AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

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

Williams v. North Carolina, 325 U.S. 226 (1945)

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 in North Carolina 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 from their spouses in that state. 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." The U.S. Supreme Court reversed, and in so doing overturned a key precedent regarding out-of-state divorces. On remand, the state supreme court again upheld the conviction, concluding that the question turned primarily on whether Williams and Shaver had truly established a new domicil in Nevada and were thus subject to that state's jurisdiction. On appeal, the U.S. Supreme Court evaluated this new claim and in a 6–3 decision affirmed the state court and upheld the conviction. The 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, but states could examine whether individuals who received those judgments were properly subject to the jurisdiction of those foreign courts. Citizens of North Carolina could not escape the legal duties and responsibilities of North Carolina by merely visiting another state.

Why was North Carolina entitled to inquire into the residency of Williams and Shaver? What is necessary to establish a domicil in a new state? Should North Carolina be obliged to follow Nevada's statutory requirement of a six-week stay? What is North Carolina's interest in what happens in Nevada? If Williams and Shaver had moved back to Virginia after their marriage, would North Carolina still have a claim against them? Could, for example, Carrie Wyke have sued O. B. Williams for financial support in the North Carolina courts?

JUSTICE FRANKFURTER delivered the opinion of the Court.

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[The full faith and credit] Clause does not make a sister-State judgment a judgment in another State. The proposal to do so was rejected by the Philadelphia Convention. "To give it the force of a

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

judgment in another state, it must be made a judgment there." It can be made a judgment there only if the court purporting to render the original judgment had power to render such a judgment. A judgment in one State is conclusive upon the merits in every other State, but only if the court of the first State had power to pass on the merits -- had jurisdiction, that is, to render the judgment. . . .

Under our system of law, judicial power to grant a divorce -- jurisdiction, strictly speaking -- is founded on domicil. The framers of the Constitution were familiar with this jurisdictional prerequisite, and since 1789 neither this Court nor any other court in the English-speaking world has questioned it. Domicil implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance. The domicil of one spouse within a State gives power to that State, we have held, to dissolve a marriage wheresoever contracted. . . . Divorce, like marriage, is of concern not merely to the immediate parties. It affects personal rights of the deepest significance. It also touches basic interests of society. Since divorce, like marriage, creates a new status, every consideration of policy makes it desirable that the effect should be the same wherever the question arises.

It is one thing to reopen an issue that has been settled after appropriate opportunity to present their contentions has been afforded to all who had an interest in its adjudication. . . . But those not parties to a litigation ought not to be foreclosed by the interested actions of others; especially not a State which is concerned with the vindication of its own social policy and has no means, certainly no effective means, to protect that interest against the selfish action of those outside its borders. The State of domiciliary origin should not be bound by an unfounded, even if not collusive, recital in the record of a court of another State. . . .

. . . . If a finding by the court of one State that domicil in another State has been abandoned were conclusive upon the old domiciliary State, the policy of each State in matters of most intimate concern could be subverted by the policy of every other State. This Court has long ago denied the existence of such destructive power. . . .

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But to endow each State with controlling authority to nullify the power of a sister State to grant a divorce based upon a finding that one spouse had acquired a new domicil within the divorcing State would, in the proper functioning of our federal system, be equally indefensible. No State court can assume comprehensive attention to the various and potentially conflicting interests that several States may have in the institutional aspects of marriage. The necessary accommodation between the right of one State to safeguard its interest in the family relation of its own people and the power of another State to grant divorces can be left to neither State.

. . . . The rights that belong to all the States and the obligations which membership in the Union imposes upon all, are made effective because this Court is open to consider claims, such as this case presents, that the courts of one State have not given the full faith and credit to the judgment of a sister State that is required by Art. IV, § 1 of the Constitution.

. . . . The challenged judgment must . . . satisfy our scrutiny that the reciprocal duty of respect owed by the States to one another's adjudications has been fairly discharged, and has not been evaded under the guise of finding an absence of domicil and therefore a want of power in the court rendering the judgment.

