Federal Jurisdiction Outline

I. Justiciability
   a. Foundations of jurisdiction
      i. The limits to judicial power
         1. Inherent limitations: Depend on executive to enforce; Fed. 78 –least dangerous branch
         2. Constitutional “case or controversy” and prudential concerns
         3. Separation of Powers limitations: Impeachment and jurisdiction stripping
            a. Juris Stripping: exceptions clause shrinks app. juris of ScT.
      ii. Policies underlying justiciability
         1. Sep. of power – “case or controversy” stops intrusion on branches
         2. Conservations of resources: Time, money, political capital
         3. Improved decision making when all facts presented
         4. Fairness to individuals not before the court
      iii. Policies must be balanced against the need for judicial review
         1. Can’t prevent court from their essential function: uphold Constitution and redressing violations of federal law
         2. Protect the rights of the minority from the majority
      iv. Normative determination whether judges should have flexibility in determining which cases to decide or firm and predictable as possible
      v. Retroactive application of the law: Changes to law just realize proper interpretation: Erie v. Tomkins – took away money awarded as proper interpretation of the previous law
         1. Prospective: apply forward if judges “made” law (Non-retro: only to some in pipeline)
   b. Constitutional decisions and the Court
      i. Marbury v. Madison: court can review actions of exec, political questions beyond reach of court, AllI sets ceiling on ScT juris, court can declare statute UC, authoritative interp of Const.
      ii. Ashwander v. Tennessee Valley Authority (1936) - Court will avoid Con decisions or limit scope of decision if there are non-Con grounds for the decision (avoidance doctrine), where record inadequate for effective judicial review, or where fed. issue is not properly presented
   c. Prohibition against advisory opinions
      i. Criteria to avoid being advisory opinon
         1. Real dispute/Injury – threat of injury can be injury (dec judgment)
         2. Adverse paries – Bring forth all evidence frame issues
         3. Substantial likelihood of redress
      ii. Executive branch review invalidates judicial participation
         1. Hayburn’s case (1792) – couldn’t decide nonbinding amounts of Rev. War benefits
         2. C&S Airlines – couldn’t review Aeronautics Board b/c the Pres could ignore decision
      iii. Congress cannot constitutionally overturn Supreme Court decisions
         1. US v. Klein (1872) – Congress adopted rule that pardon was proof of aiding rebellion and that court lost jurisdiction at that point, UC b/c it infringed on President’s pardon power and can’t prescribe decision of pending cases to Ct
         2. Robertson v. Seattle Audubon (1992) – change in land law OK b/c it was general amendment to law not directed at pending cases
         3. Plaut v. Spendthrift Farms (1995) – statute allowing securities cases beyond court limit of 1 yr UC b/c it overturned a Supreme Court decision
      iv. Collusive litigation (matching interests- danger of adequate rep.) invalidate ScT review
         1. Muskrat v. US (1911) – Congress passed law and set up suit to facilitate Con law ?’s in Native American land allotment; non-justiciable b/c litigants were not adverse, advisory
         2. Govt confesses error after winning – on appeal there is no adversity to parties. Allowed but Court either gets amicus for other side or accepts “on independent review of record”
   d. Standing
      i. Values served by limiting standing
         1. Separation of powers: restrict review when decision involves ruling another branch UC
         2. Judicial efficiency: prevent flood of ideological lawsuits
         3. Improved judicial decision making: ensure advocate will have enough personal concern to effectively litigate the matter
         4. Fairness: ensure intermeddlers cannot protect others that do not wish to be protected
      ii. Constitutional requirements of standing: Injury, Causation, Redressability
      iii. Prudential requirements of standing: No 3rd party rights asserted, no general grievances
      iv. Injury in Fact
1. Sierra Club (1972) – ideological interest not sufficient: no allegation that any member of Sierra club used area to be developed for ski resort; no standing
2. SCRAP (1973) – aesthetic injuries sufficient: students have standing to challenge freight rate increase b/cdiscourages recycling, harms enjoyment of nature in DC area
   a. Outlying case if didn’t show they used the areas affected
3. Lujan v. Nat’l Wildlife (1992) – Court denied standing to users of land in vicinity in env’tl challenge b/c allegation too general, P must use specific land subject to new regs
4. Allen v. Wright (1984) – no standing to sue govt. for enforcement of tax status rules for discriminatory schools b/c right to have govt. act w/in law not sufficient for standing
   a. Norris: gives standing to sue over giving textbooks to segregated schools
5. ASARCO – state court decision may provide injury for fed standing (unlike Nike where Cal. SCt decided there was Cal cause of action: no final judgment – no injury)
   a. State law can define right, dad didn’t have custody for under God; no standing

