**Chapter 6 Commerce Power Encompassing Congressional Power (Component I of Madisonian Democracy) and Federalism (Component II of Madisonian Democracy)**

**Chapter Objectives**

While studying this chapter, the student will learn to:

1. Understand why and how the Commerce Clause is used by Congress to augment its power and justify the laws it passes.

2. Trace the development of the Commerce Clause and its relationship to federalism.

3. Examine the power and limitations that the states possess under the Dormant Commerce Clause.

Constitutional Connector

Chapter 5 covered component II of Madisonian democracy—federalism. Principles of federal-ism relate directly to this chapter because when Congress uses its commerce power to enlarge its power, the power of the states can be reduced, which in turn results in the loss of state sovereignty. Just as the Supreme Court has moved back and forth in its interpretation of federalism and the Tenth Amendment, the Court has moved back and forth in its interpretation of the Commerce Clause, sometimes favoring the federal government and sometimes favoring the states. This chapter focuses on how the Supreme Court has reacted when Congress exercises the use of its commerce power.

**CHAPTER OUTLINE**

Commerce Power

Phase I—1824

Phase II—1880–1930s

Phase III—1880–1930s

Phase IV—1930s–1995

Phase V—1995–Present

Dormant Commerce Clause

Application of Dormant Commerce Clause

Supreme Court Opinions

Katzenbach v. McClung

United States v. Lopez

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**STUDY TIPS**

1. When you read this chapter keep in mind that the federal government is one of limited and enumerated powers. For Congress to pass laws, those laws must be based on an enumerated power. The power chosen by Congress time and again has been the power to regulate interstate commerce, given by Article I, Section 8, Clause 3. This power is referred to as commerce power or the Commerce Clause.

2. Refer back to Chapter 5, which covers federalism. Both Chapter 5 and this chapter explore the relationship of the federal government and the states. Both chapters cover cases where Congress passed laws based on the Commerce Clause and cover the issue of whether such laws invade the sovereignty of the states and violate principles of federalism and the Tenth Amendment.

3. Review the various phases of Commerce Clause development as illustrated in Exhibit 6-1. Note the various phases when the Court would uphold or strike down federal laws when Congress based these laws on the Commerce Clause. Review Exhibit 6-2, which outlines the extent of Commerce Clause power in Phase V, which is the current phase.

4. Note that Congress used the Commerce Clause to pass the Civil Rights Act of 1964. The Civil Rights Act was found to be constitutional in the cases of Katzenbach v. McClung and Heart of Atlanta Motel v. United States.

5. Review Exhibit 6-3 to visualize the Dormant Commerce Clause. Realize that the Dormant Commerce Clause involves state regulation of interstate commerce. The issue in Dormant Commerce Clause cases is whether the state law interferes with the free flow of interstate commerce or tries to protect one state’s market at the expense of the other states. If it does, the state law violates the Dormant Commerce Clause.

**EXERCISES**

1. Trace the five phases of Commerce Clause development.

**QUIZ**

**TRUE OR FALSE**

1. Congress uses the Commerce Clause to address a variety of social issues.

2. Congress possesses police power.

3. The states possess police power.

4. The Supreme Court has been inconsistent in deciding cases under the Commerce Clause.

5. The current trend in Commerce Clause cases is to favor federal power as opposed to state power.

6. Congress has used the Commerce Clause to outlaw racial and gender discrimination.

7. Because guns in schools are a national problem, Congress can use the Commerce Clause to make it a crime to possess a gun within 1,000 feet of a school.

8. Commerce includes such activities as transportation, traffic, trade, telephones, and faxes.

9. The Dormant Commerce Clause involves state regulation of commerce.

10. State regulation of commerce must not interfere with the free flow of interstate commerce.

**ANSWER KEY**

1. True

2. False

3. True

4. True

5. False

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6. True

7. False

8. True

9. True

10. True