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Economic Extraterritorial Regulation Amongst the American States

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Abstract

Economically-powerful or large states regulate less powerful states through extraterritorial regulation. This practice contributes to a diminishing effect on political agency relative to political decision making. While allowed by the Supreme Court of the United States and the Congress of the United States, this practice is exhibited primarily in the *California Effect*, a phenomenon describing how more-powerful sovereigns regulate less-powerful sovereigns through economic access. However, this phenomenon observed how the State of California used its power to regulate environmental policy nationwide and international commerce, not describing interactions amongst the American states in other topical, policy areas. By analysing historical and contemporary examples, this study demonstrates the reality of extraterritorial regulation and how concepts of federalism and political representation shape legal precedents that allow this practice to occur. Second, using a case study focused on the State of California, the State of Texas, and the State of New York, this study looked for pending or promulgated legislation with extraterritorial effect outside of environmental regulation and where the Congress preempts state law. Conclusively, the practice of economically-powerful American states regulating extraterritorially exists in other policy areas and occurs as a means of national influence outside of federal channels. Additionally, this practice diminishes the political decision-making power of individuals and businesses in non-originating states by influencing or preventing commerce without access to political representation. The findings of this study suggest that the Supreme Court, Congress, or both bodies may use their powers to close loopholes that enable states to regulate with far-reaching effects.

Keywords: Dormant Commerce Clause, Commerce Clause, Extraterritorial Regulation, California Effect, Political Representation, American States

SECTION 1: Introduction

Laws and regulations relative to commerce shape the lives of consumers and producers across the United States. From what food is declared safe to eat to what items are illegal to sell such as fireworks or illicit substances, the various states and the federal government regulate the free market for consumer protection and other economic engagements. While the Constitution grants Congress the ability to regulate interstate and foreign commerce, the states are the sole authority on commerce wholly within their respective territorial borders. However, some states use their qualities such as population and economic strength, in attempts to regulate extraterritorially. Likewise, the effect of some laws of various states may constitute extraterritorial regulation of consumers and producers wholly outside the scope of the originator's jurisdiction; Sanctioned through judicial decisions and inaction of Congress. For example, the State of California's Proposition 12 which regulates pork, whether it originates in or outside of the state, may have far reaching effects. Political decisions are rendered daily by governing bodies and this practice deadlocks the political decisions of local electorates and may have effects on the utility of federalism and notions of sovereignty of the various states through economic and authoritative means. The solution may lay within Congressional action and the creation of new judicial precedents to better account for an interconnected national economy. The states use their legal discretion to regulate extraterritorially and while this is permissible, it may prove harmful to the agency of individuals and commercial enterprises within constructs of political representation known to American forms of government.

This paper will begin with a brief overview of historical precedents relative to the Commerce Clause and core concepts of American government in Section 2: Historical Background and Core Concepts. It will then explore contemporary concepts regarding

extraterritorial regulation and current academic sentiment on the topic in Section 3: Contemporary Literature Review. Subsequently, methodology and research findings will be reviewed and analyzed in Section 4: Methodology and Section 5: Findings and Analysis, respectively. Afterward, there will be a discussion of conclusions drawn from research in Section 6: Conclusions and Impacts and a discussion of possible solutions in Section 7: A Possible Solution. This paper will conclude with a brief overview of all matters presented and areas of potential for further research in Section 8: The American Experiment.

SECTION 2: Historical Background and Core Concepts

The practice of governmental bodies regulating commerce is older than the United States. When the Articles of Confederation, the founding document that united the states before the federal constitution of 1789, were in effect, "Congress lacked the authority to regulate commerce, making it unable to protect or standardize trade between foreign nations and the various states" (Library of Congress, n.d.). Subsequently, Congress requested the power to regulate commerce from the states but was ultimately ignored by the states, causing inconsistencies within the national economy. With states freely trading with foreign nations and inequitably competing with one another, it was evident that something needed to change since the Articles were no longer practical. That change would come in the new Constitution of 1789 (The Constitution) which is still in effect today. The Constitution, once ratified, gave Congress a broad grant of authority "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (U.S. Const. Art. I, Sec. 8, cl 3). As written, Congress now possessed an explicit, enumerated power to regulate commerce "among the several States" (U.S.

Const. Art. I, Sec. 8, cl 3). However, the states continued to implement and attempt to enforce their own jurisdictional laws over interstate commerce, defying federal commerce regulations in the process and ignoring the supremacy of federal laws. Ultimately, this practice brought intervention by the Supreme Court of the United States (Court) in Ogden v. Gibbons (1824).

The main takeaway of Ogden v. Gibbons (1824) is that Congress has supremacy over state laws regulating commerce and the sole ability to regulate interstate commerce. In the opinion of the Court, Chief Justice Marshall writes that the Commerce Clause "...appears to have been introduced ex abundanti cautela (Out of an abundance of caution), to remove every temptation to an attempt to-interfere with the powers of Congress over commerce, and to show how far Congress might consent to permit the States to exercise that power. Beyond those limits, even by the consent of Congress, they (the States) could not exercise it. And thus, we have the whole effect of the clause" (*Gibbons v. Ogden*, 1824). Effectively, the Court confirms that the power of Congress to control interstate commerce is superior to that of the states and that it affects all of the states (*Gibbons v. Ogden,* 1824). Likewise, the Gibbons precedent also clarifies that Congress may exercise power over interior commerce in a state when it is reasonably integrated with interstate commerce (National Constitution Center, 2023). In other words, a deeply intermingled and non-distinct trade or interaction that affected intercourse (in this sense defined as intermingled subjects) between the states could also be subject to Congressional action. Inversely, those affairs which are wholly within the preview of a state are solely under the jurisdiction of that state (National Constitution Center, 2023). The decision in Gibbons v. Ogden (1824) and other similar cases would provide the basis of judicial interpretation and Congressional action for almost two hundred years, eventually being clarified by the Court

through other cases into both the active Commerce clause, which has been discussed as an Article I power of Congress above, and the newer Dormant Commerce clause.

