The Supremacy of National Law

Tracing the historical development of nation-state relationships, one finds that there has been constant strife over the determination of the boundaries of national power in relation to the reserved powers of the states. The Civil War did not settle once and for all the difficult question of national versus state power. The Supreme Court has played an important role in the development of the federal system, and some of its most historic opinions have upheld national power at the expense of the states. In the early period of the Court, Chief Justice John Marshall in McCulloch v. Maryland, (1819), stated two doctrines that have had a profound effect upon the federal system: (1) the doctrine of implied powers, and (2) the doctrine of the supremacy of national law. The former enables Congress to expand its power into numerous areas affecting states directly. By utilizing the commerce clause, for example, Congress may now regulate what is essentially intrastate commerce, for the Court has held that this is implied in the original clause giving Congress the power to regulate commerce among the several states. The immediate issues in McCulloch v. Maryland were, first, whether or not Congress had the power to incorporate, or charter, a national bank; second, if Congress did have such a power, although nowhere stated in the Constitution, did the existence of such a bank prevent state action that would interfere in its operation?

Constitutional doctrine regarding the power of the national government to regulate commerce among the states to promote general prosperity has been clarified in a series of Supreme Court cases. At issue is the interpretation of the power to "regulate commerce with foreign nations, and among the several States," granted to Congress in Article I. Some of these cases have emphasized the role of the national government as umpire, enforcing certain rules of the game within which the free enterprise system functions; others have emphasized the positive role of the government in regulating the economy.

A key case supporting the supremacy of the national government in commercial regulation was Gibbons v. Ogden, 9 Wheaton 1 (182H). The New York legislature, in 1798, granted Robert R. Livingston the exclusive privilege to navigate by steam the rivers and other waters of the state, provided he could build a boat that would travel at four miles an hour against the current of the Hudson River. A two-year time limitation was imposed, and the conditions were not met; however, New York renewed its grant for two years in 1803 and again in 1807. In 1807 Robert Fulton, who now held the exclusive license with Livingston, completed and put into operation a steamboat that met the legislative conditions. The New York legislature now provided that a five-year extension of their monopoly would be given to Livingston and Fulton for each new steamboat they placed into operation on New York waters. The monopoly could not exceed thirty years, but during that period anyone wishing to navigate New York waters by steam had first to obtain a license from Livingston and Fulton, who were given the power to confiscate unlicensed boats. New Jersey and Connecticut passed retaliatory laws, the former authorizing confiscation of any New York ship for each ship confiscated by Livingston and Fulton, the latter prohibiting boats licensed in New York from entering Connecticut waters. Ohio also passed retaliatory legislation. Open commercial warfare seemed a possibility among the states of the union.

In 1793 Congress passed an act providing for the licensing of vessels engaged in the coasting trade, and Gibbons obtained under this statute a license to operate boats between New York and New Jersey. Ogden was engaged in a similar operation under an exclusive license issued by Livingston and Fulton, and thus sought to enjoin Gibbons

from further operation. The New York court upheld the exclusive grants given to Livingston and Fulton, and Gibbons appealed to the Supreme Court. Chief Justice Marshall made it quite clear that (1) states cannot interfere with a power granted to Congress by passing conflicting state legislation, and (2) the commerce power includes anything affecting "commerce among the states" and thus may include intrastate as well as interstate commerce. In this way the foundation was laid for broad national control over commercial activity.

National Power over the States: A Recurring Constitutional Debate

Put simply, the Constitution created federalism by delegating powers to the national government and then, in the Tenth Amendment, providing that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."[1] The law-making powers of the national government are those enumerated powers of Congress found in Article I. The most important of these are the commerce and war powers and the power to tax and provide for the general welfare.

Constitutional and political debate during the nineteenth and much of the twentieth centuries focused upon the issue of national versus state power. Over 650,000 young men lost their lives in the Civil War because of the failure of the political system to resolve national-state conflict.

