PART I: THE JUDICIAL FUNCTION IN CONSTITUTIONAL CASES

CHAPTER 1: THE NATURE AND SCOPE OF THE SC’S AUTHORITY

Marbury v. Madison (p. 3)
-Marshall says acts is unconstitutional, then decides whether or not he has the power to declare this
-Congress cannot expand the bounds of original jurisdiction (still good law today)
-If a case arises under the Constitution, then can read the Constitution

**Holding:** In litigation before the SC, the court may refuse to give affect to an act of Congress that the court believes is unconstitutional and that statute pertains to a judicial power
-Secondary holding: SC has authority to determine all constitutional issues within any case within its jurisdiction
-An act of the legislature repugnant to the constitution is void

-3 “where” clauses
  --§25 of 1789 Judiciary Act—court can review state decisions, when:
    1. Treaty or statute of US and decided against their validity
    2. State statute against US Constitution and found in favor of state statute
    3. Constitutional clause and decided against such clause

Martin v. Hunter’s Lessee
-State court decision involving a matter of federal law
-It is the case, not the court that gives jurisdiction
  --Thus, federal question in state court can be reviewed by federal court

Cohens v. Virginia
-Marshall says parties make no difference, but nature of question was important

-These 2 cases show 2 fundamentally different ways to use Article III judicial power:
  1. Look at nature of question involved, regardless of parties
  2. Look to see parties involved

SC can review:
-Federal or state statutes, regardless of whether they come from federal or state courts

Ex Parte McCardle
**Holding:** Congress can give and take away power of jurisdiction of SC (jurisdiction is only what Congress confers), but Congress doesn’t have unlimited power to regulate SC’s appellate jurisdiction
PART II: THE STRUCTURE OF GOVERNMENT: NATION AND STATES IN THE FEDERAL SYSTEM

CHAPTER 2: NATIONAL POWERS & LOCAL ACTIVITIES: ORIGINS AND RECURRENT THEMES

McCulloch v. Maryland
-National government has enumerated/delegated powers
-States have reserved/residual powers
-To show a statute is valid, need to show either:
  1. Direct exercise of enumerated power
  2. Exercise of enumerated power couple with Necessary & Proper clause
-Congress decides what is necessary & proper to carry out an enumerated power
-The government has a right to do an act, and must be allowed to select the means
-Marshall says the sovereign is the people, not state or national government

U.S. Term Limits, Inc v. Thornton
-States cannot alter the Constitution

COMMERCE CLAUSE

Gibbons v. Ogden
-National statute preempts/ousts a state statute (supremacy clause)
-Power to regulate includes power to inhibit/prohibit
-Congress can deal with intrastate matters if necessary for executing some of the general powers of the government

4 theories/rationale of commerce power:
1. Direct exercise of commerce power to regulate IC itself (ex-Shreveport Rate)
2. Prohibit interstate movement (ex-Lottery Case; Darby)
3. Affecting commerce doctrine → Congress’ power to regulate a local activity as a means of making affective some policy for IC (regulate local activities b/c they affect IC)
   --examples-Jones & Laughlin (close and substantial), Wirtz (no trivial impact), Wickard/Perez (class of activities)
   --depends heavily on necessary & proper clause
4. Bootstrap Approach
   a. Prohibition against interstate movement
   b. Regulate local activity, not b/c it has affect on IC, but to make affective prohibition against interstate movement
      --ex—Alternative grounds in Darby; offered but not accepted in Five Gambling Devices
**Knight**
- Insufficient means → means of regulation aren’t necessary and proper (aren’t appropriate to achieve the ends)
- Direct effect → allowed to regulate

**Shreveport**
- Congress can take all measures necessary or appropriate to end of regulating IC
- “Local” activities can be regulated because of practical, economic impact on IC
- Congress can regulate when substantial economic effect on IC

Questions for all Commerce cases
1. What is local activity being regulated?
2. Where is IC?
3. What is relationship between LA and IC?
4. How can Congress regulate this? (means of achieving ends)

**Southern Railway Co. v. U.S.**
- Congress requires cupplers, regardless of intrastate or interstate, so that they don’t disrupt interstate traffic

**Champion v. Ames** (Lottery case)
- No national police power
- If what is done by Congress is manifestly in excess of the powers granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people

**Hipolite Egg** → bootstrap theory — prohibition against movement, b/c regulating the local activity will help the prohibition against IC

**Hoke**
- Congress has power over transportation “among the several States”; that the power is complete in itself, and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations.

