AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 4: The Early National Era – Separation of Powers

Wayman v. Southard, 23 U.S. 1 (1825)

A federal marshal executed a judgment of a federal district court, adhering to the Kentucky state law regulating such proceedings. The plaintiffs moved to quash those actions on the grounds that such state statutes were not applicable to federal officers executing the decisions of federal courts, and if the state statute was attempting to regulate such officers then it would be unconstitutional. The defendants contended that only states could regulate judicial proceedings within their jurisdiction.. The judges on the circuit court were divided on how to resolve those legal questions and so certified them to the U.S. Supreme Court for an authoritative answer. In a unanimous decision, the Court concluded that the state laws did not apply and returned that answer to the circuit court so that it could finish adjudicating the case.

These were not simply dry, technical issues. Kentucky, as well as other states, was regulating how debts could be collected from its citizens. In difficult financial times, state politicians were under substantial pressure to ease the burdens on debtors and find ways to minimize the traumatic effects of debt collection. Could Congress circumvent such measures in the significant class of cases decided in federal courts? The state of the federal law created an additional complication. Congress had regulated such proceedings through both the Judiciary Act of 1789 and the Process Act of 1789, and those statutes specified some procedures, referenced then-existing state laws for other procedures, and delegated the authority to modify still other procedures to federal judges. For the Court, there was both a question of federal statutory interpretation and a question of the constitutional authority of Congress to delegate rulemaking power at play. Had Congress delegated federal rulemaking authority to the state legislatures, and could it do so? Had Congress delegated lawmaking authority to federal judges, and could it do so? Ultimately, the Court concluded that Congress could not delegate to the states but could delegate some minor authority to federal judges. Federal marshals were accountable only to federal officials for the conduct of their duties.

What is the status of state laws referenced in a federal statute? Can Congress authorize states to prospectively pass legislation that has the force of federal law? Can Congress direct federal officials operating within a locality to adhere to whatever state law is currently in effect? Without congressional authorization, can states direct the conduct of federal officers operating within their borders? Why is the ability to create procedures for the resolution of civil suits within the states an exclusive power of Congress rather than a concurrent power? What rulemaking authority can Congress delegate to federal judges? What delegation would be illegitimate? What is the enumerated power that authorizes Congress to regulate the conduct of federal marshals? Why is such a power not appropriately understood to be lodged in the judiciary or the executive?

CHIEF JUSTICE MARSHALL, delivered the opinion of the Court.

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In arguing the first question, the plaintiffs contend, that the common law, as modified by acts of Congress, and the rules of this Court, and of the Circuit Court by which the judgment was rendered, must govern the officer in all his proceedings upon executions of every description.

One of the counsel for the defendants insists, that Congress has no power over executions issued on judgments obtained by individuals; and that the authority of the States, on this subject, remains unaffected by the constitution. That the government of the Union cannot, by law, regulate the conduct of its officers in the service of executions on judgments rendered in the Federal Courts; but that the State legislatures retain complete authority over them.

The Court cannot accede to this novel construction. The constitution concludes its enumeration of granted powers, with a clause authorizing Congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof. The judicial department is invested with jurisdiction in certain specified cases, in all which it has power to render judgment.

That a power to make laws for carrying into execution all the judgments which the judicial department has power to pronounce, is expressly conferred by this clause, seems to be one of those plain propositions which reasoning cannot render plainer. The terms of the clause, neither require nor admit of elucidation. The Court, therefore, will only say, that no doubt whatever is entertained on the power of Congress over the subject. The only inquiry is, how far has this power been exercised?

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. . . . The jurisdiction of a Court is not exhausted by the rendition of its judgment, but continues until that judgment shall be satisfied. Many questions arise on the process subsequent to the judgment, in which jurisdiction is to be exercised. It is, therefore, no unreasonable extension of the words of the [Judiciary Act of 1789], to suppose an execution necessary for the exercise of jurisdiction. Were it even true, that jurisdiction could technically be said to terminate with the judgment, an execution would be a writ necessary for the perfection of that which was previously done; and would, consequently, be necessary to the beneficial exercise of jurisdiction. . . .

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It may very well be doubted, too, whether the act of Congress which conforms the modes of proceeding in the Courts of the Union to those in the several States, requires the agency of State officers, in any case whatever not expressly mentioned. The laws of the Union may permit such agency, but it is by no means clear that they can compel it. In the case of the appraisement laws . . ., it was deemed necessary to pass a particular act, authorizing the Marshal to avail himself of the appraisers for the State; and the same law dispenses with the appraisement, should they fail to attend. . . .

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So far as the Process Act adopts the State laws, as regulating the modes of proceeding in suits at common law, the adoption is expressly confined to those in force in September, 1789. The act of Congress does not recognize the authority of any laws of this description which might be afterwards passed by the States. The system, as it then stood, is adopted, "subject, however, to such alterations and additions as the said Courts respectively shall, in their discretion, deem expedient, or to such regulations as the Supreme Court of the United States shall think proper, from time to time, by rule, to prescribe to any Circuit or District Court concerning the same."

This provision enables the several Courts of the Union to make such improvements in its forms and modes of proceeding, as experience may suggest, and especially to adopt such State laws on this subject as might vary to advantage the forms and modes of proceeding which prevailed in September, 1789.

