Supplementary Material

Chapter 8: The New Deal and Great Society Era – Federalism

Williams v. North Carolina, 317 U.S. 287 (1942)

Like many states in the first part of the twentieth century, North Carolina made it difficult for married couples to get a divorce (the state supreme court observed that the divorce law "is somewhat drastic, as it should be"). Nevada was notorious, even among the more lenient western states, for allowing "quickie" divorces and marriages. Hotel and lawyer interests in the state worked hard to make divorce "speedy, painless, and profitable," thereby attracting unhappy couples from throughout the country to visit Reno and Las Vegas for a "foreign divorce."[1] Other states resisted.

In 1940, O. B. Williams and Lillie Shaver Hendrix were convicted of bigamy in North Carolina. Williams had married Carrie Wyke in North Carolina in 1916, and they lived together until Williams abandoned Wyke in 1940. Lillie Shaver married Thomas Hendrix in North Carolina in 1920, and they lived together until she left him in 1940. Williams and Shaver then lived together as a couple briefly before traveling to Las Vegas. They lived in a Las Vegas motel for the six weeks required by Nevada statutes and on the basis of that residency applied for divorce in that state from their spouses. A judicial notice of the proceedings was sent to the spouses in North Carolina, but neither responded. A decree of divorce was granted. Williams and Shaver then married in Las Vegas and returned home to North Carolina, where they were soon indicted and convicted of bigamy. Wyke soon died; Hendrix filed for divorce from Shaver in North Carolina and remarried.

On appeal, the state supreme court upheld the conviction on the grounds that a divorce that was not fully consensual by all parties could be granted only in the state of "matrimonial domicil." In a 7–2 decision, the U.S. Supreme Court reversed, and in so doing overturned a key precedent regarding out-of-state divorces. The case was remanded to the state courts, and North Carolina again upheld the bigamy conviction with a different legal rationale. In 1945, the U.S. Supreme Court affirmed that second state supreme court ruling. In the 1942 case, the Supreme Court concluded that the full faith and credit clause required states to recognize decisions rendered in the courts of other states that conflicted with their own policies. An individual within a marriage could establish a domicil in another state and file for divorce, regardless of whether the spouse remained in the original state or whether the individual now filing for divorce had inappropriately abandoned the spouse. Domicil followed the petitioning individual, not the location of the marital union or of the trailing spouse.

Could Nevada allow "mail order" divorces? What principle distinguished a six-week residency in the state from a weekend residency? Could Nevada appropriately establish different procedures for notifying the absent spouse of the divorce proceedings than other states required? What would be the consequences of failing to give national recognition to divorce proceedings granted in a lenient state? Are the policies of states on marriage necessarily hostage to the policies of the most liberal states in the union?

JUSTICE DOUGLAS delivered the opinion of the Court.

. . . . [W]e must treat the present case for the purpose of the limited issue before us precisely the same as if petitioners had resided in Nevada for a term of years and had long ago acquired a permanent

[1] Hendrick Hartog, *Man and Wife in America* (Cambridge, MA: Harvard University Press, 2000), 277.

abode there. In other words, we would reach the question whether North Carolina could refuse to recognize the Nevada decrees because, in its view and contrary to the findings of the Nevada court, petitioners had no actual, *bona fide* domicil in Nevada, if and only if we concluded that *Haddock* v. *Haddock* (1906) was correctly decided. But we do not think it was.

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. . . . [T]his Court has been reluctant to admit exceptions in case of *judgments* rendered by the courts of a sister state, since the "very purpose" of Art. IV, § 1 was "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation." . . .

. . . . It is difficult to perceive how North Carolina could be said to have an interest in Nevada's domiciliaries superior to the interest of Nevada. Nor is there any authority which lends support to the view that the full faith and credit clause compels the courts of one state to subordinate the local policy of that state, as respects its domiciliaries, to the statutes of any other state. . . .

