**Tu, 11 Jan**

- **McCulloch v. Maryland**
  - The national government is one of limited, delegated powers.
  - Secretary of the Treasury Alexander Hamilton wanted the bank, thinking it would strengthen the national government and aid in the administration of public finances. i.e. Implied powers – art 1, sec. 8 para 18. “necessary and proper clause”
    - “means to an end “ argument also makes a “slippery slope” situation – “a chain may be formed that will reach every object of legislation.”
    - The Bank was a means to the ends of collecting taxes, which is enumerated.
    - To evaluate “Slippery Slope” Arguments
      - Distinguish the causal chain
      - What is the normative judgment? (is reaching this far undesirable)
  - James Madison opposed the bank as beyond Congress’ enumerated powers.
    - i.e. “all powers not delegated to the US by the Constitution, nor prohibited by it to it by the States, are reserved to the States or to the people.”
  - Congress has both implied and express powers both of which are equally
    - The Bank was held constitutional but the charter was allowed to lapse. However, Congress chartered a second bank – 80% owned by private owners, acted as the gov’ts primary fiscal agent and its notes were legal tender for the payment of government debt.

**Th, 13 Jan**

- **McCulloch v. Maryland**
  - Maryland tried to impose an annual tax on the National Bank and McCulloch (a cashier) refused to pay the tax, and Maryland sued in its own courts to recover the statutory penalty.
  - Congress has the power to incorporate a bank under the “delegation doctrine”
    - Congress’ powers were delegate to it by the States because the States have given their assent by signing the Constitution and by being represented in Congress.
  - “means-end matrix” = The Constitution limits the federal government, but the legislature needs discretion in how it executes the powers conferred to it so it can carry out its duties in the way most beneficial to the people. Therefore, let the end be legitimate and within the scope of the constitution, and the means be appropriate and not prohibited by the Constitution.
F, 14 Jan

- **McCulloch v. Maryland**
  - Maryland has the power to tax the REAL property of the U.S. Bank, but it cannot tax the bank itself. – This rubs with the concept of the lack of representation.
  - **JURISDICTION OF THE SUPREME COURT**
    - The SC has review of final judgments of a State’s highest court in three ways:
      - There is a question regarding the validity of a treaty or statute of the United States and the decision rules them invalid.
      - There is a question regarding the validity of a State statute on the grounds that the state law is not in accord with the Constitution or Federal law, and the decision rules the State law valid.
      - The state decision rules against a US law, treaty, or clause of the statute in rejecting a right or privilege claimed under that US document.
      - Judicial review of the acts of Congress, as established in **Marbury v. Madison**

- **Marbury v. Madison**
  - Establishes judicial review – which is not explicitly granted in the Constitution
  - Marbury is entitled to his commission – it was signed by President Adams, approved by the Senate, and affixed with the seal of the United States. The Secretary of State’s duty to deliver the commission is outlined by law.
  - Certain matters – “Political Questions” are not meant for judicial determination
  - **ORIGINAL JURISDICTION**
    - Cases affecting ambassadors, other public ministers and consuls
    - Where a state is a party in the suit.
    - Everything else is appellate
  - There is no jurisdiction for the SC to issue a writ of mandamus

Tu, 18 Jan

- **Eakin v. Raub**
  - The right of judicial review is held as professional dogma, but it should be questioned: The SC does not have an enumerated right to question the acts of Congress – in fact doing such is a usurpation of the legislative power.
    - The judiciary is supposed to interpret the laws, not scan the authority of the law giver. Such an inquiry must have limitations

Th, 20 Jan

- Federalist No. 78
o No legislative act can be contrary to the Constitution – otherwise this would be saying the servant is greater than his master, as the powers of Congress stem from the Constitution.
o The judiciary is not greater than the legislature, as it is without the FORCE or the WILL but it protects the Constitution.

- **Martin v. Hunter’s Lessee**
o A state passed a law that was in conflict with a US treaty, and the treaty takes precedent because it is part of the Supreme Law of the land and state laws cannot contradict it.
o The US Constitution is a part of every state constitution and automatically extends to all the states.

