II. Darby (1941) 144.

   B. Facts: GA.- lumber

   C. Darby argument:
      1. Not noxious goods.
      2. Pretext for regulating wages and hours, subject for state regulation only.

   D. Ct.
      2. Pretext
         a. 145 1/5 competition is what at stake. Unfair competition when pay substandard wages. Injurious to IC which is the subject, not a pretext.
         b. In any event 145 1/4. Power of Congress and limited judicial review. 145 1/5 plus @ Judicial review

   After Jones and Laughlin and Darby, what judicial limits are left?
   J&L McReynolds dissent 144 top last line of opinion. Role of States: 146 2/3 plus – last

   A third case in this series: Wickard v. Filburn

III. Wickard (1942) 147.

   Agriculture Adjustment Act of 1938. Protecting price and supply of wheat.
   Limited acreage and harvest. Small grower 20 or so acres.
   Planted more acres and harvested more bushels of corn than allotted (223 / 239). Penalty of $117. Have to admire litigants.

   1. Gibbons 147 1/3+
   2. Local but 147 ½
   3. Aggregation 147 bottom 2 lines and 148
Judicial review/ Judicial limits? Congress has plenary power, and Ct. Takes an inclusive, broad economic approach to this inclusive power; it has spoken of the 10th Amend = truism; and seems to have dropped the need to show a direct effect 147 last 6-7 lines of paragraph. —

But:
1. Rational
2. Substantial / close and substantial relation to IC
   Jones & Laughlin
   Darby - read 145 last 6 lines thru 146 1st 3 lines
   Wickard 147 last 4 lines as above.
3. Random observations:
   A. No longer EC Knight distinction between commerce/ manufacture, i.e. no formal approach to what is IC. Limiting distinction
   B. Shreveport notion of instruments of commerce ok. Broadening/embracing effect.
   C. Swift's "stream of commerce" not have to but can, if broadening/embracing
   D. Lottery Case (Champion) Commerce prohibiting ok. Overruled Darby's limit of commerce prohibiting must apply to noxious/ harmful goods.

Wirtz (1968) p. 148
Continues the trend. Fair Labor Standards Act Amendments extended coverage from employees engaged in commerce to employees is an ENTERPRISE engaged in commerce.

But N.B.: Congress may not use a trivial impact of IC for broad, general regulation of state or private activity.

Hodel (1981) 148 bottom
Ct upheld the strip mining regs of Surface Mining Control and Reclamation Act of 1977 that regulated strip mining against the argument that the use of private lands is the States' business. Pp 300 A Curswoe p. 148

* * *

Heart of Atlanta and Katzenbach v. McClung. An interesting development in the use of the Comm. Clause, broadened as its coverage had become. Next semester: 14th Amendment. In the early 1960's it was not clear that the 14th Amend equal protection clause would fully support broad congressional action in protection of the rights of African Americans. So the Civil Rts. Act was based on both the 14th Amendment AND the IC clause.
Heart of Atlanta accused of violating the Ginest because of its refyusal to rent rooms to African Americans. It could be argued that the motel, located as it was near interstate highways and depending as it did on those highways and their interstate travellers, it could be argues that the motel was engaged in IC.

But it was also successfully argued that racial discrimination was a substantial burden on interstate commerce. Travellers not able to stop and find place to rest and eat. Loss to them and the economy.

Katzenbach v. McClung rings a change on that holding. Ollie’s Barbecue was a family restaurant in Birmingham. The owners were charged with violating the Civil Rts. Act because they discriminated against African Americans. Some of the food Ollie’s purchased had moved in IC. The question was whether Ollie’s affected commerce.

The Ct. Accepted the argument that it was hit so much the amount of interstate food involved that mattered as it was whether Ollie’s discriminated. Pp. 151 bottom-52
Back to what read:

U.S. v. Lopez (19950 153

   Controversy is about whether the CC will support.
   Answer: No.
   Arguments about why not. Against the trend since 1937. Controversial.

2. Rehnquist op. Who votes with? 5-4, unsettled then – and now.
   writes additional.
   Maj.? Who’s on Court? R, O’Connor, Scalia, Kennedy, Thomas
   1st 2 replaced by CJ Roberts and J Samuel Alito. Difference?

3. R. Argument

A. History of CC interpretation. 154-55
   i Starts with Fed. and Gibbons

John Jay collection of newspaper essays arguing in support of adoption of the Conat.
Generally Acknowledged to be one of the truly great political documents. Underlying
question here about division of power between States and Federal gov.]

From Fed. and Gibbons to other, subsequent cases; we’ve read.

Pre 937 as we read
A No longer EC Knight distinction between commerce/ manufacture, i.e. no formal
   approach to what is IC. Limiting distinction
B. Shreveport notion of instruments of commerce ok. Broadening/embracing effect.
C. Swift’s “stream of commerce” not have to but can, if broadening/embracing
D. Lottery Case (Champion) Commerce prohibiting ok.
Post 1937 as we read
A. Jones and Laughlin and
C. Wickard and expansive interpretation of what “affects” IC.
D. Limits:
   i) rationality and ii) substantial effect.
   Judicial review limited to question: Was it rational for Cong. to decide that the activity Sought to be regulated substantially affects IC? What is substantial can be in the aggregate.

Era that begins in 1995 with Lopez.
How does R organize, read and use those past cases? His history of interpretation and his uses of that history. How differ, if at all, from way we have been talking about them?