

United States vs Lopez

OCTOBER TERM, 1994

Syllabus

UNITED STATES

v.

LOPEZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT

No. 93-1260. Argued November 8, 1994-Decided April 26, 1995

After respondent, then a 12th-grade student, carried a concealed handgun into his high school, he was charged with violating the Gun-Free School Zones Act of 1990, which forbids "any individual knowingly to possess a firearm at a place that [he] knows ... is a school zone," 18 U. S. C. § 922(q)(1)(A). The District Court denied his motion to dismiss the indictment, concluding that § 922(q) is a constitutional exercise of Congress' power to regulate activities in and affecting commerce. In reversing, the Court of Appeals held that, in light of what it characterized as insufficient congressional findings and legislative history, § 922(q) is invalid as beyond Congress' power under the Commerce Clause.

Held:

The Act exceeds Congress' Commerce Clause authority. First, although this Court has upheld a wide variety of congressional Acts regulating intrastate economic activity that substantially affected interstate commerce, the possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, have such a substantial effect on interstate commerce. Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly those terms are defined. Nor is it an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under the Court's cases upholding regulations of activities that arise out of or are connected with a commercial

transaction, which, viewed in the aggregate, substantially affects interstate commerce. Second, § 922(q) contains no jurisdictional element that would ensure, through case-by-case inquiry, that the firearms possession in question has the requisite nexus with interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce. To uphold the Government's contention that § 922(q) is justified because firearms possession in a local school zone does indeed substantially affect interstate commerce would require this Court to pile inference upon inference in a manner that would bid fair to convert congressional Commerce Clause

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Syllabus

authority to a general police power of the sort held only by the States. Pp. 552-568.

2 F.3d 1342

, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., filed a concurring opinion, in which O'CONNOR, J., joined,

post,

p. 568. THOMAS, J., filed a concurring opinion,

post,

p. 584. STEVENS, J.,

post,

p. 602, and SOUTER, J.,

post,

p. 603, filed dissenting opinions. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined,

post,

p. 615.

Solicitor General Days argued the cause for the United States. With him on the briefs were Assistant Attorney General Harris, Deputy Solicitor General Wallace, Malcolm L. Stewart, and John F. De Pue.

John R. Carter argued the cause for respondent. With him on the brief were Lucien B. Campbell, Henry

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CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In the Gun-Free School Zones Act of 1990, Congress made it a federal offense "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." 18 U. S. C. § 922(q)(1)(A) (1988 ed., Supp. V). 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 " u. S. Const., Art. I, § 8, cl. 3.

On March 10, 1992, respondent, who was then a 12th-grade student, arrived at Edison High School in San Antonio, Texas, carrying a concealed .38-caliber handgun and five bullets. Acting upon an anonymous tip, school authorities confronted respondent, who admitted that he was carrying the weapon. He was arrested and charged under Texas law with firearm possession on school premises. See Tex. Penal Code Ann. § 46.03(a)(1) (Supp. 1994). The next day, the state charges were dismissed after federal agents charged respondent by complaint with violating the Gun-Free School Zones Act of 1990. 18 U. S. C. § 922(q)(1)(A) (1988 ed., Supp. V).I

A federal grand jury indicted respondent on one count of knowing possession of a firearm at a school zone, in violation of § 922(q). Respondent moved to dismiss his

federal indictment on the ground that § 922(q) "is unconstitutional as it is beyond the power of Congress to legislate control over our public schools." The District Court denied the motion, concluding that § 922(q) "is a constitutional exercise of Congress' well-defined power to regulate activities in and affecting

1 The term "school zone" is defined as "in, or on the grounds of, a public, parochial or private school" or "within a distance of 1,000 feet from the grounds of a public, parochial or private school." § 921(a)(25).

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commerce, and the 'business' of elementary, middle and high schools ... affects interstate commerce." App. to Pet. for Cert. 55a. Respondent waived his right to a jury trial. The District Court conducted a bench trial, found him guilty of violating § 922(q), and sentenced him to six months' imprisonment and two years' supervised release.

On appeal, respondent challenged his conviction based on his claim that § 922(q) exceeded Congress' power to legislate under the Commerce Clause. The Court of Appeals for the Fifth Circuit agreed and reversed respondent's conviction. It held that, in light of what it characterized as insufficient congressional findings and legislative history, "section 922(q), in the full reach of its terms, is invalid as beyond the power of Congress under the Commerce Clause."

2 F.3d 1342

, 1367-1368 (1993). Because of the importance of the issue, we granted certiorari, 511 U. S. 1029 (1994), and we now affirm.

We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, § 8. As James Madison wrote: "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 Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties."

Gregory

v.

Ashcroft,

501 U. S. 452

, 458 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in anyone branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

Ibid.

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8,

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cl. 3. The Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in

Gibbons

v.

Ogden,

9 Wheat. 1, 189-190 (1824):

"Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."

Id.,

at 196. The

Gibbons

Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause.

"It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State."

Id.,

For nearly a century thereafter, the Court's Commerce Clause decisions dealt but rarely with the extent of Congress' power, and almost entirely with the Commerce Clause as a limit on state legislation that discriminated against interstate commerce. See,

e.

g.,

Veazie

v.

Moor,

14 How. 568, 573-575 (1853) (upholding a state-created steamboat monop-

only because it involved regulation of wholly internal commerce);

Kidd

v.

Pearson,

128 U. S. 1

, 17, 20-22 (1888) (upholding a state prohibition on the manufacture of intoxicating liquor because the commerce power "does not comprehend the purely internal domestic commerce of a State which is carried on between man and man within a State or between different parts of the same State"); see also L. Tribe, *American Constitutional Law* 306 (2d ed. 1988). Under this line of precedent, the Court held that certain categories of activity such as "production," "manufacturing," and "mining" were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause. See

Wickard

v.

Filburn,

317 U. S. 111

, 121 (1942) (describing development of Commerce Clause jurisprudence).

In 1887, Congress enacted the Interstate Commerce Act, 24 Stat. 379, and in 1890, Congress enacted the Sherman Antitrust Act, 26 Stat. 209, as amended, 15 U. S. C. § 1

et seq.

These laws ushered in a new era of federal regulation under the commerce power. When cases involving these laws first reached this Court, we imported from our negative Commerce Clause cases the approach that Congress could not regulate activities such as "production," "manufacturing," and "mining." See,

e. g., United States

v.

E.

C.

Knight Co.,

156 U. S. 1

, 12 (1895) ("Commerce succeeds to manufacture, and is not part of it");

Carter

v.

Carter Coal Co.,

298 U. S. 238

, 304 (1936) ("Mining brings the subject matter of commerce into existence. Commerce disposes of it"). Simultaneously, however, the Court held that, where the interstate and intrastate aspects of commerce were so mingled together that full regulation of interstate commerce required incidental regulation of intrastate commerce, the Commerce Clause authorized such regulation. See,

e. g., Shreveport Rate Cases,

234 U. S. 342

(1914).

In

A. L. A. Schechter Poultry Corp.

v.

United States,

295 U. S. 495

, 550 (1935), the Court struck down regulations that

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fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly. In doing so, the Court characterized the distinction between direct and indirect effects of intrastate transactions upon interstate commerce as "a fundamental one, essential to the maintenance of our constitutional system."

Id.,

at 548. Activities that affected interstate commerce directly were within Congress' power; activities that affected interstate commerce indirectly were beyond Congress' reach.

Id.,

at 546. The justification for this formal distinction was rooted in the fear that otherwise "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government."

Id.,

at 548.

Two years later, in the watershed case of

NLRB

v.

Jones

&

Laughlin Steel Corp.,

301 U. S. 1

(1937), the Court upheld the National Labor Relations Act against a Commerce Clause challenge, and in the process, departed from the distinction between "direct" and "indirect" effects on interstate commerce.

Id.,

at 36-38 ("The question [of the scope of Congress' power] is necessarily one of degree"). The Court held that intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions" are within Congress' power to regulate.

Id.,

at 37.

In

United States

v.

Darby,

312 U. S. 100

(1941), the Court

upheld the Fair Labor Standards Act, stating:

"The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce."