**Hammer v. Dagenhart** (Child Labor case) → OVERRULED by Darby
- Congress preventing the spread of evil (like Lottery, Hipolite, and Hoke)
- Production is a local activity
- Outside of commerce power b/c indirect effect on IC

**Railroad Retirement Board v. Alton Railroad Co.**
- Pension not valid, because doesn’t affect the efficiency of transportation

**Schechter Poultry**
- Stream of commerce → stream had ended, so unconstitutional to try to regulate
- Only indirect effect on IC
Carter v. Carter Coal Co.
-last time until Lopez (1995) that SC strikes down a statute for being in excess of commerce clause
-just because there is a problem doesn’t mean that it is a valid exercise of Congress’ power
-Production is purely local; mining is production, not commerce
-Looked at relation between activity and effect
-Dissent: Can regulate price in intrastate commerce if directly & intimately effect IC

NLRB v. Jones & Laughlin Steel Corp.
-It is the effect upon commerce, not the source of the injury, which is the criterion
-“Close and substantial relation” can regulate local activity
-After this case, Court looks at real world effect of local activities on IC

Wickard v. Filburn
-Even if local, if substantial economic effect on IC, then can regulate
  --Own contribution may be trivial, but taken with all other similar wheat growers, it is far from trivial (AGGREGATION)
-Direct or indirect does not matter—only actual effect

United States v. Darby
-overrules Hammer
-power of Congress over IC not confined to regulation of commerce among the states
  --extends to those activities intrastate which so affect IC
-Rationales:
  1. Affecting commerce
  2. Bootstrap

U.S. v. Five Gambling Devices
-Bootstrap—only used as an alternative ground in Darby and used by 4 dissenting Justices here casts doubt on bootstrap’s validity

U.S. v. Sullivan
-Bootstrap—regulate local activity to help enforce prohibition against interstate movement
-Affecting commerce—local druggist who doesn’t have to label can sell cheaper

U.S. v. Perez
-Commerce clause reaches 3 main categories of problems:
  1. Use of channels of IC which Congress deems are being misused (ex—shipment of stolen goods or kidnapped persons); Darby, Heart of Atlanta Motel
  2. Protection of the instrumentalities of IC (ex—thefts from interstate shipments); Shreveport Rate
  3. Those activities affecting commerce; Jones & Laughlin
-Congress has power to regulate loansharks who affect IC and since it is difficult to distinguish between those who do and do not affect IC, then Congress can regulate both kinds of loansharking

**U.S. v. Lopez (baby Lopez)**
- Court’s only function is to determine whether the class of activities regulated is within the reach of Congress’ power
- Similar to Perez→hard to distinguish when controlled substance affects IC, so allow Congress to also regulate intrastate commerce

**Maryland v. Wirtz**
- Constitutional on 2 grounds:
  1. “Unfair competition” (Darby)
  2. “Labor dispute” theory (Jones & Laughlin)

**Heart of Atlanta Motel v. U.S.**
- Affect on IC—discrimination by hotels/motels impedes interstate travel of African-Americans
- If it is IC that feels the pinch, it does not matter how local the operation that applies the squeeze

**Katzenbach v. McClung**
- Even if local and not regarded as commerce, Congress can regulate it if it exerts a substantial economic effect on IC (Wickard)
- Perez/Lopez argument→don’t know which restaurants serve interstate travelers and which don’t, so can regulate both

**U.S. v. Lopez**
- If allow statute to stay, then no limit to Congress’ power to regulate—would give Federal government a general police power
- no connection here at all to IC
- Dissent→Congress could have had a rational basis for finding a connection between gun-related school violence and IC
  --deference to Congress
- 4 points: substantial economic effects on IC; no jurisdictional element; lacked formal findings as to burden on IC; attenuated link between gun possession & IC
- Can regulate commercial activities that substantially affect IC

**U.S. v. Morrison**
- Like Lopez, says if allowed, then no limit to substantial effect argument if you could aggregate
OTHER POWERS: TAX, SPEND, TREATY, WAR

