



Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question

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This book examines the theory, law, and reality of preemption choice. The Constitution's federalist structures protect states' sovereignty but also create a powerful federal government that can preempt and thereby displace the authority of state and local governments and courts to respond to a social challenge. Despite this preemptive power, Congress and agencies have seldom preempted state power. Instead, they typically have embraced concurrent, overlapping power. Recent legislative, agency, and court actions, however, reveal an aggressive use of federal preemption, sometimes even preempting more protective state law. Preemption choice fundamentally involves issues of institutional choice and regulatory design: should federal actors displace or work in conjunction with other legal institutions? This book moves logically through each preemption choice step, ranging from underlying theory to constitutional history, to preemption doctrine, to assessment of when preemptive regimes make sense and when state regulation and common law should retain latitude for dynamism and innovation.

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