Id.,

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See also

United States

v.

Wrightwood Dairy Co.,

315 U. S. 110

, 119 (1942) (the commerce power "extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power").

In

Wickard

v.

Filburn,

the Court upheld the application of amendments to the Agricultural Adjustment Act of 1938 to the production and consumption of homegrown wheat. 317 U. S., at 128-129. The

Wickard

Court explicitly rejected earlier distinctions between direct and indirect effects on interstate commerce, stating:

"[E]ven if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'"

Id.,

The

Wickard

Court emphasized that although Filburn's own contribution to the demand for wheat may have been trivial by itself, that was not "enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial."

Id.,

at 127-128.

Jones

&

Laughlin Steel, Darby,

and

Wickard

ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a

recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern-era precedents which have expanded congressional power under the Commerce Clause

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confirm that this power is subject to outer limits. In

Jones

&

Laughlin Steel,

the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." 301 U. S., at 37; see also

Darby, supra,

at 119-120 (Congress may regulate intrastate activity that has a "substantial effect" on interstate commerce);

Wickard, supra,

at 125 (Congress may regulate activity that "exerts a substantial economic effect on interstate commerce"). Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce. See,

e. g., Hodel

v.

Virginia Surface Mining

&

Reclamation Assn., Inc.,

452 U. S. 264

, 276-280 (1981);

Perez

v.

United States,

402 U. S. 146

, 155-156

(1971); *Katzenbach*

v.

McClung,

379 U. S. 294

, 299-301 (1964);

Heart of Atlanta Motel, Inc.

v.

United States,

379 U. S. 241

, 252-253 (1964).²

Similarly, in

Maryland

v.

Wirtz,

392 U. S. 183

(1968), the Court reaffirmed that "the power to regulate commerce, though broad indeed, has limits" that "[t]he Court has ample power" to enforce.

Id.,

at 196, overruled on other grounds,

National League of Cities

v.

Usery,

426 U. S. 833

(1976), overruled by

Garcia

v.

San Antonio Metropolitan Transit

2 See also

Hodel,

452 U. S., at 311 ("[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so") (REHNQUIST, J., concurring in judgment);

Heart of Atlanta Motel,

379 U. S., at 273 ("[W]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court") (Black, J., concurring).

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Authority,

469 U. S. 528

(1985). In response to the dissent's warnings that the Court was powerless to enforce the limitations on Congress' commerce powers because "[a]ll activities affecting commerce, even in the minutest degree,

[Wickard],

may be regulated and controlled by Congress," 392 U. S., at 204 (Douglas, J., dissenting), the

Wirtz

Court replied that the dissent had misread precedent as "[n]either here nor in

Wickard

has the Court declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities,"

id.,

at 197, n. 27. Rather, "[t]he Court has said only that where

a general regulatory statute bears a substantial relation to commerce,

the

de minimis

character of individual instances arising under that statute is of no consequence."

Ibid.

(first emphasis added).

Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power.

Perez, supra,

at 150; see also

Hodel, supra,

at 276-277. First, Congress may regulate the use of the channels of interstate commerce. See,

e.

g.,

Darby,

312 U. S., at 114;

Heart of Atlanta Motel, supra,

at 256 (" '[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question'" (quoting

Caminetti

v.

United States,

242 U. S. 470

, 491 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. See, e.

g.,

Shreveport Rate Cases,

234 U. S. 342

(1914);

Southern R. Co.

v.

United States,

222 U. S. 20

(1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce);

Perez, supra,

at 150 ("[F]or example, the destruction of an aircraft (18 U. S. C. § 32), or ... thefts from interstate shipments (18 U. S. C. § 659)"). Finally, Congress' commerce authority includes the power to regulate those ac-

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tivities having a substantial relation to interstate commerce,

Jones

&

Laughlin Steel,

301 U. S., at 37, i.

e.,

those activities that substantially affect interstate commerce,

Wirtz, supra,
at 196, n. 27.

Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare

Preseault

v.

ICC,

494 U. S. 1

, 17 (1990), with

Wirtz, supra,

at 196, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.

We now turn to consider the power of Congress, in the light of this framework, to enact § 922(q). The first two categories of authority may be quickly disposed of: § 922(q) is not a regulation of the use of the channels of interstate commerce, nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor can § 922(q) be justified as a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce. Thus, if § 922(q) is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

First, we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce. Examples include the regulation of intrastate coal mining;

Hodel, supra,

intrastate extortionate credit transactions,

Perez, supra,

restaurants utilizing substantial interstate supplies,
McClung, supra,
inns and hotels catering to interstate guests,
Heart of Atlanta Motel, supra,
and pro-

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duction and consumption of homegrown wheat,
Wickard

v.

Filburn,

317 U. S. 111

(1942). These examples are by no means exhaustive, but the pattern is clear. Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.

Even

Wickard,

which is perhaps the most far reaching example of Commerce Clause authority over intrastate activity, involved economic activity in a way that the possession of a gun in a school zone does not. Roscoe Filburn operated a small farm in Ohio, on which, in the year involved, he raised 23 acres of wheat. It was his practice to sow winter wheat in the fall, and after harvesting it in July to sell a portion of the crop, to feed part of it to poultry and livestock on the farm, to use some in making flour for home consumption, and to keep the remainder for seeding future crops. The Secretary of Agriculture assessed a penalty against him under the Agricultural Adjustment Act of 1938 because he harvested about 12 acres more wheat than his allotment under the Act permitted. The Act was designed to regulate the volume of wheat moving in interstate and foreign commerce in order to avoid surpluses and shortages, and concomitant fluctuation in wheat prices, which had previously obtained. The Court said, in an opinion sustaining the application of the Act to Filburn's activity:

"One of the primary purposes of the Act in question was to increase the market price of wheat and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions. This may arise because being in marketable condition such wheat overhangs the market and, if induced by rising prices, tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market.

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Home-grown wheat in this sense competes with wheat in commerce." 317 U. S., at 128.

Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly one might define those terms.³ Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

Second, § 922(q) contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce. For example, in

United States

v.

Bass,

404 U. S. 336

(1971), the Court interpreted former 18 U. S. C. § 1202(a), which made it

3 Under our federal system, the" 'States possess primary authority for defining and enforcing the criminal law.'"

Brecht

v.

Abrahamson, 507

U. S. 619,635 (1993) (quoting

Engle

v.

Isaac,

456 U. S. 107

, 128 (1982)); see also

Screws

v.

United States,

325 U. S. 91

, 109 (1945) (plurality opinion) ("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"). When Congress criminalizes conduct already denounced as criminal by the States, it effects a "change in the sensitive relation between federal and state criminal jurisdiction."

United States

v.

Enmons,

410 U. S. 396

, 411-412 (1973) (quoting

United States

v.

Bass,

404 U. S. 336

, 349 (1971)). The Government acknowledges that § 922(q) "displace[s] state policy choices in ... that its prohibitions apply even in States that have chosen not to outlaw the conduct in question." Brief for United States 29, n. 18; see also Statement of President George Bush on Signing the Crime Control Act of 1990, 26 Weekly Compo of Pres. Doc. 1944, 1945 (Nov. 29, 1990) ("Most egregiously, section [922(q)] inappropriately overrides legitimate State firearms laws with a new and unnecessary Federal law. The policies reflected in these provisions could legitimately be adopted by the States, but they should not be imposed upon the States by the Congress").

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a crime for a felon to "receiv[e], posses[s], or transpor[t] in commerce or affecting commerce ... any firearm." 404 U. S., at 337. The Court interpreted the possession component of § 1202(a) to require an additional nexus to interstate commerce both because the statute was ambiguous and because "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance."

Id.,

at 349. The

Bass

Court set aside the conviction because, although the Government had demonstrated that Bass had possessed a firearm, it had failed "to show the requisite nexus with interstate commerce."

Id.,

at 347. The Court thus interpreted the statute to reserve the constitutional question whether Congress could regulate, without more, the "mere possession" of firearms. See

id.,

at 339, n. 4; see also

United States

v.

