

Issues of Federal Jurisdiction

Although law dictionary definitions can usually be of value, sometimes some plain speaking is required to make a complex or highly conceptual issue clear. For many people, the topic of “jurisdiction” is a bit fuzzy and difficult to nail down. In an effort to bring the topic into focus, we think it is best to start by defining jurisdiction in the following manner: **The authority to act.**

If the government has jurisdiction, it has the power to act. If it does not have jurisdiction, it does not have the power to act.

That may seem simplistic, and indeed it is. In a fundamental sense, jurisdiction is that simple.

The difficult part is determining what circumstances gives the government “power to act”, and in which circumstances the government is powerless to act.

The average American has been socialized in such a way that it is nearly impossible to imagine a circumstance in which the government (State or federal) is “powerless to act”. Fortunately, the perspective to which so many of us have been socialized is legally inaccurate and we can overcome that incorrect perspective simply by getting some correct facts under our belts.

In America, our governments, whether state or federal, are established by **The People** through the instrument of a constitution. [For more information about constitutions, see the [Constitutions](#) section within this site.]

Long before we had a “central government” (i.e. the US government) each of the 13 independent states (formerly colonies of the Crown) had their own Constitutions that provided the structure and limitations of their state governments. In 1789, the states signed the Constitution of the United States, which laid out the structure and limitations of the newly formed United States government. ***Whether it be a state, or the United States, no government in America can exercise any authority beyond that which is expressly provided to it in the written constitution that created it.***

Federal Jurisdiction Over Its “citizens”

Up until the Civil War, federal jurisdiction was a fairly straightforward proposition, without much confusion or complexity. The central question of federal jurisdiction in the pre-Civil War period was not what gave rise to it, or its general limitations, but only where to fix the exact boundary lines in a variety of circumstances. Such questions are proper and healthy to ask and that process continues to this very day.

However, at end of the Civil War the federal jurisdiction question was muddled substantially by the adoption of the 14th Amendment. [See the [Citizenship](#) section within this site for more information on the 14th Amendment.]

Prior to the Civil War, the only “American” that could be found within a state of the Union was a Citizen of that state, or the Citizen of one of the other states of the Union. Both Citizens held the same “political status” and that status was recognized in the main body of the US Constitution. With the adoption of the 14th Amendment at the close of the Civil War a new form of “citizen” could be found within the states. This new type of citizen was essentially a “federal citizen”, having received his citizenship not by birthright (i.e. being born within a state of the Union), but by a vote of the original *de jure* Citizens of the states, as expressed by their Representatives in Congress and in their state legislatures, as part of the ratification process of the 14th Amendment. This new federal citizen had far fewer rights than a *de jure* state Citizen and was of a completely different political status. Because his citizenship had been given to him solely through the 14th Amendment, the “rights” that went along with that form of citizenship were exclusively Congress’ to protect and enforce.

In many ways, what we are describing is not much different than the non-amendment based political relationship that persons had with Congress if they were born in one of the early frontier Territories. What made this situation distinct was one little phrase in the 14th Amendment:

Section 1 - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States ***and of the State wherein they reside.***

Those seven words changed the jurisdictional landscape forever. For the first time in the history of America, there were citizens of a state that did ***not*** owe their citizenship to their birth within the state, and the enforcement of their civil liberties was the exclusive domain of the Congress. In other words, for the first time, there were “citizens of a state” upon whom Congress’ authority could operate directly and exclusively. What this produced was a situation in which there were [new] “state citizens” upon which Congress’ authority could operate directly and exclusively, and [original] “state Citizens” over whom Congress had no authority whatsoever. It doesn’t take a genius to foresee the confusion (and abuse) that would soon result from such a situation.

In short, Congress has ***jurisdiction*** over citizens who have attained their political status by virtue of the 14th Amendment, but does not have any inherent jurisdiction over Citizens that attained their citizenship solely by virtue of their birth within a state of the Union.

Federal Geographic Jurisdiction

The geographic jurisdiction of the United States is **very** limited and well defined. Federal geographic jurisdiction is limited to those places where the United States is the sovereign.

In the states of the Union, **The People** are the sovereigns. All power exercised by the state governments flows from the consent of **The People**.

When the federal government is operating within a state of the Union, and is in contact with a *de jure* state Citizen, it must respect all the rights, privileges, and immunities of **The People**.

