



Supreme Court And Political Questions

James V. Calvi, Susan Coleman



Supreme Court And Political Questions:

The Political Question Doctrine and the Supreme Court of the United States Nada Mourtada-Sabbah, Bruce E. Cain, 2007-01-01 Historically the political question doctrine has held the courts from resolving constitutional issues that are better left to other departments of government as a way of maintaining the system of checks and balances However this book discusses the gradual changes in the parameters of the doctrine including its current position dealing with increasingly extraterritorial concerns

The Political Question Doctrine and the Supreme Court of the United States Nada Mourtada-Sabbah, Bruce E. Cain, 2007-01-11 The application of the Political Question Doctrine is at a crucial crossroads as the Supreme Court continues to test new War on Terrorism initiatives Historically the political question doctrine has held the courts from resolving constitutional issues that are better left to other departments of government as a way of maintaining the system of checks and balances However the doctrine s many ambiguities have allowed a roughly defined juxtaposition of the branches of government during previous years when the Republic was concerned with both international matters and those within its continental confines The Political Question Doctrine and the Supreme Court of the United States discusses the gradual changes in the parameters of the doctrine including its current position dealing with increasingly extraterritorial concerns Nada Mourtada Sabbah and Bruce E Cain bring together critical essays that examine the broad issues of judicial involvement in politics and the future of the doctrine With a wide range of historical and theoretical perspectives this book will stimulate debate among those interested in political science and legal studies

The Political Question Doctrine Congressional Research Congressional Research Service, 2014-12-23 Article III of the Constitution restricts the jurisdiction of federal courts to deciding actual Cases and Controversies The Supreme Court has articulated several justiciability doctrines emanating from Article III that restrict when federal courts will adjudicate disputes One justiciability concept is the political question doctrine according to which federal courts will not adjudicate certain controversies because their resolution is more proper within the political branches Because of the potential implications for the separation of powers when courts decline to adjudicate certain issues application of the political question doctrine has sparked controversy Because there is no precise test for when a court should find a political question however understanding exactly when the doctrine applies can be difficult The doctrine s origins can be traced to Chief Justice Marshall s opinion in Marbury v Madison but its modern application stems from Baker v Carr which provides six independent factors that can present political questions These factors encompass both constitutional and prudential considerations but the Court has not clearly explained how they are to be applied Further commentators have disagreed about the doctrine s foundation some see political questions as limited to constitutional grants of authority to a coordinate branch of government while others see the doctrine as a tool for courts to avoid adjudicating an issue best resolved outside of the judicial branch Supreme Court case law after Baker fails to resolve the matter The Court has historically applied the doctrine in a small but disparate number of cases without applying clear

rules for lower courts to follow Possibly as a result of the murky nature of the doctrine it has regularly been invoked in lower federal courts in cases concerning foreign policy However a recent Supreme Court case *Zivotofsky v Clinton* appears to have narrowed the scope of the political question doctrine In a suit seeking the vindication of a statutory right in the foreign affairs context the Court reversed a lower court's finding that the case posed a political question The Court explained that the proper analysis in such a situation begins not by asking whether adjudicating the case would require review of the foreign policy decisions of the political branches but instead examining whether the plaintiff correctly interpreted the statute followed by determining whether the statute was constitutional The Court's opinion appears to restrict the types of claims that can pose political questions and seems to encourage courts to decide more statutory claims on the merits In turn the decision could lead to increased judicial resolution of controversies concerning the separation of powers rather than resolutions between the political branches themselves

Political Questions Judicial Answers Thomas M. Franck, 2012-05-05

Almost since the beginning of the republic America's rigorous separation of powers among Executive Legislative and Judicial Branches has been umpired by the federal judiciary It may seem surprising then that many otherwise ordinary cases are not decided in court even when they include allegations that the President or Congress has violated a law or the Constitution itself Most of these orphan cases are shunned by the judiciary simply because they have foreign policy aspects In refusing to address the issues involved judges indicate that judicial review like politics should stop at the water's edge and foreign policy managers find it convenient to agree Thomas Franck however maintains that when courts invoke the political question doctrine to justify such reticence they evade a constitutional duty In his view whether the government has acted constitutionally in sending men and women to die in foreign battles is just as appropriate an issue for a court to decide as whether property has been taken without due process In this revisionist work Franck proposes ways to subject the conduct of foreign policy to the rule of law without compromising either judicial integrity or the national interest By examining the historical origins of the separation of powers in the American constitutional tradition with comparative reference to the practices of judiciaries in other federal systems he broadens and enriches discussions of an important national issue that has particular significance for critical debate about the imperial presidency

The Supreme Court and "political Questions" Philippa Strum, 1974

The Doctrine of Political Questions in Federal Courts ... Oliver Peter Field, 1924

The Constitutional and Political History of the United States: 1846-1850. Annexation of Texas-Compromise of 1850. 1881 Hermann Von Holst, 1881

American Law and Legal Systems James V. Calvi, Susan Coleman, 2016-09-19

American Law and Legal Systems examines the philosophy of law within a political social and economic framework with great clarity and insight Readers are introduced to operative legal concepts everyday law practices substantive procedures and the intricacies of the American legal system Eliminating confusing legalese the authors skillfully explain the basics from how a lawsuit is filed through the final appeal This new edition provides essential updates to forensic and scientific evidence contract law and

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