Constitution of Massachusetts

Date: October 25, 1780
Authors: John Adams, Samuel Adams, and James Bowdoin
Genre: constitution; law

"We, therefore, the people of Massachusetts...do agree upon, ordain, and establish the following declaration of rights and frame of government as the constitution of the commonwealth of Massachusetts."

Summary Overview

In 1779, John Adams, Samuel Adams, and James Bowdoin drafted the Constitution of Massachusetts, then a commonwealth. The document, which was ratified in 1780, would become a model for the United States Constitution, which was adopted less than a decade later. The Massachusetts Constitution consisted of three parts: the Preamble, the Declaration of Rights, and the Frame of Government.

Defining Moment

The latter half of the eighteenth century was a tumultuous time for the American colonies. Increasingly, colonists were bristling at English rule, a sentiment that was exacerbated by a number of key events. In 1770, for example, a colonist and a British soldier got into an argument in Boston on March 5, 1770. Several other British troops came to the scene, as did a growing mob of colonists. As the group became unruly (throwing objects and shouting epithets at the soldiers), two of the troops fired their rifles into the crowd, killing five people. The incident would become known as the Boston Massacre throughout the colonies. Interestingly, John Adams would later defend the soldier's commanding officer, who was acquitted along with six other soldiers. Adams was immediately criticized by his fellow colonists, but the larger issue was the need for a stronger rule of law that protected the colonists.

During this time, the flames of anti-British sentiment continued to spread. In 1773, a group of colonists, dressed as American Indians, dumped a large shipment of tea into Boston Harbor to protest a tax on tea coming into the colonies. Colonists had begun to view the increasing tariffs on the colonies as "taxation without representation." In 1774, the so-called Intolerable Acts were introduced, which closed Boston Harbor, allowed the quartering of troops in colonial homes, and allowed the governor to appoint legislative council members and to remove judges and other officials and replace them with allies without the approval of the people.

In 1774, then governor Thomas Gage called for the dissolution of the General Court in Massachusetts in light of the growing anti-British sentiments among its representatives. The colonists formed the first Continental Congress in 1775, which convened in Philadelphia. Over time, Massachusetts reestablished its own provincial government, moving to build its own institutions and laws, while the colonies moved as a whole to expel the British from its shores.

In 1778, Massachusetts's first attempt at creating a constitution, complete with a set of laws and system of civil rights, failed to gain public support. In 1779, a constitutional convention was formed, appointing a committee to draft the document. After the convention made some modifications, the Massachusetts constitution was ratified in 1780.

Biography

Although the Constitution of Massachusetts was modified and approved by a constitutional convention

The supposed utility of a provision of this kind can only be founded on the supposed probability, or at least possibility, of a combination between the executive and the legislative, in some scheme of usurpation. Should this at any time happen, how easy would it be to fabricate pretenses of approaching danger! Indian hostilities, instigated by Spain or Britain, would always be at hand. Provocations to produce the desired appearances might even be given to some foreign power, and appeased again by timely concessions. If we can reasonably presume such a combination to have been formed, and that the enterprise is warranted by a sufficient prospect of success, the army, when once raised, from whatever cause, or on whatever pretext, may be applied to the execution of the project.

If, to obviate this consequence, it should be resolved to extend the prohibition to the RAISING of armies in time of peace, the United States would then exhibit the most extraordinary spectacle which the world has yet seen, that of a nation incapacitated by its Constitution to prepare for defense, before it was actually invaded. As the ceremony of a formal denunciation of war has of late fallen into disuse, the presence of an enemy within our territories must be waited for, as the legal warrant to the government to begin its levies of men for the protection of the State. We must receive the blow, before we could even prepare to return it. All that kind of policy by which nations anticipate distant danger, and meet the gathering storm, must be abstained from, as contrary to the genuine maxims of a free government. We must expose our property and liberty to the mercy of foreign invaders, and invite them by our weakness to seize the naked and defenseless prey, because we are afraid that rulers, created by our choice, dependent on our will, might endanger that liberty, by an abuse of the means necessary to its preservation.

Here I expect we shall be told that the militia of the country is its natural bulwark, and would be at all times equal to the national defense. This doctrine, in substance, had like to have lost us our independence. It cost millions to the United States that might have been saved. The facts which, from our own experience, forbid a reliance of this kind, are too recent to permit us to be the dupes of such a suggestion. The steady operations of war against a regular and disciplined army can only be successfully conducted by a force of the same kind. Considerations of economy, not less than of stability and vigor, confirm this position. The American militia, in the course of the late war, have, by their valor on numerous occasions, erected eternal monuments to their fame; but the bravest of them feel and know that the liberty of their country could not have been established by their efforts alone, however great and valuable they were. War, like most other things, is a science to be acquired and perfected by diligence, by perserverance, by time, and by practice.