**F, 21 Jan**
- U.S. – German Government Systems
  o “Decentralized constitutional review” – ordinary courts (in the US, both Federal and State courts) pass on Constitutional questions in ordinary proceedings
  o “Centralized Constitutional Review” – constitutional questions are reserved for a special Constitutional court.
o In Germany rulings extend past the immediate parties, but not in the US.

**M, 24 Jan  ----- Court Stripping**
- **Ex parte McCordle** – Express Words of Constitution
  o Congress repealed the SC’s jurisdiction over this case while it was pending. – Appellate powers of the SC are not given by the Congress, but Congress can make exceptions and regulations to the SC’s jurisdiction as conferred in the Constitution.
  o The SC could not proceed to pronounce judgment because it no longer had appellate jurisdiction. Congress has the power to regulate but not the power to “destroy the court’s essential role in the Constitutional plan.”
  o **Article 4 mandates one Federal Law throughout the land – Article 3 established the SC as the constitutional instrument of implementation.**

 Essential functions of the court:
  - Resolve inconsistent or conflicting interpretations of federal law
  - Maintain supremacy of federal law and the Constitution when it is challenged by state authority.
  - Also to protect the constitutional rights of minorities and dissidents whose interests are often lost in majority politics.

- **U.S. v. Klein** – over stepped division of check and balance and necessary role.
  o The state seized lands owned from a man who aided the Confederacy, and before the case got to the SC, Congress passed a law that would force the SC to declare no jurisdiction.
  o The SC ruled the act unconstitutional and refused to apply it because it only meant to “withhold appellate jurisdiction as a means to an end” – i.e. they passed this act specifically to win this case – one party allowed to decide the controversy in its own favor. The court also viewed reviewing
Presidential pardons as part of their constitutional duty (check and balance).

- The possibility of Congress disabling the court has been avoided by the judiciary’s inherent conservatism and normative disinclination to cross lines that the other branches have drawn.

- **Robertson v. Seattle Audubon Society**
  - Congress still possess the possibility of “prescribing rules of decision to the Judicial Department”
  - A lawsuit was brought against the US Forest Service, claiming the treatment of old growth forests violated several federal statutes, and Congress passed legislation amending the old laws and making the requirements more lenient, going so far as to refer to the pending lawsuit by name.
  - The SC found it was an ordinary statutory amendment. – statutory directives bind both the executive officials and the judges.--- this means Congress can micromanage the court’s application of law.

**Tu, 25 Jan**

- **Baker v. Carr**
  - Tennessee did not reapportion its legislative districts so voting was unfair – legislative efforts to change it were always defeated.
  - This question was justiciable because it was not a political question and a matter of the Equal Protection Clause. – nonjusticiable political questions fall under the restrictions of the separations of powers.
  - What constitutes a political question?
    - Foreign relations – the formation and termination of treaties is left to other branches.
    - Dates of Duration of hostilities – the end of emergencies is a political determination. The end of a war does not necessarily end the war power.
    - Validity of Enactments – the length of enactment of a Constitutional amendment or other legislation is a political question.
    - The status of Indian tribes –
    - The formulation:
      - A constitutional commitment of an issue to a branch
      - Lack of judicial discovery or standard of resolution
      - The impossibility of avoiding a policy determination of a kind outside judicial discretion
      - The impossibility of the court making an independent resolution without disrespecting the judgment of another branch
      - Unusual need for adherence to a political decision already made
      - The creation of an obvious disagreement between the branches.