v. Causation and Redressability
1. Linda RS v. Richard D (1973) – unwed mother did not have standing to enjoin state to prosecute fathers of illegitimate children for child support b/c recovery speculative
2. Regents of UC v. Backe (1978) – white plaintiff challenged UC minority admissions standard had standing b/c the barrier was an injury to equal protection
   a. Outlier, maybe characterize complaint as opportunity to compete blocked
3. Duke Power Co (1978) – town residents had standing to challenge constitutionality of state law limiting damages for nuclear plant – see description in ripeness
4. Allen v. Wright (1984) – no standing to challenge enforcement of tax status for discriminatory schools b/c speculative whether enforcement leads to change in school

vi. Generalized Grievances
1. Frothingham (1923) – established rule that TP could not sue b/c interest in treasury minute and indeterminable, need to establish more than suffering in an indefinite way in common w/ the people (Doremus denied SCt review even w/ state standing)
2. Flast v. Cohen (1968)– granted standing to TP challenging financial support to religious schools under Establishment clause
   a. Considered an outlier and limited in application
   b. TP standing only permissible is when govt. expenditure violates establishment clause; upheld in future cases challenging aid to non-public schools
3. Valley Forge (1982) – no standing for TP challenge of transfer of army hospital land (worth $500M) under establishment clause, severely limits Flast

vii. Congressional Creation of standing
1. FEC v. Atkins (1998)– statute gives standing to person when right to information about political committees is implicated and statute gives right to sue for this information
2. Lujan v. Defenders of Wildlife (1992) – Congress could not create standing for individuals who did not satisfy “injury” Con requisite
3. Congress can create standing by elevating injuries previously inadequate to the status of legally cognizable injuries, but can’t create standing beyond reach of AIII – Lujan

viii. Special Cases for Standing
2. US v. Hays –must be w/in dist. to challenge voting district
3. Municipalities don’t have standing to challenge state legislation b/c existence from state

ix. Organizations have standing on behalf of members if
1. Members would otherwise have standing
2. Interests sought are germane to organization’s purpose
3. Claim and relief requested doesn’t require individuals

x. Third Party Standing: A party can only assert injuries he has suffered and cannot bring claims of third parties not present in the suit
1. Yazoo RR (1912) – RR has no standing to argue possibility that others might abuse law to demand outrageous settlements in forced claim settlement statute
2. Exception: Close Relationship between P and 3d party
   a. Pierce v. Society of Sisters (1925) – Parochial school allowed to challenge statute forcing public schools
   b. Ohio v. Powers (1991)– relationship between jurors and D, but no relationship between lawyers and possible D in Kowalski – explained by ability to sue
3. Exception: Where 3d party unlikely to be able to sue
   a. Ohio - D can assert rights of jury who wouldn’t know of discrimination
4. Craig v. Boren (1976) – bartender can assert rights of underage boys b/c 1) relationship between parties and 2) inability of underage drinkers to pursue suit (mootness)
   a. Ensures adequate representation, both exceptions needed

5. Exception: Overbreadth Doctrine
   a. Limited to 1st amendment b/c of chill, must be substantial overbreadth in relation to statute’s plainly legitimate sweep
   b. Coates v. Cincinnati – statute making gathering of 3 or more illegal is vague and overbroad

xi. Severability: Courts should sever UC portions before making whole statute UC (presumption)
1. Alaska Airlines – UC veto power, but kept hiring requirements
2. Problem with severability if the sections of the statute of interdependent
e. Mootness – actual controversy must exist at all times during the proceedings
   i. DeFunis v. Odegaard (1974) – UW law student sues for admission to law school b/c affirmative action is UC, moot b/c he is granted admission under preliminary injunction
      1. Not capable of review b/c he will never go to law school again
   ii. Capable of Repition but evading Review exception
      1. Erie v. Pap’s AM (2000) – state enjoined enforcement of anti-nude dancing statute, city appealed. Club closed, tried to dismiss as moot; Court rejected b/c it could open again
         a. Can’t just abandon case to insulate decision
      2. Roe v. Wade – pregnancy over but Court continues w/ case b/c women often get pregnant more than once
         a. Individual in case must be able to repeat – See DeFunis
   iii. Calderon v. Moore – If primary relief requested becomes unnecessary or improper, collateral consequences may prevent case from being moot
   iv. Death of criminal makes case moot, but criminal cases not moot when criminal is released b/c short sentences might always evade review and convictions have collateral consequences
   v. Class Actions: Class certification does not become moot on expiration of named members claim (Geraghty); after certification suit is not moot so long as some members have live issues

