

The Oldest Constitutional Question

Enumeration and Federal Power

A groundbreaking challenge to a core principle of constitutional law, arguing that congressional action is not limited by the legislative branch's textually enumerated powers.

Every law student learns that the federal government is constrained to act only according to its enumerated powers, meaning that Congress can do what the Constitution expressly authorizes it to and nothing more. Yet Richard Primus contends that this longstanding orthodoxy-allegedly required by the text of the Constitution, the Framers' vision, and the logic of federalism-is fundamentally flawed.

Through careful analysis of legal text and history, and of the structure of American federalism, *The Oldest Constitutional Question* argues for broad congressional authority. In particular, Primus shows that the primary function of enumeration is to rule listed powers in, not to rule other powers out.

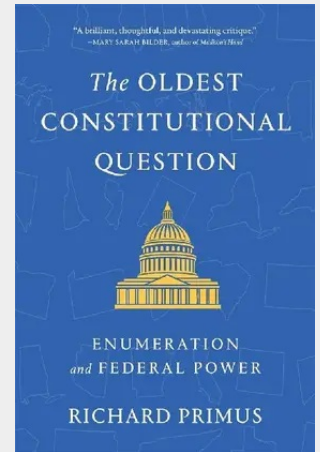
In practice, enumeration does little to limit Congress. But most constitutional lawyers-including many Supreme Court justices-think this means something has gone wrong, such that the courts must aggressively strike down federal laws. Primus's meticulous examination explodes the prevailing view. The constitutional system does place limits on Congress, and crucially so, but the enumeration of powers is not, and never has been, a sensible means for creating and enforcing those limits.

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