

Federal Legislative Power: National Sovereignty v. The States

- A. **Federalism:** National gov't must co-exist with each respective state government
- a. **Article I: Federal power**
 - i. Federal gov't has limited constitutionally enumerated power
 1. Immigration, bankruptcy, copyright, high seas, laws of the nation, declare war, raise armies and navies, **commerce, 14th amend, tax/spend (big ones for this class)**
 - ii. Congress can act only with express or implied authority
 1. *McCulloch v. Maryland*: Court found authority in Necessary & Proper Clause
 - iii. **Supremacy Clause:** allows the removal of all obstacles to Congress' actions within its own sphere
 1. *McCulloch v. Maryland*: States have no power by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of constitutional laws enacted by Congress to carry into execution the powers vested in the general gov't.
 - b. **Tenth Amendment: States' rights**
 - i. States have inherent police power to protect the health, safety and general welfare of state residents.
 1. 10th Amendment acknowledges "leftovers go to the States;" gives states sovereignty over any powers not explicitly given to the fed. gov't in Constitution.
 - ii. **State laws valid UNLESS they violate a constitutional provision**
 - c. **Arguments for Federalism – smaller federal gov't**
 - i. National government should not be too broad and powerful over states.
 - ii. States should be experimental and try out new laws or ways of handling problems without interference from the federal government.
 - iii. Smaller state governments are better equipped to protect individual rights.
 - iv. Avoid tyranny by the federal government and the loss of individual rights.
 - d. **Arguments against Federalism – bigger federal gov't**
 - i. Also afraid of tyranny on individual rights (this time by the states)
 - ii. Afraid that state governments, in political process, will infringe on individual rights by majority rule, and ignore the individual rights of the minority voice
 - e. **In all challenges to the Constitutionality of an act of Congress, 2 questions:**
 - i. Does Congress have the authority under the Constitution to legislate?
 - ii. Does the law violate another constitutional provision or doctrine, such as by infringing separation of powers or interfering with individual liberties?
 - f. **Congress' Power through the Necessary and Proper Clause:** Broad reading of Congress' power:

McCulloch v. Maryland 1819 (101):

- i. **Facts:** 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.
- ii. **Issue:** Court considered whether it is constitutional for Maryland to tax newly created Bank of the US.
- iii. **Reasoning:** (1) Court **first** found that 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, and its it not the role of the judiciary to “inquire into the degree of its necessity.” Instead, **Necessary = convenient, not essential.**
- iv. **Held:** 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. (**rational basis**)
 1. “The government of the Union is, emphatically and truly, **a government of the people.** In form, and substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, for their benefit.”
 2. Constitution bound the states under its authority, and not the reverse.
 3. “The government of the Union, though limited in its powers, **is supreme within its sphere of action** It is the government of all; its powers are delegated by all; it represents all, and acts for all.”
 4. Congress has the right to pass laws “essential to the beneficial exercise” of its enumerated powers under the Constitution.

B. The Commerce Clause

a. Generally:

i. In the Constitution:

1. Art. 1, § 6: “The Congress shall have the power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”
2. Serves as the authority for a broad array of federal statutes, from criminal statutes, to securities law, to civil rights and environmental laws

ii. Four distinct eras of interpretation:

1. Early American history – 1890s:
 - a. Commerce power broadly defined, but minimally used
2. 1890s – 1937:
 - a. Court began to adopt bright-line rules that caused difficulty, and an increasing amount of federal legislation was overturned
 - b. Court narrowly defined the scope of Congress’ commerce power and used the Tenth Amendment as a limit
 - c. Court’s majority deeply committed to laissez-faire economy
3. 1937 – 1990s:
 - a. Court expansively defined the scope of the Commerce clause and refused to apply the Tenth Amendment.

4. 1990s – today: [Rehnquist Court]
 - a. Court has again narrowed the scope of the commerce power and revived the Tenth Amendment as an independent, judicially enforceable limit on federal actions.

iii. Three Important Questions:

1. **What is commerce?**
 - a. One stage of business vs. all aspects of business vs. life is US
2. **What does “among the several states” mean?**
 - a. See *Gibbons v Ogden*: must be between states, not within state.
 - b. Direct effect on interstate commerce vs. ANY effect
3. **Does the Tenth Amendment limit Congress?**
 - a. The more broadly the Court interprets the fed’s commerce power, the less state power is protected by the 10th Amendment
 - b. This interpretation believes the 10th amendment is not a separate restraint on Congress, but rather an reminder that Congress only may legislate if it has authority under the Constitution
 - c. The more Court restricts fed power, the more state power expands.
 - i. This interpretation believes that the 10th amendment protects state sovereignty from federal intrusion, and may serve as a restraint on Congressional authority

b. **Congress’ Broad Power through the Commerce Clause:**

Gibbons v. Ogden 1824 (113)– (Starting point for a broad definition of the commerce clause that later gets trimmed back):

- i. **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.
- ii. **Issue:** Does a state have the power to grant an exclusive right to the use of state waterways inconsistent with federal law?
- iii. **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.
- iv. **Held:** Congress can regulate local activity, but **ONLY** when that activity has substantial affect on **INTERstate commerce**.
 1. Defined “Among the states” as “intermingled with” commerce, which concerns more states than one state.
 2. Thus, Commerce power trumped 10th amendment in this case.

c. **State of the Commerce Clause Pre-Lopez:**

- i. Congress can regulate commerce in three ways:
 1. When the activity “**substantially affects interstate commerce**”
 - a. This is where all the trouble comes up!

2. **Instrumentalities of interstate commerce** (infrastructure, trains), plus people/things that move across state lines
3. **Use of channels of Interstate Commerce**
 - a. Telephone lines, rivers, highways, etc.
 - b. Congress can regulate channels even if activity at issue is completely intrastate.

d. Congress' Less Broad Powers under the Commerce Clause

United States v. Lopez 1995 – (first time in almost 60 yrs. that Ct. found that a law exceeded Congress' Commerce Clause authority) (153):

- i. **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.
- ii. **Issues:** (1) Does the GFSZA exceed Congress' authority under the Commerce Clause? (2) What categories of activity may Congress regulate under its commerce power?
- iii. **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.
- iv. **Held:** Holding a gun is not economic; therefore, Congress cannot regulate gun ownership, even its effect on interstate commerce.
 1. Congress may: (a) regulate the use of channels of interstate commerce
 2. Congress may: (b) regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from *intrastate* activities
 3. Congress' powers include (c) the power to regulate those activities having a substantial relation to interstate commerce (i.e. those activities that substantially affect interstate commerce)