*Tests what he teaches. If it is on the exam he will go over it in class

**Institution of Judiciary**
- Article III judges have lifetime tenure. They can only be removed through impeachment
- “norm” against impeaching judges for political motives (since Jeffersonians couldn’t impeach Chase)
  (but, Congress could probably do it if they tried)
- We need people to believe in the law, in the system, in the judges, in the three branches, etc.
- But, the judiciary doesn’t have any power to enforce, the executive does, and the courts are mindful of this
  and have to do things to keep the executive on board.

**JUDICIAL REVIEW**
- Judiciary declares acts of other branches invalid under the Constitution (Marbury)
  - Also, can order president to act as C demands
  - Can order state officers to act as C demands
- Still, Judiciary is limited to cases and controversies:
  1. No advisory opinions,
  2. standing,
  3. mootness,
  4. ripeness, and
  5. political question
- Judicial Review also limited by considerations of public rights and retroactivity.

**Marbury v. Madison** (55) U.S. 1803

**Rule** Judicial Review: Courts bound to uphold C, even when it conflicts with a law.

**Governing Rules** Judiciary Act, Constitution

JA: “The SC shall also have appellate jurisdiction from the circuit courts and courts of several states, in the cases herein after provided for; and shall have power to issue writs of prohibition to the district courts…..”

**Facts**: Control passed from Feds to Reps. Adams appointed “midnight judges” of whom Marbury was one. Marshall (outgoing secretary of state) affixed the seal to them AND took office as chief justice (he wrote this opinion). Some of the appointments were not delivered before Jefferson took office, and he refused to honor them. Marbury wanted his appointment, so he sued for a writ of mandamus. (Jeffersonians later passed the Repeal Act of 1802 to take away some of the judgeships).

**Issues** 1. Does he have a right to the commission? 2. Has the right been violated and do the laws afford him a remedy? 3. Is that remedy a mandamus? 4. Can the mandamus be issued from this court? 5. **May the Court violate a law to follow the Constitution**

**Opinion Below**: None, it was originally in the Supreme Court under the Judiciary Act

**Holding** 1. Yes, the withholding of the commission violated a vested legal right 2. Yes, there was a duty to deliver and this wasn’t a political issue, so the law should afford a remedy 3. Yes, a mandamus should be issued 4. The Court can only issue a mandamus as appellate jurisdiction or when necessary to enable them to exercise appellate jurisdiction. 5. When both a law and the C apply to a case, the **C must prevail**

**Other Rulings**
- Presidents can be sued, unless it is an issue of executive discretion.
- Law says SC can issue writs of mandamus, so either we can or law is unconstitutional.
- C gives original jurisdiction over some things and appellate over everything else
  - It would not explicitly give appellate jurisdiction if it intended to allow Congress to change that, because otherwise it would be implicit and a superfluous sentence.
- The Constitution was meant to be permanent
- The Constitution is designed as checks and balances and here it might be appropriate to restrain the legislature
  - If the Court had to uphold laws equally to the C, the legislature would have unchecked power
- The C even gives the judiciary power over all cases arising under the C - they can’t look at cases arising under the C without looking at the C
- Judges take an oath to support the C
- In declaring the supreme law of the land, it is the C and those laws arising under the C…. (saying nothing of nonCal laws)

**Notes**:
- The question is whether statute allows for mandamus in the SC. If so, it violates the C
  - Marbury is asking for original jurisdiction
- SC doesn’t declare another statute unCal until Dred Scott, but DOES use Cal avoidance
-It almost seems like Marshall wanted a Cal issue so he could rule on judicial review

Historical Note (63)

1. Republicans were impeaching justices. First, Pickering, was insane drunkard. Then, they went for SC justice Chase, but failed. Marshall was expected to be next

2. It is ironic that this case holds some issues to be “political” and not appropriate for court review when the case itself is steaming in politics.
   - Was it Cal to repeal the 16 judges judgeships?? They had lifetime tenure!
   - This is Stewart v. Lehr
   - The SC ducked the issue.. they didn’t want to butt heads with Jefferson

3. This case holds that the Supreme Court lacks jurisdiction
   - The Judiciary Act gives the Supreme Court original jurisdiction for actions for mandamus (some argue it could have been construed Cally as not doing so)
   - The C restricts permissible scope of original jurisdiction (though some argue that while it may not be reduced it may be supplemented).

4. One could argue that Marshall was giving the court the power to enforce their interpretation of the C over the interpretations of the other two branches.
   - How could the president or congress make a Cal interpretation in particular sets of facts when they are passing the bill?

Note on Function of Adjudication (67)

Dispute Resolution (Private Rights) v. Public Rights models
- Dispute Resolution: only decide Cal issues that are necessary for deciding cases; people need standing, injury, etc. This avoids unnecessary decisions, adjudicates only claims of legal rights, not generalized grievances, and people can’t assert the rights of third parties. This is consistent w/ separation of powers and framers’ intent of judiciary only deciding cases of judicial nature.

- Public Rights Model: would permit any citizen to bring a public action. The admin. Law approach of representing public interests, supported by checks and balances, the expansion of Cal rights, and Cal rights become swords to seek affirmative relief.

- Overlap of Dispute Resolution and Public Rights models: Class actions, broadened scope of litigation, etc. However, “effective adjudication” must be satisfied:
  - concrete set of facts, adversary presentation of evidence, adversary presentation of legal issues, limited scope of holding.

- The Supreme Court’s appellate jurisdiction has become very discretionary.
  - Can the Supreme Court abstain from decisions? Many courts have exercised “principled discretion”

Note on the Retroactivity and Prospectively of Judicial Decisions (73)

- It is the legislative function to create prospective rules. Courts must apply their rulings to the case at hand

1. Retroactivity:
   1. Fully Retroactive: Applies to all pending cases
   2. Non-retroactive: Not applied to pending cases
   3. Purely Prospective: Doesn’t even apply to the case at hand.
      - Might offend the prohibition of advisory opinions

Criminal Cases on Direct Review:
- Linkletter held that it should depend on the purpose of the newly propounded rule, the reliance placed on prior decisions, and the effect of the retroactive application on the administration of justice.
  - (Johnson v. N.J.)
  - Criticized as judicial lawmaking, being swayed by practicality

- In 1987, Griffith held that “failure to apply a newly declared Cal rule to criminal cases pending on direct review violates basic norms of constitutional adjudication.

*The big example here is the Miranda warnings.

*Harlan (who Drobak loves) says that Cal interpretation has to be fully retroactive even if that means letting some prisoners go. We are interpreting the C, and if it means this, it means this.

Civil Cases: Harper: non-retroactive decision making is the province of the legislature

Habeas: SC said habeas petitions based on changed law should be dismissed because their judgment is final. *Importance of final judgments*

**ADVISORY OPINIONS**

Federal Courts Can't Issue Advisory Opinions: Case or Controversy Requirement
**May not give advice to other branches of government**

**Cannot declare statutes unCal until someone challenges them in court**
- Promotes separation of powers, full adversarial hearings, concreteness rather than hypos, conservation of resources, personal incentive to litigate fully, etc.

**Cannot have other branches review a SC ruling (requirement of finality) (Hayburn)**
- Executive: Pardons and the like, however, aren’t “review” but are deciding to do something different for political reasons. Compare facts.
- Legislative: Congress can specifically name parties, etc. but they cannot mess with final judgments. IOF: Was the judgment final

-Damages v. ongoing injunctions (Miller v. French)

**Declaratory judgments are ok as long as they retain the essentials of an adversary proceeding, involving real, not a hypothetical, controversy**
- Authorized by Act of 1934, as long as it is an actual case or controversy.
- Calderon v. Ashmus: you can’t carve out issues for declaratory judgment You must seek a ruling capable of resolving the entire, underlying conflict.

In 1973 Jefferson wrote a letter to Chief Justice Jay asking him some questions about what the US could do regarding their treaty with France. The justices would not answer the questions because they were extrajudicial. Such extrajudicial decisions were expressly limited to the executive department (by the C)

- Advisory Opinions are a case or controversy problem
- Constitutional Avoidance considerations

Note on Advisory Opinions (79)

- English judges could issue advisory opinions and neither the C itself nor the Cal Convention reflected any clear prohibition against it.
  - But they don’t want to butt heads with the other branches, etc
- What about prospective overruling of past decisions, harmless error rulings, or alternative holdings?
  - Steel Co. (1998) ruled that federal courts must resolve questions of standing at the threshold because “hypothetical jurisdiction” was bad
  - When one part of an opinion decides the issue conclusively, is the rest advisory?
- Many justices publish books, articles, etc. One wrote the President telling him that having SC justices sit on circuit courts was unconstitutional
- Article III’s prohibition against advisory opinions does not extend to state courts
- Some European countries have special courts established exclusively to review constitutional claims.
  - They generally require only an abstract question.
- We hope that the prohibition of advisory opinions will lead to better decision making through more concrete facts, adverse parties, etc.

Note on Constitutional Avoidance (85)

1. Spector Motor (1944) Shouldn’t rule on Cal issues unless it is unavoidable.
2. The nearly canonical avoidance doctrine citation is Ashwander (1936). (pg. 86 of text)
3. Breadth: Cal determinations should go no further that required by the precise facts. If this were always the policy, precedent would be of little or no value.
4. Last Resort rule: Court should avoid ruling on Cal issues “if there is also present some other ground on which the case may be disposed of.”
   - Harmless error doctrine: in these cases, the Court sometimes first determines if a constitutional error occurred and then determines if the error was harmless.
5. Justices are supposed to interpret statutes to avoid Cal issues.
   - IN FACT, they don’t have to say there is a Cal violation, just that there is a grave and doubtful Cal question.
6. Some argue that this allows the Courts to rule on Cality without being held accountable because it isn’t an opinion, but then they can interpret statutes however they want and imply that something might be unCal.
7. This gives Court a lot of power. If they declare it unCal, Congress can change it, but would Congress? So instead they do it their way
- Congress knows these rules, Congress can write statutes that are not “fairly construed” multiple ways
- Its harder for Congress to say “no we mean this” when the Court interprets it in the middle than for Congress to repass it if the Court declares the whole thing unCal
Issues of the Parties, The Requirement of Finality, and the Prohibition Against Feigned and Collusive Suits (91)

1. REQUIREMENT OF FINALITY

Hayburn’s Case (91) 1792

Rule: Court’s decision must be final and not subject to review by other branches of G

Facts: Congress had a policy where courts would try veteran’s pension/disability cases. They would then pass them to the Secretary of War who could pull any out that she thought were faulty.

- The AG tried to bring a case for someone and the Court didn’t think he could do it, so then he changed to bring the case on behalf of Hayburn (who had standing).

Holding: Neither Legislative nor Executive branches can Cally assign to the Judicial any duties, but such as are properly judicial and to be performed in a judicial manner.

- This is from reporter’s footnote

Note on Hayburn’s Case (94)

2. The Attorney General’s *ex officio* action: the United States was able to join the Spangler case… I don’t really understand this business.

4. Adverse Parties: Even though the disability hearings didn’t have adverse parties, the Court held in Tutun (1926) that in hearings when the US is a possible adverse party (such as immigration hearings) it is a-ok.

5. Intergovernmental Litigation: It doesn’t matter that G was suing the G. In fact, in Watergate, the executive branch sued the executive branch. Haha.

- This is a separation of powers issue, big time

- Court says at most they would act as commissioners, but not judges

- This is not judicial action because the Court does not have the final say

Summary: How do we reconcile these cases?

1. Revolutionary War Pensions: No Court action

2. Naturalization Petitions: Court action

- Court says they are acting as commissioners

3. Deportation Petitions: Not Article III work

Executive Revision (97)

Hayburn’s Case: Congress can’t vest review in officials of the Executive Branch *(Plaut)*

US v. Ferriera: Can’t have judges make reports to Secretary of Treasury

Chicago and Southern Air Lines: Final orders approved by the President cannot be reviewed because such orders embody Presidential discretion as to political matters. (The circuit court had avoided this issue by sending the orders back to the President for revision, but the Court held that made their decisions advisory)

- Same idea with presidential pardons - she isn’t saying the Court is wrong, just that she wants to do something different for political reasons. Plus, its in the C

Legislative Revision (99)

US v. Klein (1871): Congress can’t pass a statute telling the Court not to honor presidential pardons - strong languages about Congress’s ability to prescribe rules of decision to the Judicial Department

Robertson v. Seattle Audobon (1992): Congress can mention specific cases saying they fall within a statute - amending the substantive law, not interpreting it


- Congress can change the applicable law of pending cases, but it is different to mandate that the court reopen a final judgment

- **Principle of final judgment is very important**

Lampf, Pleva (1991) Congress can’t pass a law making a statute of limitations longer and thus reinstating cases that the Court had dismissed in ruling that the statute of limitations was shorter. This would have messed with final judgments.

- If Congress changes the rules of evidence while a case is waiting for appeal, the court has to apply the new rules of evidence

Changes of Law and Orders Mandating Ongoing Relief (101)

Miller v. French (2000): Automatic stay provision of PLRA is constitutional

- Distinguished judgments for damages from judgments providing ongoing injunctive relief - not final judgments. This is more like changing substantive law

Claims Against the US (102)

Article I courts are able to rule on cases and then recommend to Congress whether or not to pay claims.
When these decisions are reviewed by Article III Courts, however, it can’t be recommendations but rather mandates.
- The current statute allows for payments by the Secretary of the Treasury of all final judgments regardless of dollar amounts
- Can Congress then pass legislation forbidding the payment of a particular case?
  - Many cases have upheld this

**Judicial Revision** (105): Res Judicata in a way is just ensuring that judgments are final

**Patent and Trademark**: I don’t really understand

**Tuton v. US**: Naturalization decisions can be set aside in later de novo judicial proceedings. This doesn’t offend because we’re really concerned about separation of powers

****READ TERRY SHIVO NOTE ON PAGE 5 OF SUPPLIMENT****
- Shivo statute gave standing to parents and said the DC court should rule de novo
- Congress couldn’t do this to a federal court but can they do it here since its state court?

2. FEIGNED CASES

**HYPO**: There is a trust fund, but the bank won’t pay because they are afraid of liability. They want to pay and they think she should get the money, but they aren’t sure

**United States v. Johnson** (107) (**Feigned Cases**): landlord paid an attorney for her tenant to bring a suit challenging the rent as too high due to federal wartime rent controls. Plaintiff had no active participation, control, expenses, etc. The US intervened to defend the rent controls, so that there was adversarialness, the Court dismissed the case saying there was no case and controversy because there wasn’t a genuine adversary issue between the parties.
- The landlord could have just sued the rent control officer.

**Note on Feigned and Collusive Cases** (108)
- Even the government’s intervention did not make this a genuine adversarial issue
- **Test cases are ok**: ex. boarding a bus for the sole reason of suing for the bus’s policy

**Test Cases Framed by Congress.**
- **Muskrat**: (109) The Court dismissed a case that Congress specifically authorized. Congress had passed an act redistributing some tribal lands and gave specifically named people the right to sue. The Court saw this as an attempt to obtain a judicial declaration of the validity of the act. (had designated both plaintiffs and defendants and paid all attorneys)
- **South Carolina v. Katzenbach**: (111) Voting Rights Act: Gave the Courts the power to review voting regulations before they were put into effect. The Court upheld this saying that instead it should be seen as an automatic stay on the regulations and then a suit to reinstitute them. The controversy would then be between the state and the federal government.
- **Parties in Agreement** (112) **Moore**: Both litigants want the same result, and thus there is no case or controversy. But, how does this square with consent decrees?
  - Government: the government can settle or not appeal if they are convinced the other side is right, but what if they win and only then realize it? Sometimes they petition the appellate court to rule against them.
  - **Casey v. US** the Court accepted the confession of error but said the case wouldn’t establish any precedent.
- Sometimes the Court appoints an amicus curiae to argue the other side.

**STANDING**

- Drobak recommends sorting this section by taxpayer suits, agency suits, religious, etc.
- **How you characterize the suit is extremely important.**
  - You are better off in voter cases than taxpayer cases.

**Warth v. Seldin**: Standing: Whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues

**Baker v. Carr**: Must have a personal stake in the matter one seeks to litigate
- Basically requires a litigant to have some direct, concrete interest in the outcome of the case. They must have some real injury
- Two sources: Article III and prudential concerns
  - Constitutional Requirements:
    1. **Injury in Fact**
      - Must be more than purely ideological harm.
      - Must not be a generalized grievance
    2. **Causation - Fairly Traceable**
3. Redressability
*Congress cannot expand standing beyond the Cal floor (Akins)

-Prudential Requirements:
  -Zone of interests, generalized grievances, third party
  
  Duke Power shows how flexible this is - they needed nuclear power, so they were wishy
  washy and gave them standing.
  
  -There is a blurred line between Cal and prudential requirements.

HYPO: Miners are polluting lake of the Ozarks. Who has standing?
  -If you have land in the Ozarks that the pollution hurts? YES
  -You have land NEAR to Ozarks and can see the pollution? YES
  -You are a member of "Friends of the Ozarks? See SCRAP and Lujan
  -You have to actually hike there and actually use the land.

HYPO: Would someone have standing to keep a school from teaching abstinence?
  -They would have to show that it was fairly traceable to some injury they had

HYPO: If you sue for information on taxes spent in Iraq, you will lose because it is a general grievance.
  What if Congress passed a statute giving you standing (Akins)
  -Congress has created an injury. Injury \( \Rightarrow \) Standing
  -But, Congress can’t give you standing if you don’t have Cal standing.

  -Do I have standing to sue? No. It is a generalized grievance
  -The speaker of the house has standing.

Outline
1. Standing - Generally
   -There must be a logical nexus between the status asserted and the claim sought to be adjudicated.
   It is the parties, not the claim, that matters.
2. Injury in Fact: (Lujan): Show an invasion of a legally protected interest that is
   A. Concrete and Particularized
   B. Actual or imminent
2. Causation: Injury in fact was the result of D’s conduct.
3. Redressability: a favorable ruling would remedy the harm the plaintiff has suffered
4. Additional Prudential Limitations on Standing
   B. Interest must fall within the Zone of Interests protected by relevant law
   C. No generalized grievances.
   D. Congressional Power to Confer Standing
-State Courts are not bound by case or controversy
-You cannot rule on merits before ruling on Article III standing
5. Specific Examples of Standing
   Taxpayer Standing: Richardson: Must be logical nexus
   Taxpayer cases must be under the Establishment Clause cases and must involve transfer
   of money.
   Voter Standing:
   -Majority minority, etc.
   Legislator Standing
   Administrators and Executive Officials
   Organizational Standing
6. Third Party Standing
   -Craig v. Boren
7. Defendant Standing

1. STANDING - GENERALLY
Standing: Nature and Sufficiency of the litigant’s concern with the subject matter of the litigation. It is the
parties, not the issues, that matter here.
A. Frothingham and Private Rights Model (127)
Frothingham: (1923) Challenged an act because it would raise taxes. Court said she didn’t have standing
as a taxpayer because every act would raise taxes. It is a matter of public not individual concern. The
President, and not the Courts, should defend that right
   -You must show that the statute is invalid AND that you suffer some direct injury as the result of
its enforcement, not merely suffering that is common generally.

B. Flast and the Public Rights Model (128):

Flast v. Cohen (1968) Taxpayer suit under Establishment Clause. Reexamined Frothingham: Standing focuses on the party seeking to get the complaint before federal court. It is NOT defined by the issue.

RULE: **There must be a logical nexus between the status asserted and the claim sought to be adjudicated.**

1. Taxpayers must establish a logical link between that status and the type of legislative enactment attacked
2. Taxpayers must establish a nexus between that status and the precise nature of the Cal infringement alleged.

C. Standing and Rights (129) Frothingham and Flast can be distinguished two ways

1. *Flast* claimed violation of personal Cal rights under Establishment clause, whereas *Frothingham* sought standing to enforce a structural Cal provisoin.

D. Cutbacks on Flast: Since *Flast*, the Court has become less and less likely to grant citizen and taxpayer standing to assert public rights.

  Challenged property grant to Christian College.
  -Taxpayers failed first prong of *Flast*'s test -- permitting challenges only to “exercises of congressional power under the taxing and spending clause”
    1. This was Property Clause, not Taxing and Spending Clause.
    2. They were not complaining about Congressional action, but decision of the HEW to transfer a parcel of federal property.
  RULE: No standing as a taxpayer to protest property transfer because it is the Property Clause and not the Spending Clause - no nexus

2. **INJURY IN FACT**

  *Lujan*: Show an invasion of a legally protected interest that is
  1. Concrete and particularized,
  2. Actual or imminent (not conjectural or hypothetical)
  -Can include non economic harm (SCRAP) (recycling case)
    -But see *Sierra Club* - no injury in fact because didn’t allege they use land
      - *Lujan*: failed to demonstrate that affected lands are ones she used
  -It could be injury to a statutory right. If Congress creates a right by statute, you can sue when it is affected
    *(Warth v. Seldin); (Trafficante (Civil Rights Act)); (Lujan (ESA))*
    -Can be very small(*Flast v. Cohen* was only pennies of his taxes)
    -Cannot be an injury shared generally by the population if it does not affect the plaintiff in particular
      -These should be addressed through political processes instead
        -ex. *Valley Forge*: no injury except psychological consequence
        -Also, *Schlesinger v. Reservists*, *Allen v. Wright*
      -But, you don’t lose standing just because others also suffered the harm (*Akins*)
    -Injury cannot be merely speculative.
      -*City of Los Angeles v. Lyons*

3. **The Requirement of Injury in Fact** (131)

There are historical arguments that this isn’t important, but more recent cases have not questioned that this is a Cal requirement.

a. *Sierra Club v. Morton* (1972): They didn’t want a ski resort because it made the forest less beautiful. They said it violated federal statutes. NO STANDING: Nowhere did the Club state that its members used the area in question for any purpose.
   -You can’t sue merely to vindicate your own value preferences.

b. *United States v. Richardson* (1974) (133): Sued because the CIA didn’t account for its expenditures. NO STANDING.
   -This is a generalized grievance.
   -He has not alleged that, as a taxpayer, he is in danger of suffering any concrete injury as a result of the operation of the statute.
   -This should be solved in the political process.

Court upheld standing even though there was no economic injury.
-Discrimination can cause serious no economic injury (stigmatization, etc.)

Compare with *Allen v. Wright*

-No standing because they only alleged that one member actually used unspecified portions of the property.
-They had to distinguish from *SCRAP* where they allowed standing because of allegations of environmental harms.
-They said SCRAP was a Rule 12(b) and this is a Rule 56.
-Drobak says this is an aberration that just hasn’t been overruled
-Now they do standing up front. G moves for summary judgment under Rule 56 right away.
-Congress cannot give standing to people who would lack it under the C

e. *Friends of the Earth* (2000) (135)
-“The relevant injury for purposes of Article III standing is not injury to the environment, but injury to the plaintiff.”

3. **CAUSATION: FAIRLY TRACEABLE/REDRESSABLE**

Causation: Injury in fact was the result of defendant’s conduct
Redressability: A favorable ruling would remedy the harm the plaintiff has suffered

(These are often treated together)

*Simon:* No Standing: Suing G for allowing hospitals to be charitable more easily has no redressability because it doesn’t necessarily follow that a harder classification system will force hospitals to offer more services for low income

*Allen v. Wright:* No Standing: If the court ordered the government to stop giving tax exempt status to discriminatory schools, it might not redress the problem of those schools discriminating

**Allen v. Wright** (114)

Rule: A plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.

Governing Rules
- Cases or controversies clause
- *Warth v. Seldin:* Standing: “whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues”

Facts: Parents of black school children sued because the IRS gave tax exempt status to discriminatory schools. They said this harmed their children because they were less able to attend racially diverse schools

Holding: The parents do not have standing - it is not redressable/no causation

Other Rulings
- The parents at no time allege that their children want to attend the private schools
- Two components to standing: constitutional and prudential
- A plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief
- The whole idea is built on separation of powers
- An asserted right to have the G act in accordance with the law is not enough
- **Stigmatization is not enough: you have to personally denied equal treatment**
- Otherwise someone in Nebraska could sue over discrimination in Hawaii
- **The second claimed injury (their children’s inability to have a racially diverse education) also cannot stand because it is not fairly traceable to the G conduct**
- The Court says there are too many links.
- This is different from *Gilmore* because there plaintiffs were deprived of use of parks
- Can’t prove that withdrawal of tax exemptions would cause schools to change policies
- This is different from *Norwood* because there, there was a desegregation order
- *Norwood* was a case where they allowed students to sue the State for giving textbooks to discriminatory school.

Dissent (Brennan) (122): The injury to their children’s ability to receive a desegregated education is sufficient to satisfy constitutional standards. Common sense alone would recognize the redress ability that changing the tax exempt status would affect this. They have identified communities with enough racially
discriminatory schools that changing the tax exempt statuses of those schools would make a real difference. Dissent (Stevens) (124): This is an adequate injury in fact (the court, Brennan, and I all agree). The question we disagree on is redressibility. The withdrawal of money to private discriminatory schools would obviously discourage them from being discriminatory. Then, the court brings in separation of powers arguments.

-The Court wants to respect the Executive’s latitude to decide how best to enforce the law. But, this principle doesn’t apply when someone brings a suit to enforce specific legal obligations. Here they contend that a specific constitutional limitation has been violated.

Causation and Redressability Requirements (136)

Allen v Wright: Article III requires not merely a cognizable injury, but also one that is “fairly traceable” in a causal sense to the challenged action that will be redressed by a favorable decision

a. Linda RS v. Richard D. (1973): Class action for child support for children born out of wedlock. This wasn’t fairly traceable, because action would only result in jailing the fathers, not in actually getting child support (I think this case is crap)

b. Simon v. Eastern Kentucky Welfare (1976): Class action asking for higher requirements for a hospital to be non-profit because there wasn’t enough healthcare for low income individuals. No standing because it was purely speculative whether denial of hospital services resulted from classification as non profit or not

c. Regents of University of California v. Bakke (1978) (137): A white plaintiff challenge affirmative action at a medical school. They said he was deprived of a chance to compete for every place in the entering class.

d. Northeastern Florida: Added to Bakke saying it is the denial of equal treatment, not the ultimate inability to obtain the benefit that creates the injury in fact.

**How you characterize these cases is very important**

Additional Prudential Limitations on Standing

Zone of Interests

Data Processing Service: Person must be arguably within the group which the violated statute was intended to benefit

-Most often encountered when people sue under the Administrative Procedures Act

-This is a very muddled area

Generalized Grievance (61)

Valley Forge: Abstract questions of wide public significant which amount to generalized grievances pervasively shared and most appropriately addressed in the representative branches.

Akins: this doesn’t mean that someone who has legitimate standing will be denied just because she shares that harm with many others

-The court has indicated that this is required by Article III and not just a prudential concern

Lujan

Third Party Interests (see below)

*These three are generally considered prudential concerns, so they can be overruled by Congress in a way that constitutional limitations cannot be.

Special Problems with Taxpayer Standing (62)

Taxpayer standing is similar to, though different from citizen standing.

-Used to challenge the constitutionality of governmental spending programs

Mellon: Must show statute is invalid AND immediately in danger of a direct injury

Flast v. Cohen: Must be pursuant to the Taxing and Spending Clause and must be a nexus between status as taxpayer and precise nature of constitutional infringement

-Must allege a specific limitation on taxing and spending power that was breached

Valley Forge: Property transfers by the executive branch cannot be challenged with taxpayer status, because it isn’t under the taxing and spending clause

Etc. etc.

Standing in the Supreme Court to Review State Court Decisions (64)

-Even when reviewing state court decisions, parties in the supreme court must have standing due to Article III

-However, states are not bound by Article III.

-ASARCO found that a negative state court decision can give the requisite harm to have standing

The Bearing of State Law on Standing (138)
State Courts are not bound by the case or controversy provision. They are only bound as far as their state constitution allows - many give advisory opinions.

**Fidelity v. Swope**: If a state proceeding did not constitute a case or controversy within its appellate jurisdiction under Article III, a judgment rendered therein would not be res judicata in later federal proceedings.

**ASARCO Inc v. Kadish**: If the defendant loses, she can appeal in federal court. There is still SC review of a state court ruling where there was no standing, because the judgment against the party is a direct, specific, and concrete injury.

If the Plaintiff loses, they are no worse off than before the suit, so the Plaintiff CANNOT appeal to federal court off of an advisory opinion.

**Look at Coono case (pg 8 in supplement)**

**Timing of the Standing Determination**

**Steel Co. v. Citizens for a Better Environment**: (1998) rejected “hypothetical jurisdiction” and said that “a federal court must resolve Article III standing questions before reaching non-jurisdictional questions.”

- They can sometimes do merits before statutory standing
- They can sometimes do statutory standing before Article III standing
- BUT, they can never do merits before Article III standing

**Standing to Intervene, Appeal, and Challenge Removal**

**Diamond v. Charles**: (1986) - when the state had an automatic appeal, the plaintiff was not allowed to “piggy back” on that when he himself didn’t have standing. It said the state was a “party” but not necessarily an “appellant”.

- If the state had been a participant he might have been able to intervene

**International Primate Protection League**: A case was removed to federal court even though the plaintiffs did not have standing to sue in federal court. The SC held that their interest in litigating in state court gave them standing to object to removal. (I don’t really get how this applies or if I got the holding right)

**Federal Election Commission v. Akins**

Supreme Court, 1998

Rule: Voters have standing to challenge denials of information??
- If a harm is sufficiently concrete and specific, the fact that it is also widely shared does not deprive Congress of constitutional power to authorize its vindication in federal court

Governing Rules:
- The commission policy stated: “Any party aggrieved by an order of the commission dismissing a complaint filed by such party…may file a petition in DC seeking review of that dismissal”

**Public Citizen v. DOJ** A plaintiff suffers an injury in fact when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute
- General grievances (harm shared in substantially equal measure by all or a large class of citizens) do not confer standing --> political process instead

**Facts**: The Federal Election Commission determined that the AIPAC was not a political committee so they didn’t fall under certain mandatory regulations about information disclosure. Respondents filed a complaint with FEC but it was dismissed. As authorized under the statute, plaintiffs then filed a petition in the District Court

**Issue**: Whether voters had standing to challenge the FEC’s decision not to bring enforcement action in this case

**Opinion Below**: DC granted summary judgment for FEC. A divided panel of the Court of Appeals affirmed. The CA en banc reversed. Government petitioned for cert

**Holding**: Respondents, the voters, DO have standing

**Other Rulings**
- Congress, by their choice of language, intended to authorize this kind of suit (by statute)
- Congress can only grant judicial power for cases or controversies which means that respondents must show, among other things, injury in fact
- Here, the injury is concrete and particular: they are denied information that would help them evaluate candidates
- There is no need for a nexus between the status as taxpayer and the failure of Congress to give information
Also, this is voter standing, not like Richardson that didn’t allow taxpayer standing

Richardson required a nexus between tax paying and spending. Here, the nexus is not relevant. Something about a Cal provision requiring G to keep records? (top of pg 145)

-Cases that talk about generalized grievances have harm that is abstract and indefinite.

**Where a harm is concrete, though widely shared, the Court has found injury in fact**

-The harm is also fairly traceable to the FEC’s decision and the court’s can redress the injury.

Dissent (Scalia):

Allowing private citizens to use the courts to force the executive branch to do something should be narrow so as not to offend separation of powers. The statute limits court relief to aggrieved parties, but anyone can file a claim with the FEC. Obviously they didn’t want to give standing to everyone who could file a complaint with the FEC. They aren’t even complaining about a lack of information, rather the FEC’s not commencing action against a third party.

-Constitutional doubt also supports a narrow reading of “aggrieved”

Class Notes: There are two types of standing: constitutional and prudential. Congress can tinker with prudential, but not constitutional. Thus, even though Congress granted standing in the statute, they still had to reach the Cal floor.

-Why is this not a generalized grievance? The harm is concrete, though widely shared
-Where is the injury? Denial of information
-How do Ps attempt to get at AIPAC? They sue the commission to classify them, but the commission did not

**How we classify these cases is extremely important. Voting cases affect the way someone votes, but disclosure of tax spenditure does not change how much taxes we pay. If it can affect your vote, you should assert your standing as a voter.

Note on Akins and Congressional Power to Confer Standing to Sue (149)

1. Traditionally, absent Congressional grants of standing, you had standing to challenge administrative action if you were the target, but not the intended beneficiary.
   A. Traditionally, there was no standing for a competitor whose rival got a benefit
   -This is changing by Congressional acts (Communication Act, etc.)
   B. Civil Rights Act grants status to aggrieved persons
      -Intended to be defined broadly

2. The Lujan Case: No injury in fact to people who visited endangered species when the US took actions that harmed them. There was no “imminent injury” The Court also held that they didn’t show redressability, because they sued the agency and not the secretary who made the regulations.
   -Difference between rights created by statutes that are violated and public enforcement of agency’s lawfulness through the courts

3. (153) Taking Akins and Lujan together we find
   -the injury required by Art III may exist solely by statutes that create legal rights, the violation of which creates standing
   -Congress’s power is solely one of elevating to the statuts of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law
   -Inability to procure information to which Congress has created a right is a settled example.

4. The AG often gets standing even when she or the agency are not directly injured
   “Public actions”

5. (155): Under the False Claims Act, there is a bounty for prosecuting false claims. This bounty is enough to grant standing
   -Partly because of the long tradition

**Note on Standing to Challenge Federal Administrative Action: Requirements Beyond Injury in Fact (156)** (NOT ON FINAL)

-Section 702 of the Administrative Procedure Act authorizes such suit, but there are additional requirements.
  ** “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”**

-Data Processing (zone of interests test) This case rejected the legal interest test (that distinguished among different types of interests) saying “the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or
constitutional guarantee in question.
-They want to know if that is what the statute was trying to protect
-But then they used a different statute to decide the case

-Barlow: Tenant farmers are within the zone of interests because the legislative history showed a specific provision indicating “a congressional intent to benefit the tenants”

-Clarke (1987) (159): 1. The court interpreted “a relevant statute” broadly, 2. The court approved the trend toward the enlargement of the class of people who may protest administrative action.
- Plaintiffs had a “plausible relationship to these policies”

Clarke came after a long time of not applying the “zone of interests” test, but now it is applied regularly.