All violent policy, as it is contrary to the natural and experienced course of human affairs, defeats itself. Pennsylvania, at this instant, affords an example of the truth of this remark. The Bill of Rights of that State declares that standing

Historical Document

An Account of the Supremest Court of Judicature in Pennsylvania, viz., the Court of the Press

POWER OF THIS COURT

It may receive and promulgate accusations of all kinds against all persons and characters among the citizens of the state, and even against all inferior courts, and may judge, sentence, and condemn to infamy, not only private individuals, but public bodies, &c. with or without inquiry or hearing, at the court's discretion.

In whose favor and for whose emolument this court is established.

In favor of about one citizen in 500, who by education, or practice in scribbling, has acquired a tolerable stile as to grammar and construction so as to bear printing; or who is possessed of a press and a few types. This 500th part of the citizens have the privilege of accusing and abusing the other 499 parts, at their pleasure; or they may hire out their pens and press to others for that purpose.

Practice of the Court.

It is not governed by any of the rules of common courts of law. The accused is allowed no grand jury to judge of the truth of the accusation before it is publicly made; nor is the name of the accuser made known to him; nor has he an opportunity of confronting the witnesses against him; for they are kept in the dark, as in the Spanish Court of Inquisition. Nor is there any petty jury of his peers sworn to try the truth of the charges. The proceedings are also sometimes so rapid, that an honest good citizen may find himself suddenly and unexpectedly accused, and in the same morning judged and condemned, and sentence pronounced against him, That he is a rogue and a villain. Yet if an officer of this court receives the slightest check for misconduct in this his office, he claims immediately the rights of a free citizen by the constitution, and demands to know his accuser, to confront the witnesses, and to have a fair trial by a jury of his peers.

The foundation of its authority.

It is said to be founded on an article in the state-constitution, which establishes the liberty the press. A liberty which every Pennsylvanian would fight and die for: Though few of us, I believe, have distinct ideas of its nature and

Gibbons v. Ogden

Date: March 2, 1824
Author: Chief Justice John Marshall
Genre: court opinion; constitution; law

> *"When a State proceeds to regulate commerce with foreign nations, or among the several States, it is exercising the very power that is granted to Congress, and is doing the very thing which Congress is authorized to do."*

Summary Overview

The decision by Chief Justice John Marshall in the 1824 Supreme Court case of Gibbons v. Ogden *was a landmark ruling that ended the steamboat navigation monopoly originally granted to Robert R. Livingston and Robert Fulton by the New York State legislature. The Livingston-Fulton monopoly controlled all steamboat traffic between New York City and Albany along the Hudson River. Their successful manufacture and operation of steamboats on the Hudson River revolutionized the speed and efficiency, not to mention the cost, at which goods and passengers could be transported regionally. A crucial channel for interstate trade and travel, the New York monopoly prevented any outside steam-powered vessel from entering New York waterways. The monopoly held by Livingston and Fulton, therefore, was widely reviled and after years of litigation defending the steamboat monopoly, the* Gibbons v. Ogden *decision declared the state-granted monopoly to be in conflict with Congress's right to regulate commerce. The Gibbons decision abolished the right of any state to protect transportation monopolies that affected interstate commerce.*

Defining Moment

In 1808, American engineer Robert Fulton succeeded in launching the *Clermont*, a steamboat able to move upriver faster than five miles per hour. The *Clermont* made it possible to travel from New York City to Albany on the Hudson River within thirty-two hours. The New York legislature, impressed by the success of this joint venture by Fulton and his business partner Robert Livingston, not only provided them with a monopoly on state steamboat transportation, but included provisions in the monopoly that expanded their entitlement for thirty years and dictated that any steamboat entering New York waters without the consent of Livingston and Fulton be seized by the state. The monopoly kept out other entrepreneurial steamboat ventures that sought navigational routes in New York waterways and forced peripheral routes to pay significant licensing fees to operate. The Livingston-Fulton monopoly was deeply unpopular with regional business and the public alike, and the monopoly endured a significant number of legal challenges while in effect. The strong familial and political connections of Robert Livingston in the New York legislature and court system, however, secured the injunction's legacy until challenged in the Supreme Court in 1824. Though Livingston and Fulton were often the direct targets of cases challenging their exclusive navigation rights, the case that ultimately reached the Supreme Court and dismantled these exclusive rights involved neither of the men so famously associated with the monopoly.

