

Title: Moore v. Dempsey 261 U.S. 86 (1923)

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MOORE v. DEMPSEY 261 U.S. 86 (1923)

Moore was a landmark for two of the twentieth century's most important constitutional developments: the emergence of the DUE PROCESS clause of the FOURTEENTH AMENDMENT as a limitation on state CRIMINAL PROCEDURE, and the assumption by the federal judiciary of a major responsibility for supervising the fairness of state criminal processes, through HABEAS CORPUS proceedings.

For all its importance, the case began as a squalid episode of racist ferocity. Returning from WORLD WAR I, a black Army veteran sought to organize black tenant farmers of Phillips County, Arkansas, into a farmers' union. In October 1919—a year disfigured by racial violence in both North and South—these farmers held a meeting in a rural church to plan efforts to obtain fair accountings from their white landlords. At this remove in time it requires effort to understand that such a meeting, in such a place, for such a purpose, was seen as revolutionary. A sheriff's deputy fired at the church; blacks who were armed fired back, killing the deputy and wounding his companion. Hundreds of new deputies were sworn; they and hundreds of troops arrested most of the county's black farmers, killing resisters. Responsible estimates of the black dead ranged from twenty-five to 200.

About 120 blacks were indicted for various crimes, including the murder of the deputy. The trial juries, like the grand jury that had issued the INDICTMENTS, were all white. Twelve men were convicted of murder and sentenced to death; dozens of others were sentenced to long prison terms. The twelve sentenced to death filed APPEALS in two groups of six each. One group, after multiple appeals, was released in 1923 by order of the Arkansas Supreme Court, for excessive delay in their retrial. The convictions of the remaining six, however, were affirmed by the state supreme court, and the U.S. Supreme Court denied certiorari. They unsuccessfully sought habeas corpus in the state courts, and again the Supreme Court declined to review the case.

By now the NAACP had mounted a national fund-raising drive to support the six petitioners. Their execution, set for September 1921, was postponed by the filing of a habeas corpus petition in the federal district court. That court dismissed the writ. On direct appeal, the Supreme Court reversed, 7–2, with an opinion by Justice OLIVER WENDELL HOLMES. (The opinion refers, apparently erroneously, only to the five petitioners who were tried together; the petition of the sixth was consolidated for hearing and decision.)

On REMAND to the district court, counsel for the six petitioners struck a deal; the habeas corpus petition would be dismissed and the sentence commuted to twelve years' imprisonment, making the men eligible for immediate parole. In 1925 the governor of Arkansas granted an "indefinite furlough," releasing them along with the others convicted following the Phillips County "insurrection."

The federal habeas corpus petition in *Moore* alleged that counsel appointed to represent the five defendants tried together did not consult with his clients before the trial; requested neither delay nor change of VENUE nor Page 1758 | [Top of Article](#) separate trials; challenged not a single jurymen; and called no defense witnesses. The trial took forty-five minutes, and the jury "deliberated" less than five minutes. A lynch mob had been dissuaded from carrying out its purpose by a local committee, appointed by the governor to combat the "insurrection," who assured the mob that justice would be done swiftly. Two black witnesses swore they had been whipped and tortured into testifying as the prosecution wished. Holmes summarized the petition: "no jurymen could have voted for an acquittal and continued to live in Phillips county, and if any prisoner, by any chance, had been acquitted by a jury, he could not have escaped the mob."

The Supreme Court held that these facts, if proved, justified two conclusions: the state had violated PROCEDURAL DUE PROCESS, and the federal district court should grant the writ of habeas corpus. Today both conclusions seem obvious. In 1923, however, the Supreme Court had not yet begun to impose significant federal constitutional limitations on the fairness of state criminal proceedings. *Moore* lighted the path that would lead, in less than half a century, to an expansion of the liberty protected by the due process clause, applying virtually the entire BILL OF RIGHTS to the states. (See INCORPORATION DOCTRINE.)

Moore's other conclusion, concerning the reach of federal habeas corpus, also broke new ground. In *FRANK V. MANGUM* (1915), a case involving strikingly similar facts, the Court had rejected a claim to federal habeas corpus relief on the ground that the state courts had provided a full "corrective process" for litigating the accused's federal constitutional claims. Only in the absence of such a corrective process, the Court had held, could a federal habeas corpus court intervene. *Moore* did not explicitly overrule *Frank*, but it did look in a different direction. Justice Holmes, in his characteristically laconic way, said only that if "the whole proceeding is a mask," with all participants in the state trial swept to their conclusion by a mob, and if the state courts fail to correct the wrong, "perfection in the [state's] machinery for correction" could not prevent the federal court from securing the accused's constitutional rights. The right claimed in *Moore*, of course, goes to the essence of due process of law; when the basic fairness of a state criminal trial is challenged, the fact that the state courts have already had a chance to look into the matter seems a weak justification for barring federal habeas corpus.

From *Moore* through *FAY V. NOIA* (1963), the Supreme Court steadily widened access to federal habeas corpus for persons challenging constitutionality of state convictions. *STONE V. POWELL* (1976) and *WAINWRIGHT V. SYKES* (1977) marked the BURGER COURT'S reversal of the direction of doctrinal change. Indeed, *Stone* revived the doctrine of *Frank v. Mangum* in cases involving claims based on the FOURTH AMENDMENT'S guarantee against UNREASONABLE SEARCHES and seizures. Yet, despite these limitations, *Moore*'s legacy, even in the field of federal habeas

corpus, remains vital to a system of national constitutional standards of fairness for persons accused of crime.

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(1986)

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