Subsequent Applications (160)

-American Postal Workers Union: Postal workers not within the zone of interests because relevant statute intended to protect revenues, not employees
-Lujan: The statute in whose zone of interests one must fall has to be the statute whose violation forms the legal basis for complaint
-National Credit Union: (1998) There need not be an indication of congressional purpose to benefit the plaintiff, only that the asserted interest is arguably within the zone of interests to be protected.

Note on the Standing of Taxpayers, Governments and their Officials, and Organizations, and on Other Capacity-Based Standing Issues (161)

Federal Taxpayer Standing (161) (since Flast, pg 128)
-Before Flast there wasn’t much taxpayer standing at all (Frothingham)- still isn’t really.

Two Part Test for Taxpayer Standing (Flast):
1. The expenditure must be an exercise of the taxing and spending power, rather than merely an incidental expenditure connected with some regulatory program
2. The expenditures must be prohibited by some specific constitutional limitation rather than merely beyond the powers delegated to the federal government.

-Richardson (1974): There must be a ‘logical nexus’ between status of taxpayer and claimed failure of Congress to supply a more detailed report.
- Plaintiff did not claim a constitutional limitation based on the taxing and spending power
- RULE: No taxpayer standing for non-establishment clause cases.

-Schlesinger v. Reservists Committee to Stop the War (1974): This was just another example of how there is no taxpayer standing unless you are using the Establishment Clause. (They used Art I, Sec 6, Cl. 2)

Valley Forge (1982): Limited Flast by denying taxpayer standing even under the Establishment Clause to challenge an executive decision to transfer property to a religious institution. (No standing here)
- They said this was actually the Property Clause. RULE: Taxpayer cases must be under the Establishment Clause cases and must involve transfer of money.

-For taxpayer cases, try focusing less on taxpayer’s stake in the dollar and more on what rights the constitutional provisions create and who possesses those rights.

State and Municipal Taxpayers’ Actions (162)

-Doremus: (1952) Taxpayer brought a suit to keep Bible from being read at schools in the district in which he paid taxes. No Standing. This was not a good faith pocketbook action, since no specific expenditure was challenged.
- Not a question of ultimate motivation, just that they have the requisite financial interest to give them standing.

Actions by States and Municipalities (163)
- Usually denied standing to attack state legislation because they have no rights against the state of which they are a creature.

Actions by Voters (163)

-Baker v. Carr (1962): Voters were able to challenge malapportionment of state legislature. The Court said the personal stake was enough to ensure adversarialness.

-Three kinds of interests: (Karlan article, 1986)
1. Interest in being able to participate in elections
2. Interest in being able to aggregate one’s vote with like minded others to influence electoral outcomes
3. Interest in achieving governance responsive to one’s values and preferences.

-Majority-Minority districts (districts being reapportioned so there is one with a majority minority.)
**Rule:** If you are in the district, you have standing. If you are outside the district, it is a generalized grievance. YOUR vote has to be affected.

-Shaw (1993): Gave EPC status to people living within reapportioned district  
-Hays (1995) said no standing if you live outside the district  
-Thus, both white and minorities have standing if they are living within a majority-minority district (under equal protection clause) but people outside the district don’t have standing.

**Actions by Legislators (165)**

This is important but narrow: For the most part, you can’t have members of Congress suing to say things are unCal (Raines)

-**Coleman:** (1939) Court recognized standing of state senators to protect their official vote and standing by senators and representatives to claim this law was invalid because of a previous rejection by the state.  
-This is the case where it comes from

-**Powell** (1969): Court authorized a member of Congress to sue because he was excluded from Congress. The Court based this on the pecuniary interest.

-**Kennedy v. Sampson** (1974) (leading DC case on suits from representatives challenging official action that impair their rights as legislators)  
-Court recognized Senator Kennedy’s standing to challenge the pocket veto as unconstitutional because it would deprive him of an effective vote to enact legislation or override a veto.

-**Raines v Byrd** (1997) (166): Representatives cannot challenge Line Item Veto even though the Act specifically given them standing. The Court says there was no personal injury. Standing depends on personal injury and standing inquiries should be especially rigorous when settling disputes among the branches. Here it was a loss of political power, not a loss of something to which they were personally entitled. Also, this had historically been allowed.

-Evidently, there is a vast difference between the Line Item Veto Act diluting votes and the nullification in Coleman. The Court distinguished it saying that the legislators in Raines did not allege a specific for which they voted where there were enough votes to pass the bill, but nonetheless it was defeated. In the vote on the Line Item Veto Act their votes counted, they simply lost the vote.

-Losing power to vote IS an injury in fact.

**Actions Involving Executive Officials and Administrative Agencies (167)**

-**Standing to challenge the constitutionality of legislation they are charged to administer or enforce**

-**Allen:** (1968) Changed general rule that state official couldn’t challenge state statutes they were charged with enforcing. Allen said that since the officials took an oath to uphold the C, they were in the position of choosing between violating their oath or facing disciplinary action. Thus, they had a “personal stake in the outcome of the litigation”

-**Are officials better litigants than taxpayers?**

-**Bender:** (1986): The school board decided not to appeal, but one member on the school board wanted to continue to appeal. “Members of collegial bodies do not have standing to perfect an appeal the body itself has declined to take”

**The Standing of Organizations (168)**

-**Hunt v. Washington Apple Advertising Commission** (1977): Association can sue on behalf of the injuries of its members if  
1. Its members would otherwise have standing to sue in their own right  
2. The interests it seeks to protect are germane to the organization’s purpose  
3. Neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

-**Sierra Club:** (132): Organizations do not have standing to represent their particular conception of the public interest. However, they could sue for injuries to the organization  
-None of the members had injury or standing.

-**Harris v. McRae** (1980): Church lacked standing to challenge abortion under FEC because there was no coercive effect on religious practice and because the group was divided - affected individuals had to sue on their own behalf.

-**Warth v. Seldin** (1975): Lacked standing because the damages weren’t common to entire membership.

-**International Union UAW v. Brock** (1986): No class action necessary, because people join organizations
to vindicate interests they share with others.
- The court also noted, however, that if the organization were ineffective, due process might prevent a judgment from precluding claims by individual members.

**Standing to Assert the Rights of Others and Related Issues Involving “Facial Challenges” to Statutes**

(170)

**Craig v. Boren** (170)

**Rule**

Vendors are able to resist efforts at restricting their operations by acting as advocates for the third parties who seek their markets or functions.

There is standing for the seller of a product who is losing sales to bring a claim on behalf of those who can’t buy.

**Governing Rules**

- Injury in fact; concrete adverseness (*Baker v. Carr*)
- Limitations on jus tertii are not from the constitution, but from self-restraint.

**Facts**

**Issue**

Whether a person who sells alcohol has standing to challenge a law that has a higher drinking age for men than for women.

**Holding**

White can assert jus tertii standing.

**Other Rulings**

- A decision not to rule and to wait until someone with standing re-litigates would be contrary to the purpose of the standing doctrine in the first place.
- Here, she has a choice between being discriminative and suffering sanctions - she is a vendor.
- The statutes punish vendors - the can be penalized.
- It is the distribution, not the use, that is prohibited.

**Dissent (Burger):** You can only assert your own constitutional rights. This is different from past cases because there is no barrier on the men to seek redress.

**Note on Asserting the Rights of Others - Third Party Standing** (173)

**Jus Tertii Doctrine** (173) Third party standing: asserting the rights of others.
- For example, here she claimed the male’s equal protection rights were violated.
- The label should be limited to cases where the law is applied against the person asserting the right, it is just that it violates someone else’s right.

“A single application of a law both injures her and impinges upon the constitutional rights of third persons.”

**The Traditional View** (174) no third party standing.

**Current Doctrine** (175) Craig reflects the modern trend:

disfavors third party standing, but almost routinely permits them in finding:

1. Some sort of relationship between the litigants and those whose rights they seek to assert, and
2. Some sort of impediment to third parties’ effective assertion of their own rights through litigation.

**Distinguishing Plaintiffs’ from Defendants’ Standing** (177)

These cases are usually defendants who are prohibited or prosecuted for something and try to claim that the statute, though Cal in its application to them, could be unCal as applid to someone else.

- In a plaintiff case (*Caplin Drysdale*) the court held three factors
  1. Ability of rightholder to bring suit on her own
  2. Relationship was of special consequence
  3. Statute may materially impair ability to defend own rights?

- Can these third party claims be reconceptualized as first party claims? *Monaghan*

**Yazoo & Mississippi Valley RR v. Jackson Vinegar Co.** (180)

US 1912: There was a statutory penalty for not settling cases that were reasonable. The railroad then didn’t settle this case. When they got to court they claimed as a defense, that the statute was unCal. The Court said that in THIS case, the rate was reasonable and thus they refused to entertain the defense.

**You cannot consider a statute’s constitutionality as applied to facts of other cases**

- Exception: Free speech, chilling effect.

**Preliminary Note on As-Applied and Facial Challenges and the Problem of Separability**

**Underlying Policies** (181)

1. If Congress can constitutionally forbid the defendant’s conduct, then they shouldn’t be able to
escape punishment
2. To talk about hypothetical cases would be too abstract
3. State courts should have the opportunity to construct the statute narrowly so as not to be unCal

Separability (181)
-The notion that invalid applications can be separated from valid applications
   -Ex. Lewd or obscene (can lewd survive if obscene doesn’t?)
  -These are divisible linguistic units, but you can also sever “all” into valid and invalid elements
  -Try to separate a statute into subrules
   -all non exorbitant claims, all frivolous claims, etc. etc.
  -Being able to separate statutes like this explains how courts can postpone questions on how a statute would apply to other fact scenarios

Deference to State Interpretations (182)
-It is state’s job to interpret state law. Thus, there is a deference to state interpretations

Separability of Federal Statutes (183)
-This is purely a federal issue for the Supreme Court
-Separability clauses aren’t very decisive in deciding if something is separable.

*Coates v. City of Chicago* (184)
Supreme Court, 1971

**Rule** A law is unconstitutionally vague when it has an unascertainable standard and is unconstitutionally broad when it authorizes the punishment of constitutionally protected conduct

**Governing Rules** A law cannot be too vague or broad. Also freedom of assembly and association

**Facts** There was an ordinance that made it unlawful to for three or more people to assemble and conduct themselves in a manner annoying to passersby

**Issue**

**Opinion Below** Ohio upheld the conviction under a valid law

**Holding** The ordinance is unconstitutionally vague

**Other Rulings**
- An ordinance’s violation cannot depend entirely on whether or not a police officer is annoyed
- The ordinance makes a crime out of what under the Constitution cannot be a crime (peaceful (but annoying) assembly). The statute is aimed directly at something protected by the C

Black: The law prohibits conduct that it is allowed under the C to regulate and conduct that it is not allowed under the C to regulate

Dissent (White): You can’t attack a statute based on other people’s facts except with the rights of speech or press of the first amendment. Then you can bring over breadth or vagueness arguments. Here they extend that to assembly - which is not just speech.

**Note on the Scope of the Issue**… This will not be on the final (187)

**MOOTNESS**

**Circumstances have changed so there is no longer a live dispute between parties**
- Sometimes described as preventing advisory opinions.

*DeFunis v. Overgaard* (68): case moot because he was in his last semester of law school
- Right to vote case was moot when election was over *Halls v. Beals* (1969)
- Derives from the Article III case and controversy requirement.

*Kremens v. Bartley*: dismissal based on policy, not purely C considerations.

**Exceptions to the Operation of Mootness:**
1. **Voluntary Cessation**
   - If “the defendant is free to return to his old ways” *US v. WT Grant* (1953)
   - If there is no reasonable expectation that the alleged violation would recur, it might be moot (*County of L.A. v. Davis* (1979))
2. **Capable of repetition yet evading review**
   - *Roe v. Wade* (1973)
3. Class Actions
- Named representative need not have a live controversy Sosna v. Iowa
- Can substitute for capable of repetition yet evading review
- Class Certification required before it can save a case from mootness
  - You can appeal certification, even after case is moot to you Geraghty
- Mootness in Criminal Cases: Criminal appeals are not moot merely because the sentence has been served if there are collateral legal consequences from the conviction Sibron v. New York
- Mootness as Prudential Doctrine with Political Overtones: As usual, they use this to skirt sensitive issues - Lots of play in the joints.

SC said mootness isn’t exactly standing over time…

Defunis v. Odegaard (199): Example of Mootness: Supreme Court, 1974

Rule When the Court’s decision will not affect the outcome, it is moot

Governing Rules: Constitution, Article III

N.C. v. Rice: Federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them

U.S. v. W.T. Grant Co.: The voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case

Facts DeFunis didn’t get into the law school and sued for race discrimination (EPC) (he was white an was challenging affirmative action). By the time the case got to the SC, he was in his last semester and the school promised to let him finish

Issue Whether DeFunis’s case was moot since he was in his last semester and the school promised to let him finish it

Opinion Below TC issued injunction forcing the school to admit him. SC of Washington overruled it, but the SC (of the US) stayed the opinion so he could stay in school

Holding The case is moot since he will be done with school.

Other Rulings
- This is not a voluntary cessation case, rather the fact is that he is in his last quarter
- DeFunis will never again be required to apply for law schools
- This also isn’t the repetition/evading thing, because now that Washington law is established, the next case will come more quickly.

Dissent: He hasn’t yet finished law school and there are many plausible scenarios that would make him need to restart the term and then he wouldn’t be admitted
  - This is more like a case of voluntary cessation for now
  - This case is also of the public interest

Class Notes:
- What about the stigma that everyone knows he got in on court order? That’s not enough
  - Collateral consequences
    - There would be no way to get rid of these after your time was served
    - They say the stigma of being a criminal does not rise to the level of collateral consequences
  - So we’re back to Article III - we need a real dispute and there isn’t one here.

Note on Mootness: Its rationale and applications (203)
- The requisite personal interest that must exist at the commencement of the litigation (standing) must continue through its existence
  - However, some argue that it is different from standing

Foundations of Mootness Doctrine (205): Some say it is rooted in policy, not Article III

Voluntary Cessation Exception (205): A case doesn’t become moot merely because the conduct has terminated if there is a sufficient possibility of a recurrence that would be barred by a proper decree

-Vitek required “absolutely clear” that it would not recur
  - Dissent wanted “no demonstrated probability”

- Also, there may be an ongoing injury if the city is barred from enforcing the law by a lower court ruling (Erie v. Pap’s)

Study Guide:
case won’t be moot if the defendant has refrained from challenged conduct but is free to return to her old ways and there is a strong public interest in resolving the legal issue. US v. WT Grant Co.
  - US v. WT Grant: Antitrust case. They eliminated interlocking board of directors, but there was
nothing stopping them from going back.
-Exception does not apply if there is no reasonable expectation that the D will resume challenged activity (L.A. v. Davis) (interim injunctive relief)

Capable of Repetition, Yet Evading Review (207)
-This might arise out of necessity
-More recent decisions make it clear that it must repeat with the same party not with other parties who would also not have enough time
-The requisite likelihood is unclear
- *Roe v. Wade* said it was likely enough that she would get pregnant again
-If Roe had been infertile after her baby, would it be capable of repetition? No.

Study Guide:
1. A reasonable expectation or demonstrated probability that the same controversy will recur involving the same complaining party (*Murphy v. Hunt*)
2. The harm complained of is of such short duration that it will be come moot before litigation can remedy it (*Southern Pacific Terminal*)
- *Roe v. Wade*
- *Murphy v. Hunt* - no standing to protest higher bail because there was a small likelihood he would be arrested again
- *Honig v. Doe* - He was still a resident and in the school and could be excluded again

Collateral Consequences (208) Sometimes a case may seem moot but the court could still offer some sort of meaningful relief (making them burn all copies of something illegally obtained in *Calderon*)

Mootness in Criminal Cases (208)
The traditional rule was that criminal cases became moot after they had served there sentence, but *Sibron* added that there had to be no possibility of collateral consequences
-Should stigma count? How is that different from the stigma in a civil suit?
-Death of a criminal defendant moots the case

Disposition of Mooted Cases in the Federal System (209)
-Disposition depends on the nature of the events that mooted the dispute
- *Munsingwear*: reverse or vacate and remand with direction to dismiss
  -(get rid of the lower court ruling on the moot case)
  -This would also clear the path for future relitigation of the issues
  -This is still the authority for civil cases
-In criminal cases, when the defendant dies, they don’t vacate the judgments before then based on *Durham*. Thus, there is no dismissal of the indictment
-In *Bancorp* the parties settled which is what made the case moot. The SC then refused to vacate the judgment below since it was a settlement that mooted the case
- Mootness does not strip the court of power to take any action, only to pronounce on the merits. The Court can still vacatur and order costs and what not.
- They still have the decision between vacatur and dismissal

Mootness and State Court Litigation (211)
-In *ASARCO* the Court said its more recent practice when reviewing state court decisions is to dismiss the appeal and leave the state court judgment

Mootness is a federal question

Mootness in Class Actions (212)
-If it is a class action, the case won’t go moot if the named representative goes moot as long as SOME member of the class has a live controversy *Sosna v. Iowa*
-You can appeal the denial of the class, even if you don’t still have a live case or controversy *Geraghty: The Geraghty Case* (212)
-You can appeal the certification of the class action, even though he lost standing to litigate on the merits (he was released from prison). They said they were two separate issues but he still had the right to litigate the denial of a class action
  -They are now like a private attorney general
-If on appeal, the class was properly denied, merits claim will be dismissed as moot
  -The court made no effort to identify an injury

RULE: There is a stake in class certification (based on Rule 23), so they can appeal that even if their claim on the merits is now moot
- The class representative has this ‘private attorney general’ thing.
- I think he’s saying that even if the class IS certified on appeal, this guy couldn’t be the representative.
- Well, it’s hard to find a person to certify the class because they are cycling through so fast.
- Maybe there IS a little discretion to maneuver to get decisions that make sense.
- Otherwise they would have to change the representative every couple years.
- Gerapghty is a controversial case: You are not supposed to use the appealibility of class certification to solve jurisdictional problems, but they do.

**We could avoid a lot of mootness problems by using class actions.

Evolution of Mootness Doctrine in Class Actions (214):

**R**ule: Ordinarily, a showing that the case is not moot as to all named plaintiffs is required to avoid mootness under *Sosna*.

*Gerstein*: Exception: There are always people suffering this injury, but they move in and out too quickly.
- This was a case of pretrial detainees.

**Proper Class Representation (216)** Even before we get to the mootness argument, we have to make sure under Rule 23 they meet the commonality, typicality, and adequacy of representation requirements.

State Class Action Doctrine and Mootness on Appeal (217)
If a state certifies a class, then even if the federal court wouldn’t have, they can hear the appeal.

**Watch on the final for the SC ruling since they don’t want state court judgment to stand.**

**Talk about how standing, ripeness, etc. overlap, but list their elements separately.**
- ex. If there is no injury, there is no standing OR ripeness.
- We see in *Sierra Club* that standing and ripeness overlap a lot.

**Ripeness**

- Requirement that there is an actual, immediate, and concrete controversy.
- Federal courts may not adjudicate when it is speculative whether the plaintiff will actually suffer injury.
- This determination may be affected by the level of hardship to be suffered by litigants if the judiciary does not act.
- Same ideas of separation of powers, better decision making, docket control, etc.
- Again, both constitutional and prudential considerations.
- Might also be affected by judge’s view of the merits.
- Also, may have political overtones.

Requirements and Application (65)

*Abbott Laboratories Two part test**

1. **Fitness of the issues for judicial decision**
2. **Hardship to the parties of withholding court consideration**

-Fitness requirements: If judicial action is appropriate given development of dispute.
- *CA Bankers v. Schultz*: Not enough had happened to know whether harm would actually be suffered (not fit for judicial review).
- *Pacific Gas and Electric*: A purely legal question is ok to be reviewed immediately because there are no facts that need developed.
- *Golden v. Zwickler* (1969): No case or controversy when someone was once convicted of handbilling but there was no showing he would do it again.

-Hardship Factor: The extent to which delay in the judicial action will harm the plaintiff. Sometimes the Court will rule even though no harm has yet come because the harm will be so great.
- *Abbot Laboratories*: Because relabeling everything would be an immediate financial harm, they said it was ripe.
- *Mitchell*: A rule against participating in politics for employees of this company was not ripe because no one had violated the rule. They would only be harmed if they did.
- *Adler v. Board of Ed*: Teachers couldn’t be communists - The Court decided on the merits and only Frankfurter in dissent raised the ripeness issue.

-Declaratory Judgment Cases:
  - Declaratory Judgment Act said they could issue declaratory judgments in a case of actual controversy.
  
**United Public Workers v. Mitchell** (217) Supreme Court, 1947

*Rule* A general threat of a law interfering with civil rights if specific things are done does not make a judicable case or controversy.
**Governing Rules**  No advisory opinions

**Facts**  Part of the Hatch Act forbade executive officers from taking active roles in political campaigns. This group of people want to participate, and in their briefs they discuss the activities they want to take part in that are prohibited. One applicant, Poole, has violated a provision.

**Issue**  Whether the SC can advise about the legally permissible limits of a regulation

**Opinion Below**  DC said the interest in their privileges of political activities was sufficient to give standing.

**Holding**  Aside from Poole, this action isn’t ripe.

**Other Rulings**
- There is a desire to act contrary to the rules, but the rules have not been violated
- A hypothetical threat is not enough. We can only speculate what acts the appellants would engage in
- As far as Poole, who has actually violated a rule, the case is ripe.

**Dissent** (Douglas):  Declaratory relief is the single remedy to preserve the constitutional rights of appellants. The threat against them is real not fanciful and immediate, not remote

**Class Notes:**  No injury ➔ No ripeness
- They still can uphold the Hatch act because of Poole. Later cases don’t have Poole’s, so they skip the ripeness issue if they really want to rule

**Abbott Laboratories v. Gardner** (221) (Pre-enforcement review)  Supreme Court 1967

**Rule**  Twofold consideration: evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration
- Where the legal issue presented is fit for judicial resolution and where a regulation requires an immediate and significant change in the plaintiffs; conduct with serious penalties attached to noncompliance, access to the court under the APA and the DJA must be permitted absent a statutory bar or some other unusual circumstances.

**Governing Rules**  Clear and convincing evidence of legislative intent to forbid pre enforcement review restricts judicial review

**Facts**  Congress passed an act saying that on labels and printed material the drug name had to be at least half as big as the brand name. The Commissioner promulgated a regulation that anytime the brand name appeared the drug name had to be there too. The drug company challenged the commissioner’s regulations saying they exceeded the authority granted by the statute

**Issue**  Whether a regulation can be challenged before it is violated if penalties are high

**Opinion Below**  DC granted injunctive and declaratory relief. CA reversed and dismissed saying there was no case or controversy.

**Holding**  These issues are appropriate for judicial resolution at this time. Also, the impact of the regulations upon petitioners is sufficiently direct and immediate as to render the issue appropriate for judicial review at this stage.

**Other Rulings**
- The ripeness doctrine is intended to avoid premature adjudication and keep the courts out of administrative disagreements.
- The issues here are legal, there is no claim of further contemplated administrative proceedings
- There is final agency action
- This puts drug companies in the dilemma of reprinting everything or facing heavy criminal penalties.
- If they follow their present course, they risk prosecution
- Requiring them to challenge the regulations by breaking them might harm them severely and unnecessarily.

**Dissent** (Fortas):  There is no reason in this case to leave the established tradition of needing people to break the laws before we rule on them.

**Class Notes:**
- **There is an economic hardship if you comply with the law, where in Mitchell, if they comply with the law they are in the same situation, they just lose the privilege of participating in politics**
  - In Mitchell they risk losing their job, but they can comply for free
- If its purely legal, you don’t have to worry about it being too early
- This again shows that Duke Power (note on 232) was wrongly decided. That’s where they ruled on the nuclear power law. There is no immediate injury. If they comply with the law, they spend no money.

**Note on Ripeness in Public Litigation Challenging the Validity or Application of Statutes and**
Regulations (224)
The Abbott Labs Test (224) Leading case for challenges to federal administrative regulations and is often applied to attacks on other state and federal statutes.

Toilet Goods: Case wasn’t ripe because the statute only provided that certification may be refused. The regulations wouldn’t be felt immediately by those subject to it in their day to day affairs.

Lujan: Must attack a particular agency action, not an entire administrative program

Reno v. Catholic Social Services: Challenges weren’t ripe because they imposed no penalty, rather they merely limited the availability of a benefit. There can be a ripe claim only when the application was denied because of the regulations

***Since Abbott Labs, pre-enforcement review of administrative regulations has been the norm

-Takings Claims (229): It is more difficult to present a ripe takings claim than a ripe first amendment claim
-First amendment allows attack on regulations that may inhibit speech even before the regulations have been enforced, takings clause claims demand a showing that the regulating authority has foreclosed all economically viable options.
-If there is still a possibility for rezoning or whatever, it isn’t ripe yet.
-With 1st Amendment, you can’t unchill speech by getting G permits, but with property, you can get permits and whatnot before a case is ripe.

***Exam theme: If it arises under Article III, the Court shouldn’t be allowed to bend it, but if it arises under prudential concerns, the Court can try to get a “just” outcome

-There is a time component
-Not ripe → standing → Mootness (you have to hit the standing)
-Ripeness is more discretionary, so sometimes you can challenge a law before it is enforced. It is the Court’s discretion? Be careful of Article III v. Discretion

-Let’s look at some cases to illustrate this point:

Pierce (232): RIPE: Prohibits G from making everyone go to public schools
-There was an immediate and irreparable injury

Poe (233): NOT RIPE: Birth Control statute - Long history of non enforcement, no specific threat

Epperson (233): RIPE: Teaching of evolution, even though it had not been enforced. This holding does not square with Poe, except that maybe evolution wasn’t as controversial as birth control, so they wanted to dodge that one.

Doe v. Bolton: RIPE: Abortion case (maybe they just wanted to decide the issue, because they were doing Roe at the same time) Physicians hadn’t been prosecuted or threatened with prosecution

Roe v. Wade: RIPE: Pregnant woman challenged statute and had standing. Childless couple did not have standing (not the same as being pregnant).

Babbitt: ???

**Do NOT expect the Court to be consistent. They use this to avoid cases they don’t want, but they never say that, so the cases are muddled.
-There are different levels of injury, some are better than others (ex. pregnancy v. marital celibacy)

-Then there is the Pennell case on 230. The question was not ripe but it would never become ripe. The Court wanted it to percolate in the lower courts for a while. It was ripe and there was standing, the SC just was not ready to decide it.

**The Court is using its discretion to decide when there should be pre-enforcement review.

Criminal Statutes (232)
-How speculative is it that you will be prosecuted?

O’Shea v. Littleton (234) Supreme Court, 1974

Rule The threat of injury is too remote to satisfy the case or controversy requirement

Governing Rule Younger: Courts of equity should not act, especially to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief.

Facts Citizens of Cairo, Illinois brought an civil rights action claiming discrimination in trial procedures, law enforcement, and sentencing in the city.

Opinion Below DC dismissed the case because of lack of jurisdiction. CA reversed sainyg that if the
allegations were proved the DC could offer injunctive relief.

Holding  Reversed. There is no case or controversy.

Other Rulings
- None of the named plaintiffs have suffered any injury in the manner specified
- We can only speculate whether they will be arrested again or for the first time
- Past exposure doesn’t justify injunctive relief if unaccompanied by continuing present adverse effects
- There is no criminal statute that they are complaining about, rather it is a practice and procedure
- We must assume respondents will conduct their activities lawfully so they won’t face this problem again
- In order to enforce any relief they could give, they could have to do an ongoing federal audit of state criminal proceedings → continuing intrusion
- Respondents have also not alleged a likelihood of substantial and immediate irreparable injury which is needed to get equitable relief
  - There are also other avenues of relief available

Note: This could also have been spun as a standing issue → injuries are not redressable

Concurrence (Blackmun): The additional discussion on equitable relief is an advisory opinion and should not have been issued

Dissent (Douglas): There is a likelihood that the named plaintiffs or other members of the class will be arrested in the future. Here is a recurring pattern of wrong here.

Class Notes:
- They are claiming that the injury is a “chill” effect. This is ok in free speech stuff, but here, the court doesn’t want to deal with it.
- The Court says there are adequate remedies of law: appeal from your criminal convictions

Note on Ripeness and Related Issues in Public Action Challenging Patterns or Practices in the Administration of the Law (238)

Scope of the Issue (238): This case isn’t all that different from Mitchell or Roe v. Wade. Here, there is no challenged statute, but rather a pattern of events. When we are talking about official practices, it is difficult to identify the individuals likely to be harmed.

The Lyons Case (239): This guy wanted to end the police’s use of chokeholds. The SC said there was no case or controversy because he was not immediately threatened. O’Shea was precedent saying they didn’t want to give massive structural relief, and that there was no showing of irreparable injury. They DID give standing for past damages.

The Dissent distinguished it from O’Shea because he was also seeking damages for past injury.
- There seems to be a theme of no ripeness in law enforcement cases…even with damages.

Justiciability and Institutional Remedies (241) It is really hard for the court to reform or restructure governmental institutions, but sometimes they have to. It seems as though sometimes they hide behind these justifiability doctrines to try to avoid it though
  - Rizzo (note on 239) (no standing), very similar facts
  - Laird (note on 239): No standing - they don’t want to be in charge of day to day

Justiciability and Class Actions (242)

In O’Shea, the Ps had sought certification, but in Lyons they didn’t.

POLITICAL QUESTIONS

Sources and Purposes of Political Question Doctrine
- Some issues of con law are beyond the competence of the judiciary.
  - If the C commits a particular matter to another branch, the judiciary should decline to adjudicate it no matter how live, concrete, or ripe.
- Based on separation of powers, prudence, and issues not being judicially formulated

Modern Explication of Political Question Doctrine (73)

Baker v. Carr: Six relevant factors. The presence of any of these might trigger it.
*** This is a case-by-case analysis
1. Textual commitment to another branch of the federal government
2. Lack of judicially discoverable and manageable standards for resolving the legal issue
3. Impossibility of deciding without an initial policy determination of a kind clearly for no judicial discretion
4. Danger of expressing lack of respect due coordinate branches of government
5. Unusual need for unquestioning adherence to a political decision already made
6. Potentiality of embarrassment from multifarious pronouncements by various departments on
three themes in these:
1. Allocation to another branch,
2. Functional approach,
3. Prudential considerations

**Categories of Cases to Which the Political Question Doctrine has been Applied (74)**
1. Republican Form of Government:
   - *Luter v. Borden:* Which faction was a legitimate form of government for RI
   - *Texas v. White:* When to recognize governments of seceded states
2. Foreign Affairs
   - *Goldwater v. Carter:* Wouldn’t rule on the termination of a treaty
   - *Baker v. Carr*
3. Impeachment
   - *Nixon v. US:* Refused to rule on impeachment of federal judge
4. Dates of duration of hostilities
5. Regulation of Political Parties
6. Judicial review of training and weaponry of the national guard
   - *Gilligan v. Morgan*

**Areas in Which Application of Political Question Doctrine has been Rejected (76)**
1. EPC challenge to state representation apportionment *Baker v. Carr*
   - Also *US Dep. Of Comm. v. Montana:* Congressional districting
2. Exclusion of a member of Congress by one of the houses of Congress
   - *Powell v. McCormick:* Congress said he was unfit
3. Claims of Executive Privilege
   - *US v Nixon*
   - *Nixon v. United States* (244) Supreme Court, 1993

**Rule** Impeachment proceedings of the Senate are not reviewable by the courts

**Governing Rules**
Article I, S3, Cl.6 “Senate shall have the sole Power to try all Impeachments

-A controversy is nonjusticiable (because of a political question) where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it (two of the considerations from *Baker v. Carr*)

**Facts** Nixon was a judge who went on trial before the Senate for impeachment because he was convicted of making false statements before a grand jury. He was removed from office by the senate after a small group of them heard evidence and then presented it to the senate as a whole

**Issue** Whether Senate’s impeachment hearings are reviewable for Cality by courts

-Whether the Court can say they didn’t “try” it

**Holding:** This is not reviewable by the Courts

**Other Rulings**
- The word “try” was not used to limit the Senate’s power. Other limitations in the same paragraph are much more explicit.
- There is no evidence from the constitutional convention of impeachment review
- The word “sole” implies that it should belong to the Senate alone - no power for Courts
- The framers discussed having SC do impeachments but ultimately settled on the Senate
- We need checks and balances
- There are other safeguards on senate (need 2/3 vote, congress has to bring the charges)

**Class Notes:** the note from 265 says that if disrespect were enough, every time they struck down a statute of Congress it would be disrespectful. It has to be more extreme.

-What about the changing circumstances argument? They might not have thought this would be ok back when they wrote the C, but things are different now.

**Concurrence (White):** There is no constitutional provision against deciding this case. The Senate shouldn’t be given unleashed power or they might just flip a coin.
- It was Congress, not Court that framers wanted to keep out with the word “sole”
- The issue of political question isn’t whether its been given to another branch, rather whether the other branch has final responsibility for interpreting the scope and nature of such a power

However, in the instant case, this procedure was fine. (not a coin flip)

**Concurrence (Souter):** I agree that this is a nonjusticiable political question. However, the Court should
have some checks to make sure they don’t just flip a coin.

**Note on Political Questions** (253)

**Textually Demonstrable Commitment to Another Branch** (254)

- Nixon
- Powell v. McCormack: Whether Powell was entitled to a seat in Congress to which he was elected. He was denied by a House resolution as being unfit. This was held NOT to be a political question because the “textual demonstration” was limited to the qualifications expressly set forth in the C.