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If a State cannot foreclose, on review here, all the other States by its finding that one spouse is domiciled within its bounds, persons may, no doubt, place themselves in situations that create unhappy consequences for them. This is merely one of those untoward results inevitable in a federal system in which regulation of domestic relations has been left with the States and not given to the national authority. . . .

In seeking a decree of divorce outside the State in which he has theretofore maintained his marriage, a person is necessarily involved in the legal situation created by our federal system whereby

one State can grant a divorce of validity in other States only if the applicant has a *bona fide* domicil in the State of the court purporting to dissolve a prior legal marriage. The petitioners therefore assumed the risk that this Court would find that North Carolina justifiably concluded that they had not been domiciled in Nevada. . . . Mistaken notions about one's legal rights are not sufficient to bar prosecution for crime.

We conclude that North Carolina was not required to yield her State policy because a Nevada court found that petitioners were domiciled in Nevada when it granted them decrees of divorce. North Carolina was entitled to find, as she did, that they did not acquire domicils in Nevada and that the Nevada court was therefore without power to liberate the petitioners from amenability to the laws of North Carolina governing domestic relations. . . .

Affirmed.

JUSTICE MURPHY, joined by CHIEF JUSTICE STONE and JUSTICE JACKSON, concurring.

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The State of Nevada has unquestioned authority, consistent with procedural due process, to grant divorces on whatever basis it sees fit to all who meet its statutory requirements. It is entitled, moreover, to give to its divorce decrees absolute and binding finality within the confines of its borders.

But if Nevada's divorce decrees are to be accorded full faith and credit in the courts of her sister states it is essential that Nevada have proper jurisdiction over the divorce proceedings. This means that at least one of the parties to each ex parte proceeding must have a bona fide domicil within Nevada for whatever length of time Nevada may prescribe.

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The jury has here found that the petitioner's alleged domicil in Nevada was not a bona fide one, which in common and legal parlance means that it was acquired fraudulently, deceitfully or in bad faith. This means, in other words, that the jury found that the petitioners' residence in Nevada for six weeks was not accompanied by a bona fide intention to make Nevada their home and to remain there permanently or at least for an indefinite time, as required even by Nevada law. . . .

Thus the court below properly concluded that Nevada was without jurisdiction so as to give extraterritorial validity to the divorce decrees and that North Carolina was not compelled by the Constitution to give full faith and credit to the Nevada decrees. North Carolina was free to consider the original marriages still in effect, the Nevada divorces to be invalid, and the Nevada marriage to be bigamous, thus giving the Nevada marriage the same force and effect that Nevada presumably would have given it had Nevada considered the original marriages still outstanding.

By being domiciled and living in North Carolina, petitioners secured all the benefits and advantages of its government and participated in its social and economic life. As long as petitioners and their respective spouses lived there and retained that domicil, North Carolina had the exclusive right to regulate the dissolution of their marriage relationships. However harsh and unjust North Carolina's divorce laws may be thought to be, petitioners were bound to obey them while retaining residential and domiciliary ties in that state.

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There are no startling or dangerous implications in the judgment reached by the Court in this case. All of the uncontested divorces that have ever been granted in the forty-eight states are as secure today as they were yesterday or as they were before our previous decision in this case. Those based upon fraudulent domicils are now and always have been subject to later reexamination with possible serious consequences.

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JUSTICE RUTLEDGE, dissenting.

Once again the ghost of "unitary domicil" returns on its perpetual round, in the guise of "jurisdictional fact," to upset judgments, marriages, divorces, undermine the relations founded upon them, and make this Court the unwilling and uncertain arbiter between the concededly valid laws and decrees of sister states. . . .

