

# Federal Jurisdiction

## *What Powers does the Federal Government have within the Several States?*

By David L. Miner

*Jurisdiction – A government’s general power to exercise authority over all persons and things within its territory. [Black’s law Dictionary, Second pocket Edition]*

The concept of jurisdiction is often one involving great confusion on the part of the American people. But it is always a matter of presumption on the part of the federal government. Meaning, in today’s America, that Congress and the President make the assumption that they have the jurisdiction to do what they want when they want within the several States. No thought is given to the Constitution and the limitations it places on the central government because any discussion of these limitations would reduce or eliminate the power circles created by these offices and the people in them. In other words, the federal government is committed to continuing its pursuit of more and more power, regardless of the Constitution.

In this document, we will address the concept of jurisdiction and the limits implied and stated by that concept. We will discuss the US Supreme Court’s determinations as they relate to Constitutional limitations. We will also address what We The People can do.

To properly understand jurisdiction, we must first properly understand the nature of the Constitution. The Constitution was a contract created between the States and the People. Because of the near-totalitarian controls over the “colonies” that had just been overthrown in the Revolution, both the People and their leaders were very concerned about the nature of this new central government and what its limits should be. So the people and their leaders, both were Parties to this contract, were concerned about two primary problems. First, both Parties were concerned about giving up or losing certain rights and powers that each currently possessed. Second, both Parties were concerned about the central government remaining ***under control*** and not becoming so powerful that it saw itself as being ***in control*** of the People or the States. In other words, both the People and the States were very concerned that the central government would be granted only certain powers, and that both the People and the States would be able to retain their liberty and their sovereignty.

These concerns were written into a contract that seemed to protect the rights and powers of the States and the People, while at the same time delegated certain powers to a central government. That contract created the central government. It was called the Constitution for the United States.

This Constitution gave no rights to anyone – no rights were granted to the States, to the People and especially not to the central government. All rights were viewed as being given to the People by the Creator, so the People didn't need the central government to grant them anything. Further, since the States existed as sovereign entities before the Constitution was written, the central government created by that Constitution could not grant anything to the States.

The Constitution did, on the other hand, grant certain responsibilities to the central government. These responsibilities were spelled out clearly in the Sections and paragraphs of the Constitution. Further, as in all contract law, it was clearly understood by all involved that the Constitution delegated to the central government **only** those powers that were specifically listed. This legal doctrine was spelled out more clearly when the States and the People voted to add the Bill of Rights to the Constitution. The Tenth Article in the Bill of Rights specifically clarified that any power not explicitly granted to the central government was explicitly withheld from the central government.

This, the Founding Fathers hoped, rendered clear and immutable the issue of federal jurisdiction. Alas, it did not. But we digress.

When the Constitution granted powers and responsibilities to the central government, jurisdiction over those issues was also granted. For example, Article One of the Constitution defined, described and limited the Congress. There is a long list of specific responsibilities assigned to the Congress, and then there is a specific clause at the end of Article One that stated:

“...And to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof.” (Article I, Section 8, last paragraph of that Section)

So Congress is defined, described, assigned responsibilities, and then given the authority to pass any laws necessary to carrying out its responsibilities. This seems simple enough, right?

Yet a careful reading of the Constitution would show that there is absolutely no responsibility given to Congress that required the Congress to operate within the Several States. Let me repeat that. Article I Section 8 lists all the responsibilities given to Congress, and absolutely no responsibilities delegated to Congress required them to operate within the States, or gave it power that would penetrate the States. The obvious exception to the above statement is the issue that Congress uses to usurp power and encroach into the States. Let's talk about that exception.

Actually, there are two exceptions to the limits placed on Congress. The first exception gives Congress the authority to regulate commerce between the States.

The Congress shall have Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes..." Article I, Section 8, Clause 3

This section, usually called the Interstate Commerce Clause, is ***the only section in the entire Constitution that gives Congress power over the States.***

The second exception gives Congress the authority to deal with specific crimes that would involve individuals. Counterfeiting, piracy and espionage are the only crimes that Congress was given authority over. ***These are the only issues in the entire Constitution where Congress has power over We The People.***

Naturally, the Constitution gave the central government authority over the many and varied responsibilities delegated to it. The Congress was given the authority to declare war, to coin money, to raise revenue, and many other authorities. The Executive was given the authority to "rule" the national seat of government. That parcel was to be limited to ten miles by ten miles, and all authority and jurisdiction relative to that land and the people in it were delegated to the Executive. The Judicial was given the authority to settle arguments between the States, and, under certain situations, to settle arguments between the States and the People.