The Dormant Commerce clause originated as an implied power from the Commerce clause in areas of commercial activity where Congress is dormant. This judicial precedent is employed when Congress has not acted, preempted, or otherwise moved in a specific topical area and when a state law interferes with interstate commerce in a discriminatory and burdensome way. This interpretation originates in Pike v. Bruce Church, Inc. (1970), when the State of Arizona (Arizona) attempted to prohibit the exporting of cantaloupes grown in the State to other states for processing where the product would no longer bear a label indicating its origination in Arizona (Legal Information Institute, 2023). Specifically, this regulation would have imposed a substantial burden on Bruce Church, Inc., a cantaloupe grower that sent their fruit to the State of California (California) for processing and packaging (*Pike v. Bruce Church, Inc.* 1970). The Court decided in favor of Bruce Church, Inc. and further defined the ability of states to regulate commerce writing, "When the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits" (*Pike v. Bruce Church, Inc. 1970).* As such, the outcome of such laws rest on whether they are discriminatory against outer state interests, whether the local benefits outweigh the burdens of restriction, and if the intention of the regulation could have been achieved by non-discriminatory means. If Congress has acted in a topical area and state law is challenged, it is to be judged by the active or regular Commerce Clause as a power of Congress. This should not be confused to mean that state laws that have effects outside their jurisdictional boundary are prime for nullification or in violation of the Commerce Clause.

It must be noted however, that the commerce powers of Congress, while legally broad, are not absolute and that the states retain broad authority over intrastate commerce. As decided in United States v. Lopez (1995), "...certain categories of activity such as "production," "manufacturing," and "mining" were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause" (*United States v. Lopez, 1995).* Together, the active Commerce Clause and the Dormant Commerce Clause, as defined by the Court, prescribe how commerce ought to be regulated and which sovereigns have the ability to do so within a federal structure.

Continuing, political representation is the basis of state regulation and consists of "...some party that is representing; some party that is being represented; something that is being represented; and a setting in which the activity of representation is taking place" (Dovi, 2018). In republicanism, individuals vote for delegates who may partake in the legislative process, constituting a party representing a party and opinions and wills being represented in political government. Since individuals have agency in selecting their representative to a political body, the individuals are then bound by the decisions of that body. However, such laws must not be at variance with the sovereign whether that be a state constitution or the Constitution. Similarly, the organization of the government is federal, with 50 states being equal and a supreme government over them whose law supersedes that of the states, explicit to the Full Faith and Credit Clause and the Supremacy Clause of the Constitution (U.S. Const. Art. IV, Sec. 1; U.S. Const. Art. VI, Sec. 2). Again, the governed must comply with those laws they are subject to because they have consented to the sovereign. This understanding of government is written into the Constitution and draws inspiration from the idea of the social contract.

Thomas Hobbes, an English philosopher, first wrote of this social contract as one that exists between people and their agency to create a sovereign. In short, individuals are free-willed and willingly give-up some of their agency to a sovereign who is tasked with establishing order and peace (Constitutional Rights Foundation, 2016). John Locke, another English philosopher, expand upon Hobbes' notion of a social contract but believed that if a sovereign broke such trust, that the people had an ability to dissolve the sovereign and constitute a new one that would establish order and protect the natural rights of the people (Constitutional Rights Foundation, 2016). Together, the idea of a social contract is a core principle of American republican federalism and exists within the Constitution and the constitutions of states. As a core principle, courts have the option to be deferential to the political process except when they determine the laws passed by or enforced by other parties are counter to the sovereign (a constitution) or inconsistent with notions of supremacy innate to federalism (a state law cannot undo or preempt a federal one).

Together, the ideas of political representation and political philosophy constitute a historical-philosophical overview of what makes the American style of government familiar, both on a national and state level. Laws get made as representations of the will of the people and people are compelled to comply with them because they have constituted a sovereign to create order. While that idea is complex, it is important to democratic government because without political representation, a sovereign could, possibly, not be a governor of consent but rather authoritative. Having reviewed legal precedents and historical-philosophical concepts, it is now appropriate to discuss contemporary literature pertaining to the topic of extraterritorial regulation.

SECTION 3: Contemporary Literature Review

In contemporary politics, state law has widespread effects on other states, especially those states who have advantages, and have been deemed permissible by the Court. To begin, the phenomenon of states affecting subjects of other states, both producers and consumers, is known as the *California Effect*. The *California Effect* was first defined by David Vogul and documents how when California "...adopts strict regulations, those standards often end up spreading to other jurisdictions" (Woods et. al., 2022). Vogul argues that California is "...such a large [economic] market … that anything which California acquires for its own product sold in its state is going to resonate among national and global companies" (Vogul cited in Woods et. al., 2022). An example of California's economic impact is environmental regulations where they requested a carve-out from Congress when they were legislating the Clean Air Act of 1970. The State wanted the ability to implement stricter standards than the federal government and was allowed to. Since then, California has led the way in national environmental standards because the size of their market allows their law to affect broad industries. For example, a car manufacturer is, through market powers, encouraged to implement California's standards because not doing so would mean they lose the ability to compete in the market. It is worth noting that "...roughly 1 out of every 8 consumer dollars in the U.S. was spent by a Californian," which demonstrates the necessity of the California market for national competitors (Woods et al., 2022). Furthermore, industries "...often end up adopting California's rules across the country because doing so is cheaper than trying to craft two separate sets of products and policies" (Dougherty, 2023). To this point, Umair Irfan reports that, "Many car companies would rather build their offerings to similar standards than precisely tailoring their vehicles to different emissions standards in different countries…" a conclusion that derives from economic competition and returns on invested

resources (Irfan, 2019). An example of this is how the “California Air Resources Board (CARB) alongside Ford Motor Company, Volkswagen AG, Honda Motor Company Ltd., and BMW of North America agreed to increase vehicle fuel economy of their fleets” (Irfan, 2019). What this pattern of behavior means then is that California, through its sovereignty (i.e., its ability to promulgate laws), realizes that it can lead nationally. This has been realized in areas outside of environmental regulations since, “In recent decades, California’s appliance and energy rules have set national standards for televisions, washing machines and a host of battery-operated contraptions as diverse as golf carts and electric toothbrushes” (Dougherty, 2023). What this expansion demonstrates is that the notion of the *California Effec*t being only relevant in environmental policy is no longer an accurate description of the phenomenon. Vogul clarifies in a supplementary publication that “Political jurisdictions which have developed stricter product standards often force foreign producers in nations with weaker domestic standards to design products that meet those standards, since otherwise they will be denied access to its markets" (1999). The same economic principle applies to producers in different states.