- **Goldwater v. Carter**
President Carter terminated a treaty with Taiwan and recognized China as a country. The SC ruled this was a political question and outside their jurisdiction. “nonjusticiable”

**Th, 27 Jan**
- **Powell v. McCormack**
  - Powell was elected to the House of Representatives and they excluded him from his seat, even though he met the requirements outlined in the Constitution. The SC. Said this was unconstitutional and he should get his seat.
  - By the time the SC heard the case, Powell had been reelected to the next session of Congress, but the case was not moot (**NEEDED for JURISDICTION**) because he asked for damages.
  - “Political Question Doctrine” – The House asserts that under the Constitution, the House has been Constitutionally delegated the power to assess his validity requirements. The SC said this is limited to the enumerated requirements and any other requirements are reviewable.
- **Nixon v. U.S**
  - Nixon asked the court to review the question of whether a group of Senators can review his impeachment facts and then present their report to the full body, pursuant to the Impeachment Trial Clause that said “the Senate shall have the sole power to try all Impeachments. The SC said it is a non-justiciable question.
    - “textually demonstrable constitutional commitment of the issue to a coordinate political department”
    - “lack of judicially discoverable and manageable standards for resolving the issue”
- **Mora v. McNamara**
  - The petitioners were about to be shipped off to fight in Vietnam and brought this case claiming that the action in Vietnam was illegal. The SC said non-justiciable political question.

**F, 28 Jan**
- **Gibbons v. Ogden** -- Defined Commerce Clause (Steamboat Ferries)
  - Commerce between states can continue on into the interior of a state and exists beyond than just on state boundaries.
  - Congress has the power to regulate commerce with foreign nations, among the several states or with the Indian tribes.
  - The decision in this case broke up a monopoly that New York tried to grant on the waterways that separated NY from NJ
- **Paul v. Virginia** – Commerce Clause
  - The court found that issuing an insurance policy was not an item of commerce – can’t be forwarded or shipped or put up for sale.
- **Kidd v. Pearson** – Commerce Clause
  - Congress’ power does not extend to internal commerce of states – reserved to the state itself.
• **The Daniel Bell**
  o If a subject carries items involved in interstate commerce, but operates wholly within one state, it is still subject to Congressional regulation.

• **Formalism v. Realism**

• **United States v. E.C. Knight Co. --- Formalism v. Realism**
  o **Formalism**
    ▪ The Court looks to the statute in question and the regulated activity to determine whether objective criteria are satisfied
    ▪ EX. – upholding legislation because goods cross state lines. This ignores actual economic effects and legislative motivation
  o **Realism**
    ▪ The court tries to determine the actual economic impact or the legislative motivation.
  o States have the power to protect it’s citizens lives, health and property.
  o If Congress has exclusive power to regulate something (like interstate commerce) then its failure to exercise that power is an expression that such subject should be free from regulation and states cannot regulate.

• **Champion v. Ames -- The Lottery Case**
  o It is not a part of personal liberty to introduce an item into commerce that is injurious to public morality.
  o Commerce involves navigation, sales, communication, traffic, and the transit of persons.
  o Congress has “plenary authority” over interstate commerce and can exert a prohibition as a form of regulation.

**M, 31 Jan**

• **Houston East & West Texas Railway v. United States**
  o The purpose of Congress’ plenary power over interstate commerce, through the commerce clause is to provide national unity by insuring uniform regulation against conflicting state laws – protect interstate commerce from local control.
  o Carriers are instruments of interstate commerce. – This means that Congress has power over intrastate commerce if it affects interstate commerce.

• **Stafford v. Wallace**
  o The Court will not substitute it’s opinion for Congress’ if there is a burden or obstacle in the way of interstate commerce.

• **Hoke**
  o A very broad interpretation of the commerce clause that seems to intrude on the states’ police powers

• **Caminetti**
  o Interstate commerce is not an instrument for Congress to pass any law it wants just because a certain subject may accidentally cross state lines.

• **Hammer v. Dagenhart (Child Labor Case)**
  o The making of goods (production) is not a part of commerce – this was intended to be a matter for local regulation.
  o The act in question is not an effort to regulation commerce but to standardize child labor laws.
“Slippery Slope” – if you allow Congress to regulate the means of production, then all local control of manufacturing and commerce are destroyed.

