Constitutional Law Outline

I. THE POWER OF JUDICIAL REVIEW

Marbury v. Madison (1803 – Marshall) ↔ (Midnight appt of commission)
BKGND: (1) Circuit Cts Act of 2/13/1801 (2) Organic Act of DC 2/27/1801
(3) Marbury to SCOTUS 2/12/1801 (4) Rep Repeal Act of 3/1801
(5) Eliminate June/Dec Terms a- postpone Marbury b- fear Jud Rev Repeal Act

#1: Is Marbury entitled to a commission? YES
- Commission only needs signed & sealed (not delivered – like real prop law)
- Statute of US: Sec of State must affix seal to all Pres signed commissions

#2: Would a judicial remedy compelling delivery of a commission interfere w/ Pres. Constitutional discretions? NO (Separation of Powers Issue)
- Political Acts (can be corrected by Leg./Elec.) have discr., no Judic Rev
- Duty IS assigned by Legisl. (duty of Sec. to affix seal & deliver once signed)

#3A: Is mandamus the appropriate remedy? YES
- Common Law Principles

#3B: Does § 13 of the 1789 J.A. auth. issuance of the writ? YES
#3C: Is § 13, so construed, unconstitutional? YES
#3D: Can the Supreme Ct. review the constitutionality of Act of Congress? YES

INTERPRETATIONS OF HOLDING
(1) In Litigation before the CT, the CT may refuse to give affect to Act of Congress pertaining to judicial power.
   - Congress expand CT power → Marshall not allow expansion

(2) SC has Const. Power to decide Constitutional issues in any case given to the court
   - Is it a role for others – Pres? Cong?

(3) SC has a special & exclusive voice in Constitutional interpretation
   - Cooper v. Aaron (SC is exclusive voice) → Marshall’s view???

II. APPELLATE JURISDICTION OVER STATES

Martin v. Hunter’s Lease (1816 - Story / Marshall recuse) ↔ (VA taking land pre-purchase)
  VA Rule (1810): In favor of VA seizure, (a) seized in 1782 (b) 1796 Compromise = valid
  Martin v. Hunter’s Lease (1813): Reverse- land need escheat for seizure, not pre-1782
  VA Response (1815): § 25 J.A. 1789 unconst,
  Martin v. Hunter’s Lease (1816): Can SCOTUS have appellate power over states?

Cohens v. VA (~1820 - Marshall)

III. CONGRESSIONAL CONTROL OVER JURISDICTION

Ex Parte McCordle (1869 - Chase) ↔ (Prisoner wanted writ of hab. corp.)
  Congress took away SC’s 2nd means to hear case, SC declined to hear
Ex Parte Yerger (1869)

US. v. Klein (1872)
  - Congress cannot take away jurisd. for political means & if contrary to Sep of Powers
IV. FEDERALISM 1: REACH OF NATIONAL POWERS

McColluch v. Maryland (1819 - Marshall) ⇐ (MD tax on 2nd Bank of US)
- Established the ability of Cong. to use the N&P clause
- Pretext clause & debate of McColluch: Can Judiciary limit Cong. Power?
- MEANS (Regulation not in Const.) to END (Enumerated Powers of Constitution)


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A. THE COMMERCE POWER

BLUE = Pro-Federal Decision / GREEN = Pro-States Decision

1. Development from 1824 – 1936
   a. Regulating Commerce (3rd Regul. of Local Activity Rationale)
      + Gibbons v. US (1824 - Marshall)
         - Beginning… Broad view of Commerce “intercourse” – Political Process
         - *Lopez* takes issue with view

      - US v. Knight (1895 - Fuller)
         RULE: Direct (OK), Indirect (NO)

      + The Shreveport Rate Case (1914 - Hughes) ⇐ (Rate regulation from TX-LA & TX-TX)
         RULE: Real World Affect of I.C. → shippers to oil rig will choose non-regl. in-state line

      + So. Rwy v. US (1911) ⇐ (Couplings effect of I.C.)
         RULE: Congr. can regulate physical effect of local action

      + Swift v. US (1905 - Holmes) ⇐ (Price setting Sherman ATA)
         RULE: “Stream of Commerce” concept (allowed, valid statute)

      + Stafford v. Wallace (1922 - Taft) CT: not just local… part of “stream of comm.”

   b. Prohibiting Commerce (2nd Prohibition Rationale)
         MAJ: Is “actual” commerce / Cong. never use N&P, just used express power of Comm.
         DISS (Fuller): Cong. used as “pretext”