Constitutional Changes in the Balance of Federalism: The Civil War Amendments

The "Civil War amendments," the Thirteenth, Fourteenth, and Fifteenth Amendments, added an important new constitutional dimension to federalism. The amendments abolished slavery (thirteenth); granted citizenship to all persons born in the United States (fourteenth); prohibited states from denying persons life, liberty, or property without due process of law or equal protection of the laws; barred states from denying the privileges and immunities of citizens of the United States (fourteenth); and prohibited both the federal government and the states from denying the right to vote on account of race, nationality, or previous condition of servitude (fifteenth).

Especially important to federalism were the enforcement clauses of the Civil War amendments which gave Congress the authority to enforce each of the amendments by "appropriate legislation." The new enforcement powers vastly expanded Congress's potential authority over the states. The Civil War had settled the question of Union once and for all time in favor of national power. The Civil War amendments were the constitutional recognition of national victory over state sovereignty in the determination of civil rights.

However, as seemingly clear as the nationalist Civil War amendments were, they did not automatically settle the political question of the scope of national power over the

[1] Interestingly, the states did not ratify the Tenth Amendment until 1798. Textually, then, the original Constitution did not teserve any powets to the states. But the states were sovereign at the time of the ratification of the Constitution, and clearly they would not have entered into any compact that would have taken away all of their sovereign powers.

states. As with the original Constitution, the amendments provided an outline not a blueprint of congressional powers and protected rights. Absent a clear national majority reflected in disciplined political parties the courts once again became the supreme interpreters of the amendments and hence of the boundaries of national and state powers within their context. Litigation became politics by other means to settle disputes over national versus state power. Litigation over the constitutional authority of Congress over the states now encompassed not only the meaning of the commerce clause and other Article I powers, but also what constituted "appropriate legislation" under the enforcement clauses of the Civil War amendments.

Litigation then continues to be the avenue for the resolution of political conflict over the scope of national and state powers, particularly on the part of advocates of states' rights who were dissatisfied with what they viewed as increasing national encroachments upon state powers and rights. Of course, Congress represents, and some would argue over-represents in the Senate, the states, and therefore is unlikely to pass legislation that unduly interferes with states' rights. But in the highly pluralistic American political system there will always be interests that are dissatisfied with national policies, and if they have the resources they will use litigation to challenge the constitutionality of congressional laws.

Commerce Clause Litigation

Over its history the Supreme Court has interpreted the commerce clause both to expand and contract the authority of the national government. After Chief Justice John Marshall's era ended in 1836, the Court gradually adopted a more restrictive view of the national commerce power, protecting state sovereignty over many areas of commercial regulation that Marshall clearly would have allowed Congress to regulate. The Supreme Court did not fully return to the broad commerce clause interpretation of the Gibbons case until 1937, when it reluctantly capitulated to Franklin D. Roosevelt's New Deal and the centralized government it represented. The restoration of the Marshall Court's definition of the commerce power removed constitutional restraints upon Congress.

Since 1937 the Supreme Court has essentially upheld congressional interpretations of its own authority under the commerce clause. While the commerce power is generally used to support economic regulation, Congress turned to the commerce clause for the legal authority to enact the Civil Rights Act of 1961. The public accommodations section of the bill, Title II, proscribed discrimination in public establishments, including inns, hotels, motels, restaurants, motion-picture houses, and theaters. The law declared that the "operations of an establishment affects commerce ... if ... it serves or offers to serve interstate travelers or a substantial portion of the food which it serves or gasoline or other products which it sells, has moved in commerce ... [or if] it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce." In Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (196H), the Supreme Court upheld the law under the commerce clause. The motel-plaintiff contended that it was in no way involved in interstate commerce, arguing that while some of its guests might be occasionally engaged in commerce, "persons and people are not part of trade or commerce . . . people conduct commerce and engage in trade, but people are not part of commerce and trade." But the Court accepted the government's argument that racial discrimination in public accommodations impedes interstate travel by those discriminated against, causing disruption of

interstate commerce which Congress has the authority to prevent.

