

AMERICAN CONSTITUTIONALISM  
VOLUME I: STRUCTURES OF GOVERNMENT  
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Supplementary Material

Chapter 7: The Republican Era – Federalism

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**Fauntleroy v. Lum, 210 U.S. 230 (1908)**

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*Fauntleroy and Lum, two residents of Mississippi, entered into a contract on cotton futures. Mississippi considered such futures contracts a form of gambling, and as such they were illegal. Gambling contracts and debts arising from gambling were not enforceable in court. Nonetheless, the two parties went to a private arbitrator to decide their dispute, and the arbitrator ruled in favor of Fauntleroy. Lum refused to pay. Fauntleroy subsequently traveled to the state of Missouri and filed suit in a Missouri court requesting a judgment against Lum on the basis of the verdict of the arbitrator. Not realizing that the gambling debt was illegal in Mississippi (perhaps because of the existence of the award by the Mississippi arbitrator), the Missouri court agreed. Fauntleroy then returned to Mississippi and sought the help of the Mississippi state courts to enforce the judgment of the Missouri court. Lum responded that the Missouri judgment could not be enforced in the courts of Mississippi since the wager was against public policy in the state of Mississippi. The trial court sided with Fauntleroy, but the state supreme court reversed. In holding for Lum, the Mississippi court declared that "a contract condemned by our civil and criminal laws as immoral, and which the courts of this state are prohibited from enforcing, is [not] sanctified, and purged of its illegality by a judgment rendered in another state." Fauntleroy appealed to the U.S. Supreme Court, which held in his favor in a 5–4 vote.*

*The case turned on the requirement of the full faith and credit clause of the U.S. Constitution, which requires that each state give "full faith and credit" to the "judicial proceedings of every other state." Fauntleroy contended that the Mississippi courts were constitutionally obligated to recognize and enforce the legal proceedings of the Missouri courts (even if they involved actions conducted in Mississippi by residents of Mississippi). Lum contended that state courts were not obliged to violate their local public policy by enforcing the judgment of the courts of other states that conflicted with local law. Was the "gambling debt" valid and enforceable in Mississippi because a Missouri court had recognized the debt, or was it still illegal and invalid in Mississippi regardless of the actions of the Missouri courts? Writing for the majority, Justice Holmes contended that states must always give full faith to the actions of other courts and must rely on the good sense of other states not to recognize activities that were against public policy. The dissenters, who included several strong nationalists, vigorously argued that such a rule would undermine the ability of states to enforce their own public policies.*

*The full faith and credit clause has become particularly notable in recent years because of its relevance for marriage laws. Must states recognize marriages granted in other states, even when such marriages would be locally illegal? The issue has long been a testy one, with states like Nevada being an early adopter of liberal marriage and divorce laws and states differing in their policies on such matters as the age of consent for marriage (in 1957, the singer Jerry Lee Lewis notoriously crossed the border from Tennessee to Mississippi in order to marry his thirteen-year-old cousin). If states must always recognize the public acts of other states, do states necessarily lose the ability to regulate their own internal affairs? Do states become hostage to the policy preferences of all of the other states? Should the full faith and credit clause be understood as a formalization of the traditional principles of comity (the principle of reciprocity between courts of different jurisdiction) or as a transformation of them?*

JUSTICE HOLMES delivered the opinion of the Court.

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No doubt it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty of the court. . . . Whether a given statute is intended simply to establish a rule of substantive law, and thus to define the duty of the court, or is meant to limit its power, is a question of construction and common sense. When it affects a court of general jurisdiction and deals with a matter upon which that court must pass, we naturally are slow to read ambiguous words, as meaning to leave the judgment open to dispute, or as intended to do more than to fix the rule by which the court should decide.

. . . . The statute now before us seems to us only to lay down a rule of decision. The Mississippi court in which this action was brought is a court of general jurisdiction and would have to decide upon the validity of the bar, if the suit upon the award or upon the original cause of action had been brought there. The words "shall not be enforced by any court" are simply another, possibly less emphatic, way of saying that an action shall not be brought to enforce such contracts. . . . [W]e proceed at once to the further question, whether the illegality of the original cause of action in Mississippi can be relied upon there as a ground for denying a recovery upon a judgment of another State.