**Judicially Manageable Standards** (256)

**Prudence** (256) Nixon concurrence talked about case by case prudential factors.

Class Notes: Political Question doctrine is as old as Marbury v. Madison: the Court commands the President to use her own discretion.

**Colegrove v. Green**: (257) Congressional districting in IL is a political question: Districting questions are questions of political power and thus not fit for judicial determination

- Baker distinguished this saying that this is under the Guarantee Clause whereas Baker was under the EPC which has more concrete standards.

**Baker v Carr** (leading Political Question case) (258) says not to forget that this is a case by case inquiry.

**ISSUE:** Legislative apportionment in TN

**RULE:** Six criteria:

1. Textually demonstrable Cal commitment to a coordinate political department
2. Lack of judicially discoverable and manageable standards for resolving it
3. Impossibility of deciding without an initial policy determination
4. Impossibility of independent resolution without expressing lack of respect
5. Unusual need for unquestioning adherence to a political decision already made
6. Potential for embarrassment from multifarious pronouncements

**HOLDING:** The legislative apportionment was not a political question

-Scholars agree that these criteria are pretty muddled and don’t really make sense
-Then, in Reynolds v. Simms (1964) the Court announced “One person, one vote” as the judiciable standard
- (lack of judicial standards is one thing that makes things political questions)

**United States Department of Commerce v. Montana:** brought under apportionment clause having to do with the number of reps every state gets in Congress. The Court ruled on the merits saying that the Apportionment Clause was well within the competence of the judiciary and didn’t violate the factors of Baker v. Carr

Class Notes:

Since 1901, TN has had this, and then the court comes along and says “one person, one vote.” The dissent says this is ridiculous because they are taking a Guarantee Clause case (which has always been nonjudiciable) and putting it under a different label. It is just what society needed.

-Look at 21 and 22 of supplement. Cases about political gerrymandering and race gerrymandering
-If Bush invaded Canada, there would be nothing the Court could do. It would be for the Congress to stop him, the people to stop him, etc, but it is a political question.
-Note 17 on pg 263: The Kent State sued to keep the National Guard off their campus in the future. It was moot, it was not ripe, etc. But, they could have had a case in federal court for damages. The Court can’t supervise them to keep them off the campus, but they can supply damages.

**The Guarantee Clause** (259) “The United States shall guarantee to every State in the Union a Republican Form of Government”

**Luther v. Bordon** (1849): Rhode Island couldn’t decide which government was actually the Republican one. The SC wouldn’t rule saying it was nonjusticiable. Question was for Congress, not the courts.

-On several occasions since Luther the Court has found Guarantee Clause claims nonjusticiable and never found it justiciable

**New York v. US** (1992): Challenged Radioactive Waste Policy Amendments under the Commerce Clause, 10th Amendment, and Guarantee Clause. The Court avoided the issue of the Guarantee Clause by asserting a violation of the Commerce Clause. However, the Court explicitly did not resolve the issue of when a Guarantee Clause claim could be justiciable.

**Constitutional Amendments** (261):

**Coleman v. Miller** (1939): Court affirmed Supreme Court of Kansas in refusing to restrain the secretary of
state from certifying that Kansas had ratified the Child Labor Amendment: This question was better suited for Congress, and the question was essentially political and not justiciable.

**Foreign Relations** (262)

In *Baker v. Carr* dictum the court rejected the proposition that all foreign relations cases were nonjusticiable.

*Goldwater v. Carter* (1979): Since the C only talks about making treaties, not terminating them, questions on the termination of treaties is political.

*Japan Whaling Ass’n v. American Cetacean Society* (1986): Court reviewed certification of Japan’s whaling practices. The Court said it was the judiciary’s job to interpret statutes and it shouldn’t shy away merely because the decision may have significant political overtones.

-Vietnam War: The Supreme Court never ruled on the justiciability of going to war without actually declaring war. However, lower courts invariably held that the issue was nonjusticiable.

*Dellums v. Bush* (D.D.C. 1990) This lower court said the political question doctrine did NOT bar review of the Bush administrations launch of the Gulf War. However, the case was dismissed on ripeness grounds.

**Respect for Coordinate Branches** (264)

*US v. Munoz Flores* (264): Challenge to a revenue raising act that originated in the Senate instead of in Congress violating the Origination Clause. The court said it would not disrespect Congress to rule because if that was the low level of respect required, then nothing would ever be justiciable. On the merits, the Court held it did not violate the Origination Clause because it didn’t raise revenue generally, but rather for a particular program.

**Political Questions and Political Cases** (265): The mere fact that a case has political stakes or has generated political controversy clearly does not render it nonjusticiable under the political question doctrine.

-Difference between *political questions* and political cases.

-For example, the Court easily ruled in the Florida ballot cases.

*Bush v. Gore*: A very political Case

-Posner’s view was that the C gave FL’s legislature and secretary of state the power. The Florida SC took that power and gave it to themselves. That’s why the SC took the power and gave it back to the FL legislature and secretary of state

-If Gore had been victorious in the recount, there would have been two sets of electors going to the SC and Congress would have to decide which electors to sit and whichever did would decide the president. Because the two houses were controlled by different parties, Congress would not be able to pick and it would be a stalemate. It would all be political and not look at all like justice. That’s why the SC stepped in.

-People say THAT is why it is a political question because the C says that when this happens it is for Congress to decide.

-Now, this is all Posner’s theory, not the Court’s opinion that the Court was trying to avoid a political problem. The *C* does give this to Congress

**CONGRESSIONAL CONTROL OF THE DISTRIBUTION OF JUDICIAL POWER AMONG FEDERAL AND STATE COURTS** (319)

**Congressional Regulation of Federal Jurisdiction**

Q: Why would people prefer federal court to state court? Federal judges are more highly regarded, federal judges have lifetime tenure (not political), fewer federal judges so maybe they are more elite, federal judgeships pay better, etc.

**Sources of Congressional Power**

- Article III §2 cl.3: Exceptions Clause: “Such exceptions as the Congress shall make”
- Article III §1: Madisonian Compromise: “The judicial power of the United States shall be vested in one SC and in such inferior Courts as the Congress may from time to time ordain and establish”

Exceptions Clause of C: SC shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make

State Courts: Necessary and Proper Clause: Congress may impose such limits on state court jurisdiction as may be necessary and proper for carrying into execution the powers of the federal government

**Historical Limits on Federal Court Jurisdiction** (320): Congress has never vested federal courts with entire judicial power that would be permitted by C

-Today: Federal question must appear on face of well-pleaded complaint; amount in controversy must
exceed $75,000, you need complete diversity (Strawbridge v. Curtiss). SC can’t review cases with jurisdiction based on diversity. Etc.

-First Judiciary Act didn’t give federal question jurisdiction to federal courts
-It was fear of discrimination that led to federal jurisdiction, not federal questions

**The “Parity” Debate (322)** Are state courts as fair and as competent as federal?
-Defining the standard: Are they smarter people, more likely to uphold a claim, etc?
-Three features of federal courts that make them more sympathetic to federal claims
  1. Federal judgeships are better paid and more prestigious
  2. Federal judges enjoy life tenure
  3. Federal judges are in a proud tradition of protecting constitutional rights
-Empirical studies: Studies show that state courts are less likely to uphold federal rights, but still substantially likely. But, the studies are muddled.
- People who think state courts are less sympathetic to federal claims might feel there is a Cal issue with trying cases there
- Some say the Cal issue was solved with the Madisonian compromise
- Others say that “shall be vested” means it has to stay in federal courts

**Sheldon v. Sill (327) (1850)**

**Rule** Congress has very broad power to limit the jurisdiction of lower federal courts. There would be a problem though if they tried to give them more than C allowed.

**Governing Rules** Judiciary Act, Establishment Clause

**-Turner v. Bank of North America:** (1799) Congress is not bound to enlarge jurisdiction of the federal courts to every subject, in every form which the C might warrant.

**Facts** Judiciary Act said that circuit courts couldn’t rule on cases where diversity came from assigned promissory notes. This was a diversity case where P and D were both from MI, but P had assigned her note to someone from NY.

**Issue** Whether the Judiciary Act’s saying that federal courts couldn’t rule on cases where diversity came from promissory notes cases was unCal.

**Holding** The statute is Cal and since the plaintiff falls within it there is no jurisdiction

**Other Rulings:** Two possibilities: either every federal court must have all the judicial powers not given to the SC, or Congress shall have the power to define their jurisdictions

**Ex Part McCardle (328) (1869)**

**Rule** Congress can take away appellate jurisdiction from the SC, even while a case is pending on appeal.

**Governing Rules**

-1867 Judiciary Act allowed judges to grant writs of habeas corpus
-Appellate jurisdiction is conferred by the C with such exceptions and under such regulations as Congress shall make.

**Facts** McCardle filed a write of habeas that was denied, but the circuit court nonetheless ordered him released pending decision on his appeal by the SC. While his appeal was pending, Congress passed another act which repealed the ability of someone to appeal their habeas petition to the SC.

**Issue** Whether the SC can hear an appeal when their jurisdiction has been taken away.

**Holding** Court cannot rule on this case because it doesn’t have jurisdiction of the appeal.

**Other Rulings:** Congress has the express power to make exceptions to appellate jurisdiction and that is plainly what they are doing here.

- McCardle had another route to the SC (Yerger). Would it have been different?

**Historical Note:**
-A lot of what went on after the Civil War is a lot like what is going on now with trying to keep things out of the federal courts. Congress did not want the Court to be able to use this case to say the whole reconstruction was unCal.
- They also avoided adjudicating the reconstruction acts in Yerger by releasing him before the Court heard the habeas
- This is also similar to what is happening in Guantanamo Bay right now: military courts
- The Statute was passed 3 days after McCardle. It is obvious that Congress did not want the SC to hear the case. But the SC didn’t inquire into the motives, only the law.
- It was also very limited circumstances so applied very specifically to him.

**Congressional Power to Regulate Lower Federal Court Jurisdiction (81)**
Madisonian Compromise is understood to include the power of creating or not creating lower federal courts AS WELL AS the power of vesting them with less than the maximum allowed and to regulate the appellate power of the SC

-People assume that the greater power (to establish lower courts) includes the lesser power (to regulate their jurisdiction)

-Congress has historically/traditionally been given very broad power in this regard

-This relies on the assumption that federal claims can be litigated in state court

-There are also external restraints considerations like EPC, DPC, etc.

-DPC would have to show the state courts were a “burden” need deprivation

**Alternative Constructions of Article III (82)**

1. Justice Story’s Mandatory Theory - from Martin v. Hunter’s Lessee
   *This has been continuously rejected.
   -“shall be vested” means the whole of federal judicial power must be exercised somewhere in the federal judiciary

-There must be courts hearing the original cases of cases over which the SC has appellate jurisdiction only
   -However, Congress has always had lower courts, but has never vested in them the entire judicial power. So, Story says this is mandatory, but not self-executing and thus there is nothing anyone can do about it
   -This ignores the fact that state courts can be the original forum
   
   *Eisnestrager:* DC circuit took a case that had no jurisdiction anywhere saying that Congress had the duty to confer judicial power to some federal court.

2. Changing Circumstances Theory
   
   The original plan is now unworkable. The SC can’t hear as many cases now so it can’t unify federal law and police state courts

3. Two-Tier Theory: Alternate Theory of Justice Story - Professor Sager and Amar

   That the cases given to federal courts with the word “all” must be tried in federal court, but the other ones Congress can play with. The “all” ones are cases under federal law, ambassadors, and admiralty cases.

-Anyway, there are three main ideas from Justice Story:
  1. Congress is obligated to vest all judicial power either in original or appellate form in some federal court
  2. If any cases in Article III are beyond the state courts and thus not capable of review on appeal to the SC, Congress would have to create inferior federal courts
  3. Alternate: Restrict Congress’s obligation to the first three categories of cases (the ones that say all)

Cases arising under the constitution, laws, and treaties of the US, cases affecting ambassadors, other public ministers and consuls, and cases of admiralty and maritime jurisdiction.

**Recent Congressional Regulation of Lower Federal Court Jurisdiction (84)**

- The AEDPA and IIRIRA passed in 1996 purport to restrict federal court review on certain immigration and deportation orders

-Norris-LaGuardia Act (335): This was an act saying that federal courts should not issue injunctions in labor dispute cases providing that yellow dog contracts not be enforceable. A similar state statute had already been struck down, but the SC held that this statute was Cal because of Congress’s broad power to regulate inferior courts.

**Congressional Power over Supreme Court’s Original Jurisdiction (85)**

- Article III, §2 gives SC original jurisdiction over Ambassadors, Ministers and Consuls and when states are a party.

The Constitution is self-executing in regards to these (Chisholm v. Georgia)

-Congress can neither restrict nor expand Supreme Court original jurisdiction

-Congress CAN grant original jurisdiction over these cases to lower federal courts as well

-United States v. California (1936)

**Congressional Power over the Supreme Court’s Appellate Jurisdiction (337)**

Governing Rule: Exceptions Clause of C: SC shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make

-obviously subject to “external restraints” (EPC, DPC, etc.)

**We don’t have standards for this, so it is hard. Drobak thinks the uncertainty is good.

-Some argue that Congress could completely eliminate appellate power, but others argue that they must
leave some undefined remnant. Exceptions can’t swallow the whole (Exceptions Theory)
- Some argue they can only make exceptions to fact rulings because of the way the clause is worded.
  (Limitations as to Fact Theory)
- Some argue they can’t take away “essential functions” (Essential Functions Theory)

_**Ex Parte McCardle** (See above): Congress’s repeal of appellate jurisdiction was effected even though the case was pending on appeal.
  - This might be limited though, to instances where there is another route to the SC:

_**Klein Case** (339) important limitation on McCardle. Though it is poorly defined

This is the case about presidential pardons and loyalty. They said that the Court should dismiss any petition brought based on a pardon because of lack of jurisdiction.

- The SC said the statute was unCal because
  1. They can’t use the language of “jurisdiction” as a talisman and disguise every control behind the word
  2. This seems like a rule of decision in a pending case
  3. This infringed on the Executive power of issuing pardons
  4. They said it was beyond the acknowledged power of limiting appellate jurisdiction because it was enacted as a means to an end.

**So there is a Separation of Powers Exception**

_Felker v. Turpin_ (1996) (340) The Antiterrorism and Effective Death Penalty Act seriously limited SC jurisdiction for habeas petitions. They used Cal avoidance though and said that it was their appellate, not original, jurisdiction that was limited so it did not offend the C. Also found no violation of the Suspension Clause
- So, they upheld the statute but interpreted it to not take away their jurisdiction over original petitions for habeas corpus

**External Limitations:**
- Equal Protect Clause: Cannot limit a protected class’s access to SC
- Due Process Clause:
  - Can satisfy this in state courts; Doesn’t require appellate review
- Separation of Powers:
  - _Klien_ is the best example of this. It messed with the President’s pardon power
  - _US v. Sioux Nation_ clarified that statute was unCal for two reasons: prescribed a rule of decision in a case pending before the courts and did so in a manner that required the courts to decide a controversy in the G’s favor.
    - This supports a broad reading of Klien
  - _Plaut_ (1995): This was the case where they changed the statute of limitations and tried to reopen cases. The Court said this violated separation of powers in a way that was unCal.
    - Robbed the J of the power to render dispositive judgments
    - Attempted to dictate substantive results in federal litigation.
  - _St. Cyr_: (This was about IIRIRA and AEDPA): Congress’s restriction on jurisdiction did not repeal habeas corpus jurisdiction
    - Required a clear legislative statement of intent to do so.
    - This was avoiding the Cal issue under the Suspension clause

**Congressional Power to Withdraw All Federal Jurisdiction** (342)

**ISSUE:** Exceptions Clause: Can the exceptions swallow the whole?

**RULE:** SC has never directly addressed the issue of what would happen if Congress tried to restrict both SC and lower federal court jurisdiction of the same class of cases simultaneously.
- Drobak thinks it is desirable tension: Congress is elected, etc.
- Nobody knows how _McCardle and Klien_ fit together.

**HYPO:** SC accepts cert on a pledge of allegiance case. Can Congress take it away?
- If they let the trial court’s hear it but not the SC, the law will develop differently in different parts of the country, but YES, they can

**HYPO:** Congress tries to pass a bill that pledge of allegiance cases cannot be heard in federal court at all.
- It seems like Congress is trying to rule
- A Due Process challenge might have to show that state courts are not as good as federal courts
- This would go against Story’s argument, but who cares

Due Process: It is pretty clear that DP is satisfied by state judges. They are judges
-The only argument is to go back to Article III and say that at least one federal court needs to be involved.

Constitutional Arguments
-Justice Story argued that some categories of cases have to be vested in either original or appellate federal jurisdiction
  -Pr. Sager says C requires either original or appellate jurisdiction of Cal claims.
    -Largest interest in a judge who is safeguarded from politics.
    -Also historical
  -Pr. Amar argues the “Two Tiered Thesis” - that there are three kinds of cases (the ones preceded by the adjective “all” that require either original or appellate jurisdiction
    -Supported by various things: documents from drafting process, Judiciary Act, early Supreme Court opinions, structure of C, etc.
  -Pr. Meltzer is critical of Pr. Amar saying that the ‘all’ denotes both criminal and civil. He also argues some of the proof like early SC opinions, etc.

An Indian Law Perspective (345)
Santa Clara Pueblo v. Martinez (1978): Federal Courts possess no jurisdiction over suits to enforce the federal Indian Civil Rights Act
  -enforcement can only be filed in tribal courts, even though it’s federal law.

Congressional Preclusion of Both State and Federal Court Jurisdiction (345)
Congress can regulate states through Necessary and Proper clause and Supremacy Clause.

Jurisdictional Limits and Judicial Review under the Portal-to-Portal Act
-The Fair Labor Standards Act granted overtime pay in covered industries. SC interpreted this to include time traveling to and from job sites. Congress passed Portal-to-Portal Act which said no employer would be liable for violating the FLSA and no court would have jurisdiction to enforce it.
  -This was upheld under DPC challenges and retroactive operation
    -If someone sued after the Portal to Portal act, then he doesn’t have the legal right to claim the travel time - its already been clarified. The problem was that the Act destroyed the rights retroactively -back pay
-HOWEVER, lower courts still felt they could review the Cality of the act
Battaglia v. General Motors Corp. (2nd Cir. 1948)
  -Some circuits upheld it in regards to them because it is ok for Congress to take away their jurisdiction, regardless of what they do to other courts
  -The 2nd circuit, however, found that it offended the DPC of the 5th Amendment since it would deprive appellants of property without due process.

ISSUE: Can Congress remove jurisdiction from federal and state courts together?
  -If there is a limitation, it has to be external to Article III - DPC, etc.
  -Circuit Courts say Congress CANNOT take away jurisdiction to hear DPC claims
    -“they didn’t really mean no jurisdiction over takings claims, just other claims?”
  -Congress can take away jurisdiction to hear treble damage cases, but this is takings
    -Battaglia is 2nd Cir, not SC
    -Is this a due process issue? There is NO forum anywhere to hear it
    -That’s why they take Battaglia as law.

The Reach of the Battaglia Principle (347)
-The Court in Battaglia used the DPC, not Article III as justification
**It seems pretty clear that the issue ONLY arises with Constitutional rights
Constitutional Avoidance: SC has never addressed this issue head on
  -Webster v. Doe: A statute seemed to preclude review, but SC interpreted it as only precluding review of non-Cal claims saying that they needed a heightened showing of intent to deny review of Cal challenges
  -They also hinted that doing so would be a Cal issue.
  -Other statutes have similarly avoided the issue of denial of judicial review of Cal questions

Preclusion of Review and Rights to Remedies
-Does the Political Question Doctrine or sovereign immunity or other abstention doctrines preclude the argument that courts must be available to rule on every claim of a Cal right?
  -Thus, there may be some circumstances in which the law provides no effective remedy for a particular violation of someone’s Cal rights.
Professor Hart’s Views (348)
RULE: Congress can tinker with remedies. Ex. Congress can require people to pay taxes and then challenge them later. You have to go through the right procedure.
-If Congress doesn’t regulate this way, it can always claim sovereign immunity.
-This is only suits against the G, not private suits against its officers.
-But, people would be less likely to contract with the G if they claimed sovereign immunity

Developments Since the Dialogue (351)

Taxes:
-SC is moving towards giving taxpayers the right to litigate the legality of a tax…

_Reich v. Collins_ (1994): States have to provide remedies for unCal state tax violations, in spite of claims of sovereign immunity.

_Alden v. Maine_ (1999): Ruled that the _Reich_ case won over sovereign immunity only because the state, in requiring pay first litigate later, had promised a post deprivation remedy, so was bound by the DPC to satisfy that promise.

Takings Clause Cases:
_First English Evangelical v. L.A._ (1987): Remedies for takings are required by the C
-But, this was a county, so sovereign immunity was not an issue

_City of Monterey v. Del Monte Dunes_ (1999): Plurality opinion, treated it as an uncertain question whether sovereign immunity would win over a takings clause claim.

The Pertinence of the Suspension Clause (352)
Article I bars suspension of the Writ of Habeas except in rebellions or invasions.

Background: This is from England and has to do with bodily detentions. The only relief available is discharge.
-Now it is used to review criminal convictions

ISSUE: If we need habeas in federal courts, or if Congress can give it solely to states

_Ex Parte Bollman_ (1807): SC said jurisdiction over writs must be conferred by statute, but didn’t say anything about whether withdrawal, once conferred, would be a “suspension” in this sense.

The St. Cyr Case (353)
_Immigration and Naturalization Serv. V. St. Cyr_ (2001): The Suspension Clause restricts Congress’s power to preclude review of federal executive detentions
-If the opinion held that IIRIRA and AEDPA did not preclude habeas review of whether the AG could suspend deportation of a resident alien
-St Cyr pled guilty to a criminal charge which would lead to his deportation. The AG said that AEDPA and IIRIRA withdrew her discretion to grant St. Cyr a waiver. St. Cyr brought a habeas petition challenging this interpretation
-The AG argued there was no jurisdiction to hear that because it was precluded by provisions of the IIRIRA.
-At an absolute minimum, the Suspension Clause protects the writ as it existed in 1789.
-Most likely this would fall under this heading
-So, there would _most likely_ be a Cal issue if they interpreted it as Congress taking away review here, so they interpreted it differently.
-As far as the substantive issue, the court held that the AG could grant the discretionary relief because he pleaded guilty before the statutes were enacted.
-Dissent (Scalia) thought they were demanding magical words to suspend habeas, but the statute was very clear. He thought there was no particular guarantee to habeas, only that what habeas there was could not be suspended.
-O’Conner dissented separately to say that even if the suspension clause guaranteed a certain baseline, this would not fall in it.

Congressional Apportionment of Jurisdiction Among Federal Courts and Resulting Limitations on the Authority of Enforcement Courts (357)

Facts: Congress passed the Emergency Price Control Act in 1942 and with it created a special court (the Emergency Court of Appeals). Aggrieved parties could file complaints with the Administrator
and if the protest was denied, they had 30 days to file with the ECA. The jurisdiction of the ECA (and the SC for review) was exclusive.

**Holding:** dismissed

**RULE:** It is ok for Congress to limit equity jurisdiction to Enforcement Court
- They can also make them pursue administrative remedies first.
- The Court left open a challenge as a defense to criminal prosecution, or a civil suit for a different purpose than restraining enforcement → *Yakus*

### Jurisdictional Limits of Enforcement Courts (359)

**HYPO:** There is a statute that makes it a crime to perform abortions. The state says you have to challenge it before you perform the abortion. Some doctor does it anyway and is prosecuted. Can she challenge the statute as a criminal defense? → *Yakus*

#### Yakus v. United States:

**ISSUE:** (Left open from *Lockerty*) If you can challenge an act as a defense to a criminal prosecution if exclusive jurisdiction is given to another court
- This was DPC challenge, also right to jury, and interference with judicial power

**Facts:** Statute said that any claim against price regulations must be filed with the price regulator. You then have 30 days to appeal with EPC - only court in America that would hear it. Yakus didn’t do this, but got prosecuted for violating the price regulations. He tried to raise unCality as a defense.

**Holding:** Too late. You should have gone to the agency ahead of time - statute upheld

*Yakus* is very limited:
- WWII - Congress wanted to control prices during war and to litigate later.
- They interpreted statute to bar attack on regulation of statute, but not statute itself

### Subsequent Developments (361)

- The *Yakus* case was in the midst of wartime inflation but it keeps coming back
  - This notion that Congress can set up procedures.

**Mendoza Lopez:** (1987) an enforcement court could not predicate a finding of criminal violation on a previous administrative determination where there was no meaningful opportunity to seek judicial review of the administrative ruling

- *Custis v. U.S.* (1994): No Cal right to attack previous state convictions that are used in sentence enhancement in federal courts. (this is another court, not an agency)

### CONGRESSIONAL AUTHORITY TO ALLOCATE JUDICIAL POWER TO NONARTICLE III FEDERAL TRIBUNALS (362)

**ISSUE:** Whether courts created by Congress under Article I can perform judicial tasks falling within Article III

#### Adjudication by Adjuncts to Article III Courts

**RULE:** Administrative agencies, bankruptcy courts, and magistrate judges may adjudicate regarding “inherently judicial matters” only if their decisions are subject to substantial review in an Article III court.
- Administrative findings must be subject to judicial review of Cal facts
- Non Article III bodies cannot make binding determinations of private rights
- Article III courts often delegate fact finding to others
  - Congress, also, can delegate fact finding to an administrative agency subject to judicial review

- *Crowell:* A court must determine Cal facts. Such facts underlie a Cal claim, but also encompass jurisdictional facts
- It is the province of the court to determine matters of law with finality
- The review in court defers to the agency’s findings of fact only when they are supported by the record

**Bankruptcy Courts (111) Northern Pipeline v. Marathon (1982):** The Bankruptcy Reform Act was unCal to the extent it permitted non-Article III judges to determine disputes involving private rights

**Magistrate Judges:** Without consent of the parties, judges can refer disparities pretrial matters (such as motions for summary judgment). The magistrate enters findings and recommendations that are reviewed by the district judge
- WITH consent of the parties, they can have trial before the magistrate. The then waive the right to have the matter tried by an Article III judge, although they retain the right to appeal.

**Crowell v. Benson (362) 1932**

**Rule** There should be a trial de novo on the issue of jurisdictional/foundational facts
- An Art III Court/State Court must determine Cal facts- facts that underlie a Cal claim, even if they are
jurisdictional/foundational
-Crowell said it had to be de novo, but later cases changed that

**Facts**
Deputy commissioner found that Knudsen was injured while employed by Benson. Under the Longshoremen’s and Harbor Workers’ Compensation Act, this allowed the DC to award him (Crowell) compensation.

-The act provided that awards could be made by the commissioner only after investigation, notice, and a hearing. They could be enforced by a DC or they could be suspended or set aside on application if “not in accordance with law”

**Issue**
Whether an act that allowed a commissioner to determine whether or not someone is employed by someone else, a necessary condition for federal jurisdiction over the suit, violates the DPC, the right to trial by jury, or the 4th amendment

**Opinion Below**
The DC said the act would be unCal if construed to not permit a hearing, so they heard on the merits and said he was not employed by Benson. The CA affirmed.

**Other Rulings**
-The substantive provisions were upheld as Congress’s exercise of power, so the remaining issue is whether the procedural requirements were Cal
-**Due Process**
  -Factual findings by commissioners are clearly intended to be final
  -The use of administrative methods to determine things such as cause of injury, etc. is consistent with due process.
-**Article III**
  -These are all determinations of fact
  -Matters of law are still reserved for the federal court
  -As to determinations of fact, there is a distinction between private rights and those between G and the people.
  -These public rights may, but need not be, brought to the judiciary. Thus, if Congress wants to use legislative courts, they may. (Murray’s Lessee)
  -This case, however, is a private right case.
  -There is no requirement that determinations be made by judges
    -ex. Juries, private masters, commissioners, etc.
  -This statute only goes towards determining the relationship between employer and employee.
  -There is no constitutional obstacle here.

-Then there are these other, foundational facts:
  1. The injury occurred upon navigable waters
  2. The employment relationship
-Without these conditions, there is no jurisdiction

-The question here is whether Congress may substitute for Cal courts an administrative agency, whose final determination affects the Cal rights of citizens
-Thus, these facts demand independent determination.

**Dissent (Brandeis):** The employer-employee relationship is not jurisdictional, it is quasi-jurisdictional.

**Class Notes:**
-How can Congress give something that looks like a private tort suit to an administrative agency??
  -The administrative procedures satisfy due process
  -Does Article III require Court review?
  -Here, it is like the DC is to the Agency what the Circuit Court usually is to the DC for jurisdictional facts
-Brandeis says it is not jurisdictional, it is quasi-jurisdictional
-Nobody pays attention to this anymore….jurisdictional facts are treated just like anything else. The D.C. doesn’t view jurisdictional facts de novo anymore

-**So Crowell requires de novo review of jurisdictional facts but nobody does it anyway**
-**Congress can take away jurisdiction from federal courts and put it in state courts.**
  Should they be able to take it away and put it in administrative agencies?
  -Trial courts have more independence than agencies
-Administrative judges DO have like employment duration or something? They have things that keep them
somewhat independent, but not entirely.
- They DON’T have tenure

**Note on Crowell v. Benson and Administrative Adjudication (367)**

**Historical Foundations of Agency Adjudication (368)**
- The first Congress assigned responsibilities to executive officials

*Murray’s Lessee* allowed an executive official to audit saying that in an enlarged sense, such an act might be judicial, but so would be lots of administrative functions
- Many executive functions are essentially judicial - just less formal.

**RULE**: Since not every application of law to facts is inherently judicial, we question
- the extent to which the C requires remedies for injuries
- the extent to which administrative findings can be conclusive

**Constitutional Values at Stake (369)**
- Due Process Clause: are administrative agencies sufficiently fair?
- Article III: *Crowell* suggests it is violated by vesting the power in administrative agencies, but not in state courts. Article III issues are:
  - ensuring fair adjudication to individual litigants
  - Maintaining a system of judicial review and remedies
  - Preserving judicial integrity by not requiring the court to accept an agency’s erroneous decision as conclusive of a legal issue.

**Public Rights v. Private Rights (370)**
- This was used in *Crowell* but really derives from *Murray’s Lessee*

**Public Rights (370)** Three main classes of cases
1. Claims against the United States
2. Coercive Governmental conduct outside the criminal law
3. Immigration Issues
- The Court suggests that these cases can be given to the administrative agencies
  - But there are common law and equitable remedies (officer suits, etc.)

**Private Rights (371)**
- *Crowell* was a private rights case, so the court said Congress couldn’t fully preclude judicial consideration
- Then, the issue becomes what effect to give the administrative decision
  *Questions of Fact*
  **RULE**: Administrative findings of nonCal and nonjurisdictional facts may be made conclusive upon the courts if not infected with any error of law
  - expertise, docket control

  *Questions of Jurisdictional Fact*
  **RULE**: *Crowell* insisted on de novo judicial review - now infrequently applied

  *Questions of Law*
  - *Crowell*: Independent judicial decision of questions of law in private rights cases
  - Article III or DPC
  - *Chevron*: two step process
    1. Has Congress spoken directly?
    2. Was the agency’s interpretation based on a permissible construction of the statute?
- Consider also 7th Amendment right to trial by jury (400)

**Criminal Cases**: Administrative agency cannot impose criminal punishments

**ISSUE**: Can Article III court rely on administrative findings in criminal punishment?

*Relevant Considerations*
- *Yakus*: A criminal enforcement court can be bound to give conclusive effect to the decisions of a prior judicial proceeding
- Professor Hart was troubled by the idea that federal criminal courts would have to accept the findings of federal agencies.
- *Falbo*: 1946 (World War II) - a registrant who was being prosecuted for failure to report could not defend on a classification by statutory exemption
  - This is a question of law
- *Estep*: Clarified *Falbo* saying that the issue was that he failed to exhaust administrative remedies. (He didn’t present the claim at the induction center)
-This was another failure to report case. He was charged criminally for dodging the draft. Here, the petitioner DID exhaust administrative remedies. The Court allowed him to defend saying the board was beyond its jurisdiction.
-Except, they all thought it was a statutory construction issue.
The dissent said the remedy was habeas corpus
Class Notes: Statute doesn’t let federal court examine whether or not they were properly classified unless they go through the draft board process.
-The court went beyond jurisdiction because there was no basis of fact
-It was classified as jurisdiction even though it was nothing like that

**The Mendoza-Lopez Case (375)**
- Alien was convicted of reentry and wanted to challenge the original deportation order.
- The Court said that Congress intended to preclude this form of collateral attack
- *Yakus*: Where an administrative decision will lead to a criminal sanction, there must be some meaningful review of the administrative proceeding.
- The Court said that even in *Yakus* where they didn’t allow review of a regulation, that was during wartime, and things were different.
- The Court said that in this case, DPC required him to be allowed to make a collateral challenge.
- Dissent (Rehnquist): There was no DPC here, even though there could be one in other cases.
- Dissent (Scalia): Class Notes: You can’t review under statute but there is a constitutional issue.
- The court relies on *Yakus*

***When you review, look at *Yakus*, *Falbo*, *Estep*, and *Mendoza Lopez* together
- *Yakus*: (wartime) You cannot challenge the legality of a regulation in a criminal proceeding (parallel cases challenge statute)
- *Falbo, Estep*: Taking away jurisdiction of court in criminal cases (wartime)

**Legislative Courts**
- Congress creates legislative courts under the Necessary and Proper Clause of Article I.
  - Upheld in *American Ins. Co. v. Canter* (1828)
  - None of the case and controversy requirements apply
  - Judges are not protected by Article III (tenure, etc.)
- Legislative Courts are able to enter final judgments on the matters before them, subject ultimately to appellate review by the SC.