Five Gambling Devices, 346

U. S. 441, 448 (1953) (plurality opinion) ("The principle is old and deeply imbedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative"). Unlike the statute in

Bass,

§ 922(q) has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.

Although as part of our independent evaluation of constitutionality under the Commerce Clause we of course consider legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce, see,

e. g., *Preseault*

v.

ICC,

494 U. S., at 17, the Government concedes that "[n]either the statute nor its legislative history contain[s] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone." Brief for United States 5-6. We agree with the Government that Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce. See

McClung,

379 U. S., at 304;

see also

Perez,

402 U. S., at 156 ("Congress need [not] make particularized findings in order to legislate"). But to the extent that congressional findings would enable us to

evaluate the legislative judgment that the activity in question substantially affected interstate commerce, even though no such substantial effect was visible to the naked eye, they are lacking here.⁴

The Government argues that Congress has accumulated institutional expertise regarding the regulation of firearms through previous enactments. Cf.

Fullilove

v.

Klutznick,

448 U. S. 448

, 503 (1980) (Powell, J., concurring). We agree, however, with the Fifth Circuit that importation of previous findings to justify § 922(q) is especially inappropriate here because the "prior federal enactments or Congressional findings [do not] speak to the subject matter of section 922(q) or its relationship to interstate commerce. Indeed, section 922(q) plows thoroughly new ground and represents a sharp break with the long-standing pattern of federal firearms legislation." 2 F. 3d, at 1366.

The Government's essential contention,

in fine,

is that we may determine here that § 922(q) is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. Brief for United States 17. The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent

⁴ We note that on September 13, 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796. Section 320904 of that Act,

id.,

at 2125, amends § 922(q) to include congressional findings regarding the effects of firearm possession in and around schools upon interstate and foreign commerce. The Government does not rely upon these subsequent findings as a substitute for the absence of findings in the first instance. Tr. of Oral Arg. 25 ("

[W]e're not relying on them in the strict sense of the word, but we think that at a very minimum they indicate that reasons can be identified for why Congress wanted to regulate this particular activity").

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crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. See

United States

v.

Evans,

928 F.2d 858

, 862 (CA9 1991). Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. Cf.

Heart of Atlanta Motel,

379 U. S., at 253. The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that § 922(q) substantially affects interstate commerce.

We pause to consider the implications of the Government's arguments. The Government admits, under its "costs of crime" reasoning, that Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. See Tr. of Oral Arg. 8-9. Similarly, under the Government's "national productivity" reasoning, Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the theories that the Government presents in support of § 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we

are hard pressed to posit any activity by an individual that Congress is without power to regulate.

Although JUSTICE BREYER argues that acceptance of the Government's rationales would not authorize a general federal police power, he is unable to identify any activity that the States may regulate but Congress may not. JUSTICE BREYER posits that there might be some limitations on Con-

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gress' commerce power, such as family law or certain aspects of education.

Post,

at 624. These suggested limitations, when viewed in light of the dissent's expansive analysis, are devoid of substance.

JUSTICE BREYER focuses, for the most part, on the threat that firearm possession in and near schools poses to the educational process and the potential economic consequences flowing from that threat.

Post,

at 619-624. Specifically, the dissent reasons that (1) gun-related violence is a serious problem; (2) that problem, in turn, has an adverse effect on classroom learning; and (3) that adverse effect on classroom learning, in turn, represents a substantial threat to trade and commerce.

Post,

at 623. This analysis would be equally applicable, if not more so, to subjects such as family law and direct regulation of education.

For instance, if Congress can, pursuant to its Commerce Clause power, regulate activities that adversely affect the learning environment, then,

a fortiori,

it also can regulate the educational process directly. Congress could determine that a school's curriculum has a "significant" effect on the extent of classroom learning. As a result, Congress could mandate a federal curriculum for local elementary and secondary schools because what is taught in local schools has a significant "effect on classroom learning," cf.

ibid.,

and that, in turn, has a substantial effect on interstate commerce.

JUSTICE BREYER rejects our reading of precedent and argues that "Congress ... could rationally conclude that schools fall on the commercial side of the line."

Post,

at 629. Again, JUSTICE BREYER'S rationale lacks any real limits because, depending on the level of generality, any activity can be looked upon as commercial. Under the dissent's rationale, Congress could just as easily look at child rearing as "fall[ing] on the commercial side of the line" because it provides a "valuable service—namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace."

Ibid.

We do not doubt that Congress

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has authority under the Commerce Clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools.

Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress' authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender "legal uncertainty."

Post,

at 630. As Chief Justice Marshall stated in

McCulloch

v.

Maryland,

4 Wheat. 316 (1819):

"Th[e] [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."

Id.,

See also

Gibbons

v.

Ogden,

9 Wheat., at 195 ("The enumeration presupposes something not enumerated"). The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. See Art. I, § 8. Congress has operated within this framework of legal uncertainty ever since this Court determined that it was the Judiciary's duty "to say what the law is."

Marbury

v.

Madison,

1 Cranch 137, 177 (1803) (Marshall, C. J.). Any possible benefit from eliminating this "legal uncertainty" would be at the expense of the Constitution's system of enumerated powers.

In

Jones

&

Laughlin Steel,

301 U. S., at 37, we held that the question of congressional power under the Commerce Clause "is necessarily one of degree." To the same effect

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is the concurring opinion of Justice Cardozo in
Schechter Poultry:

"There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.'" 295 U. S., at 554 (quoting

United States

A. L. A. Schechter Poultry Corp.,

These are not precise formulations, and in the nature of things they cannot be. But we think they point the way to a correct decision of this case. The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.

Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

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. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. See

supra,

at 556-558. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, cf.

Gibbons

v.

Ogden, supra,

at 195, and that there never will be a distinction between what is

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truly national and what is truly local, cf.

Jones

&

Laughlin Steel, supra,

at 30. This we are unwilling to do.

For the foregoing reasons the judgment of the Court of Appeals is

Affirmed.

JUSTICE KENNEDY, with whom JUSTICE O'CONNOR joins, concurring.

The history of the judicial struggle to interpret the Commerce Clause during the transition from the economic system the Founders knew to the single, national market still emergent in our own era counsels great restraint before the Court determines that the Clause is insufficient to support an exercise of the national power. That history gives me some pause about today's decision, but I join the Court's opinion with these observations on what I conceive to be its necessary though limited holding.

Chief Justice Marshall announced that the national authority reaches "that commerce which concerns more States than one" and that the commerce power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."

Gibbons

v.

Ogden,

9 Wheat. 1, 194, 196 (1824). His statements can be understood now as an early and authoritative recognition that the Commerce Clause grants Congress extensive power and ample discretion to determine its appropriate exercise. The progression of our Commerce Clause cases from

Gibbons

to the present was not marked, however, by a coherent or consistent course of interpretation; for neither the course of technological advance nor the foundational principles for the jurisprudence itself were self-evident to the courts that sought to resolve contemporary disputes by enduring principles.

Furthermore, for almost a century after the adoption of the Constitution, the Court's Commerce Clause decisions did not concern the authority of Congress to legislate. Rather,

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the Court faced the related but quite distinct question of the authority of the States to regulate matters that would be within the commerce power had Congress chosen to act. The simple fact was that in the early years of the Republic, Congress seldom perceived the necessity to exercise its power in circumstances where its authority would be called into question. The Court's initial task, therefore, was to elaborate the theories that would permit the States to act where Congress had not done so. Not the least part of the problem was the unresolved question whether the congressional power was exclusive, a question reserved by Chief Justice Marshall in

Gibbons

v.

Ogden, supra,

at 209-210.

At the midpoint of the 19th century, the Court embraced the principle that the States and the National Government both have authority to regulate certain matters absent the congressional determination to displace local law or the necessity for the Court to invalidate local law because of the dormant national power.

Cooley

v.

Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots,

12 How. 299, 318-321 (1852). But the utility of that solution was not at once apparent, see generally F. Frankfurter, *The Commerce Clause under Marshall, Taney and Waite* (1937) (hereinafter Frankfurter), and difficulties of application persisted, see

Leisy

v.

