DOBBS, *supra* note 11, § 3.5, at 167 ("There is a strong tendency to treat any contract claim as one that is ascertainable."); and cases involving torts against property, see *Prejudgment Interest*, *supra* note 18, at 530-34 (prejudgment interest allowed as matter of right in majority of jurisdictions). The courts have been slower to extend automatic awards of interest on damages in cases regarding personal injury or wrongful death. *Id.* at 535. Even in such cases, however, courts have begun to allow interest awards, sometimes as a matter of jury discretion and in others as a matter of law. *Id.* at 535-36. For a particularly illuminating example of a court's animus against archaic doctrine restricting interest awards see *Moore-McCormack Lines, Inc. v. Richardson*, 295 F.2d 583, 592-95 (2d Cir. 1961), *cert. denied*, 368 U.S. 989 (1962) (interest awarded under Death on High Seas Act, 46 U.S.C. § 761 (1976)).

33. *Kawanankoa v. Polyblank*, 205 U.S. 349, 353 (1907); *United States v. Lee*, 106 U.S. 196,

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substantive claims for compensation, it was barred unless the government consented not only to liability for the underlying substantive claim but also to liability for the additional wrong addressed by an award of interest.³⁴ The central controversy in cases involving claims for interest against the government has focused upon whether particular statutory waivers of immunity embraced interest liability.³⁵

1. Evolution of the Doctrine Precluding Government Liability for Interest

During the nineteenth century, administrative officials sometimes interpreted statutes liberally so as to allow interest awards against the government.³⁶ The Supreme Court's opinion in *United States v. McKee*, handed

204 (1882); *Langford v. United States*, 101 U.S. 341, 345 (1879).

Sovereign immunity doctrine has periodically been criticized by judges, especially in the state courts. See, e.g., *Muskopf v. Corning Hosp. Dist.*, 359 P.2d 457, 458-59 (1961). Academic commentators have been particularly harsh in their criticism of the doctrine. Some commentators argue for legislative abolition or reform of sovereign immunity. See, e.g., Borchard, *Government Liability in Tort*, 34 YALE L.J. 1 (1924); Byse, *Proposed Reforms in Federal "Nonstatutory" Judicial Review: Sovereign Immunity, Indispensable Parties, Mandamus*, 75 HARV. L. REV. 1479 (1962); Crampton, *Nonstatutory Review of Federal Administrative Action: The Need for Statutory Reform of Sovereign Immunity, Subject Matter Jurisdiction, And Parties Defendant*, 68 MICH. L. REV. 387 (1970). Other commentators argue for judicial reform of the doctrine. See, e.g., Block, *Suits Against Government Offices and the Sovereign Immunity Doctrine*, 59 HARV. L. REV. 1060, 1079-86 (1946); Davis, *Sovereign Immunity in Suits Against Officers for Relief Other than Damages*, 40 CORNELL L.Q. 3, 38 (1954).

34. See *United States v. Sherman*, 98 U.S. 565, 567-68 (1878) ("[W]henver interest is allowed either by statute or by common law . . . it is allowed for delay or default of the debtor. But delay or default cannot be attributed to the government. It is presumed to be always ready to pay what it owes.") See also 5 Op. Att'y Gen. 138 (1849) ("It is certainly true that, as a refusal or delay of a debtor sovereign to pay a debt is never to be presumed, interest as a general rule is not to be exacted."); 2 Op. Att'y Gen. 463 (1831) (unlikely that award for interest against government would ever be appropriate since government, always ready to pay just claim immediately, is never at fault for delay); see 1 Op. Att'y Gen. 268 (1819) (interest on settlement not allowed because government not at fault for delay in payment of settlement to plaintiff). *United States v. McKee*, 91 U.S. 442 (1875) implies that executive departments may have allowed interest on liquidated and undisputed claims: "It has been the general rule of the officers of government, in adjusting and allowing unliquidated and disputed claims against the United States, to refuse to give interest." *Id.* at 450. If true, this practice would tend to contradict the idea that the government was presumed always ready to pay its obligations immediately. Nevertheless, *McKee* shares with earlier authorities a reliance upon the concept, implicit in the liquidated-unliquidated distinction, of interest as penalty.