f. Ripeness – separates matters premature for review b/c injury is speculative and may never occur
   i. UPW v. Mitchell (1947) – Hatch Act claims (law forbids exec employees from participating in politics) not ripe b/c employees did not violate act and claims of interference too general
      1. Unjust and inconsistent if workers have to break the law for case
      2. Yee court allows issue to percolate in lower courts before ruling
   ii. Abbott Laboratories (1967) – Food and Drug Act amendment challenge is ripe b/c labs would suffer economic loss if they had to change the labels on all of their bottles before challenge
   1. Evaluate hardship to party of not reviewing and fitness for review
   2. Duke Power – ripe b/c case needed to be decided for industry to move on
   iii. Lucas v. South Carolina 1992) – Permanent taking claim not ripe, but temporary taking ripe


 g. Ripeness and Injury requirements for equitable relief
   i. LA v. Lyons (1983) – no standing to pursue equitable relief b/c no showing of substantial likelihood that he would be choked in future
      1. Damages are available and would accomplish same thing
   ii. O’Shea v. Littleton – black citizens did not have standing for equitable relief on charge of discriminatory sentences and bond amounts b/c they are not currently being charged (no great and immediate harm), and federal could relief will be intrusive and unworkable
      1. Consider if equitable relief would be constant monitoring of executive
   iii. Doe v. Bolton – physicians consulted by pregnant women could pursue claim against anti-abortion statute w/o showing harm or threatened prosecution – difficult to distinguish

h. Political Questions
   i. Nonjusticiable when Con commitment to another branch, lack of judicial standards for resolving, impossible to decide w/o policy determination, impossible to undertake resolution w/o lack of respect for other branches, potential embarrassment from disagreements w/ other branches
   iii. Luther v. Borden (1840) – Rhode Island fight for control of govt. nonjusticiable
   iv. Guarantee Clause: Colgrove – republican govt. under guarantee clause nonjusticiable
      1. Pacific States Tel. Co. – Whether referendum consistent w/ rep. govt. nonjusticiable
      2. Baker v. Carr – Equal protection provides justiciable standard for reapportioning voting
         a. Davis – extends Baker to political gerrymandering

II. Congressional Control over Distribution of Judicial Power
a. Jurisdiction Stripping
i. Proponents argue that unambiguous language of Constitution gives Congress the right to make exceptions, but opponents argue juris stripping cannot be used to violate other Con provisions

1. AIII §2 – “App juris of SCt shall be subject to such Exceptions as Congress shall make”
2. Ex Parte McCardle (1869) – Supreme Court allows Congress to remove habeas jurisdiction of 1867 law in regards to reconstruction newspaper writer
   a. But, Court emphasizes it still has habeas under 1789 Act
   b. Fact that Court keeps jurisdiction over Ex Parte Yerger supports the idea that habeas jurisdiction not eliminated
3. US v. Klein (1872) – SCt invalidated statute that attempted to limit Court’s app juris b/c changing pardons would inhibit a power given to executive and change court decisions
4. Felker v. Turpin (1996) – Unanimous upholding of jurisdiction restriction that did not allow habeas review unless approved by US Court of Appeals b/c it still had original habeas jurisdiction (not used since 1925)
5. Lauf (1938) – Congress restricted authority of lower federal courts to issue injunctive relief in labor disputes making agreements not to join a union unenforceable; SCt upheld finding no question that Congress can define and limit juris of lower fed courts

ii. Congress may not strip jurisdiction so as to take away due process

1. Battaglia – Congress can take away juris of court to hear claim, but court can still hear due process claim about not having claim
   a. Ct will go out of its way to stop foreclosing all Jud. Review
   b. Even if just state court, some court must be able to hear
2. Yakus v. US – Court upheld federal law requiring criminal to go through legislatively mandated process before judicial review (example of Health and Human Services to set up abortion rules which would be appealable to the DC Circuit)
3. Can make individuals pursue legislative process, unless due process is implicated

iii. AIII, §1: Jud. power shall be vested in SCt and lower courts established
1. Must be some fed juris and in order to have appellate jurisdiction (see above) there must be some appeal even if just from state courts
2. Story’s arguments: A federal court must be able to deal with everything in AIII, §2 either through original or appellate juris b/c
   a. Congress must vest all judicial power in some federal court
   b. Any cases not heard in state court must have lower federal court so that Supreme Court can use is appellate power
   c. Obligation restricted to cases Framers used adjective all

b. Non-Article III Tribunals

i. Growth and powers of Article I courts

1. Article I tribunals can determine public rights (claims against govt for customs, taxes etc.) due to a long history of legislative courts
2. Crowell v. Benson (1932) – Court first allowed non-A III courts for private rights as adjuncts to AIII courts (Ultimate decision making authority must rest in AIII courts)
3. Chevron v. Nat'l Resources Def. Counsel (1984) – AI Courts can determine questions of law when the interpretation is clear; when unclear or ambiguous, AI court determination must be a permissible construction