Hardin,

135 U. S. 100

, 122-125 (1890).

One approach the Court used to inquire into the lawfulness of state authority was to draw content-based or subjectmatter distinctions, thus defining by semantic or formalistic categories those activities that were commerce and those that were not. For instance, in deciding that a State could prohibit the in-state manufacture of liquor intended for outof-state shipment, it distinguished between manufacture and commerce. "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactur[e] and commerce. Manufacture is transformation-the fashioning of raw mate-

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rials into a change of form for use. The functions of commerce are different."

Kidd

v.

Pearson,

128 U. S. 1

, 20 (1888). Though that approach likely would not have survived even if confined to the question of a State's authority to enact legislation, it was not at all propitious

when applied to the quite different question of what subjects were within the reach of the national power when Congress chose to exercise it.

This became evident when the Court began to confront federal economic regulation enacted in response to the rapid industrial development in the late 19th century. Thus, it relied upon the manufacture-commerce dichotomy in

United States

v.

E.

C.

Knight Co.,

156 U. S. 1

(1895), where a manufacturers' combination controlling some 98% of the Nation's domestic sugar refining capacity was held to be outside the reach of the Sherman Act. Conspiracies to control manufacture, agriculture, mining, production, wages, or prices, the Court explained, had too "indirect" an effect on interstate commerce.

Id.,

at 16. And in

Adair

v.

United States, 208

U. S. 161 (1908), the Court rejected the view that the commerce power might extend to activities that, although local in the sense of having originated within a single State, nevertheless had a practical effect on interstate commercial activity. The Court concluded that there was not a "legal or logical connection ... between an employe's membership in a labor organization and the carrying on of interstate commerce,"

id.,

at 178, and struck down a federal statute forbidding the discharge of an employee because of his membership in a labor organization. See also

The Employers' Liability Cases,

207 U. S. 463

, 497 (1908) (invalidating statute creating negligence action against common carriers for personal injuries of employees sustained in the course of employment, because the statute "regulates the persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce").

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Even before the Court committed itself to sustaining federal legislation on broad principles of economic practicality, it found it necessary to depart from these decisions. The Court disavowed

E.

C.

Knight's

reliance on the manufacturing-commerce distinction in

Standard Oil Co. of

N.

J.

v.

United States,

221 U. S. 1

, 68-69 (1911), declaring that approach "unsound." The Court likewise rejected the rationale of

Adair

when it decided, in

Texas

&

New Orleans R. Co.

v.

Railway Clerks,

281 U. S. 548

, 570-571 (1930), that Congress had the power to regulate matters pertaining to the organization of railroad workers.

In another line of cases, the Court addressed Congress' efforts to impede local activities it considered undesirable by prohibiting the interstate movement of some essential element. In the

Lottery Case,

188 U. S. 321

(1903), the Court rejected the argument that Congress lacked power to prohibit the interstate movement of lottery tickets because it had power only to regulate, not to prohibit. See also

Hipolite Egg Co.

v.

United States,

220 U. S. 45

(1911);

Hoke

v.

United States,

227 U. S. 308

(1913). In

Hammer

v.

Dagenhart,

247 U. S. 251

(1918), however, the Court insisted that the power to regulate commerce "is directly the contrary of the assumed right to forbid commerce from moving,"

id.,

at 269-270, and struck down a prohibition on the interstate transportation of goods manufactured in violation of child labor laws.

Even while it was experiencing difficulties in finding satisfactory principles in these cases, the Court was pursuing a more sustainable and practical approach in other lines of decisions, particularly those involving the regulation of railroad rates. In the

Minnesota Rate Cases,

230 U. S. 352

(1913), the Court upheld a state rate order, but observed that Congress might be empowered to regulate in this area if "by reason of the interblending of the interstate and intrastate operations of interstate carriers" the regulation of interstate rates could not be maintained without restrictions on "intra-

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state rates which substantially affect the former."

Id.,

at 432-433. And in the

Shreveport Rate Cases,

234 U. S. 342

(1914), the Court upheld an Interstate Commerce Commission order fixing railroad rates with the explanation that congressional authority, "extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance."

Id.,

at 351.

Even the most confined interpretation of "commerce" would embrace transportation between the States, so the rate cases posed much less difficulty for the Court than cases involving manufacture or production. Nevertheless, the Court's recognition of the importance of a practical conception of the commerce power was not altogether confined to the rate cases. In

Swift

&

Co.

v.

United States,

196 U. S. 375

(1905), the Court upheld the application of federal antitrust law to a combination of meat dealers that occurred in one State but that restrained trade in cattle "sent for sale from a place in one State, with the expectation that they will end their transit ... in another."

Id.,

at 398. The Court explained that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business."

Ibid.

Chief Justice Taft followed the same approach in upholding federal regulation of stockyards in

Stafford

v.

Wallace,

258 U. S. 495

(1922). Speaking for the Court, he rejected a "nice and technical inquiry,"

id.,

at 519, when the local transactions at issue could not "be separated from the movement to which they contribute,"

id.,

at 516.

Reluctance of the Court to adopt that approach in all of its cases caused inconsistencies in doctrine to persist, however. In addressing New Deal legislation the Court resuscitated

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the abandoned abstract distinction between direct and indirect effects on interstate commerce. See

Carter

v.

Carter Coal Co.,

298 U. S. 238

, 309 (1936) (Act regulating price of coal and wages and hours for miners held to have only "secondary and indirect" effect on interstate commerce);

Railroad Retirement Bd.

v.

Alton R. Co.,

295 U. S. 330

, 368 (1935) (compulsory retirement and pension plan for railroad carrier employees too "remote from any regulation of commerce as such");

A. L. A. Schechter Poultry Corp.

v.

United States,

295 U. S. 495

, 548 (1935) (wage and hour law provision of National Industrial Recovery Act had "no direct relation to interstate commerce").

The case that seems to mark the Court's definitive commitment to the practical conception of the commerce power is

NLRB

v.

Jones

&

Laughlin Steel Corp.,

301 U. S. 1

(1937), where the Court sustained labor laws that applied to manufacturing facilities, making no real attempt to distinguish

Carter, supra,

and

Schechter, supra.

301 U. S., at 40-41. The deference given to Congress has since been confirmed.

United States

v.

Darby,

312 U. S. 100

, 116-117 (1941), overruled

Hammer

v.

Dagenhart, supra.

And in

Wickard

v.

Filburn,

317 U. S. 111

(1942), the Court disapproved

E.

C.

Knight

and the entire line of direct-indirect and manufacture-production cases, explaining that "broader interpretations of the Commerce Clause [were] destined to supersede the earlier ones," 317 U. S., at 122, and "[w]hatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution,"

id.,

at 123, n. 24. Later examples of the exercise of federal power where commercial transactions were the subject of regulation include

Heart of Atlanta Motel, Inc.

v.

United States,

379 U. S. 241

(1964),

Katzenbach

v.

McClung,

379 U. S. 294

(1964), and

Perez

v.

United States,

402 U. S. 146

(1971). These and like authorities are within the fair ambit

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of the Court's practical conception of commercial regulation and are not called in question by our decision today.

The history of our Commerce Clause decisions contains at least two lessons of relevance to this case. The first, as stated at the outset, is the imprecision of content-based boundaries used without more to define the limits of the Commerce Clause. The second, related to the first but of even greater consequence, is that the Court as an institution and the legal system as a whole have an immense stake in the stability of our Commerce Clause jurisprudence as it has evolved to this point.

Stare decisis

operates with great force in counseling us not to call in question the essential principles now in place respecting the congressional power to regulate transactions of a commercial nature. That fundamental restraint on our power forecloses us from reverting to an understanding of commerce that would serve only an 18th-century economy, dependent then upon production and trading practices that had changed but little over the preceding centuries; it also mandates against returning to the time when congressional authority to regulate undoubted commercial activities was limited by a judicial determination that those matters had an insufficient connection to an interstate system. Congress can regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy.

