Appendix A

Hurtado v. People of California
28 LED 232, 110 U.S. 516, 534-38 (1884)

(110 U.S 516)

1.) The words "due process of law" in the 14th Amendment, do not necessarily require an indictment by a grand jury in a prosecution by a State for murder.

2.) The Constitution of California authorizes prosecutions for felonies by information, after examination and commitment by a magistrate, without indictment by a grand jury, in the discretion of the legislature. The penal code of the State makes provision for an examination by a magistrate, in the presence of the accused, who is entitled to the aid of counsel and the right of cross-examination of witnesses, whose testimony is to be reduced to writing, and upon a certificate thereon by the magistrate, that a described offense has been committed and that there is sufficient cause to believe the accused guilty thereof, and an order holding him to answer thereto, requires an information to be filed against the accused in the superior court of the county in which the offense is triable, in the form of an indictment for the same offense.

(110 U.S 534)

Mr. Justice Miller says however "it is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has by the laws of the State a fair trial in a court of justice,

according to the modes of proceeding applicable to such a case"

We are to construe the phrase in the 14th Amendment by the usus loquendi of the Constitution itself. The same words are contained in the 5th Amendment. That article makes specific and express provision for perpetuating the institution of the grand jury, so far as it relates to prosecutions, for the more aggravated crimes under the laws of the United States. It declares that "no person shall be held .... it then adds nor be deprived of life, liberty, and property without due process of law." According to the recognized canon interpretation, especially applicable to formal and solemn instruments of constitutional law, we are forbidden to assume, without clear reason to the contrary, that any part of this most important amendment is superfluous. The natural and obvious inference is, that in the sense of the Constitution, "due process of law" was not meant or intended to include, ex vi' termini, the institution and procedure of a grand jury in any case.
(110 U.S. 535)

The conclusion is equally irresistable that when the same phrase was employed in the 14th Amendment to restrain the action of the States, it was used in the same sense and with no greater extent: and that if in the adoption of that Amendment it has been part of its purpose to perpetuate the institution of the grand jury in all the states, it would have embodied, as it did the 5th

Amendment, express declarations to that effect. Due process of law in the latter refers to that law of the land, which derives its authority from legislative powers conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law. In the 14th Amendment, by parity of reason, it refers to that law of the land in each State, which derives its authority from the inherent and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure." The 14th Amendment," as was said by Mr. Justice Bradley in Mo v. Lewis (supra)," does not profess to secure all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there might be a right by trial by jury, and on the other side no such right. Each State prescribes its own modes of judicial proceedings."

But it is not to be supposed that these legislative powers are absolute and despotic, and that the Amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every Act, legislative in form, that

is law. Law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case,
(110 U.S 536)
and the limitations imposed by our Constitutional law upon the action of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government. "Due process of law" says "the principle does not demand that the laws existing at any point of time shall be irrepealable, or that any forms of remedies shall necessarily continue. It refers to certain fundamental rights which that system of jurisprudence, of which ours is a derivative, has always recognized. If any of these are disregarded in the proceedings by which a person is condemned to the loss of life, liberty, or property, then the deprivation has not been by due process of law." It must be conceded that there are such rights in every free government beyond the control of the State." (Mr. J. Miller)
(110 U.S. 538)
Tried by these principles, we are unable to say that the substitution for a

presentment or indictment by a grand jury of the proceeding by information, after examination and committment by a magistrate, certifying the probable guilt of the defendant, with the right on his part to the aid of counsel, and to the cross-examination of the witnesses produced for the prosecution, is not due process of law. It is, as we have seen, an ancient proceeding at common law, which might include every case of an offense of less grade than a felony, except misprison of treason; and in every circumstance of its administration, as authorized by the statute of California, it carefully considers and guards the substantial interest of the prisoner, it is merely a preliminary proceeding, and can result in no final judgement, except as the consequence of a regular judicial trial, conducted precisely as in cases of indictments.

In reference to this mode of proceeding at the common law, and which says "is as ancient as the common law itself" Blackstone adds "and to those offenses in which informations were allowed as well as indictments, so long as they were confined to this high and respectable jurisdiction, and were carried on in a legal and regular course in his Majesty's Court of the King's Bench, the subject had no reason to complain. The same notice was given, the same process was issued, the same pleas were allowed, the same trial by jury was had, the same judgement was

given by same judges, as if prosecution was by indictment.

True Copy Test

James H McKenney, Clerk, Supreme Court of the United States

9/17/20

SETH JOHN WILCOX - PETITIONER

VS.

STATE OF WASHINGTON - RESPONDANT

Clerk of the Court,

In reference to the case stated above, I, Seth John Wilcox, the petitioner, have amended my petition, and am filing this Petition for an Extraordinary Writ of Mandamus and/or Prohibition, challenging Washington State Constitutional Laws cited in my petition. I have amended the cover page, index of appendices, and included appendices relevant to my petition. In accordance to Supreme Court rules 20.3(a) and 14.1(i)(vi), I have included a declaration in Appendix B, stating the nature of the petition, relief sought, exceptional circumstances, as well as reasons why this writ cannot be filed in any other court, as was requested by the Clerk of the Court in the United States Supreme Court. I have included a Motion for leave to proceed in forma pauper, including declaration supporting the motion, Petition for an Extraordinary Writ of Mandamus and/or Prohibition, and Proof of Service. Appendix A and B are at the end of the document. Copies have been properly served to the Attorney General and Governor of Washington State by U.S. Mail.

Respectfully,
Seth John Wilcox