The complainant in the critical constitutional case was Aaron Ogden, a former governor of New Jersey, who held the majority interest in a steamboat line between New York City and Elizabethtown, New Jersey. Although he had at one point been an aggressive challenger of the Livingston-Fulton monopoly, Ogden was unsuccessful in his efforts and instead joined the monopoly as a licensed operator. Thomas Gibbons had

Document Analysis

The constitutionality of the ACA, enacted in 2010, was challenged in several federal courts. The decision of the Court of Appeals for the Eleventh Circuit was reviewed in 2012 by the U.S. Supreme Court, the nation's highest judicial authority interpreting and applying the U.S. Constitution. Two essential aspects of the ACA were challenged: the individual mandate, requiring uninsured individuals to purchase a health insurance policy providing a minimum level of coverage; and the Medicaid expansion, granting funds to the States on the condition that they provide expanded health care to low-income residents. The end result of the Supreme Court's document is to legitimate the individual mandate but invalidate the Medicaid expansion.

Chief Justice Roberts begins his opinion by reviewing the powers of Congress and the federal government under the U.S. Constitution, essential planks in understanding federal-state relations and the separation of powers. Congress only has authority to enact legislation under powers delegated to it under the United States Constitution. The purported powers Congress possessed to enact the ACA under the Constitution were essentially four: (1) Article 1, Section 8, Clause 3, giving Congress the power "to regulate commerce…among the several states…."; (2) Article I, Section 8, Clause 1, which gives Congress the power to tax; (3) Article I, Section 8, Clause 1, giving Congress the power to spend revenues it collects; and (4) the Necessary and Proper Clause, in Article I, Section 8, giving Congress the power to make laws necessary and proper to execute its delegated powers.

In an opinion joined in part by four other justices, thus becoming the decision of the Court, Chief Justice Roberts both upheld (the individual mandate) and invalidated (Medicaid expansion) portions of the ACA. First, the ACA could not be authorized under the Commerce Clause because its individual mandate does not regulate existing commercial activity among the states, the explicit language of the Commerce Clause, but creates such activity, by requiring individuals, otherwise not participating in such commerce, to become active in commerce by purchasing insurance. This purported regulation of inactivity is

President Barack Obama signs the Affordable Care Act, 2010. Photo via Wikimedia Commons. [Public domain.]

distinguished from such historic Commerce Clause cases as *Wickard v. Filburn* (1942), allowing Congress to regulate a farmer's decision to grow wheat for himself and his livestock, and *Perez v. United States* (1971), allowing Congress to regulate a loan shark's extortionate collection from a neighborhood butcher shop. Unlike these examples of commercial activity, however localized and particularized, the proximity and degree of connection between individuals currently without health insurance and their subsequent commercial activity in purchasing insurance is too lacking to fall under the Commerce Clause. Allowing Congress to regulate such inactivity would represent the furthest, and an illegitimate, expansion of congressional authority under the Commerce Clause. Second, in contrast, Congress has explicit taxing power and could use this power to increase taxes on individuals who could afford health insurance but decide to forego it. Thus, the individual mandate was constitutional as within Congress's power to tax.

Third, however, Congress could not use its spending powers to enforce Medicaid expansion by threatening existing Medicaid funding. Congress may attempt to persuade states to act by offering financial incentives, but it cannot compel states to act by coercive inducements that represent "a gun to the head" and thus infringe on state sovereignty. Under the ACA, states must either change their Medicaid regulations or risk loss of all Medicaid funding, which would represent a devasting blow to state budgets and their ability to care for their citizens. Thus, the

thought desirable to vest in the federal government, leaving those not included in the enumeration still in the states. *Carter v. Carter Coal Co.*, 298 U.S. 238, 294, 56 S.Ct. 855, 865. That this doctrine applies only to powers which the states had is self-evident. And since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source. During the Colonial period, those powers were possessed exclusively by and were entirely under the control of the Crown. By the Declaration of Independence, "the Representatives of the United States of America" declared the United (not the several) Colonies to be free and independent states, and as such to have "full Power to levy War, conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which Independent States may of right do."

As a result of the separation from Great Britain by the colonies, acting as a unit, the powers of external passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America. Even before the Declaration, the colonies were a unit in foreign affairs, acting through a common agency—namely, the Continental Congress, composed of delegates from the thirteen colonies. That agency exercised the powers of war and peace, raised an army, created a navy, and finally adopted the Declaration of Independence. Rulers come and go; governments end and forms of government change; but sovereignty survives. A political society cannot endure without a supreme will somewhere. Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow v. Doane*, 3 Dall. 54, 80, 81, Fed.Cas. No. 10925. That fact was given practical application almost at once. The treaty of peace, made on September 3, 1783, was concluded between his Brittanic Majesty and the "United States of America."

