

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 6: The Civil War/Reconstruction Era – Federalism

Crandall v. Nevada, 73 U.S. 35 (1868)

Most Supreme Court cases on federalism before the Civil War concerned the dormant commerce clause, which involved the question of whether a state could to some degree regulate interstate commerce in the absence of federal regulation. In 1865, Nevada passed a law imposing a one-dollar tax on every person leaving the state via any “vehicle engaged or employed in the business of transporting passengers for hire.” The owners of the companies were required to collect the tax and forward it to the proper officials. Crandall was the agent of a stage company who refused to report the number of passengers carried by his company and who refused to deliver the tax. As was common before the Civil War, he argued that the state tax was unconstitutional on the grounds that it interfered with Congress’s authority to regulate commerce among the states and that it amounted to a state impost or duty on exports without the consent of Congress. In his opinion for the Court, written while Congress was passing new Reconstruction Acts, Justice Miller demonstrated little patience for state laws that seemed inconsistent with the idea that the United States was one nation. Rather than rely on the commerce clause, he insisted that states had no right to pass laws that interfered with travel from state to state for any reason.

JUSTICE MILLER delivered the opinion of the Court.

The question for the first time presented to the court by this record is one of importance. The proposition to be considered is the right of a State to levy a tax upon persons residing in the State who may wish to get out of it, and upon persons not residing in it who may have occasion to pass through it. .

..

....

The proposition that the power to regulate commerce, as granted to Congress by the Constitution, necessarily excludes the exercise by the States of any of the power thus granted, is one which has been much considered in this court, and the earlier discussions left the question in much doubt. . . .

In the case of *Cooley v. Board of Wardens* (1852), . . . the same question came directly before the court in reference to the local laws of the port of Philadelphia concerning pilots. It was claimed that they constituted a regulation of commerce, and were therefore void. The court held that they did come within the meaning of the term “to regulate commerce,” but that until Congress made regulations concerning pilots the States were competent to do so.

....

It may be that under the power to regulate commerce among the States, Congress has authority to pass laws, the operation of which would be inconsistent with the tax imposed by the State of Nevada, but we know of no such statute now in existence. Inasmuch, therefore, as the tax does not itself institute any regulation of commerce of a national character, or which has a uniform operation over the whole country, it is not easy to maintain, in view of the principles on which those cases were decided, that it violates the clause of the Federal Constitution which we have had under review.

But we do not concede that the question before us is to be determined by [this].

The people of these United States constitute one nation. They have a government in which all of them are deeply interested. This government has necessarily a capital established by law, where its principal operations are conducted. Here sits its legislature, composed of senators and representatives,

from the States and from the people of the States. Here resides the President, directing through thousands of agents, the execution of the laws over all this vast country. Here is the seat of the supreme judicial power of the nation, to which all its citizens have a right to resort to claim justice at its hands. Here are the great executive departments, administering the offices of the mails, of the public lands, of the collection and distribution of the public revenues, and of our foreign relations. These are all established and conducted under the admitted powers of the Federal government. That government has a right to call to this point any or all of its citizens to aid in its service, as members of the Congress, of the courts, of the executive departments, and to fill all its other offices; and this right cannot be made to depend upon the pleasure of a State over whose territory they must pass to reach the point where these services must be rendered. . . .

The Federal power has a right to declare and prosecute wars, and, as a necessary incident, to raise and transport troops through and over the territory of any State of the Union.

If this right is dependent in any sense, however limited, upon the pleasure of a State, the government itself may be overthrown by an obstruction to its exercise. Much the largest part of the transportation of troops during the late rebellion was by railroads, and largely through States whose people were hostile to the Union. If the tax levied by Nevada on railroad passengers had been the law of Tennessee, enlarged to meet the wishes of her people, the treasury of the United States could not have paid the tax necessary to enable its armies to pass through her territory.

But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its sea-ports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it.

The views here advanced are neither novel nor unsupported by authority. The question of the taxing power of the States, as its exercise has affected the functions of the Federal government, has been repeatedly considered by this court, and the right of the States in this mode to impede or embarrass the constitutional operations of that government, or the rights which its citizens hold under it, has been uniformly denied.

The leading case of this class is that of *McCulloch v. Maryland* (1819). The case is one every way important, and is familiar to the statesman and the constitutional lawyer. . . .

It is not possible to condense the conclusive argument of Chief Justice Marshall in that case, and it is too familiar to justify its reproduction here; but an extract or two, in which the results of his reasoning are stated, will serve to show its applicability to the case before us. . . . "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very means, is declared to be supreme over that which exerts the control, are propositions not to be denied. If the States may tax one instrument employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States."

. . . .

Those principles, as we have already stated them in this opinion, must govern the present case.

JUSTICE CLIFFORD [with whom CHIEF JUSTICE CHASE joins], dissenting.

I agree that the State law in question is unconstitutional and void, but I am not able to concur in the principal reasons assigned in the opinion of the court in support of that conclusion. On the contrary, I hold that the act of the State legislature is inconsistent with the power conferred upon Congress to

regulate commerce among the several States, and I think the judgment of the court should have been placed exclusively upon that ground. Strong doubts are entertained by me whether Congress possesses the power to levy any such tax, but whether so or not, I am clear that the State legislature cannot impose any such burden upon commerce among the several States. Such commerce is secured against such legislation in the States by the Constitution, irrespective of any Congressional action.

....