This effect extends beyond just environmental regulations too, with public health and safety also being felt across the nation. Geoffrey Mohan of the Los Angeles Times wrote an article regarding California Proposition 65 (Prop 65) which is administered under the California Office of Environmental Health Hazard Assessment (OEHHA) and, “...requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm” (OEHHA, 2023a). It is necessary to mention that Prop 65 was adopted by California voters, “...to address their growing concerns about exposure to toxic chemicals,” and that the law is designed to help consumers make informed decisions relative to chemical exposure (OEHHA, 2023b). Mohan spoke with Larry Plesent, a soap

manufacturer in Vermont, and found that Plesent "[Did] not wish to fight against California," as it concerns labeling his product, naturally derived soaps, to contain carcinogens, teratogens, or other harmful chemicals (Mohan, 2020). Since businesses cannot always create two products, Plesent's product bears the warning in states that are not California, similar to other producers across the nation. While the size of Plesent's business is not immediately clear, it is necessary to state that Prop 65's label requirement does not apply to businesses with under 10 employees. Accordingly, this regulation would seem to affect medium and larger businesses but could also have effects on the growth of small businesses. It is important to note that this extraterritorial effect is not limited to California but also extends to other states where, with various degrees of success, they also have extra jurisdictional influence.

Another example of the *California Effect* is in the State of Texas (Texas) where for years education standards across the country were shaped by Texas educational standards because they were the national leader in textbook consumption. According to Lauren McGaughy of the Houston Chronicle, "For years, publishers have been forced to pay special attention to Texas' textbook demands simply because the state is so large. One in 10 [sic.] of the country's public school students sits in a classroom in Texas, and thanks to the recession that caused California to halt its textbook adoption process until recently, by 2011 the Lone Star State was spending more than any other on instructional materials" (McGaughy, 2014). Similarly, Rob Alex Fitt writes "Because of the size of Texas' textbook market, [their educational standards] influenced what was taught to all American children. For publishers, it was not economically viable to write one book to appease campaigners in Texas and a different version to sell elsewhere" (Fitt, 2020). While the rise of digital media has reduced Texas's influence in the educational literature market due to less costs surrounding physical manufacturing and vending and the availability of digital

literature, the State's use of its market influence in the textbook industry was a powerful force in shaping the educational standards of other states through what materials were being produced.

As such, some in academia would indicate that the effect is coming to represent state entities using their qualities to regulate extraterritorially. Likewise, some are arguing that this practice, "...threatens to return the country to the trade wars of two centuries ago, when states tried to disadvantage their neighbors and hamper cross-border industries" (Dougherty, 2023). Some states are beginning to get irritated with this practice. According to Zach Budryk " Seventeen Republican state attorneys general … announced a lawsuit against the Environmental Protection Agency (EPA) for allowing California to set its own vehicle emissions standards," challenging the enabling statute as a violation of equal sovereignty (Budryk, 2022). While the challenge here is one based on sovereignty, it is necessary to see the underpinnings of the California effect here. It is impossible to say whether those States would have sued the Environmental Protection Agency if they had also received a carve out or if the carve out had been in a state such as Texas. Nonetheless, since California sets the standard and industry feels it necessary to comply, they feel their sovereignty is threatened. This case is still pending a decision before the U.S. Court of Appeals for the District of Columbia Circuit (U.S. Chamber of Commerce, 2023).

In a similar way, several states sued California over a law that regulates what pork can be sold within the state. Unlike the challenge above, this case has been heard by the Court and they rendered a decision. National Pork Producers Council v. Ross (2023) was a case brought on by the adoption of California's Proposition 12 (Prop 12) which "forbids the in-state sale of whole pork meat that comes from breeding pigs (or their immediate offspring) that are 'confined in a cruel manner'." (*National Pork Producers Council v. Ross,* 2023). The petitioners, in this case

the National Pork Producers Council and the American Farm Bureau Federation, argued that Prop 12 burdened interstate commerce and that it unduly burdens out-of-state producers with the costs of compliance because California imports most of its pork from other states. For example, if a state outside of California imported most of its pork product to California then said state would bear the costs of implementing measures that allow compliance to continue participating in the market. Similarly, pig and hog farmers who exist outside of California who sell to a pork manufacturer that does sell to California will be required to implement changes or lose their contracts because the distributor has decided it must remain competitive in the California economy. In both cases, California residents shift the burden of compliance to out-of-state producers alongside in-state producers but because significantly more pork comes from out-of-state they argue this is a violation of the Dormant Commerce Clause. On the other hand, it could be argued that California has a sovereign right to regulate the production of pork within its state and economic regulation is a tool by which to accomplish this. Since farmers in California are subject to the regulation too, it could not be discriminatory and burden-wise, producers could shift to other markets. Justice Gorsuch, writing for the Court, rejects their claims that Prop 12 violated the dormant commerce clause saying, “Preventing state officials from enforcing a democratically adopted state law in the name of the dormant Commerce Clause is a matter of “extreme delicacy,” something courts should do only “where the infraction is clear” (*National Pork Producers Council v. Ross,* 2023). Similarly, they refused to consider the petitioners’ argument that Prop 12 ought to be nullified because of a per se nexus with commerce because of its extraterritorial implications. As Court decides “[Nullifying Prop 12] would essentially replicate under Pike’s banner petitioners’ “almost per se” rule against state laws with extraterritorial effects” (*National Pork Producers Council v. Ross*, 2023). Effectively, since

California's law applied to producers in and outside of its state, there was found to be no discrimination when tested against the Dormant Commerce Clause. Similarly, Congress has not moved or preempted the topical area that Prop 12 seeks to regulate so it is not in violation of the Commerce Clause. According to the Court, Prop 12 is constitutional and courts should be cautioned against nullifying state laws because of purported harm. In a similar way, the Court casts doubt on its ability to assess the wisdom of electorates and state legislatures writing that their precedents "...Do not provide judges "a roving license" to reassess the wisdom of state legislation in light of any conceivable out-of-state interest, economic or otherwise" (*National Pork Producers Council v. Ross,* 2023). As such, the Court affirms that Prop 12 is legally permissible and rejects notions towards it of unconstitutionality on the basis of the Commerce Clause, both active and dormant.

While the majority opinion carries the weight of law, it is in the dissents that this work finds particular interest. Chief Justice Roberts finds that Prop 12 does impose a substantial burden to out-of-state producers and that according to the Pike precedent, it should have been reconsidered by the Appellate Court. Roberts writes, "Pike provides that nondiscriminatory state regulations are valid under the Commerce Clause "unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits" he further writes that he "...would find that petitioners' have plausibly alleged a substantial burden against interstate commerce," and that the petition ought to be reconsidered through Pike precedent (*National Pork Producers Council v. Ross,* 2023). Roberts, joined in part and dissented to in parts by Justices Alito, Kavanuagh, and Jackson, argues that the application of precedent here is wrong but that the result was acceptable. Justice Kavanaugh, in his own dissent, argues that "In short, through Proposition 12, California is forcing massive changes to pig-farming and pork-production

practices throughout the United States. Proposition 12 therefore substantially burdens the interstate pork market," which violates the Dormant Commerce Clause (*National Pork Producers Council v. Ross*, 2023). Important to these dissents is Congressional inaction. Since the petitioners could lobby Congress to preempt California law, and there has been no attempt to, there is no violation of the Commerce Clause. In other words, Prop 12 is able to stand, though the dissents would like to see it reviewed in differing ways which may have yielded a different outcome. Having not been found to violate the Commerce Clause or the Dormant Commerce Clause, the law is constitutional and further challenge would likely need to originate as a challenge of the State's power over itself.