35. See, e.g., 4 Op. Att'y Gen. 286, 292-94 (1843) (if provision of interest omitted from statute, claim for interest cannot be awarded regardless of equities involved); 3 Op. Att'y Gen. 635, 638-39 (1841) (interest denied because statute did not expressly provide for it); 2 Op. Att'y Gen. 390-91 (1830) (since Congress did not specifically provide for interest in act awarding "full pay" to officer, interest cannot be allowed). See cases cited in note 9 *supra*.

36. See, e.g., 5 Op. Att'y Gen. 227 (1850) (allowing interest on debt owed by the government since interest was paid previously in analogous circumstances); 5 Op. Att'y Gen. 71 (1849) (interest allowed on claim based upon statute awarding "fair and full indemnity"); 3 Op. Att'y Gen. 216, 224-26 (1837) (statute authorizing payment of "actual loss" stemming from unlawful seizure of claimant's vessel construed to include interest); 1 Op. Att'y Gen. 722 (1825) (construing statute authorizing payment of interest on loans taken out by states during war as authorizing payment of interest on loans taken out by states after war as well). *But see* 7 Op. Att'y Gen. 523 (1855) (attempting to limit reach of earlier decisions granting interest awards against the government).

down in 1875, reflected this relatively liberal attitude.³⁷ In *McKee* the Court allowed an interest award against the government based upon a special act of Congress that provided that the Court of Claims should determine the petitioner's claim in a manner "adopted by the United States in the settlement of like cases."³⁸ Because the Congress, in like cases, had specifically awarded interest, the Court interpreted the special act in controversy to allow an award for interest.

After *McKee*, however, the Supreme Court became increasingly reflexive and rigid in its enforcement of the traditional rule.³⁹ *Boston Sand & Gravel Co. v. United States*,⁴⁰ decided by the Supreme Court in 1928, significantly advanced the trend toward increased strictness. The case arose from a collision between plaintiff's steamer and a United States naval vessel. Plaintiff sought damages and interest based upon a special act,⁴¹ which provided that damages should be determined "upon the same principle and measure of liability with costs" as in admiralty cases between private parties.⁴² Plaintiff's argument was that, because interest was routinely awarded in collision cases involving private parties,⁴³ interest liability should be assessed against the government. The Court, however, ruled against the plaintiff. Justice Holmes asserted that Congress had "spoken with careful precision," and insisted that the Court could allow only those remedies specifically authorized.⁴⁴ Since *Boston Sand*, the Court has consistently applied the strictest scrutiny to claims for interest against the government; with few exceptions,⁴⁵ only express authorization

37. 91 U.S. 442 (1875).

38. *Id.* at 450.

39. See, e.g., *Tillson v. United States*, 100 U.S. 43, 46-47 (1879). The court acknowledged that "it was the wish of those who procured the passage of the special statute under which the Court of Claims took jurisdiction of this suit, to obtain from Congress authority for that court to give a judgment against the United States at least for interest . . ." *Id.* at 46. But because Congress did not grant such authority in express terms, the Court concluded that Congress "did not intend to give any such power." *Id.* The Court did, however, evince some concern for maintaining a flexible standard by which to assess waivers of immunity. It suggested, for example, that interest may have been awarded had the statute provided that the claim be adjudicated upon principles applicable to suits between citizens. *Id.*

40. 278 U.S. 41 (1928). The Court decided *Boston Sand* in order to settle a conflict between circuits. Compare *Boston Sand & Gravel Co. v. United States*, 19 F.2d 744-45 (1st Cir. 1927) (interest denied because statute did not expressly provide for interest) with *New York & Cuba Mail S.S. Co. v. United States*, 16 F.2d 945, 947 (2d Cir. 1927) (interest allowed on statute providing that suit be adjudicated according to principles used in settling like cases in admiralty between private parties).