TAX POWER—Must tax for revenue and not for regulatory purposes

*Bailey v. Drexel Furniture Co. (Child Labor Tax Case)*
- A so-called tax can lose its character and become a penalty; revenue raising is merely incidental
- Discusses 3 older cases, as Government says these all were taxes that weren’t revenue measures and had some non-revenue ends in mind
- Judicial scrutiny of means/ends relationship

*U.S. v. Kahriger*
- Unless there are penalty provisions extraneous to any tax need, courts are without authority to limit the exercise of the taxing power
- Just because doesn’t raise much revenue, doesn’t make it unconstitutional, as raising revenue is still the end

SPENDING POWER—Must spend for the general welfare

*U.S. v. Butler*
- One duty by judicial branch—lay Constitution next to statute and decide whether statute squares with the constitution
- Madison v. Hamilton views
  -- Madison—spending power only can be used to implement other enumerated powers
  -- Hamilton—spending power not limited by other enumerated powers; it is separate and distinct; this is the view the Court says they adopted (although they really seem to use Madison’s view)
- Act is unconstitutional because it regulates agricultural production, which is a matter for state regulation
- Dissent (which is the law today)→ spending power is separate power—can achieve ends not allowed under other enumerated powers
  - Limits on spending power:
    1. Must be truly national
    2. May not be used to coerce action left to state control
    3. Political checks—don’t abuse the power
    4. Means must be reasonably related to the ends which alone would justify the expenditure

*Charles C. Steward Machine Co. v. Davis*
- Complaint that statute was not for general welfare, because benefits only went to unemployed persons
- Valid because incentive, not coercion

*Helvering v. Davis*
- One possible limit on spending power—must be for general welfare
  -- Congress has power to decide whether it is for general welfare
WAR POWER
Woods v. Cloyd W. Miller Co.
-War power does not necessarily end with the cessation of hostilities
-Here, Congress invoking war power to cope with current condition of which the war was a direct and immediate cause

TREATY POWER
Missouri v. Holland
-Treaty takes precedent over contrary state laws
-Some treaties are self-executing (Hauenstein-p. 228)
-Congress can implement a treaty to create regulations that would otherwise be unconstit.

MODERN FEDERALISM LIMITS ON NATIONAL POWERS
McCulloch v. Maryland
-The American people did not design to make their government dependent on the states
-When a State taxes national government, it acts upon people over whom they have no control
-States have no power to retard, impede, burden or control the operations of the constitutional laws enacted by Congress (Supremacy Clause)

IMMUNITIES (from Tax Power)
Helvering v. Gerhardt
-Everyone in every state is subject to national income tax

New York v. U.S. (mineral water case)
-States are immune from taxes on activities that only States can do, but can be taxed on things that anyone can own and it just so happens that a state owns
-non-discriminatory test
-balancing test—ability to perform sovereign functions vs. limitation on national taxing power

STATE Immunity from National Regulation
National League of Cities v. Usery
-FLSA amendments would interfere with integral government functions
-Overtures Wirtz
-Balancing (Blackmun)—federal interest vs. burdens on state autonomy

Hodel v. Virginia Surface Min. & Recl. Ass’n
-3-part test for finding something invalid under NLoC requirements:
  1. Must be a showing that the challenged statute regulates the States as States
  2. Federal regulation must address attributes of state sovereignty
  3. Must be apparent that States’ compliance with federal law would directly impair their ability to structure integral operations in areas of traditional governmental functions

United Transportation Union v. Long Island Railroad
-SC upholds national statue, as railroads aren’t a traditional state function
FERC v. Mississippi
- Can say regulate our way or don’t regulate at all

EEOC v. Wyoming
- No undue interference with performance of sovereign functions

Garcia v. San Antonio Metropolitan Transit Authority
- Overruled National League of Cities & Hodel
- Commerce Clause, by its language, does not provide any special limitation on Congress’ actions with respect to the States
- Hard to tell difference between traditional (protected) and non-traditional (not-protected) activities
- Dissent—majority ignores Marbury