Tu, 1 Feb
- **Schechter Poultry v. United States**
  - The conditions in which an exercise of power is challenged must be examined, but no crisis enlarge constitutional power.
  - After the shipment of good (poultry) enters a state and is resold for intrastate use, then the interstate commerce has ended.
  - Stream of Commerce – where goods come to rest within a State temporarily and later go forward in interstate commerce. (it is ok to regulate this)
  - Direct Effects of interstate commerce are regulated by Congress (fixing of rates to discriminate on interstate commerce)
  - Indirect Effects of interstate commerce are regulated by the States.
- **Carter v. Carter Coal** (Cardozo’s Dissent)
  - The power of the commerce clause should be as broad as the need – depending on the wording in a case you can construe situations and commerce clause applications differently.
  - Sometimes intrastate activities (like the minimums and maximums of prices) directly affect interstate commerce.
  - The majority opinion said Congress cannot set the prices of intrastate activity even though it affects the price of interstate prices.

Th, 3 Feb
- **NLRB v. Jones & Laughlin Steel Corp**
  - The Court looks to an act’s effect on commerce and not the act itself, and the act must affect commerce in a close and intimate fashion in order to be subject to federal control.
  - The controlling principle is that Congress has the power to pass “all appropriate legislation” to protect, advance, and encourage the growth of interstate commerce. – this is not limited to transactions that are an essential part of the “flow” of commerce.
  - If activities have a “close and substantial” relationship to interstate commerce then congress can protect that commerce from burdens or obstructions.
- **United States v. Darby**
  - Production is not a part of interstate commerce, but shipping those products are. Since Congress has “plenary power” to regulate interstate commerce then they can restrict the shipment of goods.
  - This decisions overrules *Hammer v. Dagenhart*.
- **Kentucky Whip**
  - Congress can restrict goods it feels are noxious or injurious to society from interstate commerce – upholds *Lottery Case*.
- **Mulford v. Smith**
  - When legislation is intended to protect interstate commerce, even when it also affects similar intrastate commerce, then it is ok.
F, 4 Feb

- **Wickard v. Filburn**
  - This decision broaden the scope of interstate commerce to include local and personal commerce – this had the possibility to infringe on a lot of rights (wheat farmer’s personal wheat) but the court and congress showed restraint.
  - you can’t view the amount in isolation or remove it from the scope of federal regulation because of it’s trivial amount.

M, 7 Feb

- **Marsh v. Alabama -- State Action**
  - If the sidewalk had been public and not privately owned, then her actions of distributing religious literature would have been fine. – In this case, ownership is not absolute dominion because the company opened its property for public use.
  - In balancing the rights of owners and the rights of free speech and religion, the latter take precedent. (freedom of speech and religion is fundamental to a free government of free men.) --- you do not have the right to exercise speech on privately owned property that is not necessarily considered public space (like a shopping center).

- **State Action**
  - The state can’t discriminate through statutory means because the Bill of Rights was designed to protect individuals from the government, both federal and state. It was not designed to protect people from each other.
  - A statutory system, although no direct action taken by a state, may constitute state action and fall within the Constitutional Protections.

- **Terry v. Adams -- State Action**
  - The function of a private political party (the Jaybird Association) takes the place of primary voting function and is equitable with state action.
  - They cannot deprive black people the right to vote as a violation of the 15th amendment (the right to vote unabridged by race or color) – you can’t just circumvent this.

- **Shelley v. Kraemer -- State Action**
  - The 14th Amendment does not protect black people against private and personal agreements – i.e. they can agree to restrict the sale of the property to white people only. This is not State Action
  - When the state enforces these restrictive agreements it is state action, which you can’t do. The states can’t lend judicial enforcement to these private agreements or it is a violation of the 14th Amend.

Tu, 8 Feb

- **Heart of Atlanta Motel v. United States**
  - Discrimination against Negroses by hotels presented a burden on interstate commerce, and Congress passed The Civil Rights Act to fix it. – Congress also felt they were correcting a social wrong.
Motels and hotels can be regulated by Congress because even though they may be an intrastate business, they are integral to interstate commerce.

