

# Baker vs Carr (1962)

## U.S. Supreme Court

**Baker v. Carr, 369 U.S. 186 (1962)**

**Baker v. Carr**

**No. 6**

**Argued April 19-20, 1961**

**Set for reargument May 1, 1961**

**Reargued October 9, 1961**

**Decided March 26, 1962**

**369 U.S. 186**

*APPEAL FROM THE UNITED STATES DISTRICT COURT*

*FOR THE MIDDLE DISTRICT OF TENNESSEE*

*Syllabus*

Appellants are persons allegedly qualified to vote for members of the General Assembly of Tennessee representing the counties in which they reside. They brought suit in a Federal District Court in Tennessee under 42 U.S.C. §§ 1983 and 1988, on behalf of themselves and others similarly situated, to redress the alleged deprivation of their federal constitutional rights by legislation classifying voters with respect to representation in the General Assembly. They alleged that, by means of a 1901 statute of Tennessee arbitrarily and capriciously apportioning the seats in the General Assembly among the State's 95 counties, and a failure to reapportion them subsequently notwithstanding substantial growth and redistribution of the State's population, they suffer a "debasement of their votes," and were thereby denied the equal protection of the laws guaranteed them by the Fourteenth Amendment. They sought,

*inter alia,*

a declaratory judgment that the 1901 statute is unconstitutional and an injunction restraining certain state officers from conducting any further elections under it.

The District Court dismissed the complaint on the grounds that it lacked jurisdiction of the subject matter and that no claim was stated upon which relief could be granted.

*Held:*

1. The District Court had jurisdiction of the subject matter of the federal constitutional claim asserted in the complaint. Pp.

369 U. S. 198

- 204.

2. Appellants had standing to maintain this suit. Pp.

369 U. S. 204

- 208.

3. The complaint's allegations of a denial of equal protection presented a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. Pp.

369 U. S. 208

- 37.

179 F. Supp. 824

, reversed and cause remanded

Page 369 U. S. 187

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This civil action was brought under 42 U.S.C. §§ 1983 and 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that, by means of a 1901 statute of Tennessee apportioning the members of the General Assembly among the State's 95 counties, [

Footnote 1

] "these plaintiffs and others similarly situated,

Page 369 U. S. 188

are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement

of their votes," was dismissed by a three-judge court convened under 28 U.S.C. § 2281 in the Middle District of Tennessee. [

Footnote 2

] The court held that it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted.

179 F. Supp. 824

. We noted probable jurisdiction of the appeal. 364 U.S. 898. [

Footnote 3

] We hold that the dismissal was error, and remand the cause to the District Court for trial and further proceedings consistent with this opinion.

The General Assembly of Tennessee consists of the Senate, with 33 members, and the House of Representatives, with 99 members. The Tennessee Constitution provides in Art. II as follows:

"Sec. 3. Legislative authority -- Term of office. -- The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people; who shall hold their offices for two years from the day of the general election."

"Sec. 4. Census. -- An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one and within every subsequent term of ten years."

"Sec. 5. Apportionment of representatives. -- The number of Representatives shall, at the several

Page 369 U. S. 189

periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed seventy-five; until the population of the State shall be one million and a half, and shall never exceed ninety-nine;

*Provided,*

that any county having two-thirds of the ratio shall be entitled to one member."

"Sec. 6. Apportionment of senators. -- The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties in the apportionment of members to the House of Representatives shall be made up to such county or counties in the Senate, as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining, and no county shall be divided in forming a district."

Thus, Tennessee's standard for allocating legislative representation among her counties is the total number of qualified voters resident in the respective counties, subject only to minor qualifications. [

Footnote 4

] Decennial reapportionment

Page 369 U. S. 190

in compliance with the constitutional scheme was effected by the General Assembly each decade from 1871 to 1901. The 1871 apportionment [

Footnote 5

] was preceded by an 1870 statute requiring an enumeration. [

Footnote 6

] The 1881 apportionment involved three statutes, the first authorizing an enumeration, the second enlarging the Senate from 25 to

Page 369 U. S. 191

33 members and the House from 75 to 99 members, and the third apportioning the membership of both Houses. [

Footnote 7

] In 1891, there were both an enumeration and an apportionment. [

Footnote 8

] In 1901, the General Assembly abandoned separate enumeration in favor of reliance upon the Federal Census, and passed the Apportionment Act here in controversy. [

Footnote 9

] In the more than 60 years since that action, all proposals in both Houses of the General Assembly for reapportionment have failed to pass. [

Footnote 10

]

Page 369 U. S. 192

Between 1901 and 1961, Tennessee has experienced substantial growth and redistribution of her population. In 1901, the population was 2,020,616, of whom 487,380 were eligible to vote. [

Footnote 11

] The 1960 Federal Census reports the State's population at 3,567,089, of whom 2,092,891 are eligible to vote. [

Footnote 12

] The relative standings of the counties in terms of qualified voters have changed significantly. It is primarily the continued application of the 1901 Apportionment Act to this shifted and enlarged voting population which gives rise to the present controversy.

