

The Bill of Rights Fraud Part two

The following is gleaned from a book called Cases in Constitutional Law, last published 1967, Library of Congress Card 68-18704, by Robert E and Robert F Cushman. It contains 159 cases and over 100 cases commented on or referred to in the 159 cases. The book is 1168 pages. The book tells you how the Bill of Rights was nationalized.

I conversed with a friend named Fred and wrote this to him concerning another patriot that debunked my findings when he would not let truth sink into his core beliefs. Since then he has capitulated and now sees it but it took him over 6 years to come to terms with the fraud, realizing it has been a fraud all along. All bold type in Part two is straight out of the Book. My comments are regular type.

Hopefully after reading these two parts you will come to realize Spooner was right. The con job was just that, a con job of immense proportions. How the fraud lived so long is only due to the fact our family tree parents, going back to 1776/1787 were led by the nose as are the people of today. You have to have a core belief, and that, my friends is based on a lie. So as all foundations are either true or false, hopefully you will find what you have been brought up to believe is one huge fraud.

The Informer
11-3-06

Hi Fred, Well now that I let off some steam, here is more on Barron. It wasn't just as someone we know said that, the supreme court brought it up in 2001. They brought Barron up way before 2001. I have a constitutional law book Titled Cases in Constitutional Law. It is ripe with cases on Barron and many more in its 1168 pages of knowledge. There are cases that they did not bring up that are just as important, one being Hepburn and Dundas v Ellezy, 2 Cranch 445. The heading of the case states: **"A citizen of the District of Columbia cannot maintain an action against a citizen of Virginia in the circuit court for the district of Virginia. A citizen of the District of Columbia is not a citizen of a state, within the meaning of the Constitution."**

Reading this, it goes way over people's heads and they are not aware. As Montgomery found out, that President Washington created the states as districts in 1791, hence the phrase "district of Virginia" in the above case. It is an important case and you must get it because it is ripe with info that will wipe out the myth that people have had on the jurisdiction. A passage in the case so states after the Court gets rid of the notion that the people of the states are on the same footing as the people of the District of Columbia and said the plaintiff could not sue in Virginia. This is the defense position statement.

"Even if the Constitution of the United States authorizes a more enlarged jurisdiction that the Judiciary Act of 1789 has given, yet the court can take no jurisdiction which it is not given by the Act. I, therefore, call for the law which gives a jurisdiction in this case."

A response was given by Plaintiff to rebut the above statement. The court then gave it's decision and sided with Defense when Chief Justice Marshall said, **"The opinion to be certified to the circuit court is, that that court has no jurisdiction in the case."**

So basically the Judiciary Act of 1789 gives what jurisdiction the federal courts have, **NOT the Congress as so many people believe and as the Defense attorney said, if it's not to be found (jurisdiction) in that Act the fed court does not have it.** Here we have direct admission that lawyers back then were dictating the parameters in which the courts had jurisdiction. The Informer, in his new history, brought this up when he cited the History of The American Bar by Charles Warren. I believe you have that book of the Informer. Might pay to reread it in light of this "revelation" the guy I was talking about had.

Now back to Barron. In the notes of the Constitutional Cases (BOOK) printed 1968, it states.

"While most rights in the Bill of Rights now do apply to the states, they do so only because they are essential to due process of law. The ruling in the present case that the Bill of Rights does not apply directly to the states has never been over ruled."

Brown v Walker (1896) Barron was again broached on self incrimination case. The BOOK had his to say;

"In 1956 the Court reaffirmed the Brown decision in Ullmann v. United States . It rejected the defendant's argument that "the impact of the disabilities imposed by federal and state authorities and the public in general—such as loss of job, expulsion from labor unions, state registration and investigation statutes, passport eligibility, and general public opprobrium—is so oppressive that the statute does not give him true immunity." The statute, like the Fifth Amendment provision, protects the witness only from having to give "testimony which may possibly expose him to a criminal charge."