- **Katzenbach v. McClung**
  - Congress put on evidence that restaurants that discriminate burden interstate commerce by discouraging travel. Additionally, they served food that was a part of interstate commerce – you can’t view the amount in isolation or remove it from the scope of federal regulation because of it’s trivial amount.
  - The Court agreed that Congress had the power because restaurants burden interstate commerce when they discriminate. An intrastate business had the ability to impact other states.

- **Perez v. United States**
  - Loan sharking is a national issue and one way that organized crime functions. It also impacts interstate commerce (how?) therefore Congress can regulate it, even though it is a criminal act.
  - The Commerce Clause cannot be viewed as an adoption of a general police power because this would break down the basic federal structure.

**Th. 10 Feb**

- **Bailey v. Drexel Furniture Co. (Child Labor Tax Case)**
  - Congress cannot levy a tax that is meant as a penalty in order to regulate certain activities – this infringed upon the State’s police power and is an abuse of the Tax Power

- **U.S. v. Kahriger**
  - A tax is not necessarily invalid if it deters or discourages certain activities, so long as it is a viable tax.

- **U.S. v. Butler**
  - Congress cannot use economic coercion and the Spending Power to regulate activities. They cannot effectively use the carrot of federal funding to achieve means that otherwise would infringe on state powers.

- **Charles Steward Machine Co. v. Davis**
  - A program is not economic coercion if it does not directly coerce someone into action.

**F. 11 Feb**

- **Woods v. Cloyd W. Miller Co**
  - If the war time situation causes the post war problem and the problem is determinate rather than open-ended, then the exercise of the war powers clause to solve the problem is constitutional
  - The “war power” includes power to remedy evils which have arisen from the conflict and continues for duration of that emergency, and does not necessarily end with cessation of hostilities.

- **Missouri v. Holland**
  - The use of the “necessary and proper” clause is not limited to the conferred powers, and treaties that the U.S. enters into and that do not conflict with the Constitution are part of the supreme law of the land.
  - While the great body of private relations usually fall within the control of the state, a treaty may override the power of the state.
• *Reid v. Covert*
  
  - Treaties that conflict with Constitutionally granted rights are not valid and are unconstitutional. This does not conflict with *Missouri v. Holland* because one deals with policy and the other deals with personal rights.
  - No agreement with a foreign nation can confer power on Congress or on any other branch of government which is free from restraints of Constitution.

**M, 14 Feb**

• *U.S. v. Lopez*
  
  - Criminal law and police power is normally a power of the states and is not one of the enumerated powers. The Federal government tried to punish people with guns in a school zone by extending the “commerce clause.” The court identified 3 broad categories under which Congress may exercise the “commerce clause,” but guns at school did not fit into any of these, and allowing it to do so would dangerously expand the commerce clause power. – “Slippery Slope” argument.
    - The court rejected the “costs of crime” and “national productivity” arguments
  - Chief Justice Rehnquist, held that Gun-Free School Zones Act, making it federal offense for any individual knowingly to possess firearm at place that individual knows or has reasonable cause to believe is school zone, exceeded Congress' commerce clause authority, since possession of gun in local school zone was not economic activity that substantially affected interstate commerce.

• *U.S. v. Morrison*
  
  - The Constitution requires a distinction between what is truly national and what is truly local – accordingly Congress may not regulate noneconomic, violent criminal conduct based on the effect of that conduct on interstate commerce.
  - The scope of the interstate commerce power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.
    - There are three broad categories of activity that Congress may regulate under its commerce power: first, Congress may regulate the use of the channels of interstate commerce; second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and, finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce.