South Dakota v. Dole
- Congress may attach conditions on the receipt of federal funds
- 4 basic limits on the spending power:
  1. Must be in pursuit of general welfare
  2. Congress must make conditions clearly
  3. Conditions illegitimate if they are unrelated to federal interest
  4. Other constitutional provisions may provide an independent bar

New York v. U.S. (radioactive case)
- Take title provision is inconsistent with 10th Amendment, as offers choice between 2 unconstitutional alternatives
- The Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States
- Variety of methods, short of outright coercion, to urge a State to adopt measures:
  1. Attach conditions to the receipt of federal funds (South Dakota)
  2. Offer States choice of regulating according to federal standards or having state law pre-empted by federal regulation (Hodel, FERC)
- No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate
- State legislatures are not subject to federal direction

Printz v. U.S.
- Federal Government may not compel States to implement legislation or executive action, federal regulatory programs
  -- Holding here—Cannot circumvent this prohibition by conscripting the State’s officers directly or requiring States to address particular problems (p. 191)

Reno v. Condon
- Regulates States as owners of databases, not as States; does not apply only to States
- A State engaging in certain activity must take legislative action to comply with federal standards is constitutional
- Commerce Power→ power to regulate persons or thing in IC (2nd category from Lopez)
  -- Alternative—local activity that has affect on IC
FEDERAL LIMITS ON STATE POWER

DORMANT COMMERCE CLAUSE

Willson v. Black Bird Creek Marsh Co.
-No conflict, as not repugnant to the dormant commerce power
-State law exercise of police power, not a state regulation of commerce

Cooley v. Board of Wardens of the Port of Philadelphia
-Local vs. National test
-Rejected the view that congressional commerce power was exclusive and that the states therefore lacked all power to regulate commerce
-In the absence of national legislation, doesn’t mean there are no limits on the states
-Congress must have though that this was a particularly local subject, best left to the States

2 types of factors in dormant commerce cases:
  1. Purpose of state law (Buck, Bradley)
  2. Effect of the state law on IC

Modern Balancing Approach—State interests vs. Burdens on IC

South Carolina State Highway Department v. Barnwell (Category #2)
-So long as state action does not discriminate, the burden is one which the Constitution permits because it is an inseparable incident to the exercise of legislative authority left to the states
-State laws that are discriminatory are not allowed (burden is ok)
-Here—non-discriminatory, b/c trucks moving only in-state have to meet standards too
-Look to see if what legislature did was rational or not

Southern Pacific Co. v. Arizona (Category #2)
-Political restraints aren’t enough when burden falls on out-of-state interests
-Balancing: State interest is outweighed by the interest of the nation in an adequate economical and efficient railway transportation service
-State doesn’t show how law will increase safety—might even decrease it

Bibb v. Navajo Freight Lines, Inc. (Category #2)
-Indication of greater scrutiny than in Barnwell
-This is one of the few cases where local safety measures that are nondiscriminatory place an unconstitutional burden on IC
-Unlike Barnwell and Southern Pacific, as in those if you met most restrictive requirements then you could pass muster in all states, but here you would have to have 2 completely different vehicles
-Like in Southern Pacific, no showing that safety will be increased
**Kassel v. Consolidated Freightways Corp.** (Category #2)
- A state’s power to regulate commerce is never greater than in matters traditionally of local concern
- If safety justifications are not illusory, court will not second guess legislative judgment about their importance in comparison with related burdens on IC
- Commerce Clause challenges must take into effect three principles (from concurring):
  1. Court not empowered to second-guess legislatures
  2. Balance burden on IC vs. local benefits sought
  3. Protectionist legislation is unconstitutional under Commerce Clause
- Critical element → look at lawmakers actual purpose for the act
- Transportation cases have a life of their own and not usually cited in other types of cases

**Baldwin v. G.A.F. Seeling, Inc.** (Category #1)
- Economic interest always related to health → can’t open that door
- Police power may not be used by state with aim and effect of establishing an economic barrier against competition with the products of another state

**Henneford v. Silas Mason Co.** (Category #1)
- Distinguishable from Baldwin, as putting equal burden on goods in-state and out-of-state
  - Equality is theme → all states treated equally

**Breard v. Alexandria** (Category 1 or 3)
- Discriminatory — hurt those engaged in IC and favored in-state retailers
- Burden — applies to those in-state as well as those out-of-state

