AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Criminal Justice/Due Process and Habeas Corpus

**Class v. United States, \_\_\_ U.S. \_\_\_** (2018)

*Rodney Class was arrested for violating a federal law prohibiting persons from carrying “on the Grounds or in any of the Capitol Buildings a firearm” He argued at trial that the federal law violated his Second Amendment and Due Process rights. When that motion was rejected, Class pled guilty and was sentenced to 24 days in prison. Class immediately appealed his conviction to the Court of Appeals for the District of Columbia on the ground that the underlying offense was unconstitutional. The Court of Appeals held that by pleading guilty Class had waived his right to challenge the constitutionality of his conviction. Class appealed to the Supreme Court of the United States.*

 *The Supreme Court by a 6-3 vote reversed the Court of Appeals. Justice Stephen Breyer’s opinion held that defendants who plead guilty do not waive their right to challenge the constitutionality of the law under which they were indicted. Breyer’s opinion distinguishes constitutional claims defendants waive when they plead guilty from those they do not. He insists that guilty pleas concede the facts asserted by the government, but not the government’s claim that the charge is constitution. What precisely is this distinction? Notice that, as both the majority and dissent point out, a guilty plea does waive some legal questions, such as whether the grand jury was constitutionally formed. What is the constitutional foundation of Justice Breyer’s distinction? Is that distinction sound? What in the Constitution explains why a defendant who pleads guilty cannot challenge the composition of the grand jury, but can challenge the constitutionality of the offense? Justice Alito insists that defendants who plead guilty waive all factual and legal claims. Is this better rooted in the constitutional text and precedent that the majority opinion? Chief Justice Roberts and Justice Gorsuch joined the majority opinion. What might explain the division among judicial conservatives in this case?*

JUSTICE [BREYER](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0254766801&originatingDoc=I0acfa0c916e911e8bc5b825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)) delivered the opinion of the Court.

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In *Blackledge v. Perry*(1974) . . . (t)he Court noted that a guilty plea bars appeal of many claims, including some “‘antecedent constitutional violations’” related to events (say, grand jury proceedings) that had “‘occurred prior to the entry of the guilty plea.’” (quoting *Tollett v. Henderson* (1973)). While *Tollett* claims were “of constitutional dimension,” the Court explained that “the nature of the underlying constitutional infirmity is markedly different” from a claim of vindictive prosecution, which implicates “the very power of the State” to prosecute the defendant.  Accordingly, the Court wrote that “the right” Perry “asserts and that we today accept is the right not to be haled into court at all upon the felony charge” since “[t]he very initiation of the proceedings” against Perry “operated to deprive him due process of law.”

A year and a half later, in *Menna v. New York* (1975) . . . the Court held that “a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute.”

These holdings reflect an understanding of the nature of guilty pleas which, in broad outline, stretches back nearly 150 years. In 1869 Justice Ames wrote for the Supreme Judicial Court of Massachusetts:

The plea of guilty is, of course, a confession of all the facts charged in the indictment, and also of the evil intent imputed to the defendant. It is a waiver also of all merely technical and formal objections of which the defendant could have availed himself by any other plea or motion. But if the facts alleged and admitted do not constitute a crime against the laws of the Commonwealth, the defendant is entitled to be discharged.

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. . . Class' constitutional claims here . . . do not contradict the terms of the indictment or the written plea agreement. They are consistent with Class' knowing, voluntary, and intelligent admission that he did what the indictment alleged. Those claims can be “resolved without any need to venture beyond that record.”

Nor do Class' claims focus upon case-related constitutional defects that “‘occurred prior to the entry of the guilty plea.’”  They could not, for example, “have been ‘cured’ through a new indictment by a properly selected grand jury.” Because the defendant has admitted the charges against him, a guilty plea makes the latter kind of constitutional claim “irrelevant to the constitutional validity of the conviction.”  But the cases to which we have referred make clear that a defendant's guilty plea does not make irrelevant the kind of constitutional claim Class seeks to make.

In sum, the claims at issue here do not fall within any of the categories of claims that Class' plea agreement forbids him to raise on direct appeal. They challenge the Government's power to criminalize Class' (admitted) conduct. They thereby call into question the Government's power to “‘constitutionally prosecute’” him.  A guilty plea does not bar a direct appeal in these circumstances.

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. . . [A] valid guilty plea “forgoes not only a fair trial, but also other accompanying constitutional guarantees.”  While those “simultaneously” relinquished rights include the privilege against compulsory self-incrimination, the jury trial right, and the right to confront accusers, they do not include “a waiver of the privileges which exist beyond the confines of the trial. . . .

A valid guilty plea also renders irrelevant—and thereby prevents the defendant from appealing—the constitutionality of case-related government conduct that takes place before the plea is entered. Neither can the defendant later complain that the indicting grand jury was unconstitutionally selected.

Finally, a valid guilty plea relinquishes any claim that would contradict the “admissions necessarily made upon entry of a voluntary plea of guilty.”  But the constitutional claim at issue here is consistent with Class' admission that he engaged in the conduct alleged in the indictment. . . . . [L]ike the defendants in *Blackledge* and *Menna,* he seeks to raise a claim which, “‘judged on its face’” based upon the existing record, would extinguish the government's power to “ ‘constitutionally prosecute’ ” the defendant if the claim were successful.

