I. INTRODUCTION

A. Nature of Federal Jurisdictional Function

1. General Considerations

   Marbury v. Madison (1803) (55)

   - Marshall says Judiciary Act requires Supreme Court to issue writs of mandamus, but the Act is wrong and the court has power to decide that birth of judicial review. SC now has power over acts of executive and congress
   - Makes SC infallible
   - Judges know best: have most info, don’t have a constituency
   - *Fed. 78 (Hamilton): judiciary is “Least dangerous” branch, judiciary has no power over sword or purse but has judgment
   - So reads Act to raise a constitutional issue even though it is more clearly one of statutory construction
   - Despite this opinion, SC does not strike down federal statute until Dred Scott in 1850s

2. Article III, Section II

   - 1st paragraph lists cases to be heard by SC
   - 2nd paragraph first says SC has original jurisdiction over cases listed in 1st, then says SC has appellate jurisdiction over everything else
   - Exceptions clause allows for shrinking of appellate jurisdiction of SC and not expansion—this is how Marshall read it and how it is still interpreted
   - Power of courts is confined

Impeachment

   - *Judges never impeached for political reasons anymore.
   - Here, Jefferson repealed judgeships, not judges
   - After Jefferson took office, impeachments of federalist judges were attempted and failed
   - Since then, Congress has never impeached a judge for political reasons

Judgments

   - Almost invariably, judicial opinions are usually retroactive
   - Legislation is usually prospective, with express exceptions

2. Advisory Opinions

   - *Federal courts will not render advisory opinions because no adverse parties—Constitution requires case or controversy

3. Declaratory Judgments

   Aetna v. Hayworth (1937) (83)

   - Court upholds Declaratory Judgment Act. Practical reason they are allowed and advisory opinions are not—declaratory opinions are very useful

   Calderon v. Ashmus (1998) (84)

   - For a declaratory judgment action to be justiciable, it must seek a ruling capable of resolving the entire underlying case rather than ask a court merely to determine a collateral legal issue

B. Constitutional Avoidance

   Doctrine of constitutional avoidance: power of judicial review is so sensitive, ultimate and troublingly counter-majoritarian that federal courts should exercise it only as an absolute necessity
Ashwanter (1936) (86)
-Bandeis’ concurring opinion—gives seven situations where Court acts in restraint
-Three are Constitutional: adversary, ripeness, standing (injury)
-Four are prudential: breadth of decision will (not formulate a rule broader than is requires, Last resort (will not pass if there is also some other ground upon which case can be disposed), Will not pass on statute at instance of one who has availed himself of its benefits

Avoidance Canon (88)
-*First ascertain whether construction of statute is possible where question can be avoided), well respected doctrine
-If SC can avoid hearing a case, it will (without getting to other points)
  1. Unconstitutionality: common during 19th century; courts decided that one interpretation of a statute would render unconstitutional, and then they would adopt the other interpretation
  2. Doubts: common now; courts construe statutes to avoid even the question of constitutionality

Debartolo (1988) (89)
-*Courts will construe statute to be constitutional unless plainly against legislative intent; will not lightly assume Congress intended to not be constitutional
-Frequently cited as the modern formulation of the avoidance canon

C. Revision
Executive Revision—not allowed
-Waste judicial resources
-Separation of powers

Glidden v. Zdanok (1962) (103)
-*Ability to enforce judgments is not hallmark of judicial power
-US gov’t does honor court decisions most of the time

Waterman (1948) (97)
-*Court does not allow judicial review to presidential decisions because his actions “embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate”
-Upheld statutory provision stating president has power to unconditionally approve or disapprove administrative orders to air carriers
-Held to review an administrative decision which has only the force of a recommendation to the president would be to render an advisory opinion

Extradition (98)
-Courts are not sitting as courts but as advisory board
-Allowed because Secretary cannot revise findings of court
-Courts determine probable cause, then Secretary of State determines whether extradition will be allowed

US v. Klein (1871) (99)
-*SC finds Congress is directing results of lawsuits, and that is not allowed
- Court finds Congress violated its power by telling Court, in a statute, not to find ex-Confederates as loyal based upon past presidential pardon

- Previously, court had allowed pardon as sufficient evidence of loyalty

**Robertson v. Seattle Audubon** (1992) (100)

-* Though statute was directed at a specific case, SC finds the 2nd statute was simply an amendment that applies to everyone and is allowed

- 1st statute specifies standards, then there is a lawsuit, then there is new statute that either clarifies or amends previous statute

**Shiavo (supp 5)**

-* Federal statute gave her parents only standing to sue de novo on Terry’s behalf in federal court (added standing) after state decisions had been rendered was probably a violation of *Klein*.  

**Plaut v. Spendthrift Farm** (1995) (100)

-* Federal statute directing federal courts to reopen final judgments in private lawsuits violated Article III and separation of powers

- Congress changed SOL and tried to apply it retroactively to apply in certain lawsuits

- Distinguished from cases where Congress changes a law while lawsuit is pending

**D. Collusive Lawsuits**

**US v. Johnson** (1943) (107):

-* If one party bears burden of litigating the entire matter (costs, arguments, etc.), there is no case or controversy because the parties are not truly adversaries. Rent control case during WWII.  

- For adversary suit, both parties must truly want to win

**Evers v. Dwyer** (1958) (109):

-* “Test cases” are generally allowed, here black man was allowed to sue bus co for segregation even though he rode the bus only the one time he sued for

- If two parties want to do something but do not know if violates a certain law, one can sue but that seems collusive, but maybe it’s just declaratory judgment

**Muskrat v. US** (1911) (109)

-* Judgments of the court cannot be used to find out is legislation is constitutional—not a real case or controversy. Here, US had no interest adverse to Ps.

- Cherokee allotment case.

- Should have been between different those who got land under new law and those who lost it (for declaratory judgment), also could have waited until people actually lost their land (real injury) and then there would have been a real controversy

**E. Confession of Error**

**Casey v. US** (1952) (113)

-* When US gov’t confesses error post-judgment, court will change judgment

- This is a practical instance of executive telling courts what to do, but courts say they change judgment because it’s right and not because US attorney (or whoever) tells them to
II. JUSTICIABILITY
A. Standing-Plaintiff’s Standing
   1. Standing doctrine—Constitutional requirements:
      P must have
      a. Personal injury
      b. Fairly traceable to defendant’s allegedly unlawful conduct
      c. Likely to be redressed by requested relief.
   2. Standing doctrine—prudential requirements:
      a. Cannot raise another person’s legal rights
      b. Cannot bring general grievances more appropriate for another branch
      c. Complaint must fall within zone if interests protected by the law

-Doctrine is based on separation of powers.
1. Constitutional Requirements
   Allen v. Wright (1984) (114)
   -*Injury must be fairly traceable to D’s challenged conduct for P to have standing, also injury must not be too general
   -Allegation that a regulation is discriminatory is not appropriate injury, court likens it to those who sue US because they don’t like a war→
   -Allegation that tax breaks were not sufficient for desegregation is not fairly traceable to conduct challenged by IRS
   Norwood v. Harrison (1973) (121)
   -*Very similar to facts of Allen, but Court distinguishes granting of standing because in this case there was a court-order to desegregate the plaintiffs school
   Sierra Club v. Morton (1972) (132)
   -*Sierra club does not have standing to sue developers because they never use the land in question→no injury in fact
   -If they used the land, court suggests they would have an injury
   -First of 4 environmental cases
   2US v. SCRAP (1973) (135)
   -*Aberration, product of Burger court, upheld standing based on similar recreational interests;
   -*Recreational claim not enough in mining case, distinguished SCRAP on thin procedural grounds
   4Friends of the Earth v. Laidlaw (2000)(135)
   -*Court found injury to plaintiffs from reasonable concern that pollution had damaged land that they would have otherwise have used; from Clean Water Act

-So far we have seen these Article III requirements:
   1. Injury in fact
   2. Traceability
   3. Redressability
   -All really deal with causation
2. More Standing
   Linda RS v. Richard D (1973) (136)
Seems courts will not allow citizens to sue prosecutors to get them to do what they want, issue of prosecutorial discretion

-No standing for mother to sue state prosecutors for not going after fathers for child support

Regents of UC v. Bakke (1978) (137)
-An injury can be found when deprived of opportunity to be on equal footing (here, to compete for every place in entering class, regardless of whether P could have gotten in or not)

-Gave white medical school applicant standing to sue on issue of affirmative action in med school admissions

Associated Gen Contractors (1993) (137): Similar injury found

-Court overcame justiciability issues to decide whether federal law crucial to development of nuclear power was constitutional, everyone really just wanted to know about this hot issue

-SC found father had no standing for prudential reasons because he was not custodial parent under State (CA) law and therefore his interests may be adverse to his daughters’.

-Father was suing because his daughter saying Pledge injured his right to communicate his atheistic beliefs to her

3. State v. Federal Standing

ASARCO v. Kadish (1989) (139)
-If state court hears case where P has no federal standing, then SC may hear the appeal because state court judgment invalidating a statute (here, against D) does cause concrete, injury in fact

-Challenged statute can be federal or state (here, was state)

-Distinguishes ASARCO because state court’s decision here did not create a federal injury—no state law was invalidated

-Case could not be brought in fed court because really a generalized grievance

Fidelity Nat Bank v. Swope (1927) (138)
-If state court proceeding did not constitute a case or controversy within Article III, a judgment rendered would not be res judicata in later proceedings in federal court

Doremus v. Board of Ed (1952): SC dismissed an appeal because Ps would not have standing in fed court, though state court did hear the case. SC said if Ps were using their taxpayer status to bring suit, they must show the requisite financial injury, does not matter if the real reason is religious.