41. Act of May 15, 1922, ch. 192, 42 Stat. 1590 (1922).

42. *Id.*

43. *Boston Sand* was a case in admiralty, an area of the law in which interest was traditionally given as a part of full compensation. 278 U.S. 41. The *Boston Sand* Court, however, ignored the traditional rule awarding interest in admiralty.

44. *Id.* at 48-49.

45. See p. 306 *infra*.

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on the face of the relevant legislation or contract has met the Court's standard.⁴⁶

Also supportive of the courts' reluctance to award interest on claims against the government is legislation, first passed in 1863, governing actions in the Court of Claims.⁴⁷ This legislation codified the traditional rule forbidding awards of interest in the absence of express statutory authorization.⁴⁸ Supreme Court decisions involving interest awards arising from the Court of Claims strongly affirmed the appropriateness of strictly construing waivers of immunity.⁴⁹ These decisions, however, did not address the general appropriateness of strict construction but only the legislative mandate that the Court of Claims strictly construe waivers. The distinction between the Court of Claims and other courts was lost when these decisions were used as authority to buttress the trend toward a stricter interpretation of claims for interest in all contexts.⁵⁰ As a result, judicial opinion regarding standards for awarding interest in claims against the government became insulated from judicial opinion regarding standards for awarding interest in other situations. Courts became increasingly less sensitive to the underlying theory, rooted in traditional conceptions of interest, that originally justified precluding interest awards in cases against the government. They applied the rule precluding interest liability against

46. See, e.g., *United States v. N.Y. Rayon Importing Co.*, 329 U.S. 654, 659 (1947) (“[T]here can be no consent by implication or by use of ambiguous language. . . . The consent necessary to waive the traditional immunity must be express, and it must be strictly construed.”); *United States v. Sherwood*, 312 U.S. 584, 590 (1941) (“Consent, since it is a relinquishment of a sovereign immunity, must be strictly interpreted.”); *United States v. Goltra*, 312 U.S. 203, 207-11 (1941) (interest denied in claim based on statute requiring payment of “just compensation” to plaintiff injured by government’s wrongful taking of his property).

47. Court of Claims Act, ch. 92, § 7, 12 Stat. 765 (1863) (current version at 28 U.S.C. § 2516(a) (1976)) (“Interest on a claim against the United States shall be allowed in a judgment of the Court of Claims only under a contract or Act of Congress expressly providing for payment thereof.”)

48. *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585, 588 (1947) (statute governing interest awards in the Court of Claims “embodies the traditional rule that interest cannot be recovered against the United States upon unpaid accounts or claims in the absence of an express provision to the contrary in a relevant statute or contract”).

49. See, e.g., *United States v. N.Y. Rayon Importing Co., Inc.*, 329 U.S. 654 (1947); *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585 (1947). In *Thayer-West Point Hotel*, the Court of Claims allowed interest on a claim founded upon a law that created a lease providing for “just compensation” in the event the government cancelled the lease. The Supreme Court reversed the Court of Claims, the law governing the Court of Claims instructed it not to award interest in the absence of express authorization. The Court’s holding, then, focused upon the rules governing the Court of Claims, not the general appropriateness of the standards governing claims for interest.

50. See, *Albrecht v. United States*, 329 U.S. 599 (1947). In *Albrecht*, the Supreme Court denied interest to a plaintiff who initiated suit against the United States in district court. All of the decisions cited by the Court to support the denial of interest involved suits initiated in the Court of Claims. *Id.* at 605. Courts invoking the traditional rule precluding government liability for interest commonly refer to cases that arose in the Court of Claims without questioning whether the particular laws governing the Court of Claims can properly be applied to other contexts. See, e.g., *Fischer v. Adams*, 572 F.2d 406, 411 (1st Cir. 1978); *Fitzgerald v. United States*, 578 F.2d 435 (D.C. Cir. 1977), *cert. denied*, 439 U.S. 1004 (1978); *Farrand Optical Co. v. United States*, 325 F.2d 328 (2d Cir. 1963).

the federal government, but ignored or forgot the underlying policy the rule was supposed to serve.

