

The Constitutional Divide Between State and Federal Jurisdiction: Navigating Jurisdictional Boundaries Inherent in United States Jurisprudence

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Presentation Overview

- **Goals of Presentation:**
 - Understand US Jurisprudence as two independent and parallel State and Federal Jurisdictions
 - Explore the historical basis for this parallel system
 - Consider the effect of this parallel system in specific relevant modern controversies

History: Where did these colonists come from?

- Henry VIII (1509-1547)
 - Breaks with the Pope, establishes the Church of England
- Mary (Bloody Mary, 1553-1558)
 - Re-imposes Catholicism, English Protestants flee to continental Europe
- Elizabeth I (1553-1603)
 - English Protestants return to England with new, more democratic ideas about religion: Presbyterianism, Puritanism, Anabaptism, etc.
- Charles I (1629-1649)
 - Protestant Revolution and Cromwell
 - Rule by Parliament and Army
 - 1660 Parliament has enough, *invites* Charles II (1660-1685) back to throne
 - End of absolute monarchy, “Government by Consent” established

History: Unique colonial political consciousness takes shape (1607-1770's)

- **RESULT OF ENGLISH TURMOIL AT THE TIME:**
English Colonies in North America founded by people with basic idea of government by popular will, both in temporal matters and religious matters
- Most of time period England's attention consumed with Continental Wars—left colonies to develop independently
- Governed by Governor appointed by crown, and Assemblies elected by colonists
- Evolution of “direct representation” vs. “virtual representation”

History: Unique colonial political consciousness takes shape (1607-1770's)

- English Colonies:
Massachusetts, Maryland, South Carolina, Virginia, Rhode Island
- Dutch Colonies:
New York, Delaware (ceded to England after English Dutch war, 1664), Pennsylvania (ceded to England, 1664), New Jersey (ceded to England, 1664), Connecticut (ceded to England, 1664), Vermont (ceded to England as part of New York, 1763)



History: The revolutionary hand is forced by George III (1760-1820)

- Unlike the revolutions of Latin America or the Revolutions in Europe in the 18th and 19th centuries, the American revolution was a struggle to keep the freedoms obtained, not to gain new freedoms.
- Revolution was not universally popular, only about 1/3 colonists were patriots.
- Revolutionary movement was created by George III's attempt to **re-impose** sovereign superiority and assert renewed authority in the form of taxes and new regulations
 - Tax on Tea
 - Stamp Act
 - Removal of trial for treason and high crimes from colonies to England
- Colonists resist **loss** of freedoms and imposition of government from afar
- **RESULT OF GEORGE III's HEAVY HAND:** Patriots' fear of unrestrained government from afar is crystallized

FOUNDATION OF THE US CONSTITUTION

- Newly free states try hand as weak Confederation and fail
- Convention of 1789 is collection of competing goals/fears
 - Need for strong central government for regulation of trade, management of national debt, printing money, foreign policy, etc.
 - Fear of new federal government with unrestrained powers: replacing one tyrant for another
 - Fear of small states (Delaware) being dominated by larger states (Virginia)
- Great debate for ratification of Constitution
 - Federalist Papers (Madison, Monroe and Hamilton)
 - Anti-Federalist Papers (many pseudonyms: Centinel, Federal Farmer, Brutus, Impartial Examiner; some known names: Jefferson, Patrick, Henry)
- Two of the major themes addressed by the Constitution
 - Division of powers between three branches
 - Federal government (preservation of states) or Consolidated Government

US CONSTITUTION: WHAT WAS WRITTEN

- Article I – Legislative Branch
 - Enumerated powers
 - Power to collect taxes, duties, imposts etc. (§8, Clause 1)
 - Commerce Clause (§8, Clause 3)
 - Immigration and Naturalization (§8, Clause 4)
 - To define the Federal Courts and their jurisdiction under the Supreme Court (§8, Clause 9)
 - Necessary and Proper clause (§8, Clause 18)
- Article IV – Preservation of the States' authority
- Article VI – General provisions
 - Supremacy Clause (Clause 2)
- Tenth Amendment – clarifies Federal Government is of limited and delegated authority
 - “The Powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the States respectively, or to the people.”

US CONSTITUTION –WHAT IT MEANT

- CLEAR: Federal Government was to be of limited and delegated powers
- UNCLEAR:
 - State vs. Federal authority, where did one end and the other begin
 - Who was to be the final arbiter of the Federal government's power and its limits (*Marbury v. Madison*)
 - Authority of US Supreme Court to review decisions by State courts (*Martin v. Hunter's Lessee*)
 - Are the Federal Government's powers limited to express language or are some powers implied (*McCulloch v. Maryland*)
 - What powers do States have in areas delegated to the Federal government (*Gibbons v. Ogdon*) or to co-regulate (preemption cases).
- **SPECIAL NOTE:** overlying all of these issues, the States inherited their understanding of government and the role of courts from England, in contrast to the European Continent. The English judicial and constitutional system is one rooted in precedent more than written code. Therefore the decisions of the courts (in England as the direct voice of the Sovereign) and precedent established by the courts hold particular importance in both Federal and State government in the US.