However, there are places where the people are **not** sovereign; where the government's power is **not** derived from the people, and where the US government (in the form of the Congress) is free to act much like a king of old, rather than a servant of the people. These places are specified in the US Constitution at Article I, Section 8, Clause 17, to wit;

To exercise exclusive legislation in all cases whatsoever, over such **district** (not exceeding ten miles square) as may by cession of particular states, and the acceptance of Congress, become the **seat of the government** of the United States, and to exercise like authority over **all places purchased by the consent of the legislature of the state** in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings... [emphasis added]

The handshake section is found at Article IV, Section 3, Clause 2:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the **territory** or **other property belonging to the United States**... [emphasis added]

Together, these two sections have been interpreted by the US Supreme Court to grant Congress the authority to legislate in ways that would be unconstitutional if applied to the states of the Union. [See *Downes v. Bidwel*, 182 US 244 (1901), and *Hooven and Allison Co. v. Evatt*, 324 US 674 (1945).] Here is a sound “rule of thumb” for viewing the distinctions in Congressional power:

When legislating for the states of the Union, under the authority of a power granted to the federal government in the Constitution, Congress **must stay strictly within the bounds of the power thus granted and limited**. However, when legislating for places where the US is the sovereign, Congress may do anything not expressly prohibited by the Constitution.

The two modes of legislating are exactly opposite and give rise to irresistible temptation to use the more permissive (and dangerous) legislative power against the people of the states of the Union.

In his powerful dissent in *Downes*, Justice Harlan stood opposed to this doctrine of irresistible temptation. Here is an excerpt from his dissent:

“The idea prevails with some, indeed it has found expression in arguments at the bar, that we have in this country substantially two national governments; one to be maintained under the Constitution, with all of its restrictions; the other to be maintained by Congress outside and independent of that instrument, by exercising such power as other nations of the earth are accustomed to...I take leave to say that, if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will result. We will, in that event, pass from the era of constitutional liberty, guarded and protected by a written constitution into an era of legislative absolutism...IT WILL BE AN EVIL DAY FOR AMERICAN LIBERTY IF THE THEORY OF A GOVERNMENT OUTSIDE THE SUPREME LAW OF THE LAND FINDS LODGEMENT IN OUR CONSTITUTIONAL JURISPRUDENCE. No higher duty rests upon this court than to exert its full authority to prevent all violations of the principles of the Constitution.” [emphasis in original]

Justin Harlan expressed grave concern that “mischievous change” would occur in our government if Congress was allowed to legislate without regard to the Constitution. His words echo those of Thomas Jefferson, who said;

“Let no more be said about the confidence of men, but bind them down from mischief with the chains of the Constitution”.

The “chains of the Constitution” that Jefferson spoke of were taken off of Congress in *Downes v. Bidwell*, and “mischievous change” has indeed occurred in abundance!

This distinction in the scope and freedom of Congress to legislate might not be quite so onerous if Congress was required to declare, in writing, at the beginning of every bill, the section of the Constitution that empowers Congress to act, concerning each element of the proposed legislation. In that way concerned Citizens would be able to readily discern whether a law, or a portion of a law, was applicable within the states of the Union, having been authorized by one of the Constitutionally enumerated powers granted to Congress by the states. Efforts to provide such a simple and clear method of Congressional accountability have consistently failed to get to the floor of the House or the Senate for a vote, instead being killed in committee every time.

The prudent American will have to ask himself one question: ***Why has Congress consistently refused to tell the American people what the specific Constitutional authority is for any law, or portion of law, that it enacts?***

Could this simply be coincidence; a mere oversight?

"In politics, nothing happens by accident. If it happens, it was planned that way."

-- Franklin D. Roosevelt

If FDR is right, then Congress' failure to tell you what its authority is to enact various legislation is not an accident, oversight, or mere coincidence. ***What then is Congress' motive?***

In the section on "[The Law](#)" in this website, we discuss that fact that the intent and focus of the law in America has been perverted over the last 60 years and now the law primarily serves the following four purposes:

- 1) Government control of persons and property.
- 2) The receipt of revenue, either by lawful action or extortionate conduct.
- 3) The protection of the system that provides for points 1 and 2.
- 4) The protection of persons who facilitate points 1, 2, and 3.

We posit this question: At the federal level, would points 1-4 be substantially undermined if Congress were to tell you specifically ***where*** a federal law applies, to ***whom*** it applies, and under which Constitutional authority it is acting? We think the answer is self-evident.

Subject Matter Jurisdiction

In the US Constitution, the states grant the United States very limited and specific powers. Most of those powers address matters the states thought best handled by a central government. Having said that, most of the powers granted to the federal government by states are not of the nature that such power would be intrusive into the states, or place an obligation upon the Citizens of the states. The primary exception to that rule is the "interstate commerce clause".

