



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Separation of Powers

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Decatur v. Paulding, 39 U.S. 497 (1840)

Ever since 1799, Congress had maintained a pension fund, drawn from part of the revenue from the sales of captured vessels, for the benefit of members of the navy who were disabled in the line of duty and for the widows of those killed in a war. Over time, the benefits of the fund were made more generous, with an act of 1834 extending benefits to the widows of all members of the navy who had died since January 1, 1824.

Susan Decatur was the widow of Commodore Stephen Decatur, who had died while still in the naval service but prior to 1824. As the law stood at the time, Mrs. Decatur was not entitled to collect anything from the pension fund. In March 1837, Congress passed a special bill allowing Mrs. Decatur to collect half of her late husband's monthly pay from the pension fund for five years. On the same day, spurred in part by the efforts on behalf of Mrs. Decatur, Congress passed a general law allowing the future widows of naval officers to collect half of the officers' monthly pay from the navy pension fund until death or remarriage.

Mrs. Decatur then applied to the secretary of the navy, who administered the fund, for pensions under both laws. The secretary of the navy sought an opinion from the attorney general, who concluded that she was entitled only to the one five-year pension granted under the special bill and did not qualify for the widow-pension established by the general law of March 1837. She accepted that payment, but when the secretary of the navy refused to reconsider her claim to the second pension and President Martin Van Buren declined to intervene, she asked the U.S. Circuit Court for the District of Columbia to issue a writ of mandamus to compel the secretary to reverse his decision. The government responded that the Circuit Court did not have jurisdiction to oversee the conduct of the executive branch or order funds to be withdrawn from the treasury. Allowing the suit to go forward would take the secretary of the navy "from the discharge of their immediate and most urgent public duties, and made to apply their time and attention . . . to an endless review and reconsideration of antiquated claims and settled questions, to the delay and hindrance of measures of vital importance to the national welfare and safety." The Circuit Court declined to issue the writ, and this decision was appealed to the U.S. Supreme Court.

*The justices all agreed that the writ should not be issued and that Mrs. Decatur was not entitled to the second pension. They disagreed, however, about whether the courts could hear such cases and inquire into executive branch decisions such as these. The Court had recently reaffirmed the argument of Chief Justice Marshall in *Marbury v. Madison* that the federal judiciary could issue such writs to compel executive branch officials to perform mere ministerial functions (though, by concluding that *Marbury's* case should have been tried in a lower court, not the Supreme Court, Marshall himself had avoided testing whether President Jefferson would comply with such an order). Consistent with the Jacksonian theories of the unitary executive, in which executive branch officials were primarily responsible to the president for how they conducted their duties, Taney and a majority of his colleagues, however, preferred to interpret the range of ministerial duties narrowly. Resolving pension claims in his role as trustee of the pension fund, the Court concluded, was a matter of executive discretion, for which the secretary of the navy was accountable to the president but not to the courts. Until Congress specifically provided for appeals to the courts from the disposition of pension claims by executive officials, the judiciary could not intervene.*

CHIEF JUSTICE TANEY delivered the opinion of the Court.

....
 The first question . . . to be considered in this case is, whether the duty imposed upon the Secretary of the Navy, by the resolution in favor of Mrs. Decatur, was a mere ministerial act.



The duty required by the resolution was to be performed by him as the head of one of the executive departments of the government, in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General to assist him with his counsel; and it would be difficult to imagine why a legal adviser was provided by law for the heads of departments, as well as for the President, unless their duties were regarded as executive in which judgment and discretion were to be exercised.

If a suit should come before this Court, which involved the construction of any of these laws, the Court certainly would not be bound to adopt the construction given by the head of a department. And if they supposed his decision to be wrong, they would, of course, so pronounce their judgment. But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of Congress, in order to ascertain the rights of the parties in the cause before them. The Court could not entertain an appeal from the decision of one of the Secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion, or judgment. Nor can it by mandamus, act directly upon the officer, and guide and control his judgment or discretion in the matters committed to his care, in the ordinary discharge of his official duties.

....
The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given to them. Upon the very subject before us, the interposition of the Courts might throw the pension fund, and the whole subject of pensions, into the greatest confusion and disorder. . . .

....
The judgment of the Circuit Court, refusing to award a peremptory mandamus, must be affirmed.

JUSTICE BALDWIN, concurring.

I concur with the Court in not interfering with the proceeding of the Circuit Court, refusing the mandamus prayed for by the relator, on the ground that she is not entitled to the benefits of the general pension law of the 3d March 1837, and of the special resolution passed on the same day in her favor. . . .

But I cannot concur in opinion with the Court, on the grounds on which they affirm the judgment, for two reasons. 1. That the Circuit Court had jurisdiction of the case; and 2. That this Court had not jurisdiction

....
JUSTICE McLEAN, concurring.

