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U.S. constitutional law--federal jurisdiction---environmental law--maritime law--state regulation of shipping for pollution--control purposes--federal preemption UNITED STATES V. LOCKE. 120 S.Ct. 1135. Supreme Court of the United States, March 6, 2000.

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concluded that the GATT 1947 may be interpreted and applied in the context of the New Commercial Policy Instrument in order to establish whether certain specific commercial practices should be considered incompatible with those rules. The ECJ's statement therefore should be interpreted as referring to provisions that make a general reference to international law and not only to specific obligations of the WTO agreements.[37]

In addition, attention should be drawn to the important rule of consistent interpretation: where a provision in municipal law is amenable to different interpretations, it must be construed to conform to international obligations.[38] In many cases, this rule of interpretation permits courts to bridge alleged divergences between international and municipal law, making adherence to both possible without sacrificing the uniformity of obligations under international law. The ECJ's decision in *Hermès International*[39] applies this interpretive rule to the relationship between EC law and the WTO agreements.

In the end, the ECJ Decision suggests that it is probably unrealistic to expect that the question of the direct effect of WTO law within the internal legal system of the EC can be successfully dissociated from the question of its direct effect within the internal legal systems of the EC's major trading partners. Nevertheless, the willingness of the ECJ to accord "indirect effect" to the WTO agreements as defined in *Nakajima* and *Fediol*, together with the principle of consistent interpretation, offers alternatives that moderate the impact of the decision to deny direct effect to the WTO agreements even when invoked by member states.

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U.S. constitutional law—federal jurisdiction—environmental law—maritime law—state regulation of shipping for pollution-control purposes—federal preemption

UNITED STATES V. LOCKE. 120 S.Ct. 1135.
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Following the *Exxon Valdez* accident off Alaska in 1989, the legislature of the State of Washington created an Office of Marine Safety, directing this agency to establish standards that would govern ship traffic in state waterways and provide "the best available protection from damages caused by the discharge of oil."[1] The office thereafter promulgated elaborate regulations addressing oil tanker design, equipment requirements, and reporting and operating rules.[2]

The International Association of Independent Tank Owners (Intertanko), a trade association of 305 members owning or operating more that two thousand U.S. or foreign-registry tankers, brought suit in the U.S. District Court for the Western District of Washington. Seeking declaratory and injunctive relief, Intertanko contended that the state regulations addressed matters falling within the exclusive responsibility of the U.S. government. Intertanko filed with the district court diplomatic correspondence directed to the United States by thirteen nations expressing concern that the state rules would lead to inconsistencies between U.S.

[37] *See* Fernando Castillo de la Torre, *The Status of GATT in EC Law, Revisited*, 29 J. WORLD TRADE 53, 59–61 (1995).

[38] According to the U.S. Supreme Court, for example, "an Act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains." Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 188 (1804) (Marshall, C.J.).

[39] *See* Case C-53/96 Hermès International v. FHT Marketing Choice BV, 1998 ECR I-3603.

[1] WASH. REV. CODE §88.46.040(3) (1994).

[2] WASH. ADMIN. CODE §§317-21-130 to 317-21-540 (1999). *But see* note 37 *infra* (enforcement of regulations suspended). Ships failing to comply with these regulations are subject, by the parent statute, to penalties, restrictions on operation in state waters, or denial of entry to state waters. *See* WASH. REV. CODE §§88.46.070–.090 (1994).

and state regulations and thus create uncertainty and confusion.[3] The district court rejected the Intertanko arguments and upheld the Washington regulations.[4] Thereafter, following Intertanko's appeal to the U.S. Court of Appeals for the Ninth Circuit, the United States intervened, also disputing the validity of the Washington regulations. The Ninth Circuit panel nonetheless largely agreed with the district court, declaring invalid only one Washington rule, which required vessels to install specified navigation and towing equipment.[5] Granting certiorari, the U.S. Supreme Court reversed the decision of the court of appeals and remanded the case for further proceedings.[6] Justice Kennedy wrote the opinion of the unanimous Court.