In referring to the whole subject of the federal and state balance, we said this just three Terms ago:

"This framework has been sufficiently flexible over the past two centuries to allow for enormous changes in the nature of government. The Federal Government undertakes activities today that would have been unimaginable to the Framers in two senses: first, because the Framers would not have conceived that any government would conduct such activities; and second, because the Framers would not have believed that the

Federal Government, rather than the States, would assume such

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responsibilities. Yet the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government's role."

New York

United States,

505 U. S. 144

It does not follow, however, that in every instance the Court lacks the authority and responsibility to review congressional attempts to alter the federal balance. This case requires us to consider our place in the design of the Government and to appreciate the significance of federalism in the whole structure of the Constitution.

Of the various structural elements in the Constitution, separation of powers, checks and balances, judicial review, and federalism, only concerning the last does there seem to be much uncertainty respecting the existence, and the content, of standards that allow the Judiciary to play a significant role in maintaining the design contemplated by the Framers. Although the resolution of specific cases has proved difficult, we have derived from the Constitution workable standards to assist in preserving separation of powers and checks and balances. See,

e. g., Prize Cases,

2 Black 635 (1863);

Youngstown Sheet

&

Tube Co.

v.

Sawyer,

343 U. S. 579

(1952);

United States

v.

Nixon,

418 U. S. 683

(1974); *Buckley*

v.

Valeo,

424 U. S. 1

(1976);

INS

v.

Chadha,

462 U. S. 919

(1983);

Bowsher

v.

Synar,

478 U. S. 714

(1986);

Plaut

v.

Spendthrift Farm, Inc., ante,

p. 211. These standards are by now well accepted. Judicial review is also established beyond question,

Marbury

v.

Madison,

1 Cranch 137 (1803), and though we may differ when applying its principles, see, *e. g., Planned Parenthood of Southeastern Pa.*

v.

Casey,

505 U. S. 833

(1992), its legitimacy is undoubted. Our role in preserving the federal balance seems more tenuous.

There is irony in this, because of the four structural elements in the Constitution just mentioned, federalism was the unique contribution of the Framers to political science and political theory. See Friendly, *Federalism: A Foreword*, 86

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Yale L. J. 1019 (1977); G. Wood, *The Creation of the American Republic, 1776-1787*, pp. 524-532, 564 (1969). Though on the surface the idea may seem counterintuitive, it was the insight of the Framers that freedom was enhanced by the creation of two governments, not one. "In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself." *The Federalist* No. 51, p. 323 (C. Rossiter ed. 1961) (J. Madison). See also

Gregory

v.

Ashcroft,

501 U. S. 452

, 458-459 (1991) ("Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in anyone 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");

New York

v.

United States, supra,

at 181 ("[T]he Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power'") (quoting

Coleman

v.

Thompson,

501 U. S. 722

, 759 (1991) (Blackmun, J., dissenting)).

The theory that two governments accord more liberty than one requires for its realization two distinct and discernable lines of political accountability: one between the citizens and the Federal Government; the second between the citizens and the States. If, as Madison expected, the Federal and State Governments are to control each other, see *The Federalist* No. 51, and hold each other in check by competing for the affections of the people, see *The Federalist* No. 46, those citizens must have some means of knowing which of

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the two governments to hold accountable for the failure to perform a given function. "Federalism serves to assign political responsibility, not to obscure it."

FTC

v.

Ticor Title Ins. Co.,

504 U. S. 621

, 636 (1992). 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. Cf.

New York

v.

United States, supra,

at 155-169;

FERC

v.

Mississippi,

456 U. S. 742

, 787 (1982) (O'CONNOR, J., concurring in judgment in part and dissenting in part). The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power.

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,"

ibid.

Whatever the judicial role, it is axiomatic that Congress does have substantial discretion and control over the federal balance.

For these reasons, it would be mistaken and mischievous for the political branches to forget that the sworn obligation to preserve and protect the Constitution in maintaining the federal balance is their own in the first and primary instance. In the Webster-Hayne Debates, see *The Great Speeches and*

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Orations of Daniel Webster 227-272 (E. Whipple ed. 1879), and the debates over the Civil Rights Acts, see *Hearings on S. 1732 before the Senate Committee on Commerce*, 88th Cong., 1st Sess., pts. 1-3 (1963), some Congresses have accepted responsibility to confront the great questions of the proper federal balance in terms of lasting consequences for the constitutional design. The political branches of the Government must fulfill this grave constitutional obligation if democratic liberty and the federalism that secures it are to endure.

At the same time, the absence of structural mechanisms to require those officials to undertake this principled task, and the momentary political convenience often attendant upon their failure to do so, argue against a complete renunciation of the judicial role. Although it is the obligation of all officers of the Government to respect the constitutional design, see

Public Citizen

v.

Department of Justice,

491 U. S. 440

, 466 (1989);

Rostker

v.

Goldberg,

453 U. S. 57

, 64 (1981), the federal balance is too essential a part of our constitutional structure and plays too vital a role in securing freedom for us to admit inability to intervene when one or the other level of Government has tipped the scales too far.

In the past this Court has participated in maintaining the federal balance through judicial exposition of doctrines such as abstention, see,

e. g., Younger

v.

Harris,

401 U. S. 37

(1971); *Railroad Comm'n of Tex.*

v.

Pullman Co.,

312 U. S. 496

(1941);

Burford

v.

Sun Oil Co.,

319 U. S. 315

(1943), the rules for determining the primacy of state law, see,

e. g., Erie R. Co.

v.

Tompkins,

304 U. S. 64

(1938), the doctrine of adequate and independent state grounds, see,

e. g., Murdock

v.

Memphis,

20 Wall. 590 (1875);

Michigan

v.

Long,

463 U. S. 1032

(1983), the whole jurisprudence of pre-emption, see,

e. g., Rice

v.

Santa Fe Elevator Corp.,

331 U. S. 218

(1947);

Cipollone

v.

Liggett Group, Inc.,

505 U. S. 504

(1992), and many of the rules governing our habeas jurisprudence, see,

e. g., Coleman

v.

Thompson,

501 U. S. 722

(1991);

McCleskey

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v.

Zant,

499 U. S. 467

(1991);

Teague

v.

Lane,

489 U. S. 288

(1989); *Rose*

v.

Lundy,

455 U. S. 509

(1982);

Wainwright

v.

Sykes,

433 U. S. 72

(1977).

Our ability to preserve this principle under the Commerce Clause has presented a much greater challenge. See

supra,

at 568-574. "This clause has throughout the Court's history been the chief source of its adjudications regarding federalism," and "no other body of opinions affords a fairer or more revealing test of judicial qualities." Frankfurter 66-67. But as the branch whose distinctive duty it is to declare "what the law is,"

Marbury

v.

Madison,

1 Cranch, at 177, we are often called upon to resolve questions of constitutional law not susceptible to the mechanical application of bright and clear lines. The substantial element of political judgment in Commerce Clause matters leaves our institutional capacity to intervene more in doubt than when we decide cases, for instance, under the Bill of Rights even though clear and bright lines are often absent in the latter class of disputes. See

County of Allegheny

v.

American Civil Liberties Union, Greater Pittsburgh Chapter,

492 U. S. 573

, 630 (1989) (O'CONNOR, J., concurring in part and concurring in judgment) ("We cannot avoid the obligation to draw lines, often close and difficult lines" in adjudicating constitutional rights). But our cases do not teach that we have no role at all in determining the meaning of the Commerce Clause.

Our position in enforcing the dormant Commerce Clause is instructive. The Court's doctrinal approach in that area has likewise "taken some turns."

Oklahoma Tax Comm'n

v.

Jefferson Lines, Inc., ante,

at 180. Yet in contrast to the prevailing skepticism that surrounds our ability to give meaning to the explicit text of the Commerce Clause, there is widespread acceptance of our authority to enforce the dormant Commerce Clause, which we have but inferred from the constitutional structure as a limitation on the power of the States. One element of our dormant Commerce Clause jurisprudence has been the principle that the States may not

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impose regulations that place an undue burden on interstate commerce, even where those regulations do not discriminate between in-state and out-of-state businesses. See

BrownForman Distillers Corp.

v.

New York State Liquor Authority,

476 U. S. 573

, 579 (1986) (citing

Pike

v.