The Union existed before the Constitution, which was ordained and established among other things to form "a more perfect Union." Prior to that event, it is clear that the Union, declared by the Articles of Confederation to be "perpetual," was the sole possessor of external sovereignty, and in the Union it remained without change save in so far as the Constitution in express terms qualified its exercise. The Framers' Convention was called and exerted its powers upon the irrefutable postulate that though the states were several their people in respect of foreign affairs were one. Compare The Chinese Exclusion Case, 130 U.S. 581, 604, 606 S., 9 S.Ct. 623. In that convention, the entire absence of state power to deal with those affairs was thus forcefully stated by Rufus King:

"The states were not 'sovereigns' in the sense contended for by some. They did not possess the peculiar features of sovereignty,—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political beings,

Morrison v. Olson

Date: June 29, 1988
Authors: Chief Justice William Rehnquist; Associate Justice Antonin Scalia
Genre: court opinion

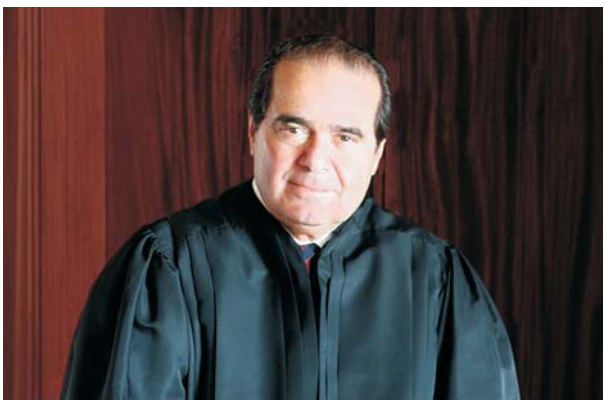
> *"That is what this suit is about. Power. The allocation of power among Congress, the President, and the courts in such fashion as to preserve the equilibrium the Constitution sought to establish."*

Summary Overview

In the wake of President Nixon's Watergate scandal, Congress enacted legislation in 1978 that allowed for appointment of an "independent counsel" to prosecute high-ranking government officials for violating federal criminal law. The executive branch resisted this law, claiming that it violated constitutional principles of separation of powers. In 1988, the U.S. Supreme Court in the case of Morrison v. Olson *upheld the law as constitutional against all challenges. Justice Antonin Scalia dissented from the Court's decision. He argued that as the independent counsel statute vested conduct of federal criminal prosecution—a purely executive power—in a person who is not the president of the United States, the statute is unconstitutional. Although Scalia was the lone dissenter in the case, his views prevailed in the sense that in 1999 the independent counsel statute expired without renewal by Congress.*

Defining Moment

Separation of powers is a core principle of the U.S. Constitution. This principle divides federal authority between three coordinate branches—legislative, executive, and judicial. Legislative powers are vested in Congress according to Article I of the Constitution; executive power is vested in the president in Article II; and judicial powers are vested in the courts in Article III. Although the federal government had appointed special prosecutors throughout American history, they were largely under the jurisdiction of the executive branch. In the Watergate scandal, President Richard Nixon fired special counsel Archibald Cox to forestall investigation into his criminal activities. In response, the Ethics in Government Act was enacted in 1978. Title VI of this Act created the Office of Special Counsel, allowing for appointment of a prosecutor to investigate high-level federal officials for certain federal crimes. The purpose was to protect prosecutors of executive branch crimes from termination by the president. The independent counsel was granted broad powers, was overseen to some extent by Congress and the judiciary, and could not be fired or removed by the president. In *Morrison v. Olson*, the U.S. Supreme Court, in a vote of seven justices to one, upheld the act as fully constitutional. Justice Scalia, the lone dissenter, argued vigorously that allowing Congress to initiate a criminal investigation by means of independent counsel violated the central tenet of the Constitution, the separation of powers among the branches of the federal government.



Justice Antonin Scalia. Photo via Wikimedia Commons. [Public domain.]

It has been suggested that the presence of intent makes a difference in the law when an "act otherwise excusable or carrying minor penalties" is accompanied by such an evil intent. Yet the existence of such an intent made the killing condemned in *Screws, supra,* and the beating in *Williams, supra,* both clearly and severely punishable under state law, offenses constitutionally punishable by the Federal Government. In those cases, the Court required the Government to prove that the defendants intended to deprive the victim of a constitutional right. If that precise mental state may be an essential element of a crime, surely an intent to overthrow the Government of the United States by advocacy thereof is equally susceptible of proof.

