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Necessary and Convenient: The Effect of Commerce and Necessary and Proper Clause Jurisprudence

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NECESSARY AND CONVENIENT: THE EFFECT OF COMMERCE AND NECESSARY & PROPER CLAUSE JURISPRUDENCE ON AMERICAN FEDERALISM

by

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ABSTRACT

While reading a news article about the upcoming presidential election one day, I noticed a trend. The vast majority of political articles discuss what the federal government *should* do, but almost never cover what it *could* do. In elementary school, American children are taught that the Constitution, a 4,543-word document, is the place from which all federal power is derived; but the Constitution says nothing about the regulation of travel, narcotics, or the vast majority of other areas that affect the way we live our daily lives, so where does that power come from? After some preliminary research, I discovered that a great deal of it comes from how the Supreme Court has interpreted two Constitutional Clauses in particular (The Necessary and Proper Clause, and the Commerce Clause) and decided to dig deeper. This thesis is a product of that research. Through a historical overview of Supreme Court jurisprudence on these two clauses, this thesis will reveal that, one case at a time, federal power has gradually expanded through the centuries and shows no sign of slowing, the effect of which is the degradation and potential devolution of American federalism, the backbone upon which this country was founded.

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TABLE OF CONTENTS

INTRODUCTION

Of all the rules, laws, and documents created within the United States jurisprudential system, the Constitution stands as a symbol of checks, balances, and government restraint. This seminal document sets the standard by which all federal rules, laws, and governing bodies must abide; but, for all the Constitution sets out to accomplish, it often lacks in sufficient detail to achieve its own purpose. As a result, the Federal Government is often left to decipher who has authority to enact legislation, and to whom the law applies. To settle disputes concerning its meaning, the Constitution appointed an arbiter—the Supreme Court—charged with the great power to decide how narrow or expansive each section should be interpreted, and when an authority figure has overextended its reach.

For nearly two and a half centuries, the Supreme Court has largely fulfilled this duty. Through its opinions, the Court has created a library of 570 volumes of judicial orders and declarations.[1] Year after year, the Court finds new meaning in the 4,543-word document, deferring to the wisdom and guidance of those who previously occupied the bench, and building precedent on top of precedent. And while the Constitution has been so broadly interpreted, the rights and limitations that it sets forth constitutes a statistically negligible amount of overall federal law, prone to broad and inconsistent interpretations.

As exemplified by the recent onslaught of media attention given to the judicial nomination process, the question of how the Constitution is interpreted, and by whom, is

[1] SUPREME COURT OF THE UNITED STATES, *Bound Volumes*, https://www.supremecourt.gov/opinions/boundvolumes.aspx (Last visited Feb. 17, 2020).

an issue of great public and political importance. This heightened level of attention can primarily be attributed to the political nature of judicial selection, and the awesome power that the select few unelected officials (serving lifetime appointments to the judicial bench) have to alter Americans' most basic rights. Supreme Court justices, through the power of judicial review, have the ability to change how the Constitution—the document that controls the essential functions of, arguably, the most powerful country in the world—is read.[2] With a Court that is currently comprised of only nine people, giving each justice an eleven percent vote, the power that individual justices carry is immense, and the power the Court wields as a whole is even heavier. Through a majority vote consisting of only five people, the Supreme Court can change the legal meaning of entire sections of the Constitution; one seldom-discussed side effect of this power is the Court's authority to rule that seemingly simple words have meanings beyond their plain-language definition. Through the power of argument, the Supreme Court has the influence to declare that the word "necessity" connotes convenience,[3] and that the word "commerce" includes the act of traveling to engage in such activities.[4] Although the distinction is seemingly trivial, the manner in which these words are interpreted can affect the future of, not only the parties of individual cases under which these definitions were decided, but the federalist system as a whole.

[2] The *Marbury* decision was a landmark case that established the power of judicial review, granting the Supreme Court the authority to declare federal laws unconstitutional. It began with a demand for the Secretary of State to serve a commission signed by former President John Adams. The Court determined that a law regarding writs of mandamus was unconstitutional, rendering it the first judicial decision to rule on the constitutionality of a federal legislative action. *Marbury v. Madison,* 5 U.S. 137 (1803).
[3] *McCulloch v. Maryland,* 17 U.S. 316 (1819).
[4] See *Gibbons v. Ogden,* 22 U.S. 1, 190 (1824).

Considering the influence that each justice holds, the longevity and estimated time justices potentially have remaining on the bench is worth noting. Today, two sitting justices—Ginsburg and Breyer—were born in the 1930s and now are more than eighty years old; moreover, two thirds of the current Supreme Court bench are above the age of sixty.[5] As the likelihood of at least two justices being replaced in the next two election cycles are extraordinarily high, and the potential for that transfer of power to shift the political leanings of the entire panel, there is a vital need for public education on the effect judicial power can have on individual rights; therefore, a historical examination, and philosophical discussion, on the effects constitutional interpretations have on American federalism is both necessary and worthy of review.

[5] SUPREME COURT OF THE UNITED STATES, *Current Members*, https://www.supremecourt.gov/about/biographies.aspx (Last visited Feb. 17, 2020) (At the time of this writing, Justice Roberts is sixty-five; Justice Thomas is seventy-one; Justice Ginsburg is eighty-six; Justice Breyer is eighty-two; Justice Alito is sixty-nine; Justice Sotomayor is sixty-six; Justice Kagan is fifty-nine; Justice Gorsuch is fifty-two; Justice Kavanaugh is fifty-five. The mean age of all Justices on the bench is 67.2.).

METHODOLOGY

Through a historical review of Supreme Court jurisprudence concerning two important constitutional clauses, this article will reveal that, one case at a time, federal power has gradually expanded through the centuries and shows no sign of slowing, the effect of which is the degradation and potential devolution of American federalism, the backbone upon which this country was founded. Because a comprehensive review of the Constitution in its entirety would be impracticable, this article will focus on the two clauses that are most vulnerable to abuse through overuse and backwards logic used to expand on the definitions of simple words and phrases. These two provisions are the Commerce Clause, and the Necessary and Proper Clause. Of all the various provisions of law written in the Constitution, these two clauses, read in a vacuum, are arguably among the most amorphous and arcane. The vague wording and simple phrasing avails itself to an endless array of interpretations. Despite an ever-increasing reliance on precedent, built upon precedent, built upon syntactical analyses of vaguely worded statements, judicial restraint is all that prevents the complete devolution of the federalist system through abuse of these clauses.

