"[N]o power is more clearly conferred by the Constitution and laws of the United States, than the power of this court to decide, ultimately and finally, all cases arising under such Constitution and laws. . . ."

Ableman v. Booth

62 U.S. (21 How.) 506, 16 L.Ed. 169 (1859).

In the mid–1850s, a federal marshal arrested Sherman M. Booth, an abolitionist editor from Milwaukee, Wisconsin, and charged him with violating the Fugitive Slave Act by helping a slave to escape. Because there was no federal prison in the area, the marshal placed Booth in a local jail. The prisoner then petitioned the Wisconsin supreme court for habeas corpus.* That court granted the writ and declared the Fugitive Slave Act unconstitutional. The marshal obtained review in the U.S. Supreme Court. Before the justices heard the case, a federal trial court convicted Booth, sentenced him to a year in prison, and ordered him to pay a fine of $1,000. Again he sought habeas corpus from the Wisconsin supreme court, and again that court granted the writ, holding that the federal trial court's action was as unconstitutional as the statute on which the conviction was based. The local jailer freed Booth. The marshal asked the U.S. Supreme Court to review this second state decision as well. The justices consolidated the two appeals.

Mr. Chief Justice **TANEY** delivered the opinion of the court. . . .

If the judicial power exercised in this instance has been reserved to the States, no offence against the laws of the United States can be punished by their own courts, without the permission and according to the judgment of the courts of the State in which the party happens to be imprisoned; for, if the Supreme Court of Wisconsin possessed the power it has exercised . . . it necessarily follows that they must have the same judicial authority in relation to any other law of the United States. . . . And, moreover, if the power is possessed by the Supreme Court of the State of Wisconsin, it must belong equally to every other State in the Union, when the prisoner is within its territorial limits; and it is very certain that the State courts would not always agree in opinion; and it would often happen, that an act which was admitted to be an offence, and justly punished, in one State, would be regarded as innocent, and indeed as praiseworthy, in another. . . .

The judges of the Supreme Court of Wisconsin do not distinctly state from what source they suppose they have derived this judicial power. There can be no such thing as judicial authority, unless it is conferred by a Government or sovereignty; and if the judges and courts of Wisconsin possess the jurisdiction they claim, they must derive it either from the United States or the State. It certainly has not been conferred on them by the United States; and it is equally

---

*An order to a jailer or other person having custody of a prisoner instructing him to bring that prisoner to court and show legal cause for holding him or her in custody.—**Eds**.

clear that it was not in the power of the State to confer it . . . for no State can authorize one of its judges or courts to exercise judicial power . . . within the jurisdiction of another and independent Government. And although the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriate to the United States is as far beyond the reach of the judicial process issued by a State judge or a State court, as if the line of division was traced by landmarks and monuments visible to the eye. . . .

. . . The Constitution was not formed merely to guard the States against danger from foreign nations, but mainly to secure union and harmony at home . . . and to accomplish this purpose, it was felt by the people who adopted it, that it was necessary that many of the rights of sovereignty which the States then possessed should be ceded to the General Government; and that, in the sphere of action assigned to it, should be supreme, and strong enough to execute its own laws by its own tribunals, without interruption from a State or from State authorities. . . .

The language of the Constitution, by which this power is granted, is too plain to admit of doubt or to need comment. It declares that "this Constitution, and the laws of the United States which shall be passed in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

But the supremacy thus conferred on this Government could not peacefully be maintained, unless it was clothed with judicial power, equally paramount in authority to carry it into execution; for if left to the courts of justice of the several States, conflicting decisions would unavoidably take place, and the local tribunals could hardly be expected to be always free from the local influences of which we have spoken. . . .

Accordingly, it was conferred on the General Government, in clear, precise, and comprehensive terms. It is declared that its judicial power shall (among other subjects enumerated) extend to all cases in law and equity arising under the Constitution and laws of the United States, and that in such cases, as well as the others there enumerated, this court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as Congress shall make. The appellate power, it will be observed, is conferred on this court in all cases or suits in which such a question shall arise. It is not confined to suits in the inferior courts of the United States, but extends to all cases where such a question arises, whether it be in a judicial tribunal of a State or of the United States. And it is manifest that this ultimate appellate power in a tribunal created by the Constitution itself was deemed essential to secure the independence and supremacy of the General Government in the sphere of action assigned to it; to make the Constitution and laws of the United States uniform, and the same in every State. . . .