The *Locke* opinion began by noting the political and economic geography of Puget Sound—the most prominent of the bodies of water subject to state oversight. The Strait of Juan de Fuca is not only the access channel to the sound from the Pacific Ocean, but also the site of the boundary between Canada and the United States and the sole means of access to Vancouver, Canada's largest port.[7] "Traffic inbound from the Pacific Ocean, whether destined to ports in the United States or Canada, is routed through Washington's waters; outbound traffic, whether from a port in Washington or Vancouver, is directed through Canadian waters."[8] U.S. and foreign-flag oil tankers are prominent within this traffic. "Washington is . . . the destination or shipping point for huge volumes of oil and its end products."[9]

Justice Kennedy then observed that the Washington legislation and regulations addressed matters—navigation and marine transport—in which "the federal interest has been manifest since the beginning of our Republic."[10] Emphasizing the point at some length, Kennedy's opinion quoted from the *Federalist*, early federal statutes, and several of the Supreme Court's own classic opinions. Congress had, in particular, enacted several statutes addressing marine tanker transport and had also approved a number of treaties pertaining to the same subject.[11] The court of appeals thought that the Oil Pollution Act of 1990, itself enacted in response to the Exxon Valdez accident, was the most pertinent of the congressional initiatives, and emphasized language in this statute recognizing continued state authority to impose "additional liability or additional requirements . . . relating to the discharge, or substantial threat of a discharge, of oil."[12] The Supreme Court, however, concluded that this savings clause did not limit the impact of the earlier Ports and Waterways Safety Act of 1972 (PWSA), and thus that the Court's analysis of the preemptive effect of this statute, pronounced in *Ray v. Atlantic Richfield Co.*,[13] remained on point.[14] PWSA authorizes (but does not require) federal officials to promulgate rules relating to control of vessel traffic and other matters relating to navigation (Title I), and requires federal officials to issue regulations concerning the seaworthiness and manning of vessels, as well as the qualifications of personnel (Title II).[15] Justice Kennedy understood *Ray* as reading PWSA to "preserve[]

[3] *See* United States v. Locke, 120 S.Ct. 1135, 1142 (2000).

[4] Int'l Ass'n of Indep. Tanker Owners (Intertanko) v. Lowry, 947 F.Supp. 1484 (W.D. Wash. 1996).

[5] Int'l Ass'n of Indep. Tanker Owners (Intertanko) v. Locke, 148 F.3d 1053 (9th Cir. 1998). With one dissent, the Ninth Circuit denied a petition for rehearing en banc. *See* Int'l Ass'n of Indep. Tanker Owners (Intertanko) v. Locke, 159 F.3d 1220 (9th Cir. 1998).

[6] United States v. Locke, 120 S.Ct. at 1152.

[7] *Id.* at 1141.

[8] *Id.*; *see* Canada-U.S. Agreement for a Cooperative Vessel Traffic Management System for the Juan de Fuca Region, Dec. 17, 1979, 32 UST 377, TIAS No. 9706, 1221 UNTS 67.

[9] United States v. Locke, 120 S.Ct. at 1141.

[10] *Id.* at 1143.

[11] *See id.* at 1143–45.

[12] 33 U.S.C. §2718(c) (1994); *see* Int'l Ass'n of Indep. Tanker Owners (Intertanko) v. Locke, 148 F.3d at 1058–60, 1062.

[13] 435 U.S. 151 (1978).

[14] *See* United States v. Locke, 120 S.Ct. at 1145–47.

[15] The pertinent provisions are codified at 33 U.S.C. §1223(a)(1) (1999 ed. Supp. III) (referred to by the Supreme Court as Title I), and 46 U.S.C. §3703(a) (1994) (referred to as Title II). *See* United States v. Locke, 120 S.Ct. at 1144.

state authority to regulate the peculiarities of local waters if there was no conflict with federal regulatory determinations," but to authorize "only the Federal Government" to adopt "national regulations governing the general seaworthiness of tankers and their crews."[16]

