

CL. 3—Oath of Office

The “duty” of state executives in the rendition of fugitives from justice was construed to be declaratory of a “moral duty.” Chief Justice Taney wrote for the Court: “The act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the Executive of the State; nor is there any clause or provision in the Constitution which arms the Government of the United States with this power. Indeed, such a power would place every State under the control and dominion of the General Government, even in the administration of its internal concerns and reserved rights. And we think it clear that the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it. . . . It is true,” the Chief Justice conceded, “that in the early days of the Government, Congress relied with confidence upon the co-operation and support of the States, when exercising the legitimate powers of the General Government, and were accustomed to receive it, [but this, he explained, was] upon principles of comity, and from a sense of mutual and common interest, where no such duty was imposed by the Constitution.”²⁹⁶

Eighteen years later, in *Ex parte Siebold*,²⁹⁷ the Court sustained the right of Congress, under Article I, § 4, paragraph 1 of the Constitution, to impose duties upon state election officials in connection with a congressional election and to prescribe additional penalties for the violation by such officials of their duties under state law. Although the doctrine of the holding was expressly confined to cases in which the National Government and the states enjoy “a concurrent power over the same subject matter,” no attempt was made to catalogue such cases. Moreover, the outlook of Justice Bradley’s opinion for the Court was decidedly nationalistic rather than dualistic, as is shown by the answer made to the contention of counsel “that the nature of sovereignty is such as to preclude the joint co-operation of two sovereigns, even in a matter in which they are mutually concerned”²⁹⁸ To this Justice Bradley replied: “As a general rule, it is no doubt expedient and wise that the operations of the State and national governments should, as far as practicable, be conducted separately, in order to avoid undue jealousies and jars and conflicts of jurisdiction and power. But there is no reason for laying this down as a rule of universal application. It should never be made to override the plain and manifest dictates of the Constitution itself. We cannot yield to such a transcendental view of state sovereignty. The Constitution and laws of

²⁹⁶ 65 U.S. (24 How.) 66, 107–08 (1861).

²⁹⁷ 100 U.S. 371 (1880).

²⁹⁸ 100 U.S. at 391.