      + Hipolite Egg v. US (1911 - McKenna) ⇐ (Bad egg IL to MO)
         MAJ: Is movement btwn states / No eggs made (MEANS) → No Commerce (END)

      + Caminette v. US (1917 - Day) ⇐ (Personal criminal Mann Act – prostitute) *Criminal Comm. 2
         DISS (McKenna (MAJ in Egg)): Only Prohb. Comm. for commercial, not private acts
Hammer v. Dagenheart [The Child Labor Case] (1918 - Day (MAJ in Caminette/Mann Act))
MAJ: Distg. from Lottery, Egg, Mann Act… Cong regl. in-state mfkt (CT: invalid stat)
- make sense?? Uses Kidd v. Pearson (Mfkt ≠ valid Comm. control)
DISS (Holmes (MAJ in Swift/Stream): (1) Power to regl = power to prohib.
   (2) Indirect Conseq. I.C. – rule is a rule.
   (3) In state fine… Out of state, must conform

RR Retire v. Alton RR (1935 - Roberts) ←(welfare, Rationale like Knight)
MAJ: Is a Welfare goal, not a Comm. goal (So Rwy = valid/direct, RR Ret = invalid/indirect)

Schechter Poultry v. US (1935 - Hughes) ←(sick chickens, warehouse selling once in NY)
Delivery (post-I.C.) → Not part of I.C., cannot regulate
MAJ: Steam stopped at NY commission / indirect effect on I.C.

Carter v. Carter Coal (1936 - Southerland) ←(lower tax on coal if abide by labor provisions)
Production (pre-I.C.) → Not part of I.C., cannot regulate
No general provision for National Police Power
Clear in opinion: Affect of Law on I.C. not matter!

Rationales of Commerce Power
(1) Direct Regulation of Interstate Commerce Itself
   - Shipment of goods Marshall, TX to Shreveport, LA
   - Not many examples… All agree congress can do
(2) Prohibition of Interstate Movement
   - Prohibit = Regulate?
   - Congress has used prohib. for non-commerce ends [The Lottery Case]
   - Basis for 4th Rationale
(3) Regulation of Local Activity Having Affect on Interstate Commerce
   - Direct/Indirect: Knight
   - “Real World”: Shreveport
(4) Bootstrap
   - 1st Prohibition … 2nd Regulation of local activity to make prohibition efficient: Five Gambl.


NLRB v. Jones & Laughlin (1937 - Hughes (MAJ in Schechter))
MAJ: Cong. can regl. INTRAstate activ. when cong. trying to oppose burden/obstrct. on I.C.
DISS (McReynolds):
Affect of Law on I.C. matters in ’37 (Not matter Carter Coal ’36)
End of the Stream of Commerce Theory (Conden 2000 revive?)

Local Activity: Firing of employees who start union
Relationship LA & I.C.: Possible strike → less goods → less I.C.
Rule of Cong.: Don’t fire employees attempting to organize union.
How Rule is means of Carrying out Comm. End: Making e’ors keep on employee, means for preventing strikes

Wickard v. Filburn (1942 - Jackson) ←(Very local – farmer grows excess wheat for self)
CT Test: “Substantial Economic Effect” COMPARE w/ LOPEZ
Look at Actual Effects (no Mfkt, etc) / Aggregating local activating from class of people
Local Activity: Growing excess crop
Relationship: Causes prices to go down
Rule: Can’t create excess crops
Means: Disallowing excess crop growing for home consumption (even though alone = de minimis
activity on effect of commerce) view in aggregate as means of maintaining price structure from interstate commerce

**US v. Darby** (1941 - Stone)  
(Fair Labor SA (1) prohibit ship by co. w/ < MW (2) Req. MW & OT)  
-§ 15(a)(1): Does affect commerce, so OK.  
  COMPARE w/ LOPEZ  
  (Cong. read as no more “pretext”)  
  2nd: Effecting Commerce- direct effect (like § 15(a)(1))

**Hypos: 3 Types of Cong. Regl:**  
(1) Prohibit Interstate Shipment – Hipolite Egg  
(2) Bootstrap – Darby (2)?  
(3) Effecting Comm. – Darby (1)

**US v. Five Gambling Devices** (1953 - Jackson)  
(Slot machines must be registered)  
-Gov’t may require ALL machines to be registered to regulate & enforce I.C. law  
-CT: Not accept “bootstrap” theory (only 2nd rationale in Darby)

**US v. Sullivan** (1948 - Black)  
(Druggist taking off labels)  
-MFKT  
  I.C.  
  Wholesaler  
  local  
  Druggist  
  local  
  Consumer  
-Rationale in opinion?? Non-existent! Uses McDermitt, but McD was I.C., this not  
-Could justify commerce by:  
  (1) Effecting Commerce (more/less need from MFKT) LOPEZ (1) / (3a/b)  
  (2) Bootstrap?? LOPEZ (1)  
  (3) Scarlet Letter “I.C.” – like Stream of Comm. LOPEZ (2)

(loan-sharking prohibited) *Criminal Comm. 3  
-Gov’t offered NO evidence that this L-S did any I.C.  
  COMPARE w/ LOPEZ  
-CT: Not matter if Perez did effect comm… Loan sharks generally DO effect comm..  
  Perez is member of L-S class.

