CONCURBY:
O'CONNOR; STEVENS (In Part)

CONCUR:

JUSTICE O'CONNOR, concurring.

The courts of this country quite properly share the responsibility for protecting the constitutional rights of those imprisoned for the commission of crimes against society. Thus, when a prisoner's property is wrongfully destroyed, the courts must ensure that the prisoner, no less than any other person, receives just compensation. The Constitution, as well as human decency, requires no less. The issue in these cases, however, does not concern whether a prisoner may recover damages for a malicious deprivation of property. Rather, these cases decide only what is the appropriate source of the constitutional right and [**3206] the remedy that corresponds [***38] with it. I agree with the Court's treatment of these issues and therefore join its opinion and judgment today. I write separately to elaborate my understanding of why the complaint in this litigation does not state a ripe constitutional claim.

The complaint alleges three types of harm under the Fourth Amendment: invasion of privacy from the search, temporary deprivation of the right to possession from the seizure, and permanent deprivation of the right to possession as a result of the destruction of the property. The search and seizure allegations can be handled together. They would state a ripe Fourth Amendment claim if, on the basis of the facts alleged, they showed that government officials had acted unreasonably. The Fourth Amendment "reasonableness" determination is generally conducted on a case-by-case basis, with the Court weighing the asserted governmental interests against the particular invasion of the individual's [*538] privacy and possessory interests as established by the facts of the case. See Terry v. Ohio, 392 U.S. 1, 17-18, n. 15 (1968). In some contexts, however, the Court has rejected the case-by-case approach to the "reasonableness" [***39] inquiry in favor of an approach that determines the reasonableness of contested practices in a categorical fashion. See, e. g., United States v. Robinson, 414 U.S. 218, 235 (1973) (searches incident to lawful custodial arrest); Bell v. Wolfish, 441 U.S. 520, 555-560 (1979) (prison room search and body cavity search rules). For the reasons stated by the Court, see ante, at 526-530, I agree that the government's compelling interest in prison safety, together with the necessarily ad hoc judgments required of prison officials, make prison cell searches and seizures appropriate for categorical treatment. See generally LaFave, "Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma, 1974 S Ct. Rev. 127, 141-145. The fact of arrest and incarceration abates all legitimate Fourth Amendment privacy and possessory interests in personal effects, see Lanza v. New York, 370 U.S. 139, 143 (1962); cf. United States v. Robinson, supra, at 237-238 (POWELL, J., concurring) (individual in custody retains no significant Fourth Amendment interest), and therefore [***40] all searches and seizures of the contents of an inmate's cell are reasonable.

The allegation that respondent's property was destroyed without legitimate reason does not alter the Fourth Amendment analysis in these prison cases. To be sure, the duration of a seizure is ordinarily a factor to be considered in Fourth Amendment analysis. See United States v. Place, 462 U.S. 696, 709-710 (1983). Similarly, the actual destruction of a possessory interest is generally considered in determining the reasonableness of a seizure. See United States v. Jacobsen, 466 U.S. 109, 124-125 (1984). But if the act of taking possession and the indefinite retention of the property are themselves reasonable, the handling of the property while in the government's custody is not itself of Fourth [*539] Amendment concern. The nonprivacy interests protected by the Fourth Amendment do not extend beyond the right against unreasonable dispossessions. Since the exigencies of prison life authorize officials indefinitely to dispossess inmates of their possessions without specific reason, any losses that occur while the property is in official custody [***41] are simply not redressable by Fourth Amendment litigation.

That the Fourth Amendment does not protect a prisoner against indefinite dispossession does not mean that he is without constitutional redress for the deprivations that result. The Due Process and Takings Clauses of the Fifth and Fourteenth Amendments stand directly in opposition to state action intended to deprive people of their legally protected property interests. [**3207] These constitutional protections against the deprivation of private property do not abate at the time of imprisonment.

Of course, a mere allegation of property deprivation does not by itself state a constitutional claim under either Clause. The Constitution requires the government, if it deprives people of their property, to provide due process of law and to make just compensation for any takings. The due process requirement means that government must provide to the inmate the remedies it promised would be available. See Parratt v. Taylor, 451 U.S. 527, 537-544 (1981). Concomitantly, the just compensation requirement means that the remedies made available must adequately compensate for any takings that have occurred. [***42] See Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1016-1020 (1984). Thus, in challenging a property deprivation, the claimant must either avail himself of the remedies guaranteed by state law or prove that the available remedies are inadequate. See Parratt v. Taylor, supra, at 537-544. When adequate remedies are provided and followed, no uncompensated taking or deprivation of property without due process can result.

This synthesis of the constitutional protections accorded private property corresponds, I believe, with both common [*540] sense and common understanding. When a person is arrested and incarcerated, his personal effects are routinely "searched," "seized," and placed in official custody. See Illinois v. Lafayette, 462 U.S. 640, 643-647 (1983); United States v. Edwards, 415 U.S. 800, 804-807 (1974). Such searches and seizures are necessary both to protect the detainee's effects and to maintain the security of the detention facility. The effects seized are generally inventoried, noticed by receipt, and stored for return to the person at the time of his release. [***43] The loss, theft, or destruction of property so seized has not, to my knowledge, ever been thought to state a Fourth Amendment claim. Rather, improper inventories, defective receipts, and missing property have long been redressable in tort by actions for detinue, trespass to chattel, and

conversion. Cf. Kosak v. United States, 465 U.S. 848 (1984) (discussing liability of Federal Government for losses incurred during customs officials' searches and seizures). Whether those remedies are adequate and made available as promised have always been questions for the Takings and Due Process Clauses. The Fourth Amendment has never had a role to play.

In sum, while I share JUSTICE STEVENS' concerns about the rights of prison inmates, I do not believe he has correctly identified the constitutional sources that provide their property with protection. Those sources are the Due Process and the Takings Clauses of the Fifth and Fourteenth Amendments, not the Search and Seizure Clause of the Fourth Amendment. In these cases, the Commonwealth of Virginia has demonstrated that it provides aggrieved inmates with a grievance procedure and various state tort and common-law [***44] remedies. The plaintiff inmate has not availed himself of these remedies or successfully proved that they are inadequate. Thus, his complaint cannot be said to have stated a ripe constitutional claim and summary judgment for the defendant was proper.