The Supreme Court did briefly resurrect the commerce clause as a limit on congressional power over the states in National League of Cities u. Usery, H26 U.S. 833 (1976). A sharply divided Court held that Congress could not regulate governmental activities that were an integral part of state sovereignty. The decision overturned provisions of the Fair Labor Standards Act that governed state employees. The Court's majority opinion argued that states had traditionally controlled their employees, a responsibility within state sovereignty because the states through their own democratic processes should have the autonomy to decide for themselves how they would manage their public sector.

It was not long, however, before the Court reversed the National League of Cities decision, holding in Garcia v. San Antonio Metropolitan Transit Authority, H69 U.S 528 (1985), that Congress could apply minimum-wage requirements to the states and their localities. Again the vote was closely divided, 5-H, and this time the majority opinion struck a distinct note of judicial self-restraint, concluding: "We doubt that courts ultimately can identify principled constitutional limitations on the scope of Congress' commerce clause powers over the states merely by relying on a priori definitions of state sovereignty." The Court found nothing in the Fair Labor Standards Act that violated state sovereignty, implying that it was up to Congress and not the courts to determine the extent of its power under the commerce clause. Sharp dissents were registered in the case, indicating that if in the future the issue was raised a more conservative Supreme Court majority might uphold some commerce clause restraints against national regulation of state governments. The Garcia decision was directly in line with Court precedents since 1937 that have supported virtually unlimited congressional authority under the commerce clause.

The Carcia decision appeared yet once again to have settled the constitutional question of the scope of congressional authority under the commerce clause. But, the conservative Supreme Court of the 1990s refused to grant Congress the benefit of the doubt in applying a "rational-basis" test in reviewing legislation under the commerce clause. The New Deal political victory embedded in the Wickard v. Filburn (1942) case doctrine where the Supreme Court deferred to congressional interpretation of its commerce power ended in United States v. Lopez (1995). In Lopez the Supreme Court by a vote of 5-H, with the conservatives in the majority, overturned the Gun-Free School Zones Act of 1990 on the ground that Congress did not have the authority to enact it under its commerce power. The law made it a federal crime "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." Chief Justice Rehnquist's opinion for the Court flatly stated: "The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress '[t]o regulate Commerce . . . among the several States. . . .' " Justice Rehnquist and his brethren in the majority were particularly concerned that Congress did not make findings that tied the possession of guns in school zones to interstate commerce. Congress merely assumed that it had the power to enact the law. The government argued before the Court that since gun possession might affect commerce among the states the law was constitutional. But, Rehnquist concluded, "To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."

The Supreme Court Redefines Congressional Power for the Twenty-first Century Limiting Congressional Authority to Regulate Violence Against Women

The Supreme Court once again confronted the question of the scope of Congress's commerce power, as well as congressional enforcement power under section 5 of the Fourteenth Amendment, when it reviewed the constitutionality of the Violence Against Women Act of 1994 in United States v. Morrison (2000). A vast majority of the states supported the law which reflected strong political support throughout the nation. Would a majority of only five Supreme Court Justices follow the Lopez precedent and overturn the law on the ground that Congress did not have the constitutional authority to enact it?

The law stated that "[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender." The enforcement section declared: "A person . . . who commits a crime of violence motivated by gender . . . shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate. . . ." The law defined a "crim[e] of violence motivated by gender" as "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender."

Unlike the gun control legislation the Court voided in Lopez Congress made extensive findings to connect violence against women with interstate commerce.

These congressional findings are called legislative facts. They are empirical in nature and Congress uses them to make policy. Empirical findings support but do not dictate policy.

In the Morrison case note how the dissent stresses the importance of the extensive congressional findings that connected violence against women with interstate commerce. These findings, the dissenters held, supported congressional authority under the commerce clause to enact the legislation.