. . . . The decisive difference between [other cases involving out-of-state divorces] and *Haddock* v. *Haddock* was said to be that, in the latter, the state granting the divorce had no jurisdiction over the absent spouse, since it was not the state of the matrimonial domicil, but the place where the husband had acquired a separate domicil after having wrongfully left his wife. This Court accordingly classified *Haddock* v. *Haddock* with that group of cases which hold that when the courts of one state do not have jurisdiction either of the subject matter or of the person of the defendant, the courts of another state are not required by virtue of the full faith and credit clause to enforce the judgment. But such differences in result between *Haddock* v. *Haddock* and the cases which preceded it rest on distinctions which in our view are immaterial, so far as the full faith and credit clause and the supporting legislation are concerned.

. . . . [I]t seems clear that the provision of the Nevada statute that a plaintiff in this type of case must "reside" in the State for the required period requires him to have a domicil, as distinguished from a mere residence, in the state. . . . Hence, the decrees in this case, like other divorce decrees, are more than *in personam* judgments. They involve the marital status of the parties. Domicil creates a relationship to the state which is adequate for numerous exercises of state power. . . . Each state as a sovereign has a rightful and legitimate concern in the marital status of persons domiciled within its borders. The marriage relation creates problems of large social importance. Protection of offspring, property interests, and the enforcement of marital responsibilities are but a few of commanding problems in the field of domestic relations with which the state must deal. Thus it is plain that each state, by virtue of its command over its domiciliaries and its large interest in the institution of marriage, can alter within its own borders the marriage status of the spouse domiciled there, even though the other spouse is absent. . . .

. . . . [I]f one is lawfully divorced and remarried in Nevada and still married to the first spouse in North Carolina, an even more complicated and serious condition would be realized. . . . Each would be a bigamist for living in one state with the only one with whom the other state would permit him lawfully to live. Children of the second marriage would be bastards in one state but legitimate in the other. And all that would flow from the legalistic notion that where one spouse is wrongfully deserted he retains power over the matrimonial domicil so that the domicil of the other spouse follows him wherever he may go, while, if he is to blame, he retains no such power. . . . The existence of the power of a state to alter the marital status of its domiciliaries, as distinguished from the wisdom of its exercise, is not dependent on the underlying causes of the domestic rift. . . .

It is objected, however, that if such divorce decrees must be given full faith and credit, a substantial dilution of the sovereignty of other states will be effected. For it is pointed out that under such a rule one state's policy of strict control over the institution of marriage could be thwarted by the decree of a more lax state. But such an objection goes to the application of the full faith and credit clause to many situations. . . .

. . . . Our own views as to the marriage institution and the avenues of escape which some states have created are immaterial. It is a Constitution which we are expounding -- a Constitution which in no

small measure brings separate sovereign states into an integrated whole through the medium of the full faith and credit clause. Within the limits of her political power North Carolina may, of course, enforce her own policy regarding the marriage relation -- an institution more basic in our civilization than any other. But society also has an interest in the avoidance of polygamous marriages and in the protection of innocent offspring of marriages deemed legitimate in other jurisdictions. And other states have an equally legitimate concern in the status of persons domiciled there as respects the institution of marriage. So, when a court of one state acting in accord with the requirements of procedural due process alters the marital status of one domiciled in that state by granting him a divorce from his absent spouse, we cannot say its decree should be excepted from the full faith and credit clause merely because its enforcement or recognition in another state would conflict with the policy of the latter. . . .

Haddock v. *Haddock* is overruled. The judgment is reversed and the cause is remanded to the Supreme Court of North Carolina for proceedings not inconsistent with this opinion.

Reversed.

JUSTICE FRANKFURTER, concurring.

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There is but one respect in which this Court can, within its traditional authority and professional competence, contribute uniformity to the law of marriage and divorce, and that is to enforce respect for the judgment of a state by its sister states when the judgment was rendered in accordance with settled procedural standards. As the Court's opinion shows, it is clearly settled that if a judgment is binding in the state where it was rendered, it is equally binding in every other state. . . .