ii. Agency Adjudication in Criminal Cases

1. Admin agency cannot directly impose criminal punishments
2. WWII cases must be considered in context
   a. Yakus (1944) – crim court could be bound to give conclusive effect to decisions of prior judicial proceeding
   b. Falbo (1944) – To appeal agency decision to AIII Court must exhaust admin.
   c. Estep (1946) – Factual determinations of agency can’t be challenged unless they present juris issues of agency
3. US v. Mendoza Lopez (1987) – where defects in admin proceeding foreclose judicial review some alternative judicial review must be available before facts can conclusively establish an element of a criminal offense

iii. Northern Pipeline (1982) – Bankruptcy Act UC b/c it transfers AIII powers to non AIII court thats not adjunct (juris over all civil matters, enforcement powers, “clearly erroneous” standard)

1. Dissent argues for functional approach considering sep of powers
2. Thomas v. Union Carbide (1985) – Agency control over EPA reimbursements to 2nd producer of approved chemical OK b/c “like public right” in complex reg. scheme
3. Commodity Futures v. Schor (1986) – Commodity commission can hear claims for reparations and **state law counterclaims** from the transactions
   - a. Efficiency of agency balanced against AIII goals of fairness of independent judiciary and structural role of judiciary in separation of powers
   - b. Consent to power of agency eliminates claim to AIII Court


**iv. To determine constitutionality of any provision for adjudication by a non-AIII tribunal:**
1. If provision falls within an “exceptional” (territorial court, military court, or public right) category of Northern Pipeline plurality or within “adjunct” theory it passes
2. If not justified under Northern Pipeline, then consider if nonetheless justified under Schor balance of AIII goals.
   - a. Consent often crucial (bring counterclaim = consent)
   - b. Way to rationalize result may be to classify as sufficiently bound up in regulatory scheme to make like “public right”
3. If non AIII tribunal is permissible, then consider whether jury trial is necessary
   - a. maybe coextensive determination b/c jury right and AI courts historical - if AI courts are available then maybe the 7th amend does not apply
   - b. If jury trial incompatible then assignment of dispute to that forum is UC
4. Proceedings subject to Due Process Clause, but Due Process on its own does not require adjudication by AIII judge (tenure, salary)

**v. Military Tribunals:** Ex Parte Milligan: if courts are open must try American citizens in criminal court, Ex Parte Quirin: if belligerent to laws of war, they can be tried in military court, Hamdi: plurality finds that he cannot be held indefinitely, but military court OK w/ some due process

**c. Federal Authority and State Court Jurisdiction**
1. Tafflin v. Levitt (1990) – Presumption of concurrent juris, rebuttable by explicit statute, unmistakable implication from leg. history, incompatibility between state juris and fed interest
   - 1. It takes an affirmative act of Congress to oust states of jurisdiction
   - 2. Strong presumption toward concurrent juris because of federalism concerns
      - a. Argument for exclusive fed. juris: uniformity, expertise of federal judges, federal court sympathetic to federal law
      - b. Tennesse v. Davis (1880) – establishes removal power, against presumption of concurrent jurisdiction – why if both are capable- preempt state law?
2. State can’t control federal actions: no habeas, no writ of mandamus, injunctions in rare cases
   - 1. Tarble’s Case (1872) – state court can’t order federal action
      - 1. Douglas v. NY – NY Court doesn’t have to hear fed. action from Conn. Citizen, against Conn. Corp., based on accident in Conn.
      - 2. Mondou – Conn. Ct. must accept federal FELA claim if it accepts analogous state claim – can’t discriminate against fed. law
3. Dice v. Akron, Canton, Y’town RR (1952) – state court must use trial by jury b/c state procedure takes too much away from rights accorded by the act to permit usage of “mere local procedure”
   - 1. If state procedure would close off lawsuit (like substantive law) then fed law must be followed – Outcome determinative?
   - 2. Frankfurter dissent: Concern for state sovereignty
   - 3. Felder v. Casey (1988) – state notice of claim statute that required written notice w/in 120 days could not preempt §1983 claims

