

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 4: The Early National Era – Judicial Power and Constitutional Authority

Bank of United States v. Deveaux, 9 U.S. 61 (1809)

*The Bank of the United States was incorporated by federal statute in 1791. The Bank was based in Philadelphia, Pennsylvania, but carried out operations in various parts of the country. In 1805, the state of Georgia passed a law imposing a tax on the Bank branch in state. When the Bank refused to pay the tax, the tax collector ordered the sheriff to enter the Bank branch in Savannah, Georgia, and seize three thousand dollars in silver to satisfy the debt. The Bank filed suit in federal district court in Georgia to recover the silver. The trial court dismissed the suit, concluding that it did not have jurisdiction to hear the case. The Bank contended that it could sue in federal courts in its corporate capacity, and as a corporation it existed as a "citizen" of Pennsylvania. Thus, the courts could exercise diversity jurisdiction in a suit between this Pennsylvania "citizen" and Deveaux, a citizen of Georgia. On appeal to the U.S. Supreme Court, the justices unanimously agreed with the Bank. The Court indicated that while a corporation as such is not a citizen for all purposes, real persons can exercise their own rights in the corporate name. Combined with the Marshall Court's decision in *Strawbridge v. Curtiss* (1806), this indicated that all of the "members" of the corporation would need to be of a different state than the opposing party in order to maintain diversity jurisdiction in the federal courts. Within a few decades, as corporations became more complex and geographically expansive, the Court treated the state of incorporation as the crucial fact for determining diversity jurisdiction rather than the state of residence of all principal members of the corporation.*

Is Marshall consistent in his understanding of corporations in this opinion? In what circumstances are corporations to be treated as persons, and in what circumstances are they treated as reflections of their disaggregated members? What is the purpose of granting federal courts diversity jurisdiction? Would corporations have the same reasons to benefit from federal jurisdiction as real persons? What would be the implications of recognizing corporations as citizens for jurisdictional purposes?

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CHIEF JUSTICE MARSHALL, delivered the opinion of the Court.

Two points have been made in this cause.

1. That a corporation, composed of citizens of one state, may sue a citizen of another state, in the federal courts.
2. That a right to sue in those courts is conferred on this bank by the law which incorporates it.

The last point will be first considered.

The judicial power of the United States, as defined in the constitution, is dependent, 1st on the nature of the case; and, 2nd on the character of the parties.

....

The plaintiffs contend that the incorporating act confers this jurisdiction.

That act creates the corporation, gives it a capacity to make contracts and to acquire property, and enables it "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any other place whatsoever."

This power, if not incident to a corporation, is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court, but to give a capacity to the corporation to appear, as a corporation, in any court which would, by law, have cognizance of the cause, if brought by individuals. . . .

. . . .
The court, then, is of opinion, that no right is conferred on the bank, by the act of incorporation, to sue in the federal courts.

. . . The other point is one of much more difficulty.

The jurisdiction of this court being limited, so far as respects the character of the parties in this particular case, "to controversies between citizens of different states," both parties must be citizens, to come within the description.

That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name. . . .

The duties of this court, to exercise jurisdiction where it is conferred, and not to usurp it where it is not conferred, are of equal obligation. The constitution, therefore, and the law, are to be expounded, without a leaning the one way or the other, according to those general principles which usually govern in the construction of fundamental or other laws.

A constitution, from its nature, deals in generals, not in detail. Its framers cannot perceive minute distinctions which arise in the progress of the nation, and therefore confine it to the establishment of broad and general principles.

The judicial department was introduced into the American constitution under impressions, and with views, which are too apparent not to be perceived by all. However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states. Aliens, or citizens of different states, are not less susceptible of these apprehensions, nor can they be supposed to be less the objects of constitutional provision, because they are allowed to sue by a corporate name. That name, indeed, cannot be an alien or a citizen; but the persons whom it represents may be the one or the other; and the controversy is, in fact and in law, between those persons suing in their corporate character, by their corporate name, for a corporate right, and the individual against whom the suit may be instituted. Substantially and essentially, the parties in such a case, where the members of the corporation are aliens, or citizens of a different state from the opposite party, come within the spirit and terms of the jurisdiction conferred by the constitution on the national tribunals.

Such has been the universal understanding on the subject. Repeatedly has this court decided causes between a corporation and an individual without feeling a doubt respecting its jurisdiction. . . .

As our ideas of a corporation, its privileges and its disabilities, are derived entirely from the English books, we resort to them for aid, in ascertaining its character. It is defined as a mere creature of the law, invisible, intangible, and incorporeal. Yet, when we examine the subject further, we find that corporations have been included within terms of description appropriated to real persons.

. . . .
If, then, the congress of the United States had, in terms, enacted that incorporated aliens might sue a citizen, or that the incorporated citizens of one state might sue a citizen of another state, in the federal courts, by its corporate name, this court would not have felt itself justified in declaring that such a law transcended the constitution.

. . . .
If the constitution would authorize congress to give the courts of the union jurisdiction in this case, in consequence of the character of the members of the corporation, then the judicial act ought to be

construed to give it. For the term citizen ought to be understood as it is used in the constitution, and as it is used in other laws. That is, to describe the real persons who come into court, in this case, under their corporate name.

That corporations composed of citizens are considered by the legislature as citizens, under certain circumstances, is to be strongly inferred from the registering act. It never could be intended that an American registered vessel, abandoned to an insurance company composed of citizens, should lose her character as an American vessel; and yet this would be the consequence of declaring that the members of the corporation were, to every intent and purpose, out of view, and merged in the corporation.

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Judgment reversed. . . .

JUSTICE LIVINGSTON, having an interest in the question, gave no opinion.



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