Some Questions Answered: Authority of Supreme Court and Limits of Federal Power

- *Marbury v. Madison*, 2 L.Ed. 60 (1803)
- Judiciary Act of 1789 and Midnight Appointments of March 1801 (Federalist Party losing power, Madison refuses to issue commission)
- Act vested **original jurisdiction** with the Supreme Court to enforce provisions (original jurisdiction of the Supreme Court was limited by Article III, §2, Clause 3) so original suit brought before the Supreme Court
- Act held unconstitutional
 - Act impermissibly expanded the scope of Supreme Court jurisdiction and thereby violated the Constitution
 - Congress cannot expand the scope of any power delegated to any branch of the Federal Government
 - The Supreme Court will be the final arbiter of what is constitutional and unconstitutional

Some Questions Answered: US Supreme Court Has Authority to Review Decision of State Courts

- ***Martin v. Hunter's Lessee***, 1 Wheat. 304 (1816)
 - Hunter claimed title to land in Virginia by grant from Virginia after seizure from Lord Fairfax; Martin claimed title through will of Lord Fairfax and Federal peace treaty with England preserving land titles to English subjects
 - Virginia ruled in favor of Hunter; US Supreme Court ruled overturned Virginia decision and “instructed and commanded” the Virginia court to enter judgment in favor of Martin pursuant to treaty
 - Virginia court refuses to follow instruction; Supreme Court replies by “reversing” the Virginia court, and holds:
 - US Supreme Court appellate jurisdiction is limited by **subject matter** of the suit and not by where the case originated “it is the case, then, not the court, that gives the jurisdiction”
 - Questions as to the US Constitution, laws or treaties of the United States fall within the US Supreme Court even if originating in State Courts

Some Questions Answered: Implied Power of Congress and Limits of State Power

- ***McCulloch v. Maryland***, 4 L.Ed. 579 (1819)
 - State of Maryland imposes tax (Maryland “Stamp Act”) on Federal bank branch in Baltimore; Federal Bank refuses to pay; suit brought against McCulloch (bank officer) and convicted; appeal to US Supreme Court
 - CHALLENGE: Maryland challenges right of Congress to create a Federal bank, power is not expressly delegated to Congress
 - CHALLENGE: McCulloch challenges authority of Maryland to tax Federal institution
 - Maryland statute is struck down
 - Article I, §8, Clauses 1 (powers related to collect taxes etc. and pay debts) and 18 (Necessary and Proper Clause) **imply** the power to create a Federal Bank
 - Article VI, Clause 2 (Supremacy Clause) dictates that where authority of a State and authority of the Federal government conflict, the authority of the Federal government prevails; the power to tax is the power to destroy

Some Questions Answered: Powers Reserved Exclusively to Congress

- ***Gibbons v. Ogden***, 6 L.Ed. 23; 22 U.S. 1 (1824)
 - Ogdon operating steamboat operation under monopoly license from State of New York; Gibbons operating competing steamboat under license pursuant to Coasting Trade statute enacted by Congress; Ogdon sues to enforce his monopoly
 - Ogdon loses; Supreme Court holds that New York monopoly license constitutes regulation of commerce delegated to Congress (Article I, §8, Clause 3); States cannot exercise authority in matters delegated to Congress

The Looming Question: Is the Union Consensual or Permanently Binding?

- States Rights Theory: Union is consensual and States have inherent right to secede
- Competing Theory: Union is a union of “We the People” not “We the States”; States do not have the right to leave the union
- Southern States have had parity in House, struggling to keep parity in Senate
- Southern States out voted on key issues: import/export duties, investment in infrastructure, policies favoring manufacturing/trade vs. agricultural and slavery
- Southern interests asserted in ***Dread Scott v. Sanford***, due process challenge to Congressional Slave Act
- Conflict settled by Civil War (1860-1865)

Reconstruction and Expansion of Federal Power

- Reconstruction: Occupation of Southern States by Federal army (1865-1876)
- Ended as compromise to settle disputed presidential election of Hayes (r.) v. Tilden (d.); South agreed to election of Hayes, North agreed to end Reconstruction
- North conditioned re-entry into union during reconstruction by Southern States on ratification of Amendments XIII (ended slavery), XIV (due process and equal protection extended to states), and XV (right to vote – excludes women)
- Fourteenth extended Fourth, Fifth and Sixth Amendment protection to state action (Federalization of Criminal Procedure)
- Fourteenth Amendment also expanded power of Supreme Court to intervene in State regulatory/police power issues; huge expansion of Federal power