The doctrine laid down by Chief Justice Marshall was "that the judgment of a state court should have the same credit, validity, and effect in every other court in the United States, which it had in the State where it was pronounced, and that whatever pleas would be good to a suit thereon in such State, and none others, could be pleaded in any other court of the United States." . . .

. . . . Whether the award would or would not have been conclusive, and whether the ruling of the Missouri court upon that matter was right or wrong, there can be no question that the judgment was conclusive in Missouri on the validity of the cause of action. . . . A judgment is conclusive as to all the *media concludendi*; and it needs no authority to show that it cannot be impeached either in or out of the State by showing that it was based upon a mistake of law. Of course a want of jurisdiction over either the person or the subject-matter might be shown. But as the jurisdiction of the Missouri court is not open to dispute the judgment cannot be impeached in Mississippi even if it went upon a misapprehension of the Mississippi law. . . .

We feel no apprehensions that painful or humiliating consequences will follow upon our decision. No court would give judgment for a plaintiff unless it believed that the facts were a cause of action by the law determining their effect. Mistakes will be rare. In this case the Missouri court no doubt supposed that the award was binding by the law of Mississippi. If it was mistaken it made a natural mistake. The validity of its judgment, even in Mississippi, is, as we believe, the result of the Constitution as it always has been understood, and is not a matter to arouse the susceptibilities of the States, all of which are equally concerned in the question and equally on both sides.

Judgment reversed.

JUSTICE WHITE, with whom JUSTICE HARLAN, JUSTICE MCKENNA, and JUSTICE Day joined, dissenting.

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. . . . This court now reverses on the ground that the due faith and credit clause obliged the courts of Mississippi, in consequence of the action of the Missouri court, to give efficacy to transactions in Mississippi which were criminal, and which were against the public policy of that State. Although not wishing in the slightest degree to weaken the operation of the due faith and credit clause as interpreted and applied from the beginning, it to me seems that this ruling so enlarges that clause as to cause it to obliterate all state lines, since the effect will be to endow each State with authority to overthrow the public policy and criminal statutes of the others, thereby depriving all of their lawful authority.

Moreover, the ruling now made, in my opinion, is contrary to the conceptions which caused the due faith and credit clause to be placed in the Constitution, and substantially overrules the previous decisions of this court interpreting that clause. . . .

The foundation upon which our system of government rests is the possession by the States of the right, except as restricted by the Constitution, to exert their police powers as they may deem best for the happiness and welfare of those subject to their authority. The whole theory upon which the Constitution was framed, and by which alone, it seems to me, it can continue, is the recognition of the fact that different conditions may exist in the different States, rendering necessary the enactment of regulations of a particular subject in one State when such subject may not in another be deemed to require regulation. . . . If it be that the ruling now made deprives the States of powers admittedly theirs, it follows that the ruling must be wrong. . . . It must follow [from this ruling], if one State by the mere form of a judgment has this power, that no State has in effect the authority to make police regulations, or, what is tantamount to the same thing, is without power to enforce them. If this be true the doctrine now upheld comes to this, that no State, generally speaking, possesses police power concerning acts done within its borders if any of the results of such acts may be the subject of civil actions, since the enforcement by the State of its police regulations as to such acts may be nullified by an exertion of the judicial power of another State. Indeed the principle, as understood by me, goes further than this, since it not only gives to each of the States in the cases suggested the power to render possible an evasion of the police laws of all the other States, but it gives to each State the authority to compel the other States, through their courts, to give effect to illegal transactions done within their borders. . . .

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[I]t cannot be denied that under the rules of comity recognized at the time of the adoption of the Constitution, and which at this time universally prevail, no sovereignty was or is under the slightest moral obligation to give effect of a judgment of a court of another sovereignty, when to do so would compel the State in which the judgment was sought to be executed to enforce an illegal and prohibited contract, when both the contract and all the acts done in connection with its performance had taken place in the latter State. . . . This seems to me conclusive of this case, since . . . it has been settled that the purpose of the due faith and credit clause was not to confer any new power, but simply to make obligatory that duty which, when the Constitution was adopted rested, as has been said, in comity alone.

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I do not see how the question, whether a judgment is without the due faith and credit clause, may be controlled by a decision [by Chief Justice Marshall] pointing out the extent of the credit to be given to a judgment if it be within that clause.

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