United States Supreme Court

BAKER v. CARR(1962)

BACKGROUND: The twentieth century was an era of urbanization. Populations moved from rural farm-based economies to jobs in ever-growing cities. One result was that some electoral districts had small populations while others had massive populations. Yet each district had one representative, no matter how many voters resided therein.

As population shifts from rural to urban areas occurred, some states redrew their congressional district lines. Many, however, did not, leaving huge disparities in population between districts. Reform groups representing urban voters began to bring litigation to force legislatures to reapportion. In one of the most important of these efforts, Colegrove v. Green (1946), they did so under Article IV of the Constitution, aka the Guarantee Clause: "The United States shall guarantee to every State in the Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature or of the Executive (when the Legislature cannot be convened) against Domestic violence." They argued that failure to reapportion legislative districts deprived some voters of their right to a republican form of government and demonstrated that, because Illinois had not redistricted since 1901, citizens in some rural districts had, in effect, nine times the voting power of their cousins in the cities.

The justices could not agree on a majority opinion, but the vote was 4-3 against Colegrove's claim. Justice Felix Frankfurter, writing for three of the justices, invoked the logic of Luther v. Borden to argue that the Constitution left open the question of legislative reapportionment within states. If the Court intervened in this matter, he asserted, it would be acting in a way "hostile to a democratic system." Reapportionment constituted a "political thicket" into which "courts ought not enter."

As a result of Colegrove, states that had not reapportioned since the turn of the century were under no federal constitutional mandate to do so, and disparities between the voting power of urban and rural citizens continued to grow. Naturally, many citizens and organizations wanted to force legislatures to reapportion, but under Colegrove they could not do so using the guarantee clause. They looked, therefore, to another section of the constitutional document, the Fourteenth Amendment's equal protection clause, which says that no state shall "deny to any person within its jurisdiction the equal protection of the laws." They argued that the failure to reapportion led to unequal treatment of voters.

"In 1960, roughly two-thirds of Tennessee's representatives were being elected by one-third of the state's population." This led to litigation about Tennessee's General Assembly. In theory under the state constitution, redistricting was to be organized by the legislature every 10 years. In fact no redistricting had happened since 1901.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

....We hold that the District Court has jurisdiction of the subject matter of the federal constitutional claim asserted in the complaint.

III.

STANDING.

A federal court cannot "pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies." Liverpool Steamship Co. v. Commissioners of Emigration, 113 U.S. 33, 39 . Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, a question of federal law.

The complaint was filed by residents of Davidson, Hamilton, Knox, Montgomery, and Shelby Counties. Each is a person allegedly qualified to vote for members of the General Assembly representing his county. 23 These appellants sued "on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who [369 U.S. 186, 205] are similarly situated . . . ." 24 The appellees are the Tennessee Secretary of State, Attorney General, Coordinator of Elections, and members of the State Board of Elections; the members of the State Board are sued in their own right and also as representatives of the County Election Commissioners whom they appoint. 25 [369 U.S. 186, 206]

We hold that the appellants do have standing to maintain this suit. Our decisions plainly support this conclusion. Many of the cases have assumed rather than articulated the premise in deciding the merits of similar claims. 26 And Colegrove v. Green, supra, squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue. 27 A number [369 U.S. 186, 207] of cases decided after Colegrove recognized the standing of the voters there involved to bring those actions. 28

These appellants seek relief in order to protect or vindicate an interest of their own, and of those similarly situated. Their constitutional claim is, in substance, that the 1901 statute constitutes arbitrary and capricious state action, offensive to the Fourteenth Amendment in its irrational disregard of the standard of apportionment prescribed by the State's Constitution or of any standard, effecting a gross disproportion of representation to voting population. The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-a-vis voters [369 U.S. 186, 208] in irrationally favored counties. A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, cf. United States v. Classic, 313 U.S. 299 ; or by a refusal to count votes from arbitrarily selected precincts, cf. United States v. Mosley, 238 U.S. 383 , or by a stuffing of the ballot box, cf. Ex parte Siebold, 100 U.S. 371 ; United States v. Saylor, 322 U.S. 385 .