Indeed, the complaint alleges that the 1901 statute, even as of the time of its passage,

"made no apportionment of Representatives and Senators in accordance with the constitutional formula . . . , but instead arbitrarily and capriciously apportioned representatives in the Senate and House without reference . . . to any logical or reasonable formula whatever. [

Footnote 13

]"

It is further alleged

Page 369 U. S. 193

that, "because of the population changes since 1900, and the failure of the Legislature to reapportion itself since 1901," the 1901 statute became "unconstitutional and obsolete." Appellants also argue that, because of the

composition of the legislature effected by the 1901 Apportionment Act, redress in the form of a state constitutional amendment to change the entire mechanism for reapportioning, or any other change short of that, is difficult or impossible. [

Footnote 14

] The complaint concludes that

"these plaintiffs

Page 369 U. S. 194

and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes. [

Footnote 15

]"

They seek a

Page 369 U. S. 195

declaration that the 1901 statute is unconstitutional and an injunction restraining the appellees from acting to conduct any further elections under it. They also pray that, unless and until the General Assembly enacts a valid reapportionment, the District Court should either decree a reapportionment by mathematical application of the Tennessee constitutional formulae to the most recent Federal Census figures, or direct the appellees to conduct legislative elections, primary and general, at large. They also pray for such other and further relief as may be appropriate.

I

*THE DISTRICT COURT'S OPINION AND ORDER OF DISMISSAL*

Because we deal with this case on appeal from an order of dismissal granted on appellees' motions, precise identification

Page 369 U. S. 196

of the issues presently confronting us demands clear exposition of the grounds upon which the District Court rested in dismissing the case. The dismissal order recited that the court sustained the appellees' grounds "(1) that the Court lacks

jurisdiction of the subject matter, and (2) that the complaint fails to state a claim upon which relief can be granted. . . ."

In the setting of a case such as this, the recited grounds embrace two possible reasons for dismissal:

*First:*

That the facts and injury alleged, the legal bases invoked as creating the rights and duties relied upon, and the relief sought, fail to come within that language of Article III of the Constitution and of the jurisdictional statutes which define those matters concerning which United States District Courts are empowered to act;

*Second:*

That, although the matter is cognizable and facts are alleged which establish infringement of appellants' rights as a result of state legislative action departing from a federal constitutional standard, the court will not proceed because the matter is considered unsuited to judicial inquiry or adjustment.

We treat the first ground of dismissal as "lack of jurisdiction of the subject matter." The second we consider to result in a failure to state a justiciable cause of action.

The District Court's dismissal order recited that it was issued in conformity with the court's per curiam opinion. The opinion reveals that the court rested its dismissal upon lack of subject matter jurisdiction and lack of a justiciable cause of action without attempting to distinguish between these grounds. After noting that the plaintiffs challenged the existing legislative apportionment in Tennessee under the Due Process and Equal Protection Clauses, and summarizing the supporting allegations and the relief requested, the court stated that

"The action is presently before the Court upon the defendants' motion to dismiss predicated upon three

Page 369 U. S. 197

grounds: first, that the Court lacks jurisdiction of the subject matter; second, that the complaints fail to state a claim upon which relief can be granted, and third, that indispensable party defendants are not before the Court."

179 F. Supp. at 826.

The court proceeded to explain its action as turning on the case's presenting a "question of the distribution of political strength for legislative purposes." For,

"From a review of [numerous Supreme Court] . . . decisions, there can be no doubt that the federal rule, as enunciated and applied by the Supreme Court, is that the federal courts, whether from a lack of jurisdiction or from the inappropriateness of the subject matter for judicial consideration, will not intervene in cases of this type to compel legislative reapportionment."

