AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Judicial Power and Constitutional Authority

Barron v. Baltimore, 32 U.S. 243 (1833)

John Barron and John Craig owned a wharf on Baltimore Harbor. Baltimore adopted a commercial development plan that required officials to divert several local streams. These internal improvements lowered the water level on the Barron and Craig property. Their wharf became useless. Barron sued for damages. He claimed that the city took property from him in violation of the due process clause of the federal constitution, which was part of the Bill of Rights. The city responded that localities had the right to divert streams as part of general police powers. Barron was awarded compensation at trial, but the state court of appeals reversed. Barron appealed this decision to the Supreme Court of the United States. He maintained that the Bill of Rights, or some provisions in the Bill of Rights, limited both federal and state governments. Baltimore city officials contended that the Bill of Rights limited only federal power.

The Supreme Court rejected Barron's appeal. Chief Justice Marshall's unanimous opinion held that the Bill of Rights limited only federal power. What reasons does Marshall give for this ruling? Do you believe the ruling sound? When thinking about the result in this case, you might consider that, after Andrew Jackson was elected president in 1828, the Supreme Court consistently found state actions constitutional. Compare Barron *to such cases as* Fletcher v. Peck *(1810), when the Supreme Court declared a state law unconstitutional. How do you explain the different result in* Barron*? Does* Barron *present a different legal issue, one that merits a different legal result? Was the Marshall Court far more deferential to states after 1828 because the judges feared political backlash?*

CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

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The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and, in that constitution, provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.

If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states. In their several constitutions they have imposed such restrictions on their respective governments as their own wisdom suggested; such as they deemed most proper for themselves. It is a subject on which they judge exclusively, and with which others interfere no farther than they are supposed to have a common interest.

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The ninth section having enumerated, in the nature of a bill of rights, the limitations intended to be imposed on the powers of the general government, the tenth proceeds to enumerate those which were to operate on the state legislatures. These restrictions are brought together in the same section, and are by express words applied to the states. "No state shall enter into any treaty," &c. Perceiving that in a constitution framed by the people of the United States for the government of all, no limitation of the

action of government on the people would apply to the state government, unless expressed in terms; the restrictions contained in the tenth section are in direct words so applied to the states.

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Had the people of the several states, or any of them, required changes in their constitutions; had they required additional safeguards to liberty from the apprehended encroachments of their particular governments: the remedy was in their own hands, and would have been applied by themselves. A convention would have been assembled by the discontented state, and the required improvements would have been made by itself. The unwieldy and cumbrous machinery of procuring a recommendation from two-thirds of congress, and the assent of three-fourths of their sister states, could never have occurred to any human being as a mode of doing that which might be effected by the state itself. Had the framers of these amendments intended them to be limitations on the powers of the state governments, they would have imitated the framers of the original constitution, and have expressed that intention. Had congress engaged in the extraordinary occupation of improving the constitutions of the several states by affording the people additional protection from the exercise of power by their own governments in matters which concerned themselves alone, they would have declared this purpose in plain and intelligible language.

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We are of opinion that the provision in the fifth amendment to the constitution, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the states. We are therefore of opinion that there is no repugnancy between the several acts of the general assembly of Maryland, given in evidence by the defendants at the trial of this cause, in the court of that state, and the constitution of the United States. This court, therefore, has no jurisdiction of the cause; and it is dismissed.