Together, the opinions demonstrate the question at the core of this work, is extraterritorial regulation a practice? Is it permissible?; And it adds the question of whether *per se* violations of the Dormant Commerce Clause constitute an actual violation? From this case, the answers are yes, yes, and no. That negative is important because clearly, Prop 12 has external effects but can stand because it is nondiscriminatory and has not been federally preempted. Nonetheless, it is another example of the *California Effect* and the latest in a long history of states influencing other producers in other states through markets. In the case of the pork industry, which the Court found to be highly intermingled and inseparable, it allows California voters to regulate the production of pork nationally. If this were to change, the challenge would need to originate in the State as a matter of sovereign self-regulation.

Overall, through the *California effect*, states can have far-reaching effects through state law and as will become clear in further sections, some states may legislate to intentionally achieve this effect. Deemed constitutional by the Courts and without preemption from Congress, contemporary literature suggests that this practice is common, tangible, and permissible.

SECTION 4: Methodology

For this work, it is most appropriate to review some laws with extraterritorial effect that some states have promulgated as well as supplementary information surrounding them, if attainable and applicable. As such, it became necessary to select a few states that could potentially exert the most influence in accordance with the *California Effect* as discussed in prior sections. Therefore, of all the states to analyze, it became necessary to select them based on geographical size, market monopolies contained therein, economic power, political power, and other qualities to assist in the narrowing of options. This metric yielded the following States as prime objects of this study: California, Texas, New York, and Florida. These States seem the most likely to have attempted to use their sovereignty to regulate business, people, states, or some combination thereof, because of their qualities.

To begin, California presents as a natural subject of this study, not only due to it being a basis of the *California Effect* phenomenon, but also because it possesses the largest market and economic power within the United States. According to an article published in Forbes, California contributed "...14.2% to U.S. GDP in Q1 of 2023" (Buchholz, 2023). Additionally, in 2022, California was credited for "$3,167,460,800,000" of the annual U.S. GDP which totaled, "...21,882, 037,000,000" (U.S. Bureau of Economic Analysis, 2023). In 2022, the leading sector of California's economy was the Information Sector which comprises "Publishing industries (except internet); Motion picture and Sound Recording Industries; Broadcasting; Telecommunications; Data Processing, Hosting, and Related Services; and other information services" (DePietro 2022; U.S. Bureau of Labor Statistics, 2023a). In other words, California is

the dominant market in the United States and so it becomes necessary to research them further and contemporarily relative to extraterritorial regulation.

Continuing, Texas presents as a subject since it is the nation's second largest economy, having contributed, "...$1,924,007,500,000," to the national GDP in 2022 and comprising "9.2% to the U.S. GDP in Q1 of 2023" (U.S. Bureau of Economic Analysis, 2023; Buchholz, 2023). The state's dominant sector is Manufacturing which is comprised of "...establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products" (DePietro, 2022; U.S. Bureau of Labor Statistics, 2023b). Texas, due to being the second economic strength in the nation, earns its spot in this study.

In a similar way, the State of New York (New York) becomes a subject because they contributed, "...$1,763,524,600,000…" to the U.S. GDP in 2022 and constituted "...8.1%" to the U.S. GDP in quarter 1 of 2023, making them the nation's third highest economy (U.S. Bureau of Economic Analysis, 2023c; Buchholz, 2023). New York's dominant sector is the Finance and Insurance Sector, which is composed of "establishments primarily engaged in financial transactions (transactions involving the creation, liquidation, or change in ownership of financial assets) and/or in facilitating financial transactions" (DiPietro, 2022; U.S. Bureau of Labor Statistics, 2023). As the nation's third highest economic producer, New York has a place within this study.

Together, these three States present the best opportunity to witness extraterritorial regulation, both intentionally and unintentionally, due to their economic impacts and contributions to the national economy. In other words, their output is a marker of their market strength, especially in those sectors that lead their local economies, so a large market becomes

the dominant tool to influence those outside their jurisdiction, both producers and consumers alike. At the very least, they present as prime subjects for study.

For data, it is necessary to research laws, legislation, or executive orders that exhibit qualities that could be extraterritorial regulation, especially those that are testified to as doing such (i.e., The law is purposely intended to affect consumers and producers in other jurisdictions). In most cases, it will be impossible to prove intent so the main focus in searching for state legal material from these various States will be language and actual or intended impacts which are a result of statutory outcomes on producers, consumers, and other market participants. It is necessary to mention that this study is not exhaustive, that the data does not follow a particular range of time (though examples have mostly been found for the years 2022 and 2023), and that there may be and likely are more examples outside these. Similarly, states and their subjects that were not selected to be studied may be mentioned or analyzed for the impacts of those States that were selected. That should not be misconstrued to mean that every state may be impacted by extraterritorial legislation. Moreso, the legislation from study-selected States may impact some markets more than others and the states that contain them which is primarily how producers and consumers may be affected, both in the agency of creation and purchasing. With that being said, it is appropriate to move to findings and analysis.

SECTION 5: Findings and Analysis

To display research, it is most appropriate to move state by state and to discuss both legislation and impact, starting with California which has many effective statutes that carry extraterritorial consequences and range from manufacturing and retail to food safety and the information sector. To begin, Assembly Bill No. 1200 of the 2021-2022 California legislative

session (AB.1200) prohibits "...any person from distributing, selling, or offering for sale in the state any food packaging that contains regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS" (Cal. Legis. Assemb., 2021a). This bill, now Chapter 15 of Division 104 of California Health and Safety Code, explicitly prohibits the sale or distribution of food packaging or cookware that contains PFAs, a type of macro, meso, or micro-plastic. California's prohibition on PFAs is not just limited to food safety however as Assembly Bill No. 1817 of the 2021-2022 legislative session (AB.1817) prohibits "...any person from manufacturing, distributing, selling, or offering for sale in the state any new, not previously owned, textile articles that contain regulated PFAS, except as specified, and requires a manufacturer to use the least toxic alternative" (Cal. Legis. Assemb., 2021b). Now a part of Chapter 13.5 of Division 104 of the Health and Safety Code, this bill prohibits textile manufacturers and consumers, especially those in the clothing industry, from using materials that contain PFAs. Like AB.1200, AB.1817 will have larger ramifications than what consumers in California can purchase since these statutes do not differentiate between in-state and out-of-state producers. Additionally, as these statutes affect manufacturers, businesses, and individuals that create or utilize food packaging or textiles and clothing retailers into compliance, or they cannot compete in the California market. These are some examples in health policy, but California's laws affect other topical areas as well.