Through an examination of case law, and other primary and secondary sources, this article will show how judicial interpretation of the Commerce and the Necessary and Proper Clauses have permanently and irreparably altered the dynamic of power between the State and Federal governments in the United States. This will be primarily achieved by an evaluation of a selection of cases, each demonstrative of the constitutional era they represent. This article will also include the author's commentary on the various phases of

judicial interpretation of these clauses, as well as how those phases have affected American federalism and the balance between State and Federal power.

The author hypothesizes that research will show that a historically broad interpretation of the Commerce and Necessary and Proper Clauses has weakened State sovereignty, and effectively limited the diversity of law among the States. When evaluating the impact that judicial interpretation of the two clauses have on federalism and States' rights, the author intends to draw conclusions based on deviations from neutral definitions and the original verbiage of the Constitution, and not through a political lens. This article is intended to be comparative in nature, and not an argument for or against States' rights concerning any individual judicial opinion or legislative proposal.

FEDERALISM

(A) Origins of the Separation of Powers

Barron's Law Dictionary defines "federalism" as "a system of government wherein power is divided…between central…and local governments, the local governments maintaining control over local affairs, and the central government…deal[s] with national needs."[12] The concept of separate State and Federal powers in American government was formalized by the Founding Fathers on July 4, 1776, as exemplified by the name they chose for this nation—the United *States* of America. In the context of geography, the word "state" typically refers to an independent, sovereign nation. The framers of the Constitution, by virtue of the Tenth Amendment, constructed a system of government wherein each State governs itself, and acts as its own sovereign nation, except where the Constitution outlines, they are beholden to Federal regulations.[13] To form the nation, the States united the Federal Government and bestowed upon it only limited and express powers, while reserving the vast residual powers to themselves.

Though some may argue that Federal expansion and control is necessary because the needs of the nation and protection of individual rights outweigh the needs of any individual State, it is important to note that the American federalist system was designed to provide for freedom of choice by preventing the central government from obtaining

[12] STEVEN H GIFIS, BARRON'S LAW DICTIONARY 212 (Baron's Educational Series, Inc., 6th ed. 2010).
[13] U.S. CONST. amend. X (The Tenth Amendment provides that any powers not granted to the federal government, nor prohibited, "are reserved to the States respectively, or to the people.").

enough power to remove that choice from the people. Despite the Founding Fathers' attempts to meticulously outline the distribution of power, the State and Federal governments have been at odds to maintain power since the country's inception. To quote former Chief Justice John Marshall: "The question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist."[14]

(B) Experimental Laboratories

Among the more prominent voices on the importance of federalism and State choice is post-depression-era Supreme Court Justice, Louis Brandeis. In his oft-quoted dissent in *New State Ice Co. v. Liebmann*, Justice Brandeis warned of the risks concerning the overuse of section five of the Fourteenth Amendment by the Federal government.[18] *New State Ice Co.* addresses the question of whether an Oklahoma law that requires business owners to obtain a permit to sell and distribute ice was constitutional.[19] The appellee, Liebmann, was brought to court for attempting to sell ice without obtaining the requisite permit from the State.[20] The lower court ruled that the State law was unconstitutional under the Fourteenth Amendment, and the Supreme Court affirmed the

[14] *McCulloch v. Maryland*, 17 U.S. 316, 405 (1819).
[18] U.S. CONST. amend. XIV § 5 (The Fourteenth Amendment states that "Congress shall have power to enforce, by appropriate legislation, the provisions of [the Fourteenth Amendment]." Justice Brandeis' warning in his dissent in *New State Ice Co.* refers to the overuse of Federal regulation of State industry under the auspices of the Equal Protection Clause.).
[19] *New State Ice Co. v. Liebmann*, 285 U.S. 262, 271 (1932).
[20] *Id.* at 271.

lower court's decision on the grounds that the Oklahoma law fosters monopoly, rather than prevents it, in a non-essential industry.[21] In his dissent, Justice Brandeis warned of the dangers that can arise from the unilateral restrictions on State governance by the Supreme Court and writes:

> *Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment…But in the exercise of this high power, we must be ever on guard, lest we erect our prejudices into legal principles.*[22]

In essence, Justice Brandeis' characterization of federalism is one in which States may enact laws that cater to their local needs, while other States observe the effects of the "experimental law." The observing States would then have the ability to decide if the law is beneficial for their own purposes, and whether it would be worthwhile to enact similar legislation in their respective territories. The appeal of allowing States to act as "laboratories" lies in ratio of risk versus reward. When a State enacts a law that is poorly received and produces negative or unintended consequences, only a single state is

[21] *Id.* at 278-280.
[22] *Id.* at 311.

affected. The remaining states are discouraged from enacting similar laws; conversely, positive effects create an incentive for other States to follow the example of the pioneering state. This strategy results in States incurring far lower risk while benefitting from the lessons learned from others.

Justice Brandeis' social laboratory theory was criticized by his peers as romantic and unrealistic.[23] Others have claimed that his theory is flawed because it does not distinguish between "scientific experimentation" and "policy experimentation."[24] The claim is that lack of control over the variables involved with State legislation make it impossible to apply the scientific method to "state laboratories" with the same precision observed by traditional "scientific laboratories," and thus, a single State cannot serve as an indicator for success in other jurisdictions. While it is true that variables[25] between states are practically immeasurable, there is value in making decisions based on observation. In a nation as vast as the United States, most laws passed by a central governing body are unlikely to benefit every State in the Union.[26] Federalism allows States to enact legislation that is uniquely suitable for a given territory, but may, however, be harmful if applied to the whole country. Another benefit of federalism is that it is coupled with the freedom of movement. If a State government mismanages its

[23] G. Alan Tarr, *Laboratories of Democracy? Brandeis, Federalism, and Scientific Management,* G. Alan Tarr, Publius, Rutgers University, 38 (Winter 2001).
[24] *Id.* at 41.
[25] The United States is a vast nation, and each state has its own geography, industry, culture, demographics, economic situations, morals, traditions, and entire governmental systems that may or may not influence the effect of any single policy.
[26] New Geography, *Which Countries would fit inside of Texas?* http://www.newgeography.com/content/005313-which-countries-would-fit-inside-texas (Last visited on Feb. 20, 2020) (By comparison, Texas alone is far larger than many European countries. In one image, an artist demonstrates the Lonestar State's massive scale by illustrating how many nations can fit within its borders.).

power, residents have the ability to "vote with their feet;" to leave a State that enacts laws that are not conducive to their ways of life, and to relocate to a State that is more representative of their desires, needs, cultures, and ideals.[27]

As integral as federalism is to the American way of life, the power balance that allows it to function is incredibly delicate. According to Justice Brandeis' warning, the Supreme Court, through the issuance of prejudicial judicial opinions, has the power to end federalism in the United States altogether. Through a historical view of Supreme Court jurisprudence, it is clear that the ever-expanding scope of Federal jurisdiction through the Commerce and Necessary and Proper Clauses has exponentially increased the risk of Justice Brandeis' warning coming to fruition.