2. Exceptions to the Rule Precluding Government Liability for Interest

The Court has developed exceptions to the traditional rule barring government liability for interest in order to accommodate the problems produced by the divergence between that rule and the modern conception of interest.⁵¹ The major class of exceptions involves claims for interest founded upon the Fifth Amendment right to "just compensation"⁵² for private property taken by the government for public use.⁵³ According to the Court, a plaintiff whose claim is based upon the Fifth Amendment is entitled to any remedy needed to effect "just compensation,"⁵⁴ including interest. By authorizing interest on claims based upon the Fifth Amendment, the Court acknowledged that interest constitutes a basic aspect of compensation that is inseparably linked to underlying principal claims.⁵⁵ Nevertheless, the Court has not overturned the traditional rule barring government liability for interest.

51. Interest has been allowed against the federal government when it places itself in the position of a private party. *See, e.g., Standard Oil Co. v. United States*, 267 U.S. 76 (1925); *Bituminous Casualty Corp. v. Lynn*, 503 F.2d 636, 643-46 (6th Cir. 1974). Interest is allowed against the government in cases in which the government voluntarily brings itself within the jurisdiction of the court by intervening in a suit between private parties. *See, e.g., United States v. The Thekla*, 266 U.S. 328 (1924); *United States v. P & D Coal Mining Co.*, 251 F. Supp. 1005 (W.D. Ky. 1964). Interest is also allowed in suits against certain subsidiary agencies of the federal government. *See, e.g., National Home for Disabled Volunteer Soldiers v. Parrish*, 229 U.S. 494 (1913); *Kennedy Elec. Co. v. United States Postal Serv.*, 508 F.2d 954, 957 (10th Cir. 1974); *Gilbert v. Johnson*, 490 F.2d 827, 830 (5th Cir. 1974).

Another exception to the traditional rule allows interest to be awarded against the federal government in suits based upon 42 U.S.C. § 1498, a statute that provides "reasonable and entire" compensation to persons whose patents are infringed by the United States. *See, e.g., Waite v. United States*, 282 U.S. 508 (1930); *Calhoun v. United States*, 453 F.2d 1385, 1395 (Ct. Cl. 1972). These exceptions are of limited applicability; none have given rise to a large class of cases. *Cf. United States v. Alcea Band of Tillamooks*, 341 U.S. 48, 49 (1951) ("[T]he only exception [to the traditional rule] arises when the taking entitles the claimant to just compensation under the Fifth Amendment.")

52. U.S. CONST. amend. V ("[P]rivate property [shall not] be taken for public use, without just compensation.")

53. *See, e.g., United States v. Klamath Indians*, 394 U.S. 119, 123-26 (1938) (awarding interest on indemnification of Indian tribes for land taken by United States under power of eminent domain); *Phelps v. United States*, 274 U.S. 341, 344 (1927) (allowing interest as part of compensation due plaintiff for government's appropriation of plaintiff's wharf during wartime); *Liggett & Myers v. United States*, 274 U.S. 215 (1927) (because order for product constituted requisition of property for public use rather than mere contract, interest allowed on plaintiff's claim for full compensation).

54. *United States v. Rogers*, 255 U.S. 163 (1920).

55. *See, Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 304 (1922) (just compensation in Fifth Amendment context encompasses "the full and perfect equivalent of the property taken It rests on equitable principles, and it means substantially that the owner shall be put in as good position pecuniarily as he would have been if his property had not been taken.")