Consider public health and safety, where Assembly Bill No. 1595 of the 2021-2022 legislative session, also known as the Firearm Industry Responsibility Act, attempts to, "...authorize a person who has suffered harm in California, the Attorney General, or city or county attorneys to bring a civil action against a firearm industry member for an act or omission in violation of the firearm industry standard of conduct, as specified" (Cal. Legis. Assemb., 2021c). This statute is of particular interest because it is an example where intent can be proven

relative to extraterritorial effect. Assemblymember Phil Ting, one of the legislation's authors, said "For far too long, the firearms industry has enjoyed federal immunity from civil lawsuits, providing them no incentive for them to follow our laws. Hitting their bottom line may finally compel them to step up to reduce gun violence by preventing illegal sales and theft" (Ting as cited in Office of Governor Gavin Newsom, 2022). This legislation, now Chapter 20 of part 4 of Division 3 of the Civil Code, effectively allows individuals to pursue civil damages against firearm manufacturers and distributors for failure to secure reasonable safety measures if firearms cause damages. In other words, it allows victims and relatives of victims to sue members of the firearm industry to force compliance with firearm regulations through economic means. This bill specifically uses a loophole in federal legislation to allow for damages under state law and this could be used to sue firearm manufacturers and distributors wholly outside California if damages occur within the state or relative to residents of the state (Office of Governor Gavin Newsom, 2022). In a similar way, though not legislation, Governor Gavin Newsom of California declined to renew the state's contract with Walgreens, a drugstore company, after the company decided to no longer dispense Mifepristone, a pharmaceutical abortifacient, in states that threatened legal action relative to local reproductive health laws. Governor Newsom argued that, "California is on track to be the fourth largest economy in the world and we will leverage our market power to defend the right to choose…" in an attempt to show the state would not yield to other states who, together, effectively constituted a national ban on the drug (Newsom as cited in Office of Governor Gavin Newsom, 2023). Furthermore, this particular move demonstrated a willingness on part of California to try and influence business decisions in non-California jurisdictions. It should be noted here that, "Walgreens shares fell

1.77% on Monday following Newsom's announcement," an immediate indication of California's impact (Olson, 2023)

California's impact in the information sector should not be overlooked either, especially as it concerns emergent artificial intelligence technology (A.I.). State Senator Scott Wiener introduced Senate Bill No. 294, An Act relating to artificial intelligence, which seeks to regulate the A.I. field by having California lead the way. The bill expresses a legislative intent to "enact legislation related to artificial intelligence that would relate to, among other things, establishing standards and requirements for the safe development, secure deployment, and responsible scaling of frontier AI models in the California market by, among other things, establishing a framework of disclosure requirements for AI models" (Cal. Legis. Sen., 2023). On this bill, Senator Weiner argues, "In an ideal world we would have a strong federal AI regulatory scheme … But California has a history of acting when the federal government is moving either too slowly or not acting…" a testament to the state's effect (Weiner as cited in Perrigo, 2023). He continues by saying "...when California sets rules around AI, that will have a global impact…" due to the state's nexus with the information sector (Weiner as cited in Perrigo, 2023). While this bill is still being debated, its intent and impact is clear, its outcome is to regulate A.I. around the globe and as an alternative to federal action; Note that there is no federal prohibition or preemption because this is an emergent field. Whether or not California adopts this legislation is unclear. However, if promulgated, it would set the tone for A.I. policy compliance across the nation because of how integral the state is to the information sector. Simply, businesses that begin in California have to comply and those that want to compete have to comply or face real difficulty in the market, raising questions about economic competitiveness and impact on innovation. This effect goes

farther than mere influence and constitutes extraterritorial regulation, both with intent and in outcome.

Across the three policy areas discussed above, California has laws, legislation, or executive actions that constitute extraterritorial movement, both intentionally and as a result of broad market bans and regulations. It is worth mentioning that this trend is prominent in other areas. As such, this behavior is not accidental but rather a trend that points to a broader phenomenon than the *California Effect* defines, that is major influence across different sectors and not just environmental policy. Furthermore, if primary producers in other states are subjected to commercial laws because their consumers are subject to California's market laws, then they become subjects of a state law that they never consented to but have to or else they lose market viability and a chance to compete with personal consumers. In other words, all businesses have to comply with the outcome or lose vertical organizational competitiveness or direct market access to buyers, both which impose substantial burdens on industry and demonstrate the far reaching externalities of California's sovereignty in ways that are not mere consequence.

Texas is also party to this trend as the nation's second largest economy and they too have legislation with extraterritorial effect in areas of education, healthcare, and more. Starting with education, House Bill No. 900 titled the Restricting Explicit and Adult-Designated Educational Resources (READER) Act, prohibits library material vendors from selling library materials like literature or media to school districts or open-enrollment charter schools, "...unless the vendor has issued appropriate ratings regarding sexually explicit material and sexually relevant material previously sold to a district or school" (Tex. Legis. Hou., 2023a). Furthermore, the Act prohibits the sale of library materials to school districts or open-enrollment charter schools from vendors who do not comply with the rating guidelines. Additionally, the definition of sexually explicit in

this statute is vague and tends to be reduced to the subjective standard of whether a work is patently offensive. Nonetheless, the effect of this statute constitutes an easier standard to ban literature in Texas and the removal of such literature deemed to violate the statute from schools. However, since Texas does have a large education market, this statute presents to library vendors an option to rate their products consistent with state law or to be prohibited from the Texas market. Like other economic prohibitions, retailers and publishers are faced with the option of participation or a loss of profit and like other products, it is not practical to make two separate products, encouraging vendors to create one standard and implement it within the broader educational market. This means that Texas's moral sensibilities may end up through the states and certainly be reflected in Texas's producers of literary or media materials that may end up in a library setting. An example of this effect is found in business decisions of the Scholastic Publishing Company (Scholastic). According to Hana Ikramuddin of the Houston Chronicle, "Scholastic is working to place titles dealing with race, gender and sexuality into a separate catalog for its popular book fairs that raise money for schools…" as a response to book bans in states like Texas (Ikramuddin, 2023). The READER Act, coupled with statutes meant to counter diversity, equity, and inclusion, has made publishing companies make decisions about how to label and sell their literature. As such, Scholastic's choice to offer distinct packages of literature based on content relative to gender and race is a national outcome of Texas's and other states' laws, especially as it concerns materials that could be construed to be "...sexually explicit…" like mentions of sexual orientation or gender identity. Overall, the READER Act is vague and because of that, its reach is far and wide, both in what materials are banned and in the companies that are affected since vendors are intermediaries between consumers and producers.

