AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 5: The Jacksonian Era – Separation of Powers

United States v. Wilson, 32 U.S. 150 (1833)

James Porter and George Wilson were found guilty of robbing the federal mails in a federal circuit court in Pennsylvania. Porter was subsequently executed. A month after his conviction, Wilson received a pardon from President Andrew Jackson remitting the death penalty but allowing for the possibility that Wilson could be convicted and sentenced on other charges pending against him. Since all the charges against Wilson were brought in a single indictment, the circuit court was uncertain whether the pardon was limited to a single offense or would necessarily apply to the entire indictment. The defendant, however, did not appeal to the presidential pardon as a shield against any sentences that might be imposed by the court on the other charges. The circuit court divided over the effect of the pardon and whether the judges should take independent notice of the pardon, and the legal questions were referred to the U.S. Supreme Court for resolution. Before the Supreme Court, Attorney General Roger Taney argued that no pardon is complete until accepted by the person in question, that the courts could not take independent notice of a presidential pardon, and that judges must rely on the pleadings of the litigants in the case to bring an executive pardon into relevance. The Supreme Court unanimously agreed with the attorney general.

Why should an individual have a choice of whether to accept a presidential pardon? Why should the pardon not attach immediately when issued by the president? Why might courts refuse to take notice of the existence of a pardon that was not put before the court by the parties in the dispute? Should a pardon be treated like a "fact" that must be introduced to the court, or like a statute that is part of the body of law that judges should discover and correctly apply to the cases before them?

CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

. . . .

The constitution gives to the president, in general terms, "the power to grant reprieves and pardons for offences against the United States."

As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance; we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it.

A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court. It is a constituent part of the judicial system, that the judge sees only with judicial eyes, and knows nothing respecting any particular case, of which he is not informed judicially. A private deed, not communicated to him, whatever may be its character, whether a pardon or release, is totally unknown and cannot be acted on. The looseness which would be introduced into judicial proceedings, would prove fatal to the great principles of justice, if the judge might notice and act upon facts not brought regularly into the

cause. Such a proceeding, in ordinary cases, would subvert the best established principles, and overturn those rules which have been settled by the wisdom of ages.

Is there anything peculiar in a pardon which ought to distinguish it in this respect from other facts?

We know of no legal principle which will sustain such a distinction.

A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered; and if it be rejected, we have discovered no power in a court to force it on him.

It may be supposed that no being condemned to death would reject a pardon; but the rule must be the same in capital cases and in misdemeanours. A pardon may be conditional; and the condition may be more objectionable than the punishment inflicted by the judgment.

The pardon may possibly apply to a different person or a different crime. It may be absolute or conditional. It may be controverted by the prosecutor, and must be expounded by the court. These circumstances combine to show that this, like any other deed, ought to be brought "judicially before the court by plea, motion or otherwise."

. . . . [T]his court is of opinion that the pardon alluded to in the proceedings, not having been brought judicially before the court by plea, motion or otherwise, ought not to be noticed by the judges, or in any manner to affect the judgment of the law. All which is directed and adjudged to be certified to the judges of the said circuit court of the United States for the eastern district of Pennsylvania.