Nevada's judgment has not been voided. It could not be, if the same test applies to sustain it as upholds the North Carolina conviction. It stands, with the marriages founded upon it, unimpeached. For all that has been determined or could be, unless another change is in the making, petitioners are lawful husband and wife in Nevada. . . .

I do not believe the Constitution has . . . confided to the caprice of juries the faith and credit due the laws and judgments of sister states. Nor has it thus made that question a local matter for the states themselves to decide. Were all judgments given the same infirmity, the full faith and credit clause would be only a dead constitutional letter.

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The question is not simply pertinent, it is imperative, whether "matrimonial domicil" has not merely been recast and returned to the play under the common law's more ancient name of "domicil of origin." For North Carolina is the only state which, upon the facts, conceivably could qualify either as "matrimonial domicil" or as "domicil of origin," whether or not they differ. Under the former conception it was at least doubtful whether sheer re-examination of "the jurisdictional fact" previously determined could be made outside the state granting the divorce and the state of "matrimonial domicil." Now we are told the decree "must be respected by the other forty-seven States provided-and it is a big proviso-the conditions for the exercise of power by the divorce-decreeing court are validly established whenever that judgment is elsewhere called into question."

If this means what it says, the proviso is big. It swallows the provision. . . . Every divorce, wherever granted, whether upon a residence of six weeks, six months or six years, may now be re-examined by every other state, upon the same or different evidence, to redetermine the "jurisdictional fact," always the ultimate conclusion of "domicil." . . .

Obviously more is involved than full faith and credit for judgments of other states. Beneath the judgment of Nevada lie her statutory law and policy. These too are denied recognition. This is not a case in which the denial extends, or could extend, to the judgment alone. For the North Carolina verdict and judgment do not purport to rest on any finding of fraud or other similar ground, whereby the petitioners procured judgments from the Nevada courts which the manner of their procurement vitiates.

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The difference in the evidence [of domicil] affected solely events taking place after the Nevada decree, the return to North Carolina and the cohabitation there. Ordinarily, valid judgments are not overturned, or disregarded upon such retroactive proof. . . .

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If this is the test, for all practical purposes the Court might as well declare outright that states of domiciliary origin are free to deny faith and credit to divorces granted elsewhere. For the case will be rare indeed where, by this standard, "domicil" can be determined as a matter of law, when divorce has been secured after departure from such a state. These are the only cases that matter. The issue does not arise with stay-at-homes. With others, it always can be raised and nearly always with "some" evidence, more than a "scintilla," to sustain both contentions.

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. . . . The very function of the clause is to compel the states to give effect to the contrary policies of other states when these have been validly embodied in judgment. To this extent the Constitution has foreclosed the freedom of the states to apply their own local policies. The foreclosure was not intended only for slight differences or for unimportant matters. It was also for the most important ones. The Constitution was not dealing with puny matters or inconsequential limitations. If the impairment of the power of the states is large, it is one the Constitution itself has made. Neither the states nor we are free to

disregard it. The "local public policy" exception is not an exception, properly speaking. It is a nullifying compromise of the provision's terms and purpose.

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Stripped of its common-law gloss, the basic constitutional issue inherent in the problem is whether the states shall have power to adopt so-called "liberal" divorce policies and grant divorces to persons coming from other states while there transiently or for only short periods not sufficient in themselves, absent other objective criteria, to establish more than casual relations with the community. One could understand and apply, without decades of confusion, a ruling that transient divorces, founded on fly-by-night "residence," are invalid where rendered as well as elsewhere; in other words, that a decent respect for sister states and their interests requires that each, to validly decree divorce, do so only after the person seeking it has established connections which give evidence substantially and objectively that he has become more than casually affiliated with the community. Until then the newcomer would be treated as retaining his roots, for this purpose, as so often happens for others, at his former place of residence. One equally could understand and apply with fair certainty an opposite policy frankly conceding state power to grant transient or short-term divorces, provided due process requirements for giving notice to the other spouse were complied with.