It would not be necessary to decide whether appellants' allegations of impairment of their votes by the 1901 apportionment will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it. If such impairment does produce a legally cognizable injury, they are among those who have sustained it. They are asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes," Coleman v. Miller, 307 U.S., at 438 , not merely a claim of "the right, possessed by every citizen, to require that the Government be administered according to law . . . ." Fairchild v. Hughes, 258 U.S. 126, 129 ; compare Leser v. Garnett, 258 U.S. 130 . They are entitled to a hearing and to the District Court's decision on their claims. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163.

IV. JUSTICIABILITY.

In holding that the subject matter of this suit was not justiciable, the District Court relied on Colegrove v. Green, supra, and subsequent per curiam cases. 29 The [369 U.S. 186, 209] court stated: "From a review of these decisions there can be no doubt that the federal rule . . . is that the federal courts . . . will not intervene in cases of this type to compel legislative reapportionment." 179 F. Supp., at 826. We understand the District Court to have read the cited cases as compelling the conclusion that since the appellants sought to have a legislative apportionment held unconstitutional, their suit presented a "political question" and was therefore nonjusticiable. We hold that this challenge to an apportionment presents no nonjusticiable "political question." The cited cases do not hold the contrary.

Of course the mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection "is little more than a play upon words." Nixon v. Herndon, 273 U.S. 536, 540 . Rather, it is argued that apportionment cases, whatever the actual wording of the complaint, can involve no federal constitutional right except one resting on the guaranty of a republican form of government, 30 and that complaints based on that clause have been held to present political questions which are nonjusticiable.

We hold that the claim pleaded here neither rests upon nor implicates the Guaranty Clause and that its justiciability is therefore not foreclosed by our decisions of cases involving that clause. The District Court misinterpreted Colegrove v. Green and other decisions of this Court on which it relied. Appellants' claim that they are being denied equal protection is justiciable, and if [369 U.S. 186, 210] "discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights." Snowden v. Hughes, 321 U.S. 1, 11 . To show why we reject the argument based on the Guaranty Clause, we must examine the authorities under it. But because there appears to be some uncertainty as to why those cases did present political questions, and specifically as to whether this apportionment case is like those cases, we deem it necessary first to consider the contours of the "political question" doctrine.

Our discussion, even at the price of extending this opinion, requires review of a number of political question cases, in order to expose the attributes of the doctrine - attributes which, in various settings, diverge, combine, appear, and disappear in seeming disorderliness. Since that review is undertaken solely to demonstrate that neither singly nor collectively do these cases support a conclusion that this apportionment case is nonjusticiable, we of course do not explore their implications in other contexts. That review reveals that in the Guaranty Clause cases and in the other "political question" cases, it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the "political question."

We have said that "In determining whether a question falls within [the political question] category, the approriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." Coleman v. Miller, 307 U.S. 433, 454 -455. The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for [369 U.S. 186, 211] case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution. To demonstrate this requires no less than to analyze representative cases and to infer from them

the analytical threads that make up the political question doctrine. We shall then show that none of those threads catches this case.

Foreign relations: There are sweeping statements to the effect that all questions touching foreign relations are political questions. 31 Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; 32 but many such questions uniquely demand single-voiced statement of the Government's views. 33 Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences [369 U.S. 186, 212] of judicial action. For example, though a court will not ordinarily inquire whether a treaty has been terminated, since on that question "governmental action . . . must be regarded as of controlling importance," if there has been no conclusive "governmental action" then a court can construe a treaty and may find it provides the answer. Compare Terlinden v. Ames, 184 U.S. 270, 285 , with Society for the Propagation of the Gospel in Foreign Parts v. New Haven, 8 Wheat. 464, 492-495. 34 Though a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute, no similar hesitancy obtains if the asserted clash is with state law. Compare Whitney v. Robertson; 124 U.S. 190 , with Kolovrat v. Oregon, 366 U.S. 187 .