The counsel for the defendants contend, that this clause, if extended beyond the mere regulation of practice in the Court, would be a delegation of legislative authority which Congress can never be supposed to intend, and has not the power to make.

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It will not be contended that Congress can delegate to the Courts, or to any other tribunals, powers which are strictly and exclusively legislative. But Congress may certainly delegate to others, powers which the legislature may rightfully exercise itself. Without going farther for examples, we will

take that, the legality of which the counsel for the defendants admit. The 17th section of the Judiciary Act, and the 7th section of the additional act, empower the Courts respectively to regulate their practice. It certainly will not be contended, that this might not be done by Congress. The Courts, for example, may make rules, directing the returning of writs and processes, the filing of declarations and other pleadings, and other things of the same description. It will not be contended, that these things might not be done by the legislature, without the intervention of the Courts; yet it is not alleged that the power may not be conferred on the judicial department.

The line has not been exactly drawn which separates those important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions to fill up the details. To determine the character of the power given to the Courts by the Process Act, we must inquire into its extent. It is expressly extended to those forms and modes of proceeding in suits at common law, which were used in the State Courts in September, 1789, and were adopted by that act. What, then, was adopted?

We have supposed, that the manner of proceeding under an execution was comprehended by the words "forms and modes of proceeding in suits" at common law. The writ commands the officer to make the money for which judgment has been rendered. This must be understood as directing a sale, and, perhaps, as directing a sale for ready money. But the writ is entirely silent with respect to the notice; with respect to the disposition which the officer is to make of the property between the seizure and sale; and, probably, with respect to several other circumstances which occur in obeying its mandate. . . .

Now, suppose the power to alter these modes of proceeding, which the act conveys in general terms, was specifically given. The execution orders the officer to make the sum mentioned in the writ out of the goods and chattels of the debtor. This is completely a legislative provision, which leaves the officer to exercise his discretion respecting the notice. That the legislature may transfer this discretion to the Courts, and enable them to make rules for its regulation, will not, we presume, be questioned. . . . The power given to the Court to vary the mode of proceeding in this particular, is a power to vary minor regulations, which are within the great outlines marked out by the legislature in directing the execution. To vary the terms on which a sale is to be made, and declare whether it shall be on credit, or for ready money, is certainly a more important exercise of the power of regulating the conduct of the officer, but is one of the same principle. It is, in all its parts, the regulation of the conduct of the officer of the Court in giving effect to its judgments. A general superintendence over this subject seems to be properly within the judicial province, and has been always so considered. It is, undoubtedly, proper for the legislature to prescribe the manner in which these ministerial offices shall be performed, and this duty will never be devolved on any other department without urgent reasons. But, in the mode of obeying the mandate of a writ issuing from a Court, so much of that which may be done by the judiciary, under the authority of the legislature, seems to be blended with that for which the legislature must expressly and directly provide, that there is some difficulty in discerning the exact limits within which the legislature may avail itself of the agency of its Courts.

The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law; but the maker of the law may commit something to the discretion of the other departments, and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a Court will not enter unnecessarily.

Congress, at the introduction of the present government, was placed in a peculiar situation. A judicial system was to be prepared, not for a consolidated people, but for distinct societies, already possessing distinct systems, and accustomed to laws, which, though originating in the same great principles, had been variously modified. The perplexity arising from this state of things was much augmented by the circumstance that, in many of the States, the pressure of the moment had produced deviations from that course of administering justice between debtor and creditor, which consisted, not only with the spirit of the constitution, and, consequently, with the views of the government, but also

with what might safely be considered as the permanent policy, as well as interest, of the States themselves. The new government could neither entirely disregard these circumstances, nor consider them as permanent. In adopting the temporary mode of proceeding with executions then prevailing in the several States, it was proper to provide for that return to ancient usage, and just, as well as wise principles, which might be expected from those who had yielded to a supposed necessity in departing from them. Congress, probably, conceived, that this object would be best effected by placing in the Courts of the Union the power of altering the "modes of proceeding in suits at common law," which includes the modes of proceeding in the execution of their judgments, in the confidence, that in the exercise of this power, the ancient, permanent, and approved system, would be adopted by the Courts, at least as soon as it should be restored in the several States by their respective legislatures. Congress could not have intended to give permanence to temporary laws of which it disapproved; and, therefore, provided for their change in the very act which adopted them.

But the objection which gentlemen make to this delegation of legislative power seems to the Court to be fatal to their argument. If Congress cannot invest the Courts with the power of altering the modes of proceeding of their own officers, in the service of executions issued on their own judgments, how will gentlemen defend a delegation of the same power to the State legislatures? The State assemblies do not constitute a legislative body for the Union. They possess no portion of that legislative power which the constitution vests in Congress, and cannot receive it by delegation. . . .

As construed by the Court, this section is the recognition of a principle of universal law; the principle that in every forum a contract is governed by the law with a view to which it was made.

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. . . . The cause came on to be hard on the questions certified from the United States Court of the seventh circuit . . .: on consideration whereof, this Court is of the opinion, that the statutes of Kentucky in relation to executions . . . are not applicable to executions which issue on judgments rendered by the Courts of the United States. . . .