

Understanding the Role of Constitutional Government in Promoting Economic Prosperity

Explore: Background on the Commerce Clause

Commerce Clause

When the Founders wrote the Constitution in 1787, they wanted to fix the economic problems of the 1780s by creating a national government that would be able to collect taxes, regulate foreign trade, and, most important, create a common commercial policy among state governments. In the Federalist Papers, Founders James Madison and Alexander Hamilton argued that the federal government needed these expanded powers in order to turn the United States into a large free-trade zone and impartially balance conflicting state economic interests to protect rights. They also argued for a strong commercial policy to open up markets for foreign trade. The reach of the Commerce Clause, found in Article I, Section 8 of the Constitution, is an important part of the debate about federal power. It states, “Congress shall have the power... to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The first Supreme Court case on this part of the Constitution was *Gibbons v. Ogden* in 1824. The Court held that the Commerce Clause granted Congress “the power to regulate; that is, to prescribe [make] the rule by which commerce is to be governed.” That power extended to interstate commerce, which the court defined as “commerce which concerns more States than one.”

One of the first twentieth century cases to deal with the Commerce Clause was *Hammer v. Dagenhart* (1918). The Court ruled that the federal government could not outlaw child labor in manufacturing activities that took place in one state and did not cross state lines. The justices might have agreed that it was a worthy goal to protect young children from long work hours, but the Court did not agree that the federal government had the power to legislate on this issue. The Court found that the Tenth Amendment left this power to the states and that Congress could not make rules related to the production of goods where interstate commerce was not involved.

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The New Deal

Midway through the twentieth century, Congress started using the Commerce Clause to justify many new types of laws to regulate not just commerce, but also the conditions of economic and social life. The Commerce Clause has been a significant basis for the growth of federal power. The Supreme Court changed its way of thinking in the 1930s under great political stress. President Franklin Delano Roosevelt proposed, and Congress passed, many new programs called the “New Deal.” One program was Social Security, which gave pensions and aid to the disabled and elderly through taxes paid by younger citizens. Other programs regulated the stock market. At first, the Supreme Court ruled in several cases that Congress had no authority to enact such laws. In 1937, President Roosevelt spoke out against the Supreme Court’s decisions on the New Deal legislation. He wanted to be able to add one new justice for every current justice over the age of 70. Most experts view his idea, which was described as “Court Packing,” as a political plan to help his legislation. Some of the political conflict eased when one justice began voting to support the New Deal. Another justice retired and was replaced by a Roosevelt-appointed supporter of the New Deal programs.

The new majority deemed the increased federal power of New Deal legislation to be constitutional. The Supreme Court was going in a new direction. Congress was now able to create laws regulating, banning, and supporting a wide range of activities, and it did. Laws would be upheld as long as the Court was convinced that the regulated activities had a close and important relation to interstate commerce. Federal power grew dramatically for over fifty years¹.

¹ Excerpt from BRI “What is the Commerce Clause?”