**ISSUE:** Can these legislative courts entertain matters falling within the judicial power as defined by Article III?
- This would eviscerate the central goal of the Article III protections

**Canter** established three things
A. Congress has the authority to create legislative courts
B. Territorial courts are legislative, not Article III
C. Legislative courts are incapable of receiving Article III judicial power.

**Glidden v. Zdanok:**
- Congress can give some Article III stuff to Article I courts (unclear how much)
- Left open possibility, as suggested in *Bakelite* that there are “inherently judicial” matters that cannot be given to Article I courts.

**Palmore v. US** (1973): Three situations in which Congress has properly vested non-Article III courts with Article III power
1. Territorial courts
2. Military Courts
3. State courts
Palmore added District of Columbia to that list.

**RULE:** Two areas in which Congress may not place adjudicative power in Article I courts
1. Inherently judicial cases involving private rights
2. Determination of constitutional facts.

**Northern Pipeline Construction Company v. Marathon** (1982): Distinguished between private rights and public rights
- Private rights cases must be decided by Article III judges
  - These are cases between two citizens
Public rights cases need not be
- Between citizen and G
- Oddly, these are the ones that need Article III protection more

Recent cases have moved towards the balancing test of *Northern Pipeline’s* dissent
(balance need for tenured position against Gal interest in flexibility
  - Held that public rights/private rights is not a bright line test and there should be balancing.
- *Commodity Futures Trading Comm. V. Shor* (1986): upheld administrative regulation for adjudication even though it was a state created private right.
  - Opinion relied heavily on *Northern Pipeline* dissent (White)

Cases involving the assertion of Cal rights must be determined by independent tribunals
- *Cowell v. Benson*
  - They need to be independent of politics
- SC has since said that review is required, it need not be de novo

**Introductory Note on Legislative Courts** (377)

**ISSUE:** Whether courts created by Congress under Article I can perform judicial tasks falling within Article III

**RULE:** (391) “In reviewing Article III challenges, we weigh a number of factors, none of which are determinative: if essential attributes of judicial power are reserved to Article III courts, the extent to which the non-Article III forum exercises a range of jurisdiction and powers normally vested only in Article III courts, the origins and importance of the right to be adjudicated, and the concerns that drove Congress to depart from the requirements of Article III” *Schor*

Legislative Courts: federal tribunals denominated as “courts” but created under Article I
  - They have existed since almost the beginning of the country.
  - Created under “Necessary and Proper” clause

Still, the Cal limits of using legislative courts instead of Article III courts is debated.

**Historical Practice: Three main categories**

1. **Territorial Courts**
     - Congress possesses general powers over territories

2. **Military Courts:** Used to try and punish offense by service members, try enemy spies, other alleged combatants under the laws of war, administer justice in foreign territories subject to occupation, etc.
   - *Dynes v. Hoover* (1858) affirmed their Cality

3. **Courts to Adjudicate Public Rights Disputes**
   - Ex. Tax Court, Court of Federal Claims, etc. etc. (These are all public rights)
     - First appeared in *Murray’s Lessee*
     - The contours of public rights doctrine have never been fully or clearly defined
     - Most public rights disputes appear to involve civil claims by or against the G.
     - **Crowell v Benson** expands these three categories allowing a purely private right into a Non-Article III court.
       - Think about dissent on 393 - incremental erosion.

**Distinguishing Legislative Courts from Administrative Agencies** (379) (generally)

1. **Enforceability of Judgments:** administrative agencies need a court or someone to enforce, whereas a legislative court can do that themselves
2. **Policymaking Functions:** Administrative agencies use adjudication as a vehicle for policymaking
3. **Traditions and Justification:** Legislative courts are seen as exceptions to Article II whereas administrative agencies are seen as being justified under Article III

**Legislative Courts and Article III Subject Matter** (380)

*Murray’s Lessee:* Congress cannot withdraw Art. III jurisdiction for common law, equity, or admiralty suits (but they do, so this is weird).

- So the issue becomes to what extent historical exceptions can swallow the concerns that give rise to the Article III protections
The Northern Pipeline Case (380) (1982)
-This is the only case invalidating congressional employment of legislative courts.
-This was a challenge to the bankruptcy judges under the Bankruptcy Act of 1978
Rule  Article I judges cannot hear claims of bankruptcy arising under state law
Public rights are not inherently judicial and thus need not be adjudicated by Article III judges, but private rights do!

Governing Rules  The Bankruptcy Act of 1978 empowered legislative courts to resolve traditional matters of bankruptcy and also legal controversies arising in or related to bankruptcy proceedings. These decisions were subject to appellate review in the court of appeals and ultimately the SC.

Facts  Northern Pipeline file for reorganization in a bankruptcy court
Issue  Whether it was Cal for Congress to authorize non-Article III bankruptcy courts to adjudicate a state law contract claim
Holding  Plurality Opinion - the courts were unCal

Other Rulings
- Article III is important to separation of powers. There are three narrow exceptions from history: territorial courts, military tribunals, and public rights.
- Bankruptcy Act does not fit into any of these defined exceptions
  - It is not a public right because it is not solely an issue of restructuring debtor creditor relations, but rather contract damages and what not.
- The G being a party is a necessary, but not sufficient, requirement for public rights.
  - However, the presumption is always in favor of Art III courts.
When these things are assigned, there should be Art III judicial review
- They tried to argue that they were like a magistrate or administrative agency - not so
- issue is whether they retained the essential attributes of judicial power
- Two principles (from Crowell and Raddatz) about non-Art III officers.
  1. Congress had substantial discretion when it created a substantive federal right
  2. The functions of the adjunct have to be limited in such a way that the essential attributes of judicial power are retained in the Art III court.
- Here, however, the claim is based on a right created by state law (not Congress). AND, the DCs didn’t retain the essential attributes of judicial power
  1. These were not small narrow determinations, but rather all cases related to bankruptcy.
  2. This isn’t factfinding like in Crowell but rather they do everything
  3. Crowell orders could only be enforced by the DCs
  4. Crowell had the supported by evidence standard whereas here it is clearly erroneous standard.
- Availability of judicial review was not enough to make these courts adjuncts

Concurrence (Rehnquist): This suit is based entirely on state law, with the only hint of federal law being that this person once filed for reorganization. This isn’t even close

Dissent (White): Restructuring is at the core of the federal bankruptcy power and totally federal law, etc.
- The values of Article III should be weighed against Congress’s desires in using Article I courts. Then, anytime Congress has good reason, they should be able to make an Article I court.
- Three principle considerations: appellate review, separation of powers, Congress’s flexibility in the future.

**This dissent is the direction subsequent cases have taken.
Class Notes:
- The claim that exceeds the bankruptcy’s power is a state contract claim.
- It makes sense that if you are adjudicating someone’s bankruptcy, you would need to determine what the debts are
  - But then the court said the bankruptcy court couldn’t do that.
- What is the harm of waiting? Takes longer

Thomas Case: Government as a party is necessary but not sufficient to make this a public right.
- They wanted to make these bankruptcy courts Article III Courts but the Art III judges objected because they wanted to keep the judgeships elite.

Identifying the Problem in Northern Pipeline (385):
- Is it really more problematic to give state law claims to Article I judges than federal law claims?
Maybe the real problem was that there was no limiting principle.
   All Art III Courts could be eliminated by piecemeal.

Possible Responses to The Problem (possible eroding of all Art III courts)
1. Art. III Exclusivity: All federal adjudicative tribunals must be Art. III
   -This is extreme, and it might be too late anyway
2. Historical Exceptions: Stick with the list of historical and textual acceptance and allow future
   exceptions only if they fit.
   -This is what Northern Pipeline adopted
3. Necessary and Proper Test (387): Seeing Art III as indifferent and asking only if it is necessary and
   proper under Art I, and whether there are any external constraints
4. Balancing (the dissent’s test): Case by case balancing of Art III values with the interests supporting
   adjudication by non Art III federal tribunals
5. Appellate Review: Treat sufficient appellate review by an Art III court as both necessary and sufficient

Commodity Futures Trading Comm’n v. Schor (387) (1986)

Rule
   It can sometimes be appropriate for non Article III courts to adjudicate private right counterclaims

Governing Rules
   -Cality of delegation is assessed by reference to the purposes underlying the requirements of Art III

Thomas v. Union

Facts
   The CEA was created to hear certain types of cases. The CEA was also allowed to hear
   counterclaims arising out of the transaction, etc. of the complaint. In this case, Schor filed
   complaints against Conti. Before being notified, Conti filed in the District Court. Schor
   counterclaimed and also moved to have the federal case dismissed because of the case in the CEA.
   Conti voluntarily dismissed and counterclaimed in the CEA.

Issues:
   Whether the CEA allowed the CFTC to hear state law counterclaims and if so whether that violates
   Art III.

Opinion Below:
   The ALJ ruled for Conti on his counterclaim and Schor’s claim both. The Commission
   declined review so Schor filed for review in the Court of Appeals. The CA upheld the CFTC’s
   decision but dismissed the counterclaim saying that the CFTC lacked authority to adjudicate
   common law counterclaims.

Holding
   Reversed, the CFTC can hear counterclaims even if based on state common law.

1. The CFTC’s position is that the CEA can take jurisdiction over such counterclaims

Other Rulings
   -The Court below read into the act an implied limitation on counterclaims to those that arise out of the act,
   but that is not what it means.
   -Such a reading would be injurious because this is a typical dispute with a typical counterclaim.
     -People would either have to forgo their counterclaims or transfer it and relitigate
   Second Claim: It is unCal to give them this power:
     -Art III serves to protect balance between the three branches of G
     -The right to an Art III tribunal is subject to waiver - here if waived
     by allowing the entire dispute to be
     settled by the ALJ (until he got ruled against)
     -Shür’s decision to use the CFTC is a valid waiver.
     -However, parties cannot always consent to cure a Cal deficiency (if it violates Art III)
     -In determining whether there is an issue, we weigh a number of things like to what extent the essential
     attributes of judicial power are left to Art III courts and the origins and importance of the rights,
     the concerns that drove Congress, etc.
     -This scheme does not impermissibly intrude on the judiciary - it is a small intrusion
       -leaves the essential attributes to art III courts
       -This is more like Crowell in that it is a particular area of law and unlike N.Pipeline where it
         covered a broad area.
       -Like Crowell and unlike N.Pipeline, the orders here are enforceable only by order of the DC
       -Subject to de novo review
       -Doesn’t have all the powers of a DC court (no jury trials or writs, etc.)
     -Nature of the claim: this is a private right
       -The Court hasn’t made the public/private right distinction determinative
     -The decision to use the CFTC is entirely up to the parties, so the jurisdiction of the federal judiciary is
     unthreatened
This doesn’t substantially threaten separation of powers
This is a specific and limited federal scheme that creates an inexpensive and expeditious alternative forum
-immune from political pressures
The magnitude of any intrusion on the Judicial Branch is de minimis
Since a federal court could decide these issues, it does not violate principles of federalism to take them from the state courts
Dissent (Brennan): Art III is too important to allow incremental erosion in the name of legislative convenience. You can’t waive your right to an Art III tribunal if it is Cally required.

Further Note on Legislative Courts (395)
Developments Between Northern Pipeline and Schor Cases (395)
*Thomas v. Union (1985): This case mandated arbitration if parties couldn’t agree to just compensation. The arbitration was upheld by the SC. N. Pipe was only a plurality and the categorical approach and bright line between public rights and private rights isn’t appropriate.
- “Practical attention to substance rather than doctrinaire reliance on formal categories should inform application of Art III.”
-Here, even though it was one party against another, it had a lot of the characteristics of a public rights dispute
-Also, there was small imposition on Judiciary, free of political coercion, meaningful review by the courts, etc.
-Although the G isn’t a party here, it sort of is because it involves the exercise of authority by the federal arbitrator
The Significance of Consent (396) Does Shor give any guidance in absence of a waiver? That was such a key in their balancing test.
Balancing (397) Does this look at all like the dissent in the Northern Pipeline case?

10/2 Reading Notes (397-407) (Supp. 31-39)

10/3 Reading Notes (Supp. 39-58)

DO READING NOTES FROM 10/2 and 10/3

STATE COURTS AND FEDERAL POWER (215)
State courts are expected to entertain cases arising under federal law under Supremacy Clause, and subject ultimately to the appellate review of the Supreme Court

Concurrent and Exclusive Subject Matter Jurisdiction (218)
Concurrent jurisdiction: Plaintiff has initial choice of forum, but then defendant has the option of removing the suit to federal court
-Under the Necessary and Proper Clause, Congress can exclude state courts from adjudication of suits arising under federal law
-They have been doing this in various cases all along

Class Notes:
There is a case on 416 (*Tidewater*) where hmmm…read this. A statute gave fed jurisdiction over cases between citizens of a state and citizens of the district of columbia.
-The C says “citizens of two states
-The majority said you should interpret DC as being a sate
-Some said Congress can do this
-Some say they can’t
-BUT, here is one example case of where Congress gave the federal courts more jurisdiction than the C.

State Court Power to Adjudicate Federal Matters
RULE: A state court has jurisdiction where it is not excluded by express provision, or by incompatibility in
its exercise arising from the nature of the particular case
- *Clafin v. Houseman*

  - exclusive federal jurisdiction can be found through: an explicit statutory directive, by
    unmistakable implication from the legislative history, or by a clear incompatibility between state-
    court jurisdiction and federal interests.

- Federal jurisdiction is exclusive over antitrust claims arising under the Sherman and Clayton Acts and
  securities regulations law, etc, pg 423

**Tafflin v. Levitt** 1990 (418)

**Rule** There is concurrent state jurisdiction unless Congress limits it. There is a high standard for
showing that limitation

**Governing Rules**
- States have authority to hear cases subject only to limitations imposed under Supremacy Clause
- There is a presumption in favor of concurrent state jurisdiction if their Cs allow it
- There are three ways Congress can limit state jurisdiction (*Gulf Offshore Co.*)
  1. Explicit statutory directive
  2. Implication from legislative history
  3. Incompatibility
- Factors indicating incompatibility are: desirability of uniform interpretation, expertise of federal judges in
  federal law, greater hospitality of federal courts to certain claims, etc.

**Facts** The statute said “Any person…may sue …in any appropriate….District Court”

**Issue** Whether states have concurrent jurisdiction over RICO cases ➔ yes

**Other Rulings**
- Use of “may” makes it permissive, not mandatory. Thus there is no explicit statutory directive
- If Congress does not even consider the issue, there is no implication of taking jurisdiction
  - The presumption is the other way — toward concurrent jurisdiction
- Borrowing language from an act that has exclusive jurisdiction is not dispositive
- Congress knows the law, it could have done it expressly.
- There is no clear incompatibility - no danger of inconsistent application, there is review by the Supreme
  Court, etc. etc.

**Concurrence (Scalia):** The three parts in *Gulf Offshore* may not be exactly right. It was just dictum.
- It should take an affirmative action to oust state jurisdiction
  - There should be no exclusion of state jurisdiction by implication - especially not implication of
    legislative history.
- It is questionable whether the third prong should be enough either.

**Class Notes:** So the question is whether state civil rulings would affect federal criminal rulings. The court
doesn’t think so. These are civil and don’t affect criminal

**Congressional Policy** (425): Congress has a ton of options for where to vest jurisdiction
*Exclusive State Jurisdiction: All cases that didn’t make Article III
*Exclusive Federal Jurisdiction: Think about the need for uniform interpretation, expertise of federal
  judges, more sympathy, etc.
  - This usually assumes parity
*Concurrent Jurisdiction: This offers convenience and choice of forum, good for Ps
*Concurrent Jurisdiction With Right of Removal: D has right to remove to federal court.
  - Typically, removal is only allowed if the well pleaded complaint has a federal issue in it. It is
typically not allowed for federal defenses or federal replies to defenses - the P could have filed
there first

**Identifying Implied Exclusion** (427)

Implied incompatibility:
- Supreme Court has not be precise in indicating what factors are important
  - *Charles Dowd Box v. Courtney* (1962): Based findings entirely on language of statute and
    legislative history. Rejected arguments about ambiguous scope, need for uniform interpretation.
- However, the court frequently DOES consider these pragmatic factors
  - *Gulf Offshore*: Considered need for uniform interpretation, expertise of federal judge, and greater
    hospitality of federal courts (I’m not sure what the holding was)
  - *Tafflin v. Levitt*: Concurrent jurisdiction for RICO - need for uniformity did not overcome
presumption of concurrent jurisdiction
-Yellow Freight System v. Donnelly (1990): Expectation of legislators that jurisdiction would be exclusive did not overcome presumption

Does the state also have jurisdiction?
Y Claflin v. Houseman: (1876) State has jurisdiction unless excluded by express provision or incompatibility
-Class Notes: Drobak finds this troubling. This is based on the Sherman Acts. The Clayton act creates rights to sue. It reads just like the top of page 420. When they interpreted the Clayton act, they say “Exclusive jurisdiction” This case sort of stands out on its own. Drobak doesn’t think this decision would be made today.

N: General Inv. Co. (1922): Implied Exclusion
Y: Charles Dowd (1962) Defended Claflin presumption against exclusion
Y: Gulf Offshore (1981): Three part test for implied exclusion
Y: Yellow Freight System (1990): The omission of express provision is strong maybe sufficient evidence that Congress had no intent to take state jurisdiction

Concurrent Jurisdiction and Tribal Courts (428):
-They are not courts of general jurisdiction

Tennessee v. Davis (429) (1880)
Rule Upheld constitutionality of federal officer removal jurisdiction
Governing Rules 28 USC 1442 allowed for “federal officer removal”
Since 1815, Congress has allowed removal of state actions or prosecutions against federal officials likely to encounter state hostility
(In 1899, however, Congress said this is only when the officer claims a federal defense, not simply when she claims innocence)

Facts A federal employee was on trial in a state court and petitioned for removal to federal court
Issue Whether a law that provides for removal of a case based entirely on state law but that happens to be against a federal officer is constitutional

Other Rulings
-This guy was on duty when he did the act
-Nothing in the C distinguishes between civil and criminal cases
-It is without doubt that congress has the authority to grant power of removal of civil cases arising under the laws of the US.
-If civil cases can be removed, criminal cases should be able to be removed as well
-The authorization of removal is not an impermissible intrusion on state sovereignty
-*Exception to well pleaded complaint
-The rationale is premised on the desire to insulate federal programs from attack in state courts and the very likely assertion of a federal defense
-Federal defenses usually are NOT sufficient.

Class Notes: This is a state law defense of self defense. But, one of the elements is a federal law issues (is the agent acting under the authority of state law?)

Tarble’s Case (433) Error to Supreme Court of Wisconsin
Rule A state court cannot issue a habeas releasing a federal detainee.
Governing Rules
-Booth: no state jurisdiction when it interferes with the authority of the US.
Facts A man was held by a federal recruiting officer as an enlisted soldier because they thought he was a minor. The Court of Wisconsin issued a writ of habeas corpus on petition of the boy’s father.
Issue Whether a state court commissioner has jurisdiction to entertain habeas petitions that interfere with the authority of the US.
Opinion Below The Court ordered him discharged. SC of Wisconsin confirmed.
Holding No jurisdiction for the state officer to issue the habeas on a federal detainee.
Other Rulings
-WI couldn’t grant habeas for the release of a prisoner in MI and likewise they can’t do it for a federal prisoner in WI
-The federal government within the state and the state themselves are two different government restricted to their respective spheres
-The only intrusion can come if the National government has to step in in cases of conflict of authority because of its rightful supremacy.

-If people were all granting habeas all the time, the army could never function. This disorder could happen with federal courts granting habeas, but there is a speedy remedy. (in the legislature?)

-The federal procedure is just as good and fair as a state procedure would be.

Dissent (Chase): A state should be able to issue a writ to protect its citizens.

Class Notes: This was written by the guy who wrote Penoyer v. Neff.

-What about full faith and credit clause?

-We probably could operate this way, maybe we should, Drobak is doing his thing.

-Why does the Court rule you can’t release a federal prisoner?

-Why is the Supremacy Clause relevant?

-If the federal ability to raise armies is supreme law

-Inside WI there are two jurisdictions: WI and Fed

-These are the roots of Pennoyer v. Neff (personal jurisdiction) - it came 5 yrs later.

-Practically, this makes sense… you want to protect your citizens and what not….

Why is there a distinction between injunctions, mandamus, habeas etc. and damages?

-Damages are post deprivation

-The others, you could really affect the function where you could cause havoc by issuing tons of injunctions against the federal G

-Why don’t you have to go to federal court for damages?

-Drobak doesn’t know either.

HYPO: PvD in fed court, DvP in st. court. Can the state court enjoin P from suing in federal court?

-It depends on the underlying claim???

-Only Congress has the power to limit federal jurisdiction

-Congress has specifically granted diversity jurisdiction (1332 opens this up)

-But 1331 opens up federal claims

-BUT, if the state court rules first, there is claim preclusion and issue preclusion that are going to affect the federal court rulings

-Why can’t they get efficiency by enjoining the suit in the first place?

-They tried issuing the injunction again the PARTY, not the federal court, but they still say you can’t do it.

   The federal court is above the state court.

RULE: No habeas, no mandamus, probably not injunctions, and no proceedings in federal courts. ONLY damages against federal officers.

State Court Power to Control Federal Officers (227)

Ableman v. Booth (1859): State’s can’t issue writ to release someone in federal custody.

-Tarble’s Case: Reaffirmed that state court lacks power to issue writ

-State’s can’t interfere with the operation of the federal government

-Some think this should be limited to national emergencies, but Tarble’s case stands as good law.

-Also, in Tarble’s case, the prisoner was free to seek a writ from federal court and didn’t

   -But, the court didn’t say that this was a condition for the ruling.

Mandamus and Injunctions:


-SC has not ruled on injunctions and lower federal courts are split

   -majority say no injunctions

   -It would make sense to not allow injunctions.

Federal officers can remove their suits to federal court if they raise a federal defense.

-So even if they could do issue injunctions, the officer could remove it

-But, this still saves the hassle of being sued and removing and defending.

Historical Practice: Prior to Booth and Tarble, states totally did this. Even after it, they still did limiting the case to times when the prisoner was held under actual judicial federal process.

Constitutionally Mandated Exclusion?

-Professor Collins offers a historical argument: That when the C was ratified these were inherently excluded from state court jurisdiction.

- Cases not within the states’ pre-existing jurisdiction were thought to be within the exclusive jurisdiction of the federal courts.
-He stops short of claiming that it was intent of the framers to exclude state court jurisdiction here.
-Redish and Woods say Congress’s power to control federal court jurisdiction is limited by the 5th amendment.

**Alternative Foundations (439)**
-Could you argue for pre-emption by federal habeas provisions?
-INS v. St Cyr: St. Cyr hints at alternatives to federal habeas. Could state habeas be this?
-Reconstruction Calism thinks state courts are insufficiently trustworthy

**State Jurisdiction in Other Proceedings Against Federal Officials (440)**
a. Mandamus: McClung v. Silliman: State court lacks jurisdiction of a suit for mandamus to compel the register of a federal land office to make a conveyance
   -The federal court had denied jurisdiction to federal courts, so why would they let the state courts rule?
   -Contemplated that state courts might be able to hear suits against federal officials seeking damages or the recovery of specific property.

b. Damages Actions: Clinton v. Jones did not rule on whether a state court could entertain an action for damages against a sitting president, but did fine that the president had no immunity in federal court.

c. Actions for Specific Relief (441)
-Slocum v. Mayberry (1817): Allowed state court to entertain an action for replevin of a cargo seized and held by customs officers where the statute gave no right to do so.

d. Injunctions: SC ha not yet decided whether states can hear actions on injunctions against federal officers. Lower courts are divided, though leaning towards denying jurisdiction

**Consequences of Exclusion of State Jurisdiction (442)** If there is no state court jurisdiction, the plaintiff may have no remedy. If the federal court can’t hear it either, this can be a real issue

**State Court Adjudication of Issues Falling Within Exclusive Federal Jurisdiction (221)**
**ISSUE:** what happens when exclusive federal law forms the basis for a suit in state court
-Ex. Patent issues in state contract suit

**RULE:** State courts can decide the question (Lear v. Adkins (1969))

**State Court Obligation to Adjudicate Federal Claims (222)**

**Martin v. Hunter’s Lessee** (1816): A state court must apply federal law that becomes applicable in the course of adjudicating state claims.

**ISSUE:** When federal law creates a claim (that is not exclusive) is a state court required to entertain the claim?

**RULE:** Yes. Federal law must be enforced in state court, with a couple exceptions

-Supreme Court has allowed for exceptions for valid excuses
  -Federal penal law is NOT a valid excuse (Testa v. Katt):
    -Because RI would have enforced the same kind of claim if it had arisen under state law, the Supremacy Clause required it to apply the federal law.
    -Inconsistency with state policy is NOT a valid excuse Howlett by Howlett
  -Rationale: 10th Amendment, congressional intent, whatevs.

1. Limited Subject Matter Jurisdiction: Herb v. Pitcairn (1945): If the state court wouldn’t hear the case because of its limited subject matter jurisdiction, then it doesn’t have to hear the federal case
   -The limited subject matter jurisdiction cannot be based on something related to its being a federal case

2. Forum non conveniens: If the doctrine would be applied in a similar situation for a state law claim Missouri ex rel. Southern Ry. V. Mayfield (1950) (no party to the case was a resident of the state

3. There might be one for when a parallel suit between the same parties is pending in federal court Barnett v. Baltimore (Ohio Ct App 1963)
-Some argue there should be one for when there is no analogous state law
   -The phrase “analogous right” was used in FERC v. Mississippi (1982) but they required Mississippi to enforce the claim
   -The SC has never adopted the “analogous right”

-A state may not claim a right simply to reject federal law
-McKnett v. St Louis (1934): they said they had no subject matter jurisdiction over federal law. Bad bad bad
**Testa v. Katt** (443) (1947)

**Rule** States cannot refuse to entertain petitions based on federal law if it would entertain the same action based on state law.

**Governing Rules:** *Robinson v. Norato:* A state doesn’t have to enforce the penal laws of a government which is foreign in the international sense.

**Facts** EPCA gave concurrent jurisdiction over suits when a buyer buys something for more than the prescribed ceiling price. An auto seller sold a car $210 above the ceiling.

**Issue** Whether a state may decline to enforce a federal law in its courts.

**Opinion Below** District Court awarded damages. State Superior Court awarded damages de novo. State Supreme Court reversed because the act was “a penal statute in the international sense” and thus could not be maintained in a state court.

**Holding** Reversed: They have to hear the case.

**Other Rulings**
- The obligations of Rhode Island enforcing a federal statute is different from their obligation to enforce the penal law of another state or foreign county.
- There is a special relationship between the Union and the States of the Union
- *Chaflin v Houseman* held that the C and laws passed pursuant to it are the supreme laws of the land and are binding on states and courts.
- Since *Chaflin* the areas of doubt have narrowed.
- *Mondou:* Court held that CN court could not decline to hear an action based on the Federal Employer’s Liability Act
  - This court said that the act was against state policy, but that is not true
- Since we vote for Congress members and they speak for the union you can’t use state policy as an excuse for not entertaining these actions
- This isn’t a full faith and credit case, so precedent that states don’t have to enforce the laws of other states in their courts do not matter here.

**Note on The Obligation of State Courts to Enforce Federal Law (446)**

1. **Power to Obligation**
   - *Chaflin* upheld the power to exercise jurisdiction over a federal claim, then extended that in *Teflin* to an obligation.
   a. *Prigg v. PN* (1842): Suggested that Congress lacked power to force states to take jurisdiction under the Fugitive Slave Act, but they couldn’t get a majority to agree on this
   b. *Brown v. Gerdes* (1995): Justice Frankfurter’s concurrence said states have power to take jurisdiction, but no one should be able to force them to take a case.

2. **State Obligations of Non-Discrimination (447)**
   **SC has repeatedly suggested that state courts may not discriminate against federal causes of action**
   a. *Mondou v. New York* (1912): CN state court must take jurisdiction of a claim under the Federal Employers’ Liability Act because the state court would take it over an analogous state law and cannot discriminate based on a policy disagreement
   b. *McKnett v. St. Louis* (1934): AL opened its courts to suits against foreign corps. Arising under the laws of other states. AL refused to hear a case under the FELA because it had accepted only cases under the laws of other states. SC reversed because it was discrimination against federal laws.
   c. *Hewlett v. Rose* (1990): If a state would waive sovereign immunity in comparable state actions, they must also do so in a 1983 claim
   d. *Alden v. Maine* (1999): Because of 11th Amendment sovereign immunity, Congress can’t make states hear cases against them. Aside from that, however, its ok. The Court said that there was no evidence that the state had manipulated its immunity in systematic fashion to discriminate against federal causes of action

3. **Valid Excuses** (449): SC has recognized that states may have **valid excuses** for declining jurisdiction
   a. *Douglas v. New York* (1929): A NY court wouldn’t hear a CN resident against a CN resident under FELA because it wouldn’t hear a state law claim under the same circumstances. That was ok.
   b. *Herb v. Pitcairn* (1945): When she originally filed the FELA action, it was the wrong jurisdiction. After she filed the change of venue the statute of limitations had run. That was a valid excuse.
   c. *Missouri ex. Rel. Southern Ry. V. Mayfield* (1950): The Missouri Supreme Court couldn’t be forced to hear a discretionary plea of forum non conveniens because it was applied without discrimination.

- So maybe the rule is that state courts can’t discriminate against federal causes of action, but that it is an
open question (except for sovereign immunity cases) whether they can be forced to hear it otherwise?

4. The Felder Case (1988): Might be viewed as overriding a state’s non discriminatory refusal to hear a federal cause of action

- They wouldn’t enforce a notice requirement on a federal 1983 claim when they would have on a similar state claim. The Court found that this was discrimination

Alden v. Maine (see above) (1999): States have to hear claims against themselves when the C requires the state to furnish remedies (14th amendment)

5. The Tenth Amendment and Related Doctrines (451): What about nonjudicial functions? What does the 10th Amendment say?

a. National League of Cities v. Usery (1976): Congress can’t regulate minimum wage and maximum hours


- Congress just said states had to “Consider”

- O’Connor dissented because they did this under Testa and it is a big leap going from regulating court jurisdiction to regulating legislation

c. Garcia v. San Antonio Metropolitan Transit (1985): Usery rationale was getting hard to apply. States are special and should be treated as such when considering how far to extend the commerce clause. However, states participate in the federal government, and that is where they should get their say

d. New York v. US (1992): Invalidated a congressional act as outside the commerce clause. Congress could not force a state to chose between two options if it couldn’t mandate the state do either.

e. Printz v. US (1997): Congress can’t force local law enforcement to conduct background checks for them for the purchase of handguns.

- Federal G can’t force states to legislate and it also can’t force them to administer or enforce federal regulations.

- Distinguishes law enforcement from state courts (where Congress can force states to enforce laws)

- O’Connor concurrence: Fed. G can enlist states by contractual agreement

e. Gregory v. Ashcroft (1991): Congress couldn’t overrule MO’s C (requiring judges to retire at age 70) with the ADEA. That would disrupt the balance between state and federal.

Class Notes:
This all started with FELA. The railroad stuff - created federal torts for federal railroad workers. States didn’t want to hear the cases because they were protective of their railroads.

- Then the SC came in and said “you have to hear these cases because you hear state court cases.

- Why do they leave open an exception for a “valid excuse?”

State Obligation to Employ Federal Procedures in Adjudicating Federal Claims (226)

ISSUE: must state courts adopt federal procedures when they are obligated to hear federal claims?

- Substantive: burden of proof, standard of proof, who has decision making power, rules of evidence, etc.

- Procedural: number of jurors required, etc.

- Then, it is an issue of fact as to whether it is substantive or procedural

- Very little is left as procedural

- Dice v. Akron, Canton, & Youngstown (1952): state courts are required to allocate decision making authority between judge and jury in the same manner as a federal court would (FELA was the law)

- Jury’s role was a goal of Congress

- It wouldn’t unduly burden the state system

- Minneapolis v. Bobolis (1916): Not required to employ the unanimous verdict requirement of FELA

- Brown v. Western Ry. Of Al. (1949): State must construe pleadings liberally as federal court would

Dice v. Akron, Canton, & Youngstown RR (453) (1952)

Rule: A state must allocate decision making between the judge and the jury in the same manner as the federal court would.

Governing Rules: Previous decisions seem to suggest that federal, not state law, should govern decisions under the Federal Employers’ Liability Act.

- Ohio law allowed judges to try (no jury) most issues of fraud

Facts: A man was injured at work and sued his employer for negligence in a state court. The employer
used a defense that the employee had signed away his rights, but the employee said this waiver
was induced by fraud.

**Issue** Whether the state had to follow federal law in giving the issue to a jury

**Opinion Below** TC followed Ohio procedure CA reversed using federal law saying the jury’s verdict must
stand. The Ohio SC reversed

**Holding**
- Decisions under the FELA raise federal questions and should be determined by federal, rather than state,
  law.
- The correct rule, under federal law, is that a release of rights under FELA is void when induced by fraud.
- The right to trial by jury is too substantial a right to be classified as a mere local rule of procedure and
  Ohio can’t deny the right by so classifying it.

**Other Rulings**
- Federal rights could be defeated by states having control over what defenses could be raised
- There is a need for uniform application
- Application of Ohio’s harsh rule is incongruous with the general purpose of the act
- Ohio tries to extend the principle that they don’t need a unanimous jury to say they don’t need a jury at all
to conform to the federal C. However, this is picking out one area of fraud where they say they
don’t need a jury and they can’t do that.
- The trial by jury is an important right that this act gives people

**Dissent (Frankfurter):** Ohio has a system that works for them and this would throw there courts out of
whack. They shouldn’t have to treat an issue that arises under federal law differently from the
way they treat every other case that comes through. Nothing in the act requires that the traditional
ways in which states adjudicate claims should be changed. The judges and lawyers are trained to
do it this way.