While recognition of foreign governments so strongly defies judicial treatment that without executive recognition a foreign state has been called "a republic of whose existence we know nothing," 35 and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory, 36 once sovereignty over an area is politically determined and declared, courts may examine the resulting status and decide independently whether a statute applies to that area. 37 Similarly, recognition of belligerency abroad is an executive responsibility, but if the executive proclamations fall short of an explicit answer, a court may construe them seeking, for example, to determine whether the situation is such that statutes designed to assure American neutrality have [369 U.S. 186, 213] become operative. The Three Friends, 166 U.S. 1, 63 , 66. Still again, though it is the executive that determines a person's status as representative of a foreign government, Ex parte Hitz, 111 U.S. 766 , the executive's statements will be construed where necessary to determine the court's jurisdiction, In re Baiz, 135 U.S. 403 . Similar judicial action in the absence of a recognizedly authoritative executive declaration occurs in cases involving the immunity from seizure of vessels owned by friendly foreign governments. Compare Ex parte Peru, 318 U.S. 578 , with Mexico v. Hoffman, 324 U.S. 30, 34 -35.

Dates of duration of hostilities: Though it has been stated broadly that "the power which declared the necessity is the power to declare its cessation, and what the cessation requires," Commercial Trust Co. v. Miller, 262 U.S. 51, 57 , here too analysis reveals isolable reasons for the presence of political questions, underlying this Court's refusal to review the political departments' determination of when or whether a war has ended. Dominant is the need for finality in the political determination, for emergency's nature demands "A prompt and unhesitating obedience," Martin v. Mott, 12 Wheat. 19, 30 (calling up of militia). Moreover, "the cessation of hostilities does not necessarily end the war power. It was stated in Hamilton v. Kentucky Distilleries & W. Co., 251 U.S. 146, 161 , that the war power includes the power `to remedy the evils which have arisen from its rise and progress' and continues during that emergency. Stewart v. Kahn, 11 Wall. 493, 507." Fleming v. Mohawk Wrecking Co., 331 U.S. 111, 116 . But deference rests on reason, not habit. 38 The question in a particular case may not

seriously implicate considerations of finality - e. g., a public program of importance [369 U.S. 186, 214] (rent control) yet not central to the emergency effort. 39 Further, clearly definable criteria for decision may be available. In such case the political question barrier falls away: "[A] Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. . . . [It can] inquire whether the exigency still existed upon which the continued operation of the law depended." Chastleton Corp. v. Sinclair, 264 U.S. 543, 547 -548. 40 Compare Woods v. Miller Co., 333 U.S. 138 . On the other hand, even in private litigation which directly implicates no feature of separation of powers, lack of judicially discoverable standards and the drive for even-handed application may impel reference to the political departments' determination of dates of hostilities' beginning and ending. The Protector, 12 Wall. 700.

Validity of enactments: In Coleman v. Miller, supra, this Court held that the questions of how long a proposed amendment to the Federal Constitution remained open to ratification, and what effect a prior rejection had on a subsequent ratification, were committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial grasp. 41 Similar considerations apply to the enacting process: "The respect due to coequal and independent departments," and the need for finality and certainty about the status of a statute contribute to judicial reluctance to inquire whether, as passed, it complied with all requisite formalities. Field v. Clark, 143 U.S. 649, 672 , 676-677; see Leser v. Garnett, 258 U.S. 130, 137 . But it is not true that courts will never delve [369 U.S. 186, 215] into a legislature's records upon such a quest: If the enrolled statute lacks an effective date, a court will not hesitate to seek it in the legislative journals in order to preserve the enactment. Gardner v. The Collector, 6 Wall. 499. The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder.

The status of Indian tribes: This Court's deference to the political departments in determining whether Indians are recognized as a tribe, while it reflects familiar attributes of political questions, 42 United States v. Holliday, 3 Wall. 407, 419, also has a unique element in that "the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else. . . . [The Indians are] domestic dependent nations . . . in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian." The Cherokee Nation v. Georgia, 5 Pet. 1, 16, 17. 43 Yet, here too, there is no blanket rule. While [369 U.S. 186, 216] "`It is for [Congress] . . ., and not for the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage' . . ., it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe . . . ." United States v. Sandoval, 231 U.S. 28, 46 . Able to discern what is "distinctly Indian," ibid., the courts will strike down [369 U.S. 186, 217] any heedless extension of that label. They will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power.

