Supplementary Material

Chapter 5: The Jacksonian Era—Foundations/Scope/The Bill of Rights in the States

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Campbell v. State, 11 Ga. 353 (1852)

James Campbell was indicted for the murder of Alfred Mays. At his trial, the state called several witnesses who claimed that Mays, before dying, told them that Campbell inflicted the fatal blow. Campbell claimed that this testimony was hearsay. The admission of hearsay testimony, in his view, violated his Sixth Amendment right to confront the witnesses against him.[1] *The prosecutor responded that dying declarations are not hearsay and that, if the testimony was hearsay, the Sixth Amendment did not limit criminal procedure in Georgia. The trial judge admitted the testimony. Campbell was convicted of voluntary manslaughter. He appealed that conviction to the Supreme Court of Georgia.*

Judge Lumpkin ruled that criminal defendants in Georgia had a right to confront the witnesses against them, but that admitting dying declarations during a criminal trial did not violate that right. On what basis did Judge Lumpkin reach his constitutional conclusion? Did his opinion claim that the Sixth Amendment limits state governments or did he claim that the Sixth Amendment expresses a principle of natural justice that limits state governments? Does your answer to these questions influence how you interpret such rights as the right to be confronted with the witnesses against you at a criminal trial?

JUDGE LUMPKIN delivering the opinion.

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That [the sixth] amendment, like the other nine adopted at the same time, was primarily introduced for the purpose of preventing an abuse of power by the Federal Government, is readily conceded. Grasping, however, as the National Judiciary is supposed to be, and studious to accumulate power in the central government, it may well be questioned, whether the limitations and restrictions imposed by these amendments, were necessary. The rights which they were designed to protect, were too sacred to be violated by any republican tribunal, legislative or judicial. A disregard of them, was mainly instrumental in overturning the Stuart dynasty in England; depriving one monarch of his head, and another of his crown. And no Court, probably, in this free country, would have ventured to enforce practices so arbitrary, unjust, and oppressive, as those inhibited by these amendments; practices condemned by Magna Charta—the Petition of Right—the Bill of Rights—and more especially, by the Act of Settlement, in Britain.

The principles embodied in these amendments, for better securing the lives, liberties, and property of the people, were declared to be the "birthright" of our ancestors, several centuries previous to the establishment of our government. It is not likely, therefore, that any Court could be found in America of sufficient hardihood to deprive our citizens of these invaluable safeguards. Still, our patriotic forefathers, out of abundant caution, super-added these amendments to the Constitution, so as to place the matter beyond doubt or cavil, misconstruction or abuse.

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[1] Hearsay is any testimony about a statement made out of court that is admitted for the truth of the matter asserted. For example, if you testify that you heard your friend Jane state, "I saw Fred rob the bank," that is hearsay. The reason hearsay violates the confrontation clause is that Jane is not available to be cross-examined. Hence, we cannot learn whether she was joking or how good her vision was. The hearsay rule has numerous exceptions, one of which is dying declarations.

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That the power to pass any law infringing on these principles, is taken from the Federal Government, no one denies. But is it a part of the reserved rights of a State to do this? May the Legislature of a State, for example, unless restrained by its own Constitution, pass a law "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and petition the government for a redress of grievances?" If so, of what avail, I ask, is the negation of these powers to the General Government? Our revolutionary sires wisely resolved that religion should be purely voluntary in this country; that it should subsist by its own omnipotence, or come to nothing. Hence, they solemnly determined that there should be no church established by law, and maintained by the secular power. Now, the doctrine is, that Congress may not exercise this power, but that each State Legislature may do so for itself. As if a National religion and State religion, a National press and State press, were quite separate and distinct from each other; and that the one might be subject to control, but the other not!

Such logic, I must confess, fails to commend itself to my judgment. For let it constantly be borne in mind, that notwithstanding we may have different governments, a nation within a nation, *imperium in imperio*, we have but *one* people; and that the same people which, divided into separate communities, constitute the respective State governments, comprise in the aggregate, the United States Government; and that it is in vain to shield them from a blow aimed by the Federal arm, if they are liable to be prostrated by one dealt with equal fatality by their own.

But I deem it unnecessary to pursue this line of argument and of illustration, any farther. When it can be demonstrated that an individual or a government has the *right* to do *wrong*, contrary to the old adage, that one person's *rights* cannot be another person's *wrongs*, then, and not before, will it be yielded that it is a part and parcel of the original jurisdiction of the State governments, reserved to them in the distribution of power under the Constitution, to enact laws, to deprive the citizen of the right to keep and bear arms; to quarter soldiers in time of peace, in any house, without the consent of the owner; to subject the people to unreasonable search and seizure, in their persons, houses, papers and effects; to hold a person to answer for a capital, or otherwise infamous crime, without presentment or indictment; to be twice put in jeopardy of life or limb for the same offence; to compel him, in a criminal case, to be a witness against himself; to deprive him of life, liberty or property, without due course of law; to take private property for public use, without just compensation; to deprive the accused in all criminal trials, of the right to a speedy and public trial, by an impartial Jury; to be informed of the nature and cause of the accusation; *to be confronted with the witnesses against him;* to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence; to enact laws requiring excessive bail, imposing oppressive and ruinous fines, and inflicting cruel and unusual punishments!

From such *State rights*, good Lord deliver us! I utterly repudiate them from the creed of my political faith!

It was not because it was supposed that legislation over the subjects here enumerated might be better and more safely entrusted to the State governments, that it was prohibited to Congress. It was to *declare* to the world the fixed and unalterable determination of our people, that these invaluable rights which had been established at so great a cost of blood and treasure, should never be disturbed by *any* government. They feared no interference from their own local Legislatures. They determined to fetter the hands of the Federal authority, the only quarter from which danger was apprehended.

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. . . The people of the several States, by adopting these amendments, have defined accurately and recorded permanently their opinion, as to the great principles which they embrace; and to make them more emphatic and enduring, have had them incorporated into the Constitution of the Union—the permanent law of the land. Admit, therefore, that the Legislature of a State may be absolute and without control over all other subjects, where its authority is not restrained by the Constitution of the State or of the United States; still, viewing these amendments as we do, as intended to establish justice—to secure the blessings of liberty—to protect person and property from violence; and that these were the very purposes for which this government was established, we hold that they constitute a limit to all legislative power, Federal or States, beyond which it cannot go; that these vital truths lie at the foundation of our

free, republican institutions; that without this security for personal liberty and private property, our social compact could not exist. No Court should ever presume that it was the design of the people to entrust their representatives with the power to take away or impair these securities. Such an assumption would be against all reason. The very genius, nature and spirit of our institutions amount to a prohibition of such acts of legislation, and will overrule and forbid them.

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