A Perspective on Federalism: Present and Future

As James Madison pointed out in Federalist 39, the original constitutional scheme of federalism represented a delicate balance between national and state ("federal") interests. But, under the original constitutional design, the national government was not to intervene directly in the affairs of state governments; and the problems of subsidiary local governments within states were not considered to be separate from the problems of the states themselves, and therefore, they were a proper matter for resolution by the individual state governments.

Morton Grodzins points out that strict separation of national and state functions has never really existed, and that even before the Constitution of 1787 a national statute passed by the Continental Congress gave grants-in-aid of land to the states for public schools. Tocqueville also comments on the difficulties of formally separating, in theory, the responsibilities of national, state, and local governments. The history of the federal system has seen the ebb and flow of national dominance over the states; centralization and decentralization have been the cyclical themes of federalism and intergovernmental relations. The thrust of the New Deal was toward centralization through the use of federal

grant-in-aid programs, a philosophy that dominated the government until the emergence of the "New Federalism" of the Nixon administration, which supported decentralization of power from the national to the state governments. The move toward decentralization was broadly supported by the Republican party. Revenue sharing was inaugurated by President Nixon to transfer national funds to the states, without stipulation of how the money was to be spent. The revenue-sharing procedure was in direct contrast to the grant-in-aid programs, which allowed for state receipt of federal money upon the condition of state adherence to national standards. President Reagan's New Federalism proposed the merging of grant-in-aid programs into block grants to the states, leading eventually to a reduced federal role in financing state and local governments. The continuing conflict between the themes and realities of centralization and decentralization are examined in the following selection.

Mr. Chief Justice Marshall delivered the opinion of the Court, saying in part:

In the case now to be determined, the defendant, a sovereign state, denies the obligation of a law enacted by the legislature of the Union; and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that state. The Constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the Union and of its members, as marked in that Constitution, are to be discussed; and an opinion given, which may essentially influence the great operations of the government. . . .

If any one proposition could command the universal assent of mankind, we might expect it would be this: that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express terms, decided it, by saying, "this Constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land," and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states, shall take the oath of fidelity to it. . . .

A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American Constitution is not only to be inferred from the nature of the instrument, but from the language. . . .

Although, among the enumerated powers of government, we do not find the word "bank," or "incorporation," we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may, with great reason, be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require, that the treasure raised in the North should be transported to the South, that raised in the East conveyed to the West, or that this order should be reversed. Is that construction of the Constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the Constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. It is, then, the subject of fair

inquiry, how far such means may be employed. . . .

We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. . .

It being the opinion of the court that the act incorporating the bank is constitutional; and that the power of establishing a branch in the state of Maryland might be properly exercised by the bank itself, we proceed to inquire:

Whether the state of Maryland may, without violating the Constitution, tax that branch? . . .

That the power of taxation is one of vital importance; that it is retained by the states; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments: are truths which have never been denied. But, such is the paramount character of the Constitution, that its capacity to withdraw any subject from the action of even this power, is admitted. The states are expressly forbidden to lay any duties on imports or exports, except what may be absolutely necessary for executing their inspection laws. If the obligation of this prohibition must be conceded—if it may restrain a state from the exercise of its taxing power of imports and exports; the same paramount character would seem to restrain, as it certainly may restrain, a state from such other exercise of this power, as is in its nature incompatible with, and repugnant to, the constitutional laws of the Union. A law, absolutely repugnant to another, as entirely repeals that other as if express terms of repeal were used.

On this ground the counsel for the bank place its claim to be exempted from the power of a state to tax its operations. There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated frorn it, without rending it into shreds.

This great principle is, that the Constitution and the laws made in pursuance thereof are supreme; that they control the Constitution and laws of the respective states, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend. These are, 1. That a power to create implies a power to preserve. 2. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, these powers to create and preserve. 3. That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. . . .

If we apply the principle for which the state of Maryland contends, to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the states. The American people have declared their Constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the states. . . .

