Other Federal Limits of State Power

Congress’ Power to Pre-empt or Consent to State Legislation

I. Preemption

A. Gibbons: Fed. statute regulating the coast-wise trade pre-empted a NY statute granting a monopoly for operating a ferry between N.Y. and N.J.

B. Preemption can take place by express statement of Congress, by implication if Cong has occupied an entire field of regulation, or by implication from the physical impossibility of complying with both a US and a state statute.

1. Express preemption is easily grasped. As statement that States prohibited from regulating a given activity or enterprise.

2. Field: p. 329 bottom at *. Then:

Pacific Gas and Electric (1983) 324

CT upholds a Cal nuclear waste disposal statute on the ground that it was not preempted by the US Atomic Energy Act of 1954. Because of the nature of the waste disposals regulation, could not slow down or prohibit the expansion of nuclear power generation in Calif. If obey Calif likely not build plants. See US interest in promoting such power. Under author.”

CT found that the federal statute had not given the Atomic Energy Comm’n authority to regulate the generation of electricity itself or to decide whether a particular plant should be built. US Retained complete control over the safety and “nuclear” issues of nuclear power but not the need for more power and not of the type of generating facilities to be licensed, etc. For example, state not involved in regulation of construction and operation of nuclear facilities. Not safety of a plant but whether to build one. Economic issue.

Argument, not whether the Atomic Energy Act expressly pre-empted> It was not. No clear statement that states could not be involved. The question was whether occupied the field and left no role for states. I.e. field preemption.

Whether waste disposal was an economic or a safety issue. Safety occupied occupied by US. Economic issues not. Here CT: 1) economic and 2) 329 top. Not field.
3. Conflict preemption

Hines p. 329 at 330 1/5.
Then Fla. Lime and Avocado 330

B. Cong. Consent to State Laws

Can. 335 at * 334 note to 3

II. Other

A. Eq. Protection

Cannot discriminate between in and out if state corporations absent a rational basis for doing so.

Unusual case: Metropolitan Life 337 1/3 *** vs. Equal prot. Odd case. 1985 compare NE Bancorp bottom 3**

B. Miscellany

1. State taxation instead of regulation of IC 338 at * 15
2. Intergovernmental tax immunities 339 bottom 340.
Separation of Powers


Looked at Congress now at Presidnet., especial executive encorachment on legislative

Constitution Art. II. Read

The leading case and much discussed presently is:

Youngstown Sheet and Tube (Steel Seizure Case) (1952) 344


Not begin to tell you the importance of the case.

1. Facts.
What context and and what action?
Strike April 9. Few hours before: order to seize. Companynes filed for an injunction. DC issued injunction April 30. Same day Ct of App stayed the inj. Cert granted May 3.
Oral argument May 12. S Ct: June 2. 54 days from Pres order to S.Ct opinion.

2. Blackmaj.
A. Designation as commander in Chief give Pres power to seize the mills? What argument for? Why not? 345 very last - 346.
Theater of war.
Not seize private property to prevent a strike.
For Cong.

NB: Theater of war?

B. Vesting of executive power? No. Contradicted by clause that the Pres. shall take care that the laws be faithfully executed. Law executor, recommender, vetoer not law maker.

C. Here Cong. Had expressly rejected a measure that would have mpowered the Pres. to seize property in emergences.
3. Frankfurter concurring 346 at 347 ½ * (a history of practice known and agreed to)

4. Jackson 347 [signature]
   
   A. Poverty of authority. And limits on judicial resolution 347 bottom
   B. Tripartite way of organizing arguments.
   C. 349 3/4 *** 1,2 & 3. (3 & 351 ½ Vinson op.)
   D. 350 ½


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Executive vs. Legislative: Foreign and Military Affairs.

I. Executive agreements: Only difference from a treaty is that not require the advice and consent of the Senate.

Dames & Moore (1981), 355


One of the President’s first actions was to declare an emergency that, among other things blocked transfer of any property or funds of the Iranian government subject to U.S. jurisdiction.

After long and difficult negotiation, vcrisis concluded with an Executive Agreement that, among other things, provide for the termination of all litigations between the two countries and between the one government and individual citizens of the other. Also created a Claims Tribunal for settlement of all claims. Blocked assets to be transferred to the Tribunal’s claims fund.

Carter also suspended the suits already filed against Iran in U.S. courts. The litigants brought suit vs. the U.S challenging the constitutionality of this act by the Pres.

Court cites Jackson in Youngstown and propose to employ it in a flexible manner: Agreements lie along a spectrum from explicit congressional authorization to explicit congressional prohibition. Pres. power greatest at the cong. Approval end and eat at the cong prohibition end.

2. Argument: Cong. Approval:

A. Pres. Carter’s action blocking and transferring the assets was undertake pursuant to the IEEPA Int’l Emergency Econ. Powers Act.

B. The question then was the constitutionality of terminating the pending suits vs. Iran. 357 bottom at *** and 358 ff.

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I. War powers

Executive Discretion in Time of War