**Class Notes:** They are federalizing the tort.
- The issue is whether the judge in OH or the jury in OH should decide the issue of fraud
- This is a little different from regular JNOV. The judge didn’t overrule the jury, she just realized after she
gave the issue to them that it was an issue of fraud so she should decide.

**Note on Substance and Procedure in the Enforcement of Federal Rights of Action in State Courts**

(457):

**Federal Rights and Federal Procedures under FELA (458)**

a. *Central Vermont Ry. Co. v. White* (1915): The state required the plaintiff to prove they didn’t contribute
negligence, but the Court said they didn’t have to prove this for FELA
  - things like burden of proof shouldn’t be flexible based on where suit is brought
b. *Minneapolis & St. Louis RR v. Bombolis* (1916): Allowed MN to use a jury that was unanimous
  - How is this more flexible than shifting the burdens of proof

b. *Brown v. Western Ry* (1949): The Court applied local rules of pleading to dismiss the case. The SC said
dest local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery
authorized by federal laws
  - Dissent: You can’t change the rules of the court depending on the claim (federal or state). The
form shouldn’t have to be different from what is required by state claims of the same type.

3. **Basis of the Holding in Dice** (460):
   - FELA doesn’t even explicitly grant trial by jury, it is just mentioned
   - Not even every FELA case gets a jury trial
   - Juries tend to strongly favor railroad workers
   - maybe they are imposing congressional policy regarding risk distribution?

4. **The Felder Case** (461)

  *Felder v. Casey* (1988): State dismissed 1983 action because it didn’t comply with the state’s notice of
claim statute.
  - SC reversed finding that the notice of claim statute was preempted by federal law.
    - The statute discriminated against federal rights and minimized governmental liability
  - “Federal law takes state courts as it finds them only insofar as those courts employ rules that do not
impose unnecessary burdens upon rights of recovery authorized by federal laws.”
  - This was an outcome determinative rule
  - They found that the notice of claim rule was more than procedural - it is a substantive condition
  - *Johnson v. Fankell* (1997): Held that a state didn’t have to provide immediate appeal to denials of claims
of sovereign immunity (as federal law would provide) if state law didn’t provide it. The Court ruled unanimously that Idaho procedural rules were not preempted by 1983.

**Also, the procedural rules were not outcome determinative**

Class Notes: they were making it harder to sue state’s officials. Drobak thinks this is substantive because it frustrates the underlying purpose.

5. **Power, Policy, and Statutory Construction** (463)
   - The general rule is that federal courts take state courts as they find them.
   - To prevent forum shopping, the federal courts should be equally accessible to both parties.

6. **Federal Limitations on the Enforceability of Federal Rights** (464)
   - So far, the cases have been about state rules that burden federal rights. What about state rules that are generous with federal rights?
   a. **Norfolk & Western Ry. Co. v. Liepelt** (1980): Federal rules govern the measure of damages and how to instruct the jury about them.
   - Even if it is a federal issue, do we need a uniform federal rule?

7. **Federal Procedures in State Administrative Processes** (465)

10/16 Reading Notes

**REVIEW OF STATE COURT DECISIONS**

Study Guide Notes?? 119---> ????
- Supplemental jurisdiction- you can hear state claims that come with federal claims
  - from Article III “arising under” clause (extends to all cases)

What about Note 2 on 492?
- They don’t want to insult state courts by saying they need SC review.
- Note 2: Guy argued that Congress can confer appellate power over anything, but the Court disagreed.

Murdock SEEMS to stand for the position that it is unCal to decide state court laws.
- The words of the C don’t seem to distinguish between trial courts and appellate courts
  - Trial courts HAVE to decide all issues, whereas appellate court only has to decide the errors
- Drobak thinks Curtis is right, but he doesn’t like it.…
- This took place during reconstruction though, so maybe Congress DID want SC review of state courts (especially southern states) but the SC just wanted to stay out of it.
- Maybe Congress can do this under the Supremacy Clause AND the cases thing

HYPO: If someone brings an FELA case in state court and the state finds they are not covered because of a definition under state law. Is that reviewable?
- This is an antecedent issue

HYPO: Suppose it is an FTC consumer law claim where you need a contract….The suit is brought in state court and they say there is no contract so federal law does not apply. He wants to know if it is antecedent - whether or not there is a contract
- This is hard…. (that is a quote)

- **Fox Films v. Muller**
  - Suit for a breach of contract.
  - Defends by arguing that the form contract is illegal.
  - The issue of whether the whole contract fails…federal or state….I don’t know what he’s talking about
  - If it is an adequate and independent state ground the federal court has no jurisdiction

**antecedent v. adequate**. That is the question
- Dismissed for want of jurisdiction

**Murdock v. City of Memphis** (483) (1875)

Rule Supreme Court can not review state court decisions that interpret state law
Only jurisdiction over the question as provided by statute- not the surrounding issues
- Issues must have been decided in state court against the right

Governing Rules

Facts So, there are two claims. One under the 1854 Federal Act and Federal Deed, and one under the
1844 Deed to Memphis from P’s family. It was a contingent grant. It went from P’s family to Memphis so that if it wasn’t used for the naval depot it would revert to Wheatley. But, it wasn’t done clearly.

**Issue** Whether the act of 1867 gave the Court jurisdiction of state issues that follow federal issues appropriate for SC review

**Opinion Below** The Supreme Court of Tennessee said the land belonged to the city of Memphis for the use of the city and not in a trust for Wheatley.

**Holding** The jurisdiction conferred is limited to the decision of the questions mentioned in the statute (Judiciary Act)

**Other Rulings**
- There was a sentence in a previous act that said they could not exercise this jurisdiction. The new act took out that sentence.
  - That doesn’t mean though that they want to change that principle. If they did, they would have said so in plain terms.
- In order for a case to get here, it must be a certain kind of case and have been decided a certain way.
- State courts are the appropriate tribunals for local law
- History of cases also go this way.
- We CAN examine the record to see if there is a controlling state ground which makes this a moot point

**Dissent** (Clifford): We should decide the whole merits of the controversy

**Dissent (Bradley):** There is no jurisdiction in this particular case

**Class Notes:**
- EITHER ONE will let the plaintiff win (not antecedent)
- They are independent
- The state court said the Plaintiff lost on both counts (federal and state) and the land stayed with Memphis
- The sentence that limited supreme court decisions to “arising under” was taken out
- The Court says they needed a more clear statement of Congress.

**Note on Murdock v. Memphis** (491)

4 (493): Murdock shows that the Court lacks authority to review a state court on issues of state law.
- Where a state law ruling serves as an antecedent for determining whether a federal right has been violated, some review of the basis for state court’s determination of the state law question is essential if the federal right is to be protected

**Disposition of Murdock** (494): This isn’t the current state of the Supreme Court. It has all been changed since this case

**The Relation Between State and Federal Law**

**Substantive Law**
Federal law is generally interstitial in nature. It fills in on an ad hoc basis.
- However, at present, federal law appears to be more primary than interstitial.

**Fox Film Corp v. Muller** (496) (Independent and Adequate State Ground)

**Rule** No jurisdiction when a ruling rests on independent and adequate state law grounds.

**Governing Rules** When a ruling is based on both federal and state grounds, there is no jurisdiction for the SC to review because it would be moot anyway

**Facts** There was a breech of contract case.

**Issue** Whether the arbitration clause was severable from the contract.

**Opinion Below** Court held that the contract violated the Sherman Anti-trust Act. It based this decision on state and federal grounds. Then on the severability point, the lower federal court said the entire contract was illegal and that the arbitration plan was inseparable.

**Holding** The non federal ground was valid to sustain the lower court’s decision so we don’t even need to look at the federal ground.

**Other Rulings**

**Note on Independent and Adequate State Ground**
Today, courts will just deny a petition without stating the ground, jurisdictional or otherwise
- It is now an accepted principle that the SC won’t review a decision if federal review could not affect the outcome.
- But, it is important to think about the distinction of when state law is an antecedent to federal law or state law has a distinct basis for relief.

**State Law as Antecedent to Federal Law** (498)
The federal rightholder must prevail on both state and federal grounds. Federal reviewability then depends on who prevailed on the state law claim.

**State Law as a Distinct Basis for Relief:**
- They win if they prevail on either state or federal grounds.
- Sometimes the SC sends these back to reexamine the state issue.
- Is the SC decision advisory when the state court didn’t decide the issue of state law but rather decided only on the federal ground?
  - Like they will get a second bite at the apple.

**Hunter’s Lessee**
There are two issues in Hunter’s Lessee:
1. State: did P own the land when treaty was enacted
2. Federal: Was treaty violated?

**QUESTION:** Search and seizure case: is the state supposed to use state or federal C?
- They can use either one. I think they just have to make sure it doesn’t violate either. Note 8 on pg 500

In Murdock, the SC said ONLY for antecedent state issues do we hear them
- Now Stevens says “keep this out of court. If you have a state law, use it”

**Michigan v. Long** (501) (1983) (unclear if holding rests on state or federal grounds)

**Rule** Presumption that state court intended to decide case on the basis of federal law.
- If the court wishes to rule on the basis of state law, it must make that explicit

**Governing Rules** Independent and Adequate state grounds
- Note 4 on 502 (Beecher): If they use federal instead of state, we can review it. Or, if they construe state law because they feel compelled by federal law, we can review it.

**Facts** In a search issue, the court referred twice to the state constitution but otherwise relied exclusively on federal law.

**Issue** What to do if it is unclear whether a holding rests on independent and adequate state grounds

**Opinion Below** Trial court denied motion to suppress evidence. MI SC reversed.

**Holding** The court has jurisdiction, this case doesn’t rest on independent and adequate state grounds.

**Other Rulings**
- So far, there is no method for dealing with cases when we don’t know if the decision was based on federal or state grounds, so we will just pick something
- If a state court decision fairly appears to rest primarily on federal law or to be interwoven with fed law and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the it did because it believed that federal law required it to do so.

If a state court decision indicates clearly and expressly that it is alternatively based on a bona fide separate, adequate, and independent ground, there is no jurisdiction.

**Class Notes:** New Hampshire just puts a disclaimer in every opinion. Fine. Freezing thing??
- Bush v. Gore (note 9 on 514): This case was pretty extraordinary
- Whenever a state has a provision that is “as far as federal law allows” they create appeal to SC because they are basing it contingent on federal law

**Concurrence (Blackmun):** Uniformity is desired, but this approach is not efficient and there is a higher danger of advisory opinions

**Dissent (Stevens):** We have used all the first three techniques (asking, attempting to figure it out, or presumption of adequate state grounds) but we have never before used this one. I think a presumption of adequate state grounds is better.
- More respect for state courts, less advisory opinions, saves judicial resources, etc.
- Also, this is a case where the state gave him too much protection instead of too little. We shouldn’t overrule that

“The result is a docket swollen with requests by states to reverse judgment that their courts have rendered in favor of their citizens”

**Note on Review of State Decisions Upholding Claims of Federal Right** (508)
1. Justice Stevens argued that claims in favor of citizens should be less important to review than those decisions that go against citizens.
-However, the SC has stuck to the position that it has the duty to review both
2. 1914 Expansion of SC Jurisdiction: Gave court the power to review state court decisions upholding claims of federal rights (Lochner-style).
3. One reason is that the SC is supposed to unify federal law by reviewing state court decisions on federal questions.
4. Supreme Court Review to Unfreeze State Political Processes
   - If a case rests on both state and federal grounds, the SC won’t review it. The state is unlikely to push for policy change if the federal government would rule the other way anyway, so it effectively freezes the decision from review.

Note on Ambiguous State Decisions and Techniques for Clarifying Them (510)
1. There are four main techniques when you don’t know if there are adequate and independent state grounds:
   1. Seek clarification from the state court,
   2. Try to resolve the ambiguity itself by examining relevant state law materials
   3. Dismiss (presumption of adequate state grounds)
   4. Presume the decision rested on federal grounds. (Long)
2. The Alternative of Vacation: it would avoid unnecessary decisions of federal law
3. Other Justifications for Long
   - Respect for state courts; Avoidance of unnecessary decisions; Increasing eligibility for SC review gives them more options to decide important issues; Federal C is a primary protection so it really is more likely to have rested of federal grounds; State judges would clearly elaborate on state law where it exists
4. The Meaning of Long (512):
   - Long says it must fairly appear to rest primarily on federal law or be interwoven with federal law AND the independence of the state ground must be not clear from the face of the state opinion
   - Ohio v. Johnson (1984): changed this to OR??
   - Pennsylvania v. Labron (1996): Extended to a case that rested on a state C, but cited federal Cal precedents because there was no plain statement that they were only being used for guidance
5. Post-Long Departures: Sound Jurisdictional Policy or Unwarranted Result Orientation

Federal Habeas Cases (515)
- A federal habeas court may not review a state prisoner’s claim that a state conviction violated the federal C unless the federal Cal claim was properly raised in state court.
  - So the issues are state procedural issues that are antecedent
  - But it is ambiguous whether rulings were because of procedure or because of underlying federal law
- Harris v. Reed (1989): federal habeas corpus exists unless the state court clearly and expressly states that its judgment rests on a state procedural bar
- Coleman v. Thompson (1991): Denied jurisdiction even though they didn’t expressly state that the judgment rested on state procedural bar because it did not mention federal law and solely relied on the statute of limitations
- Ylst v. Nunnemaker (1991): D could not bring a Miranda claim in his federal habeas petition because he did not raise it in trial as required by state rules.
6. The Importance of Long (516): States can always just explicitly say that they are relying on state grounds and that federal grounds are just advisory
   - Also, state courts can always consider independent state-law grounds on remand.

State Tax Commission v. Van Cott (517) (1939) (State Incorporation of Federal Law)

Rule

Governing Rules
- "graves" was relied on in this case, but then it was overruled so that states can decide whether income is taxable, apart from any questions of immunity.

Facts
According to state law, income gained as part of an essential governmental function isn’t taxable.

Issue

Opinion Below
The Supreme Court of Utah said the respondent’s income was not taxable saying that they thought they had to follow Rogers v. Graves “until such time as a different rule is laid down by the courts, the Congress, or an amendment to the C”
Holding  Vacated and remanded.

Other Rulings
-The opinion as a whole shows that the court felt constrained to conclude as it did because of the Federal Constitution.
-These two grounds are so interwoven that we can’t conclude it rests on an independent interpretation of state law.

Note on State Incorporation of or Reference to Federal Law (518)
-Court’s discretionary, why don’t they have broad jurisdiction and then discretion?

2.  Compelled Incorporation of Federal Law
-On remand, Utah found that this was upheld under state law
  a.  Long Arm Statutes:  some states authorize long arm in any case permitted by the C
      -This is always a federal question, isn’t it?
  
California v. Byers:  SC vacated a judgment that held on grounds of Fifth Amendment and “unfairness”
  b.  Parallel State Constitutions:  What if the interpretation of the state C parallels the federal C?
   
-Delaware v. Prouse:  SC upheld jurisdiction saying that DE would automatically interpret their Fourth Amendment as broadly
      -The C needed to find, however, not only that they would uphold every search upheld federally, but also that they would uphold ONLY those.

   -A state decision resting on an interpretation of a federal law presents a federal question.

**Class Notes:  If you have a state court suit with a duty defined by federal law, there is no jurisdiction(Merrill Dow):  But I think there is SC review???

b.  Piggyback Statutes:  Many state’s income taxes incorporate federal definitions
c.  Standard Oil Co of CA v. Johnson:  The determination of whether a Post Exchange was governmental was a relationship controlled by federal law.
   -SO, sometimes but not all times

-Maybe there is more justification in tort cases than issues of tax law, etc. ?

Indiana ex rel. Anderson v. Brand (523) (1938)

Rule
Governance Rules
Contract Clause of the Constitution.

Facts
Petitioner was a school teacher.  Indiana had had a law that gave tenure to teachers who taught for five years, but then they repealed the law while she was tenured.  After the law was repealed, they tried to fire her.

Issue
Whether the legislation created a valid contract that is still in effect

Opinion
The Court said that they could fire her.

Holding
The petitioner had a valid contract with the respondent which would be broken by her termination

Other Rulings
-Under the Contracts clause of the C, the question is whether it existed and the nature of the contract, not the construction of the law which is supposed to impair it.

-Legislation may contain provisions which, when accepted as the basis of action by individuals, become contracts.

"We accord respectful consideration and great weight to the views of the state’s highest court” but we will decide for ourselves whether or not a contract was made.

-The act used the word “Contract” many times.

-Ultil this case, Indiana had held that it was a contract.

-While contracts are impliedly subject to police power, this is not a valid exercise of it.

Dissent (Black) (527):  This was a statutory right, not a contractual right.

Class Notes:
She claimed she had a contract and the legislation impaired it.  The state took away the first statute as applied to township employees which is what this woman was.
-She claims that repeal of the tenure act, as applied to her, is unconstitutional
-Why is this a federal question?
-it’s a Contracts clause case and its up to the federal courts to decide if there is a contract
-You COULD say there is an antecedent state question that is a preliminary step to get to the federal issue,
OR you could look at it as just one federal question: is there a contract? And you use state law to help answer that question

- State: Is there a contract, Federal: Is Contracts clause violated
- Whether there is a contract is part of whether the C. Clause was violated
- BUT, the state constitution prohibits previous legislatures from binding future legislatures. How can the SC say they have to violate their C.
- Drobak thinks today that it would come out differently: yes, there was a contract but, the contracts clause was not violated because of a legitimate police purpose?

What right gives the federal court the right to decide if there is a contract under state law?

HYPO: Trustee deposits $1M in court account and A, B, and C all claim it. State says that interest earned while they litigate goes to the state. A, B, and C sue saying it was a takings.

**Note on Federal Protection of State-Created Rights** (527):
- There are lots of situations where federal law protects interests created *primarily* by state law.
- There are many difficulties in determining whether the underlying right is protected.
  - On one end they can be defined as only rights under federal law
  - They could depend on whether state law recognizes it (other extreme)
  - In the middle is “patterning definition”: establishes federal criteria and then examines state law to see if it falls into that.
- The more they examine state law, the more deferential their review

**Contract Clause Cases** (528)
- Whether a contract has been impaired only requires interpretation of the C.
- Clause prohibits only impairment by legislation and not by judicial decisions.
- *Brand* affirms an “independent judgment” rule, but, the Court accords respectful weight to the state court’s determination.
- *General Motors v. Romein* (1992): moved further away from relying on state law: the question of whether a contract was made is a federal question for the purpose of the Contract Clause.
  - Class Notes: Drobak brought this up.
- *Brand v. Murdock*: In *Brand*, state law is an antecedent, whereas in *Murdock*, they are distinct avenues
- *US Mortgage v. Matthews* (1934): The Court went the other way - reversing a right that the state court upheld.

**Due Process and Takings Clauses** (530)
- They used to do it on whether or not the state judgment rested on a “fair and substantial basis”

**New Property and Liberty** (531):
- Federal Law governs 1. Whether there was a deprivation, 2. Whether due process was afforded.
- However, we don’t know whose law governs 3. Whether there was even a protected interest.
- Generally, whether there is a protected interest is governed by state law.
  - *Board of Regents v. Roth* (1972)
- Not everything that protects property interests is designed to remedy or prevent deprivations.
  - DPC is not a font of tort law.

See Hypo above: $1M in court account - state takes the interest. They bring a takings claim. The issue of whether there is a protected interest is generally a state issue.

**Webbs v. Beckwith** (532) property rights are created not by C but by independent source like state law.....but.....Court cited other jurisdictions and said interest belonged to claimants.

- So it is sort of a state law issue, but not resolved by the state....the used general property law. So, maybe it is better to say that it is a non-federal issue.
  - This sounds like Swift v. Tyson (before Erie)
  - But this is 1980 and Erie was 1932. WTF

Sooooooo the whole thing is a federal law issue, SOMETIMES state (or non-federal) law answers the first (antecedent issue)

**Liberty Interests** (534)
- There is a federal constitutional dimension
  - Liberty interest of a student to be free from corporal punishment (*Ingraham v. Wright* 1977)
- State law can create liberty interests, just like it can create property interests (*Board of Pardons v. Allen*)
  - But not all interests --> DPC (*Paul v. Davis*)

**Sandin v. Conner** (1995): There was mandatory language in the statute that discipline had to be supported by evidence, etc. Court held that prisoner lacked a liberty interest. They refused to treat the
mandatory language of the statute as sufficient to create a liberty interest.
-They wanted an atypical and significant hardship.
-This is a prime example of the patterning approach.
-(Examining state law to determine if such an interest has been created)

Presidential Elections: The Role of State Legislatures and the Interpretation of State Statutes (536)

-Art II, sec 1, cl. 2: Each state shall appoint ...electors
Florida argued this gave them the right to conduct their elections as they wanted and that any SC review should be deferential.
-Florida SC ordered a change in vote totals. The SC reversed on equal protection grounds. They said that the Florida SC ruling modified established schemes of Florida and thereby violated article II.
-Argued that Art II gave federal review of correctness of state court’s interpretation of state statutes regulating the selection of presidential electors. ... Sketchy
-Said Florida distorted the law beyond what a fair reading required (whatever that means)

Dissenters:
-Argued that the SC had changed, rather than interpreted state law.
-Even if the Court has to examine state law to protect federal rights, they must respect interpretations of state law by state courts.

Other Federal Protections of State Created Entitlements (540): There are these...look out for them...

Class Notes: Bush Against Gore
-"Each state can appoint...electors for the president and vice president"
-They have the power (Supremacy Clause?)
-Is it proper or is this a political question?
-Political question is pretty flexible.
-The vote was 7-2 to review (said it was an equal protection problem), but 5-4 for the remedy. The other two wanted the state court to come up with the remedy.
-In some ways, it is a very controversial case, but it fits in a line of very non-controversial cases (brant, etc.)
-Traditionally relegated to state law?

The Court was saying they were protecting the legislature because the state supreme court’s ruling was so extreme.
(They were controlling runaway judges)
-It would be Cal for a state to just have their legislatures pick their electoral votes.

Antecedent State Law --> Supreme Court Review of State Law Issues

10/24 Class Notes
Pg 781: three cases

Borak: (1964) this is the case that gets the private cause of action going.
-Bivens (1971) talks about Borak

Ash (767) (1965): four things
1. P different from most people so they should be able to sue
2. Legislative intent either to create or deny such a remedy
3. Consistent with underlying purpose
4. Traditionally relegated to state law?

Sandoval (2001): (775): Issue: whether there is a cause of action under 602.
** What did congress intend
-this takes away the other prongs of the Ash test. They say all that matters is Congress’s intent because the right comes from the statute.

SO, if we have this issue today: is there a private right to sue under a federal statute?
-You have to look at the statute! Statutory construction
-Borak really opened the door to private cause of action. Ash kept it open. Sandoval pretty much closed it because if Congress wants a private right, they will just say it. Usually if it is unclear, there is no private cause of action.

Ward and Bivens talk about private rights to sue under C
-Well, Ward might not be. Let’s look at Ward

REMEDIES FOR CONSTITUTIONAL VIOLATIONS (793)

Ward v. Love County (793) (1920)

Rule
Governing Rules
If tax payment was voluntary, it cannot be recovered.

Facts
A group of Indians, upon being released from prison were forced to pay property taxes on land they received. A previous statute had said that they didn’t have to pay taxes. Then they changed the statute and the Tribe challenged the change. While their claim was pending, they were forced to pay taxes or risk losing their land.

Issue
Whether the payment was voluntary and if not, whether it can be recovered.

Opinion Below
OK SC said they paid the taxes voluntarily, so they couldn’t be recovered

Holding
The money was collected by coercion. It can be recovered back

Other Rulings
-It is clear that the lands were not taxable. That is settled.
-Since the right to tax exemption was federal, the court can decide if it was expressly denied or denied in substance and effect.

Class Notes:
-This is a due process claim
-They can hear the voluntaries issue because it is antecedent
-No 11th Amendment issue because it started in state court
-11th Amendment isn’t complete bar because they started in state court but now are saying they didn’t get due process so they get to go to federal court
-They are seeking $$, not an injunction

Note on Remedies for Federal Constitutional Rights (795)

Equal Protection Violations (797) - better treatment for one or worse for the other
-Des Moines Nat’l Bank v. Bennett (1931): Lower court granted higher taxes for privileged group, not vice versa. However, Supreme Court reversed saying the higher paying group was entitled to a refund
-McKesson v. Division of ABT (1990): If a state requires taxpayers to pay first and obtain review of tax’s validity later, the DPC requires state to afford a meaningful opportunity to secure postpayment relief.
-State must either refund one group or collect back taxes from other.
-The G here did not try to claim sovereign immunity.

Reich v. Collins (1994):
-State Cal obligation for relief even more clearly.
-**“While a state may chose between predeprivation and postdeprivation remedies, it must provide one or the other.”
-This obligation exists notwithstanding the 11th amendment immunity.
-HOWEVER, a tax remedy case brought in federal court (this was brought in state court) would be barred by sovereign immunity.

Alden v. Maine (1999): Immunity comes not only from 11 Amendment, so it is co-extensive in state and federal courts. The decision made it sound like because they held out the courts as a postdeprivation remedy, they had to stick to that.

Retroactivity and Remedies (799): What about cases based on new principles of federal law that were not established when the tax was collected
-Harper v. Virginia Dept. of Taxation (1993): Court said there was no basis for denying retroactive relief, but remanded to let state courts decide.
-Reynoldsville Casket Co. v. Hyde (1995): Allowed a statute of limitations bar to be applied retroactively

Claims for Injunctive Relief

General Oil Co. v. Crain (1908): A claim was brought seeking enjoinder of tax collection based on heavy penalties, etc. SC of TN said the state courts could NOT issue the injunction. The US SC said there was no federal question but said they had jurisdiction anyway and sustained the tax on the merits.
-They said that if this suit were barred by the 11th Amendment, states could get away with all sorts of craziness.

The Implications of Crain (802)
-The majority suggested that 11th Amendment would have barred injunctive suit in federal court.
-On the same day, they decided Ex Parte Young holding that 11th Amendment did not bar federal court’s enjoining state officials from enforcing state laws challenged on Cal grounds.

Constitutional Right to Injunctive Relief (803) That is the question…. Should people have to forego conduct or suffer penalties before relief?
-In *Ex Parte Young* the court said it was unconstitutional on its face because of how stiff the penalties were.
-A state officer can be enjoined from the practice of unconstitutional rate regulation
-There are all kinds of abstention doctrines today that are inconsistent.

-Footnote 11 on 803.


**Rule**

Constitutional claim is more than a possible defense to a state court action. It is an independent claim both necessary and sufficient to a plaintiff’s cause of action.

-Damages may be obtained for injuries consequent upon violation of the Fourth Amendment if there is Congressional action allowing it

**Facts**

Bivens was arrested by narcotics agents and manacled in front of his family. He was taken to the courthouse and strip searched, etc.

**Issue**

Whether violation of the Fourth Amendment by a federal agent acting under color of authority gives rise to a cause of action for damages.

**Holding**

Yes, Cal violations by federal agents under color of authority are actionable

**Other Rulings**

-Respondents claim his only remedy is state tort law, not federal Cal violations
  -The Cal violations would take away a defense from the federal agents is all
-An agent acting under US authority has far greater capacity for harm than an individual trespasser
-The Fourth amendment covers MORE than would be unlawful by private persons

**Concurrence (Harlan) (807):** The interest to be free from UnCal federal conduct is a federally protected interest. However, that doesn’t mean that federal courts are powerless to grant damages in the absence of explicit congressional action.

-Did want to allow Bivens to receive damages.

-Lack of judicial resources is not a good enough reason to deny these things

**Dissent (Burger) (811):** We should recommend that Congress do something about this problem.

**Dissent (Black) (812):** Resources are too valuable to be wasted on suing officers who are just trying to keep us safe.

-Remedies are everywhere….unless Congress prohibits it
  -You can sue for damages under any provision of the C unless Congress prohibits it
  -Under §1331 (arising under)

-So in Bivens, since Congress has not said otherwise, court can give damages here.

***Bivens leaves open these “Special Factors”***

-Later, it becomes military exception and where there are alternative congressional remedies

-Can Congress take away Bivens??
  -Not if it is from C, but yes if it is Judge made

**Note on the Bivens Decision and on the Relationship of Congress and the Courts in Formulating Remedies**

**Remedies for Constitutional Violations** (812)

-**Bivens** is all about damages actions against federal officials.
-Section 1983 does not apply to federal actors (under color of state law)
-However, the SC recognized in Bivens a right of action directly against a federal actor

*Bivens* recognized a right to sue a federal actor for damages for deprivation of a constitutional right

**Justification:** There was no Congressional remedy, but federal courts have the power to recognize remedies for constitutional violations

-It also seemed important that the P had no other recourse, although later cases have not required this
-**Bivens** is a serious separation of powers issue - many think it should be Congress’s job to create remedies

-Suit must be brought against individual actors in their personal capacity.
-No amount in controversy requirement

**Limits of Bivens:** Two potential factors that can defeat a Bivens claim

1. Special factors counseling hesitation in the absence of affirmative action
   -Has been found in military courts (*Chappell v. Wallace*)
2. Congress can repeal or modify Bivens but there must be a clear statement of congressional intent to do so.

**Congressional Limitations**

*Davis v. Passman:* Recognized ability to vindicate Cal right even though there was a congressional scheme
in place (Title VII)

However, Court has also been willing to forego a Bivens claim in light of congressional action: these cases recognize a broader legislative power to preclude the Bivens remedy

- Bush v. Lucas: Congress had an elaborate set of remedies for federal employee’s free speech issues. The “comprehensive remedial provisions” precluded a Bivens action

- Schweiker v. Chilicky (1988): Welfare disabilities benefits. Congress had provided “what it considers adequate remedial mechanisms” so there was no Bivens

Procedural Issues:

- No need to exhaust administrative remedies before filing suit
  - Exception for PLRA where you do have to
  - Federal common law (it is state law for 1983) fills in the gaps
  - No provision for attorney’s fees
  - Immunities are basically the same as 1983
    - President is immune for actions taken in official capacity (Nixon v. Fitzgerald)
    - Not for actions taken before becoming president (Clinton v. Jones)

Antecedents (813):

- Bell v. Hood (1946): Federal district court had jurisdiction over damages claim against federal officers under state law, but didn’t rule on federal law. That question wasn’t decided until Bivens in 1971.

- State Court authority to issue injunctions against federal officers is questionable

Official Immunity Doctrines (814): In Bivens the court left open whether or not the D might enjoy immunity from damages liability.

- Later cases have held that in fact they do have official immunity from damages.
- Some have absolute immunity and some have qualified (can’t violate clearly established federal law)

- Generally, immunity is just for damages - not for equitable relief.

Absolute Immunity: protects defendant from suit without exceptions

- Judges are absolutely immune for acts taken in their judicial capacity.
- Juror and witness in litigation are absolutely immune
- Prosecutors are absolutely immune during functions traditionally performed by advocates
- Legislators are absolutely immune
- This applies to both damages and equity

Qualified/Good Faith Immunity: If a reasonable person in her situation would have known of a Cal violation that was clearly established at the time of the conduct

Initial Extension of the Bivens Approach (814): The next two decisions showed that damage remedies would be almost automatic.

- Davis v Passman (1979): Damages remedies “can also be implied directly under the C when the DPC of the 5th Amendment is violated
  - In this case, as in Bivens it was damages or nothing

- Carlson v. Green: (1980): Upheld damages for parents of son who died when medical help wasn’t provided to him in prison (cruel and unusual punishment)
  - Vicitims of Cal violation by federal agent have a right to recover damages despite the absence of any statute conferring such a right unless the D shows special factors or Congress has provided an alternative remedy which is explicitly declared to a substitute.

Exception for Alternative Remedies

- SC started not giving Bivens remedies, especially where there were alternative remedies

Bush v. Lucas (1938): An engineer sued his superior for demoting him as retaliation for first amendment. The SC said that even though civil service remedies were less than complete, they were Constitutionally adequate.

- “Congress is in a better position to decide whether or not the public interest would be served by creating it”

Schweiker v. Chilicky (1988): Plaintiffs were denied social security but then they got retroactive benefits. The SC denied a Bivens actions because the Social Security Act provided administrative and judicial remedies.

- Again they quoted that Congress was in a better position to decide

- However, in neither Bush nor Schweiker did Congress explicitly declare that the statutory remedy was a substitute for a judicial one, even though Bivens suggested that that was what was necessary.
Military Exception (818) This would fall into “special factors” that Bivens left open
Chappell v. Wallace (1983): No Bivens action by Navy men against their superiors for racial
discrimination because of the unique disciplinary structure of the Military.
United States v. Stanley (1987): Extended Chappell beyond the officer-subordinate relationship saying that
injuries arising out of military service could not be remedied with Bivens actions

Bivens Actions Against the United States (819)
-Ordinarily, sovereign immunity prevents the US from being joined.
-FDIC v. Meyer (1994): Congress waived FSLIC’s sovereign immunity but said that a Bivens remedy was
available only against government officials, not government agencies
1. Bivens was implied in part because direct action against G was assumed unavailable
2. The purpose is to deter the officer
3. It would be a huge financial burden on the government

Other Limitations (820)
Correctional Services Corp v. Malesko (820): Prisoner sued for ear injury resulting from heart attack in
prison. SC said he could not sue because he would be suing a contractor acting under color of
state law and not an individual defendant
-The Court is far less willing to allow Bivens actions today
-We cannot expand Bivens to this kind of case.
-Concurrence (Scalia) even said that Bivens was a relic.
Class Notes: Scalia does not want to extend Bivens.
-Bivens was from the days you could imply a cause of action, but now congress said you can’t
-The issue is whether the Court should make this or Congress should
-So, what we have right now are these Constitutional Torts
  -We now have 6 different amendments that are used as constitutional torts

Bivens in Practice (821)
-Of more than 12,000 Bivens actions from 1971-86 only 4 judgments have been paid.

