THE COMMERCE CLAUSE AND THE COST OF FEDERAL POWER

The United States Constitution outlines the many rights and responsibilities of the federal government. It gives the government the power to do many things like collect taxes, declare war, print money, and regulate trade.

The power to regulate trade is written in a section of the Constitution called the Commerce Clause. The clause allows the federal government to regulate trade between states, foreign nations, and Native American nations. The clause has also been interpreted in many ways to expand federal powers. This expansion has limited the sovereignty of individual states and Native American tribes.

What is the Commerce Clause?

The Commerce Clause is a condition found in Article I of the United States Constitution. The Commerce Clause says that Congress can "regulate commerce with foreign nations, and among several states, and with the Indian tribes."

Under the Articles of Confederation, trade between states was difficult. States could create their own regulations and taxes on trade. The Commerce Clause led to the establishment of a free trade zone between all states. The clause also gave Congress the authority to regulate trade with foreign nations.

The Commerce Clause and Expansion of Federal Power

The Commerce Clause has been interpreted in many ways by courts and lawmakers. These interpretations have often expanded federal authority.

In 1824, the Supreme Court heard the case of *Gibbons v. Ogden*. The case was between Aaron Ogden and Thomas Gibbons. Ogden had a license from the state of New York to use New York waterways. Gibbons had permission to use the same waterways from the federal government. The case went to the Supreme Court. The Supreme Court decided the state of New York could not interfere with federal trade. The court said that the federal government had the power to regulate trade under the Commerce Clause.

The Commerce Clause was interpreted again during the Supreme Court case *NLRB v. Jones and Laughlin Steel Corporation.* The case was about the National Labor Relations Act (NLRA) passed by Congress in 1935. The act created the National Labor Relations Board (NLRB). It also gave employees the right to unionize, which meant that employees were now allowed to form unions. Unions are groups that protect workers' rights and interests.

In 1937, Jones and Laughlin Steel Corporation violated the NLRA by firing employees that started a union. The NLRB accused the company of breaking the law. The company claimed that the NLRA was unconstitutional because the federal government didn't have the right to make laws about unions.

The case went to the Supreme Court. The Supreme Court ruled that the National Labor Relations Act was constitutional. The court said that the Commerce Clause gave the federal government the power to regulate unions because unions contributed to interstate commerce.

In 1941, the Supreme Court made another decision about labor conditions and the Commerce Clause. The Darby Lumber Company was charged with violating the Fair Labor Standards Act (FLSA). A federal district court dismissed the charges and said that the FLSA was unconstitutional. The FLSA went to the Supreme Court in the case of *United States v. Darby*. The Supreme Court said the FLSA was constitutional because labor conditions contributed to interstate commerce. Congress had the power to regulate labor conditions because of the Commerce Clause.

A year later, industry regulations and federal powers were debated again in the case of *Wickard v. Filburn*. A farmer named Roscoe Filburn was charged with violating the Agricultural Adjustment Act. This act was a law made to increase crop prices and reduce surpluses, large amounts of extra food that wasn't being sold. The law paid farmers not to produce crops like corn, cotton, wheat, and rice because there were already large surpluses of those crops. Filburn produced too much wheat and was penalized under the law.

Filburn's case went to the Supreme Court. Filburn argued that the government wasn't allowed to regulate his wheat because it was for his own use and not meant for sale. He said the federal government wasn't allowed to tell him how much wheat he could grow.

The Supreme Court used the Commerce Clause to decide Filburn's case. The Court ruled that the federal government was allowed to regulate crop sales under the Commerce Clause. It said that goods traded within a state would still affect interstate commerce, so the government had the power to regulate them.

These decisions limited the autonomy of individual states and expanded federal powers.

The Commerce Clause and Native American Tribes

The Commerce Clause created a trade relationship between the United States and Native Americans. It gave Congress the power to make laws about trade with Native Americans. The Supreme Court has used this power to limit tribal sovereignty.

The Supreme Court case *Haaland v. Brackeen* was one instance of the federal government intervening in the lives of Native Americans. In 2022, several families challenged the Indian Child Welfare Act, which regulated the adoption and foster care of Native American children. The families said that the federal government didn't have the power to regulate adoptions and foster care. The Supreme Court ruled that the Commerce Clause gives Congress the power to make laws about "Indian affairs," including adoptions.

In 2000, Congress passed the Native American Business Development, Trade Promotion, and Tourism Act. The act provides resources for business development and trade promotion for Native Americans. The Commerce Clause allowed Congress to make laws related to Native American businesses.

The Commerce Clause has been interpreted in ways that often expand federal powers. However, this expansion has often come at the expense of tribal and state sovereignty.

Citations
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