"It is a mistake [to contend], that the constitution was not designed to operate upon states, in their corporate capacities."

Martin v. Hunter's Lessee

14 U.S. (1 Wheat.) 304, 4 L.Ed. 97 (1816).

In 1813 the Supreme Court had reversed a decision of the Virginia Court of Appeals regarding the protection afforded land rights of British citizens by Jay's Treaty (1794). The Virginia Court of Appeals, however, responded by defying the U.S. Supreme Court:

> The court is unanimously of opinion that the appellate power of the Supreme Court of the United States does not extend to this court, under a sound construction of the constitution of the United States; that so much of the 25th section of the act of congress to establish the judicial courts of the United States, as extends the appellate jurisdiction of the supreme court to this court is not in pursuance of the constitution of the United States; that the writ of error, in this cause, was improvidently allowed under the authority of that act; that the proceedings thereon in the supreme court were coram non judice [in the presence of a person not a judge of competent jurisdiction], in relation to this court, and that obedience to its mandate be declined by the court.

Martin, who had won in the U.S. Supreme Court the first time, brought his case back to Washington.

STORY, J., delivered the opinion of the court. . . .

The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by "the People of the United States." There can be no doubt, that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be, that the people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The constitution was not, therefore, necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions, for the powers of the states depend upon their own constitutions. . . . On the other hand, it is perfectly clear, that the sovereign powers vested in the state governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States. These deductions do not rest upon general reasoning, plain and obvious as they seem to be. They have been positively recognised by one of the articles in amendment of the constitution, which declares, that "the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the

states respectively, or to the people."

The government, then, of the United States can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication. On the other hand, this instrument, like every other grant, is to have a reasonable construction, according to the import of its terms; and where a power is expressly given, in general terms, it is not to be restrained to particular cases, unless that construction grow out of the context, expressly, or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.

The constitution unavoidably deals in general language. . . . Hence, its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of its powers, as its own wisdom, and the public interests, should require. . . .

The third article of the constitution is that which must principally attract our attention. The 1st section declares, "the judicial power of the United States shall be vested in one supreme court, and in such other inferior courts as the congress may, from time to time, ordain and establish." The 2d section declares, that "the judicial power shall extend to all cases in law or equity, arising under this constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority. . . ."

Such is the language of the article creating and defining the judicial power of the United States. It is the voice of the whole American people, solemnly declared, in establishing one great department of that government which was, in many respects, national, and in all, supreme. It is a part of the very same instrument which was to act, not merely upon individuals, but upon states; and to deprive them altogether of the exercise of some powers of sovereignty, and to restrain and regulate them in the exercise of others.

Let this article be carefully weighed and considered. The language of the article throughout is manifestly designed to be mandatory upon the legislature. Its obligatory force is so imperative, that congress could not, without a violation of its duty, have refused to carry it into operation. The judicial power of the United States *shall* be vested (not *may* be vested) in one supreme court, and in such inferior courts as congress may, from time to time, ordain and establish. Could congress have lawfully refused to create a supreme court, or to vest in it the constitutional jurisdiction? "The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive, for their services, a compensation which shall not be diminished during their continuance in office." Could congress create or limit any other tenure of the judicial office? Could they refuse to pay, at stated times, the stipulated salary, or diminish it during the continuance in office? But one answer can be given to these questions: it must be in the negative. . . .

The same expression, "shall be vested," occurs in other parts of the constitution, in defining the powers of the other co-ordinate branches of the government. The first article declares that "all legislative powers herein granted shall be vested in a congress of the United

States." Will it be contended that the legislative power is not absolutely vested? . . . The second article declares that "the executive power shall be vested in a president of the United States of America." Could congress vest it in any other person . . .? It is apparent, that such a construction, in either case, would be utterly inadmissible. Why, then, is it entitled to a better support, in reference to the judicial department?

If, then, it is a duty of congress to vest the judicial power of the United States, it is a duty to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. . . .