**Th, 17 Feb**

• Race and the Constitution
  
  - Race was the biggest source of friction in forming the Constitution between states with slaves and states without slaves (Delegates would have left if slavery was prohibited). – the result was that the Constitution did not prohibit nor encourage but accommodated slavery.
    - Slaves were recognized as a 3/5 person for representation in the House,
- Congress was prohibited from banning the importation of slaves until 1808
- Free states were obliged to return escaped slaves at the owner’s request.
  - It was suggested that slave owner’s rights are protect under the 5th Amendment

- **Groves v. Slaughter**
  - The case dealt with the restriction of the importation of slaves into Mississippi. This was a possible restriction upon interstate commerce, which would give Congress the power over slavery instead of the states. The majority opinion avoided the issue altogether by requiring the passage of activating legislation. There were three concurring opinions with very different ideas
    - McClean – He straddles the dilemma, denying slaves were an item of interstate commerce, because they are defined as people under the Constitution. However, slavery is an important state power and should be left to the states.
    - Taney – The power lies totally with the states
    - Baldwin – a state cannot allow slavery but abolish the slave trade because slaves are an item of commerce. This grants privileges to citizens in a certain state that they do not have in another state. This messes up transit of property and causes disharmony between the states. Hahahah

- **Prigg v. Pennsylvania**
  - This case highly divided the court. The issue in the case was the second section of the 4th Article of the Const. Since slavery in a local consideration, without this clause, then every free state could declare the liberty of any runaway slave in its borders. However, if the owner of the slave cannot redress the issue, without being hindered by the laws of any state, it is the national government’s job to assist in the redress.
  - The police power is reserved to the states, but this is not necessarily a police power and becomes an issue of the states trying to add provisions onto decisions by Congress – even when Congress is silent the states may not necessarily make laws where it is a national issue.
  - Essentially, the decision said that Article 4, Section 2, Clause 3 was self-executing, which meant that it could operate under its own force without the need of Congressional Legislation and authorized self-help remedies.

**M, 21 Feb**

- Exclusivity between States and Federal Govt.
  - Webser set out the following levels to interpret State vs. Congressional power in commercial regulation:
    - Exclusive Congressional control
    - Fully concurrent State and Congressional control
    - Partial concurrent State power
- Supremacy of a Congressional statute over a conflicting State statute
  - *Gibbons v. Ogden*
    - The court held that Congress has exclusive power – “authority to regulate implies a full power of the thing to be regulated.”
    - Makes an exception for “inspection laws” as outside of commerce but the gateway of interstate commerce.
  - *Plumley v. Commonwealth of Massachusetts.*
    - Plumley violated a Massachusetts law concerning adulterated oleomargarine. The court said States should have the power to protect the health and safety of its citizens.
    - Such laws are not inconsistent with the power of Congress to regulate commerce among the states.
  - *Cooley v. Board of Wardens*
    - Penn. Had a law requiring the use of local pilots to navigate the Delaware River.
    - The power to regulate commerce is a vast field with various subjects. Some subjects need a single uniform rule, while others demand diversity that only local regulation can provide. – this law is not in conflict with any law of Congress and is ok.
  - *Prudential Ins. Co. v. Benjamin*
    - The court upheld a S. Carolina tax on foreign insurance companies by concluding that a federal law authorized the tax.
    - Not all state laws affecting interstate commerce will be struck down because this would do more to destroy state regulatory power than even the broadest view on Congress’ power over interstate commerce.
    - Make sure states have the necessary regulatory power while not disrupting national uniformity in important areas.
  - *South Carolina v. Barnwell*
    - States control highways, and pay for them, and are in charge of their safety. Therefore States can regulate safety and maintenance standards on them without an undue burden on interstate commerce.
  - *Southern Pacific Co. v Arizona – Dormant Commerce Clause*
    - The court held that an Arizona law restricting the lengths of passenger and freight trains unreasonably burdens commerce by restricting the free flow of commerce between states.
    - The law is intended to be a safety regulation, but little to no safety advantages are involved and Arizona overstepped its boundaries. – Congress would override this law but they don’t have time to legislate on every burden the states place on commerce.
  - *Pike v. Bruce Church, Inc.*
    - Arizona passed a law regarding the packaging of cantaloupes and the court used the following test: Does the state statute even-handedly affect a legitimate local interest and has only an incidental interstate commerce effect, and does it impose an undue burden on commerce?
The court held that it did pose an undue burden because Pike would have to build a $200,000 facility because it packaged its Arizona raised cantaloupes in California and did not notifying the consumer that the fruit was raised in Arizona.