  *Wickard Class:* All have effect  
  *Perez Class:* Most have effect

**US v. Lopez** (Baby Lopez – 1972)  
(Federal Cocaine Regulation)  
-Intrastate can effect Interstate Comm by swelling  
-Not feasible for Gov’t to show swelling/not swelling  
-Reality: All local possession effects I.C.  
-CT: Allow gov’t to regulate all (rational basis test)

**Bass** (Fed. Prohibit felons from possessing firearms)  
-Gov’t: “in I.C. & affect…” applies just to “transports”  
-CT: “in I.C. & affect…” applies to “receive, possess, & transport”  
  *Scarborough:* Gov’t showed gun was in I.C. once … CT: OK (like swelling volume – Sullivan)

**MD v. Wirtz:** (1968 – Harlan): “Neither [Wirtz] & Wickard has Ct let Cong regl. trivial impact on comm. … CT said only that where gen. regl. stat bears a subst. relation to comm., the de minimis character of indiv. instances arising under that statute is of no conseq.

**Hodel:** Renquist concurring must have “substantial effect on I.C.”  
  3-5 yrs later, law via Lopez

**Civil Rights Cases – Title II, § 201 Discrimination**  
**Heart of Atlanta v. US** (1964 – Clark)  
-Discrim. hotel – hotels in I.C.)  
  MAJ: Test = 1) activity [discim. by hotel] to regl. comm. which concerns > 1 state  
  2) has a real subst. relation to the national interest  
  § 201(a) creates right  
  § 201(b)(1) puts hotel in. (c)(1) always affects comm.  
  Don’t need statute: L.A. affects I.C.  
  N&P as means to restore flow of I.C.  
  BUT: will deseegr. help or hurt comm.???
CON (Douglass): Wanted to enforce via 14th Amd (Proc. not need to prove hotel, etc)
Sees difficulty in needed to show comm. effect

*Katzenbach v. McClung* (1964 – Clark) ➞(Discrim. restr. – I.C. food that restr. uses)
To show effect: (1) Amount I.C. food (2) Class of rest: *Wickard/Perez* (3) Actual Effect
MAJ: § 201(c)(2): subst. portion of food moved in I.C.
CON (Douglass): See *Heart of Atl.*

**PRE-LOPEZ COMMERCE CLAUSE SYNTHESIS –**
**4 RATIONALES OF COMM. POWER**
(1) Direct Power to Regulate I.C.
- Marshall, TX to *Shreveport*, LA - Cardozo DISS in *Carter Coal*
(2) Commerce Prohibiting Power
- *Lottery Case* - *Darby* - *Sullivan* - Dicta in *Lopez*
(3) Effecting Commerce Power
- Under N&P clause regul. local activity to regul. comm.
  - *Jones & Laugh*: “Close and substantial”
  - *MD v. Wirtz*: Cts never let trivial excuse
  - *Hodell*: Requires “substantial relation”
  - *Lopez***!!
- Class Approach: - *Wickard* - *Perez*
- Cts defer to Cong. Jdmt: - *Katzenbach/Hotel*? Yes - *Perez*? Yes
  - Narrow Stat. Constuct: 5 *Gambli*? No - *Bass*? No
(4) Bootstrap
1st Prohibition, 2nd Regl local activity means to make prohib. effective
- Alternative in *Darby* - DISS in 5 *Gambli*.