III. **Review of State Court Decisions**
1. Martin v. Hunter’s Lessee (1816) – Ct authority to review state court judgments
   - i. Each entity independent, but uniformity of federal law requires review
   - ii. Story’s arguments
      - 1. Congress obliged to vest all judicial power “in original or appellate form” in some federal court
      - 2. If any cases in AIII power (assuming not in SCt original juris) are beyond juris of state court, then Congress must make inferior lower courts to ensure SCt appellate review
   - iii. Constitution of people, not from states. Ct enforces rule of people
   - iv. If state court refuses to adhere: remand for decision consistent w/ SCt interpretation, SCt enter judgment on own, SCt issue writ of mandamus and find state court judge in contempt
2. Murdock v. City of Memphis (1875) – SCt not authorized to examine state interpretation of state questions when unused Naval yard given back to city
i. Fox Film v. Muller (1935): When state court decision rests on state and federal law, the S Ct will not review if state ground is independent and adequate to support results

ii. Justifications: no advisory opinions, avoids unnecessary ConLaw rulings, harmony between federal and state courts, conserve resources

iii. Criticism: Inaccurate fed decisions stay on books, state courts immunize

iv. S Ct can hear state claims through pendant juris b/c state supreme court hasn’t already ruled, if pendant juris, then the state issue is from fed lower court and S Ct has role of review

c. Michigan v. Long: S Ct reversed state decision to disallow evidence of illegal search b/c the decision was not clearly based on Michigan Constitution

   i. If the adequacy and independence of the state law grounds are not clear from the opinion, S Ct will presume it was decided on federal grounds

   ii. Van Cott – definition of federal employee used and fed cases explain determination - reviewable

   iii. Maryland inserts clause saying that any reference to fed court is for explanation only

d. S Ct reviews if state decision is antecedent to federal decision and blocks federal determination

   i. Contract and property definitions cannot impair Con. obligation of K (Brand – employment K), Takings Clause (Phillips- interest to legal org. for poor), and Due Process (Ward- Indians need way to recover tax)

IV. Remedies against Federal Officials


   i. No Bivens remedy is available if 1) “Special factors counseling hesitation” in absence of action by Congress, or 2) alternative mechanism is effective substitute

   ii. Davis v. Passman (1979) – Congressman’s discriminatory firing of woman not covered under Title VII, so Bivens remedy avail. under 5th Amend.

b. Recent Bivens only used when no cause of action exists against UC action and no other remedy available

   i. Bush v. Lucas (1983) and Chilicky (1988)– alternative remedies provided by Congress is special factor counseling hesitation and precluding Bivens

   ii. Malesko (2001) – trend toward limiting Bivens actions is recognized and praised

      1. Scalia – Bivens is relic of Court creating common law powers

   iii. US v. Stanley – no cause of action for unknown military LSD test on soldier b/c military is special factor counseling against Bivens

   c. Immunity and liability determinations foreclose Bivens damages in most

      i. Absolute immunity for Pres and Congress in official acts

      ii. Qualified immunity for DEA agents, FBI agents, etc as long as a person could think they were acting appropriately

   d. Bivens can be seen as Constitutionally necessary remedy or Fed. Common Law

      i. Language suggests that while Congress may provide exclusive remedies, it may not preclude all remedies for a constitutional violation

      ii. Important to recognize state tort remedies are available

V. Suits Challenging Official Action

a. Controlling state actions with injunctions regardless of the 11th amendment

   i. Ex Parte Young – corporate RR could enjoin state officer from enforcing UC legislation; fictitiously avoids 11th Amendment problems

      1. 11th Amendment does not bar suits against state officers for violation of federal law; illegal acts are stripped of state authority

      2. Allows fed ct to reach state actions, control over state regulatory schemes

      3. Federal court heard case because it is Violation of Due Process to force breaking law and bringing defense in state court (tremendous power over state reg. schemes)

   ii. Virginia Coupon– officers enjoined from taking property to satisfy taxes b/c coupons are K

b. 42 USC 1983 – creates cause of action against those who violate fed law pursuant to state govt authority

   i. Monroe v. Pape (1961) – Chicago police liable under 1983 “under color of law” statute for breaking into man’s house, making family stand naked in living room, ransacking house, and holding for 10 hours with no charge

      1. Federal remedy is supplementary to state remedy and state remedy need not be exhausted to prove state court hostility to federal rights

      2. Liability exists for all actions taken in an officer’s capacity, whether authorized by state law or in violation of it.

