NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

FOUCHA *v.* LOUISIANA

CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 90–5844. Argued November 4, 1991—Decided May 18, 1992

Under Louisiana law, a criminal defendant found not guilty by reason of insanity may be committed to a psychiatric hospital. If a hospital review committee thereafter recommends that the acquittee be released, the trial court must hold a hearing to determine whether he is dangerous to himself or others. If he is found to be dangerous, he may be returned to the hospital whether or not he is then mentally ill. Pursuant to this statutory scheme, a state court ordered petitioner Foucha, an insanity acquittee, returned to the mental institution to which he had been committed, ruling that he was dangerous on the basis of, *inter alia,* a doctor's testimony that he had recovered from the drug induced psychosis from which he suffered upon commitment and was ``in good shape'' mentally; that he has, however, an antisocial personality, a condition that is not a mental disease and is untreatable; that he had been involved in several altercations at the institution; and that, accordingly, the doctor would not ``feel comfortable in certifying that he would not be a danger to himself or to other people.'' The State Court of Appeals refused supervisory writs, and the State Supreme Court affirmed, holding, among other things, that *Jones* v. *United States,* 463 U.S. 354, did not require Foucha's release and that the Due Process Clause of the Fourteenth Amendment was not violated by the statutory provision permitting confinement of an insanity acquittee based on dangerousness alone.

Held: The judgment is reversed.

563 So. 2d 1138, reversed.

JUSTICE WHITE delivered the opinion of the Court with respect to Parts I and II, concluding that the Louisiana statute violates the Due Process Clause because it allows an insanity acquittee to be committed to a mental institution until he is able to demonstrate that he is not dangerous to himself and others, even though he does not suffer from any mental illness.

Although *Jones, supra,* acknowledged that an insanity acquittee could be committed, the Court also held, as a matter of due process, that he is entitled to release when he has recovered his sanity or is no longer dangerous, *id.,* at 368, *i. e.,* he may be held as long as he is both mentally ill and dangerous, but no longer. Here, since the State does not contend that Foucha was mentally ill at the time of the trial court's hearing, the basis for holding him in a psychiatric facility as an insanity acquittee has disappeared, and the State is no longer entitled to hold him on that basis. There are at least three difficulties with the State's attempt to perpetuate his confinement on the basis of his antisocial personality. First, even if his continued confinement were constitutionally permissible, keeping him against his will in a mental institution is improper absent a determination in civil commitment proceedings of current mental illness and dangerousness. *Vitek* v. *Jones,* 445 U.S. 480, 492. Due process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed. See, *e. g., Jones* v. *United States, supra,* at 368. Second, if he can no longer be held as an insanity acquittee in a mental hospital, he is entitled to constitutionally adequate procedures to establish the grounds for his confinement. *Jackson* v. *Indiana,* 406 U.S. 715. Third, the substantive component of the Due Process Clause bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them. *Zinermon* v. *Burch,* 494 U.S. 113, 125. Although a State may imprison convicted criminals for the purposes of deterrence and retribution, Louisiana has no such interest here, since Foucha was not convicted and may not be punished. *Jones,* 463 U.S., at 369. Moreover, although the State may confine a person if it shows by clear and convincing evidence that he is mentally ill and dangerous, *id.,* at 362, Louisiana has not carried that burden here. Furthermore, *United States* v. *Salerno,* 481 U.S. 739—which held that in certain narrow circumstances pretrial detainees who pose a danger to others or the community may be subject to limited confinement—does not save the state statute. Unlike the sharply focused statutory scheme at issue in *Salerno,* the Louisiana scheme is not carefully limited. Pp.4–13.

FOUCHA *v.* LOUISIANA

Syllabus

WHITE, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II, in which BLACKMUN, STEVENS, O'CONNOR, and SOUTER, JJ., joined, and an opinion with respect to Part III, in which BLACKMUN, STEVENS, and SOUTER, JJ., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined.