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## The Commerce Clause

Defending the Founders' Original Intent

### Abstract

This white paper explores the original intent of the Commerce Clause in the U.S. Constitution and contrasts it with the broad interpretations that have expanded federal power over the years. By analyzing the writings and speeches of the Founding Fathers, the paper argues for a return to a more restrictive interpretation of the Commerce Clause to preserve the principles of limited government and state sovereignty.

### Introduction

The Commerce Clause, found in Article I, Section 8, Clause 3 of the U.S. Constitution, grants Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Over time, this clause has been interpreted broadly, allowing the federal government to extend its regulatory reach. This paper examines the founders' original intent and argues for a narrower interpretation.

### The Modern Usage of the Commerce Clause

In modern jurisprudence, the Commerce Clause has been used to justify extensive federal regulation of economic activities, including those that are intrastate in nature. Landmark Supreme Court cases have significantly expanded the scope of federal power under the Commerce Clause, often blurring the line between federal and state authority.

#### Wickard v. Filburn (1942)

One of the most expansive interpretations of the Commerce Clause came from the Supreme Court's decision in *Wickard v. Filburn*. In this case, Roscoe Filburn, a small farmer, was fined for growing more wheat than was allowed under the Agricultural Adjustment Act of 1938. Filburn argued that the excess wheat was for personal use and thus did not affect interstate commerce. The Supreme Court disagreed, holding that even wheat grown for personal use could be regulated by the federal government because it affected the overall market for wheat. Justice Robert H. Jackson wrote:

*"Even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce."*

This decision established the precedent that the federal government could regulate activities that have a substantial effect on interstate commerce, even if the activities themselves are not directly part of commerce.

## Regulation of Inactivity

The expansive interpretation of the Commerce Clause reached new heights with the idea that the federal government could regulate not only economic activities but also economic inactivity. This notion was notably discussed in the context of the Affordable Care Act (ACA) in *National Federation of Independent Business v. Sebelius* (2012). Although the Supreme Court ultimately upheld the individual mandate under Congress's taxing power rather than the Commerce Clause, the discussions surrounding this case illustrate the broad reach that some interpretations of the Commerce Clause can entail.

## Gun Control Laws

The Commerce Clause has also been used to justify federal gun control legislation. In *United States v. Lopez* (1995), the Supreme Court addressed the Gun-Free School Zones Act of 1990, which made it a federal offense to possess a firearm in a school zone. The Court struck down the law, ruling that it exceeded Congress's commerce power because carrying a gun in a school zone was not an economic activity that substantially affected interstate commerce. Chief Justice William Rehnquist wrote:

*"To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."*

This case marked a rare instance where the Supreme Court reined in the expansive interpretation of the Commerce Clause.

## The Founders' Intent: A Narrow Interpretation

### James Madison's Perspective

James Madison, in Federalist No. 42, discussed the importance of the Commerce Clause in preventing economic conflicts among states but emphasized its limited scope:

*"The regulation of commerce here is plainly a new power; and as it does not affect the substance of the former confederation, nor grant any additional prerogatives to Congress over those necessary to maintain harmony among the states, it cannot be regarded as infringing the rights reserved to the states."*

Madison viewed the clause as a means to facilitate trade and prevent interstate conflicts, not as a tool for extensive federal regulation.

## Thomas Jefferson's View

Thomas Jefferson was wary of expansive interpretations of federal power. In a letter to Albert Gallatin in 1802, he warned:

*"To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition."*

Jefferson's statement underscores his belief that the Commerce Clause should not be used to justify broad federal authority.

## Alexander Hamilton's Consistent View

Even Alexander Hamilton, who favored a strong central government, argued for a more limited interpretation of the Commerce Clause in Federalist No. 22:

*"The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others; and it is to be feared, that examples of this kind, if not restrained by a national control, would be multiplied and extended, till they became not less serious sources of animosity and discord, than injurious impediments to the intercourse between the different parts of the Confederacy."*

Hamilton saw the Commerce Clause as a means to eliminate trade barriers between states, not to empower the federal government to regulate all economic activity.

# Anti-Federalist Warnings

## Patrick Henry's Alarm

Patrick Henry, a vocal Anti-Federalist, expressed concern about the potential for federal overreach through the Commerce Clause. During the Virginia Ratifying Convention, he argued:

*"If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him; and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design."*

While Henry's primary focus was on the dangers of a standing army, his broader concern was about the concentration of power in the federal government, which includes the potential misuse of the Commerce Clause.

## Richard Henry Lee's Concerns

In his "Letters from the Federal Farmer," Richard Henry Lee warned about the expansive potential of the Commerce Clause:

"It is true the new Constitution does not pretend to give Congress a general power to make laws, the inference is strong that the powers intended to be vested in Congress are to be applied generally to all subjects of a general nature."

Lee feared that the general nature of the Commerce Clause could be used to justify an overreach of federal power.

## Luther Martin's Warnings

Luther Martin, a delegate to the Constitutional Convention, was a staunch opponent of a broad interpretation of federal powers. In his "Genuine Information" letters, he wrote:

*"By giving the Congress a power to regulate commerce, they will be enabled to ruin any one State, for they may, whenever they please, make any of their regulations, so as to destroy the particular commerce of any State."*

Martin's warning highlights the potential dangers of a broad interpretation of the Commerce Clause, which could lead to federal domination over state economies.

# Additional Founders on Limited Government

## Samuel Adams

Samuel Adams, an advocate for individual liberties and limited government, argued that the Constitution should be interpreted in a way that restricts the powers of the federal government:

*"The liberties of our country, the freedom of our civil constitution, are worth defending at all hazards; and it is our duty to defend them against all attacks."*

Adams emphasized that the Constitution was meant to protect individual liberties by limiting governmental powers.

## Conclusion

The contemporary use of the Commerce Clause to justify extensive federal regulation stands in stark contrast to the founders' original intent. By examining the words of Madison, Jefferson, Hamilton, Henry, Lee, and Martin, it is clear that the clause was intended to facilitate interstate trade and prevent economic discord, not to provide a blanket authorization for unlimited federal regulation. Returning to a strict interpretation of the clause is essential to preserving the constitutional balance of power and safeguarding state sovereignty. The founders' wisdom reminds us that vigilance is necessary to maintain a government that serves the people without overstepping its bounds.

## References

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