It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision

already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence. The doctrine of which we treat is one of "political questions," not one of "political cases." The courts cannot reject as "no law suit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority. The cases we have reviewed show the necessity for discriminating inquiry into the precise facts and posture of the particular case, and the impossibility of resolution by any semantic cataloguing.

But it is argued that this case shares the characteristics of decisions that constitute a category not yet considered, cases concerning the Constitution's guaranty, in Art. IV, [369 U.S. 186, 218] 4, of a republican form of government. A conclusion as to whether the case at bar does present a political question cannot be confidently reached until we have considered those cases with special care. We shall discover that Guaranty Clause claims involve those elements which define a "political question," and for that reason and no other, they are nonjusticiable. In particular, we shall discover that the nonjusticiability of such claims has nothing to do with their touching upon matters of state governmental organization.

Republican form of government: Luther v. Borden, ... The case arose "out of the unfortunate political differences which agitated the people of Rhode Island in 1841 and 1842," 7 How., at 34, and which had resulted in a situation wherein two groups laid competing claims to recognition as the lawful government. 45 The plaintiff's right to [369 U.S. 186, 219] recover depended upon which of the two groups was entitled to such recognition; but the lower court's refusal to receive evidence or hear argument on that issue, its charge to the jury that the earlier established or "charter" government was lawful, and the verdict for the defendants, were affirmed upon appeal to this Court. ....

Clearly, several factors were thought by the Court in Luther to make the question there "political": the commitment to the other branches of the decision as to which is the lawful state government; the unambiguous action by the President, in recognizing the charter government as the lawful authority; the need for finality in the executive's decision; and the lack of criteria by which a court could determine which form of government was republican. 48 [369 U.S. 186, 223]

But the only significance that Luther could have for our immediate purposes is in its holding that the Guaranty Clause is not a repository of judicially manageable standards which a court could utilize independently in order to identify a State's lawful government. The Court has since refused to resort to the Guaranty Clause - which alone had been invoked for the purpose - as the source of a constitutional standard for invalidating state action. ....

Just as the Court has consistently held that a challenge to state action based on the Guaranty Clause presents no justiciable question so has it held, and for the same reasons, that challenges to congressional action on the ground of inconsistency with that clause present no justiciable question. ....

In only a few other cases has the Court considered Art. IV, 4, in relation to congressional action. It has refused to pass on a claim relying on the Guaranty Clause to establish that Congress lacked power to allow the States to employ the referendum in passing on legislation redistricting for congressional seats. Ohio ex rel. Davis v. Hildebrant, supra. And it has pointed out that

Congress is not required to establish republican government in the territories before they become States, and before they have attained a sufficient population to warrant a [369 U.S. 186, 226] popularly elected legislature. Downes v. Bidwell, 182 U.S. 244, 278 -279 (dictum). 53

We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home 54 if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action. ....

We conclude then that the nonjusticiability of claims resting on the Guaranty Clause which arises from their embodiment of questions that were thought "political," can have no bearing upon the justiciability of the equal protection claim presented in this case. ....

We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

The judgment of the District Court is reversed and the cause is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE HARLAN joins, dissenting.

The present case involves all of the elements that have made the Guarantee Clause cases non-justiciable. It is, in effect, a Guarantee Clause claim masquerading under a different label. But it cannot make the case more fit for judicial action that appellants invoke the Fourteenth Amendment rather than Art. IV, 4, where, in fact, the gist of their complaint is the same - unless it can be found that the Fourteenth Amendment speaks with greater particularity to their situation. We have been admonished to avoid "the tyranny of labels." Snyder v. Massachusetts, 291 U.S. 97, 114 . Art. IV, 4, is not committed by express constitutional terms to Congress. It is the nature of the controversies arising under it, nothing else, which has made it judicially unenforceable. Of course, if a controversy falls within judicial power, it depends "on how he [the plaintiff] casts his action," Pan American Petroleum Corp. v. Superior Court, 366 U.S. 656, 662 , whether he brings himself within a jurisdictional statute. But where judicial competence is wanting, it cannot be created by invoking one clause of the Constitution rather than another.