The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. That is, we think, the unavoidable consequence of that supremacy which the Constitution has declared. . . .

Questions for McCulloch v. Maryland:

1. What were the principal arguments used by Chief Justice Marshall to justify the extension of congressional power to include the power to incorporate a bank, even though the words "bank" and "incorporation" are nowhere to be found in the text of the Constitution itself?
2. Once granted that Congress has the power to incorporate a bank, why did Chief Justice Marshall find that the state of Maryland could not, without violating the Constitution, tax a branch of that bank?

MULTIPLE CHOICE

1. McCulloch v. Maryland (1819) established the principle that:
   a) Congress cannot exceed its enumerated powers.
   b) powers can be implied from the specifically enumerated powers of Article I
   c) the national government is supreme over the states in cases of conflict of laws.
   d) b and c.
2. Chief Justice John Marshall proclaimed in McCulloch v. Maryland (1819):
   a) the power of taxation is vital to the states and may be exercised by both state and national governments.
   b) when Congress has acted under the authority of the Constitution, states cannot pass conflicting laws.
   c) the Constitution and the laws made in pursuance thereof are supreme, and they control the laws of the respective states and cannot be controlled by them.
   d) all of the above.
3. Which of the following statements did John Marshall not make in McCulloch v. Maryland (1819)?
   a) The Constitution and the laws made in pursuance thereof are supreme, and they control the Constitution and laws of the respective states.
   b) The Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people.
   c) Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.
   d) Article I explicitly grants Congress the authority to incorporate a national bank; therefore congressional establishment of the national bank is constitutional.

UNITED STATES V. MORRISON *(1819)*

Chief Justice Rehnquist delivered the opinion of the Court.

In these cases we consider the constitutionality of 42 U.S.C. §13981 [of the Violence Against Women Act of 1994], which provides a federal civil remedy for the victims of gender-motivated violence. The United States Court of Appeals for the Fourth Circuit, sitting en bane, struck down §13981 because it concluded that Congress lacked constitutional authority to enact the section's civil remedy. Believing that these cases are controlled by our decisions in United States v. Lopez, we affirm.

I

Petitioner Christy Brzonkala enrolled at Virginia Polytechnic Institute (Virginia Tech) in the fall of 1994. In September of that year, Brzonkala met respondents Antonio Morrison and James Crawford, who were both students at Virginia Tech and members of its varsity football team. Brzonkala alleges that, within 30 minutes of meeting Morrison and Crawford, they assaulted and repeatedly raped her. After the attack, Morrison allegedly told Brzonkala, "You better not have any . . . diseases." In the months following the rape, Morrison also allegedly announced in the dormitory's dining room that he "like[d] to get girls drunk and. . . ." The omitted portions, quoted verbatim in the briefs on file with this Court, consist of boasting, debased remarks about what Morrison would do to women, vulgar remarks that cannot fail to shock and offend.

Brzonkala alleges that this attack caused her to become severely emotionally disturbed and depressed. She sought assistance from a university psychiatrist, who prescribed antidepressant medication. Shortly after the rape Brzonkala stopped attending classes and withdrew from the university.

In early 1995, Brzonkala filed a complaint against respondents under Virginia Tech's Sexual Assault Policy. During the school-conducted hearing on her complaint, Morrison admitted having sexual contact with her despite the fact that she had twice told him "no." After the hearing, Virginia Tech's Judicial Committee found insufficient evidence to punish Crawford, but found Morrison guilty of sexual assault and sentenced him to immediate suspension for two semesters.

Virginia Tech's dean of students upheld the judicial committee's sentence. However, in July 1995, Virginia Tech informed Brzonkala that Morrison intended to initiate a court challenge to his conviction under the Sexual Assault Policy. University officials told her that a second hearing would be necessary to remedy the school's error in prosecuting her complaint under that policy, which had not been widely circulated to students. The university therefore conducted a second hearing under its Abusive Conduct Policy, which was in force prior to the dissemination of the Sexual Assault Policy. Following this second hearing the Judicial Committee again found Morrison guilty and sentenced him to an identical 2-semester suspension. This time, however, the description of Morrison's offense was, without explanation, changed from "sexual assault" to "using abusive language."