Either solution would entail some attenuation of state power. But that would be true of any other, which would not altogether leave the matter to the states and thus nullify the constitutional command. Strong considerations could be stated for either choice. The one would give emphasis to the interests of the states in maintaining locally prevailing sentiment concerning familial and social institutions. The other would regard the matter as more important from the standpoint of individual than of institutional relations and significance. But either choice would be preferable to the prevailing attempt at compromise founded upon the "unitary domicil-jurisdictional fact-permissible inference" rule.

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JUSTICE BLACK, joined by JUSTICE DOUGLAS, dissenting.

Anglo-American law has, until today, steadfastly maintained the principle that before an accused can be convicted of crime, he must be proven guilty beyond a reasonable doubt. These petitioners have been sentenced to prison because they were unable to prove their innocence to the satisfaction of the State of North Carolina. They have been convicted under a statute so uncertain in its application that not even the most learned member of the bar could have advised them in advance as to whether their conduct would violate the law. In reality the petitioners are being deprived of their freedom because the State of Nevada, through its legislature and courts, follows a liberal policy in granting divorces. They had Nevada divorce decrees which authorized them to remarry. Without charge or proof of fraud in obtaining these decrees, and without holding the decrees invalid under Nevada law, this Court affirms a conviction of petitioners, for living together as husband and wife. I cannot reconcile this with the Full Faith and Credit Clause and with congressional legislation passed pursuant to it.

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The petitioners were married in Nevada. North Carolina has sentenced them to prison for living together as husband and wife in North Carolina. This Court today affirms those sentences without a determination that the Nevada marriage was invalid under that State's laws This holding can be supported, if at all, only on one of two grounds: (1) North Carolina has extra-territorial power to regulate marriages within Nevada's territorial boundaries, or (2) North Carolina can punish people who live together in that state as husband and wife even though they have been validly married in Nevada. A holding based on either of these two grounds encroaches upon the general principle recognized by this Court that a marriage validly consummated under one state's laws is valid in every other state. . . .

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I cannot agree to this latest expansion of federal power and the consequent diminution of state power over marriage and marriage dissolution which the Court derives from adding a new content to the Due Process Clause. The elasticity of that clause necessary to justify this holding is found, I suppose, in the notion that it was intended to give this Court unlimited authority to supervise all assertions of state and federal power to set that they comport with our ideas of what are "civilized standards of law." . . . . I have not agreed that the Due Process Clause gives us any such unlimited power, but unless it does, I am unable to understand from what source our authority to strip Nevada of its power over marriage and divorce can be thought to derive. Certainly, there is no language in the Constitution which even remotely suggests that the Federal government can fix the limits of a state court's jurisdiction over divorces. In doing so, the Court today exalts "domicile," dependent upon a mental state, to a position of constitutional dignity. State jurisdiction in divorce cases now depends upon a state of mind as to future intent. . . .

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Implicit in the majority of the opinions rendered by this and other courts, which, whether designedly or not, have set up obstacles to the procurement of divorces, is the assumption that divorces are an unmitigated evil, and that the law can and should force unwilling persons to live with each other. Others approach the problem as one which can best be met by moral, ethical and religious teachings. Which viewpoint is correct is not our concern. I am confident, however, that today's decision will no more aid in the solution of the problem than the *Dred Scott* decision (1857) aided in settling controversies over slavery. This decision, I think, takes the wrong road. Federal courts should have less, not more, to do with divorces. Only when one state refuses to give that faith and credit to a divorce decree which Congress and the Constitution command, should we enter this field.

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In earlier times, some Rulers placed their criminal laws where the common man could not see them, in order that he might be entrapped into their violation. Others imposed standards of conduct impossible of achievement to the end that those obnoxious to the ruling powers might be convicted under the forms of law. No one of them ever provided a more certain entrapment, than a statute which prescribes a penitentiary punishment for nothing more than a layman's failure to prophesy what a judge or jury will do. This Court's decision of a federal question today does just that.