Since Congress need not grant immunity from state prosecution in order to compel testimony, the question arises whether it may do so if it wishes. The control over evidence admissible in state courts is traditionally a question of state power, and even the Supreme Court in administering the due process clause has been reluctant to interfere with this state prerogative. In Adams v. Maryland (1954) the Court held that Congress could, under the supremacy doctrine, forbid a state to use testimony given before a congressional committee. Adams had been summoned before the Senate Crimes Investigation (Kefauver) Committee and had bared his soul concerning his boob making activities. The state of Maryland, which had been unable to get other evidence against Adams, read the transcript of the committee hearing into the trial record as a confession, and he was convicted of illegal gambling. The Supreme Court reversed the conviction on the ground that 859 forbade the use of such testimony "in any criminal proceeding against him in any court "While Congress could not compel testimony under the statute, such testimony as was given was protected; and the phrase "in any court" included state courts as well as federal. Forbidding such use of the testimony) was held to be a necessary and proper way of securing testimony. The Immunity Act of 1954 uses this same language, and the Adams interpretation was reaffirmed by the Court in the Ullmann case.

In the present case a federal grand jury was investigating charges against a railroad that it had granted discriminatory rates and rebates. Brown, who was an officer of the railroad, was called as a witness but refused to answer certain questions on the ground that the answers would tend to accuse and incriminate him. He was adjudged in contempt for his refusal to answer.

Mr. Justice Brown delivered the opinion of the Court, saying in part;

It is true that the Constitution does not operate upon a witness testifying in state courts, since we have held that the first eight amendments are limitations only upon the powers of Congress and the Federal courts, and are not applicable to the several states, except so far as the 14th Amendment may have made them applicable. Barron v. Baltimore [1833] There is no such restriction, however, upon the applicability of Federal statutes[The Court here quotes the supremacy clause in Article VI.]

The act in question contains no suggestion that it is to be applied only to the Federal courts. It declares broadly that "no person shall be excused from attending and testifying . . . before the Interstate Commerce Commission . . . on the ground . . . that the testimony . . . required of him may tend to criminate him, etc. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing . . . in respect to which he may testify." etc. It is not that he shall not be prosecuted for or on account of any crime . . . in respect to which he may testify, which might

concerning which he may testify," etc. It is not that he shall not be prosecuted for or on account of any crime concerning which he may testify, which might possibly be urged to apply only to crimes under the Federal law...; but the immunity extends to any transaction, matter, or thing concerning which he may testify, which clearly indicates that the immunity is intended to be general and to be applicable whenever and in whatever court such prosecution may be had.

But even granting that there were still a bare possibility that by his disclosure he might be subjected to the criminal laws of some other sovereignty, that . . . is not a real and probable danger, with reference to the ordinary operations of the law in the ordinary courts, but "a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct." Such dangers it was never the object of the provision to obviate.

The same answer may be made to the suggestion that the witness is imperfectly protected by reason of the fact that he may still be prosecuted and put to the annoyance and expense of pleading his immunity by way of confession and avoidance. This is a detriment which the law does not recognize. There is a possibility that any citizen, however innocent, may be subjected to a civil or criminal prosecution, and put to the expense of defending himself, but unless such prosecution be malicious, he is remediless, except so far as a recovery of costs may partially indemnify him

. . . While the constitutional provision in question is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity, and we are therefore of opinion that the witness was compellable to answer, and that the judgment of the court below must be affirmed.

Mr. Justice Shiras, with whom Mr. Justices Gray and White concurred, wrote a dissenting opinion. Mr. Justice Field wrote a separate dissent."

In *Powell v. Alabama* (1932) *Barron* was brought up again. Then in *Palko v. Connecticut* (1937) *Barron* was again brought up and this is the BOOK's comment.

With the decision in *Powell v. Alabama* it appeared that the long struggle to nationalize the Bill of Rights might at last be bearing fruit. The Court had acknowledged that it no longer felt bound by the *Hurtado* reasoning; the application to the states of the Fifth Amendment right to just compensation and the First Amendment rights of free speech, press, religion, and assembly showed that some of the Bill of Rights guarantees could be applied to the states through due process of law. And now, in *Powell*, the Court for the first time had found one of the rights of persons accused of crime to be essential to due process.