[27] Peter A. Lauricella, The Real "Contract with America": The Original Intent of the Tenth Amendment and the Commerce Clause, 60 Alb. L. Rev. 1377, 1381 (1997).

NECESSARY AND PROPER

(A) Enactment

Before analyzing the Commerce Clause, one must first understand the Necessary and Proper Clause, the prerequisite for all laws enacted by the federal government. Article I of the Constitution grants power to the federal legislature to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States."[38] In other words, the lawmaking powers of Congress are not limited by the arduous process of creating constitutional amendments. Congress has the authority to make *any* law so long as it is relevant or connected to one of its enumerated powers. According to the plain-language meaning of the Necessary and Proper Clause, there are only three limiting factors that prevent Congress from, to use the words of Alexander Hamilton, "passing all laws whatsoever": (1) The law must serve to carry out a power granted by the Constitution; (2) the law must be necessary; (3) and the law must be proper.

Of all the provisions supplied by the Constitution, the Necessary and Proper Clause is distinct in its ambiguous verbiage, as well as its ubiquity, as a basis for Federal law; moreover, it is an anomaly in that the Founding Fathers never formally discussed its inclusion in the Constitution during the Constitutional Convention.[39] The clause was

[38] U.S. CONST. art. I, § 8, cl.18.
[39] Randy E. Barnett, *The Original Meaning of the Necessary and Proper Clause*, 6 U. Pa. J. Const. L. 183, 185 (2003).

simply added by the Committee of Detail, as a stylistic choice, as opposed to an attempt to change or add to the existing powers enumerated in the Constitution; furthermore, there is no record of any official discussion on the potential impact that the clause may have on future policy.[40] Some claim that the lack of debate "suggests that the delegates were unaware of the capacity for controversy contained within the Clause;" however, the absence of a record of discussion does not necessarily imply that the inclusion of the Clause was unintentional, considering the controversy that immediately stemmed from its incorporation, and the level of scrutiny under which the rest of the document was considered. In the legal world, where the definition of a constitutional provision can hinge on a single comma, it is strange that an entire clause would make it into the nation's founding documents without scrutiny.[41]

Soon after the Constitutional was ratified, opponents began to express their concern over the clause's potential for unbridled abuse.[42] During the debates, opponents of the Constitution argued that the wording of the Necessary and Proper Clause served as "evidence that the national government had unlimited and undefined powers,"[43] and have the potential to be "used as a weapon against the sovereignty of the States."[44] Proponents,

[40] Mark A. Graber, *Unnecessary and Unintelligible*, 12 Const. Comment. 167, 168 (1995).
[41] See *United States v. Sprague,* 282 U.S. 716, 731-2 (1931) (The constitution is described as "an instrument drawn with such meticulous care and by men who so well understood how to make language fit their thought," and "its words and phrases were used in their normal and ordinary as distinguished from technical meaning."); *Also See District of Columbia v. Heller,* 554 U.S. 570, 576-8 (2008) (A discussion on the Founding Fathers' use of commas to create "prefatory" and "operative" clauses in the Second Amendment).
[42] *See Supra* note 23.
[43] *See Supra* note 21, at 185.
[44] CHARLES WARREN, The Supreme Court in United States History 500 (Little, Brown, and Company, Vol. 1, 1922).

on the other hand, dismissed the worries of strict constructionists, believing them to be exaggerated attempts to dismantle the Constitution.[45]

Alexander Hamilton,[46] an advocate for the Necessary and Proper Clause, argued that "the constitutional operation of the intended government would be precisely the same if these clauses were entirely obliterated."[47] In his defense of the Clause's inclusion, Hamilton stated that the ability to enact laws that are necessary and proper to carry out the rights and duties enumerated in the Constitution are implied by the act of their enumeration.[48] Even if the Necessary and Proper Clause was not included, in Hamilton's view, the Constitution would still be interpreted in such a way as to provide a means to enact its enumerated powers. In Federalist Paper 33, Hamilton writes: "What is a power, but the ability or faculty of doing a thing?"[49] Hamilton not only defended the inclusion of the Necessary and Proper Clause in the Constitution, but was indignant towards those who had misgivings about its merits. Hamilton's indignancy is exemplified in Federalist Paper 33, where he claims the Necessary and Proper Clause was "held up to the people in all the exaggerated colors of misrepresentation as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated."[50] Notwithstanding the debate surrounding the Constitution's enactment, the Necessary and

[45] *Id.* at 503.
[46] *See Supra* note 21 at 195-199 (Alexander Hamilton was one of the Founding Fathers of the United States, and leader in the Federalist movement. Hamilton was a participant in the Constitutional Convention, and an avid supporter of a strong centralized government. As Secretary of the Treasury, Hamilton also proposed and defended the constitutionality of the National Bank that was the subject of the famous *Marbury v. Madison* decision).
[47] Graber, supra note 7, at 169.
[48] Alexander Hamilton, *Federalist 33*, National Archives (January 2, 1788), https://founders.archives.gov/documents/Hamilton/01-04-02-0190.
[49] *Id.*
[50] *Id.*

Proper Clause remains as a constitutional fixture, although the power that it entrusts upon the Federal government today is, perhaps, more than the Founding Fathers could have ever imagined.