The answer of the Secretary of the Navy to the rule to show cause why a mandamus should not issue, is conclusive; and I entirely concur with the decision of the Circuit Court, in refusing the writ. . . .

....
I differ from a majority of the judges, who hold, that the construction of this resolution, giving to the relatrix a pension, is a duty, in the discharge of which, an executive discretion may be exercised. The law is directory and imperative, and admits of the exercise of no discretion, on the part of the Secretary. The amount of the half-pay pension given in the resolution, is fixed by law; and is, therefore, certain. I am authorized to say that my brother Story agrees with this view of the case.



JUSTICE CATRON, concurring.

....
 The great question, then, standing in advance of all others in this cause, and the only one I feel myself authorized to examine is the broad one, whether the Circuit Court of the District of Columbia, can, by a writ of mandamus, force one of the secretaries of the great departments, contrary to the opinion and commands of the President of the United States, to pay money out of the treasury? Mrs. Decatur claimed a double pension; a single one was paid by the Secretary of the Navy; she demanded the additional one, amounting to nearly twenty thousand dollars; the Secretary refused to pay it; she then memorialized the President, and he concurred with, and affirmed the decision of the Secretary, that the claim could not be allowed: and from this final decision of the executive department of the nation, Mrs. Decatur appealed in the form of a petition for a mandamus, to the Circuit Court of the District of Columbia, to reverse and annul the decision, made by the Secretary, and sanctioned by the President.

The Court assumed jurisdiction, compelled the United States, through the Secretary of the Navy, to file a long answer; and in a tedious lawsuit to defend the United States. That he did so successfully, is of little consequence; the evil lies not in the loss of eighteen thousand six hundred dollars to the government, but in the concession by this Court, that the Circuit Court of the District has the power to sit in judgment on the Secretary's decision; to reverse the same at its pleasure, and to order the money to be paid out of the treasury, contrary to his will; and to the will of the President, and that of all those entrusted by the Constitution and laws with the safe keeping of the public moneys.

....
 The entertaining such a cause is calculated to alarm all men who seriously think of the consequences. It is an invitation to all needy expectants, with pretensions of claim on the government, to seek this superior and controlling power, (the Circuit Court of this District,) and invoke its aid to force their hands into the treasury, contrary to the better judgment of the guardians of the public money. Thousands of claims exist, quite as fair on their face, and as simple in their details, as is this of Mrs. Decatur's, that have been rejected. She has been allowed to appeal to the Court, and been heard; and so can all others. The assumption of powers need not be pushed further, to let suitors enough into the Court to consume the time and absorb the attention of the secretaries. . . .

....
 I maintain that the executive power of this nation, headed by the President, and divided into departments in its administration of the finances of the country, acts independently of the Courts of justice in paying the public creditors; and that the decision of the Secretary of the Navy in this case, affirmed by the President, under the advice of the Attorney General, was final on the laws as they stood; and that the petitioner could only appeal to Congress.

And here it may be safely asked whether the Secretary and President, the latter elected by the nation and responsible to the people directly, and to their representatives in Congress, each exercising an undoubtedly legitimate authority, were not the safest and best to decide on the rights of the nation, and of the petitioner seeking justice at its hands? Is the country known, that submits the administration of its finances to the Courts of justice, or permits them to control the operations of the treasury? What guarantee have the people of this country that the Circuit Court of this District, will as faithfully perform the functions they have assumed, when dealing out the public money to satisfy rejected claims, as the heads of the departments? . . .

....
 For these and other reasons, the Court below had no jurisdiction of the subject matter; and, of course, no authority to issue the mandamus to bring the Secretary before it: and therefore I hold the suit must be dismissed, and the judgment affirmed.

Note: *Kendall v. United States ex rel. Stokes* (1838) raised similar issues of executive discretion, but in a context even less friendly to the executive's position. Andrew Jackson's postmaster general, Amos Kendall, and a mail transportation company, Stockton and Stokes, were in disagreement about the



amount owed to the company under their existing contracts. The firm persuaded Congress to direct by statute that a Treasury Department official should settle the dispute, and that official found in favor of Stockton and Stokes. Kendall, nonetheless, refused to pay out the full amount from that decision. Stockton and Stokes won a writ of mandamus from the federal circuit court in the District of Columbia directing Kendall to make the payment, and the Supreme Court affirmed that decision.

The Jackson administration denied that the courts had jurisdiction to order executive officials to perform their official duties. Justice Thompson, writing for the majority, countered that although the Constitution vested the executive power in the president, "it by no means follows that every officer in every branch of that department is under the exclusive direction of the President." It was possible for Congress to impose duties on executive officers, placing them to that degree under "the control of the law, and not at the direction of the president." The alternative "would be clothing the President with a power entirely to control the legislation of Congress and paralyze the administration of justice." Even Roger Taney did not disagree with that constitutional proposition, but dissented from the majority only on the question of whether the circuit court had been given the power to issue the writ of mandamus by the statute setting up that court.