Justice Kennedy acknowledged "some overlapping" of the pertinent categories: regulations concerning "local waters" (matters of state competence if not in actual conflict with federal rules) and regulations addressing "general seaworthiness" (the exclusive responsibility of federal agencies).[17] In any particular instance, characterization would depend on the content of promulgated federal regulations (including rules originating in ratified conventions and statutes other than PWSA); the specific matters that PWSA included in its list of seaworthiness issues; whether or not state regulations at issue are "justified by conditions unique to a particular port or waterway"; and whether the state regulations have a "limited extraterritorial effect."[18] "Local rules not pre-empted . . . [are those that] pose a minimal risk of innocent noncompliance, do not affect vessel operations outside the jurisdiction, do not require adjustment of systemic aspects of the vessel, and do not impose a substantial burden on the vessel's operations within the local jurisdiction itself."[19]

The *Locke* Court examined four of the challenged Washington regulations in order to "illustrate[]" its statement of the applicable analysis (the remaining regulations were left to be considered by the court of appeals on remand).[20] The Washington training requirements and English-language proficiency rules had obvious extraterritorial effects and were therefore "not limited to governing local traffic or local peculiarities."[21] The Washington navigation-watch procedures, which governed independent of immediate weather conditions, were applicable throughout the state and therefore insufficiently linked "to the peculiarities of Puget Sound."[22] Finally, the state requirement that vessels approaching its waters report marine casualties—collisions, near misses, mechanical breakdowns, and so on—was inconsistent with federal legislation independent of PWSA that gives federal officials responsibility for casualty-reporting rules.[23]

* * * *

The notable absence of any express disagreement within the Supreme Court in *Locke*,[24] and the fact that all four of the Court's illustrative rulings concluded that state regulations were preempted, together suggest that the justices readily appreciated the conjoined na-

[16] United States v. Locke, 120 S.Ct. at 1149; *see Ray*, 435 U.S. at 158–78. The first half of the *Ray* formula is based on Title I of PWSA; the second derives from Title II. *See* note 15 *supra*.

[17] United States v. Locke, 120 S.Ct. at 1149.

[18] *Id.* at 1149–50.

[19] *Id.* at 1150. Readers knowing something of the law of the sea will be aware that a somewhat similar construction is put to use on the international level. The rules regarding the right of innocent passage through the territorial sea prohibit coastal state regulation that hampers innocent passage or has the practical effect of denying or impairing such passage—in particular, coastal state regulation of the design, construction, manning or equipment of foreign ships unless giving effect to generally accepted international standards. These rules do not, however, restrict coastal state conditions for port entry or apply to those internal waters in which there is no right of innocent passage. *See* United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, Arts. 8, 17, 21(2), 24(1), 25(2), 1833 UNTS 397, *reprinted in* 21 ILM 1261 (1982). For present purposes, what is most interesting about the international formula is its absence (the dog that does not bark) within the analysis in the *Locke* opinion itself.

[20] United States v. Locke, 120 S.Ct. at 1150.

[21] *Id.* The Washington requirements were read as addressing operations and personnel-qualifications matters falling within PWSA Title II, *see* 46 U.S.C. §3703(a) (1994). Justice Kennedy found support for this conclusion in federal regulations fixing crew-training requirements, 46 C.F.R. pts. 10, 12, 13, 15 (1999). The International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, with Annex, 1978, S. TREATY DOC. No. 96-1, C.T.I.A. No. 7624, also addressed crew-training and qualification requirements.

[22] United States v. Locke, 120 S.Ct. at 1151.

[23] *Id.* at 1151–52; *see* 46 U.S.C. §6101 (1994); *see also id.* §6102 (federal responsibility for devising uniform system of state marine-casualty reporting).

[24] In *Ray*, by contrast, the Supreme Court split complicatedly. *See* Ray v. Atlantic Richfield Co., 435 U.S. 151, 153 (1978) (syllabus).

tional and international dimensions of the case. Justice Kennedy's opinion is not without discordant notes, however. Notwithstanding its acknowledgment of the multinational geography of the case, *Locke* declined to treat international law—or even international concerns—as immediately dispositive.[25] But Kennedy read PWSA—which he did treat as decisive—to have as one aim the conformity of U.S. law with international standards.[26] International norms were in one sense irrelevant, and in another, relevant. The *Locke* opinion does not explain why this cross-cut form of argument was necessary.