"The *Palko* case, printed below, made clear that the Court was not prepared to abandon earlier decisions such as *Hurtado* and *Twining*. Instead, it undertook to explain why some rights, such as the rights to counsel and free speech, are absorbed into due process; and why others, like jury trial and grand jury indictment, are not. It should be emphasized that the cases "absorbing" rights into the Fourteenth Amendment do not overrule *Barron v. Baltimore* (1820). The provisions of the federal Bill of Rights still limit directly only the federal government; it is the Fourteenth Amendment which limits the states. What the Court has done is to reverse the practical effect of the rule in *Barron v. Baltimore* with respect to part, but not all, of the Bill of Rights. Some of these rights are still not considered by the Court to be so fundamental as to be required by due process of law. The Court in case after case has been classifying the provisions of the Bill of Rights into those which are essential to due process of law and thus bind the states through the operation of the Fourteenth Amendment and those which are not essential to due process and by which 'the states are not bound. In effect, the Court has established an "honor roll" of superior rights which bind both state and national governments. The opinion in the present case is important since it gives an official summary of this classification up to 1937 and states clearly the principles upon which the 'classification rests.

In another situation, and for a very different purpose, the Court classified the provisions of the federal Bill of Rights. In fixing the constitutional status of territories after the war with Spain, the Court held that in governing "unincorporated" territories, such as Puerto Rico and the Philippines, Congress was restricted only by those guarantees in the Bill of Rights which are basic and fundamental, and not by those which are merely "procedural" or "remedial," such as the guarantee of trial by jury. See *Balzac v. Porto Rico* (1922). This classification is essentially the same as that in *Palko v. Connecticut*.

One question which the *Palko* case failed to answer satisfactorily was what was meant by "absorption" or "incorporation" of a Bill of Rights guarantee into due process. Did it mean that the right, as listed in the Bill of Rights and interpreted by the Supreme Court in federal cases, was made applicable to the states? Or was the right as applied to the states a more general right, less clearly defined and permitting more leeway and discretion on the part of the states? Clearly, incorporation of the First Amendment has meant its application to the states exactly as it is applied to the national government. Justices Brandeis and Holmes, in their dissent in the *Gitlow* case, suggested that the free speech applicable to the states perhaps "may be accepted with a somewhat larger latitude of interpretation than is allowed to Congress by the sweeping language that governs or ought to govern the laws of the United States." The Court, however, has never acknowledged such a distinction, and the same rules for deciding such cases are applied to the states and the nation alike.

With the gradual extension of due process to include other rights, an important controversy developed as to how these rights would apply to the states. This problem is discussed in connection with the specific rights in the chapter below."

Another case is *United States v. Lanza* (1922). This is what the court stated then I will go to the BOOK comments and bear in mind what happened at the Ruby Ridge trial against the government agent and put into that what the BOOK states.

Chief Justice Taft delivered the opinion:

"We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject-matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition, with the limitation that no legislation can give validity to acts prohibited by the Amendment. Each government, in determining what shall be an offense against its peace and dignity, is exercising its own sovereignty, not that of the other.

It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both, and may be punished by each. The 5th Amendment, like all the other guaranties in the first eight amendments, applies only to proceedings by the Federal government (*Barron v. Baltimore* [1833]) and the double jeopardy therein forbidden is a second prosecution under authority of the Federal government after a first trial for the same offense under the same authority. Here the same act was an offense against the state of Washington, because a violation of its law, and also an offense against the United States under the National Prohibition Act. The defendants thus committed two different offenses by the same act, and a conviction by a court of Washington of the offense against that state is not a conviction of the different offense against the United States, and so is not double jeopardy

If Congress sees fit to bar prosecution by the Federal courts for any act when punishment for violation of state prohibition has been imposed, it can, of course, do so by proper legislative provision; but it has not done so. If a state were to punish the manufacture, transportation, and sale of intoxicating liquor by small or nominal fines, the race of offenders to the courts of that state to plead guilty and secure immunity from Federal prosecution for such acts would not make for respect for the Federal statute, or for its deterrent effect. But it is not for us to discuss the wisdom of legislation; it is enough for us to hold that, in the absence of special provision by Congress, conviction and punishment in a state court, under a state law, for making, transporting, and selling intoxicating liquors, is not a bar to a prosecution in a court of the United States, under the Federal law, for the same acts

