

Introduction to American Politics

Week 3

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Overview

- ▶ Office hours (10:15-12pm)
- ▶ Review Federalism (Chapter 3) and Federalist 10
- ▶ Judicial decision making and activism: *Brown v. Board of Education*
- ▶ National sovereignty v. The states

Federalism: Chapter 3

- ▶ The ultimate arbiter in controversies of American federalism is the U.S. Supreme Court, which often sides with the national government over states.
 - ▶ Recall the classic *state rights argument*: These people have a philosophical commitment to the decentralization of authority, believing that it leads to greater governmental innovation and to a set of state policies that better represent the desires of each state's residents than a single, one-size-fits-all national policy.
 - ▶ Recall the classic *federalist argument*: a practical argument - the patchwork of policies created when states are free to do as they please makes it difficult to govern a nation where problems can spill over state lines too easily. (It becomes harder to govern).

Federalism: Constitutional provisions governing federalism

▶ The Supremacy Clause

- ▶ This clause appears to give the national government license to do whatever it wants, but the text has an important qualifier: the national government enjoys supremacy, but only insofar as its policies conform to a Constitution that prohibits certain kinds of federal activities.
- ▶ The Supremacy Clause was framed to avoid impasses over jurisdiction rather than to cede authority to the federal government, however it was used, ultimately, to ensure power over the states.

▶ The Powers of Congress in the Constitution

- ▶ Article 1, section 8 (Commerce Clause); Article 1, section 8 (Elastic Clause); Article IV, section 3 (Admission of New States); Article IV, section 4 (Enforcement of Republican form of Government).
- ▶ We will focus on the Commerce Clause: The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

▶ The Tenth Amendment

- ▶ 10th Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
- ▶ The 10th Amendment offers the most explicit endorsement of federalism found in the Constitution.

Political instability and Federalist 10

- ▶ History:
 - ▶ Madison presents Federalist 10 at the Convention in support of the Virginia Plan
- ▶ Discussion question 1: What was the Virginia Plan?
 - ▶ Answer: ?

Political instability and Federalist 10

- ▶ History:
 - ▶ Madison presents Federalist 10 at the Convention in support of the Virginia Plan
- ▶ Discussion question 1: What was the Virginia Plan?
 - ▶ Answer: The Virginia plan was drafted by James Madison and was a proposal for a bicameral legislature (a Senate and a House of representatives). It was important because it put forth the idea that the House should be based on a population-weighted representation formula.
- ▶ Discussion question 2: Why did we need Federalist 10?
 - ▶ Answer: ?

Political instability and Federalist 10

- ▶ Discussion question 2: Why did we need Federalist 10?
 - ▶ Answer: To ameliorate concerns about groups and factions and how they related to each other
- ▶ Madison argues that one of the strongest Federalist arguments in favor of the Constitution is the fact that it establishes a government capable of controlling the violence and damage caused by factions. Madison defines factions as groups of people who gather together to protect and promote their special economic interests and political opinions. Although these factions are at odds with each other, they frequently work against the public interest, and infringe upon the rights of others.
- ▶ At the time, both supporters and opponents of the plan are concerned with the political instability produced by rival factions AND the state governments have not succeeded in solving this problem.

14th Amendment and Equal Protection

- ▶ After Civil War, discrimination against former slaves led to passage of the 14th Amendment: No state shall . . . deny to any person w/in its jurisdiction the equal protection of the laws.
- ▶ *Brown v Board of Education* 1954 (617) ushered in new era in civil rights
- ▶ Since then, Ct. has relied on the Equal Protection Clause to combat discrimination
- ▶ Applies to both Fed government (through Due Process / 5th) and the states

How we apply the 14th Amendment:

Level of scrutiny	Means	Relationship	Ends
Strict scrutiny race, national origin, discrim against aliens		Necessary	Compelling
Intermediate Scrutiny gender, non-marital children		Substantial	Important
Rational Basis everything else	Reasonable	Rational	Legitimate