(B) Jurisprudence

In 1800, a federal charter of a copper mine, through the authority granted by the Necessary and Proper Clause, sparked one of the first Supreme Court cases calling into question the meaning of the Necessary and Proper Clause.[64] Thomas Jefferson[65] vehemently opposed the charter, citing a lack of reasonable connection between it and any expressed powers granted by the Constitution; soon after, the Supreme Court published the opinion of *United States v. Fischer*.[66] In *Fischer*, Chief Justice John Marshall wrote the opinion of the Court, declaring that the Necessary and Proper Clause should be interpreted to include "any means which are…conducive to the exercise" of the enumerated powers,[67] an Opinion whose wording was not received well by the public. In response to the ruling, representatives from the State of Virginia proposed a constitutional amendment, requiring a "rational connection" to the enumerated powers.[68]

[64] *See Supra* note 26, at 501.
[65] *See Supra* note 21 (Thomas Jefferson was Secretary of State at the time that Alexander Hamilton initially proposed the creation of the National Bank. This is the same Thomas Jefferson who later became the third president of the United States.).
[66] *See Supra* note 26, at 501.
[67] *Id.* at 501-502.
[68] *Id.* at 502.

In 1819, the interpretation of the Necessary and Proper Clause was again called into question. The conflict arose when Alexander Hamilton, acting as Secretary of the Treasury, suggested the creation of a National Bank.[69] During the debates concerning the legality of the charter, James Madison[70] argued that the initial bank charter went beyond the limits allowed by the Constitution, arguing that any congressional act of power "should be pointed out in the instrument."[71] Madison further warned that "[w]hatever meaning this clause may have, none can be admitted, that would give an unlimited discretion to Congress."[72] Thomas Jefferson was also outspoken against the doctrine of "necessary and convenient," cautioning that "there is no one, which ingenuity may not torture into a convenience."[73] Despite the opposition, the bank's charter eventually passed.[74]

Soon after the signing of the bank's second charter, the bank launched an aggressive lending campaign, foreclosing on farm mortgages, and utilizing collection tactics that forced smaller banks out of business.[75] The economic crisis that ensued caused States to react by imposing taxes on banks not chartered by themselves.[76] The national bank's refusal to pay these taxes gave rise to *McCulloch v. Maryland*, a

[69] *See Supra* note 21, at 188.
[70] *Id.* (James Madison was another Founding Father, member of the First Congress, and was considered to be the chief drafter of the Constitution.).
[71] *Id.* at 189.
[72] *Id.* at 183.
[73] *Id.* at 196.
[74] PETER IRONS, A people's History of the Supreme Court, 122 (Penguin Books, 1999). (In 1816, although hesitant in doing so, and under political pressure brought on by the economic downturn caused by the War of 1812 James Madison, as President of the United States signed a second charter of the same bank.).
[75] *Id.*

landmark case that drastically expanded the definition of the Necessary and Proper Clause.[77]

The crux of the issue in *McCulloch* is whether the chartering of the National Bank violated the Necessary and Proper Clause.[78] In the Supreme Court's ruling, written by Justice Marshall, the Court justifies the charter, claiming that the charter is neither permitted, nor prohibited, under the Constitution.[79] The opinion states that while all acts of Congress must remain both *necessary* and *proper*, the Constitution does not preclude Congress from deciding the means by which it deems necessary or proper to carry out its duties.[80] In interpreting the Constitution, the Court draws a distinction between "necessary" and "absolutely necessary," claiming that the standard of "absolute necessity" would unnecessarily restrict Congress from carrying out its duties.[81] The Court defines the word "necessary" as "no more than that one thing is convenient, or useful, or essential to another."[82] As a result of the *McCullough* decision, the Constitution is now read to say, in essence, and by law, that Congress now has the power "to make all laws which shall be *convenient* for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution," setting a new standard for Congress to follow when enacting laws under all sections of the Constitution. No more is this attitude apparent than in the historical interpretation of the Commerce Clause. In the 201 years since this case was decided, *McCullough* has never been overturned, and its logic,

derived from the Marshall Court continues to be relied upon by the Supreme Court today as the leading and seminal case in this area.[83]

der political pressure brought on by the economic downturn caused by the War of 1812 James Madison, as President of the United States signed a second charter of the same bank.).

law wherein North Carolina taxes beneficiaries of trusts that are also State residents, regardless of whether the trust is in the state, or the beneficiary profits from it financially. As part of its reasoning, the Court defers to *McCullough*, stating that, in some areas, the Constitution imposes limitations on State power. *Id.* at 2226).

COMMERCE CLAUSE

The Constitution grants Congress the power to "to regulate commerce with foreign nations, and among the several States."[103] The Commerce Clause is distinctive due to the extent to which it has been interpreted beyond its plain-language meaning by both the United States Congress and the Supreme Court, particularly with regard to matters that, some may argue, are intrastate affairs. The dictionary defines "commerce" as "an interchange of goods or commodities;"[104] however, the meaning of the Commerce Clause has been gradually expanded through Supreme Court precedence, and is now interpreted as a legal basis for federal regulation of travel on roads and waterways,[105] civil rights legislation,[106] and limitations on crops grown for personal use.[107] Throughout history, Supreme Court interpretations on the extent of power that the Commerce Clause offers to federal legislators has waxed and waned, ranging from strict construction to the Constitution to liberal and expansive; nonetheless, the current, and overall trend appears to be unidirectional.

[103] U.S. CONST. art. I, § 8, cl. 3.
[104] Dictionary.com, *Commerce*, https://www.dictionary.com/browse/commerce?s=t.
[105] *Gibbons v. Ogden*, 22 U.S. 1 (1824).
[106] *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).
[107] *Wickard v. Filburn*, 317 U.S. 111 (1942).