**MAJ**
- *Rehnquist MAJ* - *Breyer DISS*
- Scalia MAJ - Stevens DISS & DISS
- *Kennedy CON* - Souter DISS & DISS
- O’Conner CON - Ginsberg DISS
- Thomas CON

MAJ: (Rehnquist)
3 Categories of Activities that Cong. may Regul. Under the Comm. Power
(1) Regulating the Use of Channel of I.C.
  - *Darby (Hammer)* (Reference to §15(a)(1)) – bootstrap part of (1)?
  - *Heart of Atl.* (Reference to Mann Act/Caminnette)
  - *Hipopile Egg, Lottery Case, 5 Gambling* (bootstrap)??
- Endorsement of Cong’s power to prohibit
(2) Regulation to Protect an Instrumentality of I.C. or Person/Thing in I.C.
  - *Shreveport Rate Case* undoubtedly in IC
  - *So. Rwy* (Couplers) movement in I.C.???
  - *Swift & Stafford* (stream) ➞probably…
  - *Schecter* (or 3(a/b))???
(3) Regulate Local Activities that substantiably affects I.C.
  - *Jones & Laugh*: “Close and substantial” (3a)
  - *Wickard*: “substantial economic effect” (3a)
(3a) Regulating INTRastate Economic Activities that subst. affect I.C. 
(1) MUST BE ECONOMIC ACTIVITY...
THEN, (2) COURT DETERMINES “SUBST. AFFECT”
- Wickard: involved econ. activity in way gun at school not
- Commercial Activity \( \rightarrow \) Obviously subst. affects
- NOT 3a: “Possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere substantially affect any sort of I.C.”

(3b) Regulation that contains Jurisdiction. Element that would ensure, through case-by-case inquiry, that activity affects I.C.
(e.g., “only guns from I.C. in schools are prohibited.”)
FALLOUT FROM 3A \( \rightarrow \) Burden on Govn’t to show nexus

CONG. SHOWS Nexus: CT AGREES (less than 3a test?)
“...part of OUR independ. eval....consider legisl. findings”
“legisl findings enable us to eval legisl jdgt of actv. in quest”
-BUT by WHAT standard?? (NLRB: step-by-step)

-HOW EVALUATE IF CONG. HAS JURISD. ELMT IN STAT.?
(1) No J.E. in stat.
(2) So, Govn’t can still show “subst. affect”
(3) Govn’t did not...
-Bass: Ct required an addition nexus to I.C. / Ct: no Jurd. Elmt.
-Baby Lopez (cocaine drugs): regulating cocaine in I.C. (swell)
-Perez: Govn’t offered no evid. for loan shark I.C. effect (most)
-5 Gambling: Machines from I.C. regulated
-Katzenbach: Jurisd. Element (or 3a \( \rightarrow \) economic???)

US v. Sullivan (1948 - Black) \( \leftarrow \) (Druggist taking off labels)
-MFKT \( \rightarrow \) I.C. \( \rightarrow \) Wholesaler \( \rightarrow \) local \( \rightarrow \) Druggist \( \rightarrow \) Consumer
-Rationale in opinion?? Non-existent! Uses McDermit, but McD was I.C., this not
-Could justify commerce by:
(1) Effecting Commerce (more/less need from MFKT) LOPEZ (1) / (3a/b)
(2) Bootstrap?? LOPEZ (1)
(3) Scarlet Letter “I.C.” – like Stream of Comm. LOPEZ (2)

CON1: (K & O) Agree w/ MAJ but, Cautionary Note!!! May side w/ DISS...
2 Lessons from Comm. Clause History...
1) Imprecision of content based boundaries (mfkt-comm, subst. affect???)
2) Ct has immense stake in stability of Comm. Clause jurisprudences evolved
-Anti-Thomas Opinion (anti-going back to 1800s)
\( \rightarrow \) Reservations about CT overlooking Cong’s Comm. Power (dire consq)
-FEDERALISM TEST: §922q forecloses on state rights...

DISS1: (Bryer) Deference to Congs. on… relationship between Comm. means/end
-Use for NLRB/Wickard Step-by-step approach
-Cts must give Cong. certain leeway in determ. significant factual connection
-Real question: Cong. have “rational basis” for making Comm. connection?
-No specific finding by cong. needed: Just possible “rational basis”
-RENQ: Will any activity be invalidated!???
B. THE POWER TO TAX

**Bailey [The Child Labor Tax Case]**
- Tax similar to Hammer
- Is 10% a **TAX (VALID)** or a **PENALTY (INVALID)**??

CT: PENALTY

(1) Same amount for violation
(2) For Enforcement
(3) Tax: To raise revenue / Penalty: To accomplish non-revenue end
- Three Cases Ct. Allowed Non-Revenue End (THIS CASE IS DIFFERENT)
  
  **Veazie Bank & McCray & Doremus**

  (1) Raising Revenue (to achieve non enumerated end)
  (2) **Means** (*N&P §8[18]*) to regulate *Commerce* (*§8[3]*)
  (3) Tax (*§8[1]*) to achieve **End** of *Commerce* (*§8[3]*)