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JUSTICE [ALITO](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0153052401&originatingDoc=I0acfa0c916e911e8bc5b825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)), with whom JUSTICE [KENNEDY](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0243105201&originatingDoc=I0acfa0c916e911e8bc5b825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)) and JUSTICE [THOMAS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I0acfa0c916e911e8bc5b825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)) join, dissenting.

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*Blackledge* and *Menna* represented marked departures from our prior decisions. Before they were handed down, our precedents were clear: When a defendant pleaded guilty to a crime, he relinquished his right to litigate all nonjurisdictional challenges to his conviction (except for the claim that his plea was not voluntary and intelligent), and the prosecution could assert this forfeiture to defeat a subsequent appeal. The theory was easy to understand. As we explained in *Tollett,* our view was that “a guilty plea represents a break in the chain of events which has preceded it in the criminal process.”  The defendant's decision to plead guilty extinguished his right to litigate whatever “possible defenses” or “constitutional plea[s] in abatement” he might have pursued at trial or on appeal.  Guilty pleas were understood to have this effect because a guilty plea comprises both factual and legal concessions. Hence, we said in *Tollett,* a defendant who pleads guilty is barred from contesting not only the “historical facts” but also the “*constitutional significance*” of those facts, even if he failed to “correctly apprais[e]” that significance at the time of his plea.

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On the strength of that rule, we held that defendants who pleaded guilty forfeited a variety of important constitutional claims. For instance, a defendant who pleaded guilty could not attack his conviction on the ground that the prosecution violated the Equal Protection Clause by systematically excluding African–Americans from grand juries in the county where he was indicted.  Nor could he argue that the prosecution unlawfully coerced his confession—even if the confession was the only evidence supporting the conviction. . . .

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In *Blackledge,* the Court held that a defendant who pleaded guilty could nevertheless challenge his conviction on the ground that his right to due process was violated by a vindictive prosecution.  The Court asserted that this right was “markedly different” from the equal protection and Fifth Amendment rights at stake in *Tollett* . . . because it “went to the very power of the State to bring the defendant into court to answer the charge brought against him.”  The meaning of this distinction, however, is hard to grasp.

The most natural way to understand *Blackledge*'s reference to “the very power of the State” would be to say that an argument survives a guilty plea if it attacks the court's jurisdiction. . . . . But that cannot be what *Blackledge* meant. First, the defendant in *Blackledge* had been tried in state court in North Carolina for a state-law offense, and the jurisdiction of state courts to entertain such prosecutions is purely a matter of state law. . . . Second, a rule that jurisdictional defects alone survive a guilty plea would not explain the result in *Blackledge* itself. Arguments attacking a court's subject-matter jurisdiction can neither be waived nor forfeited. But the due process right at issue in *Blackledge* was perfectly capable of being waived or forfeited—as is just about every other right that is personal to a criminal defendant.

So if the “very power to prosecute” theory does not refer to jurisdiction, what else might it mean? The only other possibility that comes to mind is that it might mean that a defendant can litigate a claim if it asserts a right not to be tried, as opposed to a right not to be convicted. But we have said that “virtually all rights of criminal defendants” are “merely ... right[s] not to be convicted,” as distinguished from “right[s] not to be tried.” . . . .

The rule could hardly be otherwise. Most constitutional defenses (and plenty of statutory defenses), if successfully asserted in a pretrial motion, deprive the prosecution of the “power” to proceed to trial or secure a conviction. If that remedial consequence converted them all into rights not to be prosecuted, *Blackledge* would have no discernible limit. . . .

The upshot is that the supposed “right not to be prosecuted” has no intelligible meaning in this context. And *Blackledge* identified no basis for this new right in the text of the Constitution or history or prior precedent. . . .

If the thinking behind *Blackledge* is hard to follow, *Menna* may be worse. . . . Arguing that *Tollett* and the other prior related cases did not preclude appellate review of the double jeopardy claim, the Court wrote:

[A] counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it *quite validly* removes the issue of factual guilt from the case. In most cases, factual guilt is a sufficient basis for the State's imposition of punishment. A guilty plea, therefore, simply renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt.”

The wording of the final sentence is not easy to parse, but I interpret the Court's reasoning as follows: A defendant who pleads guilty does no more than admit that he committed the essential conduct charged in the indictment; therefore a guilty plea allows the litigation on appeal of any claim that is not inconsistent with the facts that the defendant necessarily admitted. If that is the correct meaning, the sentence would overrule many of the cases that it purported to distinguish, including *Tollett,* which involved an unconstitutional grand jury claim. . . . And it would permit a defendant who pleads guilty to raise on appeal a whole host of claims, including, for example, the denial of motions to suppress evidence allegedly obtained in violation of the Fourth, Fifth, or Sixth Amendments.

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. . . . Now, instead of clarifying the law, the Court sows new confusion by reiterating with seeming approval a string of catchphrases. The Court repeats the line that an argument survives if it “implicates ‘the very power of the State’ to prosecute the defendant,” but this shibboleth is no more intelligible now than it was when first incanted in *Blackledge*. The Court also parrots the rule set out in the *Menna* footnote—that the only arguments waived by a guilty plea are those that contradict the facts alleged in the charging document, even though that rule is inconsistent with *Tollett,* . . . and even though this reading would permit a defendant who pleads guilty to raise an uncertain assortment of claims never before thought to survive a guilty plea.