

# The current extended interpretation of the commerce clause

Law



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BUSTER**

Interpretations of the Commerce Clause Interpretations of the Commerce Clause The Commerce Clause raises several interpretive and normative questions. How, for example, is commerce to be defined? What constitutes commerce among the several states? What are the proper functions and powers of the respective state and federal governments under the commerce clause? What weight should original intent, current values or modern conditions of trade have in construing the commerce clause?

During the constituting era, the implication of a word in any legal document was postulated to be its ordinary, conventional meaning (Branch, 1753; Natelson & Kopel, 2011). There is little doubt that the conventional and accepted common meaning of commerce both in common discourse as well as in legal language, was mercantile trade and the additionally associated activities (Natelson & Kopel, 2011).

There are at least four possible interpretations which have been proposed in interpretation of the Commercial Clause (Scheb & Stephens, 2007, pg. 100). First it has been advocated that the clause bestows upon the Congress the absolute power to control commerce. Under this construal, states are deprived off power to check interstate commerce. Secondly, it has been interpreted that the clause gives Congress and the states contemporaneous powers to regulate commerce. Under this interpretation, state regulation of commerce is unenforceable only in cases where it is pre-empted by federal laws (Exploring Constitutional Conflicts, 2011).

Third, the Commerce Clause has been interpreted to imply that both the congress and the states each have their own mutually exclusive zones of regulatory power. Under this construal, it becomes the responsibility of the

judicial system to determine whether one sovereign has invaded the exclusive regulatory zone of the other.

The last interpretation that has been advanced is that the clause by its own force dissociates states the power to regulate commerce in certain ways, but both the Congress and States retain coexisting power to control commerce in many other respects. This forth interpretation, is a complicated and convoluted hybrid of two others, and it is the approach employed by the courts in their decision while interpreting the commerce clause.

According to Marshall (Kommers, Finn, & Jacobsohn, 2004, pg. 301), as long as any aspect of commerce implicated or involved more than one state, such as transportation or the exchange of commodities across state lines, congress may regulate it. The power to regulate, however, is equally broad. He added, this power, like all others vested in congress is complete in itself, may be excised to its utmost extent and acknowledges no limitations, other than are prescribed in the constitution.. Marshall stated that the national government was limited to some specified objects, but the power to regulate those objects - interstste commerce being one of them- was vested in congress as absolutely as it would be in a single unitary government.

Whereas commerce among the states is clearly subject to congressional legislation, commerce within the states is subject to state regulation. Justice Willium Johnson, posited Congress's exclusive authority over commerce and denied any significant difference in commerce among and within the states. This power in his words, " can reside but in one potentate and hence the grant of this power carries with it the whole subject, leaving nothing for the sttae to act upon (Kommers, Finn, & Jacobsohn, 2004, pg. 302).

Having stated the various interpretation of the Commerce Clause. A more practical interpretation of this clause is that it should return to dual federalism that is implicit in the States' rights account of the constitution. The Commerce Clause has for long been used as a weapon to limit the ability of the federal government to regulate the national economy

#### References

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