179 F. Supp. at 826. The court went on to express doubts as to the feasibility of the various possible remedies sought by the plaintiffs. 179 F. Supp. at 827-828. Then it made clear that its dismissal reflected a view not of doubt that violation of constitutional rights was alleged, but of a court's impotence to correct that violation:

"With the plaintiffs' argument that the legislature of Tennessee is guilty of a clear violation of the state constitution and of the rights of the plaintiffs the Court entirely agrees. It also agrees that the evil is a serious one which should be corrected without further delay. But even so, the remedy in this situation clearly does not lie with the courts. It has long been recognized and is accepted doctrine that there are indeed some rights guaranteed by the Constitution for the violation of which the courts cannot give redress."

179 F. Supp. at 828.

In light of the District Court's treatment of the case, we hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of

Page 369 U. S. 198

action is stated upon which appellants would be entitled to appropriate relief, and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the Tennessee apportionment statutes. [

#### Footnote 16

] Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial.

## **II**

### *JURISDICTION OF THE SUBJECT MATTER*



The District Court was uncertain whether our cases withholding federal judicial relief rested upon a lack of federal jurisdiction or upon the inappropriateness of the subject matter for judicial consideration -- what we have designated "nonjusticiability." The distinction between the two grounds is significant. In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded. In the instance of lack of jurisdiction, the cause either does not "arise under" the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Art. III, § 2); or is not a "case or controversy" within the meaning of that section; or the cause is not one described by any jurisdictional statute. Our conclusion,

*see*

pp.

369 U. S. 208

- 237

*infra*,

that this cause presents no nonjusticiable "political question" settles the only possible doubt that it is a case or controversy. Under the present heading of "Jurisdiction

Page 369 U. S. 199

of the Subject Matter," we hold only that the matter set forth in the complaint does arise under the Constitution, and is within 28 U.S.C. § 1343.

Article III, 2, of the Federal Constitution provides that

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . . ."

It is clear that the cause of action is one which "arises under" the Federal Constitution. The complaint alleges that the 1901 statute effects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment. Dismissal of the complaint upon the ground of lack of

jurisdiction of the subject matter would, therefore, be justified only if that claim were "so attenuated and unsubstantial as to be absolutely devoid of merit,"

*Newburyport Water Co. v. Newburyport,*

193 U. S. 561

,

193 U. S. 579

, or "frivolous,"

*Bell v. Hood,*

327 U. S. 678

,

327 U. S. 683

. [

Footnote 17

] That the claim is unsubstantial must be "very plain."

*Hart v. Keith Vaudeville Exchange,*

262 U. S. 271

,

262 U. S. 274

. Since the District Court obviously and correctly did not deem the asserted federal constitutional claim unsubstantial and frivolous, it should not have dismissed the complaint for want of jurisdiction of the subject matter. And, of course, no further consideration of the merits of the claim is relevant to a determination of the court's jurisdiction of the subject matter. We said in an earlier voting case from Tennessee:

"It is obvious . . . that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right. But as the very nature of the controversy was Federal, and, therefore,

Page 369 U. S. 200

jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that the action was not one arising under the Constitution and laws of the United States."

*Swafford v. Templeton,*

185 U. S. 487

,

185 U. S. 493

.

"For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits, and not for a dismissal for want of jurisdiction."

*Bell v. Hood,*

327 U. S. 678

,

327 U. S. 682

.

*See also Binderup v. Pathe Exchange,*

263 U. S. 291

,

263 U. S. 305

- 308.

Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power defined in Art. III, § 2, and so within the power of Congress to assign to the jurisdiction of the District Courts. Congress has exercised that power in 28 U.S.C. § 1343(3):

"The district courts shall have original jurisdiction of any civil action authorized by law [

Footnote 18

] to be commenced by any person . . . [t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States. . . . [

Footnote 19

] "

Page 369 U. S. 201

An unbroken line of our precedents sustains the federal courts' jurisdiction of the subject matter of federal constitutional claims of this nature. The first cases involved the redistricting of States for the purpose of electing Representatives to the Federal Congress. When the Ohio Supreme Court sustained Ohio legislation against an attack for repugnancy to Art. I, § 4, of the Federal Constitution, we affirmed on the merits and expressly refused to dismiss for want of jurisdiction "In view . . . of the subject matter of the controversy and the Federal characteristics which inhere in it. . . ."

*Ohio ex rel. Davis v. Hildebrant,*

241 U. S. 565

,

241 U. S. 570

. When the Minnesota Supreme Court affirmed the dismissal of a suit to enjoin the Secretary of State of Minnesota from acting under Minnesota redistricting legislation, we reviewed the constitutional merits of the legislation and reversed the State Supreme Court.