**Dean Milk Co. v. Madison** (Category #4)
- Madison plainly discriminates against IC
- Reasonable alternatives:
  1. Charge for inspecting themselves
  2. Make sellers meet US standards
- State cannot put itself in a position of economic isolation (Baldwin)

**Great Atlantic & Pacific Tea Co., Inc. v. Cottrell** (Category #4)
- Balance — uphold state interests unless burden imposed on IC is clearly excessive in relation to the putative local benefits (PIKE test)
  - Here: Unduly burdens the free flow of IC and cannot be justified as a permissible exercise of any state power
    -- no legitimate local interest
- Alternative → Mississippi could apply own standards to shipments from nonreciprocating States

**Hunt v. Washington State Apple Advertising Commission** (Category #3)
- No effect on in-state apple growers, but discriminated against out-of-state
  -- raises costs for out-of-state, but not in-state
  -- strips away competitive & economic advantages that Washington apple industry had
  -- Washington apples have to marked down to USDA counterparts
-When discrimination, burden falls on State to justify:
  1. Local benefits
  2. Unavailability of nondiscriminatory alternatives
     -Possible alternatives here:
       a. Use state grades along with USDA grades
       b. Ban state grades that are inferior to USDA categories
-“Not every exercise of state authority imposing some burden on the free flow of commerce is invalid.”

**Exxon v. Governor of Maryland** (Category #4)
- Court concludes that statute bears a reasonable relation to State’s legitimate purpose in controlling the gasoline retail market
- Does not discriminate because no local producers (so no local producers effected)
- IC is not subjected to an impermissible burden simply b/c an otherwise valid regulation causes some business to shift from one interstate supplier to another
- Dissent → burden is even more severe than Hunt, b/c completely banned (LaPierre agrees with the dissent here)—Dissent is state of law today (?)
  --almost all burden on out-of-state and all benefits in-state
*Be careful in using this case—measures were discriminatory and the Court really didn’t explain why they allowed the Maryland law to stand

**SUPREMACY CLAUSE AS PREEMPTION**

**Gibbons v. Ogden**
- Marshall’s view—distinction between regulations of commerce (Congress) and police power regulations (States)
- State and national regulation can’t exercise regulation concurrently
- Stat law conflicts with national law, and because of Supremacy Clause, state law is preempted

**LIMITING ACCESS OF OUT-OF-STATTERS TO LOCAL PRODUCTS/RESOURCES**

**Milk Control Board v. Eisenberg Farm Products Co.** (Category #1)
- Distinguished from Baldwin—here, burden on own dairy farmers, not another state

**H.P. Hood & Sons v. Du Mond** (Category #3)
- This Court consistently has rebuffed attempts of state to advance their own commercial interests by curtailing the movement of articles of commerce, while generally supporting their right to impose even burdensome regulations in the interest of local health & safety

**Pennsylvania v. West Virginia** (Category #3)
- West Virginia could not require all local needs to be met before any gas was exported
- State cannot restrict IC to protect in-state needs (when dealing with commerce, but see Reeves for allowing this when market participant)
Hughes v. Oklahoma (Category #4)
-Evil of protectionism can reside in legislative means as well as legislative ends
-Discriminatory on its face, but applied Hunt test, not Philly v. NJ
-Invalid, because finds alternative means are available

Foster-Fountain Packing Co. v. Haydel (Category #1)
-Court finds law unconstitutional, as thinks it was created so that packaging plant would be in Louisiana and not Mississippi

Pike v. Bruce Church Inc. (Category #1)
-State regulation upheld unless burden imposed on such commerce is clearly excessive in relation to the putative local benefits

Philadelphia v. NJ (Category #3)
-Must be some reason, apart from their origin, to treat them differently
-Both on its face and in its plain effect, the law violates this principle of nondiscrimination
-What is crucial is the attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade
-Economic protectionism is per se invalid

Minnesota v. Clover Leaf Creamery Co. (Category #2)
-Pike test→only relatively minor burden on IC
-Differentiated based on type of packaging, not in-state vs. out-of-state

CTS Corp. v. Dynamics Corp. of America
-Upheld by Pike test (merely burdensome)→both in-state and out-of-state treated same way