Brown v. Board of Education

- ▶ **Facts:** This case is a consolidation of several different cases from Kansas, South Carolina, Virginia, and Delaware. Several black children sought admission to public schools that required or permitted segregation based on race. The plaintiffs alleged that segregation was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.
- ▶ **Judicial Procedure:** In all but one case, a three judge federal district court cited Plessy v. Ferguson in denying relief under the separate but equal doctrine. On appeal to the Supreme Court, they contended that segregated schools were not and could not be made equal and that they were therefore deprived of equal protection of the laws.
- ▶ **Issue:** Is the race-based segregation of children into separate but equal public schools constitutional?
- ▶ **Reasoning:** The court reasoned that since schools were in their infancy at the time of the passage of 14th amendment, intent of the framers is not super helpful.
- ▶ **Holding:** The race-based segregation of children into separate but equal public schools is **not** constitutional and violates the Equal Protection Clause of the Fourteenth Amendment.
- ▶ **Takeaway:** Today it is clearly established that laws separating the races are racial classifications that will be allowed only if strict scrutiny is met.

Brown v. Board of Education and Equal Protection

- ▶ Thinking back to lecture how did we get to the conclusion in this case?
 - ▶ **Strict intent?** (1) The framers predominantly had slaves at the time so it's unlikely that they would want slaves; (2) There was no public education at this time
 - ▶ **So how did Congress get to where it's at?** Broad brush strokes strokes - if education is seen as a right to citizenship and the 14th amendment says you, based on race, cannot be deprived of your right of citizenship

Tension between federal power and states' rights

▶ **Article I: Federal Power**

- ▶ Federal government has limited constitutionally enumerated power. These include: Immigration, bankruptcy, copyright, high seas, laws of the nation, declare war, raise armies and navies, commerce, 14th amend, tax/ or spend.
- ▶ Congress can act only with express or implied authority.
- ▶ *McCulloch v. Maryland*: Court found authority in Necessary Proper Clause
- ▶ Supremacy Clause: allows the removal of all obstacles to Congress' actions within its own sphere.

▶ **Tenth Amendment: States' rights**

- ▶ States have inherent police power to protect the health, safety and general welfare of state residents.
- ▶ 10th Amendment acknowledges 'leftovers go to the States' - this gives states sovereignty over any powers not explicitly given to the federal government in Constitution.
- ▶ State laws valid UNLESS they violate a constitutional provision.

Authority in the Constitution

2 questions in all challenges to the Constitutionality of an act of Congress:

- ▶ (1) Does Congress have the authority under the Constitution to legislate?
- ▶ (2) Does the law violate another constitutional provision or doctrine, such as by infringing separation of powers or interfering with individual liberties?

3 ways to talk about Congress' power in the case law we are reviewing today:

- ▶ (1) Congress' power through the necessary and proper clause (*McCulloch v. Maryland*)
- ▶ (2) Congress' broad power through the commerce clause (*Gibbons v. Ogden*)
- ▶ (3) Congress' narrower power through the commerce clause (*U.S. v. Lopez*)

McCulloch v. Maryland: Congress' Power through the Necessary and Proper Clause

- ▶ **Facts:** The state of Maryland had attempted to impede operation of a branch of the Second Bank of the United States by imposing a tax on all notes of banks not chartered in Maryland. Maryland objected to the bank because it called in loans owed to the US . . . so it taxed the hell out of it. When the bank refused to pay, Maryland sued to collect.
- ▶ **Issue:** Is it constitutional for Maryland to tax newly created Bank of the US?
- ▶ **Reasoning:** (1) The U.S. has the authority to create a Federal bank: Congress has the right to pass 'necessary and proper' laws for carrying out the powers expressly delegated to it, including the responsibility of raising and collecting taxes. (2) Secondly, when Congress exercises this power, the Constitution requires that its laws be the law of the land. Court reasons the framers meant 'necessary and proper' to be a guide for Congress' authority.
- ▶ **Holding:** States cannot impose a tax on a constitutional bank without violating the Supremacy Clause; as long as the end is legitimate and within the scope of the constitution, any appropriate and convenient acts by Congress that further that end and that are not prohibited by the constitution, are constitutional.
- ▶ **Takeaway:** Congress has the right to pass laws 'essential to the beneficial exercise' of its enumerated powers under the Constitution.