In a similar way, Texas also passed Senate Bill No. 8, known as the Texas Heartbeat Act. The Texas Heartbeat Act, among other things, allows private individuals to seek civil damages against other individuals for receiving, performing, or aiding an abortion, whether it occurred within the boundaries of the state or elsewhere (Tex. Legis. Sen., 2021). The model for California's similar firearm legislation discussed above, this act seeks to influence providers more than anyone and would affect the bottom line of abortion providers within the state and outside of the state. Furthermore, based on the construction of the statute, if an individual is not a Texas resident and receives an abortion and then moves to Texas, they could be held civilly liable. In the event a court claim is successful the Texas Heartbeat Act mandates that, "Statutory damages in an amount of not less than $10,000 for each abortion [shall be issued to the defendant]..." and that said judgement also includes court and attorney's fees (Tex. Legis. Sen., 2021). By pursuing abortion providers, abetters, abiders, and recipients financially, Texas hopes to eliminate the practice not only statutory but by moving those that participate in the procedure into financial negatives. Since this statute is vague to allow for broad summaries of judgement, models of healthcare which are available in other states are stressed through consumer demands and economic means since Texas has effectively outsourced its reproductive healthcare sector. As such, doctors who perform this procedure, vendors who sell surgical material, nonprofits that help funding for underserved communities, and other interwoven subjects become extraterritorially affected and may be reluctant to provide care in jurisdictions that allow it.

Another example of Texas legislation with broad and burdensome weight is House Bill No. 896 (HB.896), not yet titled, which relates to social media. What HB.896 effectively does is prohibit children between the ages of thirteen and eighteen years old from using or accessing social media platforms (Tex. Legis. Hou., 2023b). Additionally, to enforce this ban on access,

this legislation requires the submission of personal identification documents and a photograph that relates the account holder to the identification provided (Tex. Legis. Hou., 2023b). Social media companies in violation of this mandate will be subject to consumer protection laws, carrying hefty fines and other tools of sanction. While this does not imply *prima facie* extraterritoriality, again, the broadness of the ban and verification guidelines presents an inherent barrier to access. Should this bill pass, social media companies that provide services to Texas will have to establish a process that corresponds to the state law, meaning that every user that is based in Texas will have to verify their adulthood. However, what does this say for visitors, or if the process is too burdensome for the media companies? What if Texas dominated the social media market or as the nation's second most populous state had more direct influence over media companies because they were within their jurisdiction? It is likely that media companies would likely see this process as burdensome but because of Texas's market, they would comply and it would not be unreasonable to presume that rather than have multiple different policies across the various states, they might just adopt the strictest standard to save costs on implementation down the line, when other states would maybe model legislation on Texas's law. While this is more hypothetical an example than an application of legal outcomes, this bill has the workings to be an extraterritorial regulation, through market bans that would disconnect consumers, either through age or by alienation through privacy concerns for mature audiences. Like California, Texas uses its laws to impact markets which ultimately direct business and the decisions of producers and consumers in other jurisdictions.

Moving on, New York is no different than the previous two States when it comes to extraterritorial regulation. To start, New York Senate Bill 6605-A prohibits the use of certain food additives such as red dye 3 and titanium dioxide from being used at any stage of food

product creation and retail sale, including possession (N.Y. Legis. Sen., 2023a). Effectively, this bill forces producers, retailers, and consumers to separate themselves from various food additives, which are deemed acceptable by the Food and Drug Administration (FDA), or lose access to New York's market, including the almost 8.5 million people who reside in New York City (U.S. Census Bureau, 2022). A similar bill was proposed in California and Dana Smith of the New York Times writes "If the bills are passed, it could motivate more brands to follow suit because it might not be economically prudent to produce one batch of products for [these states] and another for the rest of the U.S." (Smith, 2023). Likewise, if New York does adopt this legislation and it does, through business interests, force these products out of the food market, then it also would affect primary producers who create these products, making them either adopt safer, legal alternatives, shift markets, or close their businesses, even if they are wholly outside the boundaries of New York, where the law is applicable.

Similarly, New York Senate Bill No. 4030-B, signed into law in 2021 and titled the Family and Fire Fighter Protection Act, prohibits the use of certain chemical flame retardants with regards to the production of mattresses, various furniture, and electrical enclosures (N.Y. Legis. Sen, 2021). This law also enables a civil penalty against violators of this act, with the first offense carrying a thousand dollar fine per day of continued infraction and the second offense carrying no more than a two-hundred and fifty thousand dollars fine per day of continued infraction (N.Y. Legis. Sen., 2021). Overall, this bill will be very effective in banning the covered flame retardants out of products available to New York consumers, however, like other bans, its effects are very wide. New York is not the leading manufacturer of mattresses in the United States but this ban will impact mattress manufacturing because out-of-state producers, if they want to remain viable in New York's market, will be forced to adjust to this standard. With

the tendency to adopt the strictest standard as a means of regulatory prediction, this may mean that mattress producers across the country will ban these chemicals in their production of mattresses that may never be sold in New York, effectively regulating consumers in other state markets. Additionally, like food additives, what does this mean for primary producers of chemicals or fabrics that go into mattress manufacturing. The same is true for upholstered furniture and electronic components. Does business adjust their model generally with the best, cost-effective alternative or do they forfeit the ability to compete in New York's market. Likewise, do they have a capacity to make two separate products or do they standardize and sell a product that is compliant with New York's regulation in jurisdictions that do not demand such action? The answer is not clear but it would seem to be in the affirmative, that this law and proposed Senate Bill 6605A extend beyond New York consumers and outside of the state's boundaries.