(A) Early Commerce Clause Jurisprudence

In early United States history, the Supreme Court was relatively silent insofar as the Commerce Clause was concerned. It was not until the 1824 case of *Gibbons v. Ogden* that the Supreme Court rendered its first significant opinion on Commerce Clause jurisdiction.[113] *Gibbons* was the first Supreme Court case to declare that the right to regulate interstate commerce is an exclusive right of the federal government.[114] The case was decided in the midst of the Industrial Revolution in the United States; during a time where roads and bridges were inadequate to reach much of the country, and steamboats were an invaluable tool for transporting merchandise to ports, cities, and trade hubs. To secure funding to build much-needed infrastructure, and to expand and facilitate trade, some States began to offer private businesses exclusive access to waterways in exchange for funding to build new roads.[115]

In 1798, New York was among the States who took advantage of this approach by granting a company, Fulton and Livingston, exclusive access to operate steamboats on its waterways.[116] Over the next decade, Fulton and Livingston's contract was extended while competitors took advantage of other opportunities to purchase exclusive access rights.[117] Aaron Ogden was a subcontractor for Fulton and Livingston, a company that had an

[113] Andrew Weiss, *Commerce Clause in the Cross-Hairs: The Use of Lopez-Based Motions to Challenge the Constitutionality of Federal Criminal Statutes*, V. 18 No. 5 Stanford Law Review 1437.
[114] James M. McGoldrick, Jr., *The Dormant Commerce Clause: The Origin Story and the "Considerable Uncertainties"—1824-1925*, Creighton Law Review 243-244 (June 2019).
[115] Daniel B. Moskowitz, *A Federal Take on Trade,* V. 54, Issue 2 American History 22-23 (Jun 2019).
[116] *Id.*
[117] *Id.*

exclusive license to the use of New York seaports.[118] In 1818, Fulton and Livingston filed a complaint with the State, and Gibbons was stopped and issued an injunctive order, prohibiting him from crossing the waterways between New Jersey and New York in his steamboat.[119] Although Gibbons never requested permission from New York State to cross local waterways, the Federal government issued Gibbons a permit "to navigate the waters of the United States, by steam or otherwise, for the purpose of carrying on the coasting trade."[120] In response to the injunction, Gibbons claimed that the New York Law is unconstitutional, and violated the Commerce Clause.[121]

The case was eventually brought to the United States Supreme Court, where Chief Justice John Marshall wrote the landmark opinion that permanently altered the balance of power between the State and Federal Governments. The opinion focuses primarily on the definition of "interstate commerce," and how that power affects States' rights to regulate travel and trade within its borders. In the Court's opinion, the word "commerce," in the context of Article I, Section 8 of the Constitution, is one that extends beyond "buying and selling, or the interchange of commodities."[122] In *Gibbons*, "commerce" consists, not only of the physical exchange of goods and services, but of any action that affects, facilitates, or hinders sales and trade. The Court's opinion describes commerce as a form of "intercourse" that consists of "all laws concerning navigation."[123] Ogden defended his position, citing the Tenth Amendment, and claiming that the Constitution gives States the

[118] *Id.*
[119] *Gibbons v. Ogden*, 1824 U.S. Lexis 370, 8 (1824).
[120] *Id.* at 301.
[121] *Id.* at 186.
[122] *Id.* at 189-190.
[123] *Id.*

rights to regulate themselves so long as no law or constitutional provision exists in conflict with State action.[124] The Supreme Court conceded to Ogden's claim, however, stated that the Commerce Clause is such a provision, as it is an exclusive right granted to the Federal Government under the Constitution.[125] The Court further justified its answer, claiming that the Supremacy Clause provides that the federal need to facilitate interstate commerce supersedes the economic needs of individual States.[126]

In a single historical instant, the Supreme Court dramatically shifted the balance of power in favor of the Federal Government. By broadly interpreting the definition of a single word—commerce—the Supreme Court expanded the reach of the Federal Government, and dramatically altered, not only the manner in which Commerce Clause jurisprudence is decided, but how the Constitution is interpreted as a whole. Because of the *Gibbons* decision, the word "commerce" has shifted from an enumerated power to regulate transactions, to a body of law in which the Federal Government has the exclusive right to control not only trade and sales, but anything that may affect such processes. Since *Gibbons* the Federal Government has used its power to regulate interstate commerce to control nearly every aspect of American business, including those that do not restrict travel, so long as its exercise bears a distant connection with interstate commerce. More directly, the *Gibbons* decision has laid the foundation for the creation of

[124] *Id.* at 200-201.
[125] *Id.*
[126] *Id.* at 210-211.

the entire Department of Transportation, which regulates roadways and travel, not only across state lines, but within states as well.[127]

(B) Scaling Back

In the 1890s, the Supreme Court began to rule against the constitutionality of federal laws that attempt to extend the scope of the Commerce Clause to businesses engaged exclusively in intrastate transactions. *A.L.A. Schechter Poultry Corp v. United States* is a landmark case that is representative of this trend. The appellants in this case, owners and operators of A.L.A. Schechter Poultry Corporation and Schechter Live Poultry Market, faced criminal charges for violating the "Live Poultry Code," among other federal regulations.[143] The appellants' business consisted of purchasing chickens for slaughter and resale.[144] The appellants' business was conducted almost exclusively in Brooklyn NY, although they occasionally made purchases in Philadelphia.[145] The Live Poultry Code "authorizes the President to approve codes of fair competition," and limit

[127]Department of Transportation, *FY 2021Budget Highlights*, pg. 5, https://www.transportation.gov/sites/dot.gov/files/2020-02/BudgetHightlightFeb2021.pdf (Last visited Feb. 17, 2020) (Today, the Department of Transportation alone projected budget of $89 billion for the year 2021, all of which is used in the creation, and enforcement of travel-related regulations, none of which would have been possible without the legal foundation established by *Gibbons v. Ogden.*).
[143] *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 519-21 (1935) (Appellants were originally charged eighteen counts of violation of the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York (Live Poultry Code), plus conspiracy to commit such acts. All but two charges for violation against the Live Poultry Code were upheld by the lower court).
[144] *Id.*
[145] *Id.* at 520.

monopolies.[146] It also contains provisions that regulate various aspects of employment and operation of factories, and establishes a fifty cent per hour minimum wage, limits the number of hours an employee is allowed to work per week, and sets a minimum age to be for eligible employment.[147]

In their defense, the appellants challenged the Live Poultry Code, asserting that the Code violates the Commerce Clause, and undermines the authority that the Constitution grants to the Federal Government.[148] The government defended its position, stating that "adoption of codes must be viewed in the light of the grave national crisis."[149] While the Court acknowledged that exigent circumstances, including those under which the Federal Government has made its decision, must be taken into consideration, it ruled that "extraordinary conditions do not create or enlarge constitutional power," and "extra-constitutional authority…[is] precluded by the…Tenth Amendment."[150] As the entirety of the defendants' business was conducted within New York State, "the interstate transactions in relation to that poultry…ended" as the transactions in question "do not concern the transportation of the poultry from other States to New York."[151] To the question of where the Court draws the line concerning intrastate commerce's effect on interstate commerce, the Court states that "where the effect of intrastate transactions upon