Some citational choices are also curious. In the course of grounding his opinion in the grand Supreme Court discussions of the early nineteenth century, Justice Kennedy referred to, but did not much emphasize, *Gibbons v. Ogden*[27] and its virtuoso amalgam of constitutional and statutory preemptive arguments. Kennedy instead gave pride of place to *Cooley v. Board of Port Wardens*,[28] famous to generations of law students precisely for its efforts to define a rightful place for state regulation of national and international maritime transit. Similarly, the *Locke* opinion identified the point of departure for preemption analysis as such to be the Supreme Court's decision in *Rice v. Santa Fe Elevator Corp.*,[29] written by Justice Douglas in a way that acknowledged the frequent coexistence of state and federal law.[30] Surprisingly, the Court did not invoke *Hines v. Davidowitz*[31]—decided only a few years before *Rice*—in which Justice Black emphatically minimized the relevance of state law in matters with international overtones, such as immigration and naturalization.[32]

Justice Kennedy, it appears, was concerned to remove from the case any "beginning assumption that concurrent regulation by the State [in this case, Washington] is a valid exercise of its police powers."[33] But he did not mean to put in place an opposed presumption, even against the backdrop of "national and international commerce."[34] State regulation was to be judged by reference to "federal statutory structure."[35] "No artificial presumption aids us in determining the scope of appropriate local regulation under the PWSA . . . ."[36] As a result, it is easy to notice the opinion's acknowledgement that some Washington regulations could conceivably pass the PWSA tests.[37]

[25] Justice Kennedy briefly mentioned "[i]llustrative . . . treaties and agreements," United States v. Locke, 120 S.Ct. at 1145, and also noted the United States' argument that "these treaties . . . have pre-emptive force over the state regulations in question here." *Id.* "We need not reach that issue . . . because the state regulations . . . are preempted by federal statute and regulations." *Id.* It was possible, Kennedy allowed, that treaty terms might become pertinent at later stages in the litigation. *Id.*

[26] *See id.* at 1145, 1149, quoting *Ray*, 435 U.S. at 166, 168.

[27] 22 U.S. (9 Wheat.) 1 (1924).

[28] 53 U.S. (12 How.) 299 (1852). For the *Locke* discussion of *Gibbons* and *Cooley*, see 120 S.Ct. at 1143.

[29] 331 U.S. 218 (1947).

[30] *See id.* at 230–36. Justice Kennedy found it necessary to proceed at some length to distinguish *Rice* from *Locke* itself. *See* United States v. Locke, 120 S.Ct. at 1147–48. Ostensibly, *Rice* was relevant because *Ray* briefly quoted from it (*see Ray*, 435 U.S. at 157, quoting *Rice*, 331 U.S. at 230) and because in *Locke* itself, the courts below and the State of Washington had invoked it. *See* United States v. Locke, 120 S.Ct. at 1147. It is not obvious, however, why this reliance, in and of itself, justifies using three paragraphs of the *Locke* opinion to parse *Rice*. *But see id.* (*Rice* will not be studied "in detail").

[31] 312 U.S. 52 (1941).

[32] *See id.* at 62–68.

[33] United States v. Locke, 120 S.Ct. at 1148.

[34] *Id.*

[35] *Id.*

[36] *Id.* Interestingly, in *Crosby v. National Foreign Trade Council*, 120 S.Ct. 2288 (2000), *see* Brannon P. Denning & Jack H. McCall, Case Report: Crosby v. National Foreign Trade Council, 94 AJIL 750 (2000), in which Massachusetts's "Burma law" was held to be preempted by federal statutes, Justice Souter's majority opinion cited *Hines* (*see Crosby*, 120 S.Ct. at 2294), but only in connection with standard preemption formulas. Like Justice Kennedy in *Locke*, Souter treated the case as an ordinary preemption challenge. *See Crosby*, 120 S.Ct. at 2294 n.8 (reserving question of "presumption *against* preemption," citing *Locke*) (emphasis added).

[37] *See* United States v. Locke, 120 S. Ct. at 1148, 1152. Justice Kennedy was notably careful, however—especially in concluding the opinion—not to press the point. *See also* State v. Stepansky, 761 So.2d 1027, 1034 (Fla. 2000) (relying on limited preemption in *Locke* and upholding state law providing for state prosecution of crimes committed on board Florida-based cruise ships at sea). A case report on *Stepansky* is scheduled to appear in the next issue of the *Journal*.

