struments of transportation; or can legislate solely upon the premise that certain transactions by their nature alone or as part of a class sufficiently *affect* interstate commerce as to warrant national regulation. Civil rights laws touching public accommodations and housing, environmental laws affecting land use regulation, criminal laws, and employment regulations touching health and safety are only the leading examples of enhanced federal activity under this authority.

Over the last two decades, however, the Court has established limits on the seemingly irrevocable expansion of the commerce power. While the Court has declined to overrule even its most expansive rulings regarding "affects" on commerce, it has limited the exercise of this authority to the regulation of activities which were both economic in nature and which had a nontrivial or "substantial" affect on commerce (although regulation of non-economic activity would still be allowed if they were an essential part of a larger economic regulatory scheme). The Court also seems far less likely to defer to Congressional findings of the existence of an economic effect. The relevant cases arose in an area of traditional state concern—the regulation of criminal activity—and the new doctrine resulted in the invalidation of recently-passed federal laws, including a ban on gun possession in schools and the provision of civil remedies to compensate gender-motivated violence. The Court has most recently found chronological limits to commercial regulation, holding that the prospect of a future activity—seeking health care—could not justify requiring the present purchase of health insurance by individuals.

The exercise of authority over commerce by the states, on the other hand, has over the last sixty years been greatly restricted by federal statutes and a broad doctrine of federal preemption, increasingly resulting in the setting of national standards. Only under Chief Justice Burger and Chief Justice Rehnquist was the Court not so readily prepared to favor preemption, especially in the area of labor-management relations. The Court did briefly inhibit federal regulation with respect to the States' own employees under the Tenth Amendment, but this decision failed to secure a stable place in the doctrine of federalism, being overruled in less than a decade. Also noteworthy has been a rather strict application of the negative aspect of the commerce clause to restrain state actions that either discriminate against or overly inhibit interstate commerce.

Much of the same trend towards national standards has resulted from application of the Bill of Rights to the States through the due process clause of the Fourteenth Amendment, a matter dealt with in greater detail below. The Court has again and again held that when a provision of the Bill of Rights is applied, it means the same whether a State or the Federal Government is the challenged party (although a small but consistent minority has argued otherwise). Some flexibility, however, has been afforded the States by the judicial loosening of the standards of some of these provisions, as in the characteristics of the jury trial requirement. Adoption of the exclusionary rule in Fourth Amendment and other cases also looked to a national standard, but the more recent disparagement of the rule by majorities of the Court has relaxed its application to both States and Nation.

While the Tenth Amendment would appear to represent one of the most clear statements of a federalist principle in the Constitution, it has historically had a relatively insignificant independent role in limiting federal powers. Although the Court briefly interpreted the Tenth Amendment in the 1970s substantively to protect certain "core" state functions from generally applicable laws, this distinction soon proved unworkable, and was overruled a decade late. More recently, the Court reserved the question as to whether a law regulating only state activities would be constitutionally suspect, although a workable test for this distinction has not yet been articulated. However, limits on the process by which the Federal Government regulates the states, developed over the most recent decade, have proved more resilient. This becomes important when the Congress is unsatisfied with the most common methods of influencing state regulations—grant conditions or conditional imposition of federal regulations (states being given the opportunity to avoid such regulation by effectuating their own regulatory schemes). Only in those cases where the Congress attempts to directly "commandeer" state legislatures or executive branch officials, *i.e.* ordering states to legislate or execute federal laws, has the Tenth Amendment served as an effective bar.