-At odds with ASARCO?

4. Tax Cases

Frothingham v. Mellon (1923) (127)
-No generalized grievances, taxpayer cannot sue because disagrees with a tax….

Flast v. Cohen (1968) (128)
- Need taxpayer to (1) establishes logical link between taxpayer status and the type of legislation and (2) established a nexus between taxpayer status and precise nature of the constitutional infringement allowed
  - Dissent/Harlan: still a generalized grievance even no matter what kind of relationship he has to spending program, must be special authorization by Congress for standing
    -*Court seems to be saying that Flast is aberration or that it is just very very narrow, uses thin rationale to distinguish

5. Congress and Standing
FEC v. Akins (1998) (143)
- * Act of congress can expand standing to Article III limits (concrete injury that is fairly traceable to contested activity and redressable by the courts). AIPAC has standing.
  - Seems like the facts show this would be a generalized grievance without the statute, but court says this injury is concrete
  - **Here is one theory of congressional creation of standing—Congress creates rights by the Act, invasion of these rights creates a cognizable injury (153)
  - Dissent says that Congress unconstitutionally transferred executive duties to the Courts—individuals should not be able to make issues out of things that should be left to executive discretion
    Lujan (1990) (151): Court restricts what standing Congress can confer. Court says Congress is transferring power to enforce the laws from the executive to the courts—like dissent in Akins
    - This is a plurality, no opinion is actually the law

6. Voter Standing
US v. Hays (1995)(164): people living outside voting district do not have standing to challenge voting scheme within ➔ no cognizable injury (more of a generalized grievance)
Powell v. McCormack (1969)(165): a would-be member of congress had standing to sue alleging he had been unlawfully excluded from Congress (why not like Hays?)
Raines v. Byrd (1997) (166): Though provision of Line Item Veto Act granted standing to Congressmen or individuals adversely affected, no standing found because Congressmen were not deprived of something they are personally entitled to, no personal injury

7. Standing of Organizations
Sierra Club (168): organizations do not have standing (1) unless itself as an organization has been injured, or (2) unless it is representing injured parties who themselves have standing
Hunt v. Washington State Apple Ad Commn (168): associations can bring suit on behalf of members when (1) members would otherwise have standing to sue (2) interests it seeks to protect are germane to the organizations purpose and (3)
neither the claim nor relief requires participation of individual members in the lawsuit
- More efficient, organizations can afford to do it, can draw on expertise

B. Third Party Standing
-*jus tertii: third party standing; whether one person may assert the rights of another, Court usually treats this as prudential
- Not usually granted, but has exceptions:
  1. Special/close relationship (ex-doctor and patient, Roe v. Wade)
  2. Third party is unlikely to be able to sue (Boren)
  3. Overbreadth—when statute is so glaringly unconstitutional, usually applies to 1st amendment law (Coates) (NOT ON FINAL)

Craig v. Boren (1976) (170)
-*Third party standing granted to saloon owners who were contesting gender based liquor laws, saying they formed sex-discrimination towards young men because saloon owners in a better position to bring suit (have more $), law is directed to saloon owner, owners and young men have interchangeable economic interests

-*SC found that lawyers and prospective clients do not have a close relationship and did not find third party standing to be proper
   - Lawyers wanted to make court-appointed appellate counsel a right of defendants (rather than left to discretion of court)

-*SC found that criminal defendants and jurors have close relationship that allows defendants to argue for jurors’ rights
   - Defendant challenged discrimination by race in preemptive strikes, violation is more blatantly unconstitutional
     - Also, Younger doctrine which says SC wants to be deferential to states
   - Potential jurors are only potential jurors for a short period of time

Pierce v. Society of Sisters (175)
-*Owners of private schools were entitled to assert the rights of potential pupils and their parents
   - Challenged law that required all students to attend public school
   - NOTE: Declaratory judgments should make it much easier for the third parties to sue on their own

C. Separability
- Not standing doctrine but runs in sync with standing

Coates v. City of Cincinnati (1971) (184)
-*Ordinance prohibiting assembly is unconstitutionally vague (does not give notice of what violates it) and unconstitutionally broad (constitutionally protected activity can fall under it). Facts are not relevant because statute is unconstitutional on its face

Yazoo & MI Valley RR v. Jackson Vinegar (1912) (180)
Severability: when invalid applications of a statute an be severed from valid applications without invalidating the statute as a whole
Court says cannot make arguments that statute would be unconstitutional in some situations if it is constitutional in the present situation → statute and its constitutionality is severable
- Statute penalizes railroads that do not settle within 60 days, RR asks what about excessive claims?
- FYI, does not apply in 1st Amendment cases
-Court should not meddle in economics unless fundamental rights for discrete and insular minorities are involved (from footnote 17 of Caroline Food Products (New Deal case))
-Reason why Court allows standing for third parties in abortion, civil rights, etc.

US v. Jackson (1968) (183)
- *Unless it is clear legislature would not have enacted provisions which are in its power (the valid ones), invalid parts of statutes may be severed.
- Though death penalty portion of kidnapping statute is unconstitutional, kidnapping charge can stand.

- *Unconstitutional statutory provisions must be severed unless Congress would not have passed statute that results. More deferential to Congress → harder standard to determine than Jackson?

C. Mootness
-Mootness: American courts will not decide cases in which there is no longer any actual controversy.
- Is mootness just standing over time?
  - Can be conceptualized that way, though there are exceptions

- *Standing is not the same as mootness. Big difference is that by the time a court rules a case moot, many times parties and courts have invested a lot of time in it.

- *A case is moot if the controversy is no longer definite and concrete and adjudication does not touch the legal relations of the parties. If remedy requested has already been granted without a ruling, a case is moot.
  a. Court says he will not go through law school twice—should have started a class action or had another student bring it
  b. P should have asked that admissions procedures be changed, not that the school to admit him

- Exceptions:
  a. Capable of repetition but evading review (like Roe v. Wade), when time is of the essence—gag orders for criminal trial, election issues (207)
  b. When D voluntarily ceases practices complained about and that is what P is requesting, case is not moot if D is free to return to his old ways.
  c. Collateral consequences (in criminal cases, see below)

City of Erie v. Pap’s AM (2000) (206)
- *Example of (b) voluntary cessation that does not make a case moot. There is still a chance that city (defendant) will continue to cause injury if its law is unconstitutional.
  - Nudity ordinance case—is not moot though business owner plaintiff retired and therefore did not have an interest in it anymore
- If case goes forward it is not truly adversary, City is only one ostensibly making arguments
-Solutions for many of these are to file class action instead—that way the case is preserved even if Ps circumstances change

- *Example of (c): If a convicted criminal wants to challenge conviction after he’s served his time, he must show *collateral consequences* (like not being able to vote, get a job, etc.)
- *Death of criminal defendant normally moots defendant’s case on direct or collateral review

**Class Actions and Mootness**
- *Normally if a class representative for a class action changes status so the case becomes moot with regard to him, can just find new class representative

- *An action brought on behalf of a class does not become moot upon expiration of the named plaintiff’s substantive claim
  - Need to find a new class representative
  - This is an anomaly

**Liner v. Jafco (1964) (211)**
- *Mootness itself is a federal question and when any case involves federal question, state ruling can be reviewed by SC.
  - Though state appellate court held case moot, parties can still appeal to SC.

**D. Ripeness**

*Ripeness*: The requirement that this circumstance must exist before a court will decide a controversy

**United Public Workers v. Mitchell (1947) (217)**
- *If Ps seek to challenge an act that restricts their activity (Hatch Act) but they have not yet engaged in restricted activity, case is not ripe because the threat to Ps is too general an interference with their rights to form a justiciable case or controversy
  - Ps did include specific activities they want to engage in, the one P that did violate Act and lost his job has a ripe claim

**US Civil Service Commn v.. National Ass’n of Letter Carriers (1973) (228)**
- *25 years later the Court heard a similar claim on Hatch Act without discussing ripeness at all, cited changes that took place in the interim as distinguishing

**Abbott Laboratories v. Gardner (1967) (221)**
- *If an administrative regulation and/or statute requires an immediate change in Ps conduct with serious penalties attached, Ps have access to declaratory judgments.
  - How to reconcile this with *Mitchell*? Are economic rights are more important than political rights?
  - Under Abbott, Suits against agencies are just like civil suits for declaratory judgment
Court defines the ripeness doctrine for administrative challenges: “to prevent courts from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties”. In other words, must be:

1. Hardship on parties (like injury requirement to standing)
2. Fitness of case for judicial decision

**Lucas v. South Carolina Coastal Council (1992) (230)**

- Court finds Ps temporary taking claim ripe, said requirement (2) of fitness for judicial decision is prudential only and choose to disregard it in this case.
- Had to do with land ordered not to be developed

*Takings clause: 5th Amendment provision that prohibits the government from taking private property for public use without fairly compensating the owner.*

**Adler v. Board of Education (1952) (227)**

- Frankfurter was the only one concerned about ripeness when teachers challenged Feinberg law and court ruled on it before any harm was specifically threatened or inflicted and before law had really been applied.


- Court heard case because an entire industry was concerned. Stevens concurred but raised objection to ripeness, saying Court had yielded to reasons of expediency.
  - No harm occurred at time of suit, nor was it imminent
  - Price Anderson Act capped damages for nuclear accidents, suggested court issued judgment because of importance of nuclear power then

**San Remo Hotel v. City and County of San Francisco (2005) (16 supp)**

- Once state court has ruled, federal court must give state judgment preclusive effect, even on a takings claim that would not be ripe in federal court (?)
  - In effect, seems federal courts are forcing you to litigate your constitutional claims in state court

**Pennell v. City of San Jose (1988) (230)**

- Takings claim is not ripe when in rent control case because tenants have not shown hardship. Seems like court ducks constitutional problem because he thought issue would lose (Rehnquist usually v. protective of property rights).