C. THE POWER TO SPEND

- Cong. IS allowed to condition spending (**NY v. US** –1995)
- Difficulty with Spending Cases = **STANDING**

**US v. Butler** (Agriculture pay of, $ is earmarked for farmer)

MAJ: Not voluntary, but coercion

**Question**: Whether Spending for Agr. Production = Spending for General Welfare

DISS: Spending Power is diff. from all others:
- No diff. btwn $ of agree, and $ if agree w. K

DISS RESTRICTIONS

(1) Must be National
(2) Not to be used to Coerce State poers
(3) **POLITICAL RESTRAINTS**
(4) Conditions (means) = Ends (spending)

**Steward Machine Co.**

Tax & **CREDIT** (Spending)

If State not have program: E’er subject to unemployment tax and no benefit
If State has program & not meet stnds: E’er taxed twice

**Okl. v. Civil Serv.**: Highway Official MUST BE ELECTED to get $$ (Ct OK!!)

- **Possible** Judicial Imposed Limits…

**Helvering v. Davis**: Leaving Spending power “gen welfare” to **Cong. Discression**

**SD v. Dole** (1987)

MAJ’s 4 requirements for Fed. spending statute to be valid:

(1) Expenditure must be for general welfare
(2) Conditions posed must be ambiguous
(3) Conditions must be reasonably related to the purpose of expenditure
(4) Legislation must not violate any independent const. provision
D. THE WAR POWER

_**Woods:**_ Must be WITHIN War-Time Need  ➔ But can extend to Non-War Time that was caused by (Means to End…PO)

**Treaties:** _MO v. Holland_: Migratory Bird Treaty Act… (must be enforced by states!)

“Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power… It is not sufficient to rely on states”
V. FEDERALISM 2: INTERGOVERNMENTAL IMMUNITY

A. NATIONAL LAWS vs. State Power (key: 80 NWULR 577)

1. Early Cases
   - *Collector v. Day* (1871)
   - *Helvering v. Gerheart*
   - *NY v. US* (Mineral Water)

2. Pre-NLC Regulatory Cases
   - Railroad Cases: *US v. CA* (1936) (Still Good Post NLC)
     - *CA v. Taylor* (1952)
     - *Pardon v. Term RR*
     - *Case v. Bowles* (1945) (Still Good Post NLC)
     - *Okl. v. Civil Service* (Still Good Post NLC)
     - *MD v. Wirtz*
     - *Fry v. US* (Still Good Post NLC)
   - *NY v. US* (Mineral Water)

3. National League of Cities

4. Post-NLC Cases
   - *Hodel v. VA Surface Mining*
   - *UTU v. L.I. RR*
   - *FERC v. Miss.*
   - *EEOC v. Wyoming*

5. *Garcia*
   - *SD v. Dole*


7. Modern Court
   - *Printz v. US*
   - *Reno v. Condon*

1st: Ask National Power Question
   - Comm.: Go to *Lopez* Categories
   - Tax, Spend, War: Go to those Cases

2nd: Ask Federalism Category (1, 2, or 3) Question
   - 1: No Federalism Question (SKIP!)
   - 2: Base on *Garcia* (overrule *NLC*) / *Reno* (not #3)
   - 3: Key = *NY*(legisl) / *Printz*(officials)

Category 1: National Laws That Regulate Private Activity
   - *Lopez* - Significant effect on states
   - *NLRB v. J&L* - National trumps state (usually)
   - Exa: FLSA to private sector

Category 2: National Laws That Apply Same Rules to State & Private Actions
   - *NY v. US* (Mineral Water) - Extending Private Laws to State
   - *Case v. Bowles*
   - *MD v. Wirtz*
   - *National League of Cities* (FLSA to States) *note: No stat. invalid under NLC in its 9 yrs.
     - MAJ: *Rehnquist* (4) + Blackmon (CON)
     - DISS: Brennan (3) + *Stevens*
     - (1) Source of Intergovernmental Immunity
     - MAJ: 10th Amend. –Statement of Fed. Structure
(2) Who Enforces Limits?

MAJ: Judicial
DISS: Political Restr. & States ARE rep in Cong. (Gibbons & Wickard)

(3) Test of State Immunity


-Hodel
-EEOC v. WY
-Garcia (1984 – San Antonio subway system pay rates)

MAJ: 4 NLC Diss (incl. Stevens) + *Blackmun
-NLC not work, bad test, too loose
-Adequacy of Political Process (Gibbons, Stone & MAJ)
-Does NOT list example where St. Law would be immune by Ct.
-Judicial Tests interfere w/ “principles of dem. self-governance”
-But how is MAJ version consistent w/ “principles of d.s-g….”??
-Wechsler’s test NOT mention regulation of STATES
-Balancing? Little Interference /already @ min wage / burden on state?
-States are represented in National Government
-How MAJ view 10th Amend?