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II. A Modern View of Government Liability for Interest

Comparing the history of interest doctrine with the evolution of the rule precluding government liability for interest reveals two contradictory trends. On the one hand, there has been a steady movement by courts to broaden restrictive legal categories and to emphasize the role of interest in rendering full compensation to plaintiffs. On the other hand, the rule precluding awards of interest against the federal government has been construed with increasing strictness.

During much of the nineteenth century, a measure of congruence existed between these two trends based upon a consistent view of the meaning of interest. In that period it made sense to construe waivers of immunity strictly. Because interest represented a separate remedy for an additional injury, it was reasonable to demand a clear indication from the legislature that it intended to waive immunity not only to the principal claim but also to a claim for interest. The modern trend, however, is to view interest as a constituent rather than as an additional element of compensation.

Nor does the traditional rule precluding interest awards against the government serve the policies underlying sovereign immunity doctrine. The central modern justification for barring suit against the government in the absence of its consent is to prevent undue interference with the government's public tasks.⁵⁶ That concern, however, cannot convincingly be advanced as a reason for barring claims for interest, because by allowing a suit for the principal, the government has waived its immunity with regard to the relevant sphere of activity.⁵⁷ Moreover, an award of

56. Several other justifications have been advanced in support of sovereign immunity. See, e.g., *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 478 (1793) (sovereign immunity based on "logical and practical ground that there can be no legal right as against the authority that makes the law on which the law depends"); THE FEDERALIST NO. 81 (A. Hamilton) ("It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*.") See generally P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, HART & WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (2d ed. 1973) [hereinafter cited as HART & WECHSLER], at 1339-51. These explanations are, however, no longer considered credible. "The only rationale for the doctrine that is now regarded as respectable by courts and commentators alike is that official actions of the Government must be protected from undue judicial interference." Crampton, *supra* note 33, at 397. See *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 704 (1949) ("The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be protective of nothing but mischief. . . ."); Block, *supra* note 33, at 1061 (the only explanation "that seems worthy of consideration as a real policy basis for the doctrine of sovereign immunity today . . . is [the possibility] that the subjection of the state and federal governments to private litigation might constitute a serious interference with the performance of their functions and with their control over their respective instrumentalities, funds, and property.")

57. See HART & WECHSLER, *supra* note 56, at 1349 (when the United States has agreed that justice be done in the main matter, there is no reason for assuming an intention to deny the usual incidents of justice).

interest does not interfere with any distinct government activity, but merely insures that a sum of money shall retain its effective value.

Analysis of some of the other justifications that have been articulated in support of sovereign immunity leads to similar conclusions. For instance, the old notion that "the King can do no wrong"⁵⁸ led to the principle, cited in favor of the traditional rule precluding government liability for interest, that "delay or default cannot be attributed to the government."⁵⁹ This principle is no longer applicable, because now interest is not viewed as a penalty for delay, but rather as an integral aspect of compensation.⁶⁰ When courts hold, then, that claims for interest can be allowed only if supported by a specific provision in the relevant contract or statute, they are applying an anachronistic conception of interest.

A. *The Proposed Rule*

An alternative to the rule precluding government liability for interest must take into account the following considerations in interpreting waivers of sovereign immunity. First, an alternative rule should accord great deference to specific statutory language and legislative history. Such deference is required in order to accommodate Congress' interest in controlling government liability. If a statute specifically bars⁶¹ or consents⁶² to government liability for interest, or if a statute's legislative history clearly indicates a congressional preference, then a court's inquiry should be at an end.⁶³

Second, if the statutory language and legislative history are silent or ambiguous as to interest, the court should look to general interest doctrine as developed in analogous cases in private law. If plaintiffs in a private law context receive interest on claims based upon a particular statute, plaintiffs suing the federal government under that same statute should also receive interest. On the other hand, if plaintiffs are barred from re-

58. See Borchard, *supra* note 33, at 4. The notion of royal prerogative, which originally justified sovereign immunity in England, *id.*, never took root in sovereign immunity doctrine in the United States, but was transmuted into a tenet of public policy that a sovereign nation should not be compelled by courts of its own creation to defend itself from attack in those courts. *Id.* at 5. See Langford v. United States, 101 U.S. 341, 342-343 (1878) (British maxim that King can do no wrong not applicable to United States government).