There is a perhaps important gap in the Supreme Court's discussion. If a Washington regulation—say, one redrafted after *Locke*[38]—on its face restricts its reach to tanker activity within Puget Sound, and if the administrative processes leading up to the regulation reveal a record seemingly replete with evidence of risky local peculiarities and thus of local concerns, how does the preemption analysis play out if there are, for example, no Coast Guard regulations precisely on point? Is it the responsibility of critics of proposed state rules to introduce into the state record evidence of "adjustment of systematic aspects" and "substantial burdens" likely to be occasioned by the state regulations? If state officials are not persuaded by such evidence, and if they explain their conclusions, do usual doctrines of deference to administrative judgments apply? Are tanker interests free to sidestep state processes and proceed directly to federal courts once regulations are promulgated, propounding their criticisms for the first time at this stage?

It is possible to begin answering these questions by asking yet one more. Notwithstanding the ultimate style of the case, *United States v. Locke* started out as private litigation. Nothing in the Supreme Court opinion suggests that the involvement of the United States was necessary to the suit's progress. What was the right of action that the tanker owner association asserted? Intertanko based its claim to federal jurisdiction on 28 U.S.C. Sections 1331 and 1337(a).[39] These statutes do generally authorize district court involvement but by their terms also suppose some other, more specific statutory or constitutional recognition of a private right to sue.[40] Neither PWSA nor the Supremacy Clause of the U.S. Constitution confers such a right explicitly.[41] The Supreme Court nonetheless did not stop in *Locke* to explore the rigors of its implied-rights jurisprudence.[42] The Court has, however, at least since 1989, treated 42 U.S.C. Section 1983—authorizing legal and equitable remedies for infringements of federal rights by individuals acting under color of state law—as a pertinent right of action in preemption cases.[43] The Supreme Court's Section 1983 jurisprudence usefully addresses issues that *Locke* itself did not resolve. Litigants usually need not, for example, exhaust state administrative or judicial remedies, but may instead challenge rules in federal district court once state legislative or administrative initiatives acquire final form.[44] Section 1983 suits are not subject to the Anti-Injunction Act.[45] Insofar as their concern with color of law is rooted in the Fourteenth Amendment, *Ex parte Young*[46] proceedings against state officials—seeking injunctive or declaratory relief authorized by Section 1983—are not open to the state sovereign-immunity scrutiny that the Supreme Court brings to bear in reviewing, for example, actions based on the Commerce Clause.[47] Finally, the substance of Section 1983 analysis, because

[38] On June 12, 2000, the Washington State Department of Ecology suspended enforcement of the regulations at issue in *Locke* pending adoption of new regulations. *See* Int'l Ass'n of Indep. Tanker Owners (Intertanko) v. Locke, 216 F.3d 880 (9th Cir. 2000).

[39] *See* Brief on the Merits for Petitioner Intertanko at 6, United States v. Locke, 120 S.Ct. 1135 (2000) (No. 98-1706), *available in* 1999 WL 966536.

[40] *See* Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 8 n.7 (1983); 13B CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE §3574 (2d ed. 1984).

[41] *See* 46 U.S.C. §§3713, 3718 (1994) (PWSA civil-penalty remedy for violation of federal requirements enforceable by the United States); Chapman v. Houston WRO, 441 U.S. 600, 613 (1979) (Supremacy Clause "is not a source of any federal rights").

[42] *See, e.g.*, Touche Ross & Co. v. Redington, 442 U.S. 560 (1979). *See generally* RICHARD H. FALLON, DANIEL J. MELTZER, & DAVID L. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 839–46 (4th ed. 1996).

[43] *See, e.g.*, Lividas v. Bradshaw, 512 U.S. 107 (1994); Golden State Transit Corp. v. City of Los Angeles, 493 U.S. 103 (1989). *See generally* Henry Monaghan, *Federal Statutory Review Under Section 1983 and the APA*, 91 COLUM. L. REV. 233 (1991).

[44] *See* Patsy v. Florida Bd. of Regents, 457 U.S. 496 (1982); Monroe v. Pape, 365 U.S. 167 (1961).