[146] *Id*. at 521.
[147] *Id.* at 524.
[148] *Id.* at 519 (The defendants also claimed that the section of the Live Poultry Code that allows the President to approve of such codes is an "unconstitutional delegation of legislative power.").
[149] *Id.* at 528-529 (This case was decided in 1935, less than a decade after the Great Depression. In this case, the government claimed that the grave economic conditions gave rise to the need to enact legislation to mitigate the strain on the economy. The government claims that the legislation was enacted to facilitate national cooperation of companies involved in trade; however, the Court criticized the claim, and cited the code as "involuntary" and "coercive.").
[150] *Id.*
[151] *Id.* at 542-43.

interstate commerce is merely indirect, such transactions remain within the domain of state power."[152] The Court concluded that the hours and wages of employees engaged in local business "have no direct relation to interstate commerce," and that the Live Poultry Code "was not a valid exercise of Federal power."[153] The significance in this ruling lies in the imposition of jurisdictional limits on federal regulation of interstate commerce. It recognizes that, while the Constitution grants the Federal Government the power to regulate nearly every aspect of American business, its scope is limited to those whose business transactions transcend State borders.[154]

When reading cases on constitutional authority, it is necessary to look at not only the facts and circumstances surrounding individual cases, but more importantly, how they can be applied to other situations. The Live Poultry Code was intended to improve the lives of the working class. It established minimum wages, imposed maximum work hours, and abolished child labor; but in the context of jurisprudence on federal jurisdiction, Congress' intentions, and the good that a law is intended to achieve, is irrelevant if it simultaneously subverts Constitutional authority. *A.L.A. Schechter Poultry*

[152] *Id*. at 546.
[153] *Id*. at 549-50.
[154] *Id*. at 529-142 (In *A.L.A. Schechter Poultry Corp.*, the also ruled on the issue concerning the legislature's misappropriation of its constitutional authority by allowing the President to approve codes is another matter of great importance to Commerce Clause jurisprudence. In the Supreme Court's opinion, Chief Justice Charles Evans Hughes writes that the Court must look to whether Congress, in authorizing an act allowing the President to enact laws, has "abdicated" or "transferred" "the essential legislation functions" granted to it by the Constitution. As Congress has issued few, if any guidelines for activity under the Live Poultry Code, the Court ruled that Congress has, in effect, authorized another party (the President) to carry out a power exclusively reserved for the legislature, and therefore, misappropriated the law-making power granted to it by the Constitution. For those reasons, the Court deemed the portion of the Live Poultry Code, authorizing the President to approve certain portions of the code "virtually unfettered," and unconstitutional. Because of the *A.L.A. Schechter Poultry Co.* decision, the power to enact laws that interfere with interstate commerce must, at a minimum, be approved by the Legislative Branch, and cannot be delegated to the Executive Branch.).

Corp. is one of very few cases in United States history that imposes hard limitations on how broadly the Commerce Clause may be interpreted. The appellants in this case almost never conducted business outside their residential State, but were, nevertheless, subject to criminal charges under Congress' authority to "regulate commerce… among the several States."[155] Without the precedent of *A.L.A. Schechter Poultry Corp.*, the "interstate" portion of "interstate commerce" would, in essence, be meaningless. Both the Legislative and the Executive branches of the Federal Government would have a green light to impose regulations concerning the manner in which *all* American companies conduct their business, regardless of where and with whom it is conducted, and the States would lose the little power they have to regulate their internal business matters.

(C) A New Wave of Federal Expansion

The freedom gained by the States through the *A.L.A. Schechter Poultry Corp.* decision was short-lived, as a wave of Supreme Court decisions in the mid-1900s brought a new rise in Federal power, and the requirement that a business be directly engaged in business that crosses State lines to fall within Federal jurisdiction under the Commerce Clause came to an end. In 1942, the Supreme Court once again broadened its definition of the Commerce Clause to include interstate activities that have an *indirect* effect on interstate

[155] U.S. CONST. art. I, sect. 8, cl. 3.

commerce. One prominent example of this expansion of Federal jurisdiction is the case of *Wickard v. Filburn.*

Wickard begins with a man on a farm. Filburn, the appellee, owned a small farm, which he used to sell dairy, eggs, and poultry.[172] Filburn also planted and harvested wheat, a portion of which he sold, and the other part, he used to for personal consumption, to provide food for his animals, and to seed his ground annually.[173] In 1941, the Federal Government sought action against Filburn for exceeding the maximum volume of wheat production, per the Agricultural Adjustment Act of 1938.[174] The Agricultural Adjustment Act claims authority under the Commerce Clause, and is used to regulate foreign and interstate wheat distribution, and "to avoid surpluses and shortages and the consequent abnormally low or high wheat prices."[175] Filburn challenged the Act, and claims against him, stating that his wheat production is local in nature and that, at most, his crop had an *indirect* effect on interstate commerce.[176] After analyzing national profits compared to the area of land dedicated to wheat production, the Court held that because private consumption of wheat accounts for the biggest variable affecting the market, farming for private consumption does *directly* affect interstate commerce.[177] As for Filburn's claims that the local nature of his production exceeds the scope of the Commerce Clause, the Court stated that "there is no decision of this Court that such

[172] *Wickard*, 317 U.S. 114.
[173] *Id.*
[174] *Id.* at 114-9 (Under the Act, Filburn was allotted a maximum wheat crop of 11.1; however, he sowed more than double the allotted amount, and ultimately harvested 11.9 acres of wheat.).
[175] *Id. at 115.*
[176] *Id.* at 119.
[177] *Id.* at 127.

activities may be regulated where no part of the product is intended for interstate commerce or intermingled with the subjects thereof."[178]

The attitude the Supreme Court expressed in *Wickard* is representative of a sixty-year trend towards the broadening of Federal power under the Commerce Clause.[179] In a single opinion, *Wickard* eradicated the requirement set forth in *A.L.A. Schechter Poultry Co.* wherein a business must engage in business directly in multiple States for federal jurisdiction to apply. Because of the *Wickard* decision, the Federal Government has the power to regulate any individual activity that can affect a market that spans across multiple states, *if enough individuals decide to engage in it,* and regardless of whether the activity is commercial in nature. While the logic in *Wickard* may seem reasonable when it is applied to Federal regulation of the wheat industry, it is cause for concern when examining other aspects of life for which it can be applied. For example, can Congress pass a law limiting the amount of groceries that stores that only sell locally sourced produce can sell? Using the same logic as *Wickard*, the restaurant business is a thriving industry that engages in both interstate and international commerce.[180] As the trend towards healthier eating habits continues to rise, some may choose to eat exclusively from home. While any individual that chooses to eat from home may not have any effect at all on interstate commerce, if enough people choose to exclusively eat from home, it can collapse the entire restaurant industry; therefore, grocery stores that only sell locally sourced produce directly can affect interstate commerce. While this is an extreme

[178] *Id.* at 120.
[179] *See supra* note 19, at 1379.
[180] Many restaurants source their food and have chains in multiple states and countries. McDonalds, for example, has restaurants in nearly every state and country.

example, and a bill limiting grocery sales is unlikely to pass any time in the near future, given the breadth of power established by *Wickard*, such laws, and ones that are similar in scope, are not outside of congressional reach.

