

## **How do we tell the difference between a question of law that the Court should handle and a “political question” that it should not?**

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The political question doctrine delineates which questions should be decided by the executive or legislative branch of government and not the judicial branch. The cases on this issue have all sought to only rule on the following of state action by the letter of the constitution. If the question is if the action is in adherence to the Constitution, then it is a question of law, and thus a judicial question. If the question presented by a case is a decision given to the executive or legislative branch by the Constitution, then it is a political question.

The proper separation of powers is to limit the powers of each branch from interfering with the powers of another. Chief Justice John Marshall first argued the limitation of the Supreme Court’s powers into the function of the executive branch in his opinion for *Marbury v. Madison*. In his writing he is very plain in this limitation as he says, “The province of this court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made by this court.” William Marbury was asking the court to issue a writ of mandamus forcing an officer of the executive branch, the Secretary of State, to issue Marbury’s judicial commission. Marbury had been confirmed by the previous controlling party. However, before the commission was issued, a different party came in control of the executive branch. The new Secretary of State was performing his duties as prescribed by the constitution. His obligation to issue the commission was a power granted the executive branch by the constitution. It therefore was a political question and not a judicial question. This set the issue outside Chief Justice Marshall’s boundary for the jurisdiction of the judiciary branch. As long as a coordinate branch is acting according to the powers submitted to it by the constitution, the court has no power of review over how that branch carries out its business.

The court’s relationship to coordinate political departments and specifically the legislative branch was further reviewed in *Baker v. Carr*. The state of Tennessee failed to reapportion the state legislative districts long past it was needed to maintain equal weight of votes. The political issue of reapportionment is the responsibility of the legislative branch. Justice Brennan reiterated the requirement for the courts to stay out when there is a function of the separation of powers. However, he continued to state that beyond, “any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department.”, then the court should not dismiss for nonjusticiability. The court concluded that the complaint’s allegations of a denial of equal protection presented a justiciable constitutional cause of action. The political question was difficult to discern from the question of individual rights. The legislative branch is given the power to apportion districts for elections, creating a political question. The risk of appearing to be meddling in the political functions of a legislative branch was apparent. However, the fundamental purpose of the

Supreme Court to decide on the rights given to individuals by the constitution took greater importance. In this case the politics had violated the law of the Constitution and allowed for action by the Supreme Court. The question of constitutional law overpowered the political question involved.

The question of the Supreme Court's power and the distinction between a political question and one of law is again tested in *Powell v. McCormack*. Chief Justice Warren cites *Baker v. Carr* in his opinion on the justiciability of the case. He uses the key phrase "textually demonstrable constitutional commitment of the issue to a coordinate political department". The House had voted to exclude Adam Clayton Powell, who had been duly elected from his Congressional district. The House of Representatives were against him being seated because of unethical use of congressional funds. The Constitution gives the power of a house of Congress to exclude someone from membership only if they don't meet the listed requirements in Article 1, § 2, clause 2. The House instead tried to exclude him for his unethical activities, which was improper procedure by the Constitution. In the fact that this was the activity of the legislative branch, it could have been a political question. Since it was a matter of the adherence of the legislative branch to the proper execution of the powers by the letter of the Constitution, the action taken was found to be a judicial question.

Walter L. Nixon, Jr. tried to use this same argument to allow the courts to review the House of Representatives' decision to impeach him from his judgeship in a United States District Court. Chief Justice Rehnquist concluded that the difference between *Powell v. McCormack* and this case was in the exercise of the House's power granted it by the constitution. In *Powell v. McCormack* the question wasn't if the House had the ability to exclude someone from being seated, but if they could decide what the qualifications were. Article 1, § 2, clause 2 of the constitution listed the qualifications and so by the text of the constitution only gave the House the power to exclude on those qualifications. The impeachment clause, Article 1, § 3, clause 6, that Nixon was claiming was breached by the House, doesn't enumerate the means by which the House has the power to impeach. The realm of the Supreme Court's jurisdiction stops at the text of the constitution.

These cases all are working out where the line is drawn for what is justiciable and what is a political question. The constitution gives powers that are political in nature to the executive and legislative branches. It explicitly says what powers belong to the executive and judicial branches, although it doesn't always say how those powers are to be executed. The Supreme Court has defined its power over the other branches of government to be limited to the enforcement of the limitations put on those branches by the text of the constitution. How the other branches go about exercising those powers is a political matter and thus beyond the reach of the Supreme Court. Simply put, the political question doctrine is that the powers granted to the executive and legislative branches by the Constitution are theirs to carry out.

## Bibliography

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