The duty of a state to respect the judgments of a sister state arises only where such judgments meet the tests of justice and fair dealing that are embodied in the historic phrase, "due process of law." But in this case all talk about due process is beside the mark. If the actions of the Nevada court had been taken "without due process of law," the divorces which it purported to decree would have been without legal sanction in every state, including Nevada. There would be no occasion to consider the applicability of the Full Faith and Credit Clause. It is precisely because the Nevada decrees do satisfy the requirements of the Due Process Clause and are binding in Nevada upon the absent spouses that we are called upon to decide whether these judgments, unassailable in the state which rendered them, are, despite the commands of the Full Faith and Credit Clause, null and void elsewhere.

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JUSTICE MURPHY, dissenting.

I dissent because the Court today introduces an undesirable rigidity in the application of the Full Faith and Credit Clause to a problem which is of acute interest to all the states of the Union and on which they hold varying and sharply divergent views, the problem of how they shall treat the marriage relation.

This case cannot be considered as one involving the Constitution alone; rather the case involves the interaction of public policy upon the Constitution. This is not to say that our function is to become censors of public morals and decide this case in accordance with what we may think is the wisest rule for society with respect to divorce. But the question of public policy enters to this degree -- marriage and the family have generally been regarded as basic components of our national life, and the solution of the problems engendered by the marital relation, the formulation of standards of public morality in connection therewith, and the supervision of domestic (in the sense of family) affairs, have been left to the individual states. Each state has the deepest concern for its citizens in those matters, and, concomitantly with that concern, it exercises the widest control over marriage, determining how it is to be solemnized,

the attendant obligations, and how it may be dissolved. When a conflict arises between the divergent policies of two states in this area of legitimate governmental concern, as here, this Court should give appropriate consideration to the interests of each state.

. . . . Did petitioners acquire a bona fide domicile in Nevada? I agree with my brother Jackson that the only proper answer on the record is, no. North Carolina is the state in which petitioners have their roots, the state to which they immediately returned after a brief absence just sufficient to achieve their purpose under Nevada's requirements. It follows that the Nevada decrees are entitled to no extraterritorial effect when challenged in another state. . . .

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There is an element of tragic incongruity in the fact that an individual may be validly divorced in one state but not in another. But our dual system of government and the fact that we have no uniform laws on many subjects give rise to other incongruities as well -- for example, the common law took the logical position that an individual could have but one domicile at a time, but this Court has nevertheless said that the Full Faith and Credit Clause does not prevent conflicting state decisions on the question of an individual's domicile. . . . In the absence of a uniform law on the subject of divorce, this Court is not so limited in its application of the Full Faith and Credit Clause that it must force Nevada's policy upon North Carolina, any more than it must compel Nevada to accept North Carolina's requirements. The fair result is to leave each free to regulate within its own area the rights of its own citizens.

JUSTICE JACKSON, dissenting.

I cannot join in exerting the judicial power of the Federal Government to compel the State of North Carolina to subordinate its own law to the Nevada divorce decrees. The Court's decision to do so reaches far beyond the immediate case. It subjects matrimonial laws of each state to important limitations and exceptions that it must recognize within its own borders and as to its own permanent population. It nullifies the power of each state to protect its own citizens against dissolution of their marriages by the courts of other states which have an easier system of divorce. It subjects every marriage to a new infirmity, in that one dissatisfied spouse may choose a state of easy divorce, in which neither party has ever lived, and there commence proceedings without personal service of process. The spouse remaining within the state of domicile need never know of the proceedings. . . . It is not an exaggeration to say that this decision repeals the divorce laws of all the states and substitutes the law of Nevada as to all marriages one of the parties to which can afford a short trip there. . . .

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There is confided to the Court only the power to resolve constitutional questions raised by these divorce procedures, and not moral, religious, or social questions as to divorce itself. I do not know with any certainty whether in the long run strict or easy divorce is best for society or whether either has much effect on moral conduct. It is enough for judicial purposes that to each state is reserved constitutional power to determine its own divorce policy. It follows that a federal court should uphold impartially the right of Nevada to adopt easy divorce laws and the right of North Carolina to enact severe ones. No difficulties arise so long as each state applies its laws to its own permanent inhabitants. The complications begin when one state opens its courts and extends the privileges of its laws to persons who never were domiciled there and attempts to visit disadvantages therefrom upon persons who have never lived there, have never submitted to the jurisdiction of its courts, and have never been lawfully summoned by personal service of process. This strikes at the orderly functioning of our federal constitutional system, and raises questions for us.