*Smiley v. Holm,*

285 U. S. 355

.

*And see*

companion cases from the New York Court of Appeals and the Missouri Supreme Court,

*Koenig v. Flynn,*

285 U. S. 375

;

*Carroll v. Becker,*

285 U. S. 380

. When a three-judge District Court, exercising jurisdiction under the predecessor of 28 U.S.C. § 1343(3), permanently enjoined officers of the State of Mississippi from conducting an election of Representatives under a Mississippi redistricting act, we reviewed the federal questions on the merits and reversed the District Court.

*Wood v. Broom,*

287 U. S. 1

,

*reversing*

1 F. Supp. 134

. A similar decree of a District Court, exercising jurisdiction under the same statute concerning a Kentucky redistricting act was

Page 369 U. S. 202

reviewed and the decree reversed.

*Mahan v. Hume,*

287 U.S. 575,

*reversing*

1 F. Supp. 142

. [

Footnote 20

]

The appellees refer to

*Colegrove v. Green,*

328 U. S. 549

, as authority that the District Court lacked jurisdiction of the subject matter. Appellees misconceive the holding of that case. The holding was precisely contrary to their reading of it. Seven members of the Court participated in the decision. Unlike many other cases in this field which have assumed without discussion that there was jurisdiction, all three opinions filed in

*Colegrove*

discussed the question. Two of the opinions expressing the views of four of the Justices, a majority, flatly held that there was jurisdiction of the subject matter. MR. JUSTICE BLACK, joined by MR. JUSTICE DOUGLAS and Mr. Justice Murphy, stated: "It is my judgment that the District Court had jurisdiction . . . ," citing the predecessor of 28 U.S.C. § 1343(3), and

*Bell v. Hood, supra.*

328 U.S. at

328 U. S. 568

. Mr. Justice Rutledge, writing separately, expressed agreement with this conclusion. 328 U.S. at

328 U. S. 564

- 565, n. 2. Indeed, it is even questionable that the opinion of MR. JUSTICE FRANKFURTER, joined by Justices Reed and Burton, doubted jurisdiction of the subject matter. Such doubt would have been inconsistent with the professed willingness to turn the decision on either the majority or concurring views in

*Wood v. Broom, supra.*

328 U.S. at

328 U. S. 551

.

Several subsequent cases similar to

*Colegrove*

have been decided by the Court in summary per curiam statements. None was dismissed for want of jurisdiction of the subject matter.

*Cook v. Fortson,*

329 U. S. 675

;

*Turman v.*

Page 369 U. S. 203

*Duckworth, ibid.; Colegrove v. Barrett,*

330 U.S. 804; [

Footnote 21

]

*Tedesco v. Board of Supervisors,*

339 U.S. 940;

*Remmey v. Smith,*

342 U.S. 916;

*Cox v. Peters,*

342 U.S. 936;

*Anderson v. Jordan,*

343 U.S. 912;

*Kidd v. McCanless,*

352 U.S. 920;

*Radford v. Gary,*

352 U.S. 991;

*Hartsfield v. Sloan,*

357 U.S. 916;

*Matthews v. Handley,*

361 U. S. 127

. [

Footnote 22

]

Two cases decided with opinions after

*Colegrove*

likewise plainly imply that the subject matter of this suit is within District Court jurisdiction. In

*MacDougall v. Green*,

335 U. S. 281

, the District Court dismissed for want of jurisdiction, which had been invoked under 28 U.S.C. § 1343(3), a suit to enjoin enforcement of the requirement that nominees for statewide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties. This Court's disagreement with that action is clear, since the Court affirmed the judgment after a review of the merits and concluded that the particular claim there was without merit. In

*South v. Peters*,

339 U. S. 276

, we affirmed the dismissal of an attack on the Georgia "county unit" system but founded our action on a ground that plainly would not have been reached if the lower court lacked jurisdiction of the subject matter, which allegedly existed under 28 U.S.C. § 1343(3). The express words of our holding were that

"Federal courts consistently refuse to exercise their equity powers in cases posing

Page 369 U. S. 204

political issues arising from a state's geographical distribution of electoral strength among its political subdivisions."

339 U.S. at

339 U. S. 277

.