Maine v. Taylor (Category #4)
-Both Hunt/Hughes factors met→serves legitimate local purpose and no available nondiscriminatory means
-Significant health and safety concerns outweigh any discrimination against IC; also, nondiscriminatory alternatives to achieve state’s interest

MARKET PARTICIPANT EXCEPTION TO DORMANT COMMERCE CLAUSE

South-Central Timber Dev. v. Wunnicke
-If a State is acting as a market participant, rather than a market regulator, the dormant Commerce Clause places no limitations on its activities
-But here, State is exert regulation in processing market, where it is not a participant (cannot control downstream)
-Cannot survive Pike scrutiny
   --Also, falls within per se invalidity (Philly v. NJ)
**PRIVILEGES AND IMMUNITIES CLAUSE**
- Like Commerce Clause, serves as restraint on state efforts to bar out-of-staters from access to natural resources
- Designed to ensure same privileges to out-of-state citizens

**Toomer v. Witsell**
- Inquiry must be:
  1. Whether there are substantial reasons for the discrimination beyond the mere fact that they are citizens of other States
  2. Whether the degree of discrimination bears a close relation to the reasons/means
- Here, reasons do not bear relationship to high degree of discrimination

**Baldwin v. Montana Fish & Game Comm’n**
- Fundamental rights are protected by P&I Clause, but hunting elk is not a fundamental right
- Only obligated to treat a nonresident equally when dealing with an essential activity or exercise of a basic right (Corfield Test)

**Hicklin v. Orbeck**
- Alaska did not demonstrate that nonresidents were a peculiar source of the evil (no substantial relationship to the evil) → Toomer Test

**United Bldg. & Constr. Trades v. Camden**
- 2 step inquiry (from Baldwin?)
  - burden on privileges and immunities
  - substantial reason for difference in treatment
- No real in-state burden, because all other municipalities in NJ could have same law and thus the same benefits
- No market participation exception in P&I

**Supreme Court of New Hampshire v. Piper**
- We find that none of these alternative reasons are substantial and that the means chosen do not bear the necessary relationship to the State’s objectives
PREEMPTION OF STATE LAW
-preemption claims can come from conflict with any one of Congress’ legislative powers
-Court will look at preemption over commerce clause
-Express preemption—Congress will clearly say that certain state law are preempted
-Express savings—Congress doesn’t want their law to oust certain state laws

Pacific Gas & Elec. Co. v. State Energy Comm’n
-Different “tests”:
  -National interest so dominant that federal system assumed to preclude state laws on subject
  -State law preempted when conflicts with national law
  -Conflict when can’t comply with both national and state laws
  -State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress (Crosby)
-Here, national and state authority both allowed
  --national for safety concerns
  --states for economic determinations

Crosby v. National Foreign Trade Council
-Conflicts with Congress’ strategy, so preempted under Supremacy Clause
-Normally a presumption against preemption (deference to state law authority in non-foreign affairs)

SPENDING POWER
U.S. v. Sabri
-No connection needed between offense and federal funds received
-Not a conditions statute, so S.D. v. Dole analysis not applicable (or Butler)
-2 inquiries:
  1. Whether Congress has power to enact criminal legislation under N&P Clause
     --Yes--McCulloch
  2. Whether statute is rationally related to Congress’ ends
     --Yes
-All Congress is doing is proscribing rules for 3rd parties who have contact with organizations
IMPORTANT STUFF

JUDICIAL POWER IN GENERAL
2 fundamentally different ways to use Article III judicial power (from Cohens v. Va):
1. Look at nature of question involved, regardless of the parties
2. Look to see the parties involved

To show a statute is valid, need 1 of these 2:
1. Direct exercise of enumerated power
2. Valid exercise of enumerated power coupled with Necessary & Proper clause

2 possibilities of judicial power of Congress’ powers:
1. Inquiries into ends
2. Inquiries into mens/ends relationship

Marshall’s pre-text reservation (from McCulloch):
-Congress cannot enact a law under the pretext of exercising an enumerated power, when the purpose of the law is really to do something not enumerated

TAX POWER
Immunities from Taxation:
1. Federal Government immune from State taxation (McCulloch)
2. State immune from Government—only when activity is only performed by the States (NY v. US—mineral case)

