AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

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

Vanhorne's Lessee v. Dorrance, 2 U.S. 304 (C.C. D. Pa., 1795)

The Pennsylvania legislature, in an attempt to settle a land dispute between state residents and out-of-state purchasers from Connecticut, passed a law vesting title to the disputed property in the out-of-state purchasers. State residents with bona fide claims were compensated with an equivalent tract. Several Pennsylvania residents sued, claiming that the legislative resolution of the land dispute deprived them of their vested rights and right to a jury trial.

Justice William Patterson, serving on the Circuit Court of the United States for the Pennsylvania district, supported the Pennsylvania claimants. His charge to the jury defended the judicial power to declare laws unconstitutional. Patterson then concluded that the Pennsylvania "quieting and confirming act" violated the constitution of Pennsylvania and the Constitution of the United States. Vanhorne's Lessee *may be the first instance in which a federal court held state legislation unconstitutional. How does Paterson's justification for judicial compare with John Marshall's in* Marbury v. Madison *(1803)?*

JUSTICE PATERSON delivered the following jury charge.

. . . The constitutionality of the confirming act; or, in other words, whether the legislature had authority to make that act. Legislation is the exercise of sovereign authority. High and important powers are necessarily vested in the legislative body; whose acts, under some forms of government, are irresistible and subject to no control. In England, from whence most of our legal principles and legislative notions are derived, the authority of the parliament is transcendent and has no bounds. . . . [I]n England, the authority of the parliament runs without limits, and rises above control. . . . Some of the judges in England have had the boldness to assert, that an act of parliament, made against natural equity, is void; but this opinion contravenes the general position, that the validity of an act of parliament cannot be drawn into question by the judicial department: It cannot be disputed, and must be obeyed. The power of parliament is absolute and transcendent; it is omnipotent in the scale of political existence. Besides, in England there is no written constitution, no fundamental law, nothing visible, nothing real, nothing certain, by which a statute can be tested. In America the case is widely different: Every state in the Union has its constitution reduced to written exactitude and precision.

What is a constitution? It is the form of government, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the legislature, and can be revoked or altered only by the authority that made it. The life-giving principle and the death-doing stroke must proceed from the same hand. What are legislatures? Creatures of the constitution; they owe their existence to the constitution: they derive their powers from the constitution: It is their commission; and, therefore, all their acts must be conformable to it, or else they will be void. The constitution is the work or will of the people themselves, in their original, sovereign, and unlimited capacity. Law is the work or will of the legislature in their derivative and subordinate capacity. The one is the work of the creator, and the other of the creature. The constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move. In short, gentlemen, the constitution is the sun of the political system, around which all legislative, executive and

judicial bodies must revolve. Whatever may be the case in other countries, yet in this there can be no doubt, that every act of the legislature, repugnant to the constitution, is absolutely void

. . . . Could the legislature have annulled these articles, respecting religion, the rights of conscience, and elections by ballot? Surely no. As to these points there was no devolution of power; the authority was purposely withheld, and reserved by the people to themselves. If the legislature had passed an act declaring, that, in future, there should be no trial by jury, would it have been obligatory? No. It would have been void for want of jurisdiction, or constitutional extent of power. The right of trial by jury is a fundamental law, made sacred by the constitution, and cannot be legislated away. The constitution of a state is stable and permanent, not to be worked upon by the temper of the times, nor to rise and fall with the tide of events: notwithstanding the competition of opposing interests, and in violence of contending parties, it remains firm and immovable, as a mountain amidst the strife of storms, or a rock in the ocean amidst the raging of the waves. I take it to be a clear position; that if a legislative act oppugns a constitutional principle, the former must give way, and be rejected on the score of repugnance. I hold it to be a position equally clear and sound, that, in such case, it will be the duty of the court to adhere to the constitution, and to declare the act null and void. The constitution is the basis of legislative authority; it lies at the foundation of all law, and is a rule and commission by which both legislators and judges are to proceed. It is an important principle, which, in the discussion of questions of the present kind, ought never to be lost sight of, that the judiciary in this country is not a subordinate, but co-ordinate, branch of the government. . . .

. . . . The legislature declare and enact, that such are the public exigencies, or necessities of the state, as to authorize them to take the land of A. and give it to B.; the dictates of reason and the eternal principles of justice, as well as the sacred principles of the social contract, and the constitution, direct, and they accordingly declare and ordain, that A. shall receive compensation for the land. But here the legislature must stop; they have run the full length of their authority, and can go no further: they cannot constitutionally determine upon the amount of the compensation, or value of the land. Public exigencies do not require, necessity does not demand, that the legislature should, of themselves, without the participation of the proprietor, or intervention of a jury, assess the value of the thing, or ascertain the amount of the compensation to be paid for it. This can constitutionally be effected only in three ways: (1) By the parties -- that is, by stipulation between the legislature and proprietor of the land. (2) By commissioners mutually elected by the parties. (3) By the intervention of a jury.

. . . . The interposition of a jury is, in such case, a constitutional guard upon property, and a necessary check to legislative authority. It is a barrier between the individual and the legislature, and ought never to be removed; as long as it is preserved, the rights of private property will be in no danger of violation, except in cases of absolute necessity, or great public utility. By the confirming act, the value of the land taken, and the value of the land to be paid in recompense, are to be ascertained by the board of property. And who are the persons that constitute this board? Men appointed by one of the parties, by the legislature only. The person, whose property is to be divested and valued, had no volition, no choice, no co-operation in the appointment; and besides, the other constitutional guard upon property, that of a jury, is removed and done away. The board of property thus constituted, are authorized to decide upon the value of the land to be taken, and upon the value of the land to be given by way of equivalent, without the participation of the party, or the intervention of a jury.

The proprietor stands afar off, a solitary and unprotected member of the community, and is stripped of his property, without his consent, without a hearing, without notice, the value of that property judged upon without his participation, or the intervention of a jury, and the equivalent therefor in lands ascertained in the same way. If this be the legislation of a republican government, in which the preservation of property is made sacred by the constitution, I ask, wherein it differs from the mandate of an Asiatic prince? Omnipotence in legislation is despotism. According to this doctrine, we have nothing that we can call our own, or are sure of for a moment; we are all tenants at will, and hold our landed property at the mere pleasure of the legislature. Wretched situation, precarious tenure! And yet we boast of property and its security, of laws, of courts, of constitutions, and call ourselves free! In short,

gentlemen, the confirming act is void; it never had constitutional existence; it is a dead letter, and of no more virtue or avail, than if it never had been made.

IV. After the opinion delivered on the preceding questions, it is not necessary to determine upon the validity of the repealing law. But it being my intention in this charge to decide upon all the material points in the cause, in order that the whole may, at once, be carried before the supreme judicature for revision, I shall detain you, gentlemen, a few minutes only, while I just touch upon the constitutionality of the repealing act. . . .

2. It impairs the obligation of a contract, and is therefore void. . . . [I]f the confirming act be a contract between the legislature of Pennsylvania and the Connecticut settlers, it must be regulated by the rules and principles which pervade and govern all cases of contracts; and if so, it is clearly void, because it tends, in its operation and consequences, to defraud the Pennsylvania claimants, who are third persons, of their just rights; rights ascertained, protected, and secured by the constitution and known laws of the land. The plaintiff's title to the land in question, is legally derived from Pennsylvania; how then, on the principles of contract, could Pennsylvania lawfully dispose of it to another? As a contract, it could convey no right, without the owner's consent; without that, it was fraudulent and void.