**M, 28 Feb**

- **Bibb v. Navajo Freight Line** --- Undue Burden on Commerce Clause
  - Question is whether Illinois statute regarding mud flaps on trucks interferes with the Commerce Clause.
  - Unless the national interest strongly outweighs the safety benefits of a state statute governing the highway, then the court will let the law stand.
  - In this case, the Illinois law places an undue burden, forcing carriers to change trucks when traveling through Illinois because other states had contradictory but similar laws. – too heavy of a burden.

- **Kassel v. Consolidated Freightways Corp.** Undue Burden on Interstate Commerce
  - Question: Can an Iowa statute prohibit certain large trucks unconstitutionally burden interstate commerce?
  - Yes it is an undue burden and there is no substantial increase in safety with the law. – it does not outweigh the national interest in keeping interstate commerce free from serious interferences.

**Tu, 1 Mar**

- **Baldwin v. G.A.F. Seeling, Inc.**--- Discrimination Against Interstate Commerce
  - There is a New York statute that sets a minimum price for buying New York milk that encourages people to buy from New York dairies, but Seelig buys cheaper from a Vermont creamery. – refused to grant them a license.
    - You can import cheaper milk, but you cannot resell it in New York.
  - This creates a barrier similar to a custom duty and subjects the commerce between states. – One state cannot economically isolate itself.
  - when a state seeks to promote a valid health interest on a non-discriminatory basis, then the *Southern Pacific* balancing test applies
    - when a state discriminates against interstate commerce its actions are invalid.

- **Welton v. Missouri** --- Discrimination Against Interstate Commerce
  - Out of state peddlers had to have licenses, but in-state peddlers did not
  - The court struck this down as discrimination against interstate commerce
  - “strict scrutiny” test to see what the underlying purpose of a law is and how its application affects constitutionality

- **Hunt v. Washington State Apple Advertising**
  - A C. Carolina law said all closed containers of apples could not bear any grade other than the applicable US grade or standard. This was intended to eliminate confusion and deception.
This discriminates because it strips away competitive and economic advantages companies have gained through strict inspection of their products.

- Edwards v. California
  - Court struck down a law forbidding you from brining in an indignant person into California.
  - A state can’t isolate itself by closing its borders to other states

- Heal v. Beer Institute
  - Tried to reserve pricing for a region – can’t do that because it discriminates against beer brewers and shippers engaged in interstate commerce.

- Dean Milk Co. v. Madison
  - A law made it illegal to sell milk that wasn’t processed and bottled at an approved plant within a 5 mile radius of Madison. This imposes an undue burden.

- Beard v. City of Alexandria
  - Door to door solicitation prohibition was upheld. – does not burden interstate commerce.

**Th, 3 Mar**

- Philadelphia v. New Jersey
  - Does a prohibition on the importation of solid or liquid waste from out of a state put an undue burden on interstate commerce? The state claims this was done to protect the environment, and therefore outside the realm of Congressional control.
  - Even a legitimate goal cannot be achieved through the illegitimate means of isolating the state from the national economy.—cannot impede the flow of commerce

- Hughes v. Oklahoma
  - Challenges under the commerce clause to state regulations of wild animals are decided along the same guidelines as other natural resources.
  - 3 Tests of Whether a Burden is Acceptable of Undue
    - does the state statute regulate evenhandedly (and effects interstate commerce incidentally) or does the statute discriminate against interstate commerce on its face (directly) or as a practical effect?
    - Does the statute serve a legitimate local purpose?
    - Is there another way to promote this local purpose without discriminating against interstate commerce.
  - This statute directly affects interstate commerce by blocking the flow. – a state’s ownership of animals can no longer force others to bear the force of such conservation when other methods are available.
    - Not a “last ditch conservation effort”

**F, 4 Mar**

- Maine v. Taylor
Maine’s statute restricts interstate commerce on its face (directly) and therefore is subject to strict scrutiny regarding a substantial local purpose. The Court found that Maine’s regulation on the flow of interstate commerce was OK because it served a substantial local purpose and there was no other alternative remedy.