But the powers were carefully defined, and jealously guarded by the States and the People.

See, e.g., 2 Debates 267-268 (A. Hamilton at New York convention) that there would be just cause for rejecting the Constitution if it would enable the Federal Government to "alter, or abrogate . . . [a state's] civil and criminal institutions [or] penetrate the recesses of domestic life, and control, in all respects, the private conduct of individuals") [quoted in *United States v Lopez*]

"The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things in short which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction." *Federalist Papers # 17*

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce... The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement and prosperity of a State." *Federalist Papers # 45*

"The [federal] government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it . . . is now universally admitted. But the question respecting the extent of the powers actually granted is

perpetually arising, and will probably continue to arise, as long as our system shall exist."  
[Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316 (1819)]

For almost one hundred years, the central government knew its place and stayed there. But President Abraham Lincoln violated the Contract by invoking a power over the States not listed in the Constitution, not granted to the central government. President Lincoln believed that the need to maintain the confederation of States was far more important than obeying the Contract which created that federation of States, and which created his job. So he declared war on the Southern States rather than let them secede from the United States. This violation of the Constitution began a long list of additional violations by almost every President and Congress since that time.

While there have been a few overtly unconstitutional bills passed into law during these past 140 years, most of the Constitutional excesses have been justified by twisting the Interstate Commerce Clause into saying something far different than the Founders intended.

Interstate Commerce came to include manufacturing, if it was possible that whatever was being manufactured might possibly someday be sold to someone in another State. This gave rise to the federal government creating all sorts of rules and regulations controlling manufacturers, including health, safety, environmental and wage issues.

Interstate Commerce came to include farming, if it was possible that whatever was being raised might possibly someday be sold to someone in another State. This gave rise to a whole host of rules and regulations over farmers, including fertilizer content, seed origin, farming methods, crop quantity and land use issues.

And Interstate Commerce came to include individual actions and ownership if it could be construed that the action or ownership might some day in some way impact on Interstate Commerce. This gave rise to a whole host of rules and regulations, including speed limits, blood alcohol content, gun ownership and gun possession, driver and automobile registration, retirement, employment, voting, insurance and taxation issues.

Often Congress stopped short of actually passing laws that were tenuously linked to the Interstate Commerce Clause. Instead of passing a law mandating a result which they knew would be overturned by the Supreme Court as unconstitutional, Congress would often pass a recommendation or guideline, and then force the States to comply with it. Examples of this include coercing the States to reduce speed limits, or more recently reduce the blood alcohol level that is deemed acceptable while driving. The big stick the central government used to force the States to "volunteer" to obey the dictates of Congress was the loss of millions in tax dollars for failure to comply.

Some laws were just too unconstitutional to pass muster, and the Supreme Court would strike the law. This happened very seldom, but it did happen, for many years following the War Between the States. But while the Supreme Court would, for the most part, officially maintain the doctrine of limited powers to which the central government is

subjected by the Constitution, the Court would often ignore the increasing size and scope of government powers. Yet even though the Court would often side with the increasing authority that the central government gave itself, here and there were cases that gave a refreshing confirmation of the Constitution and its limitations.

"Our national government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States."  
[*Screws v. United States*, 325 U.S. 91, 109 (1945)]

Recently, however, the Supreme Court has begun to render decisions much more consistent with the clear meaning and intent of the Constitution. What started as a slight twisting of the Interstate Commerce Clause in order to justify usurping authority over an increasing number of issues has, over the past 60 years, become a clear and intentional corruption of the Founders' intentions. Thankfully, the Supreme Court has decided to wake up and address this egregious fraud on the part of Congress and the President.

One clear example of the Supreme Court coming down on the side of States Rights was the recent decision involving the *Violence Against Women Act*. The Act granted to women the "right" to sue their attacker in federal civil court if the criminal court could not or did not convict him. The case was *United States v. Morrison*, 169 F.3d 820 (1999). In this case, the Supreme Court overturned a segment of the Act, resulting in women all over America claiming that the Court just declared open season on women. But this is not what the Court happened.