*See Lujan (225)*

If regulation imposes penalty, then declaratory judgment can be brought from the start?


- *Sua sponte ruling that challenges were unripe → no injury yet, that regulations do not impose a penalty but merely limit availability of a benefit (to become legal).
  - Aliens in class action challenged INS regulations

**Ripeness and Public Action**

The threat of injury from county officials (police, courts, judges) of unfair treatment is too remote to make claim ripe. Needs to be a specific injury; not enough that injury is likely in the future or had happened in the past.

-Court also said equitable relief is inappropriate because fed courts should not be monitoring state court system; also no immediate threat of injury and is an adequate remedy at law.

-For remedy at law, a P would need to be illegally sentenced for case to be ripe.

-Dissent outraged—Douglas says majority will “please the white superstructure”

**Laird v. Tatum (1972) (239)**

-*Court said Ps suing to prevent army surveillance on citizens did not have a ripe case because there was no injury yet*


-*Case not ripe when Ps are asking for investigation of police activity—no injury even though there were 19 past violations of civil rights.*

- Court may have heard case if P had gathered evidence of violations (wiretaps, etc) but question remains: what can fed court do about it?

**City of LA v. Lyons (1983) (239)**

-*No standing for injunction (even though damages suit was pending) because P did not show imminent threat of further irreparable damages.*

- Courts are very reluctant to impose injunctions on any government body.
- Dissent says stupid to allow standing for one part and not allow it for another part of the same suit

**Doe v. Bolton (1973) (233)**

-*Court allowed doctors to challenge an anti-abortion statute before they were prosecuted for violating it (before they were injured)*

-Why? Because doctors get more respect? Because greater threat? Because not requesting injunction?

E. Political Questions

**Nixon v. US (1993) (244)**

-*Court will not hear political questions if (1) they are better answered by another branch (constitutional reason) or (2) there is a lack of judicial standards (prudential reason).*

- Nixon is impeached judge challenging impeachment procedures
- Procedures that Senate adopts for to “try” impeached persons are to be determined by the Senate itself and not the courts.
- Constitution gives basic guidelines for impeachment (2/3 vote, CJ presides for Pres., members must be under oath)
- Framers intended Senate alone to impeach.

**Baker v. Carr (1962) (257)**

-*Apportionment not a political question when it is raised as an Equal Protection Clause issue and not a Guarantee Clause issue.*

- Earlier in Colgrove, Court left it to the legislature. It’s about voting→Congress.

- *Guarantee Clause claim: guarantee every state in U.S. republican government, ALWAYS a political question

-Political gerrymandering is political question doctrine because there’s no judicially manageable standard for determining when a legislature has gone too far.

-Weird, since courts are pretty good about coming up with judicially manageable standards and discoverability standards…. 

**Gilligan v. Morgan (1973) (263)**
- Injunction against military is political question.
  - Refuses to enjoin national guardsman at Kent State.

**Scheuer v. Rhodes (1973) (263)**
- Is not a political question to grant damages to Kent State decedents.
  - Easier to determine damages, or just that this case will make less people angry?

**Professor’s Views on Political Questions:**
- *Staying out of Vietnam*—good
- Commitment to other branch makes since, but when court backs out we have a govt of two branches.
  - Court says it’s okay—we have to trust politics, voters, and the media.
- *Baker v. Carr*—good, has to be limits to the political process.

**II. Congressional Regulation of Federal Jurisdiction**

-Congress has the ability to narrow the jurisdiction of the federal courts to less than what the Constitution allows—§1331, 1332, 1441, 1367, etc.

- Now requires complete diversity 
  - Are federal courts better than state courts?

**A. Jurisdiction Stripping in General**

**Sheldon v. Sill (1850) (327)**
- Congress can restrict jurisdiction of federal courts by statute, as long as no direct conflict with the Constitution.
  - Statute is narrower than Article III.

**ExParte McCordle (1869) (328)**
- The Supreme Court has appellate jurisdiction granted by the Constitution, but such jurisdiction is subject to exceptions and regulations as Congress shall make. Court cannot inquire into motives of Congress.
  - Post-Civil War, P filed HC, appealed to the SC. In the meantime, the Congress took away the jurisdiction of the SC to hear HC claims that it had previously given.
  - What Congress gives, Congress can take away.

**U.S.v Klein (1871)(339)**
- Court refused to give effect to a statute that refused to allow presidential pardons to be admissible and required federal courts’ dismissal of any such cases for lack of jurisdiction—revision not allowed
  - Court here scrutinizes Congress’s real motives.
  - Difference from *McCordle*—there Congress is only limiting jurisdiction of SC, here it is impairing an Executive order (the pardons) in addition to the SC’s jurisdiction.
Klein was battle between the Exec and Congress. McC Cardle wa battle between the Congress and the Courts.

**Lauf v. E.G. Shinner & Co. (1938) (336)**

- Court held there can be no question of the power of Congress to define and limit jurisdiction of inferior courts so long as no violation of other parts of Constitution—i.e. 1st Amendment, Equal Protection Clause. Congress doesn’t have to establish federal trial courts, so they can restrict its jurisdiction as much as they want.
  - Norris LaGuardia Act limited fed courts’ rights to grant an injunction in a labor dispute or to enforce yellow-dog contracts in a federal court
  - No due process problem because employers still had access to state courts.
  - Seems like function stripping, not jurisdiction stripping

- If congress takes away jurisdiction from the SC, then it freezes the law.
  - Is this a good thing?

- Seems like Congress could take away appellate jurisdiction if it wanted, for most part Congress has used restraint.

**Story’s View (331-333), see notes**

- If there is a federal question, Article III requires SC to be available as last resort (Story’s view); at least one inferior level of courts required
  - How is *Sheldon* (Congress does not have to use all powers in Art III, Section 2) squared with Story’s view?
  - Editors believe “cases” in first section means civil and criminal matters, and “controversies” in second section mean civil causes of action only and that’s what Congress can touch—limited view
  - Some think that is why amount in controversy is okay requirement for diversity cases because it is a “controversy” (in second section)

**B. Preclusion of State and Federal Jurisdiction**

**Portal-to-Portal Act (1947) (345)**

- Congress closed access to the courts for those seeking overtime pay for travel time, but number of courts allowed 5th amendment takings claims for retroactive “property” (pay).
  - Portal to Portal Act closed part of what FLSA left open

**HYPO:** State passes Act that requires everyone with takings claim (zonings, etc) to go get a special decision from the legislature → blocks access to courts. Is this ok?

- No. Even if state gives just compensation still due process claim.
- Also, state immune from being sued over its decisions, no federal review.
- Some states in early times regularly adjudicated claims against gov’t in legislature rather (not in courts) b/c legislators were seen to be bound by public faith (352)

**Seamon Article (351)**

- Argues that the states’ just compensation obligation (for takings) can be satisfied by non-judicial compensation systems, but if there is no such system then the obligation is on the state courts.
C. Suspension Clause

-*Language of Immigration Act giving AG (not courts) exclusive power to decide
deporation matters does not take away right to habeus petition because the Act
does not clearly say so. Suggests that there would be problem if Congress had
withdrawn HC from courts.

-Scalia’s dissent—majority looked only for existence of a “super-clear
statement”, now has this “magic words” requirement, when in fact
Congress does have power to suspend writ of HC and did so in this case

-*Court uses Scalia’s suggestion that statutes must contain “super clear
magic words” to bar HC petitions to find that congress did intend to do so

D. Limits on Enforcement Courts

Yakus v. US (1944) (359)
-*Court held that Congress took away its jurisdiction to hear attacks on
regulations the Price Control Act (when used as defense), but not its jurisdiction
to enforce the Act and to determine validity of the Act itself and that is okay.

-Court further upheld the Act and its procedure for review, saying that it
gave reasonable opportunity to be heard.

-Rutledge’s dissent: judicial power is responsible to fundamental law, and here it
is unacceptable for Congress to intervene by allowing the Court to enforce some
things and taking away its power to do other, related things.

-State courts cannot hear federal HC petitions, but Marbury says federal courts do
not have original jurisdiction over those types of writs, so Story’s view cannot
fit??

-Congress can take away remedies, as long as there are other remedies available.

E. Allocation of Power to Non-Article III Courts

-Administrative/legislative courts—no rules of evidence, no life-time tenured judges, etc.

1. Agency Courts

-Can hear private disputes

Cromwell v. Benson (1932) (362)
-*Congress can establish non-Article III courts/commissions when private rights
are involved so long as their decisions are reviewable by Article III courts when
constitutional rights are involved. This court is adjunct to Art III courts. Ship
liability case.

-adjunct courts: non-article III courts that are reviewable by Article III
courts

-Court suggests that Congress can mess with public rights (customs, taxes,
etc.) as much as it wants→even give complete jurisdiction to legislative
courts

-Admiralty is taken away from federal judges though it is a part of their
duty and historic business (with law and equity)

-In reality agencies make own determinations of their jurisdiction and of fact and
fed courts barely review findings→usually completely accept agencies findings

-Is efficiency enough of a reason to do this?

Murray’s Lessee v. Hoboken Land (1855) (380)
Congress can allocate fact-finding (in this case, auditing) and application of rules and law to non-judicial branch—many kinds of duties are judicial-like.