Another example of the expanding era of Commerce Clause jurisprudence involves a case wherein the appellant challenged the federal government's authority to enforce Title II of the Civil Rights Act of 1964.[181] The Act was created based on a request from President Kennedy to "promote the general welfare by eliminating discrimination based on race, color, religion, or national origin."[182] Under the Commerce Clause, the Act extended protections against discrimination to consumers, and prohibited business owners from refusing service to people because of their race.[183] *Heart of Atlanta Motel, Inc. v. United States* concerned an innkeeper that owned and operated a motel in Atlanta, Georgia.[184] Because of the hotel's proximity to two interstate highways, approximately twenty-five percent of the hotel's patrons came from other States however, the entire operation of the Heart of Atlanta Motel was conducted within the State of Georgia.[185] When the Civil Rights Act was enacted, the innkeeper sought injunctive relief against its enforcement, claiming a lack of Federal jurisdiction over the operation of his business.[186] As a regular part of the motel's operations, the innkeeper profiled patrons, and refused service to those who did not meet his standards on the basis of race. As part

[181] *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 242 (1964).
[182] President John F. Kennedy, as cited in *Id.* at 245.
[183] *Id.* at 247.
[184] *Id.* at 243.
[185] *Id.*
[186] *Id.* at 242.

of his challenge to the Civil Rights Act, the innkeeper expressed his intentions to continue this practice.[187]

In his complaint, the innkeeper claimed that the Act violated his Fifth Amendment rights, and "deprived [him] of the right to choose [his] customers and operate [his] business as [he] wishe[d].[188] The Supreme Court ruled in favor of the Federal Government, and held that the Commerce Clause, alone is sufficient grounds for upholding the Act.[189] The Court defers to *McCullough v. Maryland* in concluding that the Constitution grants the Federal Government the power to enact laws that regulate intrastate commerce, so long as it *has an effect* on interstate commerce.[190] The Court ruled that because the innkeeper's business serves travelers from outside the state, the business does effect interstate commerce, "however 'local' [his] operations may appear," and therefore, he is bound to restrain from racially discriminating against his patrons.[191]

Despite the good intentions behind the Civil Rights Act, the holding in this opinion has implications that extend beyond the prohibition of racial discrimination. Through *Heart of Atlanta Motel*, the Supreme Court opinion has, once again, expanded the power of the Federal Government by broadening Commerce Clause jurisdiction to cover businesses that operate exclusively within a state, so long as customers from outside the State patronize the establishment. Part of what makes the *Heart of Atlanta Motel* decision troubling is that it does not provide a standard for determining how much

[187] *Id.* at 243.
[188] *Id.* at 243-44.
[189] *Id.* at 250.
[190] *Id.* at 258.
[191] *Id.* at 258, 261.

patronage from out-of-state clients is required to declare that a business is engaged in interstate commerce. Would a single customer suffice? What if a business does not track where their patrons come from? Could there be an automatic presumption that businesses serve a certain percentage of out-of-state clientele? With interstate travel becoming progressively more accessible, the logic used to regulate the Heart of Atlanta Motel has the potential to extend to virtually all businesses.

(D) New Beginnings?

The 1995 decision of *United States v. Lopez*, once again, marked a new era of jurisprudence surrounding the Commerce Clause. This was the first Supreme Court case in sixty years that ruled that Congress exceeded its authority under the Commerce Clause.[212] In *Lopez*, a student was arrested for bringing a gun to school, a direct violation of the Gun Free School Act of 1990.[213] The student challenged the law, calling it unconstitutional on the grounds that Congress has exceeded its scope of power by attempting "to legislate control over our public schools."[214] The Court ruled that "[t]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce."[215]

[212] *See supra* note 19, at 1379.
[213] *See Lopez*, 514 U.S. at 551.
[214] *Id.*
[215] *Id.* at 551, 567.

When this case was first decided, it was viewed as the beginning of a new trend towards increasing judicial restraint in Commerce Clause jurisprudence. In only a year after the *Lopez* decision, motions to review the constitutionality of decisions concerning Commerce Clause jurisprudence were filed in more than eighty districts.[216] As time passes, the Supreme Court undergoes alternating phases of strict and loose construction of the Commerce Clause; the overall trend, however, seems to point towards a slow dissolution of congressional standards, and evermore encroachment on the States' Tenth Amendment right to regulate intrastate commerce. Despite the outcome of the *Lopez's* decision, efforts to scale back federal power are inconsistent, at best. Shortly after *Lopez* was decided, President Clinton, in his quest to "find a way to ban firearms in or near schools," and to solve the jurisdictional issue presented by the decision, proposed that Congress amend the act to require that the government prove firearms brought into school zones have traveled across state lines or are otherwise engaged in interstate commerce.[217] In response, "Congress changed the gravamen of the offense from possessing a firearm in a school zone to possessing a firearm 'that has moved in or that otherwise affects interstate or foreign commerce' in a school."[218] Regardless of the verbiage of the law, however, the intent of the Gun-Free School Zones Act is to use a the constitutional power to regulate interstate commerce to federally regulate an inherently non-economic activity.

[216] *See supra* note 58, at 1432.

[217] John M. Scott, *Constitutional Law—Supreme Court Invalidates Federal Gun-Free School Zones Act. United States v. Lopez, 115 S .Ct. 1624 (1995),* University of Arkansas at Little Rock Law Review. Vol. 18, Issue 3, 513, 530 (1996).