      3. Frankfurter dissent: Federalism – 1983 requires demonstration that state court doesn’t work or doesn’t provide adequate remedy
4. 1983 significantly changes balance between state and federal court due to 600 page Congressional finding of discrimination in South
   ii. Monell – City of NY liable for policy requiring unpaid leave of absence for teacher pregnancy
      1. Municipal governments were intended to be included under 1983
      2. Municipality can’t be held liable for acts of its employees under respondeat superior, but can be liable for policy or regulation
   iii. Patsy – exhaustion of state administrative remedies is not required under 1983
      1. Dissent: should conserve resources by staying with general rule, federalism, comity

VI. Judicial Federalism: Limitations on District Court Jurisdiction
   a. General Rule: concurrent juris allows simultaneous fed and state court action unless property at issue
      ii. The law of preclusion will apply once action comes to judgment
      iii. Federal courts require exhaustion of admin remedies (doesn’t include going to ct)
   b. Anti-injunction act §2283 prohibits fed cts from enjoining state proceeding unless specific exception
      i. Mitchum v. Foster (1972) – Fed Court can enjoin state court action to shut down porno book store b/c 1983 is express exception to Anti-injunction
         1. Federal law need not expressly authorize injunction or reference 2283, the Act must simply create a specific federal remedy that would be frustrated if fed. court not empowered to enjoin state ct.
         2. Two independent barriers to federal court injunctions of state court proceedings: 2283 (overcome in Mitchum) and Younger doctrine (remanded for determination in Mitchum)
         3. Mitchum finds that removal is express exception from 2283
         4. Mitchum reasoning doesn’t apply to Clayton Act, b/c this would obliterate 2283 – must be careful to apply this reasoning
      ii. In aid of jurisdiction exception
         1. Removal Jurisdiction: when court removes, can enjoin state in aid of jurisdiction
         2. Cases involving property can be enjoined b/c juris necessary to decide all property
            a. Bankruptcy Court
            b. 1st Court to get case decides case
         3. In re Federal Skywalk (8th Cir) can’t enjoin class members from settling claims in state court until fed class resolved even though it would be in aid of jurisdiction
            a. Problem w/ race to become first to settle and ensure attorneys fees
      iii. Relitigation Exception:
         1. Atlantic Coast RR (1970) – RR wants to enjoin picketing of union: a) RR denied injunction from fed court, b) RR gets injunction from state court, c) SCt finds federally protected right to picket that state courts couldn’t enjoin, d) Union claim for dissolution denied by state court, e) Federal Ct grants dissolution, but this is reversed by SCt
            a. Fed. Ct. can enjoin state court to protect its judgments, but cannot review state court decisions (Rooker-Feldman)
            b. Atlantic Coast RR was an attempt to evade state ct. review
         2. Parsons Steel – Fed Ct cannot enjoin state court after state court has made determination, even if earlier fed ct decision should preclude state case
            a. Relitigation exception limited to situations where state court has not yet ruled on the merits of res judicata. Once state court rules, fed court can’t review
            b. In simultaneous suits, must seek fed ct injunction right away which is inconsistent with policy of letting state decide
         3. Choo – federal court cannot enjoin under relitigation if fed decision was based on fed court procedure (forum non conveniens)
      iv. Three statutory restrictions on federal court injunction jurisdiction (combats Ex Parte Young):
         a. Tax Injunction Act (can’t enjoin tax collection), Johnson Act (can’t enjoin state rate makers for public utility), Three Judge Court (for challenging Con of apportionment for legislature)
         b. Judically developed limitations on fed. ct. juris: Abstention
            i. Pullman (1941) – TX law prevents porters in sleeper cars (racial discrimination): abstention b/c state court clarification of state law might avoid federal ruling on Con grounds
               1. Abstention allowed/required if there is:
                  a. Substantial uncertainty as to meaning of state law
                  b. Reasonable possibility clarification obviates Con ruling
               2. England: allows you to save federal issue while pursuing state issue under Pullman
a. Traditional res judicata about splitting claims does not apply

3. Pullman to avoid friction (doesn’t b/c only friction if state allows and fed ct. finds UC, friction inherent in overruling state determinations), reduces likelihood of erroneous interpretations of state law (risk commonly accepted in ruling on state law), avoid UC rulings (should require fed court to interpret state law first)
   a. Pullman causes enormous delays and costs
   b. Certification today covers a great amount of Pullman

ii. Thibodaux (1959)- eminent domain of public utility in fed. diversity; abstention appropriate b/c of special and peculiar nature of proceedings coupled w/ important issues of unclear state law
   1. Allegheny v. Mashuda – court refused to abstain in another eminent domain case on the same day; distinguished by two justices based on the unclear state law in Thibodaux
      a. Abstain in diversity if there is uncertain state law AND important interests intimately involved w/ state sovereignty
      b. Limited to disputes between state powers and priority in eminent domain
   2. No SCt case has subsequently upheld Thibodaux on its own
   3. Usually sent to state court and b/c only state issues (diversity juris) it never comes back