Finally, New York Senate Bill No. 7623-A (S7623A) from the current session of the New York Senate and Assembly (2023-2024 session) seeks to regulate the usage of online monitoring tools in the workplace. Effectively, this bill prohibits, except when necessary and to the least invasive means possible, employers from using "employee data collected through electronic monitoring when making hiring, promotion, termination, disciplinary, or compensation decisions," as well as some restrictions regarding employee privacy and other sensitive data (N.Y. Legis. Sen., 2023b). More generally, it restricts an employer's ability to monitor employees through electronic means unless in a limited way that is necessary to the job being performed. Furthermore, this bill applies to all New York employers including labor contractors. This bill, while obviously affecting New York residents, extends farther than them because it makes no distinction between residents and non-residents. With remote work becoming a large part of the

economy, it is likely that some form of electronic monitoring would be necessary for collaboration and accountability outside of a physical workplace. Nonetheless, certain workers in other states would have more security (i.e., privacy) in their workplace compared to others if their employer was based in New York. Furthermore, this could create pressure on domestic employers to conform with the New York standard, especially in the financial services and insurance sector where New York has an outsized role, because employees may seek employment that prioritizes their privacy and agency in the workplace and remote work makes this distinction possible no matter where one is located in the country.

Overall, California, Texas, and New York, as subjects of this study, are ripe with examples of bills that are either wide-reaching in form or could be used extraterritorially. From the environment to public health, food safety to data privacy and security, the areas that the states can regulate are broad and plenty. There may be more examples to be found but the examples highlighted above illustrate how states use their economic sovereignty to regulate and how, both intentionally and unintentionally, the effects of their laws constitute extraterritorial regulations that affect producers and consumers in other jurisdictions, directly and tangentially. The distinction between correlation and causation here is the component of economic sanction that forces behavior or change in producers wholly outside the originators because of intermingled sectors and the choice to compete or forfeit profits from a market. In that definition, these States consistently act within that perimeter, all of the laws above are recent as of 2020, and surely there are more examples if one was to explore through time. Nonetheless, these examples show sovereigns using their sovereignty and effectively regulating other jurisdictions regardless of intent alongside their own, creating real impacts on extraterritorial producers and consumers.

SECTION 6: Conclusions and the Impacts on Political Agency

From historical, contemporary, and present examples, it is evident that extraterritorial regulation is a common practice amongst the economically powerful states and that the effects of state law can reach far beyond the boundaries of their jurisdiction and polity. Whether intentional or not, economic regulations can affect producers and consumers that cannot consent to the rule of an originating sovereign, raising questions of political agency.

To begin, through the examples of California, Texas, and New York, it is clear their laws can produce widespread effects, especially in material goods. In California's case laws regarding food packaging, medicine, firearms, and other material goods create a choice for businesses – one that equates market accessibility with compliance. Knowing that it is not always possible for a producer to create multiple different products, California leverages its economy as a means of national regulation. In the example of Walgreens, Governor Newsom argued that California will use its economy to leverage business decisions across the country in response to the drugstore company yielding to other state's threats of legal action. Similarly, in the firearms legislation, Assemblymember Ting argues that hurting the bottom-line of producers will force them to take action or forfeit profits through inaccessibility to the state's market. California, the state from which the *California Effect* draws its name, is clearly still a leading exhibitor of the phenomenon. However, other states are also party to it, with Texas and New York using legislation in a similar manner to achieve national or regional effect.

On the topic of material goods, the research shows that states have the largest impact on other jurisdictions through regulations on production, manufacturing, synthesis, and retail commerce. The easiest to trace examples tend to be in the regulation of material goods because an item either contains a banned substance or it does not. In the example of Texas, a book is

either deemed appropriate to be vended or it is not. In New York, a mattress either contains flame retardants or it does not. In this way, states that exhibit extraterritorial laws have their biggest impact relative to actual, material creations. In some ways, this conclusion reflects one of the arguments in *National Pork Producers Council v. Ross* (2023), that the interwoven nature of a vertical economy creates an inseparability between creation and buying, and all the objects in between. In the case of California's pork regulations, demanding that pork sold in the state be raised within certain confines is acceptable; however, since pork rearing and pork production are highly interwoven, it becomes necessary for pig producers across the nation to make these adjustments or lose access to the market.

Similarly, in the case of New York's ban on titanium dioxide as a food additive, does this statute harm miners who do not know where their titanium is destined for? Or producers of titanium dioxide in other states who now cannot sell to food producers anywhere because the manufacturers may not know what goods are destined for New York selves or have chosen to phase out the additive because they cannot create two distinct products? In kind, the far reaching effects of material bans on any stage of material production make state laws of such nature especially potent. It is why, for example, products that will never see California bear a warning label for carcinogens pursuant to Proposition 65. Perhaps in the future, books that are never destined for Texas will bear a rating or upholstered furniture that will never see New York will explicitly state that they do not contain certain flame retardants. Material regulation is a clear way that states produce extraterritorial effects.

Concurrently, laws that affect immaterial goods and behaviors, like those statutes in California, Texas, and New York, that regulate social media or electronic monitoring, are still within the realm of extraterritoriality because companies may exhibit tendencies to adopt the

strictest standard as a means of proactive policy making in response to suspected government action. Similarly, they may change more generally because they do not want to exhibit repetitive costs on the creation of new policy, allowing a state to force wider change in response to the sensibilities of its polity. What this shows generally is that businesses will prioritize streamlining and profit over different products for different markets. What it shows more narrowly, is that states can create industry wide changes regardless of federal action, such as California's bill regarding A.I. where the author of the bill states that their intent is to work around the federal government and create global standards. Similarly, New York's ban on electronic monitoring in hiring decisions moves the employment market towards employee privacy, since remote work is a feasible option. Within this though, it may be seen that local businesses that do not prioritize employee privacy and rights or that are not compelled to by law may lose in the long term because a person would rather choose to work remotely with privacy than to work locally without privacy. Accordingly, New York sets a national standard for what to expect relative to online work. As noted prior, this effect is not merely due to cause and effect, it is something more and some states, such as California, are particularly aware that they can use their state law to regulate broadly. Similarly, it is not just economic competition and innovation that motivates behavior on part of producers or consumers but rather what can and cannot be done. Together, this constitutes a manipulation of markets and behaviors by states through law. Overall, in both material and immaterial commerce, states with economic strength or centralized sectors have the ability to exert their wills over entire industries with national effects.