59. United States v. Sherman, 98 U.S. 565, 568 (1879).

60. See pp. 299-303 *supra*.

61. See, e.g., Public Vessels Act, 46 U.S.C. § 782 (1976) ("[N]o interest shall be allowed on any claim up to the time of rendition of judgment unless upon a contract expressly stipulating for the payment of interest.")

62. See, e.g., 28 U.S.C. § 2411(a) (1976) (in any judgment against United States for any overpayment of internal-revenue tax, "interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954 upon the amount of the overpayment, from the date of the payment or collection thereof").

63. See Boston Sand & Gravel Co. v. United States, 278 U.S. 41, 47-48 (1928) (discussing statute in which provision for interest was eliminated during legislative process).

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ceiving interest in a private law context, they should also be barred from receiving interest in analogous litigation against the federal government.⁶⁴ If there is no private law counterpart to a particular right of action against the federal government, courts should look for guidance to general federal law practice.⁶⁵

Third, when courts refer to private law to decide whether interest should be awarded in suits against the federal government, they must determine whether an interest award in the private law context would constitute a penalty.⁶⁶ Interest awards that are intended to be penalties should not be allowed in suits against the federal government unless Congress has consented to this form of liability. Consent in this situation is required because the theory underlying both the modern trend in interest doctrine and the proposed rule for determining government liability for interest is founded upon the idea of interest as an element of compensation.⁶⁷

B. The Proposed Rule Applied to Title VII

Title VII of the Civil Rights Act of 1964⁶⁸ established for the first time a comprehensive law prohibiting employment practices that discriminate on the basis of race, sex, religion, or national origin.⁶⁹ Initially, the federal

64. This situation might arise, for example, if a federal law provided that interest be determined according to the requirements of state law, *see, e.g.*, Federal Tort Claims Act, 28 U.S.C. § 2674 (1976), and the applicable state law awarded interest only upon liquidated or ascertainable damages.

65. This situation would arise, for example, under the Back Pay Act, 5 U.S.C. § 5596 (1976), which empowers employees to sue various government agencies and the government of the District of Columbia for backpay in the event of an unjustified personnel action. Because the Back Pay Act is applicable only to certain government entities, it has not spawned cases within a purely private-law context.

Applying the second step of the proposed rule, a court would look to general federal law practice to determine whether plaintiffs suing under the Back Pay Act should receive interest on an award against the federal government. This is precisely what courts do now in deciding whether to allow interest under the Back Pay Act in suits against agencies accorded the power to sue and be sued. *See, Payne v. Panama Canal Co.*, 607 F.2d 155, 165-66 (5th Cir. 1979) (interest awarded). Presently, interest is barred in suits under the Back Pay Act that are brought against the United States. *See Van Winkle v. McLucas*, 537 F.2d 246, 248 (6th Cir. 1976).

66. *See Bankers Life & Casualty Co. v. Bellanca Corp.*, 288 F.2d 784, 790 (7th Cir. 1961) (in diversity suit applying Illinois law, interest assessed against defendant for "unreasonable and vexatious" refusal to pay). *See also Rivera v. Redeberi A/B Nordstjernan*, 456 F.2d 970, 975-76 (1st Cir. 1972). In *Rivera*, the district court awarded interest in a tort action relying upon the Puerto Rican Rules of Civil Procedure. *Id.* The Court of Appeals held that reliance upon the Puerto Rican Rule was misplaced, but allowed the interest award to stand. *Id.* at 976. Whether the interest award was allowed in order to compensate the plaintiff fully or to punish the defendant is not made clear. That the penalty-based conception of interest played at least a significant part in the interest award can be inferred from the importance the court attached to the defendant's "obstinate" handling of the case, and from the court's imposition of attorney's fees against the defendant. *Id.* at 975-76.