iii. Burford (1943) – challenge to commission grant of permit to drill in oil field: abstention for complex state regulatory issues; state courts better know complex issues involving state industry
   1. Court completely dismisses under Burford rather than stay as in Pullman, Thibodaux
   2. Appropriate when exercise of fed. review would be disruptive of state efforts to establish coherent policy w/ respect to local issue
      a. Not applied to all areas of state policy (education, etc.)
   3. Possible extension rejected:
      a. AL Pub. Serv. v. Southern Ry.: state review available to protect Con rights and local interests; last time S.Ct. invoked Burford
      b. NOPSI: mere existence of state admin procedure does not warrant abstention, procedure must have purpose of uniformity disrupted by potential fed decision

iv. Quackenbush (1996) – abstention derived from discretion of equity
   1. Abstention not available for damages (only equity)
   2. Abstention is discretionary rather than mandatory

v. San Remo Hotel (2005) – If issue is decided by state court Full Faith and Credit forces federal court to recognize resolution of issue

d. Younger v. Harris (1971) – Teacher of Marx seeks injunction against DA prosecution; SCt rules that fed courts cannot enjoin state court proceedings – specifically ruled on equity and comity rather than 2283
   i. The basic principles of Younger v. Harris
      1. Equity: courts of equity should not act when moving party has adequate remedy at law (state court proceeding) and will not suffer irreparable injury if denied relief
      2. Comity: OUR FEDERALISM embodies a proper respect for state functions; fed court won’t unduly interfere w/ legit activity of state
      3. Independent barrier from anti-injunction act
         a. Must fall under specific exception of anti-injunction
         b. Also pass concerns for equity and Comity (Our Federalism)
      4. Chilling effect of pending litigation not enough to override Younger principles
      5. Exception to Younger: Ct distinguished Dombrowski 1965 (statute enforced w/o intent to conviction, but to harass P from supporting Con rights) b/c great and immediate injury, irreparable, but acts continued to harass (can’t assert rights w/o prosecution)
      6. Wooley: after cited 3 times injunction to stop NH law invalidating slogan, never challenged Con in state court
   ii. Steffel v. Thompson (anticipatory relief): handbilling in shopping mall, one arrested and other stops to avoid arrest; SCt. declaratory relief granted
      1. Dec relief not precluded when no state prosecution pending and fed P shows genuine threat of enforcement of disputed criminal statute (whether attack on face or as applied)
         a. Difficult to meet ripeness and standing
         b. D does not have to break law to assert rights
      2. Issue preclusion of fed declaratory judgment determined by state ct, state most likely will respect judgment and change enforcement
      3. Hicks v. Miranda – police seized Deep Throat; if state crim proceedings begin against fed P before any proceedings of substance in fed ct. Younger applies even if fed first
   iii. Federal court can’t enjoin in state civil suits
      1. Younger applies to civil cases when state is party
a. Huffman v. Pursue (1975) – no injunction of state civil action on state civil action for nuisance b/c of poss. appeal

2. Younger applies to suits btwn private parties w/ public concerns
   a. Juidice (1977) – no injunction of civil contempt proceeding btwn private parties
   b. Penzoil (1987) – no injunction of high bail bond b/c state interest in ct system

3. NOPSI: Younger does not apply in civil action to review state legislative or executive action, only applies to civil cases that do not involve state party if proceedings involve certain orders uniquely in furtherance of state courts judicial functions
   iv. Younger applies to state admin proceedings in which important state interests are vindicated so long as federal P would have full and fair opportunity to litigate Con claim
      2. Dayton Christian Schools (1986) – fed court abstinets from suit to allow firing of pregnant woman under Religion Clause because claim could be heard in admin hearing
         a. Did not alter existing doctrine that state admin procedures need not be exhausted before federal civil rights claim filed

3. NOPSI case is different because state action was “legislative”

e. Colorado River (1983) - fed courts have unflagging obligation to exercise juris and can’t abstin from parallel proceeding, but exceptional circumstances require abstention out of deference
   i. 4 factors making exceptional circumstance
      1. Problems w/ dual juris w/ large state implications
      2. Relative inconvenience for federal forum
      3. Participation of US in state proceeding (McCarron Act)
      4. The order in which the state and federal actions were filed
   ii. Colorado River abstention is extremely limited

f. Special Rules
   i. Medema: where there is exclusive fed juris, fed court can’t abstin
   ii. Exceptions to federal court jurisdiction
      1. Domestic relations exception: federal courts do not have power to issue divorce, alimony, and child custody decrees
      2. Probate: no fed power to probate a will or admin. an estate