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

,

113 U. S. 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. [

### Footnote 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

Page 369 U. S. 205

are similarly situated. . . . [

### Footnote 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. [

### Footnote 25

]

Page 369 U. S. 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. [

Footnote 26

] And

*Colegrove v. Green, supra,*

squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue. [

Footnote 27

] A number

Page 369 U. S. 207

of cases decided after

*Colegrove*

recognized the standing of the voters there involved to bring those actions. [

Footnote 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

Page 369 U. S. 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

307 U. S. 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

,

258 U. S. 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,

5 U. S. 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. [

Footnote 29

] The

Page 369 U. S. 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

,

273 U. S. 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, [

Footnote 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

Page 369 U. S. 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."

*Snowdell v. Hughes*,

321 U. S. 1

,

321 U. S. 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 appropriateness 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

,

307 U. S. 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

Page 369 U. S. 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. [

Footnote 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, [

Footnote 32

] but many such questions uniquely demand single-voiced statement of the Government's views. [

Footnote 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

Page 369 U. S. 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

,

184 U. S. 285

,

with 21 U. S. New Haven,

8 Wheat. 464,

21 U. S. 492

- 495. [

Footnote 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," [

Footnote 35

] and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory, [

Footnote 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. [

Footnote 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

Page 369 U. S. 213

become operative.

*The Three Friends,*

166 U. S. 1

,

166 U. S. 63

,

166 U. S. 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

,

324 U. S. 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

,

262 U. S. 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,

25 U. S. 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

,

251 U. S. 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,

78 U. S. 507

."

*Fleming v. Mohawk Wrecking Co.,*

331 U. S. 111

,

331 U. S. 116

. But deference rests on reason, not habit. [

Footnote 38

] The question in a particular case may not seriously implicate considerations of finality --

*e.g.,*

a public program of importance

Page 369 U. S. 214

(rent control), yet not central to the emergency effort. [

Footnote 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

,

264 U. S. 547

- 548. [

Footnote 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 evenhanded 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. [

Footnote 41

] Similar considerations apply to the enacting process: "[t]he 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

,

143 U. S. 672

,

143 U. S. 676

- 677;

*see Leser v. Garnett*,

258 U. S. 130

,  
258 U. S. 137

. But it is not true that courts will never delve

Page 369 U. S. 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, [

Footnote 42

]

*United States v. Holliday,*

3 Wall. 407,

70 U. S. 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 pupillage. Their relation to the United States resembles that of a ward to his guardian."

*The Cherokee Nation v. Georgia,*

5 Pet. 1,

30 U. S. 16

,

30 U. S. 17

. [

Footnote 43

] Yet here, too, there is no blanket rule. While

Page 369 U. S. 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

,

231 U. S. 46

. Able to discern what is "distinctly Indian,"

*ibid.*,

the courts will strike down

Page 369 U. S. 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 non judicial 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,

Page 369 U. S. 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,*

7 How. 1, though in form simply an action for damages for trespass was, as Daniel Webster said in opening the argument for the defense, "an unusual case." [

Footnote 44

] The defendants, admitting an otherwise tortious breaking and entering, sought to justify their action on the ground that they were agents of the established lawful government of Rhode Island, which State was then under martial law to defend itself from active insurrection; that the plaintiff was engaged in that insurrection, and that they entered under orders to arrest the plaintiff. The case arose "out of the unfortunate political differences which agitated the people of Rhode Island in 1841 and 1842," 7 How. at

48 U. S. 34

, and which had resulted in a situation wherein two groups laid competing claims to recognition as the lawful government. [

Footnote 45

] The plaintiff's right to

Page 369 U. S. 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.

Chief Justice Taney's opinion for the Court reasoned as follows: (1) If a court were to hold the defendants' acts unjustified because the charter government had no legal existence during the period in question, it would follow that all of that government's actions -- laws enacted, taxes collected, salaries paid, accounts settled, sentences passed -- were of no effect, and that "the officers who carried their decisions into operation [were] answerable as trespassers, if not in some cases as criminals." [

Footnote 46

] There was, of course, no room for application of any doctrine of

*de facto*

status to uphold prior acts of an officer not authorized

*de jure*,

for such would have defeated the plaintiff's very action. A decision for the plaintiff would inevitably have produced some significant measure of chaos, a consequence to be avoided if it could be done without abnegation of the judicial duty to uphold the Constitution.

(2) No state court had recognized as a judicial responsibility settlement of the issue of the locus of state governmental authority. Indeed, the courts of Rhode Island had in several cases held that "it rested with the political power to decide whether the charter government had been displaced or not," and that that department had acknowledged no change.