Judgment reversed

Now for the comment by the BOOK:

It was one of the universal maxims of the common law that no man should be brought into jeopardy of his life more than once for the same offense. Protection against double jeopardy is guaranteed by the Fifth Amendment against invasion by the federal government, while a similar clause is found in the bills of rights of most of the state constitutions. A person is held to be in jeopardy when his trial has progressed to the point where he actually confronts the jury. If convicted, he may waive his immunity from double jeopardy by an appeal to a higher court which may allow him a new trial; but if acquitted, further proceedings against him by the prosecuting authorities are barred, the government not even being allowed to appeal the case on the ground of error of law. See *United States v. Sanges* (1892). Moreover, if he appeals his conviction and is granted a new trial the defendant can only be retried on the charge of which he was convicted. Thus in *Green v. United States* (1957) a person who was indicted and tried for first degree murder but was found guilty by the jury of second degree murder could not, after successfully appealing the second degree murder charge, be retried on the original charge of first degree murder. He had already been once in jeopardy for that crime and had not waived his protection by appealing his conviction for a different crime.

In certain recognized circumstances a court can declare a mistrial and subject the accused to a second trial without violating the protection against double jeopardy. This is true where it turns out that a juror is disqualified, see *Thompson v. United States* (1894); and in *United States v. Perez* (1824) it was held permissible where the jury could not agree on a verdict; "The prisoner has not been convicted or acquitted, and may again be put upon his defense. We think, that in all cases of this nature, the law has invested courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances which would render it proper to interfere." The double jeopardy clause would prevent declaring a mistrial and ordering a new trial solely to permit the government more time to secure evidence against the accused. In *Downum v. United States* (1963) the government asked that the jury be discharged when it discovered two of its key witnesses were missing. Two days later a new jury was empanelled and Downum was convicted. The Court conceded that a new jury could be empanelled after the discharge of the first where there is "an imperious necessity to do so," or in "very extraordinary and striking circumstances."

Here the government had simply started the trial before it had located all its witnesses.

A move such as this does not, however, amount to a denial of due process when done in a state court. In *Brock v. North Carolina* (1953) the state court had declared a mistrial and ordered a continuance of the case in order to permit the state to deal with some of its own witnesses who had unexpectedly refused to testify on pleas of self-incrimination. Citing the Palko case, the Court held that the double jeopardy provision was not incorporated into the Fourteenth Amendment, and this particular action was not shocking enough to make the trial unfair. In 1967 the Court declined to decide whether or not the double jeopardy provision of the Fifth Amendment would be extended to the states. Although it had granted certiorari to decide the question, on a full hearing of the case it agreed that the state action did not amount to double jeopardy and dismissed the writ as improvidently granted. See *Cichos v. Indiana*.

Since one is not in jeopardy until his trial actually begins, indictment for crime does not put a person in jeopardy, and therefore repeated indictments do not constitute double jeopardy. Moreover, the government can appeal the dismissal of an indictment, and such an appeal gives the Supreme Court an opportunity to pass upon the constitutionality of criminal legislation which a lower court holds unconstitutional. See discussion in the note to *Muskrat v. United States*.

It does not constitute double jeopardy to try a person each time he commits the same offense over again. Thus a conscientious objector who has served a prison sentence for refusing to register for the draft may be tried and convicted again if he continues in his refusal. The same is true of a person who is punished for contempt for refusing to give testimony. Where, however, a witness is asked to identify a person as a Communist and in reply refuses to so identify "anyone," she is guilty of only one contempt, despite a refusal to answer the same question asked 11 times with regard to other persons. See *Yates v. United States* (1957). Where Congress has made conspiracy to commit a felony a separate crime from the commission of the felony itself, a person may be tried for both crimes. Whether the second trial constitutes double jeopardy in cases like this depends on the nature of the evidence needed to convict. The Court in *Morgan v. Devine* (1915) quoted with approval from Bishop on Criminal Law: "The test is whether, if what is set out in the second indictment had been proved under the first, there could have been a conviction; when there could, the second cannot be maintained; when there could not, it can be."