Morrison appealed his second conviction through the university's administrative system. On August 21, 1995, Virginia Tech's senior vice president and provost set aside

Morrison's punishment. She concluded that it was " 'excessive when compared with other cases where there has been a finding of violation of the Abusive Conduct Policy.' " Virginia Tech did not inform Brzonkala of this decision. After learning from a newspaper that Morrison would be returning to Virginia Tech for the fall 1995 semester, she dropped out of the university.

In December 1995, Brzonkala sued Morrison, Crawford, and Virginia Tech in the United States District Court for the Western District of Virginia. Her complaint alleged that Morrison's and Crawford's attack violated §13981 and that Virginia Tech's handling of her complaint violated Title IX of the Education Amendments of 1972, 86 Stat. 373-375, 20 U.S.C. §§1681-1688. Morrison and Crawford moved to dismiss this complaint on the grounds that it failed to state a claim and that §13981's civil remedy is unconstitutional. The United States, petitioner in No. 99-5, intervened to defend §13981's constitutionality.

The District Court dismissed Brzonkala's Title IX claims against Virginia Tech for failure to state a claim upon which relief can be granted. See Brzonkala v. Virginia Polytechnic and State Univ., 935 F. Supp. 772 (WD Va. 1996). It then held that Brzonkala's complaint stated a claim against Morrison and Crawford under §13981, but dismissed the complaint because it concluded that Congress lacked authority to enact the section under either the Commerce Clause or §5 of the Fourteenth Amendment. Brzonkala v. Virginia Polytechnic and State Univ., 935 F. Supp. 779 (WDVa. 1996).

A divided panel of the Court of Appeals reversed the District Court, reinstating Brzonkala's §13981 claim and her Title IX hostile environment claim. Brzonkala v. Virginia Polytechnic and State Univ., 132 F. 3d 949 (CA4 1997). The full Court of Appeals vacated the panel's opinion and reheard the case en bane. The en banc court then issued an opinion affirming the District Court's conclusion that Brzonkala stated a claim under §13981 because her complaint alleged a crime of violence and the allegations of Morrison's crude and derogatory statements regarding his treatment of women sufficiently indicated that his crime was motivated by gender animus. Nevertheless, the court by a divided vote affirmed the District Court's conclusion that Congress lacked constitutional authority to enact §13981's civil remedy. Brzonkala v. Virginia Polytechnic and State Univ., 169 F. 3d 820 (CA4 1999). Because the Court of Appeals invalidated a federal statute on constitutional grounds, we granted certiorari. 527 U.S. 1068 (1999).

Section 13981 was part of the Violence Against Women Act of 1994. It states that "[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender." . . .

Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. "The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written." Marbury v. Madison, 1 Cranch 137, 176 (1803) (Marshall, C. J.). Congress explicitly identified the sources of federal authority on which it relied in enacting §13981. It said that a "federal civil rights cause of action" is established "[p]ursuant to the affirmative power of Congress . . . under section 5 of the Fourteenth Amendment to the Constitution, as well as under [the Commerce Clause,] section 8 of Article I of the Constitution." We address Congress' authority to enact this remedy under each of these constitutional provisions in turn.

II

Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds. . . . With this presumption of constitutionality in mind, we turn to the question whether §13981 falls within Congress' power under Article I, §8, [the Commerce Clause] of the Constitution. Brzonkala and the United States rely upon the third clause of the Article, which gives Congress power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

As we discussed at length in Lopez, our interpretation of the Commerce Clause has changed as our Nation has developed. . . . We need not repeat that detailed review of the Commerce Clause's history here; it suffices to say that, in the years since NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), Congress has had considerably greater latitude in regulating conduct and transactions under the Commerce Clause than our previous case law permitted. . . .