Bruce Church, Inc.,

397 U. S. 137

, 142 (1970)). Distinguishing between regulations that do place an undue burden on interstate commerce and regulations that do not depends upon delicate

judgments. True, if we invalidate a state law, Congress can in effect overturn our judgment, whereas in a case announcing that Congress has transgressed its authority, the decision is more consequential, for it stands unless Congress can revise its law to demonstrate its commercial character. This difference no doubt informs the circumspection with which we invalidate an Act of Congress, but it does not mitigate our duty to recognize meaningful limits on the commerce power of Congress.

The statute before us upsets the federal balance to a degree that renders it an unconstitutional assertion of the commerce power, and our intervention is required. As THE CHIEF JUSTICE explains, unlike the earlier cases to come before the Court here neither the actors nor their conduct has a commercial character, and neither the purposes nor the design of the statute has an evident commercial nexus. See

ante,

at 559-561. The statute makes the simple possession of a gun within 1,000 feet of the grounds of the school a criminal offense. In a sense any conduct in this interdependent world of ours has an ultimate commercial origin or consequence, but we have not yet said the commerce power may reach so far. If Congress attempts that extension, then at the least we must inquire whether the exercise of national power seeks to intrude upon an area of traditional state concern.

An interference of these dimensions occurs here, for it is well established that education is a traditional concern of the States.

Milliken

v.

Bradley,

418 U. S. 717

, 741-742 (1974);

Epperson

v.

Arkansas,

393 U. S. 97

, 104 (1968). The proximity to schools, including of course schools owned and operated by the States or their subdivisions, is the very premise for making the conduct criminal. In these circumstances, we have a particular duty to ensure that the federal-state balance is not destroyed. Cf.

Rice, supra,

at 230 ("[W]e start with the assumption that the historic police powers of the States" are not displaced by a federal statute "unless that was the clear and manifest purpose of Congress");

Florida Lime

&

Avocado Growers, Inc.

v.

Paul,

373 U. S. 132

, 146 (1963).

While it is doubtful that any State, or indeed any reasonable person, would argue that it is wise policy to allow students to carry guns on school premises, considerable disagreement exists about how best to accomplish that goal. In this circumstance, the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear. See

San Antonio Independent School Dist.

v.

Rodriguez,

411 U. S. 1

, 49-50 (1973);

New State Ice Co.

v.

Liebmann,

285 U. S. 262

, 311 (1932) (Brandeis, J., dissenting).

If a State or municipality determines that harsh criminal sanctions are necessary and wise to deter students from carrying guns on school premises, the reserved powers of the States are sufficient to enact those measures. Indeed, over 40 States already have criminal laws outlawing the possession of firearms on or near school grounds. See,

e.

g.,

Alaska Stat. Ann. §§ 11.61.195(a)(2)(A), 11.61.220(a)(4)(A) (Supp. 1994); Cal. Penal Code Ann. § 626.9 (West Supp. 1994); Mass. Gen. Laws § 269:10(j) (1992); N. J. Stat. Ann. § 2C:39-5(e) (West Supp. 1994); Va. Code Ann. § 18.2-308.1 (1988); Wis. Stat. § 948.605 (1991-1992).

Other, more practicable means to rid the schools of guns may be thought by the citizens of some States to be preferable for the safety and welfare of the schools those States are

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charged with maintaining. See Brief for National Conference of State Legislatures et al. as

Amici Curiae

26-30 (injection of federal officials into local problems causes friction and diminishes political accountability of state and local governments). These might include inducements to inform on violators where the information leads to arrests or confiscation of the guns, see Lima, Schools May Launch Weapons Hot Line, Los Angeles Times, Ventura Cty. East ed., Jan. 13, 1995, p. B1, col. 5; Reward for Tips on Guns in Tucson Schools, The Arizona Republic, Jan. 7, 1995, p. B2; programs to encourage the voluntary surrender of guns with some provision for amnesty, see Zaidan, Akron Rallies to Save Youths, The Plain Dealer, Mar. 2, 1995, p. 1B; Swift, Legislators Consider Plan to Get Guns Off Streets, Hartford Courant, Apr. 29, 1992, p. A4; penalties imposed on parents or guardians for failure to supervise the child, see,

e.

g.,

Okla. Stat., Tit. 21, § 858 (Supp. 1995) (fining parents who allow students to possess firearm at school); Tenn. Code Ann. § 3917-1312 (Supp. 1992) (misdemeanor for parents to allow student to possess firearm at school); Straight Shooter: Gov. Casey's Reasonable Plan to Control Assault Weapons, Pittsburgh Post-Gazette, Mar. 14, 1994, p. B2 (proposed bill); Bailey, Anti-Crime Measures Top Legislators' Agenda, Los Angeles Times, Orange Cty. ed., Mar. 7, 1994, p. B1, col. 2 (same); Krupa, New Gun-Control Plans Could Tighten Local Law, The Boston Globe, June 20, 1993, p. 29; laws providing for suspension or expulsion of gun-toting students, see,

e.

g.,

Ala. Code § 16-1-24.1 (Supp. 1994); Ind. Code § 20-8.1-54(b)(1)(D) (1993); Ky. Rev. Stat. Ann. § 158.150(1)(a) (Michie 1992); Wash. Rev. Code § 9.41.280 (1994), or programs for expulsion with assignment to special facilities, see Martin, Legislators Poised to Take Harsher Stand on Guns in Schools, The Seattle Times, Feb. 1, 1995, p. B1 (automatic year-long expulsion for students with guns and intense semester-long reentry program).

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The statute now before us forecloses the States from experimenting and exercising their own judgment in an area to which States lay claim by right of history and expertise, and it does so by regulating an activity beyond the realm of commerce in the ordinary and usual sense of that term. The tendency of this statute to displace state regulation in areas of traditional state concern is evident from its territorial operation. There are over 100,000 elementary and secondary schools in the United States. See U. S. Dept. of Education, National Center for Education Statistics, Digest of Education Statistics 73, 104 (NCES 94-115, 1994) (Tables 63, 94). Each of these now has an invisible federal zone extending 1,000 feet beyond the (often irregular) boundaries of the school property. In some communities no doubt it would be difficult to navigate without infringing on those zones. Yet throughout these areas, school officials would find their own programs for the prohibition of guns in danger of displacement by the federal authority unless the State chooses to enact a parallel rule.

This is not a case where the etiquette of federalism has been violated by a formal command from the National Government directing the State to enact a certain policy, cf.

New

York v.

United States,

505 U. S. 144

(1992), or to organize its governmental functions in a certain way, cf.

FERC

v.

Mississippi,

456 U. S., at 781 (O'CONNOR, J., concurring in judgment in part and dissenting in part). While the intrusion on state sovereignty may not be as severe in this instance as in some of our recent Tenth Amendment cases, the intrusion is nonetheless significant. Absent a stronger connection or identification with commercial concerns that are central to the Commerce Clause, that interference contradicts the federal balance the Framers designed and that this Court is obliged to enforce.

For these reasons, I join in the opinion and judgment of the Court.

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JUSTICE THOMAS, concurring.

The Court today properly concludes that the Commerce Clause does not grant Congress the authority to prohibit gun possession within 1,000 feet of a school, as it attempted to do in the Gun-Free School Zones Act of 1990, Pub. L. 101-647, 104 Stat. 4844. Although I join the majority, I write separately to observe that our case law has drifted far from the original understanding of the Commerce Clause. In a future case, we ought to temper our Commerce Clause jurisprudence in a manner that both makes sense of our more recent case law and is more faithful to the original understanding of that Clause.

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. See

New York

v.

United States,

505 U. S. 144

, 155 (1992) ("[N]o one disputes the proposition that '[t]he Constitution created a Federal Government of limited powers'"') (quoting

Gregory

v.

Ashcroft,

501 U. S. 452

, 457 (1991);

Maryland

v.

Wirtz,

392 U. S. 183

, 196 (1968);

NLRB

v.

Jones

&

Laughlin Steel Corp.,

301 U. S. 1

, 37 (1937). Cf.

Chisholm

v.