The next consideration is, as to the courts in which the judicial power shall be vested. It is manifest, that a supreme court must be established; but whether it be equally obligatory to establish inferior courts, is a question of some difficulty. If congress may lawfully omit to establish inferior courts, it might follow, that in some of the enumerated cases, the judicial power could nowhere exist. . . .

This construction will be fortified by an attentive examination of the second section of the third article. The words are "the judicial power shall extend," & c. . . . For the reasons which have been already stated, we are of opinion, that the words are used in an imperative sense; they import an absolute grant of judicial power. . . .

It being, then, established, that the language of this clause is imperative, the question is, as to the cases to which it shall apply. The answer is found in the constitution itself "the judicial power shall extend to all the cases enumerated in the constitution." . . .

This leads us to the consideration of the great question, as to the nature and extent of the appellate jurisdiction of the United States. . . . [A]ppellate jurisdiction is given by the constitution to the supreme court, in all cases where it has not original jurisdiction; subject, however, to such exceptions and regulations as congress may prescribe. It is, therefore, capable of embracing every case enumerated in the constitution, which is not exclusively to be decided by way of original jurisdiction. . . . The appellate power is not limited by the terms of the third article to any particular courts. The words are, "the judicial power (which includes appellate power) shall extend to all cases," & c., and "in all other cases before mentioned the supreme court shall have appellate jurisdiction." It is the case, then, and not the court, that gives the jurisdiction. If the judicial power extends to the case, it will be in vain to search in the letter of the constitution for any qualification as to the tribunal where it depends. It is incumbent, then, upon those who assert such a qualification, to show its existence, by necessary implication. If the text be clear and distinct, no restriction upon its plain and obvious import ought to be admitted, unless the inference be irresistible.

If the constitution meant to limit the appellate jurisdiction to cases pending in the courts of the United States, it would necessarily follow, that the jurisdiction of these courts would, in all the cases enumerated in the constitution, be exclusive of state tribunals. . . .

But it is plain, that the framers of the constitution did contemplate that cases within the judicial cognisance of the United States, not only might, but would, arise in the state courts, in

the exercise of their ordinary jurisdiction. With this view, the sixth article declares, that "this constitution, and the laws of the United States which shall be made 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." It is obvious, that this obligation is imperative upon the state judges, in their official, and not merely in their private, capacities. . . . They were not to decide merely according to the laws or constitution of the state, but according to the constitution, laws and treaties of the United States—"the supreme law of the land." . . .

It must, therefore, be conceded, that the constitution not only contemplated, but meant to provide for cases within the scope of the judicial power of the United States, which might yet depend before state tribunals.

It has been argued, that such an appellate jurisdiction over state courts is inconsistent with the genius of our governments, and the spirit of the constitution. That the latter was never designed to act upon state sovereignties. . . . We cannot yield to the force of this reasoning; it assumes principles which we cannot admit, and draws conclusions to which we do not yield our assent.

It is a mistake, that the constitution was not designed to operate upon states, in their corporate capacities. It is crowded with provisions which restrain or annul the sovereignty of the states, in some of the highest branches of their prerogatives. The tenth section of the first article contains a long list of disabilities and prohibitions imposed upon the states. Surely, when such essential portions of state sovereignty are taken away, or prohibited to be exercised, it cannot be correctly asserted, that the constitution does not act upon the states. The language of the constitution is also imperative upon the states, as to the performance of many duties. It is imperative upon the state legislatures, to make laws prescribing the time, places and manner of holding elections for senators and representatives, and for electors of president and vice-president. And in these, as well as some other cases, congress have a right to revise, amend or supersede the laws which may be passed by state legislatures. When, therefore, the states are stripped of some of the highest attributes of sovereignty, and the same are given to the United States; when the legislatures of the states are, in some respects, under the control of congress, and in every case are, under the constitution, bound by the paramount authority of the United States; it is certainly difficult to support the argument, that the appellate power over the decisions of state courts is contrary to the genius of our institutions. . . .