In the *United States v Morrison*, the Supreme Court basically claimed that the federal government had no jurisdiction over crimes committed within the 50 States. Therefore, it could not grant women any authority to file suit in federal courts for a crime committed within one of the several States. The Court's opinion observed accurately that women still had the pre-existing right to file suit in State civil court, but could not file suit in federal civil court.

Please read that again. The US Supreme Court admitted that the federal government had no authority or jurisdiction over crimes committed within the several States. While this statement is not a new revelation by the Supreme Court, it was misunderstood or just plain missed by the Patriot Movement.

But four years earlier, in 1995, the Supreme Court handed down an incredibly important decision. The case was *United States v. Lopez*, 115 S.Ct. 1624 (1995), and was, I believe, the most important Supreme Court decision in the 1990s. This case was extremely broad and far-reaching in both its logic and in its case law. The *Lopez* Court reviewed most of the clear attempts on the part of Congress to usurp authority it did not have, based on a perverted view of the Interstate Commerce Clause, and it attempted to put Congress back in its place.

The **Lopez** decision clearly established that the Supreme Court and the Congress had, for more than 60 years, exceeded the obvious intentions of the Interstate Commerce Clause. The Court used more than 100 pages to analyze the past Court decisions and to pronounce that Congress must abide by the limitations classically understood to be contained in that clause.

“But law in the sense in which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that State existing by the authority of that State without regard to what it may have been in England or anywhere else. ... 'The authority and only authority is the State, and if that be so, the voice adopted by the State as its own (whether it be of its Legislature or of its Supreme Court) should utter the last word.' Thus the doctrine of *Swift v. Tyson* is, as Mr. Justice Holmes said, 'an unconstitutional assumption of powers by the Courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct.' In disapproving that doctrine we do not hold [304 U.S. 64, 80] unconstitutional section 34 of the Federal Judiciary Act of 1789 or any other act of Congress. We merely declare that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several states.” [*United States v. Lopez*]

“Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory.” Justice Kennedy in his concurring opinion, *United States v. Lopez*)

“To be sure, one conclusion that could be drawn from The Federalist Papers is that the balance between national and state power is entrusted in its entirety to the political process. Madison's observation that "the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due," The Federalist No. 46, p. 295 (C. Rossiter ed. 1961), can be interpreted to say that the essence of responsibility for a shift in power from the State to the Federal Government rests upon a political judgment, though he added assurance that "the State governments could have little to apprehend, because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered..." [Justice Kennedy in his concurring opinion, *United States v. Lopez*]

“The exchanges during the ratification campaign reveal the relatively limited reach of the Commerce Clause and of federal power generally. The Founding Fathers confirmed that most areas of life (even many matters that would have substantial effects on commerce) would remain outside the reach of the Federal Government. Such affairs would continue to be under the exclusive control of the States.” [Justice Thomas in his concurring opinion, *United States v. Lopez*]

The Supreme Court quoted from dozens of previous Court decisions that showed how Congress had stretched further and further the clear intent of the Constitution. The Court used these cases to demonstrate that there was a strong tradition of conservative interpretation of the Commerce Clause throughout the history of the Supreme Court, and that it was merely returning to the true meaning of the Constitution.

"[T]he Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself..." [*New York v. United States*, quoted in *United States v. Lopez*]

"The enumeration presupposes something not enumerated." [*Gibbons v. Ogden*, 9 Wheat., at 195, quoted in *United States v. Lopez*]

Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts. [*Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), quoted in *United States v. Lopez*]

"I am aware that what has been termed the general law of the country-which is often little less than what the judge advancing the doctrine thinks at the time should be the general law on a particular subject-has been often advanced in judicial opinions of this court to control a conflicting law of a state. I admit that learned judges have fallen into the habit of repeating this doctrine as a convenient mode of brushing aside the law of a state in conflict with their views. And I confess that, moved and governed by the authority of the great names of those judges, I have, myself, in many instances, unhesitatingly and confidently, but I think now erroneously, repeated the same doctrine. But, notwithstanding the great names which may be cited in favor of the doctrine, and notwithstanding the frequency with which the doctrine has been reiterated, there stands, as a perpetual protest against its repetition, the constitution of the United States, which recognizes and preserves the autonomy and independence of the states,- independence in their legislative and independence in their judicial departments. Supervision over either the legislative or the judicial action of the states is in no case permissible except as to matters by the constitution specifically authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the state, and, to that extent, a denial of its independence." [*Baltimore & Ohio R.R. Co. v. Baugh*, 149 U.S. 368, 401, as quoted in *United States v. Lopez*]

"Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. . . . In the tension between federal and state

power lies the promise of liberty." [*Gregory v. Ashcroft*, 501 U.S. 452, 458-459 (1991), , quoted in *United States v. Lopez*]

But perhaps the most important issue discussed in the **Lopez** case was the concept of federal police power within the several States. The Court clearly established, perhaps for the first time since the founding of this nation, that authority for police power rests not in what type of crime was committed (State versus federal) but where the crime was committed (within the boundaries of federal territory or within the boundaries of a State).

“We have said that Congress may regulate not only ‘Commerce . . . among the several states,’ U.S. Const., Art. I, 8, cl. 3, but also anything that has a ‘substantial effect’ on such commerce. This test, if taken to its logical extreme, would give Congress a ‘police power’ over all aspects of American life. Unfortunately, we have never come to grips with this implication of our substantial effects formula. Although we have supposedly applied the substantial effects test for the past 60 years, we always have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power; our cases are quite clear that there are real limits to federal power. . . . Indeed, on this crucial point, the majority and Justice Breyer agree in principle: the Federal Government has nothing approaching a police power.” [Justice Thomas in his concurring opinion, *United States v. Lopez*]

“Even before *Gibbons*, Chief Justice Marshall, writing for the Court in *Cohens v. Virginia*, 6 Wheat. 264 (1821), noted that Congress had ‘no general right to punish murder committed within any of the States,’ *id.*, at 426, and that it was ‘clear that congress cannot punish felonies generally,’ *id.*, at 428. The Court’s only qualification was that Congress could enact such laws for places where it enjoyed plenary powers - for instance, over the District of Columbia. *Id.*, at 426. Thus, whatever effect ordinary murders, or robbery, or gun possession might have on interstate commerce (or on any other subject of federal concern) was irrelevant to the question of congressional power.” [Justice Thomas in his concurring opinion, *United States v. Lopez*]

“The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation.” [*United States v. Lopez*]

“If we wish to be true to a Constitution that does not cede a police power to the Federal Government, our Commerce Clause’s boundaries simply cannot be ‘defined’ as being “‘commensurate with the national needs’” or self-consciously intended to let the Federal Government “‘defend itself against economic forces that Congress decrees inimical or destructive of the national economy.’” See post, at 12-13 (BREYER, J., dissenting) (quoting *North American Co. v. SEC*, [327 U.S. 686, 705](#) (1946)). Such a formulation of federal power is no test at all: it is a blank check.” [Justice Thomas in his concurring opinion, *United States v. Lopez*]

The Patriot Movement in general has staked its purpose on the foundational issue that the central government is one of limited powers created by a Constitution that defines

the government and limits its powers. Further, it claims that this central government has vastly exceeded its limitations.

Here the Patriot Movement is absolutely right.

But the Patriot Movement in general has seen its abilities to fight this government it claims is out of control as being drastically limited by the Supreme Court.

Here the Patriot Movement is absolutely wrong.

Properly constructed, the Supreme Court has given us all the tools we need to fight the unlawful expansion of federal powers, and fight it successfully. But for some reason we have ignored incredibly important Supreme Court decisions in forming our strategies and in formulating our court battles.

The Supreme Court has declared, both historically and recently, that the federal government has no authority or jurisdiction over any individual or over any issue that does not involve interstate commerce or over any issue that does not involve federal territory. Congress can pass no laws that govern life or activities within the boundaries of the several States. The President can enforce no laws that govern life or activities within the boundaries of the several States. And the federal courts can punish no individuals who violate these unconstitutional laws.

Americans, and especially the several States, must realize that States Rights has a friend in the current Supreme Court. We must realize that the Supreme Court has established the clear and long-standing doctrine of limited federal authority.

Americans must realize that the federal government can only violate these clear Constitutional limitations when and if We The People voluntarily submit to its unlawful laws and mandates. We must take the responsibility to learn what we must learn and hold the federal government accountable to these limitations, and we must commit the financial resources to finish this battle, or the only option to increasing federal tyranny is revolution.

"If a nation expects to be ignorant and free, it expects what never was and never will be...  
The People cannot be safe without information." -- Thomas Jefferson

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