Is Bivens Remedy Constitutionally Required? (821)
-Congress necessarily has a wide choice in the selection of remedies
Unqualified Congressional Preclusion: Is it fair to have NO remedy for a violation
-Consider Marbury v. Madison: every violation needs a remedy
  -This has become more of a principle than a rule
-What about official immunity - bars other remedies so that the violation doesn’t have a remedy
-The court has found a constitutional obligation for remedies in two other settings
  1. Just Compensation Clause
  2. Refunds of unconstitutionally collected taxes
  -However, both of these have to be balanced with sovereign immunity

Bivens as Constitutional Common Law (823)
If damages are not Cally required, are they just federal common law?
-then Congress could repeal or modify them at whim

The Respective Roles of Congress and the Courts (824)
Congress’s capacity to determine appropriate remedies for Cal violations is superior to that of the
courts….but Bivens is at the very least Constitutionally inspired…

THE ELEVENTH AMENDMENT AND STATE SOVEREIGN IMMUNITY
The Eleventh Amendment has been interpreted much more broadly than its language
History: Chishold ruled that someone could sue another state, so Congress passed the 11th Amendment.
-Bars suit by a citizen of one state against another state
-Bars suits by a citizen against her own state (Hans v. California)
-Bars suits by Indian tribes, municipalities, and other states against a state
-Bars suits against Puerto Rico and other territories
-Bars suits against statewide agencies
-Does NOT bar suits by US against state
-Does NOT bar suits in state court
-Does NOT bar SC from exercising appellate jurisdiction over a case brought against a state in state court
-Does NOT bar suit against a county (Lincoln County v. Lunin)
-Does NOT bar suit against a bi-state regional agency (Lake Country Estates v. Tahoe)
Subject Matter: It doesn’t matter if it is federal question, diversity etc. Hans v. Louisiana
Timing:
- It can be raised at any time
- If it is not raised, the court is not required to raise it. *Patsy v. Board of Regents*
- State can waive

What Constitutes a State?
- Anytime a state is actually named
- If the state is the real party in interest
  - Look at the “Essential nature and effect of the proceeding”
  - Look at whether they recover from state treasury *Quern v. Jordan*
- Burden is on political entity to show they are the state
  - Determined by federal law
- Municipalities and municipal agencies are usually not considered arms of the state
- School districts usually are not considered to be arms
- *Regents of the University of CA v. Doe (1997): Theory of legal liability: 11th Amendment bars claims*
  - Even where the plaintiff does not seek to collect from the state treasury
- State cannot create immunity by agreeing to indemnify an antity
  - *Ford Motor Co:* Where the money judgment would be paid from the state treasury, you might be barred
- Suits against a state officer in her individual capacity are not barred *Scheuer v. Rhodes*

**Methods for Avoiding the 11th Amendment Bar**
1. *Ex Parte Young*
2. Waiver of immunity
3. Congressional action to abrogate immunity

*Ex Parte Young:*
- A plaintiff can sue a state actor for certain equitable relief and if successful, stop the state from doing something allegedly illegal
- The P in this case got an injunction against the enforcement of the state law
- The court reasoned that when he enforced the unCal law, he was stripped of his immunity

**Current Doctrine:**
- Used for challenges of the constitutionality of state laws
- The officer must have a duty to enforce the challenged state law
  - Cannot challenge discretionary tasks
- State action must violate federal law or the C
- The federal law must be the supreme law of the land
  - Federal guidelines or laws that leave pieces open to state can’t be used

*The theory is not available if federal law provides such intricate remedies that it is clear that Congress did not intend for Ex Parte Young cases*
- If federal law has its own remedial scheme they assume they meant to foreclose
- Suit must concern an ongoing violation

*Idaho v. Coeur d’Alene (1997):* Not available if it would interfere with special state sovereignty interests such as those implicated by quiet title actions to real property

**Remedies:** (244):
- Must be prospective: injunction or declaratory act (*Edelman v. Jordan*)
- Ancillary costs on the state treasury are ok, but they can’t be damages, it has to be prospective (*Milliken v. Bradley*)
- *Hutto v. Finney* allowed attorneys fees for bad faith failure to comply with court order
- *Quern v. Jordan (1979):* Notified class members of their right to pursue retroactive relief

**Waiver by the State**
- A state may waive its sovereign immunity, but it must be unequivocal either by act or language. (*Port Authority v. Feeney*)
  1. Express provision in a statute
  2. Express provision in state C
  3. Express consent to a particular suit
  4. May be waived by litigation conduct (*Lapides v. Board of Regents (2002))
    - Joined in removal to federal court
- Who? State attorney general, possibly others
- The fact that a state consents to be sued in state court does not compel the conclusion that it has
waived its 11th Amendment immunity from suit in federal court.

**Congressional Abrogation**
- Congress can pass a statute which provides that states may be sued in federal court for violation
- Indirect abrogation/constructive waiver: a statute may say that a state will lose its Eleventh Amendment immunity if it participates in a federal program.

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Class Notes: Why sovereign immunity?? Enforceability is problematic (no judicial police), history, dignity of sovereignty, avoid interference with running the government

**Hans v. Louisiana** (973) (1890)

**Rule** State cannot be sued by its own citizen in federal court on an “arising under” action

**Governing Rules**
- State cannot be sued by a citizen of another state or another state for “arising under” cases (11th Amendment)
- A state may be sued by its own consent (waiver)

**Facts** This was a suit under the contracts clause where a citizen of Louisiana sued to recover the interest on some bonds he bought from the state.

**Other Rulings**
- It would be anomalous to allow a state to be sued by its own citizen where it could not be sued by the citizen of another state.
- The country was in a huge uproar after Chisholm because it seems wrong to allow a state to be sued by an individual.
- Suability of a state was a thing unknown to the law. And, no anomalous or unheard of proceedings or suits were intended to be raised by the Constitution
- If the states aren’t able to hear cases against the state without its consent, why should federal courts, that have only concurrent jurisdiction, be able to hear those cases.

Class Notes: This is not literally in the 11th Amendment. It is expansion

**Note on the Origin, Meaning, and Scope of the 11th Amendment** (978)

**Chisholm v. Georgia** (1793): SC citizen sued the State of GA in the SC. Jurisdiction was upheld as being within Article III’s “between a state and citizens of another state

→ 11th Amendment!

- **Osborn v. Bank of United States** (1824): Allowed a suit against state officials for collecting unCal taxes.
  - Limited 11th Amendment to cases when the State is a party on the record.

- **Governor of Georgia v. Madrazo**: No admiralty suit even though literal language would include

**Interpretation of Hans, Its Aftermath, and the Continuing Controversy over its Meaning and Validity**

Ever since Hans the Court has not adhered to a literal reading of the 11th Amendment.
- Have used Amendment to bar suits against a state by a foreign country
- Included suits of admiralty, even though the text is limited to law and equity
- Barred federal claim in a state court, etc.

- However, they have not barred suits against a state by another state
  - Or suits against a state by the US
  - Also, they have said the immunity is waveable

- **The “Diversity” Interpretation of the Eleventh Amendment** (983): The dissent would only bar diversity suits, not admiralty or federal question jurisdiction

**Federal Court Suits Against State Agencies and Local Governments** (985)
- A suit against a statewide agency is considered a suit against the state under the Eleventh Amendment
  - Does not bar an individual’s suit in federal court against a county for nonpayment of a debt
  (Lincoln County v. Lunin) (1890)

6. Federal Court Suits Against Multi-State Agencies (986)
- **Lake Country Estates v. Tahoe** (1979) said a bi-state regional agency was not immune
  - Lack of state financial responsibility for the Authorities liability, etc.

**Ex Parte Young** (987)

**Rule** You can sue a state actor for equitable relief to stop them from doing something unCal

**Governing Rules** Eleventh Amendment

**Facts** Railroad shareholders brought federal suit alleging that state legislation regulating railroad rates violated Fourteenth Amendment.
Issue  
Whether there is a remedy in federal court for state violations of the constitution of judicial investigation and temporary injunctions against enforcement of a state law

Opinion Below  
Trial court enjoined AG from enforcing the legislation and denied 11th Amendment motion to dismiss. Young, the attorney general, filed a state action seeking to enforce the legislation. The circuit court held Young in contempt. He then filed a petition for a writ of habeas corpus.

Holding  
The rates and punishments are so extreme that they are unconstitutional on their face. Writ of habeas is denied. Young was enjoined from enforcing the law

Other Rulings  
- This would be hard to challenge without this face on suit because of the stiff penalties. Nobody would risk the criminal violations just to test the law.
- A case where you sue an officer but they don’t have any personal stake in the case, it would be paid out of the treasury, etc. is the same as suing the state.
- This is what they did here by suing Attorney General Young
**If the officer enforces the unCal act, however, she is stripped of her representative character and is subjected to personal consequences, because of the superior authority of the C.**
- This is the way they get around it
- A federal court can’t generally enjoin criminal proceedings, but there are exceptions for unCal statutes, etc.
- But they can’t interfere with already pending state court stuff.

Dissent (Harlan) (991):  This really was against the state.

Class Notes:  If the case is TRULY against individual, there can be damages - regardless of whether or not the state choses to indemnify, there is no 11th Amendment problem.
- It is just when you are trying to sue the state but name an individual that you can’t get damages.
- This is what is happening here

- It IS ok, if carrying out the injunction costs money, just not damages.

Note on Ex Parte Young and Suits Against State Officers (992)

- 11th Amendment is inapplicable in suits in which state is not a part of record (Osborn)
- “Part of the record” rule

The Post Reconstruction Bond Cases (992) - big time for 11th Amendment
- Louisiana ex rel. Elliott v. Jumel (1883): 11th Amendment bars a suit by Louisiana bond holders to collect property tax.
- Virginia Coupon Cases: Virginia statute repealed previous statute that people were relying on. The Court held the officials were stripped of their official character because they were enforcing an unCal law.

The Significance and Viability Ex Parte Young (994)
- Young removed doubt that a plaintiff can obtain a federal injunction against the bringing of criminal proceedings under an unCal law.
- Also, strengthened the breach of legal duty notion as a basis for equitable relief.
- Idaho v. Coeur d’Alene Tribe (1997): They sued a lot of people and agencies, but by the time it reached the SC only the individual capacity of some of the officers remained. The Court dismissed it. They said Ex Parte Young was discretionary.
- Look at different factors and strike a balance.
- - intrusive on states, etc. etc.

FEDERAL STATUTORY PROTECTION AGAINST STATE OFFICIAL ACTION: HEREIN OF 1983 (1072)

You don’t need to exhaust state court remedies (Monroe v. Pape) or administrative remedies (Patsy) for 1983
- However, for the PLRA has exhaustion requirements.

Under color of state law: some badge of authority to enforce state law - not whether actions were authorized by state law.

*Defendant must be a person
- A state is not a person
- Officers sued in their official capacities are not “persons”
- Officers sued in the individual capacities are “persons”
- A private corporation is a person
- Municipalities cannot be held liable on the basis of respondeat superior (Monell). They can be held liable
only if the deprivation was caused by some policy or custom of the municipality,
-NO PUNITIVE DAMAGES from municipalities
*You can only sue for a right granted by federal law or the Constitution (not state law)
Remedies
-Attorney’s fees
-Damages
-Injunctions,
Statute of Limitations: Apply state statute for that kind of case:
- general or residual statute for personal injury cases (Owens v. Okure)
-In federal court, there is a right to trial by jury
-Federal notice requirements (notice pleading)
-Sue in State OR Federal Court
*There is still some immunity
Monroe v. Pape (1961)
Rule
1. *A plaintiff does not need to exhaust state remedies before filing a 1983 claim
2. Someone can be acting under color of state law even though their actions are unlawful
Governing Rules
-Fourth amendment applies to the state through the Due Process Clause of the 14th
-Congress can enforce Fourteenth Amendment against states whether they are acting in accordance with
authority or misusing it.
-“Under color of state law” means “misuse of power, possessed by virtue of state law and made possible
only because the wrongdoer is clothed with authority of state law.”
-For a 1983 claim we need: 1. Constitutional violation, 2. Under color of state law
Facts 13 police officers broke into petitioners’ home and searched them, arrested them, etc. without
valid warrants.
Issue Whether Congress meant to give a remedy under 1983 for a deprivation of constitutional rights by
an official’s abuse of their position.
Opinion Below District Court dismissed, Court of Appeals affirmed.
Holding Yes, damages should be available for 1983 claims. The claim was properly dismissed against the
city, but not against the officials.
Other Rulings
-The Courts of Illinois are available here. However, 1983 wasn’t enacted for when Courts weren’t
available only. It was also used to override certain state laws, to grant a remedy where state law
was inadequate, and to provide a federal remedy if the state remedies weren’t actually available in
practice.
-You don’t need to exhaust state remedies before seeking federal ones.
-This WAS under color of law
Concurrence (Harlan):
Dissent (Frankfurter): We should distinguish between unconstitutional actions that the state authorizes,
which should be federal, and unconstitutional actions without state authority, which should be a
state issue.
-If there is a state remedy, they should seek that first
Note on 1983: An Overview (1079):
Monroe established two propositions
1. 1983 creates a federal remedy against state officials for violation of federal rights
2. That remedy is available even if the official conduct is wholly unauthorized under state law. -
**Still under “color of law”
State Action and Private Conduct (1080)
-for 1983, must establish an injury resulting from unconstitutional state action
-This talks about a constitutional tort in violation of 14th Amendment
-American Mfrs. Mut. Ins. Co. v. Sullivan (1999): Considered the extent the state needs to be part of private
action to be under state law. The court reiterated that plaintiff must show both constitutional
deprivation AND state actorship
-Since Monroe, 1983 litigation has grown rapidly
Attorney’s Fees (1084)
Civil Rights Attorney’s Fees Awards Act of 1976 allows a court to give a prevailing party, other than the US, reasonable attorney’s fees.

- Also awards plaintiffs who prevail in settlement
- Since *Maher v. Gagne* (1980), attorney’s fees have been required bar special circumstances for plaintiffs
- For defendants, they recover not when they prevail, but when the action was frivolous or vexatious.

**Individual Officers, Local Governments, and States as Defendants Under 1983** (1084)

**Individual Officers as Defendants: Personal Capacity Suits** (1084)
- The great preponderance of 1983 suits name individual officers
- When damages are sought, they are sued personally or in their individual capacity so that the judgment is paid out of their own personal assets.
  - The attorney’s fees, also, come out of their pocket
- However, officials sued in their personal capacity may have qualified immunity
  - Clearly established statutory or constitutional rights for which a reasonable person would have knowledge (*Harlow v. Fitzgerald* (1982)).

**Individual Officers as Defendants: Official Capacity Suits** (1985)
- When officers are sued in their official capacity, the government can be ordered to pay damages and attorney’s fees if they have adequate notice and opportunity to defend.
- But, if money is coming from the government, you have to watch immunity, etc.
- When equitable relief is sought, officers are usually named in their official capacity.

**Local Governments as Defendants: The Monell Decision** (1086):
- *Monroe*: Municipalities are not persons within 1983 → only lasted until 1978.
- *Monell* (1978): held that *Monroe* was wrong and that Congress DID intend to include local governments.
  - Monroes misinterpreted the rejection of the Sherman Amendment. Sherman Amendment was broader and rejected on other grounds.
- In dictum, they rejected the *respondeat superior* liability

**The Scope of Municipal Damages Liability After Monell** (1087)
- *Monell* rendered city, county, and school board treasuries liable for damages under 1983
  - BUT only when the violation occurred pursuant to government policy or custom.
- However, this money always goes straight to the taxpayers.
  - *Owen v. City of Independence* (1980): No qualified immunity just because they can show that the officials themselves would not be footing the bill.

**The Meaning of Policy or Custom** (1088):
- *Pembaur v. City of Cincinnati* (1986): A single decision by a high enough officers could be official policy
- *City of Saint Louis v. Praprotnik* (1988): State law determines who is a policymaking official. Under this state law, only the mayor and alderman of St. Louis and the Civil Service Commission were high enough. Thus, the Director of Urban Design and the Director of the Community Development Agency could not speak as “official policy.”
- *City of Canton v. Harris* (1989): Failure to train. Liable only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact
  - Focus on the adequacy of the training and its relation to the injury, not to the mistake of the officer.
- *Board of County Comm’r* (1997): The action by the policymaking official itself must violate federal law or direct or authorize a deprivation of federal rights.
  - This is an element that must be alleged.

**Monell and Its Progeny** (1990)
- Since *Monell* the Court seems to be trying to limit local government liability to those situations in which fault can be attributed not simply to an individual officer but to the governmental entity itself

**States and State Agencies as Defendants** (1091)

*Quern v Jordan* (1979): A federal court lacks power to impose a remedy against a state.
- This doesn’t mean 1983 doesn’t create a remedy.

- *Will v. Michigan State Police* (1089): This says you can’t sue the state or a state official in her official capacity
- So, there is no express or implied damages remedy against a state for violation of constitutional rights

**Note on 1983 as a Remedy for the Violation of a Federal Statute** (1092)
- There was some jurisprudence that would suggest that 1983 would only apply to “equal rights” statutes, but *Manie v. Thiboutot* held that it was not so limited
Then the question became whether to imply a private right of action under a federal statute that did not expressly provide one.

1. Has the statute created a private right?

2. Has the scheme of remedies provided by Congress implicitly excluded a private remedy?

1. Has Congress Created a Private Right?

-Pennhurst (1981): A statute must confer private rights
-Gonzaga v. Doe (2002): A plaintiff needs to show an intent to create a private right - it must be unambiguous

Special Problem of 1983 with Preemption Claims

-Golden State Transit Corp (1989): The National Labor Relations Act created rights which were secured against the state through the Supremacy Clause. So, they have the right to sue
-***It turns on whether the statute creates obligations sufficiently specific and definite to be within the competence of the judiciary to enforce intended to benefit the plaintiff and not foreclosed by express provision.
-They allowed them to get declaratory, injunctive, and damages

-Dennis v. Higgins (1991): Violation of the dormant Commerce Clause is cognizable under 1983
-The Commerce Clause is held to have rights and the clause was intended to benefit those who, like petitioner, engaged in interstate commerce

2. Has Congress Superseded the Remedy? (1096)

Has Congress created a system of remedies that implicitly excludes an action under 1983?

-Middlesex County Sewerage (1981): Because FWPCA had such elaborate enforcement provisions, plaintiffs could not obtain remedies other than those
-Wright: Because federal law and the HUD were insufficient, they didn’t demonstrate congressional intent to foreclose enforcement under 1983
-*This is an issue of fact to argue how elaborate the system was and if it is intricate enough to show congressional intent to foreclose enforcement under 1983

**JUDICIAL FEDERALISM: LIMITATIONS ON DISTRICT COURT JURISDICTION OR ITS EXERCISE**

**Coordination of Concurrent Jurisdiction in a Federal System-Abstention**

Kline v. Burke Construction Company (1142) (1922)

Rule: For *in rem* actions, whichever court gets the case first gets it, but for *in personam* actions, it is whichever court issues the order first

Governing Rules
-When a federal court has first jurisdiction of the subject matter it can enjoin the parties and vice versa when it is in rem. The property should be under the control of the court
-For in personam actions, the other court is not precluded

Facts: A construction Company filed in federal district court against some citizens of Arkansas based on diversity. These people brought a suit in state court based on breach of contract. Burke tried to enjoin the state court action.

Issue: Whether a federal court can issue an injunction precluding state court action on the same set of facts

Opinion Below: DC would not issue the injunction but CA did

Holding: It is not proper to enjoin another court on an *in personam* action

Other Rulings
-Whichever court issues its order first it will become res adjudicata for *in personam*.
-Lower federal courts aren’t created by Constitution but rather by an act of Congress
-The rank of the federal court to state court is equal, but both cannot possess the same thing at the same time (*in rem*) exception

RULE: first court to issue an opinion wins (for *in personam*)
-Nothing precludes a case from going forward when the other one is on appeal or being dragged out or what not.

-The Authority for Congress to pass the all writs act comes from Congress having broad authority to regulate the jurisdiction of the federal courts.

**Coordination of Overlapping State Court and Federal Court Jurisdiction** (1144)

LAW: *Kline* says law of preclusion applies only once one of the actions has come to judgment
-Some propose doing the first suit filed; which forum is better; always deferring to state court…but, that is the rule.
Special Problems in Class Actions (1145): May different forum options
- Counsel have a large incentive to settle before anyone else does!
  - Some people propose amending civil rules, coordinating federal litigation, having case specific
determinations, having a single tribunal to resolve these problems, etc.

ANTI-INJUNCTION ACT

Atlantic Coast Line RR v. Brotherhood of Locomotive Engineers (1970)

Rule: Unless a case falls within the three exceptions of the Anti-Injunction Act, federal court can not
enjoin a state court.

Governing Rules: Anti-Injunction Act: federal courts “may not grant an injunction to stay proceedings in a
State court except as expressly authorized by Act of Congress, or where necessary in aid of its
jurisdiction, or to protect or effectuate its judgments.”

Facts: A federal court enjoined a railroad company from following an injunction issued by a Florida state
court. ACL had gone to the court to get an injunction so their workers would stop picketing.
They didn’t get one, so they went to state court and got one there. The workers then went to
federal court and got an injunction against the enforcement of the other injunction on the basis that
picketing was a federal right.

Issue: Whether a federal court can enjoin a state court injunction

Opinion Below: Court of Appeals Affirmed

Holding: The injunction was improper

Other Rulings:
- We have two legal systems - federal and state
- On its face, Act is an absolute prohibition against enjoining state proceedings except for the three
exceptions listed.
- This was not expressly authorized by Congress
- This cannot be justified as necessary to protect or effectuate the earlier order
- And this is not necessary in aid of jurisdiction

Dissent: This was passed to effectuate or protect jurisdiction, so it is ok.

**This is an injunction against the enforcement of an injunction, which falls into proceedings, not just
against the suit continuing and what not

- SC says the practical effect here is that the party was trying to use the federal district court as an appellate
court of the state trial court
- watch for this idea on the final, it shouldn’t happen
- Because they are using this as an appeal, it doesn’t fit into the exceptions of the anti-injunction act (in aid
of jurisdiction)
- Why didn’t they argue claim preclusion when they first went to state court for the injunction? They
should have.

Mitchum v. Foster (1153) (1972)

Rule: Congress expressly authorizes injunctions against state court proceedings only when the Act of
Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could
be given its intended scope only by a stay of a state court proceeding.

§1983 falls within the expressly authorized exception

Governing Rules

Anti-Injunction Statute: A federal court “may not grant an injunction to stay proceedings in a State court
except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or
to protect or effectuate its judgment.

Section 1983 expressly authorizes a suit in equity to redress the deprivation under color of state law

- Younger v. Harris, A federal court enjoined a criminal prosecuting in California. The CS reversed based
  on federalism, but not based on the anti injunction statute.

Facts: State court issued an injunction shutting down a bookstore. The owner filed in federal court for
deposition of First and Fourteenth Amendment rights.

Issue: Whether section 1983 falls within the “expressly authorized” exception to the anti-injunction
statute.

Opinion Below: DC denied injunctive relief based on Atlantic Coast Line

Holding: Section 1983 falls within the “Expressly authorized” exception

Other Rulings:
- If 1983 is not within the “expressly authorized” category, we must overrule Younger and other cases that
have recognized the permissibility to enjoin criminal prosecutions in certain limited circumstance.

History: The statute was enacted in 1793, The court added exceptions on their own and Congress explicitly recognized a bankruptcy exception in 1874. There were 6 other situations that led to exceptions.


-There was also the implied exceptions of 1. in rem, 2. relitigation, and 3. superior federal interests.
-Then in 1941, the Court decided *Toucye* which disavowed the relitigation exception and said to stop expanding.
-Congress, in response, enacted the current anti-injunction statute with a reviser’s note that said it was intended to restore “the basic law as generally understood prior to the *Toucye* decision.

-Thus, we must determine whether this would be authorized based on the criteria of decisions prior to *Toucye*.

-The relevant criteria are:

1. A federal law need not contain and express reference to that statute
2. A federal law need not expressly authorize an injunction of a state court proceeding
3. Act of Congress must have created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding

-Section 1983 was passed for enforcement provisions of the Fourteenth Amendment against state actions.
-Congress clearly conceived that they were altering the relationship between the States and the Nation.
-The very purpose was to interpose the federal courts between the states and the people as guardians of the people’s federal rights.

**Anti-Injunction Act (1159)**

Anti-Injunction Statute: 28 USC §2283: Federal cannot enjoin state court proceedings:

***Three exceptions***

1. Expressly authorized by Act of Congress
2. Necessary in aid of its jurisdiction or to protect or effectuate its judgments
3. Relitigation exception

-The act was passed to overrule *Toucye*
-Appeared to invent another exception in *Leiter Minerals* (1957) which held that the Act did not apply to cases brought by the United States

-Atlantic Coast Line RR (1970): Said to stop inventing exceptions
-Besides satisfying the statute, you still have to get the basics for injunction: showing of irreparable harm is likely if the injunction is not issued, etc.
-The injunction is against the litigants, not the court. You say the litigants cannot proceed
-ALSO, applies only to proceedings, so you can enjoin them from filing because that is before it is a proceeding *Dombrowski v. Pfister* (1965)

1. History and Purpose (1158): Original Anti-Injunction Act was intended to prevent tension between state and federal courts.
-However, federal courts may enjoin proceedings in different federal courts and state courts may enjoin proceedings in different state courts…

2. Pre-1948 Exceptions

1. The Res Exception:
   -*Hugan v. Lucas*: the court that first assumes jurisdiction over property may exercise that jurisdiction to the exclusion of any other court - if necessary by enjoining another court’s proceedings.
2. Fraudulent State Court Judgments: You can enjoin litigants from enforcing judgments fraudulently obtained in state court.

3. The Toucye Decision (1160):
-Held that federal court lacked authority to enjoin state relitigation of issues settled in a prior federal action.

5. Interpretative Approaches to 2283 (1160): The reviser’s note says it is intended to get us back to pre-Toucye decisions. But then *Atlantic Coast Line* and *Mitchum* say that the ban should be seen as
absolute unless the case falls within one of the three stated exceptions

-Leiter Minerals v. US (1957): Recognized an additional exception for injunctions sought by the United States. They said the policy of preventing conflict between state and federal courts is less when the United States is staying a threat of irreparable injury to a national interest.

The Three Statutory Exceptions (1161)
-1983 is an exception to Anti-Injunction act, but Clayton Act isn’t
1. Expressly Authorized by Congress (1161)
-Congress may withdraw the bar of the statute whenever it wants
-Language of statute doesn’t need to be exact: language allowing for injunction against “any proceeding” is probably sufficient.
-Mitchum v. Foster: 1983 expressly authorized an exception to the anti-injunction statute. (doesn’t have any language like that at all)
-Specifically provided for equitable relief
-legislative history established mistrust of state court
TEST (Mitchum): whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a state court proceeding
Vendo Co (1977): Applied Mitchum test to the Clayton Act - said the court should NOT have issued the injunction, but the opinion makes little sense.

a. The Scope of Mitchum: (hold that 1983 is expressly authorized) Plainly depends on the fact that a 1983 cause of action must be under color of state law
-Lugar v. Edmondson Oil: Held that a private party’s invocation of state legal procedures was not action under color of law.

b. Mitchum’s Interpretation of the Act (1162): Mitchum sort of read “expressly authorized” to mean “impliedly authorized”
c. The Vendo Decision (1162): Vendo (1977): Federal district court enjoined enforcement of a judgment holding that a statute allowing injunctive relief against antitrust violations was an express authorization. Supreme Court reversed saying there was no indication that Congress was concerned with the possibility that state court proceedings would be used to violate the Sherman or Clayton Acts

-**SO, Congressional indication that state court proceedings would be used to violate a right is important.
2. In Aid of Its Jurisdiction (1163)
-This is like when they have taken possession of property which is either the subject of the litigation or a basis for jurisdiction
-Kline v. Burke
-Parallel in personam proceedings may proceeding without injunctive interference, notwithstanding the waste such duplicative litigation causes.
-Two primary objectives: 1. Most courts have viewed the language as confirming the res exception. 2. Confirm the power of the federal courts to stay proceedings in state cases that have been removed
-Amalgamated Clothing Workers v. Richman Borthers (1955): SC affirmed DC’s refusal to issue an injunction because no statute authorized the union to file the federal court suit.
-Most court’s have viewed Richman Brothers’ refusal to authorize an injunction to protect the NLRB’s exclusive jurisdiction as applying equally to protection of the federal courts’ exclusive jurisdiction.
-Class Actions are a big mess when different plaintiffs can file in different jurisdictions.
-Some lower courts have read the in aid of jurisdiction exception broadly to permit anti-suit injunctions in class actions, but in most circumstances, it has not been ok.

The Relitigation Exception (1165)
They want to respect the preclusive effect of a federal judgment
-This is the one that directly overruled Toucey
-Chick Kam Choo (1165): DC dismissed a wrongful death action because of forum non conveniens - should have been in Singapore. The plaintiffs then filed in STATE court. The defendants returned to federal court to get an injunction against the state court action
-The SC said §2283 did not preclude the injunction insofar as it barred relitigation of the Texas law claim which the federal court had previously held to lack merit. But, the SC overturned the injunction insofar as it barred state court litigation of the claim based on Singapore law.
-Also, merely because §2883 permitted an injunction against relitigation of the Texas claim did not mean that an injunction was required.
-Relitigation exception is founded in the well recognized concepts of res judicata and collateral estoppel.
-Final judgments and interlocutory rulings that are appealable as a right may generally be protected by federal court’s issuing an injunction against relitigation in state court.
-The issues have to actually have been decided by the federal court.
-Seems to be more like issue preclusion than claim preclusion.
-*Parsons Steel v. First Alabama Bank (1986): Ps sued in state and federal court. The federal action came to judgment first. The state court rejected the claim of res judicata and caused a $4 million verdict. The SC did not allow an injunction because the full faith and credit statute required the federal court to give the state court judgment the same effect that it would have under state law.
-*A litigant may not raise a defense of claim preclusion in a state proceeding before seeking injunctive relief in the federal court under the relitigation exception.
*The relitigation exception was limited to those situations in which the state court has not yet ruled on the merits of the res judicata issue.
-So now, as soon as you get a federal judgment, you need to immediately get an injunction against the state court.

Class Notes:
-A federal judge who applies Missouri law, even if it is wrong, is preclusive of relitigation in state court.
-Even though no federal judge can tell a state judge what Missouri law means, if the federal judge decides the case, you can’t relitigate in state.
-P cannot litigate again; she chose federal court.
-We allow injunctions for claim preclusion, but not issue preclusion.
-*Atlantic v. Chick

Questions on Coverage (1167)
2. The Meaning of Proceedings
a. Commencement of Proceedings:
-The Act does not apply to an injunction against criminal proceedings that have not yet been instituted (Ex. Parte Young).
-A prejudgment garnishment is not a proceeding and thus can be enjoined by a federal court (Lynch v. Household Finance).

b. Termination of Proceedings and Proceedings Against Different Parties
-County of Imperial v. Munoz (1980): There was a state court injunction barring someone from selling his water. Three people who wanted to buy the water, sued in federal court for an injunction. The SC reversed, using Atlantic Coast Line to reject the view that the state court proceedings had terminated.
-Unless the federal plaintiffs were “strangers” the injunction was barred.
-So, I think this is something like you can sue against an injunction if you weren’t a party the first time around? Or something? Actually, I have no idea....

c. Declaratory Judgments (1168) Sometimes your injunction is barred, but can you still get declaratory relief?
-Thiokol Chem Corp (1971): Allowed a declaratory judgment as to the validity of a patent. Normally, they said, the policy that precludes federal injunctions would bar a declaratory judgment, but if the state suit is likely to turn on a question of federal law, and the state manifests its willingness to hear the federal decision on that question, it is not desirable to preclude the declaratory judgment.

Injunctions of Federal Judicial Proceedings
-The Anti-Injunction State doesn’t apply to cases involving a federal court injunction of other federal court proceedings.
-A federal court can enjoin another federal court or stay its own proceeding to avoid the duplicative litigation.
-They use the “first filed” rule as a rule of thumb.
-Circumstance may render it appropriate to do it some other way.

Note on the Power of State Courts to Enjoin Federal Court Actions (1169)
-RULE: State courts cannot enjoin in personam proceedings in federal court Donovan v. City of Dallas (1964) (Exception for in rem cases.).
-I.e. state courts can’t enjoin federal courts *in personam* actions. Pretty much ever.

**Donovan Decision** (1169): No federal Statute forbids state courts from enjoining overlapping federal actions

-Donovan said that state courts CAN’T enjoin federal courts in *in personam* suits
  -Later cases held that it is impermissible for a state court to enjoin a party from proceeding in federal court

**General Atomic v. Felter.** Also bars a state court injunction prohibiting the institution of future federal court litigation

**The Res Exception:**

-Donovan and General Atomic are both expressly limited to *in personam* actions. *In Rem* actions are still fair game to enjoin federal proceedings.

**Class Notes**

Some lower courts have allowed injunctions against class members in class actions from going into state court, but mostly not.

****Be mindful of the different limitations

-In a pending state criminal proceeding, *Younger* prevents a federal injunction

-In a pending state civil proceeding, S1983 allows federal injunctions notwithstanding federal injunction statute (*Mitchell v. Foster*)
  -We will later see that sometimes *Younger* prevents injunctions in civil cases

*Barriers to federal court injunctions

1. Anti-Injunction Act
2. *Younger v. Harris*

(We will continue to add barriers - Johnson Act, Anti-Tax, Pullmer?, etc.)