VII. Problems with Res Judicata

a. The preclusive effects of federal judgments
   i. Review: Types of preclusion
      1. Claim preclusion: cannot split remedies or different claims based on the same transaction; no nonmutual (res judicata)
      2. Issue preclusion: if issue litigated and essential to judgment, then it is precluded. Nonmutual preclusion allowed in most cases (collateral estoppel)
   ii. Semtek (2001) – res judicata effect of fed decision sitting in diversity is determined by fed common law which applies state law used in decision
      1. FRCP 41(b) only applies to suits in the same district as which they came because the FRCP language would defeat Erie rules
   iii. Compulsory counterclaim from fed ct. in diversity are precluded under FRCP 13
   iv. Comm’r v. Sunnen – Tax case: Substantive changes to the facts or the law destroy the preclusive effects of a prior judgment
      1. Montana v. US – If party has effectively controlled litigation in a separate state court proceeding and loses, decision can have preclusive effect on same issue in federal court
   v. McCormick: If no subj. matter juris in previous decision, but it goes to judgment, the judgment of court has preclusive effect

b. RULE: Non-mutual offensive collateral estoppel cannot be used against the US
   i. US v. Mendoza: establishes and develops reasons for rule
      1. Govt. is party to too many cases, Court needs to let issues develop
      2. Admin concerns in deciding what to appeal; preclusion would force appeal of all cases
      3. Govt. appeals are also determined by policy considerations of the current administration
      4. Govt. is not the same as private parties: Economic interests that normally support collateral estoppel outweighed by constraints that peculiarly affect the govt.
   ii. US v. Stauffer Chemical Co.: Stauffer wins case against EPA in 10th Cir disallowing private contractors for inspections. Govt. precluded in 6th Cir
      1. Mutual issue preclusion available against US
2. In circuit split then rule of the circuit should be applied even if the party has won a different outcome outside of the circuit.

iii. Governmental Nonacquiescence: when admin agency or exec. official continually relitigates issue an issue it believes is decided wrong by courts.
   1. Estreicher: Non-acquiescence not necessarily violative of due process, equal protection or separation of powers. Desirable if:
      a. For the development of uniform national law
      b. To permit uniform administration
      c. To avoid binding agency by single unfavorable ruling

2. Problem: eventually pisses judge off when decision ignored
   a. Hillhouse: 8th Cir threatened Secretary of SSA w/ contempt

c. 28 USC §1738 (Full Faith and Credit-fed ct) and Res Judicata of State Judgments
   i. Allen v. McCurry: McCurry shoots officers who then search and find drugs, McCurry convicted and search deemed lawful; In 1983 case vs. officers lawfulness of search issue precluded
      1. State decisions have preclusive effect in subsequent federal 1983 litigation so long as state gave full and fair hearing on Con issue
      2. No evidence Congress intended to provide unrestricted relitigation for 1983 claim (even if issue forced in state court due to a criminal case)
   ii. Migra v. Warren City USD: Migra won an employment and K suit in state court, then tried to bring 1983 action in federal court. Claim preclusion
      1. Issue should have been brought in initial state court suit
      2. State court could have heard 1983 claim from same transaction
   iii. Kremer – Kremer filed complaint with EEOC commission and agency ruled that complaint unfounded, state court affirmed on appeal. 1983 case precluded b/c state court already decided
      1. Title VII gives trial de novo, but decision to appeal to state ended in “judgment” which is given preclusive effect even if only review of administrative decision
      2. Appeal of admin decision to state court precludes federal review
   iv. Univ. of Tenn. V. Elliot – Admin proceeding against Elliot. Elliot then brings 1983 and Title VII claim. 1983 precluded based on finding of admin proceeding (Title VII gets trial de novo)
      1. Factfinding by state agency acting in judicial capacity to be given the preclusive effect of a determination of state court
      2. Title VII forces party to go to agency, which may preclude factfinding for 1983 issue
   v. Marrese v. AA of Ortho Surgeons – State court rules against Marrese, but then Marrese brings Sherman Act claim (exclusive fed juris) in fed ct
      1. SCt says that fed ct must look to the preclusive effect state would give to a claim outside of its jurisdiction

d. Preclusive effect of class action
   i. Matsushita v. Epstein (1966) – state ct. class action judgment (settlement), then fed. class action
      1. If state court preclusive effect then fed ct. should unless fed interests override FF+C
      2. Issue preclusion could prevent relitigation of adequate representation determination
         a. Historically we let class members collaterally attack
         b. Argue adequate representation determined ex ante and collateral attack questions representation ex post

e. Rooker-Feldman: Supreme court cases that develop “doctrine” to say that district court cannot sit on appeal from state court determination
   i. Hard to know the reach of the doctrine
   ii. Kamilewicz – member of class is charged b/c payout is less than attorney’s fees, but no personal juris – 7th cir uses Rooker to dismiss

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