

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era – Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

Ex parte Royall, 117 U.S. 241 (1886)

William Royall was indicted by Virginia authorities for selling certain state bonds without a license. Royall asked a federal court to issue a writ of habeas corpus releasing him from state prison on the ground that the Virginia licensing law violated the contracts clause of the federal Constitution. The circuit court refused to grant habeas corpus on the ground that federal courts had no jurisdiction to issue the writ in these circumstances.

The Supreme Court agreed that the writ should not issue, but for different reasons than stated by the circuit court. Justice Harlan's unanimous opinion asserted that persons detained by states in violation of their constitutional rights had a right to have federal courts issue a writ of habeas corpus. Nevertheless, he insisted that state courts should normally be given the first opportunity to determine the constitutional issue. In legal parlance, habeas petitioners must normally "exhaust the state remedies" before asking a federal court for the writ. What is the legal foundation for the exhaustion of remedy doctrine? Was the decision rooted in an interpretation of the federal statute, the constitution or general principles? Should persons with claims that states have violated their constitutional rights be forced to first raise those claims in state court? What are the virtues and vices of the exhaustion requirement?

JUSTICE HARLAN delivered the opinion of the Court

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... [I]f the local statute under which Royall was indicted be repugnant to the constitution, the prosecution against him has nothing upon which to rest, and the entire proceeding against him is a nullity. . . . In *Ex parte Yarbrough* (1884), it was said that if the statute prescribing the offense for which Yarbrough and his associates were convicted was void, the court which tried them was without jurisdiction, and they were entitled to be discharged. It would seem, whether reference be had to the act of 1867 or to existing statutory provisions, that it was the purpose of congress to invest the courts of the Union, and the justices and judges thereof, with power, upon writ of *habeas corpus*, to restore to liberty and person, within their respective jurisdictions, who is held in custody, by whatever authority, in violation of the constitution or any law or treaty of the United States.

The statute evidently contemplated that cases might arise when the power thus conferred should be exercised during the progress of proceedings instituted against the petitioner in a state court or by or under authority of a state, on account of the very matter presented for determination by the writ of *habeas corpus*; for care is taken to provide that any such proceedings, pending the hearing of the case upon the writ, and until final judgment, and after the prisoner is discharged, shall be null and void. If such were not the clear implication of the statute, still, as it does not except from its operation cases in which the applicant for the writ is held in custody by the authority of a state, acting through its judiciary or by its officers, the court could not, against the positive language of congress, declare any such exception, unless required to do so by the terms of the constitution itself. But, as the judicial power of the nation extends to all cases arising under the constitution, the laws, and treaties of the United States; as the privilege of the writ of *habeas corpus* cannot be suspended unless when in cases of rebellion or invasion the public safety may require it; and as congress has power to pass all laws necessary and proper to carry into execution the powers vested by the constitution in the government of the United States, or in any department or

officer thereof,—no doubt can exist as to the power of congress thus to enlarge the jurisdiction of the courts of the Union, and of their justices and judges. That the petitioner is held under the authority of a state cannot affect the question of the power or jurisdiction of the circuit court to inquire into the cause of his commitment, and to discharge him, if he be restrained of his liberty in violation of the constitution. The grand jurors who found the indictment, the court into which it was returned and by whose order he was arrested, and the officer who holds him in custody, are all, equally with individual citizens, under a duty, from the discharge of which the state could not release them, to respect and obey the supreme law of the land, “anything in the constitution and laws of any state to the contrary notwithstanding.” . . . We are therefore of opinion that the circuit court has jurisdiction, upon writ of *habeas corpus*, to inquire into the cause of appellant’s commitment, and to discharge him if he be held in custody in violation of the constitution.

It remains, however, to be considered whether the refusal of that court to issue the writ, and to take the accused from the custody of the state officer, can be sustained upon any other ground than the one upon which it proceeded. . . . The question as to the constitutionality of the law under which he is indicted must necessarily arise at his trial under the indictment, and it is one upon which, as we have seen, it is competent for the state court to pass. Under such circumstances, does the statute imperatively require the circuit court, by writ of *habeas corpus*, to wrest the petitioner from the custody of the state officers in advance of his trial in the state court? We are of opinion that while the circuit court has the power to do so, and may discharge the accused in advance of his trial if he is restrained of his liberty in violation of the national constitution, it is not bound in every case to exercise such a power immediately upon application being made for the writ. We cannot suppose that congress intended to compel those courts, by such means, to draw to themselves, in the first instance, the control of all criminal prosecutions commenced in state courts exercising authority within the same territorial limits, where the accused claims that he is held in custody in violation of the constitution of the United States. The injunction to hear the case summarily, and thereupon ‘to dispose of the party as law and justice require,’ does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the states, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the constitution. . . . The circuit court was not at liberty, under the circumstances disclosed, to presume that the decision of the state court would be otherwise than is required by the fundamental law of the land, or that it would disregard the settled principles of constitutional law announced by this court, upon which is clearly conferred the power to decide ultimately and finally all cases arising under the constitution and laws of the United States.

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That these salutary principles may have full operation, and in harmony with what we suppose was the intention of congress in the enactments in question, this court holds that where a person is in custody, under process from a state court of original jurisdiction, for an alleged offense against the laws of such state, and it is claimed that he is restrained of his liberty in violation of the constitution of the United States, the circuit court has a discretion whether it will discharge him upon *habeas corpus*, in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the state court shall have finally acted upon the case, the circuit court has still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the state, or whether it will proceed, by writ of *habeas corpus*, summarily to determine whether the petitioner is restrained of his liberty in violation of the constitution of the United States. . . .