This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, but also to guard the States from any encroachment

upon their reserved rights by the General Government. And as the Constitution is the fundamental and supreme law, if it appears that an act of Congress is not pursuant to it and within the limits of the power assigned to the Federal Government, it is the duty of the courts of the United States to declare it unconstitutional and void. . . . And as the final appellate power in all such questions is given to this court, controversies as to the respective powers of the United States and the States, instead of being determined by military and physical force are heard, investigated, and finally settled with the calmness and deliberation of judicial inquiry. . . .

. . . No State judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them. And if the authority of a State, in the form of judicial process or otherwise, should attempt to control the marshal or other authorized officer or agent of the United States, in any respect, in the custody of his prisoner, it would be his duty to resist it. . . . No judicial process . . . can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence.

Nor is there anything in this supremacy of the General Government, or the jurisdiction of its judicial tribunals, to awaken the jealousy or offend the natural and just pride of State sovereignty. Neither this Government, nor the powers of which we are speaking, were forced upon the States. The Constitution of the United States, with all the powers conferred by it on the General Government, and surrendered by the States, was the voluntary act of the people of the several States, deliberately done, for their own protection and safety against injustice from one another. . . .

. . . [N]o power is more clearly conferred by the Constitution and laws of the United States, than the power of this court to decide, ultimately and finally, all cases arising under such Constitution and laws; and for that purpose to bring here for revision, by writ of error, the judgment of a State court, where such questions have arisen, and the right claimed under them denied by the highest judicial tribunal in the State. . . .

The judgment of the Supreme Court of Wisconsin must therefore be reversed. . . .

Editors' Notes

(1) **Query:** Granting that the federal supreme court can review federal questions decided by a state supreme court, did Taney give good reasons, textual or other, for concluding that a state supreme court could not review the acts of a federal marshal or a federal district court?

(2) **Query:** Like Story in the previous case, Taney reached a nationalist conclusion in this case – they gave similar answers to the WHO question. But were they together on the WHAT question? Did Taney agree with Story that the Constitution flowed from the will of one great people, as distinguished from a collection of separate political communities?

(3) The Wisconsin legislature adopted a resolution branding the U.S. Supreme Court's

ruling "an act of undelegated power, and therefore without authority, void and of no force"; then repeated some of the language of the Second Kentucky Resolutions of 1799 (reprinted above, p. 354):

> That the government formed by the Constitution of the United States was not made the exclusive or final judge of the extent of the powers delegated to itself; but that as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself as well of infractions as the mode and measure of redress. . . .

Nevertheless, federal officers rearrested Booth in March, 1860, and he again sought habeas corpus from the state supreme court. This time, however, he did not succeed. One judge had to recuse himself because he had been the prisoner's attorney during early stages of the litigation, and the other two judges disagreed with each other about their authority to issue the writ. Booth was locked up in the federal building in Milwaukee. He was something of a popular hero who further embarrassed his jailers by refusing to pay the fine or to ask for a presidential pardon. An abolitionist mob provided the practical solution by freeing him. In 1861, the Wisconsin supreme court ruled that the U.S. district court had had jurisdiction to try Booth. Arnold v. Booth (1861). For details, see Charles Warren, *The Supreme Court in U.S. History*, II, ch. 27; Note, "Interposition vs. Judicial Power," 1 *Race Rels.L.Rep.* 465, 490–496 (1956); and Carl B. Swisher, *The Taney Period, 1836–64*, vol. V of the Holmes Devise (New York: Macmillan, 1974), ch. 26.

(4) Wisconsin's resistance to the Fugitive Slave Act was not an isolated event. At least ten other northern and western states tried to suspend the statute's operation within their borders. See, Note, "Interposition vs. Judicial Power," 1 *Race Rel.L.Rep.* 465, 496 (1956); and Anthony J. Sebok, "Judging the Fugitive Slave Acts," 100 *Yale L.J.* 1835 (1991). For a more general treatment of the moral and constitutional problems of slavery, Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), and Christopher L. M. Eisgruber, "Justice Story, Slavery, and the Natural Law Foundations of American Constitutionalism," 55 *U. Chi. L. Rev.* 273 (1988).