II

The obvious purpose of the statute is to protect existing Government not from change by peaceable, lawful and constitutional means, but from change by violence, revolution and terrorism. That it is within the power of the Congress to protect the Government of the United States from armed rebellion is a proposition which requires little discussion. Whatever theoretical merit there may be to the argument that there is a "right" to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change. We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence. The question with which we are concerned here is not whether Congress has such power, but whether the means which it has employed conflict with the First and Fifth Amendments to the Constitution.

One of the bases for the contention that the means which Congress has employed are invalid takes the form of an attack on the face of the statute on the grounds that, by its terms, it prohibits academic discussion of the merits of Marxism-Leninism, that it stifles ideas and is contrary to all concepts of a free speech and a free press. Although we do not agree that the language itself has that significance, we must bear in mind that it is the duty of the federal courts to interpret federal legislation in a manner not inconsistent with the demands of the Constitution. *American Communications Assn. v. Douds* ... . We are not here confronted with cases similar to *Thornhill v. Alabama,* ... *Herndon v. Lowry,* ... and *De Jonge v. Oregon,* ... where a state court had given a meaning to a state statute which was inconsistent with the Federal Constitution. This is a federal statute which we must interpret as well as judge. Herein lies the fallacy of reliance upon the manner in which this Court has treated judgments of state courts. Where the statute as construed by the state court transgressed the First Amendment, we could not but invalidate the judgments of conviction.

Dobbs v. Jackson Women's Health Organization

Date: June 24, 2022
Author: Justice Samuel Alito (as summarized by Rebecca Anne Womeldorf)
Genre: court opinion

Summary Overview

In 1973, a landmark ruling on reproductive rights was issued by the U.S. Supreme Court in the case of Roe v. Wade. *Voting 7-2, the court overturned most state and federal restrictions on abortion. Since that time, conservative activists had sought to overturn this ruling to once again allow state and federal laws outlawing many, or all, abortions.* Dobbs v. Jackson Women's Health Organization (Dobbs v. Jackson) *was this ruling. The conservative six-member majority ruled in favor of a Mississippi law strictly regulating abortion, with instructions that this ruling overturned all previous Supreme Court rulings on abortion. Thus, state legislative bodies could regulate abortions in whatever manner was deemed in the public interest. The aspirations of many conservative political and religious groups were achieved in the majority opinion written by Justice Samuel Alito.*

Defining Moment

From the time the ruling in *Roe v. Wade* was issued, many (generally conservative) activists sought to have it overturned. In addition to mandating that abortion be available to all women prior to the third trimester of pregnancy, *Roe v. Wade* essentially took away the various states' power in this area of medical care. What state regulations were eventually permissible had to be accepted by federal courts. Thus, the issue of states' rights was conflated with the medical/moral issue of ending a pregnancy during the first months after conception. In *Roe*, the right to an abortion was considered to come from the implicit right to privacy based on the Fourteenth Amendment.

In writing the majority opinion for *Dobbs v. Jackson*, Justice Samuel Alito not only upheld the strict state of Mississippi law restricting abortions to the first fifteen weeks of pregnancy, but he had four others who voted with him to completely overturn *Roe v. Wade*. Thus, states were free to pass any type of legislation restricting abortions, and if a state action was appealed to a federal court, any new ruling would have to be based on something other than the principles laid out in *Roe v. Wade*. In anticipation of this type of ruling, several states had "trigger laws" which would go into effect as soon as *Roe v. Wade* was overturned. Some of these did take effect, as state legislators had planned, while, initially, others were stayed by various state or federal courts as suits seeking to block their implementation were filed by interested parties.

While the Mississippi law was upheld by a 6-3 majority, the complete overturning of *Roe v. Wade* was enacted with a 5-4 majority. The five-person conservative majority, which struck down *Roe,* began to build in 2016 through the efforts of Republican Senate Majority Leader Mitch McConnell, who blocked action on a Supreme Court nominee from President Barack Obama, claiming it came too close to an election. With the election of Donald Trump to the presidency that same year, a much more conservative justice was nominated and confirmed. Later during his presidency, Trump was able to fill two additional Supreme Court vacancies, with McConnell pushing through one in the closing months of Trump's presidency, which was the opposite of what he did during the Obama presidency. All three of these individuals voted to overturn *Roe v. Wade*, even though all had testified during their confirmation hearings that *Roe* was established law and they respected precedent. While conservatives had been energized to campaign against *Roe v. Wade*, the political result of *Dobbs v. Jackson* has been for liberals to respond with similar intensity.