SPENDING POWER
Restraints on Spending Power (from US v. Butler, Stone’s dissent, which is the law today):
1. Must be national in scope
2. Must be choice (no coercion)
3. Means must be related to ends
4. Political checks
-Spending power is a separate, distinct power from other enumerated powers

4 limits on Spending Power (from South Dakota v. Dole)
1. Must be for general welfare
2. Unambiguous conditions
3. Must be related to federal interests
4. Other constitutional provisions may provide an independent bar to conditional grant of federal funds

National government “compelling” states to do things:
1. Can condition funds (Dole)
2. Can give a choice between state or national implementation (Hodel)
3. Can say regulate our way or don’t regulate at all (FERC)
4. Can regulate area where both states & private parties can act (NY—mineral act)
5. Cannot compel state government to act (Printz, NY—radioactive)
**COMMERCE POWER**

Old Commerce Power
- Direct/Indirect (Knight)
- Substantial Effect (Wickard, Shreveport Rate?)

4 areas in which Commerce Power can be used to regulate: (p. 2 of Gibbons notes)
1. Prohibit interstate movement of goods (Shreveport Rate)
2. Prohibit people or things in IC (Lottery, Darby)
3. Regulate local activities which substantially affect IC (affecting commerce rationale)  
   (Jones & Laughlin, Wickard, Perez, 5 Gambling Devices)
4. Bootstrap—regulating local activity as means of making affective prohibition against interstate movement of goods (Alternative ground in Darby)

3 categories of activity that Congress may regulate under Commerce Power (Lopez):
1. Channels of IC (Darby, Heart of Atlanta)
2. Persons or things in IC (Shreveport Rate)
3. Activities that have a substantial relation to IC (Jones & Laughlin)

4 points from Lopez:
1. Substantial economic effects on IC
2. No jurisdictional element
3. Lacked formal findings as to burden on IC
4. Attenuated link between gun possession & IC

Questions for Commerce cases:
1. What is local activity?
2. Where is IC?
3. What is relationship between local activity and IC?
4. How can Congress regulate this? (means of achieving ends)

3 categories of national legislation:
1. Regulating private activity
2. Regulating state and local governments
3. Requiring state and local governments to perform tasks
DORMANT COMMERCE CLAUSE

Dormant Commerce Clause
1. Burden (in-state and out-of-state treated the same) → use Pike test
   -- unconstitutional if burden on IC outweighs state interest (or other less burdensome alternatives(?))
2. Discrimination → use Hunt test
   -- State has burden to show that:
   1. Local interest outweighs discrimination
   2. No less discriminatory or non-discriminatory alternatives
3. Per se Invalidity → use Philly test (use when economic purpose, discrimination on face)

3 types of factors in Dormant commerce cases:
1. Purpose of state law
   -- Buck; Bradley
2. Effect of the state law on IC
3. Extent to which state regulation worked to achieve the state’s interests (Barnwell)

4 categories:
1. Economic and Burden
   -- Pike, Baldwin v. Seelig, Henneford (V), Eisenberg (V), Foster Fountain
2. Health & Safety and Burden
   -- Barnwell (V), Southern Pacific, Bibb, Kassel, Mintz (V), Minnesota (V)
3. Economic and Discriminatory
   -- Philly, Hunt, Welton, Hood, Pa v. WVa, Polar Ice Cream, Hood (Majority)
4. Health & Safety and Discriminatory
   -- Hunt, Maine (V), Hughes, Dean Milk, Exxon (V), A&P, Hood (Dissents)

PRIVILEGES & IMMUNITIES

2 distinct threads of Privileges & Immunities Clause
1. See whether interest at stake is fundamental right (Corfield)
2. Focus on rights created by state law and a focus on discrimination (Toomer)
   -- 4 part test:
   1. Fundamental right
   2. Has to be substantial reason for discrimination independently from discrimination (i.e. non-residents are the source of the problem)
   3. Discrimination must bear close relationship to means
   3a. Inquiry into less restrictive means [alternatives] (Piper)

PREEMPTION
1. Express preemption provision—Congress clearly says certain state laws are preempted
2. Express savings clause—Congress doesn’t want their law to oust certain state laws