Substantive Due Process (5th & 14th Amd.): Expands Supreme Court Power at Expense of States and Congress

- No person shall be deprived (5th) and no State shall (14th) “deprive any person of life, liberty or property without due process of law” (Allgeyer-Lochner-Adair-Coppage line)
 - **Allgeyer v. Louisiana**, 165 U.S. 579 (1897): Supreme Court defines liberty to include “to be free in the employment of all his faculties, to live and work where he will; the earn his livelihood by any lawful calling” and strikes Louisiana statute prohibiting insuring property in Louisiana with any company not in compliance with Louisiana law
 - **Lochner v. New York**, 198 U.S. 45 (1905): Lochner convicted of violation State wage and hour law limiting work week to 60 hours/week; Supreme Court struck the law because it interfered with employee’s Fourteenth Amendment right to contract
 - **Adair v. United States**, 208 U.S. 161 (1908): Supreme Court struck Federal law against “yellow dog” contracts (employee contract with employer **not** to join a union); “Legislation that disturbs that equality [to sell labor on terms desired by employee and prescribed by employer] is an arbitrary interference with the liberty of contract”
 - **Coppage v. Kansas**, 236 U.S. 1 (1915): Supreme Court invalidated Kansas “yellow dog” contract prohibition

Further Supreme Court Economic Restrictions by Limiting Commerce Clause

- President Roosevelt's depression era "New Deal" legislation is threatened by Supreme Court's "economic intervention":
 - ***Schechter Poultry v. United States***, 295 U.S. 495 (1935): Supreme Court invalidates implementation of National Industrial Recovery Act of 1933 with respect to poultry quality standard enacted by Federal Government (sick chicken case)
 - ***Carter v. Carter Coal Co.***, 298 U.S. 298 (1936): Supreme Court invalidated minimum wage/maximum hour provision of the Bituminous Coal Conservation Act of 1935; held that power to regulate not within the "Commerce Clause" power of the Congress because all purported harms regulated were local in character
 - Court packing "Court Reform" plan introduced in Congress; President permitted to appoint one additional Justice for each sitting Justice over the age of 70 and who has held judicial office 10 or more years, up to total of 16 Justices on the Bench (six Justices were over 70)

Fourteenth Amendment Expands Federal Power: Substantive Due Process Revisited

- ***West Coast Hotel Co. v. Parrish***, 300 U.S. 379 (1937): Liberty of Contract theory abandoned in favor of permitting minimum wage legislation; Supreme Court focuses on public interest in protecting working condition of women in hospitality industry
 - Reasoned reconsideration of substantive due process or "switch in time that saved nine"
- ***NLRB v. Laughlin Steel***, 301 U.S. 1 (1937): "the power to regulate commerce is the power to enact all appropriate legislation for its protection and advancement"
 - Activity regulated was firing of employees in single plant within a single state; NLRB regulation was not interstate commerce on its face; however, intrastate activities that affected interstate commerce could be regulated

Equal Protection (14th Amd.) Further Expands Supreme Court Power

- No State shall “deny to any person within its jurisdiction the equal protection of the laws”
- Little or no use until 1950 forward
 - Rational Basis Test in economic regulation (***Railway Express v. New York***)
 - Strict Scrutiny in Suspect Classification (***Brown v. Board of Education*** (race); ***Craig v. Boren*** (gender); ***Graham v. Richardson & In re Griffiths*** but see ***Mathews v. Diaz*** (alienage))
 - Strict Scrutiny in Fundamental Rights and Interests (***Harper v. Vir. Board of Elections*** (poll tax); ***Plyler v. Doe*** (public education for undocumented aliens))

Limitations on Supreme Court Power

- **Prohibition on Advisory Opinions:** 1793 President Washington’s request for advisory opinion regarding US neutrality in English/French war; Supreme Court declines to give any opinion; relies on Separation of Powers doctrine, that Supreme Court is court of **last resort** and therefore not of a judicial nature
- **Doctrine of Ripeness:** (***United Public Workers v. Mitchell***, 330 U.S. 75 (1947)) Suit brought by federal employees to challenge the Hatch Act of 1940 prohibiting employees from engaging in political activities; plaintiffs all alleged desire to participate, but none had yet participated nor charged with violation; Supreme Court denied relief citing that claim was not “ripe” and workers sought advisory opinion
- **Political Questions:** Off limits where the Court finds no judicial standard to apply (***Goldwater v. Carter***-abrogation of prior treaty), or where the Court hears prudential considerations (***O’Brien v. Brown***-1972 Democratic Convention delegates); but the Court will take up potentially political questions which implicate fundamental constitutional principals such as equal protection under the 14th Amendment (***Baker v. Carr***, Tennessee re-apportionment case)