Having proven that this effect is popular amongst those party to it and a contemporary phenomenon, allows a question of principle to arise: Does this practice fit into political agency? While the Court may find this practice permissible and Congress has yet to act relative to it, it is

fair to argue that extraterritorial regulation deprives non-jurisdictional subjects of the originator of their political agency. In discussing the basis of American political thought through Hobbes' social contract, it is argued that individuals give part of their agency to a sovereign to constitute order and peace. In the case of the United States, there are two sovereigns that individuals are typically subjects of: The federal government of the United States and the government of the state or jurisdiction they reside in. What makes simultaneous polity fair, in accordance with the social contract and democratic-republican government, is residents of a state can vote directly for their state and federal representatives; Meaning that they are bound by the decisions of their state government and the national government because they had agency in picking their representatives that are able to create law on their behalf. This is also true of the President of the United States and the Court, since one is directed through electoral delegation and the other with the consent of the representative body. However, individuals of one state cannot vote for the government of another state, which is an integral part of residential-based sovereignty and the power of governments to respond to the issues that affect their subjects. Effectively, if the laws of one state are enforced in another jurisdiction, either through direct interference or market coercion, then the originating sovereign creates peace and order over a population that did not give their agency to it, despite the maintenance of a local sovereign. In essence, it creates a sovereignty issue that depletes the political agency of non-jurisdictional populations through economic means. While the Commerce Clause and the Dormant Commerce Clause may allow such regulation so long as Congress does not act and said regulation is applicable in and outside of the originator's jurisdiction, it is troubling that, within the federal structure, non-local populations can effectively force regulation on populations that did not consent to being governed. This not only creates a negative in political representation but it also allows larger

states and larger economies to dominate the others and their ability to create laws independently. If the federal government does not act, it is presumptive that California or whatever states have the largest economy could regulate with national power or that the various states would try to one-up each other, both being realities in American history that prompted the end of the Articles of Confederation.

Conclusively, states, particularly those with advantageous qualities like a large population or a robust economy, do regulate with extraterritorial effect in the contemporary day. While not all state laws with external effect constitute extraterritorial regulation, the ones that do constitute regulations on producers and consumers in sovereign states regardless of decision-making powers of said sovereign states. Though legally permissible through the Commerce Clause and the Dormant Commerce Clause, this practice is philosophically at odds with the American ideas of popular representation, political agency, and the democratic-republican form of government found in each of the 50 states and the national government. Similarly, the Constitution was created, in part, to rectify some of the issues that this practice animates. Despite this, there may be a simple solution.

SECTION 7: A Possible Solution

If extraterritorial regulation is a burdensome and denigrating practice on the decision-making ability of other sovereign states, there are two possible solutions. It is known that the Court's interpretation of the Commerce Clause has allowed this phenomenon to persist, most recently in *Pork Producers National Council v. Ross* (2022) because it failed to violate precedent tests in *Gibbons v. Ogden* (1824), *Pike v. Bruce Church, Inc.* (1970), and *United States v. Lopez* (1995), at least in accordance with tests established by the Court therein which

constitute the perimeters of the Commerce Clause and the Dormant Commerce Clause. To allow for judicial remedy, the Court could establish a new precedent test that judges the extraterritorial expanses of state laws if they are challenged on that basis. In the cases above, especially in *Pike* and *Lopez*, the decision used to render Proposition 12 legal in *Pork* was predicated on respecting the local sensibilities of political decision making (in that case California's electorate) and a vague definition of burden relative to affected interests. As such, some clarity or guidelines for lower courts could help the adjudication of cases where this phenomenon is a main issue, though great attention would be required to not overstress cause and effect of law. Existing in an intermingled nation, every law is going to have cause and effect, especially in those larger states. The difference could be a barrier of harm or the wide impact of a regulation on industries that are transregional, that is to say, weighing the scope of a regulation against the impact of it. If a company chooses to compete and comply, this would not constitute a violation even though they have been moved to do such because they, as a unit, have taken steps to implement broad changes. This solution is difficult to define because measuring effects relative to causes and a point of damages is subjective. Perhaps, subjectivity here is key, does a law clear the tests relevant to the Dormant Commerce Clause?; If so, does a reasonable individual find it to be too much of a strain on a local polity? If so, maybe the law ought to be narrowed to immediate producers or consumers and spare creators or otherwise affected subjects. In all, judicial precedent could be a means of lessening the impact of extraterritorial regulation because it allowed it in the first place through the ambiguity that exists between the Commerce Clause and the Dormant Commerce Clause.

A second, more feasible option is for Congress to preempt state law relative to goods which places relevant laws with extraterritorial effect under the scrutiny of the Commerce

Clause, changing the level of judicial scrutiny. It does mean that this phenomenon will still happen but it increases the burden on part of the states to prove that their commerce regulation is not a stand in for an interstate regulation which is solely Congress's to prescribe. Furthermore, this creates a path of representation from each polity to the national body politic and ensures that individuals have a stake in laws that are made on their behalf. If Congress were to exercise its powers, it could do so broadly and then judicial actors could determine if there is a constitutional question.

Alternatively, less economically powerful states could spend considerable resources to promote business behaviors within their state. However, the activity promoted would likely need to be more beneficial than conforming to the regulation of the more economically powerful state. It could be argued that medium-sized economies could combine their efforts to neutralize the effect of larger economies but again, corporate actors would need to realize more benefits than not relative to other actions. At the same time, this kind of compounding runs afoul of the Commerce Clause because Congress has sole jurisdiction of interstate commerce so it would likely need to be a unitary effort on a case by case basis. While not the most successful option, states guaranteeing corporate flourishing could be a moderately successful way to mitigate the *California Effect.* Overall, while state action could be a semi-viable solution, the most effective remedy seems to lay with congressional preemption, the Court creating new precedent, or some combination thereof.

SECTION 8: The American Experiment

This work has, through historical, contemporary, and present case studies, defined both commerce powers and American political philosophy. As such, there exists a tendency to question the motivations and methods within the American framework for when states move outside established channels such as Congress. However, it is necessary to mention that the United States is only a couple hundred years old. Its institutions have evolved over time and so have applications of constitutional law. The Commerce Clause and the Dormant Commerce Clause are interpretations of the Court overtime when disputes have arisen over the meaning of the Constitution. Similarly, ideas of political representation, the purposes of government, and what constitutes a sovereign have also had their meanings evolve. Nonetheless, in the American experiment, large democratic institutions exist as just that – an experiment. It is the work of present and future minds now to determine the course they take and extraterritorial regulation is part of that. Do larger economies get to dominate smaller ones? Do Americans care if a government they did not consent to can manipulate business decisions over them? Does Congress need to reign in its commerce powers? The answer to these is a question for present and future American polities. Overall, extraterritorial regulation is a current occurrence, one that was troubling enough in history to prompt a change in sovereignty, and one that should be addressed so that all people may determine the future of their communities within established channels.

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