Constitution of the United States: Article I, Section 8:
Congress shall have the power -

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; [Clause 4]

Any federal legislation that is not based in geographic jurisdiction is almost certainly based on interstate commerce authority. There are relatively few federal laws that depend on any other provisions of the Constitution for their authority. For the sake of this section, we will not address federal authority over foreign commerce as that topic rarely impacts directly the lives of the average American.

When one reads the writings of the Founding Fathers, there is little doubt that the commerce clause (as applied between the states of the Union), was to be used for little more than insuring what we would call today, a “free trade zone”. That limited role is quite rightfully where the federal government’s authority in interstate commerce should end. Any reach for authority beyond that envisioned by the men who wrote the Constitution should be considered unconstitutional.

The first real exertion of substantial federal power under the interstate commerce clause came with the advent of the railroads in the mid-1800’s. The government assumed complete dominion over the early railroads, going so far as to grant regional railroad monopolies through Acts of Congress, as well as owning a large percentage of stock in various early railroad corporations. The power and money that came with complete control over such a powerful industry was not lost on Congress. To this very day Congress maintains absolute control over the railroads through regulation. Euphemistically speaking, a railroad company can’t blow its nose without Congressional approval.

By the early 20th century Congress had divested itself of its ownership interest in the railroads, but maintained iron-fisted control through regulation. Having seen the power that came with controlling such a powerful industry as the railroads, Congress began looking for new industries to subjugate and control. Much to Congress’ dismay, they were fairly limited to postal issues, railroads, navigable waterways and a few roads.

Beginning in the early 1930’s Congress started exploring how to expand its interstate commerce authority. The US Attorney General started to argue new expansive interpretations of the commerce clause and was generally unsuccessful until the late into FDR’s last term. Toward the end of the 1930’s we see the federal courts begin to broaden the government’s authority by adopting a new standard in which the US could exercise alleged Constitutional authority in any matter where the issue was “affecting interstate commerce”. This was dramatic shift because the government no longer had to limit itself to actual acts of interstate commerce, but could now reach anything that could be shown to have an “effect” upon interstate commerce. Many concerned observers saw this new policy as an open door for even deeper power grabs.

In the mid-1950’s that concern was realized when the US Supreme Court agreed that the US could control *intra*-state commerce if the failure to do so would

adversely affect interstate commerce. The original intent of the interstate commerce clause had now been turned squarely on its head. The framers of the Constitution certainly had the prerogative to include the regulation of *intra*-state commerce as one of the authorities granted to the US if they had so chosen. They did *not* so choose. What the framers had clearly withheld from the federal government, the federal courts had granted as a matter of mere practicality.

The deeper implications of the Court's ruling is that the US now had the authority to act as a shepherd over the "vitality" of interstate commerce. Obviously such was *never* the intention of the Founding Fathers.

So what was the intention of the Founding Fathers in allowing the federal government to regulate commerce among the states? The primary source for making this determination is the Federalist Papers. Although the Federalist Papers do not offer any singular all-embracing statement on the subject, the concerns of the day can be seen in a number of observations addressing the lack of such federal power.

War Between The States

During the years that the country operated under the Articles of Confederation, there was no federal authority over commerce between the states. Concerns arose that the actions of individual states concerning trade issues might result in other states taking reprisal steps against neighboring states, and that eventually such circumstances could snowball into open warfare between the states. Their concerns were based on the study of the history of European trade conflicts and how many such conflicts had devolved into war. Since each state was/is its own sovereign nation, the Founding Fathers believed that the temptations and pressures that led to war between European countries might easily repeat themselves in the New World if there was not a central authority to govern and resolve trade conflicts. In other words, the states pledged themselves to allow their trade conflicts with each other to be adjudicated and resolved by the federal government.

One should clearly understand that the Founding Fathers never intended the interstate commerce clause to act directly upon individual Citizens of the states. As in any free nation/state, if merchants, farmers, manufacturers, etc., have concerns about trade relations with other nation/states, the individual Citizen (or group of affected Citizens) pleads his case to his elected representative and that official then attempts to have legislation passed to assist the affected Citizens in achieving an improved trade position. An "improved trade position" may be the result of tariffs, import restrictions, price controls, etc., all of which are valid methods to address trade concerns.