Georgia,

2 Dall. 419, 435 (1793) (Iredell, J.) ("Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them") (emphasis deleted). Indeed, on this crucial point, the majority and JUSTICE BREYER agree in principle: The Federal

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Government has nothing approaching a police power. Compare

ante,

at 556-558, with

post,

at 624.

While the principal dissent concedes that there are limits to federal power, the sweeping nature of our current test enables the dissent to argue that Congress can regulate gun possession. But it seems to me that the power to regulate "commerce" can by no means encompass authority over mere gun possession, any more than it empowers the Federal Government to regulate marriage, littering, or cruelty to animals, throughout the 50 States. Our Constitution quite properly leaves such matters to the individual States, notwithstanding these activities' effects on interstate commerce. Any interpretation of the Commerce Clause that even suggests that Congress could regulate such matters is in need of reexamination.

In an appropriate case, I believe that we must further reconsider our "substantial effects" test with an eye toward constructing a standard that reflects the text and history of the Commerce Clause without totally rejecting our more recent Commerce Clause jurisprudence.

Today, however, I merely support the Court's conclusion with a discussion of the text, structure, and history of the Commerce Clause and an analysis of our early case law. My goal is simply to show how far we have departed from the original understanding and to demonstrate that the result we reach today is by no means "radical," see

post,

at 602 (STEVENS, J., dissenting). I also want to point out the necessity of refashioning a coherent test that does not tend to "obliterate the distinction between what is national and what is local and create a completely centralized government."

Jones

&

Laughlin Steel Corp., supra,

at 37.

I

At the time the original Constitution was ratified, "commerce" consisted of selling, buying, and bartering, as well as transporting for these purposes. See 1 S. Johnson, *A Dic-*

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tionary of the English Language 361 (4th ed. 1773) (defining commerce as "Intercour[s]e; exchange of one thing for another; interchange of any thing; trade; traffick"); N. Bailey, *An Universal Etymological English Dictionary* (26th ed. 1789) ("trade or traffic"); T. Sheridan, *A Complete Dictionary of the English Language* (6th ed. 1796) ("Exchange of one thing for another; trade, traffick"). This understanding finds support in the etymology of the word, which literally means "with merchandise." See 3 *Oxford English Dictionary* 552 (2d ed. 1989) (com-"with"; merci-"merchandise"). In fact, when Federalists and Anti-Federalists discussed the Commerce Clause during the ratification period, they often used trade (in its selling/bartering sense) and commerce interchangeably. See *The Federalist* No.4, p. 22 (J. Jay) (asserting that countries will cultivate our friendship when our "trade" is prudently regulated by Federal Government); 1

id.,

No.7, at 39-40 (A. Hamilton) (discussing "competitions of commerce" between States resulting from state "regulations of trade");

id.,

No. 40, at 262 (J. Madison) (asserting that it was an "acknowledged object of the Convention ... that the regulation of trade should be submitted to the general government"); Lee, Letters of a Federal Farmer No.5, in Pamphlets on the Constitution of the United States 319 (P. Ford ed. 1888); Smith, An Address to the People of the State of New-York, in

id.,

at 107.

As one would expect, the term "commerce" was used in contradistinction to productive activities such as manufacturing and agriculture. Alexander Hamilton, for example, repeatedly treated commerce, agriculture, and manufacturing as three separate endeavors. See,

e.

g.,

The Federalist No. 36, at 224 (referring to "agriculture, commerce, manufactures");

id.,

No. 21, at 133 (distinguishing commerce, arts, and industry);

id.,

No. 12, at 74 (asserting that commerce and agriculture have shared interests). The same distinctions

¹ All references to The Federalist are to the Jacob E. Cooke 1961 edition.

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were made in the state ratification conventions. See,

e.

g.,

2 Debates in the Several State Conventions on the Adoption of the Federal Constitution 57 (J. Elliot ed. 1836) (hereinafter Debates) (T. Dawes at Massachusetts convention);

id.,

at 336 (M. Smith at New York convention).

Moreover, interjecting a modern sense of commerce into the Constitution generates significant textual and structural problems. For example, one cannot replace "commerce" with a different type of enterprise, such as manufacturing. When a manufacturer produces a car, assembly cannot take place "with a foreign nation" or "with the Indian Tribes." Parts may come from different States or other nations and hence may have been in the flow of commerce at one time, but manufacturing takes place at a discrete site. Agriculture and manufacturing involve the production of goods; commerce encompasses traffic in such articles.

The Port Preference Clause also suggests that the term "commerce" denoted sale and/or transport rather than business generally. According to that Clause, "[n]o Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another." U. S. Const., Art. I, § 9, cl. 6. Although it is possible to conceive of regulations of manufacturing or farming that prefer one port over another, the more natural reading is that the Clause prohibits Congress from using its commerce power to channel commerce through certain favored ports.

The Constitution not only uses the word "commerce" in a narrower sense than our case law might suggest, it also does not support the proposition that Congress has authority over all activities that "substantially affect" interstate commerce. The Commerce Clause 2 does not state that Congress may

2 Even to speak of "the Commerce Clause" perhaps obscures the actual scope of that Clause. As an original matter, Congress did not have authority to regulate all commerce; Congress could only "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U. S. Const., Art. I, § 8, cl. 3. Although the precise line between

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"regulate matters that substantially affect commerce with foreign Nations, and among the several States, and with the Indian Tribes." In contrast, the Constitution

itself temporarily prohibited amendments that would "affect" Congress' lack of authority to prohibit or restrict the slave trade or to enact unproportioned direct taxation. Art. V. Clearly, the Framers could have drafted a Constitution that contained a "substantially affects interstate commerce" Clause had that been their objective.

In addition to its powers under the Commerce Clause, Congress has the authority to enact such laws as are "necessary and proper" to carry into execution its power to regulate commerce among the several States. U. S. Const., Art. I, § 8, cl. 18. But on this Court's understanding of congressional power under these two Clauses, many of Congress' other enumerated powers under Art. I, § 8, are wholly superfluous. After all, if Congress may regulate all matters that substantially affect commerce, there is no need for the Constitution to specify that Congress may enact bankruptcy laws, cl. 4, or coin money and fix the standard of weights and measures, cl. 5, or punish counterfeiters of United States coin and securities, cl. 6. Likewise, Congress would not need the separate authority to establish post offices and post roads, cl. 7, or to grant patents and copyrights, cl. 8, or to "punish Piracies and Felonies committed on the high Seas," cl. 10. It might not even need the power to raise and support an Army and Navy, cls. 12 and 13, for fewer people would engage in commercial shipping if they thought that a foreign power could expropriate their property with ease. Indeed, if Congress could regulate matters that substantially affect interstate commerce, there would have been no need to spec-

interstate/foreign commerce and purely intrastate commerce was hard to draw, the Court attempted to adhere to such a line for the first 150 years of our Nation. See

infra,

at 593-599.

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ify that Congress can regulate international trade and commerce with the Indians. As the Framers surely understood, these other branches of trade substantially affect interstate commerce.

Put simply, much if not all of Art. I, § 8 (including portions of the Commerce Clause itself), would be surplusage if Congress had been given authority over matters

that substantially affect interstate commerce. An interpretation of cl. 3 that makes the rest of § 8 superfluous simply cannot be correct. Yet this Court's Commerce Clause jurisprudence has endorsed just such an interpretation: The power we have accorded Congress has swallowed Art. I, § 8.3

Indeed, if a "substantial effects" test can be appended to the Commerce Clause, why not to every other power of the Federal Government? There is no reason for singling out the Commerce Clause for special treatment. Accordingly, Congress could regulate all matters that "substantially affect" the Army and Navy, bankruptcies, tax collection, expenditures, and so on. In that case, the Clauses of § 8 all mutually overlap, something we can assume the Founding Fathers never intended.

Our construction of the scope of congressional authority has the additional problem of coming close to turning the Tenth Amendment on its head. Our case law could be read to reserve to the United States all powers not expressly

pro

hibited by the Constitution. Taken together, these fundamental textual problems should, at the very least, convince us that the "substantial effects" test should be reexamined.