*Appellate Article III courts now give agencies great deference in question of law if there is an ambiguity, as well as fact-finding authority and jurisdictional authority

### 2. Agency Courts and Criminal Cases

1. **Yakus**: Criminal enforcement court could be bound to give effect to decisions of prior judicial proceedings—can enforce Act but not rule on its validity if raised as criminal defense

2. **Falbo (1944) (374)**: Act did not allow P to raise a defense that he was wrongly classified under Act because P did not exhaust agency procedure—should have gone to draft board. Draft dodger case.

3. **Estep (1946) (374)**: Court defers when Act removed judicial review in lieu of Draft Board—possible court would overrule Board decision is if there was no basis in fact for agency finding → have to file HC petition
   - Draft dodger; P did follow procedure
   - As long as there is one way to get into court, even if it’s just HC, that is all due process requires

-Cases not expressly limited to wartime, no limit to what Congress can do?

4. **Mendoza-Lopez (1987) (375)**: Though Congress intended to preclude collateral attacks on deportation orders (statutory determination), since process was lacking in the agency hearing D must be allowed such a collateral attack (constitutional holding)
   - D here could not practically get review at time of deportation, so SC let him do it now

- Scalia’s dissent: have to make appeal from administrative decision, no collateral attacks

### 3. Legislative Courts

-Cases are between government and private parties

-Differences between Agency Courts

- Legislative court orders are self-executing
- Agency courts use adjudication for policymaking

a. **Territorial Courts**: established by Congress in areas that are not states (Inc. DC Circuit)

b. **Military Courts**: can only try servicemen, have also been used to try spies, combatants, etc.

c. **Public Rights Courts**: Tax court, Court of federal claims, Court of veterans appeals, Patents—between government and individuals

### 4. Problems With Non-Article III Courts


*Congress cannot give Bankruptcy court power to hear all matters arising in or related to bankruptcy because those are private rights, and bankruptcy court is not adjuncts to district courts like magistrates clearly are.
- Plurality finds that (1) when Congress creates substantive right (bankruptcy), it can create legislative court but at the same time, (2) legislative court cannot overstep Article III courts.
- After this case, Bankruptcy judges hear both core and plenary issues, but when they hear the plenary stuff, they are acting as appointed by district court judges.
- In *Crowell*, narrower grant of jurisdiction to agency court, appellate court had less deferential standard of review.

**Thomas v. Union Carbide Ag Products (1985) (395)**
- *EPA can oversee arbitration of private matters because practically, the case is more like a public rights dispute and arises under regulatory scheme.*
  - Entire proceeding is sort of public (part of regulatory regime) and while precise dispute is private, Court still allows it to be adjudicated by an agency.
  - Court is cheating a little bit, though government has large stake.
  - Plaintiff would not have a claim against D without the federal law; dispute comes from the statute.
  - Congress did not detract from Article III courts because it created new right.

**Commodity Futures Trading Comm’n v. Schor (1986) (387)**
- *An agency court authorized to hear a small set of cases involving public rights can also hear counterclaims arising from same set of facts without violating Article III.*
  - Original dispute was reparations claim by Schor, properly in front of agency—public dispute (Congress created cause of action for reparations).
  - (1) Litigants consented to agency jurisdiction; waived protection of Article III, and (2) Judges hearing counterclaims by Commission does not practically intrude on Article III judiciary functions, so Article III is not controvened.
  - *Balancing test—avoid piecemeal litigation, consistent findings, very small amount of “private rights” go in front of commission, everything is reviewable de novo by Article III courts, moves small amount of cases from Article III courts, more efficient.*

- *7th Amendment right to jury trial for common law cases is guaranteed for cases qualified as private rights, even for cases in agency courts.*
  - Court does not say whether Article I courts should have jury trials or the case should just be moved to Article III court.
  - If case would be in equity in common law, then jury trial not required.
  - Practically, bankruptcy courts (for example) are allowed to conduct jury trials if they have consent of the parties.

**Atlas Roofing v. OSHRC (1977) (400)**
- *In public rights cases, 7th Amendment does not prohibit Congress from moving fact-finding and adjudication duties to agency courts where jury trials would be incompatible with forum.*

-Schor can probably be classified as a public case.

5. Summary of Non-Article III Courts so far (401)
Non-Artricle III tribunal can decide constitutionality of any provision, if one of the following is met:
(a) *Northern Pipeline*: “exceptional” categories (territorial, military, and public rights) are excepted, OR
(b) *Schor*: use balancing test—consent is crucial, if functional reasons are paramount, can rationalize by saying rights of parties are bound up in an integrated regulatory scheme and therefore relate to public rights, THEN
(c) *Granfinanciera*: ask whether jury trial is required by 7th amendment, if so and jury trial is incompatible with forum then use of tribunal may be unconstitutional, ALSO
(d) these proceedings are subject to other constitutional restrictions such as Due Process Clause

6. Military Tribunals
Ex Parte Milligan (1866) (408)
-*Military tribunals cannot try civilians in areas where the regular civilian courts are open and functioning.

Ex Parte Quirin (1942) (409)
-*Citizenship does not preclude jurisdiction of military tribunal if defendant is an unlawful combatant (spies w/ no uniforms, playing dirty, etc.—Geneva convention does not apply)
-How to reconcile these? Some try to do it on the facts, using the unlawful/lawful combatant distinction BUT Milligan was charged with unlawful type-activities

-*Plurality finds that detainees cannot be held indefinitely, and have right to due process to challenge detention. Mentions that military tribunal may suffice to give due process.
-Disent says this contravenes *Milligan*, D cannot be detained without being charged for a crime and must have access to civilian courts.

10.4.05 MISSED CLASS-GET NOTES

F. Adding Jurisdiction
National Mutual Insurance Co v. Tidewater Transfer (1949) (416)
-*Congress can confer jurisdiction on Article III courts to hear cases outside of Article III, but it must be judicial “business”. Congress can give jurisdiction to hear suits between citizens of DC and citizens of other states though DC is not a state.
-Plurality opinion, some ruled this way because it is (1) under necessary and proper power of Congress or (2) because DC is like a state.
-Strong dissent that Article III represents clear boundaries.

G. Concurrent Jurisdiction
Tafflin v. Levitt (1990) (418)
-*State courts have concurrent jurisdiction over federal claims unless exclusive federal jurisdiction is provided for (1) by the federal statute, (2) in legislative history, or (3) incompatibility between state court jurisdiction and federal interest.
-In RICO statute, there is no language or history suggesting exclusive federal jurisdiction, and danger of inconsistent state/fed decisions is not enough

**Tarble's Case (1872) (433)**
- State courts cannot grant HC petitions to federal prisoners. Slave case under military pretenses.
  - Similar to *Pennoyer v. Neff*—power of state courts stop at state line; one reason is that HC is too much interference in fed gov't (whereas state can grant federal damages b/c not much interference)
  - Here, D was imprisoned for not enlisting in the military
- Is this a constitutional issue or can it be amended by Congress?
  - No specific constitutional provision, but structural argument that states cannot reach the federal sovereign→comes down to supremacy
  - Maybe a common law rule and Congress can change this, like hearing federal question cases in state court
- Congress cannot also take away power of federal courts to hear HC petitions
  - Has to be an open court→Suspension Clause
  - So is this an argument that there must be lower federal courts (like Story)

**Testa v. Katt (147) (443)**
- A state court cannot refuse to enforce a right arising under a law of the US because it disagrees with the policy or is already addressed by a state law→no discrimination of federal laws.
  - Federal law is the will of the people as a nation and is supreme over view of a single state→Supremacy clause
- However court alludes to there being possible valid excuses for states to refuse to enforce federal statutes
  - Valid excuse—must be procedural reason
  - Ex-forum non conveniens type cases might be valid excuse—state court does not hear claims by non-resident P v. non-resident D when cause of action occurs out of state—not discrimination of federal law

**Mondou v. NY (1912) (447)**
- No state which gives its courts jurisdiction over common law actions for negligence may deny access to its courts for a negligence action founded on a federal statute. (FELA)→no discrimination.

**McKnett v. St. Louis & SF (1934) (447)**
- No state may discriminate against actions for negligence solely because they are brought under a federal statute (FELA).
- These two are example of commandeering state courts….

- FELA empowers states to hear cases arising under it but does not require them to if they already have a non-discriminatory statute barring the instant type of case (cannot refuse simply on grounds that FELA case is federal)
  - Here, NY statute barred all actions against foreign corporations by non-residents. Just because case arose under FELA does not mean NY court had to hear such a case
-Maybe forum non conveniens/procedural type of thing

**Printz v. US (1997) (452)**
- *Federalism means state courts have to enforce federal law, but not state agents.
  - If Congress cannot commandeer state agents, why can federal government commandeer state courts?

**Dice v. Akron, Canton & Youngtown RR (1952) (453)**
- *A state cannot apply its own procedural rules to federal law if state rule is burdensome on the federal right that is discrimination. A state cannot allow a jury to hear part of a FELA case but have a judge decide one phase of one issue of the case.
  - Right to jury trial is a substantial part of the rights given by FELA—state rule cannot take this right away by calling it a procedural right because that is discrimination towards suits arising under a federal law.
  - More controversial application of Testa because states may have to use different procedural rules when hearing federal cases.
  - Along with Testa, this case establishes the principle of state courts as obligated enforcers of federal law

**Felder v. Casey (1988) (461)**
- *State law that imposes notice-of-claim on §1983 suits is impermissible. Federal law takes state courts as it finds them only insofar as courts do not employ rules that impose unnecessary burdens upon rights of recovery authorized by federal laws.