DISS: Rehnquist, O’Connor, + 2 (*Powell)
-Want Judicial Review to overturn national legislation
-MAJ ignoring Stare decisis / Failed to use or justify NLC

-Reno v. Conden (2000 – Rehnquist) (Cong. require DMV gain consent for selling lists)
1st: Uses Lopez’s #2 “thing in I.C.” and “steam” to show that Law is valid Comm.
2nd: Shows that not category 3 & Law applied to State & Priv. alike.
“DPPA not require states to regl. own citiz. DPPA regl. states as owners of the database”


-Hodel (raises issues): States don’t, national gov. will do (but natl. laws will be more strict)
CT: Why valid? Cooperative Federalism (Allow states to enact own “lighter” laws)
-FERC v. Miss: Not fed. preemption which would replace/ all states reg would be preempted.
Ct employed an amorphous distinction btwn inducement & coercion

-SD v. Dole

MAJ: O’Connor (+ R, Sc, K, So, T)
Three Parts of Law
(1) Cong. may attach conditions to receipt of funds
-Endorsement of SD v. Dole
(2) Cong. may use threat of preemption (If states don’t do, natl. gov. will)
-Endorsement of Hodel & FERC
(3) Close Door / State Movement
-w/o Cong., state can’t discrim, w/ Cong., Cong., may auth. state to discrim.
-Cong. can regulate I.C.

(4) Take Title Provision INVALID!
-Cong. could order state to build facility, but not have power to order take title
-How important vs. (1) $ Inducement, (2) Preemption & (3) Auth. Discrim.???

-Printz v. US (1996) (Brady Gun Bill)
  NY: Worried about Fed commands to State/Local Legislature
  Printz: Worried about Fed commands to State/Local Officials
MAJ (Scalia): Cong. can’t get around NY by ordering state/local officials directly
-Cong. can command state officials to provide information
-No case-by-case weighing (Scalia = Anti-Balancing)
CON (O’Conn): Purely Ministerial
DISS (Stevens, So, B,G): Cong. action here same as asking police to report…

B. STATE LAWS vs. National Power
(Dormant Commerce Clause)

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-Skill: What is achieved by Judicial Intervention?
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-Be Able to Move: Discriminatory v. Burden
  Heath & Safety v. Economic Interest
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-Burden: InS & OoS Same Burden
Discrim: Mostly of Burden on OoS
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1. State Police Power Effecting I.C.
   Willison v. Blackbird (DE damn building)
   Cooley v. Port of Phil (Hiring of local pilot)

Purpose of Law
   Buck: Purpose = Restrict Competition (commercial) → INVALID
   Bradley: Purpose = Relieving Traffic (safety & health) → VALID

Effect of Law (1) effect on I.C. – burden  (2) Winners v. Losers – OoS v/ InS
   So Railway
      1st Time: Not enough burden on I.C., safety effect → VALID
      2nd Time: 4½ hr. trip take 10 hrs., adverse effect on I.C. → INVALID

Balancing Approach (with Transportation Safety) – Legisl. overruled (now Comm.)
   Barnwell (width/length restrictions for trucks)
   CT: Some St. laws are foreclosed by Dorm. CC (when no political check)
   Burden: OoS & InS truckers alike
   Stone’s Test: (1) Whether Legisl. acted w/in P.P. province
   -Inquiry into Legisl. Ends
   (2) Whether means chosen “reas” amount to ends (rational basis)
   -Inquiry into Means/Ends
**So. Pacific v. Arizona** (length of trains – slack action) “SUPER-LEGISL”
Stone’s Test: Balancing: State Interest (RR Safety) v. Natl Interest (Restrict I.C.)
Barnwell (rational basis) / So. Pac. (more than rational basis → “super legis.”)
HOW OFTEN CT LOOK AT MEAN/ENDS & BECOME “SUPER-LEGISL”??