[218] Seth J. Safra, *The Amended Gun-Free School Zones Act: Doubt as to Its Constitutionality Remains,* Duke Law Journal, Vol. 50, No. 2, pp. 637, 638 (Nov., 2000).

In 2005, a decade after *Lopez,* the Supreme Court heard *Gonzalez v. Raich* and rendered a decision upholding the *Wickard* decision, as well as a Federal law that attempts to regulate intrastate activity. *Gonzalez v. Raich* concerns the Compassionate Use Act (CUA), a statute passed in 1996 by the California State Legislature.[219] The CUA legalized, with restrictions, the use of marijuana for medicinal purposes, despite possession, distribution, and sale of the drug being illegal under federal law at the time.[220] In 2002, the respondents in *Gonzalez* were prescribed medicinal marijuana, in compliance with CUA, to treat serious medical conditions.[221] Marijuana, at that time, was the only substance known to effectively treat the respondents' ailments. That August, however, the Federal Government became aware of the respondents' respective sources for the drug and destroyed the plants.[222] In response to the actions of the federal officers, the respondents sought injunctive relief from the courts, and challenged the Federal Government's jurisdiction to regulate the use of marijuana under the Commerce Clause.[223] The Supreme Court granted *certiorari* to resolve discrepancies between various lower court opinions on the issue, and to address an important question concerning Commerce Clause jurisprudence: Does the Constitution allow the Federal Government to

[219] *Gonzalez v. Raich*, 545 U.S. 1, 5 (2005).
[220] *Id.*
[221] *Id.* at 6-7.
[222] *Id.* at 7.
[223] *Id.* at 8.

regulate Schedule I substances[224] grown, harvested, and consumed within a single state?[225] In a 5-4 decision, the Supreme Court answered yes.[226]

In *Gonzalez,* the Supreme Court defers to *Wickard,* and ruled that the respondents' use of marijuana falls within Commerce Clause jurisdiction because it "substantially affects interstate commerce."[227] According to the Supreme Court, the fluctuations in demand by the use of home-grown marijuana could influence the interstate market for illicit substances, and therefore, affect interstate commerce.[228] The Court further justified its decision by stating that a rise in production of marijuana, even if grown and consumed locally, would also "frustrate the federal interest in eliminating commercial transactions in the interstate market in their entirety."[229]

The logic used to defend the *Gonzalez* and *Wickard* decisions persist to this day as the Supreme Court continues to rely on the intractability of illicit substances to expand federal jurisdiction under the guise of interstate commerce. In a 2016 decision, the Supreme Court, ruled that the Federal Government has jurisdiction over anyone who obstructs, delays, or otherwise affects persons engaged in interstate commerce, including dealers of illegal substances.[230] The Court defers to the *Gonzalez* decision in ruling that the sale of illicit substances qualifies as interstate commerce, even if the drugs, or persons

[224] The United States Drug Enforcement Agency, *Drug Scheduling,* https://www.dea.gov/drug-scheduling (Last visited Feb. 17, 2020) (The United States Drug Enforcement Agency classifies marijuana as a Schedule I drug. "Drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse." Per the DEA, the Schedule I drugs also include substances that are not listed, but are "substantially similar to or is represented as being similar" to listed substances.).
[225] *Gonzalez*, 545 U.S. at 8-9.
[226] *Id.* at 4, 9.
[227] *Id.* at 17.
[228] *Id.* at 19.
[229] *Id.*
[230] *Taylor v. United States*, 136 S. Ct. 2074, 2077-2078 (2016).

engaged in its transactions, never leave the state.[231] "If the Government proves beyond a reasonable doubt that a robber targeted a marijuana dealer's drugs or illegal proceeds, the Government has proved beyond a reasonable doubt that commerce over which the United States has jurisdiction was affected."[232] Although federal power over intrastate matters fluctuate over time, overall trends, and the nature of power itself, suggest progressive and incremental expansion, with no clear indication of ever so much as slowing down.

[231] *Id.* at 2087 (*Taylor* upheld the *Gonzalez* decision that "the Commerce Clause gives Congress authority to regulate the national market for marijuana, including the authority to proscribe the purely intrastate production, possession, and sale of this controlled substance.").
[232] *Id.* at 2077.

CONCLUSION

After learning about the history of Necessary and Proper, and Commerce Clause jurisprudence, how is federalism actually effected, and why does all of this matter? While the Constitution was designed to be steadfast and consistent, the Federal government has demonstrated a general tendency to use backwards logic and contradictory statements to achieve its goals. While many of these laws and policies begin with good intentions, the use of linguistic gymnastics to pass them can lead to unintended consequences, such as the degradation of plain-language rights and restrictions enumerated in the Constitution. The Founding Fathers meticulously crafted every word of the Constitution. With only a few pages of text, they created a nation with built-in safeguards against tyranny. One vital tool they used to achieve this was the creation of federalism, or the separation of powers between the State and Federal governments; a device that further reinforces the system of checks and balances between the Executive, Legislative, and Judicial branches, and also allows for experimenting with laws, as explained by Justice Brandeis.

Federalism is integral to the function of American society because the danger of a rogue central authority with little oversight far outweighs the dangers of a handful of States enacting laws that conflict with the customs and privileges that the rest of the country enjoys. It allows States to enact laws that work for their individual needs, and not necessarily those of other States. It promotes diversity of culture and thought, offering people the ability to "vote with their feet," and move to a State that better suits their familial, ethical, and economic needs. Without federalism, the United States government would lose the thing that makes it special, reducing itself to a single governing body that

uniformly and indiscriminately enacts laws over an immense swath of land with no regard for local concerns, and that is why the unfettered power of judicial review is so disquieting.

Admittedly, many of the opinions regarding the Commerce and Necessary and Proper Clauses are genuinely for the benefit of the people, but where should the line between judicial review and original intent be drawn? The Constitution was written with specific language; every word, and every phrase was considered with care and written with purpose, so why should the American people accept the word "necessary" to mean "convenient," when the plain-language meaning of the word connotes an actual need?

Despite the Constitution only allowing a limited number of defined federal powers, the Supreme Court's standard of convenience has allowed the Federal Legislature to grow exponentially, encompassing nearly every aspect of American life, and overshadowing the power of the States one case at a time. Although the trials faced in America today are far from the oppression faced by colonists under the suffocating reign of King George III, the progression of expansion is, at the very least, cause for concern.

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