The Commerce Clause

- ▶ In the Constitution:
 - ▶ Art. 1, section 6: The Congress shall have the power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.
- ▶ Four distinct eras of interpretation
 - ▶ **Early American history - 1890s:** Commerce power broadly defined, but minimally used
 - ▶ **1890s - 1937:** Court began to adopt bright-line rules that caused difficulty, and an increasing amount of federal legislation was overturned. Court narrowly defined the scope of Congress' commerce power and used the Tenth Amendment as a limit. Court's majority deeply committed to laissez-faire economy.
 - ▶ **1937 - 1990s:** Court expansively defined the scope of the Commerce clause and refused to apply the Tenth Amendment.
 - ▶ **1990s - today:** Court has again narrowed the scope of the commerce power and revived the Tenth Amendment as an independent, judicially enforceable limit on federal actions.

Gibbons v. Ogden: Congress' Broad Power through the Commerce Clause

- ▶ **Facts:** What were the facts of the case?
- ▶ **Issue:**
- ▶ **Reasoning:**
- ▶ **Held:**

Gibbons v. Ogden: Congress' Broad Power through the Commerce Clause

- ▶ **Facts:** New York statute granted a monopoly for steamboat operation to Fulton, who licensed the monopoly to Ogden. Gibbons later started to run his own steamboat company under the authority of a Federal statute, breaking up the monopoly. The Act of Congress was entitled: An act for enrolling and licensing ships and vessels to be employed in the coasting trade and fisheries and for regulating the same. Ogden argued against fed authority to legislate; he wanted commerce defined as barter, trade, and buying/selling, but NOT transportation. Gibbons argued that the Act of Congress superseded the exclusive privilege granted by the state of New York.
- ▶ **Issue:** What was the issue in the case?
- ▶ **Reasoning:**
- ▶ **Held:**

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- ▶ **Issue:** Does a state have the power to grant an exclusive right to the use of state waterways inconsistent with federal law?
- ▶ **Reasoning:** Marshall defined commerce to include not only transportation, but much more - 'commercial intercourse.' Marshall did impose some limits, however, and reasoned that this definition does not apply to commerce purely within one state.
- ▶ **Held:**

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- ▶ **Held:** What was the holding of the case?

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- ▶ **Reasoning:** Marshall defined commerce to include not only transportation, but much more - 'commercial intercourse.' Marshall did impose some limits, however, and reasoned that this definition does not apply to commerce purely within one state.
- ▶ **Held:** Congress can regulate local activity, but **ONLY** when that activity has substantial effect on INTERstate commerce.

U.S. v. Lopez: Congress' Narrower Power through the Commerce Clause

- ▶ **Facts:** Federal Gun Free Zones Act of 1990 makes it a felony to knowingly possess a firearm within 1000 feet of a school. Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. Defendant charged with this crime, but argues law is unconstitutional because Congress does not have the power under the Commerce Clause to legislate this activity.
- ▶ **Issues:** (1) Does the GFSZA exceed Congress' authority under the Commerce Clause? (2) What categories of activity may Congress regulate under its commerce power?
- ▶ **Reasoning:** Rehnquist, writing for the majority, agrees. Plays with first justification for regulation of commerce: SUBSTANTIAL impact (he added this new requirement). Also adds new test that **the local activity must be commercial or economic**, which is why possession of a gun falls outside Congress' legislative power.
- ▶ **Held:** Holding a gun is not economic; therefore, Congress cannot regulate gun ownership, even its effect on interstate commerce.

Next week

- ▶ **Assignments for next week - Week 4:**
- ▶ KJKV: Chapter 4 and Chapter 5
- ▶ Griswold v. Connecticut (1965)
- ▶ Texas v. Johnson (1989)

- ▶ Week 5 is the midterm - in DISCUSSION