### III. SUPREME COURT AND THE STATES

#### A. Review of State Court Decisions by the Supreme Court

**Martin v. Hunter’s Lessee (1816) (469)**
- *Establishes Supreme Court’s jurisdiction over state court decisions on federal questions. If case involves a state law issue that is interwoven with the federal one, then Supreme Court can hear that too. Cites spirit of constitution, uniformity and state prejudice as reasons.
  - Story says SC has appellate jurisdiction over “cases” and it doesn’t matter where they are first brought, VA judges wonder what is to stop SC from having appellate jurisdiction over cases first brought in England
    - But states are a territorial part of the US
  - Statutory interpretation of Judiciary Act
  - More common for state to take land—no 5th/14th Amendment protections against takings
  - Like layers with state court decision (validity of escheat) on bottom—antecedent to federal question (Treaty of Peace)
  - SC first looks to state court escheat decision and rules it invalid and then considers Treaty
    - *Antecedent:* when plaintiff must prevail on state law claim and federal claim, state law claim is antecedent
  - How can SC enforce its opinion on unwilling state court?
-Here, affirms favorable trial court, skipping remand to unfavorable VA supreme court
  -If court on remand will not comply, SC can:
  -Issue writ of mandamus but will not do this
  -Issue its own decree, but won’t do this either
  -Has issued contempt order very rarely (see US v. Shipp (483))

**Cohens v. Virginia (1821) (480)**
-SC extended power to review state court judgments to criminal cases

**Murdock v. City of Memphis (1875) (483)**
-*When there are is one federal and one state issue, Supreme Court cannot review state court decisions of state law if the federal question can be answered without doing so—SC review of state court determinations of federal questions is limited. Respect states.
  -Today federal courts have ancillary jurisdiction under §1367
  -SC has jurisdiction since one issue is a federal act (repeal of 1867 Judiciary Act), other is a state law issue
-SC must interpret federal act to determine whether or not it can rule on state law
  -If SC decides that federal issue was wrong, it normally cannot look into the state issue, like 2 separate pillars and when one falls the other doesn’t matter (Whereas Martin is like layers)
  -If federal issue is valid then state court judgment may be upheld on other grounds

- *Martin* argued that SC takes jurisdiction over an entire case, so SC should have Article III jurisdiction over whole thing (and be able to disregard state sc interpretation)
- State courts can self-insulate—Massachusetts decided gay marriage case on state law due process so US SC cannot touch their decision

**Fox Film Corp v. Muller (1935) (496)**
-*When state judgment rests on two grounds, one federal and one state law, then there is no federal appellate jurisdiction if state law is adequate and independent Supreme Court must dismiss.
  -Court assumes that this case is like Murdock

-Constitutionality and State Law Claims in Federal Court
-Is Murdock holding that only federal issue can be before federal court constitutional? Where did it come from?
-Wouldn’t Art. III give supplemental jurisdiction for appellate court all cases and controversies
-*Editors thin §1367 is necessary only when cases come from state supreme court since state has made final determination of state law—bigger deal

-* When a state court decision appears to rest on federal law (Martin) or when the adequacy or independence of the state law grounds is not clear, federal court will presume there is none and will have appellate
jurisdiction. Clarifies *Murdock* by requiring independent and adequate state ground to be very sufficient.

- Expands federal jurisdiction when *Murdock* sought to cabin it
  - *Boilerplate*: state courts can rebut the presumption that it relied on federal law by saying that it is using federal cases for guidance only and not relying on them as precedent and then such state court decisions will not be open for SC review (see New Hampshire boilerplate on 516)
    - Another example of insulation from federal review
      - Kind of a “magic words” thing
    - Were possible political reasons for this holding?
      - Conservative SC (Burger court) at the time wanted to correct state courts who were letting criminal defendants go
      - Stated reasons was “uniformity of federal law”
    - Another way these kinds of cases can arise is state rules of civil procedure (long-arms, etc.) that are interpreted using federal case law—SC can review all decisions regarding these

*State Tax Commission v. Van Cott (1939) (517)*

- *Federal grounds are interwoven (not independent) with state grounds, so Supreme Court has jurisdiction over case. Court claims it has jurisdiction because state relied on SC case (*Graves*).*
  - §1257: SC can review state court decisions on tort when liability is based on federal statute, BUT
  - §1331: SC cannot have original jurisdiction over cases with state tort law that uses federal standards

**B. Federal Protection of State-Created Rights**

- Examples of gate-keeping state law affecting federal rights—federal court treats state law as antecedent and takes jurisdiction

  1. **Contract Cases**
     - Need valid contract (state law)
     - Need life, liberty or property (state law)
     - SC scrutinizes contracts because they need to be valid before constitution is involved

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

- *Supreme Court may overrule a state supreme court’s interpretation of a state law when federal law is involved. Here, SC says state law did create a contract for tenured teachers, overruling the state supreme court.*
  - Had to first determine question of state law (whether valid contract existed) to get to federal question

  - Example of when federal law protects interests created primarily by state law, and federal court reviews that state law determinations

  2. **Due Process and Taking Clauses**


- *Supreme Court first decides what is property, then faces Takings Challenge*

  3. **Role of State in Presidential Elections**

-Court overruled state court interpretation of state law, said state court actually changed state law, and state legislature has constitutionally protected right to establish election procedure.

-SC took it upon itself to first look at the way state courts interpreted its own constitution (antecedent issue) and then got to the Constitutional question.
-FL election laws gave authority to secretary of state of FL (executive), and FL SC reviewed this action—what right does state sc have to trump state legislature?
-What right does SC have to intervene/oversee things?

IV. REMEDIES FOR CONSTITUTIONAL VIOLATIONS

1. Unconstitutional State Action

Ward v. Love County (1920) (793)

-*When constitutional right is violated by a state, no statutory authority is required for court to find a remedy.
-County forced Indians to pay unlawful taxes w/ no way to challenge, Court finds this contravened the 14th amendment (due process)
-Supreme Court has jurisdiction because either state tax law violated a federal law (antecedent state issue) or state practice itself violates the constitution
-When taxes violate equal protection, state must provide remedy either by refunding those discriminated against or back-taxing those favored (798)

General Oil v. Crain (1908) (801)

-*SC upheld its jurisdiction over a case for an injunction against state officials concerning a state tax, striking down state’s sovereign immunity claim. Federal courts must be open to hear Constitutional claims since state courts are not.
-Also says 11th Am means federal courts cannot have original jurisdiction over cases against state officials

Ex Parte Young (1908) (803)

-*SC granted injunction against state officials enforcing state railroad rates because sanctions for not paying them were so high as to be intimidating. Little or no authority cited.


-* Violation of constitution (4th Amendment) by federal agents acting under color of law gives rise to tort cause of action for damages though Constitution itself does not provide for damages. Constitutional tort.
-Left open possibility for Court to grant damages when there is a statute or decide not to (see Passman below)
-Federal agents acting in name of US have potential for far greater harm than private citizens.
-Currently federal agents have qualified immunity from damages, and prosecutors, judges, legislators have absolute immunity
-Where does P get damages?
-Agency, agents, agent's superiors?
-When a cause of action is both constitutional (right is violated) and statutory (remedy is defined by Congress), can Congress take away a remedy altogether?
   -Lots of dispute over this

   -Current rule is that if Congress did not include remedy in statute, then Congress did not intend remedy. Statement against legislating from the bench.
   -Scalia’s textual approach

**Davis v. Passman (1979) (814)**
   -*Court grants damages to woman who claims she was fired because of sex discrimination and sues under Equal Protection Clause though there is Title VII (did not extend to Congress).
   -P here now has option of (1) going to state court or (2) go to federal court under Bivens
   -If Title VII did apply to Congress, court would probably find amendment to be an adequate remedy (esp.current court)

**Schweiker v. Chilicky (19988) (817)**
   -*Court held SSA an adequate remedy though it provided for less damages than available at common law

**Correctional Services v. Malesko (2001) (820)**
   -*Inmate cannot sue contractor of federal prisons because that is like suing the US itself, so inmate is left with state tort action.
   -Scal-mas concurrence calls Bivens a relic, does not think court should grant implied damages for constitutional harms

   -*No Bivens cause of action when defendant is the military and there is no statutory exception to sovereign immunity
   -Sad case—P was former serviceman who was given LSD as part of military experiment

V. CHALLENGES TO OFFICIAL ACTION

A. 11th Amendment and State Sovereign Immunity—NOT on final???
   -Under Article III, federal courts could hear cases between states and citizens of another state or foreign states.
   -Repealed by 11th Amendment after public outcry

**Hans v. Louisiana (1890) (973)**
   -* Although the 11th Amendment does not exclude suits against states brought by their own citizens in federal courts arising under Constitution or laws of US, idea of state sovereign immunity prevents such suits.
   -Why—FEDERALISM: Fear that federal judges will cabin sovereign immunity for states in interest of expanding federal power,
   PRACTICALLY: Fear that states will not enforce federal court’s judgments against itself
   -Typical period piece—all the states were broke after Civil War, states could not repay debts and ourt did not want to issue judgments that would never be enforced
-Under *Sandovan* and Scalia’s rule, citizens can sue their own State in federal court, calls this case judicial legislation
  -State sovereign immunity does not bar suits against officers, based on a literal interpretation of 11th Amendment.

**Cohens v. Virginia (1821) (979)**
-11th Amendment does not bar federal appellate review of state court decisions in cases between states and their own citizens arising under Constitution or federal laws.