By including the interstate commerce clause in the US Constitution, the states agreed to surrender their prerogative to make laws concerning trade issues to Congress. ***In short, the states agreed to abide by the decisions of the central government as an alternative to making war over trade issues.*** It is important to note that the Founding Fathers never intended the federal government to assume complete control over every aspects of commerce between the states, but rather to create a framework of regulation designed to minimize potential conflicts and then to take action only when a conflict appeared to be imminent or a conflict was brought to the courts of United States for resolution.

The States and Foreign Trade

The US Constitution precludes the states from entering into treaties or other agreements with foreign sovereigns. This Constitutional provision serves two purposes, one of which is closely related to the concerns that gave rise to the interstate commerce clause.

The first reason that the states are barred from entering into treaties or any other form of independent agreements with foreign nations is that such actions would embarrass the United State's power to make treaties. Obviously no foreign power would bother to make a treaty with the United States if the states were free to ignore the treaty, or effectively nullify it by entering into their own treaty with an adversarial power. It has long been held that powers granted to the federal government may not be embarrassed by the independent actions of the states.

The second reason, and the one that shares the same concerns as led to the interstate commerce clause, is war between the states. If the states were free to enter into treaties with foreign powers, there is no end to the mischief that could be done to the states through proxies of an aggressive state.

For these reasons, all treaties (including ones pertaining to commerce) are the exclusive domain of the federal government.

Interstate Commerce Authority Used To Usurp State Power

Over the years, the federal courts have expanded the role the federal government can play in State concerns by stretching the "affecting interstate commerce" standard to absurd limits. Let's examine one such case (out of many).

Some people have concerns about children playing with toy guns. Others have concerns that criminals who are afraid of the "use a gun, go to jail" doctrine adopted by many states will use toy guns instead of real guns when committing their crimes. People certainly have right to their views and their concerns, however whichever way you slice these concerns, they are exclusively matters that must be left to the

internal police powers of the states to address. Our Founding Fathers did not create a federal government to regulate children's toys.

However, in 1988, under the alleged authority of the interstate commerce clause, Congress passed Public Law 100-615, which controls toy guns. Congress relies upon the commerce clause in this matter because most toys are not made in the state in which they are sold. Most toys are made outside the country and imported, or they are made in a State and shipped to stores in other States. What Congress is saying is that it has the power to address local issues (that should be the exclusive domain of the States) if a product "moves" in interstate or foreign commerce. Such was clearly never the intention of those who signed the US Constitution and the intentions of the framers and signers is the eternal yardstick for Constitutionality. Accordingly, laws such Public Law 100-615 are unconstitutional – and errant decisions of the US Supreme Court can never make such laws Constitutional.

In a discussion on why a National Bank created by Congress would be unconstitutional, here is what Thomas Jefferson said in reference to the issue Congressional power over the field of commerce:

"...if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State, (that is to say of the commerce between citizen and citizen,) which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes."

Can we imagine that Thomas Jefferson would have found Public Law 100-615 Constitutional?

The "toy gun law" is just one example of literally thousands of laws that the federal government has enacted under highly suspect interpretations of the commerce clause in order to interfere in state affairs.

Will the real Interstate Commerce please stand up!

As we've discussed, the United States may legislate for its possessions and territories by a completely different set of rules than when legislating exclusively for the states of the Union under the authority of a Constitutionally delegated power.

Does it not then stand to reason that federal "interstate commerce" authority could be applied in a much more oppressive manner when

involving the possessions and territories than when applied exclusively to commerce between the states of the Union?

We think the answer is self-evident. So the question becomes;

“Is there a separation between when the government applies its interstate commerce authority to the possessions and territories versus when it is applied to the states exclusively?”

The best way to answer that question is to look at existing federal law. Here is a section from Title 49 of the United States Code [Transportation] dealing expressly with “interstate transportation”:

Section 10501 -

- (2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in -
- (A) a State and a place in the same or another State as part of the interstate rail network;
 - (B) a State and a place in a territory or possession of the United States;
 - (C) a territory or possession of the United States and a place in another such territory or possession;
 - (D) a territory or possession of the United States and another place in the same territory or possession;
 - (E) the United States and another place in the United States through a foreign country; or
 - (F) the United States and a place in a foreign country.

In this section we see some interesting things.

First, we note that the US assumes interstate commerce jurisdiction over a person or product that travels exclusively within the same State if it so travels on a railway that is used for interstate business – which is essentially all railways. In that definition we see that jurisdiction is not assumed based on what ***is*** taking place [intrastate], but rather upon what ***could*** take place [interstate].