**Bibb** (mud guards) “SUPER-LEGISL”
Barnwell & So Pac: All States Uniform → 1 St. Change
Bibb: 2 inconsistent States
CT: Strait balancing / Reverse Safety for State and LARGE burden on I.C>

**Kassel** (IA double truck length)
*last word on transp. safety
PLUR (Powell): “SUPER-LEGISL” Balancing
CON (Brennan): (1) Look to Actual Purpose (protectionist?)
(2) **Barnwell** Rational Basis
DISS (Rehnquist): Means/Ends **Barnwell** Rational Basis

2. State Barriers to *Incoming Trade* (Imports)

**Baldwin v. Selig** (NY telling VT farmer, price to sell milk)
MAJ (Cardozo): IS barrier to trade
Police power can’t be used as barrier against OoS products

**Mintz v. Baldwin**: Upheld NY law prohibiting OoS Cattle sold in NY
If purpose to prevent disease, then may discriminate

**Welton v. MO** (shoddy mattress law → INVALID
InS Peddlers: No License Req.
OoS Peddlers: License Req.

**Silas Mason** (2% tax – of paid state tax, exempt)
Law only wiped out SOME competition (rather than ALL competition like Baldwin)

**Dean Milk** (Prohib. sale of milk, unless pasteurized in Madison)
Purpose (avowed): Promote safety/health = assure sanitary supply of milk
Effect: Economic barrier / disrupts I.C.
Reserved BENEFIT for In-Local Pop / Pushed DETRIMENT to Out-of-Political Pop.
DISS (Black): Maj = “Super-Legis!” –
No discrim, since Dean can pasteurize in Mad, but what about OoP pasteurizes

**Breard v. Alexandria** (Prohibit door-to-door solicitation, unless allowed by person)
**DISCRIM**: -Local newsstands benefit, aide local retailers
**BURDEN**: -Applies to InS & OoS door-to-door salesmen alike
Alternatives: Solicitation allowed unless prohibited by person

A&P Milk met all of MS health standards, only bar was reciprocity

**PIKE BALANCING TEST** (Standard for *Burden*some Law/Ord.)

CT: (1) Looks at MS’s H&S Purpose / Reciprocity not meet goal
    (2) MS reciprocity goes against Free Trade / LA must accept MS bad milk
    (3) p376 ALT: MS could inspect milk

MS not really care about H&S


NC purpose: To eliminate consumer confusion

CT Discrim. Test:
    (1) Increase Cost of doing business in state
    (2) Strips WA state reputation that was cultivated
    (3) Levels WA apples to NC level

**HUNT BALANCING TEST** (Standard for *Discriminatory* Law/Ord.)

-“Burden falls on state to justify in both terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve local interests at stake”

-Not much on State balance
-How much InS burden necessary for ct to say statute is burden, no discrim

**Exxon v. Gov. of MD** (1977) (Prohibit gas refineries from owning/operating gas stations)

<table>
<thead>
<tr>
<th>3780 Gas Stations</th>
<th>Protected</th>
<th>Divest</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) 3547 InS Local Ret.</td>
<td>99%</td>
<td></td>
</tr>
<tr>
<td>(2) 233 Co-Owners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) 197 OoS Prod/Ref.</td>
<td>98.5%</td>
<td></td>
</tr>
<tr>
<td>(b) 34 OoS Non-Prod/Ref.</td>
<td>1%</td>
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<tr>
<td>(c) 2 InS Prod/Ref.</td>
<td>1.5%</td>
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</table>

MAJ (Stevens): *Looks at Prod.* / All gas sold from OoS / No change in gas into state

**DISS *key now!* (Blackmon): Statute has Discr. effect / Not just talking about Transp.!

Law is selecting out most powerful OoS interests

HUNT (and DISS): Discrim. *not need to be universal* (not all apple states hurt)

**Milk Cond. v. Eisenberg** (PA min. price to be sold in NY)

**Hood v. DuMond** (Prohibit the opening of receiving depot in Troy, NY)

NY Purpose: Not enough milk in Troy / H&S – milk in Troy (*Violates Comm Cl.*)

MAJ: “This court consistently has rebuffed attempts of states to advance their own commercial interests by curtailing the movement of articles in commerce, either
into [Baldwin] or out of [Hood] the state, WHILE generally supporting their right to impose even burdensome regulations in the interest of local H&S”

DISS₁ & 2: Prefer Balancing Test
DISS₁: believed that commission deny depot even if milk to NYC

3. State Barriers to Outgoing Trade (Exports)
   PA v. WV (No natl. gas export, until all InS Demands are met)

   Foster v. Hadel (Prohibit export of shrimp until heads cut & shells off)
   LA: H&S = ensure fertilizer / CT: Keeping labor in LA, INVALID

   Pike v. Bruce Church (Pike Balancing Test)
   AZ: All cantaloupes exported must be crated, let people know from AZ/best
   CT: Agree w/ purpose. but STATE’S INTEREST NOT OUTWEIGH BURDEN

