

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

The Doctrine of Political Questions

It is not within the province of the courts to inquire into the policy underlying action taken by the “political departments”—Congress and the President—in the exercise of their conceded powers. This commonplace maxim is, however, sometimes given an enlarged application, so as to embrace questions as to the existence of facts and even questions of law, that the Court would normally regard as falling within its jurisdiction. Such questions are termed “political questions,” and are especially common in the field of foreign relations. The leading case is *Foster v. Neilson*,⁶⁶⁹ where the matter in dispute was the validity of a grant made by the Spanish Government in 1804 of land lying to the east of the Mississippi River, and in which there was also raised the question whether the region between the Perdido and Mississippi Rivers belonged in 1804 to Spain or the United States.

Chief Justice Marshall’s opinion for the Court held that the Court was bound by the action of the political departments, the President and Congress, in claiming the land for the United States. He wrote: “If those departments which are intrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its right of dominion over a country of which it is in possession, and which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this, respecting the boundaries of nations, is, as has been truly said, more a political than a legal question, and in its discussion, the courts of every country must respect the pronounced will of the legislature.”⁶⁷⁰

The doctrine thus clearly stated is further exemplified, with particular reference to presidential action, by *Williams v. Suffolk Ins. Co.*⁶⁷¹ In this case the underwriters of a vessel which had been confiscated by the Argentine Government for catching seals off the Falkland Islands, contrary to that Government’s orders, sought to escape liability by showing that the Argentinian Government was the sovereign over these islands and that, accordingly, the vessel had been condemned for willful disregard of legitimate authority. The Court decided against the company on the ground that the President had taken the position that the Falkland Islands were not a part of Argentina. “[C]an there be any doubt, that when the executive branch of the government, which is charged with our foreign

⁶⁶⁹ 27 U.S. (2 Pet.) 253 (1829).

⁶⁷⁰ 27 U.S. at 309.

⁶⁷¹ 38 U.S. (13 Pet.) 415 (1839).