**B. Young Doctrine**

**Ex Parte Young (1908) (987)**
-It is no violation of 11th Amendment for state officials to be sued for enforcing invalid state legislation. If legislation is found to be unconstitutional, then the state official was not acting for the state in attempting to enforce it (so you are not suing the state).
  -Railroad sues state official
  -Constitutional rights really drive this case—trump state sovereignty
  -Unfair that under state law, only way to test this law would be to violate it, go to jail, and then challenge it
  -This is a tremendous advance in federal power
  -Prof thinks this is a bad decision, that court interfered too much

**Virginia Coupon Cases, Part I (1885-ish) (992)**
-*SC upheld damages against state officials for enforcing a state law (they were collecting taxes that had already been paid with bond coupons).

**In re Ayers, Part II (1887) (993)**
-*Since state amended law so that actions of state officials was the only way of effectuating the law, suit against such official amounted to a suit against the state and is impermissible by 11th amendment.
  -State really hides behind 11th to act really unfairly

**C. §1983**

**Monroe v. Pape (1961) (1072)**
-§1983 intended to give a federal remedy (though a state remedy might exist) when an official both abuses his position to violate constitutional rights and when he is acting under state orders/law in violating constitutional rights.
  -Municipalities were not intended to be sued under §1983.
  -under color of state law: misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with the authority of state law
  -WHY: in state court remedy might be unevenly enforced
  -But contention between justices is that if officers are rogue, acting in violation of state law, then state court can take care of it
  -Harlan’s concurrence: precedent justifies majority, but §1983 itself does not—applicable only when violation of constitutional rights are supported by the state, not for individual abuse of power
  -Frankfurter’s dissent: only if state court is shown to not work can federal claim be brought. Also, §1983 was only meant to address cases involving state policy, not individual abuse of power.
§1983 applies when any constitutional right is violated
- Not limited to civil rights/racial/equal protection violations

**Monell v. Department of Social Services (1978) (1086)**
- *Actually municipalities can be sued under §1983 if plaintiff alleges some kind of official unconstitutional custom, policy, ordinance, etc. Municipalities cannot be sued just because it employs a tort-feasor (no respondeat superior).
- Changes course from *Monroe*

**Maine v. Thiboutot (1980) (1092)**
- *Upheld complaint under §1983 where state was depriving P not of constitutional rights but of welfare benefits due under Social Security Act. Expansive reading of §1983.
- Now have cut back: if congress provides for another remedy, §1983 is inapplicable
- Now court holds that must be substantive constitutional right violated

**VI. JUDICIAL FEDERALISM**

**A. Concurrent Jurisdiction**

**Kline v. Burke Construction Co (1922) (1142)**
- *In general, state courts and federal courts can hear an action over the same subject matter. When action gets judgment in one court first, that judgment is given res judicata effect in second court. Exception—for actions *in rem*, court where action is first filed retains exclusive jurisdiction.
- Creates race to judgment
- Alternative—Race to courthouse, would be more efficient but violates federalism
- Bankruptcy considered like action *in rem*

**B. Statutory Limitations on Federal Court Jurisdiction**

1. Anti-Injunction Act

**Atlantic Coast Line RR v. Brotherhood of Locomotive Engineers (1970) (1148)**
- *Federal courts can only enjoin state court proceedings under one of the exceptions to the Anti-Injunction Act. The exceptions should not be interpreted broadly. Exceptions:
  1. Injunction is expressly authorized by Act of Congress
  2. Injunction is protecting or effectuating the District court’s judgments
  3. Injunction is necessary in aid of District court’s jurisdiction
- Court holds that injunction to state court is inappropriate here
- Passage of time probably relevant, is P acted sooner, maybe exception #2
- Court acknowledges inconsistency, that state is invading federally protected right, but P should appeal up the state court hierarchy, possibly to SC
- Attempt to appeal a state decision by asking federal court to enjoin it is like jumping tracks—can’t do it
- Plus, *Rooker-Feldman doctrine*

**Mitchum v. Foster (1972) (1153)**
Since §1983 created a specific and uniquely federal right that would be frustrated if federal courts were not allowed to enjoin state courts, it falls under the “expressly authorized by statute” exception to the Anti-Injunction Act. Not really express language in §1983 allowing injunctions to state courts, but express language that §1983 allows suits in law or in equity
Court is sort of playing with words but good result
-Most Acts court say have “express exceptions” do not say “this act authorizes federal courts to issue injunctions to state court…”
Court looks to legislative history—injunctions are necessary to effectuate the act, state officials (including courts) were treating people unfairly and that is what prompted the act
-Example of #3: Injunctions allowed “in aid of jurisdiction” of federal court in removal cases—if state court tries to do anything after case has been removed, federal court can get injunction.
-Besides Anti-Injunction Act, see also Younge doctrine says federal court should not interfere with state proceedings
-Here, SC only addresses Anti-Injunction Act because district court based its holding on it
-Class actions—open area. If federal class action goes to judgment, res judicata to pending state suits. But when federal class action is pending, and multiple state suits are filed, answer is not clear.

Skywalk cases (1982) (1165)
-A class action suit is not a “res” so that federal court cannot enjoin subsequent state courts from proceeding. Majority view.
-But there have been some courts to find that when the class action has progressed to a point, it is a “res” and district court can enjoin the state
-Other option is a race to the courthouse (if federal courts can enjoin state actions)

Parsons Steel (1986) (1166)
-Exception #2 to Anti-Injunction Act barring re-litigation is limited to situations where state court has not yet ruled on merits of res judicata claim. If state court rejects res judicata claim, and state law would allow state suit to proceed, federal courts cannot stop them.
-D wins in federal court. P wins later in state court. Federal court issues injunction. SC finds full faith and credit requires fed court to accept fact that state court rejected res judicata claim in state suit.

Vendo v. Lektro-Vend (1977) (1162)
-Clayton Act, though allowing for some injunctions, is not an expressly authorized exception to Anti-Injunction Act. It can be enforced within its intended scope without allowing federal courts to enjoin state courts.
-Court pulling back on Mitchum
-Clayton Act intended to enjoin individuals violating anti-trust law, not to enjoin state court proceedings
-So, D must pay $7 million state judgment for K that violated Clayton Act
Chick Kam Choo v. Exxon (1988) (1165)
- *Injunction is okay to bar relitigation of state law claim (#3) but injunction not okay as far as forum non conveniens because different jurisdictions have different FNC rules.
  - Fed court first gave SJ to D b/c (1) state law did not apply and (2) case would have to be tried in Singapore and FNC barred that
  - Then P filed in state court. Then fed court issued injunction. Not okay—must see what state would have done.
  - Why doesn’t P appeal fed court decision

2. Other Acts
Johnson Act (1934) (1172)
- *District court has no jurisdiction to enjoin the operation of or compliance with any order of a state administrative agency or local rate-making body fixing rates for public utility
  - Makes Young cases more difficult
Tax Injunction Act (1937) (1173)
- *District court shall not enjoin, suspend, or restrain the assessment, levy or collection of any tax understate law where a plain, speedy, and efficient remedy may be had in the courts of such state
  
  - *Federal courts must decline jurisdiction in suits seeking damages for state taxation whenever state provides plain, adequate and complete remedy.
    - Disruptive nature of suit to state tax procedure, principles of comity

Three Judge Courts (1171)
- *From 1910-1976, Act required 3-judge panel to hear all cases requesting injunctions against state legislation. Now Act requires 3 judge panels in very few cases.

C. Judge Made Limitations of Federal Court Jurisdiction
1. Exhaustion of State Remedies
Prentis v. Atlantic Coast Line Co (1908) (1180)
- *When protesting state commission, must exhaust state administrative remedies provided for by state statute (appeal to state SC) before asking federal court for an injunction.
  - RR protesting state rate-making commission
  - Anti-Injunction Act does not apply here because state court’s role is prospective—duties are legislative (state commission had not yet imposed confiscatory rates so state court would be making a rule for the future)
  - If Ps appeal to federal court after state supreme court has ruled, no res judicata effect because state decision is not “judicial”
  - Considerations of comity are strong but case turns on legislative nature of the court

Bacon v. Rutland RR (1914) (1181)
- *No need to exhaust state remedies when state court would not be acting in legislative/administrative nature (injury to P has already occurred).
-Other RR case
-Prof thinks court is result driven here, Act limiting jurisdiction would be much better idea

*State administrative exhaustion is not required in §1983 actions because purpose of the Act was to give people a federal cause of action when their federal rights were being impeded.*

- P alleged gender and racial discrimination

*Judicial state post-deprivation remedies can sometimes provide all the process that is constitutionally due. This eliminates the basis for a federal suit under due process.*

-Prisoner §1983 action for $23 hobby package

2. **Pullman Doctrine of Abstention**

_Abstention:_ any judicially-created rule where courts decline to decide particular matters even though other jurisdictional requirements have been satisfied, federal court stays an action and waits to see how state rules, usually state resolves issue

**RR Commission of Texas v. Pullman Co. (1941) (1186)**
*Federal courts should not enter sensitive areas of social policy unless no alternative is open. If there is a federal question that turns on an unclear state law issue, then federal court should abstain, stay the proceeding, and let state supreme court decide before deciding.*

- State law essentially wanted white employees on sleeping cars
- Court avoided the constitutional issue and decided only on state law
  - _Pullman_ most significant form of abstention

-Is court giving up too easily?
  -Good scholars come out on opposite poles, so it’s a normative thing
  -Scholars think that judicial restraint is the reason that SC is so well-respected→they don’t piss people off so they don’t get dumped on
  -SC knows that Congress can strip jurisdiction, impeach judges, etc.

