Supplementary Material

Chapter 5: The Jacksonian Era—Federalism

Bank of Augusta v. Earle, 38 U.S 519 (1839)

The Bank of Augusta was incorporated by the Georgia legislature. In 1836, the bank drew up a bill of exchange with Joseph Earle, a citizen of Alabama. The note for $6,000 was signed in Mobile, Alabama, for payment in sixty days at a financial institution in New York and subsequently sold to a third party. Earle did not make good on the bill of exchange, and the Bank of Augusta sued in federal circuit court in Alabama to recover the funds. (Earle was also the subject of another suit consolidated with this one in which he defaulted on payment on a bill of exchange with a Louisiana railroad.) Earle contended that the Georgia bank could not make a valid contract in the state of Alabama, and the trial court agreed. On appeal, the U.S. Supreme Court reversed in an 8–1 decision, with only the newly appointed Justice McKinley dissenting. The majority concluded that a bank incorporated in one state implicitly possessed all the usual attributes of an artificial person, including the right to make contracts and enter suits, and that states were presumed to recognize by comity such creatures of foreign states, unless their actions were against local public policy.

What is the constitutional status of comity? Why did the Court adopt the assumption that states allowed foreign corporations unless they explicitly excluded them, rather than the assumption that states disallowed foreign corporations unless they explicitly permitted them? Is there a greater constitutional foundation for using one assumption rather than the other? Is McKinley right that this ruling gives the laws of individual states extraterritorial or national effect? Why might such extraterritorial effects be problematic? If Georgia banks are incorporated on a different basis than Alabama banks, should the assumption of comity still hold? If the Alabama legislature was constitutionally prohibited from incorporating banks that looked like Georgia banks, would it be possible for Alabama to give explicit permission for such banks to operate within its borders? Could the U.S. Supreme Court do what the Alabama legislature could not? Could this case have been decided on interstate commerce grounds instead? What would be the consequences of resting the case on those grounds?

CHIEF JUSTICE TANEY delivered the opinion of the Court.

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. . . . A multitude of corporations for various purposes have been chartered by the several states; a large portion of certain branches of business has been transacted by incorporated companies, or through their agency; and contracts to a very great amount have undoubtedly been made by different corporations out of the jurisdiction of the particular state by which they were created. In deciding the case before us, we in effect determine whether these numerous contracts are valid, or not. . . .

Much of the argument has turned on the nature and extent of the powers which belong to the artificial being called a corporation; and the rules of law by which they are to be measured. On the part of the plaintiff in error, it has been contended that a corporation composed of citizens of other states are entitled to the benefit of that provision in the Constitution of the United States which declares that "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states;"

that the Court should look behind the act of incorporation, and see who are the members of it. . . . *Bank of the United States v. Deveaux* (1809).

It is true, that in the case referred to, this Court decided that in a question of jurisdiction they might look to the character of the persons composing a corporation. . . . But in that case the Court confined its decision, in express terms, to a question of jurisdiction; to a right to sue; and evidently went even so far with some hesitation. . . . If [that principle] were held to embrace contracts, and that the members of a corporation were to be regarded as individuals carrying on business in their corporate name, and therefore entitled to the privileges of citizens in matters of contract, it is very clear that they must at the same time take upon themselves the liabilities of citizens, and be bound by their contracts in like manner. The result of this would be to make a corporation a mere partnership in business, in which each stockholder would be liable to the whole extent of his property for the debts of the corporation; and he might be sued for them, in any state in which he might happen to be found. . . .

. . . . Whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial being created by the charter; and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a state: and we now proceed to inquire what rights the plaintiffs in error, a corporation created by Georgia, could lawfully exercise in another state; and whether the purchase of the bill of exchange on which this suit is brought was a valid contract, and obligatory on the parties.

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. . . . [A] corporation can make no contracts, and do no acts either within or without the state which creates it, except such as are authorized by its charter; and those acts must also be done, by such officers or agents, and in such manner as the charter authorizes. And if the law creating a corporation, does not, by the true construction of the words used in the charter, give it the right to exercise its powers beyond the limits of the state, all contracts made by it in other states would be void.

The charter of the Bank of Augusta authorizes it, in general terms, to deal in bills of exchange; and, consequently, gives it the power to purchase foreign bills as well as inland; in other words, to purchase bills payable in another state. The power thus given, clothed the corporation with the right to make contracts out of the state, in so far as Georgia could confer it. . . .

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. . . . [A] corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. But although it must live and have its being in that state only, yet it does not by any means follow that its existence there will not be recognized in other places; and its residence in one state creates no insuperable objection to its power of contracting in another. It is indeed a mere artificial being, invisible and intangible; yet it is a person, for certain purposes in contemplation of law. . . .

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The corporation must no doubt show, that the law of its creation gave it authority to make such contracts, through such agents. Yet, as in the case of a natural person, it is not necessary that it should actually exist in the sovereignty in which the contract is made. It is sufficient that its existence as an artificial person, in the state of its creation, is acknowledged and recognized by the law of the nation where the dealing takes place; and that it is permitted by the laws of that place to exercise there the powers with which it is endowed.

. . . . It is needless to enumerate here the instances in which, by the general practice of civilized countries, the laws of the one, will, by the comity of nations, be recognized and executed in another, where the right of individuals are concerned. The cases of contracts made in a foreign country are

familiar examples; and Courts of justice have always expounded and executed them, according to the laws of the place in which they were made. . . .