- **Rice**
  - ?
- **Hines v. Davidowitz – State Law vs. Federal Law**
  - The uniformity of Alien Registration takes precedence over state laws – federal regulations are superior to contradictory state regulations.
  - Federal regulations are superior to contradictory state regulations.
  - In this case there is no collision between Federal and State laws because even though the statutes concern the same incident, they regard different costs.
- **City of Burbank v. Lockheed Air Terminal – State Law vs. Federal Law**
  - Aviation requires a standard federal regulation, and federal control is intensive and exclusive. Therefore Federal Regulations (FAA) take precedent over any local ordinances.

**M, 14 Mar**
- **Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development**
  - Congress and Federal law can preempt state laws for uniformity and the need for increased safety. – Certain fields require dominant federal interest. Nuclear power is one of them.
  - The historic police powers of the states are not superceded, because the federal gov’t is only concerned with safety – not licensing or rates.
  - There is not the need for preemption of a state law when the federal gov’t completely occupies a particular field (nuclear safety in this case). States are prohibited from passing laws in this area anyway.
    - A state law is preempted if “it stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.”
- **Ray v. Atlantic Richfield Co.**
  - When a state’s exercise of its police power is challenged under the Supremacy Clause, the Court assumes that the historic police power of the States was not meant to be superceded by the federal law, unless that was the clear and manifest intention of Congress.
  - Congress wanted to establish a uniform regulation for oil tanker design and operation.

**Tu, 15 Mar**
- **Alexander Scrap**
- Reeves
- Limbach
• Wunnicke

Th, 17 Mar
• Corfield v. Coryell
  o slavery was allowed or prohibited as a matter of self-determination by the individual states.
  o The “Privileges and Immunities” clause became the focal point for arguments that fundamental rights and liberties exist that are not enumerated in the Constitution.
  o This case said fundamental rights belong to everyone, and not all of these rights are enumerated in the constitution but are fundamental.

• Baldwin v. Fish and Game Commission of Montana
  o The Privileges and Immunities Clause has been interpreted to prevent States from imposing unreasonable burdens on the citizens of other states in their access to common callings, ownership of land, and access to state courts. --- States can make a distinction between people based on residency.
  o “Privileges and Immunities Clause” bear upon the items that are vital to maintaining the Nation a single entity.
  o The clause applies when the state is impeding interstate commerce or interfering with someone’s livelihood – not when it is just recreation or sport.

• Toomer v. Witsell
  o The state discriminated based purely on residency and interfered with non-residents’ livelihood without showing cause that non-residents severely impacted South Carolina’s environment more than residents.

• Hicklin v. Orbeck
  o In order to discriminate on non-residents, the state must show there is a reasonable relationship between the danger represented by them as a class and the discrimination practiced on them.
  o Alaska’s unemployment problem was not a fault of the non-residents, so therefore Alaska can not impede their priviledges and immunities to seek employment.

• Supreme Court of New Hampshire v. Piper
  o The right to practice law is protected by the “privileges and immunities clause” and admittance to the bar cannot be limited just to state residents.

• Camden
  o The privileges and immunities clause applied to cities but not to this law.

F, 18 Mar
• National League of Cities v. Usery – Government Immunity
  o The League argued that Congress could not pass legislation that told cities and states what to do under the “doctrine of intergovernmental immunity.” -- the act imposed a minimum wage and maximum hours on employees of public employers.
Congress cannot invade on the States sovereign ability to be a state that functions as a separate and independent entity to the federal government. This act forces state to compromise their services. – Can’t do this because States as states are different than corporations and Congress cannot impair their ability to function effectively in a federal system.

- *Garcia v. San Antonio Metropolitan Transit Authority.*

**M, 21 Mar**
- *Printz*
- *Alden*

**Tu, 22 Mar**
- *Slaughter-House Cases*
- *Lochner*
- *Muller*
- *Adkins*