   Hunt Discrim: NC Law discriminatory in effect of law → Hunt Balancing Test
   Okl. Discrim: OK Law discriminatory on face → Hunt Balancing Test
   Phil. Discrim: NJ Law discriminatory on face → Per Se Invalid Rule

   MAJ: Ok, for states to protect some economic interests (p245)
   BUT, this Law INVALID since it’s discrim. per se (on face)
   (Like Hunt), there are Alternatives for NJ
   DISS (Rehnquist): H&S / Envir. → Law should be valid

   Hughes v. Oklahoma (1979) (Prohibit export of Natural Minnows)
   MAJ: Discrm on face: Looks to means (revert back to Hunt)
   – there ARE alternatives to accpl. goal
   DISS (Rehnquist): Non-Discr: 1. Hatchery Minnows ok
   2. TX or OK can sell InS, No one can sell OoS

   MN v. Clover Leaf Creamery (1981 – Brennan) (plastic v. cardboard milk containers)
   (1) Statute does not effect ‘simple protectionism’ but ‘regulates even-handedly’
   (2) Is burden imposed on I.C. ‘clearly excessive in relation to putative local benefits’

   CTS Corp. (Indiana Control Shares Act)
   Ct: Used Pike B. T. (State Interests outweigh small burden on I.C)
   ECON: Help Existing Management Keep Jobs
   H & S: Protect Shareholders on IN Corps.
   BURDEN: People less likely to buy shares if less likely to get voting rights
   CON: Scalia ANTI-Pike B.T.
>>KEY FRAMEWORK<<

**Maine v. Taylor**

ME View Purpose: 1. Protect. of native species  2. Prevent parasites from OoS fishes

**MAJ: Is Discrim. & No Alt. for State (must trust Dist Ct.’s findings)**

**BURDEN:** InS & OoS are equally prohibited from bringing in fish to ME

**DISCRIM:** InS may catch fish then sell in ME / OoS can’t catch fish then sell in ME

**ECON:** (Dist. & SCOTUS) – Environmental & No other Alts

**H & S:** (Ct of App) – Preserving InS fishers & Are other Alts

(1) **Burden only**

- Violate DCC only if burden to I.C. excessive vs. benefits to State (PIKE!!)

(2) **Affirmative Discrimination**

- More Demanding
  - One face (Phil) or In effect (Hunt)
  
  - Burden on State to demonstrate
    
    a. *That statute serves legitimate purpose*
    
    b. *The purpose cannot be served by an alternative method*

*MAJ Cites Phil v. NJ: Per Se invalid = Addl. Argument depending on discussion in MAJ?*
### ADAM'S DORM. COMM. CLAUSE CHART

<table>
<thead>
<tr>
<th>ECONOMIC</th>
<th>H &amp; S</th>
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<tbody>
<tr>
<td><strong>BURDEN</strong></td>
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<tr>
<td>Exxon</td>
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<td>Contrell</td>
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<td>Silas</td>
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<td>Milk Cond v. Eisenberg</td>
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<td>So Pac (T)</td>
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<td>Bibb (T)</td>
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<td>Kassel (T)</td>
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<tr>
<td><strong>DISCRIM</strong> (on face/in effect)</td>
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<tr>
<td>Phil v. NY</td>
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<tr>
<td>Hughes v. Okl</td>
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<td>Hunt</td>
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<tr>
<td>Dean Milk</td>
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<tr>
<td>Baldwin</td>
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<td>Hood</td>
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<td>Welton (shoddy)</td>
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### LA PIERRE DORM. COMM. CLAUSE CHART

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<thead>
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<th>H &amp; S</th>
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<tbody>
<tr>
<td><strong>BURDEN</strong></td>
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<tr>
<td>Baldwin (VT dairy)</td>
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<tr>
<td>Silas</td>
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<tr>
<td>Milk Cond v. Eisenberg</td>
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<tr>
<td>City Serve (Natl Gas)</td>
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<tr>
<td>Foster (shrimp)</td>
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<td>Pike (cantaloupe)</td>
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<tr>
<td>Breard? (door-to-door)</td>
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<tr>
<td><strong>DISCRIM</strong> (on face/in effect)</td>
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<tr>
<td>Phil v. NY (DISS see as Envir)</td>
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<tr>
<td>PA v. WV (Natl. Gas)</td>
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<tr>
<td>Hunt (possible)</td>
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<tr>
<td>Hood → Jackson MAJ</td>
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<td>Welton (shoddy)</td>
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<td>Breard?</td>
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