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The effect of the Court's decision today -- that we must give extraterritorial effect to any judgment that a state honors for its own purposes -- is to deprive this Court of control over the operation of the full faith and credit and the due process clauses of the Federal Constitution in cases of contested

jurisdiction and to vest it in the first state to pass on the facts necessary to jurisdiction. It is for this Court, I think, not for state courts, to implement these great but general clauses by defining those judgments which are to be forced upon other states.

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I doubt that it promotes clarity of thinking to deal with marriage in terms of a *res*, like a piece of land or a chattel. It might be more helpful to think of marriage as just marriage -- a relationship out of which spring duties to both spouse and society and from which are derived rights, -- such as the right to society and services and to conjugal love and affection -- rights which generally prove to be either priceless or worthless, but which none the less the law sometimes attempts to evaluate in terms of money when one is deprived of them by the negligence or design of a third party.

It does not seem consistent with our legal system that one who has these continuing rights should be deprived of them without a hearing. Neither does it seem that he or she should be summoned by mail, publication, or otherwise to a remote jurisdiction chosen by the other party and there be obliged to submit marital rights to adjudication under a state policy at odds with that of the state under which the marriage was contracted and the matrimonial domicile was established.

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To hold that the Nevada judgments were not binding in North Carolina because they were rendered without jurisdiction over the North Carolina spouses, it is not necessary to hold that they were without any conceivable validity. It may be, and probably is, true that Nevada has sufficient interest in the lives of those who sojourn there to free them and their spouses to take new spouses without incurring criminal penalties under Nevada law. I know of nothing in our Constitution that requires Nevada to adhere to traditional concepts of bigamous unions or the legitimacy of the fruit thereof. . . . But it is quite a different thing to say that Nevada can dissolve the marriages of North Carolinians and dictate the incidence of the bigamy statutes of North Carolina by which North Carolina has sought to protect her own interests as well as theirs. In this case there is no conceivable basis of jurisdiction in the Nevada court over the absent spouses, and, *a fortiori*, over North Carolina herself. I cannot but think that in its preoccupation with the full faith and credit clause the Court has slighted the due process clause.

We should, I think, require that divorce judgments asking our enforcement under the full faith and credit clause, unlike judgments arising out of commercial transactions and the like, must also be supported by good-faith domicile of one of the parties within the judgment state. Such is certainly a reasonable requirement. A state can have no legitimate concern with the matrimonial status of two persons, neither of whom lives within its territory.

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While a state can no doubt set up its own standards of domicile as to its internal concerns, I do not think it can require us to accept and in the name of the Constitution impose them on other states. If Nevada may prescribe six weeks of indefinite-permanent abode in a motor court as constituting domicile, she may as readily prescribe six days. Indeed, if the Court's opinion is carried to its logical conclusion, a state could grant a constructive domicile for divorce purposes upon the filing of some sort of declaration of intention. Then it would follow that we would be required to accept it as sufficient and to force all states to recognize mail-order divorces as well as tourist divorces. Indeed, the difference is in the bother and expense -- not in the principle of the thing.

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Domicile means a relationship between a person and a locality. It is the place, and the one place, where he has his roots and his real, permanent home. . . . Thus domicile fixes the place where one belongs in our federal system. In some instances the existence of this relationship between the state and an individual may be a federal question, although this Court has been reluctant to accept that view.

If in testing this judgment to determine whether it qualifies for federal enforcement we should apply the doctrine of domicile to interpretation of the full faith and credit clause, Nevada would be held to a duty to respect the statutes of North Carolina and not to interfere with their application to those

whose individual as well as matrimonial domicile is within that State unless and until that domicile has been terminated. And North Carolina would not be required to yield its policy as to persons resident there except upon a showing that Nevada had acquired a domiciliary right to redefine the matrimonial status.

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In the application of the full faith and credit clause to the variety of circumstances that arise when families break up and separate domiciles are established, there are, I grant, many areas of great difficulty. But I cannot believe that we are justified in making a demoralizing decision in order to avoid making difficult ones.

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