(You must overcome all barriers)

**SUBSECTION B: OTHER STATUTORY RESTRICTIONS ON FEDERAL COURT JURISDICTION**

**Other Statutory Restrictions on Federal Injunctions Against State Activities** (281)

-Three congressional responses to *Ex Parte Young* (recognized federal jurisdiction to enjoin state officers in some situations)
  1. Three Judge Court Requirement
  2. Johnson Act of 1934
  3. Tax Injunction Act of 1937

1. **Three-Judge District Courts** (1171)

The Reaction to *Ex Parte Young*: They didn’t like the power of a single judge, so Congress (in 1910) required applications for interlocutory injunctions on Cal grounds to be heard by three judge panels

Near Abolition of the Requirement: There were substantial burdens from doing this.

-Congress repealed the requirement and enacted a new provision requiring 3 judges only in suits “challenging the Cality of the apportionment of congressional districts or when otherwise required by act of Congress”

2. **The Johnson Act of 1934** (1172)

-Prohibited the DC in diversity cases from enjoining, etc. with public utility rates.

1. **Origins**: Didn’t allow district court to enjoin a state administrative agency or local rate making body if
  1. Jurisdiction was based solely on diversity or Constitutionality
  2. The order did not interfere with interstate commerce
  3. The order had been made after reasonable notice and a hearing
  4. A plain, speedy, and efficient remedy could be gotten in the state courts

-Reasonable notice and a hearing:
  -Governed by federal law
  -If there is no issue of fact, even if there was no notice or hearing, there still can be no injunction
  -Plain, speedy, and efficient remedy
  -Litigation has centered on availability of interlocutory stay in state court

3. **Non-Injunctive Relief** (1173):

-Lower courts have applied the act to declaratory relief as well

4. **Exceptions**: The Act does not apply to suits brought by the United States

3. **The Tax Injunction Act of 1937**

66
-There can be no federal interference with state tax collection if state law provides the taxpayer with a plain, speedy, and efficient remedy.

-These are procedural and have nothing to do with the state’s willingness to pay interest.

-Allowing taxpayers to raise a defense in an action to collect the tax was a “plain, speedy, and efficient remedy” Rosewell v. LaSalle (1981)

-Requiring taxpayer to pay the tax and then sue for a refund is plain, speedy and efficient.

-If the state requires multiple suits, it may not be plain, speedy, and efficient Georgia v. Redwine

-The act also prohibits declaratory judgments that taxes are unconstitutional California v. Grace Brethren Church

-Comity precludes a taxpayer from suing in federal court under 1983 for damages for allegedly unCal administration of a state tax Fair Assessment in Real Estate v. McNairy (1981)

1. **Origins**: Says “the district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state.”

   **b. Adequacy of State Remedies:**
   
   -If you don’t have an offense in state court, just a defense, it has been held to be adequate
   
   -A refund remedy conditioned upon payment under protest is adequate
   
   -A forfeited remedy is (was) adequate
   
   -A remedy you might have to cross state lines for is adequate
   
   -A length of two years to receive back pay is speedy
   
   -Certainty that the remedy exists is important
   
   -Ultimately, these criteria should be narrowly construed

   **c. Availability of Interest**

   -Rosewell v. LaSalle: A refund remedy that did not include interest was plain speedy and efficient.

   **3. Declaratory Judgments (1176):** The Court ruled in California v. Grace Brethren Church that the Tax Injunction Act barred declaratory judgments as well


   -Since, in a damages action, you must first enter declaratory judgment and they can’t do that.

   -Also, it could have a chilling effect on the officials’ conduct of their duties.

   **Class Notes:** McNary case was from Saint Louis

   -These people complained about their taxes and won, so the county went after them personally and raised their taxes.

   -It was a suit against county officials

   -If federal courts got involved it would interrupt comity, and thwart the jobs of the officials, etc.

   etc.

5. **Suits Between States or Suits Filed by the United States (1177)**

   -Department of Employment v. United States (1966): The Act does not bar suits by the United States or a federal instrumentalities, to enjoin state taxation of the instrumentalities’ employees who asserted a federal immunity from taxation

   -Also, held inapplicable to suits between two states brought for the first time in the SC

6. **Section 1983 Actions in State Courts (1178)**

   -National Private Truck Council (1995): A state court ordered tax refunds, but refused to give attorney’s fees as 1983 would require. The SC affirmed.

   **Class Notes:**

   -This is like McNary but in state court. The SC says your ONLY recourse is state law. No 1983.

   -We want to stay out of it.

   -This is limited to PAYMENT of taxes, not to like first amendment claims for giving money to religious schools.

   -You can get injunctions over tax issues, just not the PAYMENT of taxes

   -This is basically because so many people want to avoid paying taxes.

**JUDICIA LY DEVELOPED LIMITATIONS ON FEDERAL COURT JURISDICTION:**

**DOCTRINES OF EQUITY, COMITY, AND FEDERALISM**

**Abstention: Introductory Note (1179)**

When can federal courts abstain even though they have congressionally granted jurisdiction?
1. The requirement of exhaustion of administrative and other nonjudicial remedies
2. The doctrine derived from the Pullman case (Pullman abstention) and related doctrines
3. Doctrine derived from equity practice and frequently labeled “Younger abstention” restricting the availability of federal equitable relief from pending state enforcement actions and particularly from pending criminal prosecutions
4. The doctrine calling for a federal court to stay its hand in exceptional circumstances because of the pendency of a parallel proceeding in state court
5. The rules restricting the exercise of federal jurisdiction in probate and domestic relations matters.

**Section A: Exhaustion of State Nonjudicial Remedies** (1179)

**The Prentis Case:** A statute gave an appeal as of right to the Supreme Court of Virginia. They used the habeas corpus considerations to say they wouldn’t decide until the SC of VA was done with it.

**The Legislative Judicial Distinction** (1181)

*Bacon v. Rutland:* Whether a state court’s role is characterized as legislative or judicial determines not only whether a litigant must take an appeal in the state courts before mounting a federal challenge, but also the proper forum in which to seek federal review.
- Legislative --> federal jurisdiction
- Judicial --> only review by supreme court

Class Notes:
- The state had made rate making a legislative action instead of a judicial action
- So you have to characterize their actions as judicial or legislative
  - Drobak thinks this is a lousy distinction
  - It has a lot of characteristics of litigation

**The Traditional Requirement to Exhaust Administrative Remedies** (1181)

- There is a traditional principle that a federal court will not entertain an action against a state officer if the plaintiff has failed to exhaust remedies before a state administrative agency.

**Inapplicability of Exhaustion Requirements to §1983 Actions** (1182)

- Requirement of exhaustion does NOT apply to 1983 actions
- *Patsy* (1982): Exhaustion of state administrative remedies is not required in actions under 1983
  - Three recurring themes
    1. Paramount role in protecting Cal rights
    2. Congress’s belief that the state authorities had been unable or unwilling to protect the Cal rights of individuals or to punish those who violated those rights
    3. Many legislators interpreted the bill to provide dual or concurrent forums in the state and federal system
- Dissent said that this didn’t defeat federal jurisdiction, it merely deferred it, so they shouldn’t give up the tradition of waiting until there was an exhaustion of remedies.

**Exceptions to the Patsy Rule** (1183)

Plain, Adequate, and Complete Tax Remedies: Requires federal courts to decline jurisdiction in suits seeking damages remedy for state taxation whenever the state provides a plain, adequate, and complete remedy

PLRA: requires exhaustion of such administrative remedies as are available
- The court may DISMISS without exhaustion, however.
- *Booth:* Applied this to a prisoner seeking only money damages even though money wasn’t available in the administrative forum

Administrative Remedies, the Merits, and Ripeness
- *Parratt v. Taylor:* postdeprivation judicial remedies can sometimes provide all the process that is required for Due Process claims.

**Section 1983 Actions in State Court** (1185)

- The *Patsy* rule of non exhaustion applies to state courts as well
- Doesn’t make sense to make people go in front of the people they are suing

**Exhaustion Requirements in Challenges to Federal Administrative Action** (1185)

- The exhaustion requirement traditionally applied to challenges to federal administrative action as well
- But, the Court interpreted the Administrative Procedure Act as making it optional

**PULLMAN ABSTENTION AND RELATED DOCTRINES** (1186)

- Congress can order federal courts to abstain: anti-injunction act, etc.
  - Then there are these judge made abstentions
ADD ABSTENTION NOTES FROM STUDY GUIDE

Railroad Commission of Texas v. Pullman (1186) (1941)

Rule When a federal complaint asserts a federal claim and there is an unclear issue of state law that is susceptible to an interpretation that may avoid or modify the federal claim, the federal action may be stayed until the state courts are given an opportunity to resolve the state law ambiguity.

Facts The Texas Railroad Commission ordered that no sleeping car be operated by anyone but a Pullman conductor. In Texas at this time, conductors were white and porters were black. So, this eliminated jobs for black people.

Issue The railroads brought an action in federal court to enjoin the commission’s order. A three judge panel enjoined enforcement of the order.

Other Rulings -This touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open
-The issue can be avoided if a definitive ruling on the state issue would terminate the controversy - so we turn to Texas law
-No matter how seasoned the judgment of the DC can be about Texas law, it is a forecast rather than a determination because the Supreme Court of Texas always has the final word
-We want harmonious relations with the state

HYPO: P designs it so there is no state law issue. But, there is a state issue. Could the federal court say “we don’t want to decide this; bring a state claim?”

Note on Abstention in Cases Involving a Federal Question (1188)

Basis of the Pullman Doctrine (1188) SC cited various reasons for abstention in Pullman:

1. Resolution of a state law question in a particular way would avoid the necessity to decide a federal constitutional question
2. The relevant state law was unclear
3. Resolution of the federal constitutional question adversely to the defendants might generate needless friction with state policies
4. The federal constitutional question touched a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to adjudication is open

There is also the Siler v. Louisville idea that a federal district court should decide a state question first in order to avoid, if possible, a constitutional decision.

-Pullman Abstention is only appropriate when
1. There is a federal constitutional challenge
2. There is ambiguous or uncertain state law
3. The uncertain law involves an important state function

Abstention and the Separation of Powers (1190)

Shapiro says there are four criteria for channeling discretion:

1. Equitable discretion
2. Federalism and comity
3. Separation of powers
4. Judicial administration

These, then, need to be weighed against the presumption favoring the assertion and exercise of jurisdiction.

HYPO: What if Pullman had a statute instead of C?
- Pullman trumps 1983
- Pullman is still discretionary

* No Pullman abstention for interpreting federal statutes as applied to state law
- Maybe because there is no statutory avoidance canon?

Quakenbush: Remand is inappropriate for damages suits - you should stay the action under Burford abstention?

Pullman doesn’t apply to damages suits:
- equity/injunction
- Respect or states/federalism
- Cal avoidance canon

** He won’t test on sovereign immunity

The Evolution of Pullman Abstention
Early Years: SC initially frequently required abstention of unsettled state law issues when resolution of those issues was preliminary to consideration of a federal Cal question.

Extension to Actions at Law
- Pullman was an equitable case, but it was easily applied to actions at law.
- Then, the court changed course in Quackenbush saying it was inappropriate in a suit for damages
  - Said forum non conveniens was supported by a distinct historical pedigree, but that otherwise dismissal or remand wasn’t appropriate

Diversity Cases:
- Pullman was based on a federal statute, but later cases, (Clay, United Gas Pipe Line, and Fornaris) were all diversity.

Section 1983 Actions: Pullman doctrine is applicable

Impact of Pennhurst (1195)
Pennhurst (1984): The Eleventh Amendment denies federal courts jurisdiction to award injunctive relief against state officials based upon state law.
- Does NOT bar federal suits challenging state action under both state and federal law
- Does NOT bar attempts to attack a state statute.

The Meaning of Unsettled State Law
ISSUE: When is an issue of state law sufficiently unsettled or unclear to warrant abstention?
- Harrison v. NAACP (1959): When the Court is unable to agree that there is no reasonable room for a limiting construction
  - Others have similar or more narrow standards
  - Consider newness of statute and absence of judicial precedent
- The uncertainty about the state law must be such that a construction by the state court might obviate the need for decision

Harman v. Forsseius: (1965) State law must be “fairly subject to an interpretation which will render unnecessary or substantially modify the federal Cal question.”
- The mere fact that the state law has not yet been interpreted is not sufficient.

Unsettled State Constitutional Provisions (1196) Drobak loves this
- If the state Cal provision merely mirrors the federal C, abstention is not appropriate
  - If it is specialized, it might be appropriate
- Reetz v. Bozanich: (1196): Suit was brought over fishing laws based in 14th amendment and two provisions of Alaskan C. The SC directed abstention because the Alaska Constitutional provisions had never been interpreted by an Alaska court.
- Wisconsin v. Constantineau: (1971): Declined to abstain - mirrored fed C
- Harris County v. Moore (1975) (This case was supposed to reconcile Reetz and Wisconsin. They said
  - No abstention where the federal due process claim was not complicated by an unresolved state law question, even though the plaintiffs might have sought relief under a similar provision of the state constitution.
  - Where the challenged statute is part of an integrated scheme of related constitutional provisions, statute, and regulations, and where the scheme as a whole calls for clarifying interpretation by the state courts, we have regularly required the district courts to abstain.
  - No abstention for “broad and sweeping” state Constitutional provisions

Delay: Sometimes it can take 6 or 8 years to get through litigation
- Also a waste of resources

Discretionary or Mandatory? (1198) SC has sometimes refused to abstain, implying it is discretionary.
However, they have at other times devoted much attention to sensitivity of the state program (whatever that means)

Note on Procedural Aspects of Pullman Abstention (1198)
Stay of Federal Proceedings: The federal court retains jurisdiction

Commencing a State Proceeding:
- If a proceeding on the issues is already pending, they will have to either join or file an independent action
  - Sometimes, a plaintiff can seek declaratory judgment, but there is no assurance that a state will entertain an action
  - If they don’t, the federal court might “dismiss” so they have to
  - There are also certification procedures

Resolution of Federal Questions
Whether or not the federal court retains jurisdiction, the parties may present their federal as well as their state contentions to the state court for decision. Reviewable to supreme court

The party may not want to submit federal questions, but the state gets to be apprised of them.

**IF the state court hasn’t ruled, Pullman extension allows them to get the first crack**

**England Case**

-Held that a party is not bound by a state court determination of a federal question, if they didn’t chose that as their forum

-You can tell the court you are only there in compliance with *Windsor*
  -You can wave this right

-You have to say perfectly clear magical words “reserve the right to go back to federal court” or whatever
  -even if federal and state law is exactly the same
  -no claim preclusion

-If it is clear you did more than *Windsor* required, you voluntarily give up your right to go back to federal court

**The Option of Certification** (1200)
-It takes much less time
-States will accept certified questions from SC and CA, but only some DCs.
-Most states require the certified question to be potentially determinative
-Use of certification is on the rise.
-Since it is less time consuming and burdensome than abstention, it may be appropriate even IF the standards for Pullman abstention are met

**Burford Abstention**

*Burford* (1943): This was a Texas case involving oil. The Court held that Texas’ interests in the matter were larger than that of conservation, because they had to consider the economy and the land etc. etc.
- Texas had a Railroad Commission charged with administering the law
- The State had a unified method for formulating policy and determining cases.
- If a federal court would rule, it would just mess everything up

**RULE:** Abstention is appropriate when a federal court decision might disrupt state efforts to establish a coherent policy with respect to a matter of substantial public concern
  -State must have expertise in the relevant substantive area
  -State decision makers may have more sympathy.

-This was dismissal, not just staying, but *Quakenbush* said it should be a stay, not a dismissal
-Sometimes called “administrative abstention” because it defers to state administrative regulation
-Does not require uncertain state law
-AND, there must be some showing that federal courts would interrupt (*NOPSIS*)

**Burford Doctrine in the Supreme Court**

-Supreme Court has used this only one other time (*Alabama Pub Serv v. Southern Railway* (1951))
  -Held that regulation of intrastate railroad service was “the primary concern of the state”
  -Statutory appeal from Commissioner’s order was part of the regulatory process.
  -Thus, the state court procedure was adequate

-The Court continues to refer to *Burford* in a way that implies its continuing vitality.

**RULE:** Where timely and adequate state court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies
1. When there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case at bar
2. Where the exercise of federal review would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

**Thibodaux Abstention**

*Louisiana Power and Light v. Thibodaux* (1208) (1959): This was an eminent domain case based on diversity. DC stayed the action pending state declaratory judgment. SC affirmed abstention saying that
  “Eminent domain proceedings are special and peculiar and intimately involved with sovereign prerogative.”
- The special nature of eminent domain justifies getting the state statute clarified by the state.
-Since the statute hadn’t been interpreted by local courts, they might find meaning not discernable to an outsider.

- The federal jurisdiction was based on diversity. It wasn’t a Cal challenge.

*1. Cases involving exercise of eminent domain, AND 2. State law is unclear.

- DISSENT Relied heavily on Meredith v. City of Winter Haven (1943): Held that a federal court could not refuse to exercise diversity jurisdiction merely because the case “involves state law or because the law is uncertain or difficult to determine

- You can’t abstain just to avoid a difficult question of state law, but that’s not what is happening here.

- Mashuda was decided the same day. The Court held that federal courts couldn’t abstain from deciding whether land taken by the county was validly condemned.

- In this case state law was clear and certain

- there was no possibility that adjudication would conflict with state policy

- So, it isn’t just an eminent domain thing ➔ you also need uncertain state law

Current Status (1211)

- The Supreme Court has never upheld abstention based solely on Thibodaux, but they do continue to cite it.

- Kaiser Steel (1968) did not cite Thibodaux, but could be seen like it.

- It was a diversity action over water rights. The court held that since the state issue was so crucial to the state and such a novel issue, it would eventually have to be resolved by the New Mexico courts.

- Lehman Brothers (1974): A diversity case where the SC ordered it vacated waiting for state court opinion.

The book doesn’t say the facts, but they might be somewhere else in the book

4. Rationales Reexamined (1212)

1. State Courts should make state law

2. Burford says not to disrupt coordinated policy making by state agencies and state court.

3. Thibodaux is parallel saying that even in the absence of administrative agency action, if there is a sensitive and uncertain decision of policy making that would be better in state court, the federal court should leave it to them

- So Burford and Thibodaux are closely linked.

SUBSECTION C: EQUITABLE RESTRAINT (1213)

The Concept of Our Federalism

- Judge made doctrine that keeps federal courts from enjoining ongoing state criminal proceedings

- Has been referred to as an abstention doctrine (Colorado River)

- Bars both injunctive AND declaratory relief (Samuels v. Mackell)

Relationship to the Anti-Injunction Statute

- Usually federal court authority to interfere with ongoing state judicial proceedings is prohibited by the Anti-Injunction Statute

- This is like a second hurdle they have to get over

- 1983 is an expressly authorized exception (Mitchum v. Foster) but they STILL have to satisfy Younger

Dombroski v. Pfister: Applied Younger to cases of threatened state prosecution

- It was a First Amendment case and they were worried about the chilling effect

Younger v. Harris: He was distributing leaflets and indicted. The SC refused to allow a federal injunction.

- There was no showing of bad faith or harassment (as there had been in Dombroski)

- Rejecting chilling effect argument

Exceptions to the Operation of Younger (291)

- The court said that unusual situations calling for federal intervention might arise

**1. Exception for state prosecutions brought in bad faith, or as part of a series of harassing prosecutions, federal courts should be able to enjoin an ongoing state prosecution

**2. Extraordinary circumstances: flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it. Watson v. Buck

Timing of Federal Intervention

- Younger was an injunction of an ongoing state criminal prosecution

- Steffel v. Thompson: younger does NOT apply to the issuance of declaratory relief against future state prosecutions

- Also, the Anti-injunction statute doesn’t limit federal power to stop future state court proceedings

Hicks v. Miranda: A federal court cannot issue an injunction, even if the state doesn’t begin proceedings
until after the federal case has begun, UNLESS the federal court has already had proceedings of substance on the merits

*Doran v. Salem Inn* (1975): Preliminary injunctive relief might be obtained against a future state prosecution

*Wooley v. Maynard*: Authorized permanent injunctive relief against future state prosecution

**Post Trial Intervention**

- After the state proceeding is complete, the party still need to exhaust state appellate remedies before seeking relief in the DC *Huffman v. Pursue*
  - If a losing litigant in state court doesn’t appeal, you can’t get relief in federal court unless you fall in an exception to *Younger*
- *Wooley v. Maynard* the case where he was arrested 3 times for covering up his license. He didn’t appeal but it was ok, because he was seeking a future injunction, not like relief from those convictions

**Applicability of Younger to Civil Proceedings**

*Huffman v. Pursue*: Though the state proceeding was not technically a criminal matter, the Court applied *Younger*
  - It was in all important respects more akin to a criminal prosecution

*Trainor v. Hernandez*: Extended *Younger* to state civil proceedings for welfare payments
  - Applied because the state was a party in the suit

*Judice v. Vail*: Applied *Younger* to a federal suit against state statutory contempt procedures

*Moore v. Sims*: Applied *Younger* to a federal suit to enjoin the operation of Texas rule of judicial protection of minors

*Pennzoil v. Texaco*: *Younger* to civil suit in Texas state court between two private parties
  - The state’s interests in the proceeding are so important that the exercise of the federal judicial power would disregard the comity between the States and the National Government

**Applicability of Younger to Non-Judicial State Action** (297)

**State Executive Actions**

  - Our Federalism counsels abstention in cases seeking review of state executive decisions

**State Administrative Agencies**

*Middlesex County Ethics Committee v. Garden*: State bar disciplinary proceeding - applied *Younger*
  - The proceeding bore a close relationship to proceedings criminal in nature
  - Might be limited to cases in which the administrative action is closely intertwined with the state judicial process

Hawaii Housing Authority: rejected an extension of *Middlesex* to administrative proceedings that are not part of judicial proceedings

Ohio Civil Rights Commission v. Dayton: held that *Younger* applied and barred federal injunctive relief

**State Legislative Actions**

*New Orleans Public Service*: Held that *Younger* did not apply to a federal court challenge brought by an electric utility to the results of a city council rate-making proceeding on preemption grounds.
  - It has never been suggested the *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action.

*Younger v. Harris* (1213) (1971)

**Rule** To enjoin, you need unconstitutionality as well as irreparable injury. There might be other situations, but every constitutional violation is not appropriate.

**A** federal court must not, save in exceptional and extremely limited circumstances, intervene by way of either injunction or declaration in an existing state criminal prosecution

**Governing Rules**

- A general idea that state courts should be free of federal interference.
  - The exceptions have been few and minor

- Ordinarily, there should be no interference with state prosecution
  - Any exceptions have required a showing of irreparable injury
  - AND that the irreparable injury is both great and immediate.

**Facts** Harris was arrested for handing out pamphlets. While his criminal case was ongoing, he filed in federal court for an injunction to restrain prosecution of him

**Issue**
1. Whether the decision of the Court in *Whitney v. California*, holding CA’s law constitutional in 1927 was binding on the DC
2. Whether the state’s law is constitutional on its face.

**Opinion Below** The DC issued the injunction and held the Criminal Syndicalism Act void for vagueness and overbreadth.

DC relied on *Dombrowski* saying it broadened the availability of injunctions.

**Holding** The judgment of the DC, enjoining appellant Younger from prosecuting under these California statute, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances.

**Other Rulings**

Here, he had been indicted and thus had an acute, live controversy with the state

- The other plaintiffs who joined (complaining about chilling effect on their speech) did not and can’t go forward.
- Here, there was a pending state court case, giving Harris no opportunity to raise his constitutional claims.
- Any injury Harris suffered was incidental to every criminal proceeding brought lawfully and in good faith.
- DC’s reliance on *Dombrowski* was bad. A “chilling effect” does not by itself justify federal intervention.
- For one thing, a federal injunction would not solve the problem.
  - The chilling effect would be eliminated by repealing the statute, but then the state would not be able to regulate the not constitutionally protected speech.

*Marbury* does not give unlimited power to read statute books and pass judgment

- The *Dombrowski* decision should not be regarded as having upset the settled doctrines that have always confined very narrowly the injunctive relief against state criminal prosecutions.

**Concurrence (Brennan) (1219):** Because he was indicted before he sued he shouldn’t have been able to get an injunction

**Concurrence (Stewart) (1219):** This should be limited to criminal prosecutions with contemporaneously pending suits in state court

**Dissent (Douglas) (1220):** This would fall under the *Dombrowski* exception

**Note on Younger v. Harris and the Doctrine of Equitable Restraint** (1221)

1. **History of Equitable Restraint** (1221)
   - English Origins: used to be that equity would not enjoin a criminal prosecution
   - *Ex Parte Young*: The court noted the general rule against enjoining criminal prosecution
   - Warren Era (1223): Warren court had the civil rights movement and put new strains on doctrines demanding deference of federal courts to state courts.

- *Dombrowski*: The statute was overbroad and would create a “chilling effect” with “irreparable injury”
  - So they did not abstain
- This suit was brought to keep them from prosecuting or threatening to prosecute, but they weren’t already arrested and being prosecuted when they brought the federal case.

2. **Criticism of Younger** (1224)
   - Fails to respect congressional policy by requiring abstention in 1983 suits
   - Based on the assumption that state forums will be less receptive than federal
   - Younger is frequently an insuperable barrier to prospective and class action relief.

3. **Younger’s Near Unanimity** (1224)
   - Only one judge dissented.
   - There WAS a pending criminal prosecution
   - Not enjoining pending criminal cases was historic
   - At this point there wasn’t a strong cause to think state courts were untrustworthy.

4. **Companion Cases** (1225)
   - *Samuels v. Mackell* (1971): There might be unusual circumstances in which, despite a plaintiff’s strong claim for relief, an injunction would be withheld because it would have been particularly intrusive or offensive, but in which a declaratory judgment might be appropriate.

5. **11/14 Reading Notes** (1226-1243)
   - **The Relationship of Younger to Mitchum v. Foster** (1226)
     Issue: Whether 28 USC 2283 would bar an injunction
     *Mitchum v. Foster* (1972):
There is this tension between trusting state enforcement of federal rights and distrusting it.

6. The Relationship of Younger to Pullman Abstention (1226)

-Difference between Pullman abstention and Younger equitable restraint

Pullman: whether plaintiffs should be forced to obtain state court resolution.

-Postponement
Younger: something is already in state court so the issue is whether the whole case should go there.

-Relinquishment/dismissal.

-Some state criminal defendants, notwithstanding Younger can get to federal court with habeas.

7. Exceptions to Younger Doctrine (1227)

-Narrowness of possible exceptions

A. Bad Faith Prosecution or Harassment

-Court has never authorized intervention under this exception

B. Patent and Flagrant Unconstitutionality

-“flagrantly and patently violative of express constitutional prohibitions in every clause, sentence, and paragraph and in whatever manner and against whomever an effort might be made to apply it.
-Exception was narrowed in Trainor (1977): SC didn’t find a flagrant Cal violation even though the state took property with no hearing.

C. Other Extraordinary Circumstances

-Gibson v. Berryhill (1973): Court refused to apply Younger to require deference to administrative proceedings because a lower court had found them to be “incompetent by reason of bias”

8. Equitable Restraint -- Mandatory or Permissive? (1229)

Ohio bureau of Employment Servs. v. Hodory (1977): Said that since state chose federal forum, Younger didn’t require dismissal. However, the Court also said it was not required to defer to parties wished as far as Pullman abstention.


Steffel v. Thompson (1229)

Supreme Court, 1974

Rule Regardless of whether injunctive relief may be appropriate, federal declaratory relief is not precluded when no state prosecution is pending and a federal plaintiff demonstrates a genuine threat of enforcement of a disputed state criminal statute, whether an attack is made on the validity of the statute on its face or as applied.

Governing Rules

-Younger v. Harris: Federal courts should ordinarily refrain from enjoining ongoing state criminal prosecutions.

-Samuels v. Mackell: Same principles apply to federal declaratory judgment when state proceeding is pending.

Facts Petitioner and others were distributing handbills to protest the Vietnam War. One of his companions was arrested. Petitioner did not return to the shopping center because he was afraid that he too would be arrested.

Issue Whether declaratory relief is precluded when a state prosecution has been threatened but is not pending, and a showing of bad faith enforcement or other special circumstances has not been made.

Opinion Below DC denied relief because there was no showing of bad faith.

Holding Reversed

Other Rulings

-Is there an actual controversy? Yes
-There are actual threats that cannot be characterized as imaginary or speculative. Thus, it is not necessary that he actually be arrested or prosecuted.

-Did the DC property find the request for declaratory relief inappropriate?

-When no state proceeding is pending, the propriety of granting federal declaratory relief may be considered independently of a request for injunctive relief.

-The Court erred in treating the requests for injunctive relief and declaratory relief as a single issue.

-The Court goes through the history of the civil rights act: Giving power to the federal courts, etc. etc.
-Given all this **It was an error for the Court of Appeals to rule that a failure to demonstrate
irreparable injury precluded the granting of declaratory relief.

- The only exception is principles of federalism, but in this case, federalism does not preclude intervention, but in fact compels it.

- Respondents try to distinguish between an attack on the statute facially and an attack on the statute as applied when it comes to situations where there is no pending prosecution.

- This argument was rejected.

Concurrence (Stewart): Cases with a genuine threat will be rare. Here, he showed the threat of imminent arrest, corroborated by the actual arrest of his companion.

Concurrence (White):

Concurrence (Rehnquist): Court reserves the issue of whether granting of a declaratory judgment will have res judicata effect.

- A plaintiff who continues to violate a state statute after filing this federal complaint, does so both at the risk of state prosecution and risk of dismissal of federal lawsuit.

- Declaratory judgments should not be seen as the first step to injunctive relief. It is simply a statement of rights.

- This cannot be used to circumvent Younger by saying that enforcement of a statute declared unCal by one of these declaratory judgments is per se bad faith.

Note on Steffel v. Thompson and Anticipatory Relief (1238)

1. The Pending/Non-Pending Distinction (1238)

- Steffel says that the principles of equity, comity, and federalism, that underlay Younger have little or no force in absence of pending state proceeding.

2. Interests in Anticipatory Relief

   A. Future Conduct: Steffel wants to handout leaflets
   B. Past Conduct: Steffel wants his past leafleting to be immunized
   C. Continuing Conduct: Plaintiffs do not want to choose between foregoing conduct and risking criminal penalties.

3. Declaratory v. Injunctive Relief (1240)

   A. Intended Effect: These are really the same, except that if a prosecutor violates a declaration, it doesn’t really matter.
   B. Res Judicata Effect of a Federal Declaratory Judgment on an Issue of Federal Law: Rehnquist’s concurrence suggests that this is less intrusive because it lacks res judicata effect.

4. After Steffel: Injunctions Against Non-Pending Actions (1241):

   - Wooley v. Maynard (1977): Court upheld a permanent injunction barring enforcements of a law. Maynard had already been convicted of it three times. The Court held that the reppeated prosecution was sufficient to justify injunctive relief.

   - The Court has sometimes approved final injunctions (rather than declaratory relief) in other cases as well.

   - Morales v. TWA (1242): AG had sent people letters as formal notices of intent to sue. The Court approved an injunction because of irreparable injury and no adequate remedy at state law. These are the usual requirements for injunctive relief I think.

5. Exhaustion of State Remedies and Res Judicata (1242)

- Once Younger has barred federal courts, is there any way to get it back?

   A. State Remedies Still Available

   - Huffman v. Pursue (1975): Court said Pursue had to exhaust state appellate remedies before seeking relief in the DC, unless he can get within exceptions of Younger.

   ** So you don’t have to exhaust administrative remedies, but its different from judicial remedies. Huffman says to exhaust state appeals

   B. State Remedies No Longer Available:

   - Issue: Plaintiff files suit at that time she has forfeited state court appellate remedies that would have been available at an earlier point.

   - Ellis v. Dyson (1975): People were convicted of loitering and paid a $10 fine because they were scared of higher fines on reconviction. They then brought suit in federal court (after forfeiting state court appeal). SC reversed the CA ruling that they were not entitled to relief, but the opinion is confusing. ???

   - This was distinguished from Maynard where he was trying to get wholly prospective relief to preclude further prosecution because here they were trying to annul the results of a state
trial.

**11/19 Reading Notes** (1244-1258)

**Hicks v. Miranda** (1244)

Supreme Court, 1975

**Rule** Where state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court, the principles of *Younger v. Harris* should apply in full force.

**Governing Rules**

*Younger v. Harris*: Federal court can’t hear a case when there are pending criminal charges.

**Facts** The state had a law against obscene movies. They seized a particular film. The movie theater filed suit in the federal court for injunction against the enforcement of the California obscenity statute. The parties were charged in the California criminal court, but then the federal court said the statute was unconstitutional.

**Issue** Whether the federal court should abstain when criminal charges are pending at the time of the decision but not at the time the case was filed in federal court.

**Opinion Below** The District Court heard the case and reached the merits.

**Holding** The DC should not have heard the case.

**Other Rulings** The DC should have dismissed the complaint

Dissent (Stewart): *Steffel* just held that *Younger* does not preclude a federal district court from entertaining an action to declare unconstitutional a state criminal statute when a state criminal prosecution is threatened but not pending. This ruling trivializes that because all they have to do is file and the federal court has to abstain. It is an open invitation to state officials to institute state proceedings in order to defeat federal jurisdiction.

**Class Notes:** so when you file the federal case, you should file for a preliminary injunction

-If you get it, that is a “proceeding of substance on the merits”
-If you don’t, it isn’t.

**Slippery Slope:**

*Huffman* (civil, but seems criminal) → *Trainor* (all civil) → *Judas* → *Pennzoil* → (extends to cases that implicate extremely important issues for states) → *Ohio Civil Rights* (administrative proceeding) →

-NOPSI = NO abstention. That is too far. But is that consistent with *Ohio Civil Rights*?

*Younger* is HUGE

**You can’t interfere with ongoing state litigation**

-This is inconsistent with the no need to exhaust state administrative remedies under 1983 (*Patsy*)

*Exam question on all this*

-**Dayton v. NOPSI**

-**Dayton** was an enforcement proceeding in an agency

-So, there is something going on about appealing in the state gets you stuck in the state or something? I have no idea!

Look at 1257?!!!