Modern Controversies: Limitation on State Action

- Latter half of 20th century Supreme Court further defines the limits of State and Federal power:
 - Expansion of “new fundamental liberties” resident within the Substantive Due Process Clause (***Griswald v. Connecticut/Roe v. Wade***)
 - Upholds certain police power/social issues reserved to the states (***Cruzan v. Missouri; Schiavo v. Florida***)
 - Preemption by Federal exercise of regulatory power in area of joint State/Federal regulation which excludes States, delegates authority to States (***Gonzalaz v. City of Peoria; INA §287(g) IIRAIRA §133 (1996)***)

Modern Controversies: Limitations Based on New “Fundamental Liberties”

- New Fundamental Liberty discovered resident within the Substantive Due Process Clause – Right to Privacy:
 - ***Griswald v. Connecticut***, 381 U.S. 479 (1965): Supreme Court invalidated Connecticut statute that prohibited counseling use of or providing contraceptive methods to married couples; no majority opinion; separate plurality opinions found “penumbras” of privacy vs. outright general right to privacy
 - ***Roe v. Wade***, 410 U.S. 113 (1973): Supreme Court, building on the ***Griswald*** decision, Supreme Court coalesced around general fundamental right to privacy and that this right counter balanced any State’s interest in regulating abortion; consequently, State’s could not outright ban abortion

Modern Controversies: Supreme Court Upholds States' Right to Regulate in Other Areas

- Certain traditional areas of State regulation upheld; State interest in preservation of life vs. right to die:
 - ***Cruzan v. Missouri***, 497 U.S. 261 (1990): Supreme Court upheld Missouri Supreme Court's decision against permitting discontinuation of hydration and feeding for Cruzan in "persistent vegetative state"; State's presumption in favor of life was permissible as well as its requirement of "clear and convincing" evidence that Cruzan's choice would have been to end care
 - ***Schiavo v. Florida***, 916 So. 2d 814 (Fl 2005) & ***Schiavo ex rel. Schindler v. Schiavo***, 403 F.3d 1223 (11th Cir., 2005): Cert denied; Florida Supreme Court also applied "clear and convincing" test to challenge by parents of Schiavo in persistent vegetative state when husband/guardian decided to terminate hydration and feeding; Court found there was clear and convincing evidence; Federal Court of Appeals upheld Florida Supreme Court and US Supreme Court denied certiorari

Modern Controversies: Federal Courts Find Federal Preemption by Congress in Area of Regulation

- Federal Preemption exists when Congress has so extensively regulated an area of activity so as to exclude State regulation:
 - ***Rice v. Santa Fe Elevator Corp.***, 331 U.S. 218 (1947): Supreme Court struck State regulation of grain warehouses in light United States Warehouse Act; "The Scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it"
 - ***Hines v. Davidowitz***, 312 U.S. 52 (1941): Supreme Court struck Pennsylvania Alien Registration Act of 1939 in view of Federal Alien Registration Act of 1940; based decision on broad national power over immigration
 - ***Gonzalez v. City of Peoria***, 722 F.2d 468 (C.A.9 (Ariz.) 1983): Court of Appeals holds that State of Arizona and cities may act to enforce ***criminal*** (stop aliens in course of illegal entry) but not ***civil*** (arrest of aliens illegally present) enforcement provisions of Immigrations and Naturalization Act (INA)
 - ***IRAIRA §133 (1996)*** enacting ***INA §287(g)*** clarifies narrow specific circumstances where States may act to enforce civil provisions of INA

Conclusion

- As originally intended, the Federal Government remains a government of limited, enumerated powers and the States remain the seat of plenary power unless otherwise limited by the Constitution.
 - The Federal Government has no power unless delegated to it by the Constitution
 - The States have all powers unless restricted by the Constitution
- However the understanding of what is delegated to the Federal Government and what is restricted from the States has exploded over the last 221 years
- Echo the words of Centinal (Anti-Federalist), No.6, 22 Dec. 1787: I say the people, who exhibited so lately a spectacle, that commanded the admiration, and drew the plaudits of the most distant nations are now lost to every noble principle, are about to sacrifice that inestimable jewel liberty, to the genius of despotism.
- Is all this for better or worse? The debate continues after 221 years

Thank you.

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