Adopting, as we do, the principle here stated, we proceed to inquire whether, by the comity of nations, foreign corporations are permitted to make contracts within their jurisdiction; and we can perceive no sufficient reason for excluding them, when they are not contrary to the known policy of the state, or injurious to its interests. . . . It is but the usual comity of recognizing the law of another state. . . . It is impossible to imagine that any Court in the United States would refuse to execute a contract, by which an American corporation had borrowed money in England; yet if the contracts of corporations made out of the state by which they were created, are void, even contracts of that description could not be enforced.

. . . . The intimate union of these states, as members of the same great political family; the deep and vital interests which bind them so closely together; should lead us, in the absence of proof to the contrary, to presume a greater degree of comity, and friendship, and kindness towards one another, than we should be authorized to presume between foreign nations. And when (as without doubt must occasionally happen) the interest or policy of any state requires it to restrict the rule, it has but to declare its will, and the legal presumption is at once at an end. But until this is done, upon what grounds could this Court refuse to administer the law of international comity between these states? They are sovereign states; and the history of the past, and the events which are daily occurring, furnish the strongest evidence that they have adopted towards each other the laws of comity in their fullest extent. . . . [The] usages of commerce and trade have been so general and public, and have been practiced for so long a period of time, and so generally acquiesced in by the states, that the Court cannot overlook them when a question like the one before us is under consideration. The silence of the state authorities, while these events are passing before them, shows their assent to the ordinary laws of comity which permit a corporation to make contracts in another state. . . .

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. . . . And it remains to inquire, whether there is anything in the constitution or laws of Alabama, from which this Court would be justified in concluding that the purchase of the bill in question was contrary to its policy.

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It is but justice to all the parties concerned to suppose that these contracts were made in good faith, and that no suspicion was entertained by either of them that these engagements could not be enforced. Money was paid on them by one party, and received by the other. And when we see men dealing with one another openly in this manner, and making contracts to a large amount, we can hardly doubt as to what was the generally received opinion in Alabama at that time, in relation to the right of the plaintiffs to make such contracts. . . . [W]hen a Court is called on to declare contracts thus made to be void upon the ground that they conflict with the policy of the state; the line of that policy should be very clear and distinct to justify the Court in sustaining the defense. Nothing can be more vague and indefinite than that now insisted on as the policy of Alabama. It rests altogether on speculative reasoning as to her supposed interests; and is not supported by any positive legislation. There is no law of the state which attempts to define the rights of foreign corporations.

We, however, do not mean to say that there are not many subjects upon which the policy of the several states is abundantly evident, from the nature of their institutions, and the general scope of their legislation; and which do not need the aid of a positive and special law to guide the decisions of the Courts. When the policy of a state is thus manifest, the Courts of the United States would be bound to notice it as a part of its code of laws; and to declare all contracts in the state repugnant to it, to be illegal and void. Nor do we mean to say whether there may not be some rights under the Constitution of the United States, which a corporation might claim under peculiar circumstances, in a state other than that in which it was chartered. The reasoning, as well as the judgment of the Court, is applied to the matter

before us; and we think the contracts in question were valid, and that the defense relied on by the defendants cannot be sustained.

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JUSTICE BALDWIN, concurring [without opinion].

JUSTICE MCKINLEY, dissenting.

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This is the first time since the adoption of the Constitution of the United States, that any federal Court has, directly or indirectly, imputed national power to any of the states of the Union; and it is the first time that validity has been given to such contracts, which it is acknowledged, would otherwise have been void, by the application of a principle of the necessary law of nations. This principle has been adopted and administered by the Court as part of the municipal law of the state of Alabama, although no such principle has been adopted or admitted by that state. And whether the law of nations still prevails among the states notwithstanding the Constitution of the United States; or the right and authority to administer it in these cases are derived from that instrument; are questions not distinctly decided by the majority of the Court. But whether attempted to be derived from one source or the other, I deny the existence of it anywhere, for any such purpose.

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Now, I ask again, what is the necessity for such a rule of law as this? Have not the states full power to adopt or reject what laws of their sister states they please? And why should the Courts interfere in this case, when the states have full power to legislate for themselves, and to adopt or reject such laws of their sister states as they think proper? If Alabama had adopted these laws, no difficulty could have arisen in deciding between these parties. This Court would not then have been under the necessity of resorting to a doubtful presumption for a rule to guide its decision. . . .

. . . . This is the whole amount of the argument, upon which the benefit of this doctrine is claimed. Because banks cannot make money in places and by means not authorized by their charters; because they may lose by contracts made in unauthorized places; because the commerce of the country may be subjected to temporary inconvenience; and because corporations in the north, created for manufacturing purposes only, cannot, by the authority of their charters engage in commerce also; this doctrine, which has not heretofore found a place in our civil code, is to be established. Not-withstanding, it is conceded that the states hold ample legislative power over the same subject, it is deemed necessary, on this occasion, to settle this doctrine by the supreme tribunal. The majority of the Court having, in their opinion, conceded that Alabama might make laws to prohibit foreign banks to make contracts, thereby admitted, by implication, that she could make laws to permit such contracts. I think it would have been proper to have left the power there to be exercised or not, as Alabama, in her sovereign discretion, might judge best for her interest or her comity. The majority of the Court thought and decided otherwise. And here arises the radical and essential difference between them and me.

They maintain a power in the federal government, and in the judicial department of it, to do that which in my judgment belongs, exclusively, to the state governments; and to be exercised by the legislative and not the judicial departments thereof. . . .

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