[Using the] principles underlying our Commerce Clause jurisprudence as reference points, the proper resolution of the present cases is clear. Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity. While we need not adopt a categorical rule against aggregating the effects of any noneco-nomic activity in order to decide these cases, thus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature. . . .

In contrast with the lack of congressional findings that we faced in Lopez, §13981 is supported by numerous findings regarding the serious impact that gender-motivated violence has on victims and their families. . . . But the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. As we stated in Lopez, " '[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.' "...

Congress found that gender-motivated violence affects interstate commerce by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved in interstate commerce; ... by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products.

Given these findings and petitioners' arguments, the concern that we expressed in Lopez that Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority seems well founded. The reasoning that petitioners advance seeks to follow the but-for causal chain from the initial occurrence of violent crime (the suppression of which has always been the prime object of the States' police power) to every attenuated effect upon interstate commerce. If accepted, petitioners' reasoning would allow Congress to fegulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption. Indeed, if Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part.

Petitioners' reasoning, moreover, will not limit Congress to regulating violence but may, as we suggested in Lopez, be applied equally as well to family law and other areas of traditional state regulation since the aggregate effect of marriage, divorce, and childrearing on the national economy is undoubtedly significant. . . .

We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local. . . .

Because we conclude that the Commerce Clause does not provide Congress with authority to enact §13981, we address petitioners' alternative argument that the section's civil remedy should be upheld as an exercise of Congress' remedial power under §5 of the Fourteenth Amendment. As noted above, Congress expressly invoked the Fourteenth Amendment as a source of authority to enact §13981. . . .

. . . [T]he language and purpose of the Fourteenth Amendment place certain limitations on the manner in which Congress may attack discriminatory conduct. These limitations are necessary to prevent the Fourteenth Amendment from obliterating the Framers' carefully crafted balance of power between the States and the National Government. . . . Foremost among these limitations is the time-honored principle that the Fourteenth Amendment, by its very terms, prohibits only state action. "[T]he principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." Shelley v. Kroemer, 334 U.S. 1, 13, and n. 12 (1948). . . .

. . . Section 13981 is not aimed at proscribing discrimination by officials which the Fourteenth Amendment might not itself proscribe; it is directed not at any State or state actor, but at individuals who have committed criminal acts motivated by gender bias. . . .

. . . [W}e conclude that Congress' power under §5 does not extend to the enactment of § 13 981.

IV

Petitioner Brzonkala's complaint alleges that she was the victim of a brutal assault. But Congress' effort in §13981 to provide a federal civil remedy can be sustained neither under the Commerce Clause nor under §5 of the Fourteenth Amendment. If the allegations here are true, no civilized system of justice could fail to provide her a remedy for the conduct of respondent Morrison. But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States. The judgment of the Court of Appeals is Affirmed.

Justice Souter, with whom Justice Stevens, Justice Ginsburg, and Justice Breyer join, dissenting.

The Court says both that it leaves Commerce Clause precedent undisturbed and that the Civil Rights Remedy of the Violence Against Women Act of 1994, 42 U.S.C. §13981, exceeds Congress's power under that Clause. I find the claims irreconcilable and respectfully dissent.

Our cases, which remain at least nominally undisturbed, stand for the following propositions. Congress has the power to legislate with regard to activity that, in the aggregate, has a substantial effect on interstate commerce. See Wickard v. Filburn, 317 U.S. Ill, 124-128 (1942). The fact of such a substantial effect is not an issue for the courts in the first instance, but for the Congress, whose institutional capacity for gathering evidence and taking testimony far exceeds ours. By passing legislation, Congress indicates its conclusion, whether explicitly or not, that facts support its exercise of the commerce power. The business of the courts is to review the congressional assessment, not for soundness but simply for the rationality of concluding that a jurisdictional basis exists in fact. Any explicit findings that Congress chooses to make, though not dispositive of the question of rationality, may advance judicial review by identifying factual authority on which Congress relied. Applying those propositions in these cases can lead to only one conclusion.