Nor can such a right be deemed to impair the independence of state judges. It is assuming the very ground in controversy, to assert that they possess an absolute independence of the United States. In respect to the powers granted to the United States, they are not independent; they are expressly bound to obedience, by the letter of the constitution; and if they should unintentionally transcend their authority, or misconstrue the constitution, there is no more reason for giving their judgments an absolute and irresistible force, than for giving it to the acts of the other co-ordinate departments of state sovereignty. . . .

This is not all. A motive of another kind, perfectly compatible with the most sincere

respect for state tribunals, might induce the grant of appellate power over the decisions. That motive is the importance, and even necessity of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the constitution. Judges of equal learning and integrity, in different states, might differently interpret the statute, or a treaty of the United States, or even the constitution itself: if there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties and the constitution of the United States would be different, in different states, and might, perhaps, never have precisely the same construction, obligation or efficiency, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable. . . .

On the whole, the court are of opinion, that the appellate power of the United States does extend to cases pending in the state courts; and that the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases, by a writ of error, is supported by the letter and spirit of the constitution. We find no clause in that instrument which limits this power; and we dare not interpose a limitation, where the people have not been disposed to create one. . . .

It is the opinion of the whole court, that the judgment of the court of appeals of Virginia, rendered on the mandate in this cause, be reversed, and the judgment of the district court, held at Winchester, be, and the same is hereby

Affirmed.

JOHNSON, J. . . . I acquiesce in their opinion, but not altogether in the reasoning or opinion of my brother who delivered it. . . .

Editors' Notes

(1) *Hunter's Lessee* is one of the few constitutional disputes for which John Marshall did not assign himself the task of writing the opinion of the Court. In this instance, he did not sit because he had become involved in the land speculation that revolved around the ownership of property, once possessed by Loyalists during the Revolutionary War, whose title was at issue in this case. But Marshall was not as pure as his formal recusal indicates. He worked behind the scene to perfect Martin's appeal and to "assist" his brethren in reaching the "correct" decision. For details, see: G. Edward White, *The Marshall Court and Cultural Change, 1815–35*, vols. III–IV of The Oliver Wendell Holmes Devise, *History of the Supreme Court of the United States* (Paul A. Freund and Stanley N. Katz, eds.) (New York: Macmillan, 1988), pp. 165–173. The critical general issues of federalism might have provided the Chief Justice a rationalization for his informal participation. But Marshall's (and perhaps most judges') sense of propriety was different from that of our time. For instance: He apparently did not find it troublesome to sit in Marbury v. Madison (1803; reprinted above, p. ____), where he himself and his brother had been significant actors in precipitating the dispute.

(2) To avoid further conflict with Virginia's Court of Appeals, the Supreme Court sent its order directly to the state trial court in Winchester.

(3) Virginia's attack on § 25 was only one among many. See the two-part article by Charles Warren, "Legislative and Judicial Attacks on the Supreme Court of the United States—A History of the Twenty–Fifth Section of the Judiciary Act," 47 *Am.L.Rev.* 1; 47 *ibid*. 161 (1913).

(4) **Query:** Story asserted that Congress was constitutionally obligated to create an entire system of federal courts. Does that conclusion follow from the plain words of Article III? Does it follow from the nature of federalism? See the discussion in Chapter 11, below. Canada and the Federal Republic of Germany, both federal systems, have depended primarily on the equivalent of state courts for the bulk of national civil and criminal jurisdiction. And it was not until after the Civil War that Congress conferred on federal courts anything approaching the full jurisdiction listed in Article III, and more recently—in the Emergency Price Control Act of 1942, for example—has specifically authorized enforcement of federal law, at least in civil cases, in state tribunals. See the discussion in *Hart and Wechsler's The Federal Courts and the Federal System* (4th ed.; Foundation Press, 1996); and Henry J. Friendly, *Federal Jurisdiction* (New York: Columbia University Press, 1973), pp. 1–14.