67. *See pp.* 299-302 *supra*.

68. Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, § 701 (1964) (current version at 42 U.S.C. §§ 2000e, 2000e-16 (1976)).

69. On the historical significance of Title VII, *see* A. BLUMROSEN, BLACK EMPLOYMENT AND THE LAW 57-58 (1971); Belton, *Title VII of the Civil Rights Act of 1964: A Decade of Private Enforcement and Judicial Developments*, 20 ST. LOUIS L.J. 225, 226-31 (1976).

government and state and local governments were exempt from Title VII.⁷⁰ In 1972, however, Congress amended Title VII to extend its protections to employees in Federal, state and local governments.⁷¹

Applying the proposed rule to Title VII, as amended, the first inquiry is whether Congress clearly indicated a preference regarding the award of interest in either legislative history or statutory language. The legislative history of the amendments indicates that Congress generally intended to extend to federal employees the remedies enjoyed by employees in the private sector.⁷² One of the reasons Congress cited for amending Title VII was that federal employees, unlike those in the private sector, faced the legal obstacle of sovereign immunity in obtaining remedies against discrimination.⁷³ The amendments incorporate by reference the sections of Title VII originally governing suits against private employers.⁷⁴ On the other hand, interest is neither expressly provided for in the text of Title VII nor specifically mentioned in its legislative history.⁷⁵ This ambiguous silence precludes a finding that Congress expressed a clearly defined preference regarding government liability for interest.⁷⁶

70. Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, § 701, 78 Stat. 253-54 (1964) (current version at 42 U.S.C. §§ 2000e, 2000e-16 (1976)).

71. 42 U.S.C. § 2000e (1976).

72. See S. REP. NO. 415, 92d Cong., 2d Sess. 16 (1971) (“[A]ggravated [federal] employees as applicants will . . . have the full rights available in the courts as are granted to individuals in the private sector under Title VII.”)

73. See S. REP. NO. 415 *supra* note 72, at 16 (under then-existing state of law, “[i]n many cases, the employee must overcome a United States Government defense of sovereign immunity”); H.R. REP. NO. 238, 92d Cong., 2d Sess., reprinted in [1972] U.S. CODE CONG. & AD. NEWS 2160 (“There is serious doubt that court review is available to the aggrieved Federal employee. Monetary restitution or back pay is not attainable.”)

74. The current version of the provision, provides that “[t]he provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder.” 42 U.S.C. § 2000e-16(d) (1976). 42 U.S.C. § 2000e-5(g) (1976) in turn provides that, upon a finding of unlawful employment discrimination in the private sector or in state or local governments, a court “may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to . . . back pay . . . or any other equitable relief as the court deems appropriate.”

Supreme Court interpretations of the 1972 amendments confirm the view that they were intended to confer upon federal employees the same substantive rights enjoyed by private-sector employees. In *Chandler v. Roudebush*, 425 U.S. 840 (1976) the Court held that federal employees were entitled to trials *de novo* in court after going through the prerequisite administrative proceedings. The right had been well established for private-sector employees but was not expressly authorized in the 1972 amendments providing federal employees with a cause of action. The Court emphasized that a “principal goal” of the amendments was to accord “[a]ggravated [federal] employees or applicants the full rights available in the courts as are granted to individuals in the private sector under Title VII.” *Id.* at 841.

75. See *Blake v. Califano*, 626 F.2d 891, 894 (D.C. Cir. 1980) (“The legislative history is wholly silent on the propriety of awarding interest in Title VII cases.”)