3 There are other powers granted to Congress outside of Art. I, § 8, that may become wholly superfluous as well due to our distortion of the Commerce Clause. For instance, Congress has plenary power over the District of Columbia and the territories. See U. S. Const., Art. I, §8, cl. 17, and Art. IV, § 3, cl. 2. The grant of comprehensive legislative power over certain areas of the Nation, when read in conjunction with the rest of the Constitution, further confirms that Congress was not ceded plenary authority over the

whole

Nation.

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II

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.

Early Americans understood that commerce, manufacturing, and agriculture, while distinct activities, were intimately related and dependent on each other—that each "substantially affected" the others. After all, items produced by farmers and manufacturers were the primary articles of commerce at the time. If commerce was more robust as a result of federal superintendence, farmers and manufacturers could benefit. Thus, Oliver Ellsworth of Connecticut attempted to convince farmers of the benefits of regulating commerce. "Your property and riches depend on a ready demand and generous price for the produce you can annually spare," he wrote, and these conditions exist "where trade flourishes and when the merchant can freely export the produce of the country" to nations that will pay the highest price. A Landholder No.1, Connecticut Courant, Nov. 5, 1787, in 3 Documentary History of the Ratification of the Constitution 399 (M. Jensen ed. 1978) (hereinafter Documentary History). See also The Federalist No. 35, at 219 (A. Hamilton) ("[D]iscerning citizens are well aware that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry. Many of them indeed are immediately connected with the operations of commerce. They know that the merchant is their natural patron and friend");

id.,

at 221 ("Will not the merchant ... be disposed to cultivate ... the interests of the mechanic and manufacturing arts to which his commerce is so nearly allied?"); A Jerseyman: To the Citizens of New Jersey, Trenton Mercury, Nov. 6, 1787, in 3 Documentary History 147 (noting that agriculture will serve as

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a "source of commerce"); Marcus, The New Jersey Journal, Nov. 14, 1787,

id.,

at 152 (both the mechanic and the farmer benefit from the prosperity of commerce). William Davie, a delegate to the North Carolina Convention, illustrated the close link best: "Commerce, sir, is the nurse of [agriculture and manufacturing]. The merchant furnishes the planter with such articles as he cannot manufacture himself, and finds him a market for his produce. Agriculture

cannot flourish if commerce languishes; they are mutually dependent on each other." 4 Debates 20.

Yet, despite being well aware that agriculture, manufacturing, and other matters substantially affected commerce, the founding generation did not cede authority over all these activities to Congress. Hamilton, for instance, acknowledged that the Federal Government could not regulate agriculture and like concerns:

"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." The Federalist No. 17, at 106.

In the unlikely event that the Federal Government would attempt to exercise authority over such matters, its effort "would be as troublesome as it would be nugatory."

Ibid.

4

4 Cf. 3 Debates 40 (E. Pendleton at the Virginia convention) (The proposed Federal Government "does not intermeddle with the local, particular affairs of the states. Can Congress legislate for the state of Virginia? Can [it] make a law altering the form of transferring property, or the rule of descents, in Virginia?");

id.,

at 553 (J. Marshall at the Virginia convention) (denying that Congress could make "laws affecting the mode of transferring property, or contracts, or claims, between citizens of the same state"); The Federalist No. 33, at 206 (A. Hamilton) (denying that Congress could change laws of descent or could pre-empt a land tax); A Native of Virginia: Observations upon the Proposed Plan of Federal Government, Apr. 2, 1788, in 9 Documentary History 692 (States have sole authority over "rules of property").

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The comments of Hamilton and others about federal power reflected the well-known truth that the new Government would have only the limited and enumerated powers found in the Constitution. See,

e.

g.,

2 Debates 267-268 (A. Hamilton at New York Convention) (noting 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"); The Federalist No. 45, at 313 (J. Madison); 3 Debates 259 (J. Madison) (Virginia Convention); R. Sherman & O. Ellsworth, Letter to Governor Huntington, Sept. 26, 1787, in 3 Documentary History 352; J. Wilson, Speech in the State House Yard, Oct. 6, 1787, in 2

id.,

at 167-168. Agriculture and manufacture, since they were not surrendered to the Federal Government, were state concerns. See The Federalist No. 34, at 212-213 (A. Hamilton) (observing that the "internal encouragement of agriculture and manufactures" was an object of

state

expenditure). Even before the passage of the Tenth Amendment, it was apparent that Congress would possess only those powers "herein granted" by the rest of the Constitution. Art. I, § 1.

Where the Constitution was meant to grant federal authority over an activity substantially affecting interstate commerce, the Constitution contains an enumerated power over that particular activity. Indeed, the Framers knew that many of the other enumerated powers in § 8 dealt with matters that substantially affected interstate commerce. Madison, for instance, spoke of the bankruptcy power as being "intimately connected with the regulation of commerce." The Federalist No. 42, at 287. Likewise, Hamilton urged that "[i]f we mean to be a commercial people or even to be secure on our Atlantic side, we must endeavour as soon as possible to have a navy."

Id.,

No. 24, at 157.

In short, the Founding Fathers were well aware of what the principal dissent calls "economic ... realities." See

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post,

at 625 (BREYER, J.) (quoting

North American Co.

v.

SEC,

327 U. S. 686

, 705 (1946)). Even though the boundary between commerce and other matters may ignore "economic reality" and thus seem arbitrary or artificial to some, we must nevertheless respect a constitutional line that does not grant Congress power over all that substantially affects interstate commerce.

III

If the principal dissent's understanding of our early case law were correct, there might be some reason to doubt this view of the original understanding of the Constitution. According to that dissent, Chief Justice Marshall's opinion in

Gibbons

v.

Ogden,

9 Wheat. 1 (1824), established that Congress may control all local activities that "significantly affect interstate commerce,"

post,

at 615. And, "with the exception of one wrong turn subsequently corrected," this has been the "traditiona[l]" method of interpreting the Commerce Clause.

Post,

at 631 (citing

Gibbons

and

United States

v.

Darby,

312 U. S. 100

, 116-117 (1941)).

In my view, the dissent is wrong about the holding and reasoning of

Gibbons.

Because this error leads the dissent to characterize the first 150 years of this Court's case law as a "wrong turn," I feel compelled to put the last 50 years in proper perspective.

A

In

Gibbons,

the Court examined whether a federal law that licensed ships to engage in the "coasting trade" preempted a New York law granting a 30-year monopoly to Robert Livingston and Robert Fulton to navigate the State's waterways by steamship. In concluding that it did, the Court noted that Congress could regulate "navigation" because "[a]ll America ... has uniformly understood, the word 'commerce,' to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed." 9 Wheat., at 190. The Court also ob-

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served that federal power over commerce "among the several States" meant that Congress could regulate commerce conducted partly within a State. Because a portion of interstate commerce and foreign commerce would almost always take place within one or more States, federal power over interstate and foreign commerce necessarily would extend into the States.

Id.,

at 194-196.

At the same time, the Court took great pains to make clear that Congress could *not*

regulate commerce "which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States."

Id.,

at 194. Moreover, while suggesting that the Constitution might not permit States to regulate interstate or foreign commerce, the Court observed that "[i]nspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State" were but a small part "of that immense mass of legislation ... not surrendered to a general government."

Id.,

at 203. From an early moment, the Court rejected the notion that Congress can regulate everything that affects interstate commerce. That the internal commerce of the States and the numerous state inspection, quarantine, and health laws had substantial effects on interstate commerce cannot be doubted. Nevertheless, they were not "surrendered to the general government."

Of course, the principal dissent is not the first to misconstrue

Gibbons.

For instance, the Court has stated that

Gibbons

"described the federal commerce power with a breadth never yet exceeded."

Wickard

v.

Filburn,

317 U. S. 111

, 120 (1942). See also

Perez

v.

United States,

402 U. S. 146

, 151 (1971) (claiming that with

Darby

and

Wickard,

"the broader view of the Commerce Clause announced by Chief Justice Marshall had been restored"). I believe that this misreading stems from two statements in

Gibbons.

First, the Court made the uncontroversial claim that federal power does not encompass

"commerce"

that "does