**Further Note on Enjoining State Criminal Proceedings** (1247)

2. **Meaning of Proceedings of Substance on the Merits** (1247)

- In Hicks, they had proceedings on the motion for a temporary restraining order, but it did not suffice.

- A plaintiff who obtains a temporary restraining order or preliminary injunction is sufficient

3. **The Pertinence of Doran v. Salem Inn** (1247)

A. *Doran’s Facts and Holding*: There was a municipal ordinance prohibiting topless dancing in bars. One of the plaintiffs resumed topless dancing and was arrested. The one who was arrested was barred from securing injunctive relief by *Younger* and declaratory relief by *Samuels v. Mackel*

- The other two got in under *Steffel*. They got a preliminary injunction and said it was not restricted by *Younger* because prior to final judgment, there is no declaratory remedy comparable to a preliminary injunction. ???

B. **The Relationship Between Hicks and Doran**

- Is there an underlying inconsistency in the case of continuing conduct?

- *Steffel* permits federal intervention as long as no state prosecution is pending. *Hicks* says a state can preempt federal action by commencing a prosecution before substantial proceedings occur. *Doran* says the DC may issue a preliminary injunction against enforcement of a statute if the requisites
for such relief has been satisfied.
-Prosecutors can still press charges before much is done on the hearing for the preliminary injunction

4. Doran and Issues Involving Federal Relief Pendente Lite (1249)
   B. The Effect of Preliminary Relief (1249)
   Issue: Does preliminary relief immunize the plaintiff from criminal prosecution for acts taken after the injunction was issued? The Court did not decide this issue, but said it should be decided if and when the person is charged.

5. The Pertinence of Pending Actions Against Nonparties (1250)
   -Hicks and Doran are contrary to each other.
   -In Doran the Court refused to withhold federal relief in favor of the two bar owners because of the pending prosecution of the third.

Note of Further Extensions of the Equitable Restraint Doctrine: Pending Civil Actions in State Court, State Administrative Proceedings, and Executive Action (1251)

1. Civil Actions to Which the State is a Party (1251)
   -Huffman v. Pursue (1275): SC held that Younger applies to bar federal relief when the state is a party to the proceeding and the proceeding is both in aid of and closely related to criminal statutes.
   A. The Huffman Opinions and Rationale: They said this was more like a criminal proceeding than a state proceeding anyway, etc. etc.
   -Brennan’s dissent said this was a slippery slope towards applying Younger to every case.
   -Moore v. Sims added custody hearings for abused children.
   C. The NOPSI Case: New Orleans Public Service, Inc (1989): SC limited Younger abstention at least to actions to which the state is a party. NOPSI was a utility company and the City Council denied their requested rate increase.
   RULE: The rational of the line of cases that call for abstention when the state brings a civil enforcement action in its sovereign capacity does not extend to challenges to completed legislative or executive actions that do not require or have not yet led to enforcement suits.

2. Civil Actions Involving Important State Interests (1253)
   A. Juidice v. Vail (1977): This was a class action against New York judges, but the Court held that Younger and Huffman barred the injunction because of the state’s interest in its contempt processes.
   B. Pennzoil Co v. Texaco, Inc (1987): There was an $11 billion jury verdict against Texaco. They were unable to afford it, so they could not post the bond to appeal. Texaco filed in the district Court in New York to enjoin the post judgment right. The SC held that the State’s interests are so important that exercise of the federal judicial power would disregard the comity between the states and national government.
   C. Limiting Principles? These cases extend Younger to civil proceedings involving certain orders that are uniquely in furtherance of the state courts’ ability to perform their judicial functions.

3. Damages Actions Involving State Officials (1255)
   -In Juidice, the SC reserved the question as to whether Younger applied in 1983 suits seeking only damages.
   -Quakenbush v. Allstate Ins Co. (1996): RULE: Federal Courts have the power to dismiss cases based on abstention principles only where the relief being sought is equitable or otherwise discretionary.
   -Left open the possibility of a suit for damages being stayed pending the outcome of state court litigation

   -Steffel v. Thompson: extended the abstention doctrine to state administrative proceedings of a judicial nature.
   A. Middlesex County Ethics Comm. (1982): A lawyer who was called before a state disciplinary board didn’t go but instead filed a First Amendment challenge in federal court. The SC said it was barred by Younger because the state disciplinary authority was an arm of the state and the disciplinary proceeding was judicial in nature.
   -The Court also noted that the First Amendment claim could be raised in the state court proceeding
B. State administrative proceedings of a judicial nature: *Ohio Civil Rights Comm’n v. Dayton* (1986): A 1983 action to enjoin the administrative proceedings under First Amendment. The SC said it was sufficient that the First Amendment claims could be heard in a state court, even though they could NOT be heard in the state administrative hearing.
- IOF: If the administrative proceedings were judicial.
- *Hawaii Housing Auth* (1984) said a land distribution was not judicial.

C. ISSUE: if a state administrative proceeding is judicial in character and the administrative decision has become final, may a litigant seek to review or challenge it in federal court?
- The Circuits are divided.

5. Equitable Restraint and State Executive Functions:
- *Rizzo v. Goode* (1976): Couldn’t sue high officials in City of Philadelphia for discriminatory police practices because there was no showing that they had invaded or authorized any invasions of the plaintiffs’ constitutional rights.

11/20 Reading Notes

**SUBSECTION D: PARALLEL PROCEEDINGS** (1258)

**Colorado River Water Conservation District v. United States** (1258)

**Supreme Court, 1976**

**Rule** There is an ad hoc balancing test you can use any time you want to abstain
1. Whether either court first assumed jurisdiction over property; if so, whichever court got it first gets to proceed
2. Inconvenience of the federal forum
3. Desirability of avoiding piecemeal litigation
4. The order in which jurisdiction was obtained.

**Governing Rules**
- *McCarran Amendment, 43 USC 666*: “Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to use of water… or (2) the administration of such rights where it appears that the United States is the owner…
- *28 USC 1345*: Dcs have jurisdiction over all civil actions brought by the Federal Government except as otherwise provided by Act of Congress
- The Court determined that the McCarran Amendment is not an Act of Congress excepting jurisdiction under 1345, but that it provided for concurrent state and federal court jurisdiction.

*Pullman* abstention: Abstention is appropriate in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law.

*Thibodaux* abstention: Abstention is appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar.

*Burford* abstention: Abstention is appropriate where federal review of the question in the case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

*Younger* abstention: Abstention is appropriate where, absent bad faith, harassment, or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings, state nuisance proceedings antecedent to criminal proceedings (*Huffman*), etc.

Generally, the pendency of an action in the state court is no bar to proceedings concerning the same matter in Federal court.
- Between federal courts, however, there is a general principle of trying to avoid duplicative litigation.
- There is also this virtually unflagging obligation of the federal courts to exercise the jurisdiction given to them.

- There is an exception for when a court obtains jurisdiction over property - they can exclude other courts.

**Facts** Colorado has an elaborate system for water rights. The United States has reserved rights for Indian lands, national parks, etc. The Government instituted this suit in a District Court seeking declaration of the G’s rights to certain waters. Then the US was joined to a state court action and properly served according to the McCarran Amendment.

**Issue** The effect of the McCarran Amendment upon jurisdiction of the federal district courts under 28 USC 1345 over suits for determination of water rights brought by the United States as trustee for certain
Indian tribes and as owner of various non-Indian Government claims.

- Whether the DC’s dismissal was appropriate under the doctrine of abstention.

**Opinion Below**

The District Court dismissed citing the doctrine of abstention. The CA reversed.

**Holding**

Reversed. The DC’s dismissal, though not justified by any existing abstention doctrine, is justified by the policy underlying the McCarran Amendment, and other factors.

**Other Rulings**

- The McCarran Amendment provides consent for state courts to determine federal reserved rights held on behalf of Indians.
- Abstention from the exercise of federal jurisdiction is the exception, not the rule.
- This is not *Pullman* abstention because there are no issues of federal constitutional law.
- This is not *Thibodaux* because state law is settled.
- This is not *Burford* because it is only speculative that this will interfere with state systems?
- This is also not *Younger*
- Even though it doesn’t fall within any of these previous abstention doctrines, it could still be prudent to abstain based on wise judicial administration, etc.
- There are a number of factors in this case that counsel against concurrent federal proceedings
  - McCarran Amendment’s desire to avoid piecemeal adjudication of water rights
    - Similar to the res exception
  - Up until dismissal, there weren’t any significant proceedings in the DC
  - The state water rights was extensive and the suit named 1,000 defendants
  - The district court in Denver was geographically far away
  - The G was already involved in other state proceedings

However, there IS a heavy obligation to exercise jurisdiction.

**Dissent (Stewart):** The Court relies a lot on the res exception (when a court has exclusive jurisdiction over property). But, those cases are only when exclusive control over the subject matter is necessary to effectuate a court’s judgment. Here, it wasn’t necessary. The District Court could make their rulings without having control of the river.

- There is also a lot of emphasis on avoiding piecemeal litigation. This would not be more piecemeal than what the state would have to do with the same claims.
- These are issues of federal law and Indian rights and should be better left to the federal courts.

**Dissent (Stevens):** Agreed with Stewart and added the Court’s holding would restrict private water users’ access to federal courts which surely was not the intent of the McCarran Amendment.

**Class Notes:**

- Its not like *Burford* because state law is settled
  - Also, in *Burford*, the federal courts were screwing it up, but here, there is no evidence of that!
  - Look at history

- But, this is a very shady line between *Burford* and *Colorado River*
- Drobak thinks it is very different to say that when its two people they can have suits in both state and federal court but not when it’s a v. 1000 defendants.
  - That’s a lot of people having to defend
- Here, they are suing thousands of people

**Note on Federal Court Deference to Parallel State Court Proceedings** (1265)

1. Earlier Examples of Deference to Pending State Court Proceedings (1265)

- *Kline*: The pendency of a state court action does not require a federal court to stay proceedings concerning the same matter
  - Exception for res
  - Exception for *Younger*

- Aside from these two exceptions (res and Younger) the Court had only approved deference in a few cases before *Colorado River*

  *Brillhard v. Excess Ins* (1942): state court garnishment proceeding or something? Court said that in determining whether to abstain, the DC should consider whether the claims of all parties in interest could be satisfactorily adjudicated in state court

  *Growe v. Emison* (1993): Apportionment is better in states 0 either legislative or judicial

  *Kaiser Steel* (1968): Private diversity action over water rights. Court should abstain because it is a novel issue of vital concern to the arid state.
2. **The Moses H. Cone Decision** (1267)

*Moses H. Cone* (1983): The case involved a construction contract that was subject to arbitration. Then the contractor filed in state court, so the architect filed in federal court to compel arbitration under the Federal Arbitration Act.

- The Supreme Court said the District Court could NOT abstain
- Although abstention is discretionary, it must be exercised in accordance with Colorado River’s exceptional circumstances test

**Rule:** Colorado River provided four factors to support abstention
1. Jurisdiction over a *res*
2. Court’s greater convenience
3. Avoiding piecemeal litigation
4. The order of suit?

- Two further factors were relevant here: It was governed by federal law (Federal Arbitration Act), and the state court remedy was probably inadequate.

*Quakenbush*: Federal courts generally have no authority to dismiss actions otherwise within their jurisdiction unless the relief sought is itself discretionary.

- This only addresses form

Drobak says they always rule in favor of arbitration, so if you see an arbitration case, take it with a grain of salt.

3. **Declaratory Judgment Actions** (1268)

*Wilton v. Seven Falls* (1995) There was a diversity action pending in federal court and a state action to recover from the insurer. The federal suit had been filed first. The Court upheld dismissal saying the exceptional circumstances test of *Colorado River* and *Moses Cone* did not govern a federal declaratory judgment act.

- The Declaratory Judgment Act had a textual commitment to discretion and breadth of leeway.

5. **Criticisms of Colorado River** (1269)

- Federal courts really should decline jurisdiction conferred by Congress
- This leads to ad hoc and unpredictable decisionmaking

6. **Colorado River and Kline** (1270)

*Kline*: A federal court should exercise jurisdiction even when there is already pending a related state court *in personam* action

7. **Appealability**

- A refusal to stay or dismiss an action is not appealable (*Gulfstream Aerospace* (1988))
- Order staying or dismissing a federal action in favor of state court proceedings is appealable- at least where the judgment in that proceeding will be res judicata (*Moses Cone*)

11/21 Reading Notes

**SECTION E: MATTERS OF DOMESTIC RELATIONS AND PROBATE**

**Rule:** No federal court jurisdiction for divorce, alimony, child custody, child support, or probate of wills and trusts

*Ankenbrandt v. Richards* (1271)

**Rule** The domestic relations exception to federal jurisdiction covers ONLY divorce, alimony, and child custody.

**Governing Rules**

There is an exception from federal jurisdiction for divorces and for alimony.

- This exception was then expanded to include child custody cases.

*Colorado River*: Virtually unflagging obligation to exercise jurisdiction if you have it

**Facts** This was a diversity case brought in federal court claiming damages for alleged sexual and physical abuse of the children.

**Issue**

1. Is there a domestic relations exception to federal jurisdiction?
2. If so, does it permit a district court to abstain from exercising diversity jurisdiction over a tort action for damages?
3. Did the District Court in this case err in abstaining from exercising jurisdiction under the doctrine of *Younger v. Harris*?

**Opinion Below** DC dismissed under the domestic relations exception

**Holding** This is a suit for torts and does not fall within the exception, so there is jurisdiction to hear it.
-abstention was erroneous. Reversed and remanded.

Other Rulings
-We will continue to recognize the exception for alimony and divorces.
-They use abstention as an alternative ground for not ruling
  -Younger: There is no state proceeding pending
  -Burford: There are no “difficult questions of state law….”
  -Etc. Etc.

-There is no good reason to abstain.
Concurrence (Blackmun) (1275): Doesn’t think there should be any domestic relations exception
  whatsoever. The precedents should allow discretionary abstention only, not mandatory limits on
  federal jurisdiction. Further, the extension to child custody was wrong.
Concurrence (Stevens) (1277): This case falls outside a domestic exception, if there is one, so we don’t
  need to decide if there is one.
Notes: This case was trying to expand the exception to include tort claim for sexual abuse. The court
  won’t allow it.
-They say that Congress knows the exception and hasn’t changed it, so its not judge made anymore but was
  ratified in 1331
-Disst says “come on. They don’t know the law” its judge made
-The issue is jurisdiction v. abstention
-Right now, it jurisdictional according to Ankenbrandt

Note on Federal Jurisdiction in Matters of Domestic Relations (1278)
3. Justification for Ankenbrandt: relies on precedents and Congress’s failure to object to them
4. Scope of the Exception (1279): Ankenbrandt defines the exception rather narrowly.
5. Lack of Jurisdiction v. Abstention
  -While Ankenbrandt adopts the “jurisdictional” view, Part IV of the opinion leaves open the
    possibility of “abstention” in cases that fall outside the jurisdictional exception.
Quakenbush v. Allstate (1996): suggests that where the suit is not one for discretionary remedy such as an
  injunction or declaratory judgment, a federal court may not refuse to exercise jurisdiction
  altogether; at most it can stay the action pending the resolution of state court proceedings.
6. Jurisdictional Grants Other Than Diversity (1280)
ISSUE: what implications does Ankenbrandt have on cases in which federal jurisdiction is not based on
diversity (S1332)
-Lehman v. Lycoming County (1982): a mother filed a habeas action oh behalf of their being placed in
  foster case. The SC said there was no federal habeas jurisdiction, but it didn’t cite the domestic
  relations exception per se. The Court also reserved the question of jurisdiction when the child is
  confined in a state institution.
RULE: after Ankenbrandt the predominant view among lower courts is that the domestic relations
  exception applies only to the diversity jurisdiction.

Note on Federal Jurisdiction in Matters of Probate and Administration (1280)
This is the Anna Nichole Smith Case: That was a tort of tortuous interference, not probate of a court.
  -The district judge netered judgment for Anna Nichole Smith
1. Development of the Exception: This came from England and what not
2. The Markham Decision (1281)
Markham v. Allen (1946): This would have had jurisdiction because it was brought by an offer of the US,
  but the SC said “ a federal court has no jurisdiction to probate a will or adminisiter an estate, the
  reason because the Judiciary Act….did not extend to probate matters. Then it was established by a
  long line of cases.
3. The Rationale for the Exception (1281): It was just tradition. Could it have something to do with res?
4. The Scope of the Exception (1282)
a. Misconduct by Representatives: Federal courts may entertain actions against administrators or executors
to establish
  -a right to a distributive share
  -A lien
  -a debt, etc
  As long as the judgment does not interfere with the handling of the estate
b. Challenges to wills: Actions to annul a will or set aside an order to probate have brought special
6. Abstention
- *Rice v. Rice Foundation* (7th Cir. 1979): “Discretionary abstention in probate-related matters is suggested not only by the strong state interest in such matters generally but also by special circumstances in particular cases.
- Compare: *Giardina v. Fontana* (2d Cir 1984): Error not to take case because of *Colorado River*

**CHAPTER XII: ADVANCED PROBLEMS IN JUDICIAL FEDERALISM**

Claim Preclusion: You can’t split your theories on a group of facts
- You can’t sue in torts for slip and then come back in contract theory later
- You also can’t split damages, remedies, etc.

Issue Preclusion: Only precludes issues that were actually litigated
- Issues must be essential to the judgment

- This is only allowed sometimes, that is the reading today

**SECTION 1: PROBLEMS OF RES JUDICATA**

Full Faith and Credit
- Art IV §1: Full Faith and Credit for PROCEEDINGS only applies to state courts
- 28 USC §1738: Full Faith and Credit for JUDGMENTS applies to all courts
  - **RULE:** A federal court is required to give a state court judgment the same “full faith and credit as would the state court that rendered the judgment

**RULE:** JUDGEMENTS: apply in every court, ISSUE PRECLUSION only state courts

- *Marrese:* even though he could not raise the federal (antitrust) issue in the state court, it was still precluded by claim preclusion because it was from the same set of facts
  - Facts: a doctor was suing the medical board for not letting them in

- *Matsushita v. Epstein:* Class Settlement: SC held that Delaware law would ascribe claim preclusion to the class settlement, so a federal court must also. So those who did not opt out were barred from their federal (securities law) claim.
  - In order for a federal statute to supersede the requirements of §1738, it must clearly state the congressional desire to do so
    - Federal securities law does not (*Epstein*)
    - §1983 does NOT (*Allen v. McCurry*)
    - Federal court must give res judicata effect even on issues that COULD have been raised in the state proceeding but weren’t (*Migra v. Warren City School*)
      - Title VII also does not repeal Full Faith And Credit Clause

*Full faith and credit applies to state court judgments only (not federal)*
- But, federal courts must apply federal claim and issue preclusion anyway…

**Note on the Res Judica Effects of Federal Judgments** (1407)
- Res Judicata of federal judgments is almost entirely judge made law
  - Res judicata of a federal judgment is governed by federal common law (*Semtek*)

**Effect of a Federal Judgment on a Subsequent State Proceeding**
- When a federal court decides a federal question, federal preclusion rules govern effect of judgment
- When the federal judgment is rendered in a diversity case, it is more complicated

*Semtek:* Federal court in CA (on diversity jurisdiction) entered judgment based on statute of limitations (CA). Then they bought a case in state court in MA which had a longer statute.

**ISSUE:** whether a dismissal on the basis of statute of limitations was “on the merits” (which is required for claim preclusion)

**RULE:** federal common law governs the effect of a judgment entered by a federal court exercising diversity of citizenship jurisdiction

**HOLDING:** federal common law would apply the law of the state in which it sat. CA provided that dismissal based on sol was not “on the merits, so the judgment of the federal court in CA was not preclusive.

*Semtek:* use the law that would be applied by state courts in the state in which the federal diversity court sits.
  - Exception for situations in which the state law is incompatible with federal interests
    - This has raised problems, obviously

**Drobak thinks *Semtek* is very important:****
Questions of Law Adjudicated in Government Litigation (1408)
-Commissioner v. Sunnen (1948): They litigated the exact same issue like three years apart. The Court said there was no issue preclusion because of a series of intervening SC decisions.

**RULE:** If the law changes, there is no issue preclusion
-Montana v. US (1979): SC held the US was bound by state judgment since it had controlled the litigation and there had been no major changes

Attacks on Subject Matter Jurisdiction (1409)

**Finality is more important than lack of subject matter jurisdiction**
-MOST of the time you will not be able to collaterally attack subject matter jurisdiction after a final judgment because they care about finality.
-Otherwise, this won’t be on the final.
-Mansfield rule: A challenge to federal court’s subject matter may be made any time during proceedings
-**but** it cannot be a collateral attack

McCormick v. Sullivan (1825): Can reverse it on appeal but not once judgment is final
Des Moines Navigatoin (1887): The record affirmatively showed there was no diversity, but the Court held that the judgment was entitled to preclusive effect
Chicot County Drainage (1940): Judgment was res judicata even though the issue hadn’t been litigated in the first case
Durfee v. Duke (1963): A judgment about land not even in the state was res judicata because they didn’t realize it until after the order was final.

**This is an example of how finality is more important than subject matter jurisdiction. They didn’t want to reopen the case. The SC said “tough. Its over”

United States v. United States Fidelity (1940): Failure to assert immunity of Indians did not waive it and they could use it to collaterally attack judgment later.

**The one exception is when a government interest trumps finality.**

Non-Mutual Issue Preclusion
United States v. Mendoza (1411) Supreme Court, 1984

Rule Nonmutual offensive collateral estoppel cannot extend to the Government

Governing Rules
-The doctrine of non-mutual collateral estoppel was approved in *Blonder Tongue Labs*
-The doctrine of non-mutual offensive collateral estoppel has been conditionally approved. *Parklane Hosiery*

Facts Mendoza filed a claim for naturalization on an expired statute claiming that the Nationality Act denied him due process. The same issue had already been decided against G in a case from the Northern District of CA that the G had not appealed

Issue Whether the G’s decision not to appeal an adverse ruling in one jurisdiction can be used as issue preclusion in another

Opinion Below DC and CA held that G was collaterally estopped

Holding Reversed. The G is not collaterally estopped

Other Rulings
-Blonder Tongue and Parklane Hosiery both involved private rights of private litigants.
-The G is in a very different position than the average private litigant.
   -Greater number of cases
   -Cases involve substantial public importance.
   -More likely than a private party to be in lawsuits against different parties that involve the same legal issues over and over again.

-Allowing non-mutual collateral estoppel against the G would thwart the development of important questions of law by freezing the first decision
   -Take away the benefit of split circuits in helping the SC reach its decisions

-The Government doesn’t appeal every decision
   -Because of limited resources and crowded dockets, G picks and chooses battles
   -If this were allowed, they would have to appeal every adverse decision.

-Changes in administration would be bound by earlier administration’s decision not to appeal.

-G may still be estopped under certain circumstances from relitigating a question when the parties are the same. *Stauffer, Montana v. US*

*In order for issue preclusion, you must have had “full and fair …”*
Class Notes:

HYPO:
1. Plaintiff sues a Contractor who is an agent for a city
2. Plaintiff sues City who is principle of agent
   - one of the issues is whether the Contractor was negligent. Is there issue preclusion on the issue of negligence.
   - This is allowed. It is non-mutual offensive collateral estoppel

HYPO: P1 and P2 are neighbors. The G makes an airbase that cuts off their access to their lands. P1 sues and wins. Then P2 sues
   - Why is this different? Government is different from private litigants
   ** Even if it arises from the EXACT same facts (two people in the same car), there is no issue preclusion for the Government.

HYPO: P sues G in the 8th Cir and wins. Then G sues P in the 2nd Cir on the same issue
   - This is issue preclusion because it is the same parties
   - So we could have everyone in the 2nd Cir governed by a different law than A because of issue preclusion

HYPO: Suppose the G is a serial loser.
   - When should the G stop? When they run out of circuits.
   - This is all non-mutual issue preclusion.
   - Litigators can avoid this by building class actions. Otherwise, G can sue over and over.

**Note on Res Judicata in G Litigation and on the Problem of Acquiescence** (1415)
Remember that for issues of law there is the Sunnen/Montana thing that depends on whether the law has changed

   - Stauffer was a companion case to Mendoza.
   - The 10th Circuit ruled for Stauffer (that private contractors would not be allowed in in place of EPA).
   Then, the same thing happened in 6th Circuit. They held that G was precluded from relitigating.

RULE: When estoppel is applied in a case where G is litigating same issue arising under virtually identical facts against same party, collateral estoppel should be applied
   - They walk through how none of the arguments from Mendoza carry over.
   - The 9th Circuit had already ruled against another corporation on the same issue. The Court did not address the issue of how that preclusion would work out

Concurrence (White): Would not give Stauffer the benefit of the 10th Circuit ruling in a circuit that had already decided the issue as it pertained to another corporation (this is the issue the court did not decide).

**The Question of Party Identity** (1417)
Issue: Whether G party in 2nd suit is the same G party that was in the 1st suit
Rule: A judgment in a suit between a party and a representative of the United States is res judicata in relitigation of the same issue between that party and another officer of the G. Montana v. US (1979)

**Executive or Administrative Nonacquiescence** (1417)
Issue: If after court rules against the G, they only change with regard to that one plaintiff, everyone else has to litigate on their own Some can’t afford to, so they lose
   - A number of federal agencies have refused to acquiesce.

**Mendoza and the Supreme Court’s Original Jurisdiction** (1419)
Issue: Do the considerations of Mendoza apply when case was brought originally in SC?

**Allen v. McCurry** (1420) Supreme Court, 1980
Rule: Collateral Estoppel applies to 1983 suits.

**Governing Rules**
- No requirement of mutuality in applying collateral estoppel to bar relitigation
- Collateral estoppel can be used offensively in a new federal suit against a party who lost on the decision earlier.
   ** Collateral estoppel cannot apply when the party against whom the earlier decision was asserted did not have a full and fair opportunity to litigate that issue in the earlier case. Montana v. US
- Federal courts have generally accorded preclusive effect to issues decided by state courts.
**Congress, in 28 USC 1738, has required federal court give preclusive effect to state court judgments whenever the courts of the State from which the judgments emerged would do so.**

- The virtually unanimous view of the CAs has been that 1983 presents no categorical bar to the application of res judicata and collateral estoppel concepts.

**Facts**

McMurry was convicted of selling heroin. In his trial, he claimed that some evidence was seized in violation of Fourth and Fourteenth Amendments. The motion was denied in part and he was convicted. The conviction was affirmed. Since he didn’t claim he was denied a “full and fair opportunity” to litigate, he was barred from seeking a writ of habeas. He then brought a 1983 claim for the Fourth and Fourteenth Amendment violations.

**Issue**

Whether collateral estoppel is a defense to a 1983 suit for damages.

**Other Rulings**

- When 1983 was passed, doctrines of estoppel and res judicata were around (though non mutual collateral estoppel was not) but the statute says nothing about the preclusive effect of state court judgments.
- The legislative history of 1983 does not in any clear way suggest that Congress intended to repeal or restrict the traditional doctrines of preclusion.
- Congress knew that in enacting 1983, it was altering the balance between state and federal courts. But, it was adding to federal jurisdiction, not taking away from state jurisdiction.
- 1983 was intended for those circumstances where state law was unCal, inadequate in practice, etc. etc. I.e. those situations in which the litigant did not have a full and fair opportunity to litigate the claim or issue.
  - But this is already an exception from collateral estoppel.
- The CA appears to assume that every person asserting a federal right is entitled to one unencumbered opportunity to litigate that right in federal court, but that just isn’t true.
- It is difficult to believe that the drafters of 1983 intended it to be a substitute for habeas corpus. I.e. just because there is no habeas doesn’t mean there has to be this?
- Prosecutors can take away your 1983 claim by bringing criminal charges and then using issue preclusion under McCurry.

Drobak thinks this case is wrong, but that’s how it is.

**Note on 28 USC 1738 and the Res Judicata Effect of State Judgments** (1428)

The **Kremer Decision and the Role of State Law** (1429)

Kremer v. Chemical (1982) RULE: §1738 directs the federal courts to give the same preclusive effect to state court resolutions of federal questions as would be given in the courts of the rendering state
  - The state court’s rejection of the claim was preclusive to the same extent that it would be in a new action in a New York court -- even though Title VII had a right to trial de novo following administrative proceedings.
  - The state decision only found that the state agency’s decision had not been arbitrary or capricious

**Exception to preclusion if you did not have a full and fair opportunity to litigate.**

- They found that it didn’t fall into that exception
- So, because they appealed to state court first, they only had the “arbitrary or capricious” standard of review and essentially lost their Title VII claim because of the finding of an administrative agency.

The **Migra Decision** (1429)

-Migra v. Warren City School Dist (1984): She WON her contract and tort suit in state court, and then brought a 1983 claim in federal court. They said there was claim preclusion because she should have raised it in state court.
  -(McCurry): State Court judgments have issue preclusion on 1983 suits

**RULE (Migra):** State court judgments have CLAIM preclusion on §1983

- The state court judgment in this litigation has the same claim preclusive effect in federal court that the judgment would have in the Ohio state courts.

**Arguments for Alternative Approaches** (1430) Drobak doesn’t like this rule. Maybe it should be federal common law? Its not. Its state preclusion law.

**Cases Involving Exclusive Federal Jurisdiction** (1431)

Court has not ruled squarely on the issue, but some people argue that cases with exclusive federal jurisdiction should not be precluded by state court judgment


**RULE:** State court judgments have claim preclusion even over issues that could not have been raised in the state court because of exclusive federal jurisdiction to the same extent that the state would allow
claim preclusion over other claims not within their subject matter jurisdiction - look at state law

FACTS: This was a state claim, but after he lost, the plaintiff brought a suit under federal anti-trust law which is exclusively in federal courts. The SC said they should have first looked at state preclusion law. Since Illinois law wouldn’t have addressed whether a state judgment had claim preclusion over claims that can only be brought in federal court, they ask whether claim preclusion forecloses related claims that were not within the jurisdiction of the Illinois Courts.

HOLDING: Claim preclusion usually does NOT apply in these situations, so it wouldn’t apply here -This is NOT a rule that state courts cannot preclude anti-trust laws. Look at the state courts.

Restatement 2d provides that rules against splitting causes of action do not apply where the plaintiff was barred from submitting a certain theory of the case because of limitations on the subject matter jurisdiction of the rendering court.

b. This leaves open whether and when state preclusion rules can be defeated by the policies that led congress to provide for exclusive federal jurisdiction over a certain class of claims.

The Res Judicata Effect of State Administrative Decisions (1433)

University of Tennessee v. Elliott (1986):
Gov Rule: Preclusive effect of state proceedings on fed courts is measured by state law.

RULE: §1738 is inapplicable to administrative appeals because it governs only the preclusive effect of judicial proceedings.
-However, fact finding by a state agency acting in a judicial capacity is to be given the preclusive effect to which it would be entitled in the state’s courts.

Gov. Rule: Patsy: §1983 plaintiff does not have to exhaust state administrative remedies.
-NOW, they are discouraging voluntary resort because of the preclusive effect.

Gov Rule: Ohio Civil Rights Comm’n v. Dayton: Younger requires a federal court to abstain when there is a pending state administrative enforcement proceeding.

**HYPO: suppose someone goes before a state agency and then appeals to state court and loses. Then they go to federal court

RULE: Elliott says that there is no issue preclusion for administrative agencies because §1738 only applies to judicial decisions
-In Elliott there was no appeal to state court, so it is even harder

Kremer appealed to the state courts and that cost him his de novo federal review
Look how far back we have cut 1983!
-AN unappeased decision by a state agency might preclude 1983

**Federal court does what the state would do and some STATE’S would give it preclusive effect.

If you DO appeal to state court, you have a Kremer problem

Res Judicata Effects of Determinations of State Court Class Actions (1434)

Matsushita Elec v. Epstein (1996): Class action in state court on state law grounds. Another group of shareholders brought a federal action. While the federal action was pending, the state court approved a settlement providing for the release of all class members.

ISSUE: whether, under §1738, the settlement precluded those class members who had not opted out of the class from prosecuting their federal claims in federal court even when those federal claims have exclusive federal jurisdiction (securities law)

RULE: So long as the demands of due process are met and federal law does not provide otherwise, §1738 requires reference to state law in order to determine whether such a settlement has preclusive effect--even with respect to a federal claim over which the state court had no jurisdiction.

-One rationale is that a settlement is a contract that acquires the force of a binding judgment when approved by a court.

Review:
*Issue preclusion (collateral estoppel) applies in 1983 cases (Allen v. McCurry)
*Claim preclusion (res judicata) also applies (Migra v. Warren (1984))

Class Notes:
-Learned Hand said you could use Sherman Act as a defense in state court and THEN sue with it in federal court without issue preclusion
Q: Would this be true today??
-The trend since 1955 has been “What would the state do?”
-you *Could* say it is claim preclusion under *Mariesee* but that might be too far
-The whole purpose of the Sherman Act is to get federal courts

**11/30 Class Notes - DO READING NOTES!! LOOK AT THIS IN STUDY GUIDE!!!**

*Rooker Feldman:* A federal district court cannot review judicial proceedings of a state court

There are seven short essay questions on the exam

*Rooker Feldman Doctrine*

This is really claim preclusion. Both cases the doctrine comes up, the federal court shouldn’t take it

- because of claim preclusion

-Federal courts shouldn’t take appeals from state courts.

Claim preclusion is a defense that’s waive able. So maybe the court is just making it mandatory by saying

-the court has to dismiss it on its own

-The trouble is that it gets used in crazy ways.

Note 4 on pg 1440: *Kamilewicz:* a guy from Maine is in a class action in Arizona or something?

-He wins $2.19

-Because of Rooker Feldman, he can’t sue

A nice review is the Penzoil litigation on 1441:

- Texas appellate bond requirement is so high they can’t afford to appeal.

-Their federal court suit is not an appeal on the merits so there is no Rooker Feldman problem