

## Federalism Fights (Part 1)

Welcome to *Constitutional Context*. This is Professor Glenn Smith with another “five-minute bite of background about the Court and Constitution.”

Do you ever stop to think about how many of your life activities are affected by laws passed and legal decisions rendered by officials of your STATE government?

Whether we’re aware of it or not, it is state law – not national law – that provides the majority of the legal constraints and opportunities we face today. For example, like its 49 state cohorts, California law defines what it takes to create a binding contract or will, what standard of care we should expect from manufacturers, professionals or landlords, and what the rules are for marriage, divorce, child custody and a whole range of other interpersonal relationships. And, of course, by defining crimes and prescribing punishments, California law mainly determines who becomes a criminal offender and therefore what collateral costs are imposed on families, communities and taxpayers.

Of course, national law is important as well. Federal law calls most of the shots about overarching issues like immigration and national security. In many areas, from consumer protection to environmental safety, federal law often sets the legal “floor” on which individual state law builds. And federal constitutional limitations can constrain the running room that individual states have. (For example, after the 2015 *Obergefell* decision, no state is allowed to treat same-sex marriages differently from marriages between men and women.)

Still, none of this obscures the reality that, for individuals, businesses and non-profit entities, it is the intricate network of often-varying state laws that most significantly determines what they do and don’t do as they go about their daily lives.

This system of “federalism,” in which national authorities face strong state officials with independent sources of power, makes the American constitution an outlier among the constitutional plans of the vast majority of other countries. American federalism regularly confounds the foreign students and professionals I teach; they scratch their heads over the reality that legal requirements (such as whether marijuana is legal) can vary from one part of the country to the other.

American federalism stems from the 1787 decision of the Constitution’s Framers to embed the national government they created within the existing structure of strong and independent states. Beyond pragmatism, relying on federalism as a central pillar of the new constitutional structure reflects a variety of Framer expectations, including that strong state power would help keep federal power appropriately limited and that the states would serve as “laboratories” of policies more responsive to constituent needs.

Ever since, Americans have disputed the wisdom of American federalism. And just where to draw the line between national and state power has ongoingly consumed the attention of Americans, their elected officials, and their courts.

In the last three decades, the Supreme Court has been an active arbiter of the federal-state balance. Several times the Court has limited federal-government power in the name of preserving state sovereignty.

A prominent recent example is the Court's 2012 decision about the constitutionality of the Affordable Care Act. A central concern of Chief Justice Robert's holding that the ACA's "individual mandate" exceeded Congress' power to regulate interstate commerce (although not, ultimately, its taxing power) reflected a strong sense that "permitting Congress to reach beyond the natural extent of its authority" would undermine the federal balance of power. The ACA decision also protected state power in another explicit way – by invalidating a "Medicaid expansion" provision seven justices saw as inappropriately coercive on state-government autonomy.

Two companion cases from New Jersey on the Court's current docket (and the subject of oral argument last month) pose the latest matchup in the ongoing federalism fights. The constitutional context behind the latest lawsuits is the subject of this month's second podcast.

Enjoy!