One obvious difference from United States v. Lopez, 514 U.S. 549 (1995), is the mountain of data assembled by Congress, here showing the effects of violence against women on interstate commerce. Passage of the Act in 1994 was preceded by four years of hearings, which included testimony from physicians and law professors; from survivors of rape and domestic violence; and from representatives of state law enforcement and private business.

The record includes reports on gender bias from task forces in 21 States, and we have the benefit of specific factual findings in the eight separate Reports issued by Congress and its committees over the long course leading to enactment. . . .

II

The Act would have passed muster at any time between Wickard in 1942 and Lopez in 1995, a period in which the law enjoyed a stable understanding that congressional power under the Commerce Clause, complemented by the authority of the Necessary and Proper Clause, Art. I. §8 cl. 18, extended to all activity that, when aggregated, has a substantial effect on interstate commerce. . . .

Amendments that alter the balance of power between the National and State Governments, like the Fourteenth, or that change the way the States are represented within the Federal Government, like the Seventeenth, are not rips in the fabric of the Framers' Constitution, inviting judicial repairs. The Seventeenth Amendment may indeed have lessened the enthusiasm of the Senate to represent the States as discrete sovereignties, but the Amendment did not convert the judiciary into an alternate shield against the commerce power. . . .

III

As our predecessors learned then, the practice of such ad hoc review [as the majority has practiced in this case] cannot preserve the distinction between the judicial and the legislative, and this Court, in any event, lacks the institutional capacity to maintain such a regime for very long. This one will end when the majority realizes that the conception of the commerce power for which it entertains hopes would inevitably fail the test expressed in Justice Holmes's statement that "[t]he first call of a theory of law is that it should fit the facts." O. Holmes, The Common Law 167 (Howe ed. 1963). The facts that cannot be ignored today are the facts of integrated national commerce and a political relationship between States and Nation much affected by their respective treasuries and constitutional modifications adopted by the people. The federalism of some earlier time is no more adequate to account for those facts today than the theory of laissez-faire was able to govern the national economy 70 years ago.

Questions for U.S. v. Morrison:

1. Violence against women is a serious and compelling issue. Congress attempted to deal with the issue in the Violence Against Women Act. To what extent does this case indicate the difficulties of implementing policy in the American system?

2. Is the Court right to decide that Congress's reasoning on the relationships between violence against women and interstate commerce would allow Congress to regulate virtually all other aspects of social life on the same grounds?

3. Is there a clear line that helps courts determine when Congress has overstepped its authority? Is the text of the Constitution helpful? Are judges well-suited to make the distinction, or is defining such boundaries better left to the other branches and to bargaining between federal and non-federal interests?

4. Does the history of Commerce Clause interpretation help illustrate the Court's relationship to economic and political trends and to current events?

MULTIPLE CHOICE

1. In U.S. v. Morrison, the Supreme Court ruled that the Violence Against Women Act:
   a) was constitutional under the Commerce Clause.
   b) was constitutional under the Fourteenth Amendment.
   c) was unconstitutional, as it exceeded Congress's authority under the Commerce Clause.
   d) was not an appropriate subject for judicial review.
2. U.S. v. Morrison is part of the Supreme Court's recent line of decisions that:
   a) uphold the rights of women to seek remedies for violence at the federal level.
   b) refuse federal protections to minorities who have been discriminated against.
   c) limit Congress's authority in defense of principles of federalism.
   d) Morrison was not a Supreme Court decision.
3. Passage of the Violence Against Women Act differed from passage of the Gun-Free School Zones Act because:
   a) it was supported by extensive data gathered by Congress.
   b) it was passed by a unanimous Senate.
   c) it was passed by overriding a presidential veto.
   d) it was supported by the Supreme Court.