[45] *See* Mitchum v. Foster, 407 U.S. 225 (1972).

[46] 209 U.S. 123 (1908). On color of law, see Steven L. Winter, *The Meaning of "Under Color of" Law*, 91 MICH. L. REV. 323 (1992).

[47] On *Ex parte Young* as a Section 1983 case, see David P. Currie, *Ex parte Young After Seminole Tribe*, 72 N.Y.U. L. REV. 547 (1997). *See generally* Ernest A. Young, State Sovereign Immunity and the Future of Federalism, 1999 SUP. CT. REV. 1.

of its twin emphases on the presence of federal rights and the possibility that state officials are pursuing agendas insufficiently grounded in actual state concerns, may provide a ready framework within which a hard look at state rules can be justified.

Section 1983 does presuppose, however, federal "rights, privileges, or immunities"[48]—which may be one reason why Justice Kennedy attributed only background relevance to international agreements. To be immediately pertinent for Section 1983 purposes, treaty terms would seemingly need to be self-executing.[49] PWSA provisions appear to meet Supreme Court requirements for enforceability. Title II and—where the Coast Guard has issued regulations in conflict with state law—Title I are properly read to impose the binding obligations on state officials that the Supreme Court requires.[50] These obligations are not just a consequence of the Supremacy Clause, but are, more precisely, concomitants of the relationships that PWSA establishes. The statutory provisions impose specific legal duties on tanker operations; states are bound not to interfere with performance of these duties—and thus operators hold correlative rights vis à vis states.[51] This analysis, obviously, also shows that state obligations are for the benefit of tanker operators.[52] Justice Kennedy's acknowledgment of the international preoccupations informing PWSA's terms is also apposite. Mare liberum is a proposition—perhaps most obviously so in its Grotian articulation—that takes as its point of departure the pursuit by individuals of individual interests. At bottom, little turns on whether these individuals are private actors or states. What does matter, instead, is whether bodies of water capable in fact of being used by all remain in law open to common use. Common right, here at least, subsumes individual rights.[53]

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U.S. constitutional law—state statutes imposing indirect sanctions on foreign countries—federal preemption—sanctions against Myanmar (Burma)

CROSBY V. NATIONAL FOREIGN TRADE COUNCIL. 120 S.Ct. 2288.
Supreme Court of the United States, June 19, 2000.

In June 1996, the Commonwealth of Massachusetts enacted a law[1] aimed at indirectly punishing the repressive State Law and Order Restoration Council (SLORC) military government of Myanmar (formerly Burma) by broadly preventing companies and individuals that did business with Myanmar from doing business with the Commonwealth of Massachusetts and its agencies. In April 1998, the law was challenged in federal district court by the National Foreign Trade Council, a 550-member trade group comprising corporations and financial institutions involved in overseas trade and international investment. Both the district court and, on appeal, the Court of Appeals for the First Circuit ruled against the state, holding that the statute was inconsistent with the Constitution's "dormant" foreign affairs power. The First Circuit also held that the statute violated preemption principles and the dormant Foreign Commerce Clause doctrine.[2] A unanimous Supreme Court affirmed, but solely on

[48] *See* Blessing v. Firestone, 520 U.S. 329, 340–41 (1997).

[49] *See* Bacardi Corp. v. Domenech, 311 U.S. 150, 161–63 (1940).

[50] *See Blessing*, 520 U.S. at 341; Lividas v. Bradshaw, 512 U.S. 107, 132–33 (1994).

[51] *See* Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 512–14 (1990); Clearfield Trust Co. v. United States, 318 U.S. 363, 366 (1943).

[52] *See Blessing*, 520 U.S. at 340.

[53] *See generally* RICHARD TUCK, PHILOSOPHY AND GOVERNMENT, 1572–1651, at 154–201 (1993).

[1] *See* MASS. GEN. LAW ANN. ch. 7 §22G–J (West Supp. 1998).

[2] National Foreign Trade Council v. Natsios, 181 F.3d 38 (1st Cir. 1999); National Foreign Trade Council v. Baker, 26 F. Supp.2d 287 (D. Mass. 1998). *See generally* Brannon P. Denning & Jack H. McCall, *The Constitutionality*