One of the obvious results of living under our federal form of government is that every person is subject to the criminal jurisdiction of two separate governments, the state and the national. It is entirely possible, therefore, for a single act to constitute an offense against the statutes of the United States and at the same time to be punishable under state law. This is true in the case of counterfeiting the national currency, corrupt practices in the conduct of congressional elections, assaults against federal officers, the larceny of goods moving in interstate commerce, violations of the former Prohibition Amendment, etc. In these cases it has long been held that a person may be tried and punished by both governments without violating the protection against double jeopardy. That guarantee is violated only by a second trial for the same offense against the same sovereignty, not by a trial /or the same act when it constitutes a separate and distinct crime against another sovereign. This doctrine had, of course, considerable practical effect in connection with the enforcement of the Prohibition Amendment, under which concurrent jurisdiction rested in the state and national governments. Note the similarity of this rule to the one applied to the self-incrimination cases.

In the present case Lanza had been convicted by the state courts for violating the state prohibition act. He was then indicted in a federal court for the same act, which also violated the Volstead Act. The district judge dismissed the indictment on the ground of double jeopardy and the government appealed. The Lanza rule, though sharply criticized, still stands. *Abbate v. United States* (1959) held that a man convicted of a crime in Illinois could later be tried for the same act (dynamiting telephone communications) under a federal law. Lanza was specifically reaffirmed by a six-to-three decision. On the same day the Court held, five to four, that one acquitted in a federal court of robbing a federally insured bank could later be tried and convicted in a state court for the same robbery. See *Bartkus v. Illinois* (1959).

While the Lanza rule has a logical persuasiveness about it and the Court has done nothing to weaken it, it has not been given wide application. It is not, for example, followed in international law. As early as 1820 the Supreme Court recognized that while all states could try a person for piracy, "there can be no doubt that the plea of autrefois acquit would be good, in any civilized state, though resting on a prosecution in the courts of any other civilized state." See *United States v. Furlong*. Nor has the Court felt the rule should apply in cases where two states have concurrent jurisdiction, as on the Columbia River where Washington and Oregon both have jurisdiction over the entire river so as "to avoid any nice question as to whether a criminal act sought to be prosecuted was committed on one side or the other of the exact boundary in the channel" "Where an act is . . . prohibited and punishable by the laws of both states," the Court commented, "the one first acquiring jurisdiction of the person may prosecute the offense, and its judgment is a finality in both states, so that one convicted or acquitted in the courts of the one state cannot be prosecuted for the same offense in the courts of the other." See *Nielson v. Oregon* (1909).

The manifest unfairness of the Lanza rule has been widely recognized, and following the *Abbate* and *Bartkus* decisions the Attorney General of the United States ordered that "no federal case should be tried when there has already been a state prosecution for substantially the same act or acts without the United States Attorney first submitting a recommendation to the appropriate Assistant Attorney General in the Department." And in *Petite v. United States* (1960) *Petite*, a lawyer in deportation proceedings against the same man held in both Philadelphia and Baltimore, induced his client to swear falsely

that he had been born in the United States. For this suborning of perjury he was convicted and punished in the federal district court in Pennsylvania , and later in the federal district court in Maryland . When the case came to the Supreme Court the Solicitor General moved that the second judgment be vacated and the indictment dismissed. He contended that the double jeopardy clause had not been violated, but stated that "the initiation of the second prosecution in this case was contrary to sound policy and that for that reason, and in the interests of justice, the indictment should be dismissed." The Supreme Court, without passing on the double jeopardy question, granted the motion."

So there Fred, is the story. Now I think this fellow I was talking about has a lot of cognitive dissonance and ego to get rid of and it just might take him more than 3 months to understand. After all, I would say he is at least 12 years behind the Informer's knowledge. Well, once he obtains the level of competence that we have obtained then he is on to better things and won't be so ego centered. It is nice to be eating humble pie once in awhile. I think everyone has a lot to learn from reading this and the cases if they so choose. But they need interpretation like this BOOK gives, because after all it's what "they" interpret as ruling , not us. We are only slaves remember?