-Major problem with abstention is time delays
  -Certification procedures have helped this
  -Important enough to court that delays just need to be put up with

*Party is bound by state court determination only if the party elected to seek complete and final adjudication of his rights in state court—_exhaustion_. P can elect to reserve certain issues to bring in federal court following state proceedings (if necessary).*

-This is what ended up happening in Pullman
  -Why? If state court rules incorrectly on fed constitutional issue, then P is likely never going to get a fed court to hear it (SC takes so few cases)

**San Remo case (87 supp)**
*Under full faith and credit and issue preclusion, fed court is bound by state court decision though P did not bring fed claim in state court. P should have brought fed claim in state court. What about reservation?
-Residential hotel case, owners lost state suit on state constitutional taking clause, was barred from fed suit.

3. **Burford Abstention**  
**Burford v. Sun Oil Co (1943) (1204)**  
-*Abstention appropriate when difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result of instant case. Review of federal question if fully preserved if needed.*  
-Related to *Pullman* abstention  
-Holding is similar to Johnson Act, but for oil and gas  
-Oil regulation is very complex, etc.

**Alabama Pub Serv Commn v. Southern Ry (1951) (1205)**  
-*Abstention to state for regulation of railroads even when state law is settled. Trying to avoid friction and there are adequate state proceedings.*  
-Intrastate issue, state has commission to deal with it

**McNeese v. Board of Education (1963) (1205)**  
-*When there is a strong federal interest, there is no *Pullman* abstention. No abstention in education issue because issue was not entangled in state law.*

4. **Thibodaux Abstention**  
**Louisiana Power and Light v. City of Thibodaux (1959) (1208)**  
-*Eminent domain proceedings are special and strongly tied to state sovereignty so abstention is appropriate—state court should decide whether municipalities can exercise eminent domain.*  
-Related to *Pullman* abstention  
-Though fed courts hear diversity suit often, this is not normal diversity case, b/c issue is tied up in important state issues  
-Prof seems to disagree, thinks fed courts should always hear diversity

**County of Allegheny v. Frank Mashuda Co (1959) (1210)**  
-*Abstention not required in eminent domain case because issue is factual and state law is clear and settled (everyone agrees that county has eminent domain power).*  
-So *Thibodaux* is a very narrow exception.  
-Mashuda is run of the mill diversity case

5. **Younger/Equitable Abstention (Criminal cases)**  
**Younger v. Harris (1971) (1213)**  
-*Judicial exception to Anti-Injunction Act only when person being prosecuted in state court can show that he will suffer irreparable damages without an injunction. Not enough that challenged state statute is unconstitutional on its face.*  
-Ps might be communists?  
-Equitable doctrine: no equitable relief if no remedy at law and no threat of irreparable injury, normally no equitable relief in criminal proceedings  
-If constitutional issue can be raised as defense in state court—adequate remedy at law is available  
-Note that this is §1983 case and that state action was in progress

**Douglas v. City of Jeannette (1943) (1222)**
- No enjoining state prosecution of city ordinance restraining 1st amendment. Ps can raise constitutional defense if charged in state court (hadn’t happened here) with possibility of review by SC.
  - Jehovah’s witness case

**Dombrowski v. Pfister (1965) (1223)**
- Example of when injunction of state suit okay under Younger b/c no adequate remedy at law. State was harassing plaintiffs and possibility of constitutional defense in state suit is not enough to protect him. If suit would even be brought there would be chilling effect on 1st amendment rights.
  - Warren court decision, Ps were civil rights activists
  - Contradictory to Younger and Douglas, distinguished on facts
- Exception for “Our federalism” (like court said in Younger)
  - Element of distrust of state courts, esp w/civil rights, etc.
- So in suits for injunction to state court, must overcome 2 hurdles
  1. Anti-Injunction Act (must fall in one of three exceptions)
  2. Younger judicial doctrine
- So in Mitchum, we know Anti-Injunction Act does not bar §1983 suits, but as we see in Younger itself, that is not enough

**Samuels v. Mackell (1971) (1225)**
- Younger abstention also applies to declaratory relief against a state criminal prosecution. However, there are circumstances when declaratory judgment might be appropriate though injunctions are not.

- Regardless of whether injunctive relief may be appropriate, federal declaratory relief is not precluded when no state prosecution is pending and there is a genuine threat of enforcement of unconstitutional state statute.
  - Ps Vietnam protestors
  - Does not matter whether constitutional attack is on its face or as applied.
  - Declaratory judgments are different because they do not offend state courts as much as injunctions (if DA refuses to follow an injunction, he can be found in contempt, if DA refuses to follow declaratory judgment, he is just acting “inappropriately”)
  - Rehnquist’s concurrence—seems that declaratory judgments have not weight, are not real judgments, like advisory opinions.
  **HYPO**: Stripper case, see addendum

**Wooley v. Maynard (1977) (1241)**
- Court upheld injunction barring state officials from enforcing state law because of threat of repeated prosecutions.
  - P kept covering up motto on license plate and was convicted 3 times.
  - No issue preclusion because Ps never appealed convictions → reserved federal issue

**Hicks v. Miranda (1975) (1244)**
- Where state criminal proceedings are begun against federal plaintiffs after federal complaint is filed but before proceedings of substance on the merits have taken place in federal court, Younger abstention should apply.
  - Deep Throat movie case
-Question case raises is, what are proceedings of substance on the merits?
-Like a “Reverse removal” rule—state prosecutor can bring this case back to state court just by quickly filing charges

6. Younger Abstention in Civil Suits
Trainor v. Hernandez (1977) (1252)
-*Principles of Younger and Huffman are broad enough to apply to interference by federal court with ongoing civil enforcement action brought by state.

- Welfare case

Judice v. Vail (1977) (1253)
-*Though state lawsuit is between private parties, the state itself has strong interest in civil contempt process so federal court used Younger abstention to refrain from ruling on whether contempt procedure violates due process.

-P must have chance to raise fed concerns in state suit.

-*Younger applies when State’s interests are so important that exercise of federal judicial power would disregard comity. State interest was in enforcing the orders and judgments of its courts.

- Before Texaco could appeal an $11 billion judgment, it needed a bond in that amount. Fed challenge to bond rule was barred.

- Prof seems to think abstention goes too far in this case—no real state forum to dispute the bond

Middlesex County Ethic Comm. V. Garden State Bar Ass’n (1982) (1255)
-*Administrative proceedings that judicial in nature also barred by Younger so long there is clear path to state court.

-Lawyer under disciplinary investigation by bar—had direct line of appeal to state Supreme Court

-P must have chance to raise fed concerns.

OH Civil Rights Comm’n v. Dayton Christian Schools (1986) (1256)
-*Younger bars interference with pending state administrative proceedings involving sufficiently important state interests (discrimination is one such interest)—big expansion of Younger. Different from Patsy because P brought fed claim there (remedial) and here D raises it (coercive)—D needs to exhaust state remedies.

-P cannot raise constitutional claim in administrative proceeding, but can do so in appeal at state supreme court

- Patsy says for §1983 suits state administrative remedies do not need to be exhausted before fed suit

- Confusing—Prof things coercive means when school is D (forced to go to court)

- Prof thinks this is just an exception to Patsy but court does not phrase it this way

-Theory of Younger doctrine

-Criminal cases (state is P)

-Quasi-criminal cases (state is P)

-State judicial procedures: Contempt powers, appellate bond, bar matters
-Employment discrimination/state agency coercive action (if “coercive” mean the state is the P, likens these to quasi-criminal cases)

- *Administrative proceedings, though in a court, are not state judicial proceedings and therefore *Younger* does not apply. Federal court does not have to abstain.
  - State was redistributing land and someone sought federal preliminary injunction.

- *Suggests that *Younger* stands for deference not only to state courts but also to state executive branches when there is an important state policy (which is open to interpretation)
  - Suit against Philadelphia mayor, resolved on facts

- *Federal *Younger* abstention not required when state judiciary is reviewing a legislative or executive action. So, loser of a state legislative or executive decision can go directly to federal court w/o exhausting state remedies.
  - City council decision was being reviewed, and it is a “legislative decision” even though it acts like a rate-making body which is “quasi-judicial”.
  - Simply by calling state “legislative or executive action” can bypass state courts
  - Facts can be distinguished from *Dayton*.

7. Parallel Proceedings

**Colorado River Water Cons District v. US (1976) (1258)**
- *Exceptional circumstances test*: Federal suits can be dismissed when there is a concurrent state suit under circumstances: Inconvenience of federal forum, desire to avoid piecemeal litigation, order of commencement of litigation, *res* rule, infancy of federal proceedings, involvement of state rights, and other pending state suits.
  - Very narrow exception, find that water rights are like property (*res*)
  - McCarran Amendment authorizes US to be joined—encourages one suit, be it in state court or federal court, avoids piecemeal litigation

- *Federal court can dismiss declaratory judgment actions in diversity when there is state court proceeding—*Declaratory Judgment Act gives federal court *permissive* jurisdiction over declaratory judgments. *Colorado River* test does not govern federal declaratory judgment actions.
  - Federal suit was filed first

- *Federal court cannot abstain when a case is within exclusive federal jurisdiction, notwithstanding *Colorado River* test.
  - 7th Circuit—not SC
  - Exclusive federal jurisdiction, like Sherman Act or something

8. Abstention in Family Cases
Ankenbrandt v. Richards (1992) (1271)
-*Domestic relations abstention in cases of divorce, alimony and child custody. Fed courts can hear everything else so long as there is no state proceeding pending or assertion of state interest made.
  -Claim there is statutory support in diversity statute (from Barber)—diversity was originally granted in Judiciary Act for suits in common law and equity
  -Divorce, alimony and child custody were not common law nor equity
-Concurrence says just long historical practice, Congress had no idea when it enacted §1332
-Also, where there is strong state interest on family issues NOT divorce, alimony, and child custody, then Burford abstention may be appropriate

9. Abstention in Probate Cases
Markham v. Allen (1946) (1281)
-*Federal courts have no jurisdiction over probate proceedings, but can hear suits that are related, like with creditors, legatees and heirs so long as they don’t interfere with state probate proceedings.