Next we see that the US assumes interstate commerce jurisdiction if the transportation is “between a place in a State and a place in a territory or possession of the United States”. Let’s look again at the exact text of the commerce clause:

“...regulate commerce with foreign nations, and among the several states, and with the Indian tribes”

We think it apparent for the language of the clause that the grants interstate commerce authority to the federal government does **not** embrace commerce between the states of the Union and federal possessions and territories. Such places are not foreign nations, nor states of the Union, nor Indian tribes.

If there is no authority in the commerce clause that gives the United States the authority over commerce between the states of the Union and US territories, then where would authority come from to regulate commerce within the possessions and territories as well as between them and the other areas?

Article IV, Section 3, Clause 2 of the US Constitution states:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States...

Would not control over commerce within the territories, as well as control over commerce moving into and out of a territory be the subject of “needful rules and regulations”? We believe so.

Accordingly, we find that we have two different Constitutional grants of authority that have an effect on commerce. One is specific concerning foreign nations, the several states, and Indian tribes; the other is a general rule-making authority for **all** matters that involve a US possession or territory.

When operating under the authority of the former, the government is constrained (in theory) by the original intent of the framers of the Constitution and what their view was of regulating commerce between the states. When operating under the latter, the government is unshackled from the constraints of “original intent” and may impose much broader controls.

So we now come to the meat of the issue. ***How does one reconcile these two distinct authorities when they are combined in one federal statute?***

In the section shown above (10501) there is no distinction to be made because the only “state-to-state” language that appears involves the use of railroads, which has long been held to be completely within the regulatory control of Congress.

When a statute contains language that impose control over commerce between a State and a possession or territory, one can be certain that such authority is derived from the power to make all needful rules and regulations for the territories because any activity that originates in, or emanates from, such a possession or territory will be governed by the territorial authority of Congress.

Only state-to-state commerce is governed by the interstate commerce clause. State-to-territory commerce (or visa versa) is governed under the government's territorial authority, and commerce from a state to a foreign nation is governed by the foreign commerce language of the clause.

It should be noted that the government's territorial authority (Article IV, Section 3, Clause 2) inherently includes the power to regulate commerce moving into and out of the territories. The United States and its court will refer to this authority as "interstate commerce" authority, but one should not lose sight of the fact that this species of interstate commerce authority is **not** the same power granted in Article I, Section 8, Clause 4.

Corporations in Interstate Commerce

The US Supreme Court case of Hale v. Henkel is famous for what it says about the rights of private Citizens. However, equally meaningful (but generally overlooked) is what the Court says about corporations. The Court draws a clear distinction between a private Citizen and a corporation. The Court concluded that a corporation is granted into existence by the State "for the benefit of the public" and is thus subject to all manner of regulation that may be required to insure that end. The vast majority of interstate commerce laws that are on the books today apply primarily to corporations. Corporations may be regulated far more closely than citizens of the states of the Union. A Citizen is protected by the Privileges and Immunities clause of the US Constitution as he conducts his private affairs from state-to-state. Here is how the California Supreme Court described the right to travel from state to state with one's own property:

"Our conclusion is, that the right of transit through each State, with every species of property known to the Constitution of the United States, and recognized by that paramount law, is secured by that instrument to each citizen, and does not depend upon the uncertain and changeable ground of mere comity.

Ex parte Archy (1858) 9 Cal. 147, 163-164.

In other words, while it is indisputable that the federal government has Constitutional authority over interstate commerce, such authority can be applied far more rigorously and expansively to fictitious legal entities that exist for the public benefit than it can to a *de jure* Citizen who is simply pursuing his private affairs state-to-state. This is because the private Citizen has no obligation to promote or serve the "public benefit" and thus is not properly the subject of regulations created to benefit the public generally.

It should also be noted that there is **no** governmental authority that can alter, modify, or abolish a Citizen's fundamental rights, which existed before the

formation of either the states or the federal government. Even the Constitution itself grants no such authority.

Although not directly involved in interstate commerce, allow us to digress for a moment and discuss the word "business". In ordinary speech this word simply means the conduct of the affairs in what we commonly call "work". ***However, in law, the word "business" almost always means a corporation, or the actions of a corporation.*** This is a pivotal point for one to understand when reading law. It is absolutely essential to understanding laws that are directed at corporations. In other words, in law, the words "corporation" and "business" are generally used as synonyms.

It should be noted that because of the way definitions are tortured in today's statutory law, ***what a private Citizen does to earn his living is properly referred to as a part of his "private affairs", and not "business".***