76. Although certain court decisions are cited or discussed in the legislative history of Title VII, none involves awards for interest. See H.R. REP. NO. 238, *supra* note 73. Congressional silence, however, provides no definite indication of Congressional intent. Moreover, “the political economy of congressional attention” dictates that “low visibility” items such as liability for interest will increasingly be unnoticed and undebated by Congress. See Ackerman & Hassler, *Beyond the New Deal*:

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It is necessary, then, to apply the second step of the proposed test whereby courts look to general interest doctrine as developed in analogous cases in private law. Under this standard, interest should be awarded against the federal government because courts have commonly allowed interest in backpay awards in Title VII suits against private employers.⁷⁷

Applying the third step of the proposed rule buttresses this conclusion. According to this third inquiry, courts should determine the function of interest. Under Title VII interest serves not as a penalty but as an element of compensation. Its compensatory character derives from the purpose of backpay awards, which were intended to help effectuate the Title VII goal of achieving equality of employment opportunities and removing barriers that favor one identified group of employees over other employees.⁷⁸ Backpay awards promote this purpose in two respects. First, they provide "the spur or catalyst" that causes employers to eliminate discriminatory practices.⁷⁹ Second, they make persons whole for injuries suffered from unlawful employment discrimination.⁸⁰ Courts have acknowledged that including interest with backpay increases the incentive to eliminate discriminatory employment practices.⁸¹ Courts have also acknowledged that without interest as compensation for depreciation or the forgone use-value of wrongfully delayed wages, plaintiffs cannot be made whole financially. Although courts rarely have explained interest awards explicitly in terms of a compensation theory, what mention there is of their purposes consistently points to compensation.⁸² Under the proposed rule,

Coal and the Clean Air Act, 89 YALE L.J. 1466, 1511-13 (1980).

77. See, e.g., *Chastang v. Flynn & Emrich Co.*, 381 F. Supp. 1348, 1351 (D.Md. 1974), *rev'd in part and aff'd in part*, 541 F.2d 1040 (4th Cir. 1976); *Laffey v. Northwest Airlines, Inc.*, 374 F.Supp. 1382 (D.D.C. 1974), *modified*, 567 F.2d 429 (D.C. Cir. 1976).

78. See *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 417 (1975) (discussing legislative history of Title VII and 1972 amendments); Davidson, "Back Pay" Awards Under Title VII of the Civil Rights Act of 1964, 26 RUTGERS L. REV. 741, 741-43 (1973).

79. *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 417-18 (1975).

80. *Id.* at 418-25.

The framers of the 1972 amendments to Title VII strongly reaffirmed the "make whole" purpose of Title VII. The provisions of the sections setting forth remedies under the 1972 amendments

are intended to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible. . . . The courts have stressed that the scope of relief under . . . the Act is intended to make the victims of unlawful discrimination whole, and that the attainment of this objective rests not only upon the elimination of the particular unlawful employment practice complained of, but also requires that persons aggrieved by the consequences and effects of the unlawful employment practice be, so far as possible, restored to a position where they would have been were it not for the unlawful discrimination.

118 CONG. REC. 7168 (1972) (remarks by Sen. Harrison Williams).

81 See *EEOC v. Pacific Press Publishing Ass'n*, 482 F. Supp. 1291, 1319 (N.D. Cal. 1979) (inadequate interest award "may not have any effect in deterring discrimination or ensuring prompt implementation of restitutionary orders").

82. See, e.g., *EEOC v. Pacific Press Publishing Ass'n*, 482 F. Supp. 1291, 1319 (N.D. Cal. 1979) (interest awarded "to reflect the depreciation in the purchasing power of the dollar which has occurred since [plaintiff's] discharge"); *Davis v. Jobs for Progress, Inc.*, 427 F. Supp. 479, 483 (D. Ariz.

then, interest should to be awarded in Title VII judgments against the federal government.

1976) ("Prejudgment interest is a proper and allowable component of a back pay award . . . because the injured worker must be restored to the economic position in which [plaintiff] would have been but for the discrimination.")