VII. RES JUDICATA
A. Res Judicata Effects of Federal Judgments
Claim preclusion: cannot split claims or remedies into two suits
  -No non-mutual—must be identical parties to assert claim preclusion
  -If same “transaction” which is fact-based, must be brought in one suit
Issue preclusion: if issue is litigated and essential to the judgment it cannot be litigated twice; issues include both fact and legal questions
  -Offensive (non-mutual) issue preclusion: previous plaintiff has won, and a subsequent plaintiff uses the judgment against same defendant—encourages more litigation, allows would-be plaintiffs to wait and see what happens in first case, NOT EFFICIENT
  -Has to be used against someone who was already a party—everyone deserves their day in court → no defensive non-mutual issue preclusion where winning defendant asserts it against new plaintiff

1. In General
Semtek v. Lockheed Martin (2001) (1407)
-*Federal common law governs the claim-preclusive effect of a dismissal by district court sitting in diversity (because FF&C only applies to states). Claim preclusion is a substantive rule, so federal common law is to give prior state judgments the same effect the rendering state would give them.
  -When courts say “dismissed with prejudice”, then judgment normally has preclusive effects
  -Federal courts can make own decision when state law is incompatible with federal law
-Prof says to look at these like Erie cases
  -Though would be simpler to call a dismissal with prejudice a substantive rule (so state law should be followed), Court will never call a FRCP anything but procedural (remember Hanna)
-What court essentially says is that the “without prejudice” dismissal is substantive within the state district courts

-Court really goes back to where it started, Depassuer

**HYPO 2:** see addendum

**Commissioner v. Sunnen (1948) (1408)**
-If party gets judgment, then law is changed and same parties are litigating a different occurrence of same fact pattern, there will be no issue preclusion because the law has changed and therefore the issue has changed.

**Montana v. US (1979) (1409)**
-US cannot sue same party for same issues because of issue preclusion.
- US was not actual P but controlled first lawsuit was in privity

**2. Issue Preclusion When US is a Party**

**US v. US Fidelity (1940) (1410)**
-Judgment against US is open to subject matter collateral attack in later proceedings.

**McCormick v. Sullivant (1825) (1409)**
-Even if it appears first court did not have subject matter jurisdiction, its judgment will be given preclusive effect until it is reversed.
-These two can be reconciled because US fidelity involves important government issue
- *McCormick* is the general rule

-Doctrine of offensive non-mutual issue preclusion cannot be applied to the government because of the important of issues the government litigates and the changing views of the executive branch.
-Blanket rule—Doesn’t matter if two suits are very close in time, or if facts are uncontested, or anything
-This seems like a good rule in this case, but it is easy to imagine cases where this is not fair and very efficient

-Mutual issue preclusion is okay when Government is party (when litigating same issue under “virtually identical” facts against the same party).
-Here preclusion was applied to same company but in a different circuit and on a different occurrence (though fact pattern was same)
-There cannot be claim preclusion b/c not same facts
-But 9th Circuit rules for government against different company. Government argues that now Stauffer gets different treatment than other companies located in 9th circuit
-Seems to be the case, but not as grave as gov’t makes it out to be
-After this decision, can EPA do contested behavior in circuits where it has lost, but against different defendants?
-Article argues that non-acquiescence intra-circuit is okay under certain circumstances, that agencies have right to try to get uniform policy
-Must be careful not to violate Rule 11 (which forbids frivolous lawsuits)
-Maybe can do this to accomplish objectives of *Mendoza*?

**Allen v. McCurry (1980) (1420)**
Non-mutual issue preclusion is appropriate when party it is raised against has had a full and fair chance to litigate in previous case. Can even apply when first case is criminal and second case is §1983.

- Seems adverse to purposes of §1983, because P never got a chance to bring allegations against federal officials
- Only way P could have succeeded in this case is if there are issues he did not raise in first case, which is a bad idea—different objectives
- Blackmun’s dissent argues that (1) §1983 is rendered useless by this holding in cases like these and (2) implies that filing a motion in trial court is not a full and fair chance to litigate—wants prophylactic rule

*28 USC §1738: judicial proceedings of any court of any state shall have same full faith and credit in every court in US as they have in courts of such state


- Though a federal statute might give right to trial de novo, if P has full and fair chance to litigate in state court and/or agency then P is precluded from (subsequent) federal suit if judgment would be preclusive in state court.
  - Dissent says issue preclusion inappropriate because state court did not decide the merits (just reviewed agency decision)

University of Tennessee v. Elliott (1986) (1433)

- State agency judgment does not get preclusive effect under §1738, but fed common law means that fact-finding by an agency acting in judicial capacity gets preclusive effect if state court would give it (§1983 claim). For Title VII claim, P is not precluded because in title VII Congress gave trial de novo.
  - §1983 opens fed court and other doctrines (Younger, res judicata) close it back up

3. Claim Preclusion


- Federal §1983 suit claim precluded when P already litigated some state law claims in state court. P should have combined all claims.
  - P has had control over this suit the entire time, while in McCurry the §1983 P was first a criminal D


- If P brings claim with exclusive federal jurisdiction following state suit on same facts, federal court must look to state law to see if state court would give state suit preclusive effect. Most states would not give preclusive effect
  - 2nd federal suit raised Sherman Act (exclusive federal jurisdiction)
  - Could have brought whole thing in state court


- When there is state class action, a subsequent federal class action on same facts (but challenging the settlement) will be precluded if state court would make it precluded and there is no federal law providing otherwise
  - Historically, class member can bring later suit only if there is a due process claim, usually inadequate representation (Hansberry v. Lee)

4. Rooker-Feldman Doctrine

Rooker v. Fidelity Trust Co (1923) (1436)
If a state court has proper jurisdiction, its judgment may not be challenged except by appeal. US District Courts have no appellate jurisdiction over state court decisions—only US SC.

- Ordinary answer is claim preclusion, but here court ruled based on jurisdiction instead

**DC Court of Appeals v. Feldman (1980) (1437)**

-*Rooker-Feldman doctrine:* US Supreme Court is the only federal court with jurisdiction to review state court decisions when issues are properly raised, district courts have no appellate jurisdiction at all. State Ps cannot file new federal suits if judgment has already been rendered in state court → must appeal to SC

- Not controversial in these cases, but has been controversial since then


-*7th Circuit rules that under Rooker-Feldman, federal action following state class action is barred even in state did not have personal jurisdiction over P*

- Absent class action member tries to sue attorney for malpractice because he ended up paying $90 when class won (he won $2)

-*Remember Texaco (1440-1441)*

**FINAL**

No 11th Amendment material on final

90. 30, 60 format of final

Closed book

Will give us Constitution

Would blackmun’s dissent mean that there should be no issue-preclusion in any §1983 suit when first suit is criminal??

**GET NOTES:** 10.4 AND 10.10

Why does Separability run in sync with standing?
Legislative courts (only public rights) v. agency courts (can do private rights)?

Story’s opinion in Martin v. Hunter—article iii requires existence of lower federal courts, not just allows them????

Why does younger apply in Dayton christian schools and not in patsy, why does coercive nature of Dayton make the difference?

**HYPO:** Strip club owner gets charged under obscenity law. Stripper brings declaratory suit and wins. If she goes back and dances, can DA bring criminal suit against her or is he precluded?
- It would make sense if he was precluded but it is unclear.
- DA brings suit and wins, and state keeps affirming, can stripper go to SC?
  - One issue is federal law→first amendment
  - One issue is state law→res judicata
- Can stripper ask for injunction of state suit after she wins declaratory judgment?
  Is this a case when injunction is needed to enforce federal judgments. Later cases suggest that injunction would be justified.
- Could club owner use declaratory judgment given to stripper as affirmative defense (res judicata, or stare decisis)
  - It is the same issue, body of facts
  - In civil suit like for car accidents, prior judgments are res judicata (non mutual issue preclusion)
  - No preclusion because club owner is in criminal proceedings and stripper just wants to know her rights?
- Just know that declaratory judgments can be very powerful
- So does the distinction between declaratory judgments and injunctions really make sense?
  - Declaratory judgments can be less disrespectful/intrusive to the state if they are issued and that’s the end.
  - They allow state to decide for itself if it wants to give DJ effect→intrude little by little

**HYPO:** Dancer files federal suit for declaratory judgment. Later, DA charges the dancer, and state judge rules state statute unconstitutional. Should first suit for declaratory judgment be dismissed?
- Yes. Issue preclusion—interests of dancer are taken care of in state judgment.
- Can federal judge enjoin DA from charging dancer at all? Yes.

**HYPO:** State charged club owner. Club owner and dancer sue DA for declaratory judgment in state court.
- Dancer can go forward and club owner cannot because there is pending state action.
- Just like *Roe v. Wade*, see note 18, (1233)—doctor has to make constitutional arguments in his criminal suit and can appeal them up state system and THEN got to SC
-HYPO 2: P brings suit in fed court and D fails to raise counterclaim. D brings suit in another fed court on counterclaim issue.
   -Can D do this? Rule 13(a) bars this in same fed court and all fed courts in the state, federal common law bars this in all other federal courts, and state law claim preclusion bars it in state court
   -D wins on issue preclusion.
   -What if P perfects title?
     -New issue because new facts
   -What if state law has changed so that Ps original title is now good
     -New issue because new facts???