A Unified Theory of Preemption and Access to Migrant-Worker Camps

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NOTES

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Migrant-worker life remains a silent, desperate struggle for survival. The wealth of the society fed by migrant labor and the variety of federal programs established to help migrant workers has not affected this condition. One reason for the ineffectiveness of these programs is the migrant worker’s segregation from society


Removal of the migrant and seasonal farmworkers programs from the rural program title to an independent title, is intended to clearly indicate the attention the Committee intends the Director [of the Community Services Agency] to give to the unique needs and characteristics of rural poverty and the poverty experienced by migrant and seasonal farmworkers.

in camps located on private property. The camp owners frequently deny antipoverty programs access to the migrant-worker camps, isolating the migrant worker from needed assistance. A number of organizations funded under Title IV of the Economic Opportunity Act to assist migrant workers have sought court orders to force growers to allow access to the camps. The results have been mixed because the legal theories advanced by the organizations often have not convinced unwilling courts to expand traditional legal concepts to resolve this novel problem or to decide the issue on the basis of the equities involved.

The supremacy clause doctrine of preemption provides a legal theory that justifies permitting access to migrant-worker

3. See text accompanying notes 20 & 21 infra.
4. Id.
5. Amended 42 U.S.C., supra note 2, §§ 2901-2906.
7. See cases cited note 6 supra.
8. See, e.g., Illinois Migrant Council v. Campbell Soup Co., 574 F.2d 374 (7th Cir. 1978) (narrowly construing Marsh doctrine after Hudgens v. NLRB, 424 U.S. 507 (1976), and summarily rejecting supremacy clause argument); Asociacion de Trabajadores Agricolas v. Green Giant Co., 518 F.2d 130 (3d Cir. 1975) (narrowly construing Marsh doctrine after Lloyd Corp. v. Tanner, 407 U.S. 551 (1972)). Marsh v. Alabama, 326 U.S. 501 (1946), held that in certain circumstances it is unconstitutional for a private-property owner to restrict the constitutional rights of those who are on his or her property. The issue focuses on what circumstances must be present for the denial of constitutional rights to be state action and therefore subject to constitutional restraints.
10. U.S. CONST. art. VI, cl. 2:
This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
11. Preemption, as used in this Note, is the invalidation of a state or local statute because it conflicts with federal legislation. Conflict is defined as subordination by a state of rights and values created by federal legislation to state-created rights and values. As used in this Note, preemption does not cover the full scope of the supremacy clause, since the separate problem of conflict between a state statute or constitution and the United States Constitution is not addressed. Any preemption analysis presumes that the threshold question whether Congress has the power to act in the area has been answered in the affirmative. See notes 90 & 152 infra and accompanying text.
only three courts have considered the preemption argument in deciding whether to grant access: The argument was accepted by the Southern District of New York, rejected by the Seventh Circuit, and accepted in part by the Western District of Michigan. However, all three cases were decided without apparent analysis of the supremacy clause and with only cursory treatment of the Economic Opportunity Act. This sporadic use of the preemption doctrine results from several problems. First, the doctrine is poorly defined, and little attention has been paid to unifying, or providing rationales for, its seemingly inconsistent applications. Without a clear standard, the doctrine's scope remains amorphous. Therefore the issue is frequently not raised in situations where it may be dispositive. Even when an attorney is aware of the doctrine's relevance, litigation is complicated by the need to develop standards from a confused body of case law. Consequently, the decisions are few and inconsistent. Second, there are conceptual difficulties in applying preemption to a migrant-camp context. Traditional preemption analysis requires that state private-property rules be preempted when they conflict with federal antipoverty legislation. The conflict is difficult to conceptualize because the property rules address interests unrelated to the purposes of the federal legislation. This contrasts with preemption cases of direct conflict when state and federal statutes address identical issues, but compel different results. Finally, while more clearly defined legal doctrines have been available to compel access, the limitations of these doctrines have only recently become apparent.

15. See, e.g., Hirsch, Toward a New View of Federal Preemption, 1972 U. ILL. L.F. 515; Note, Pre-emption as a Preferential Ground: A New Canon of Construction, 12 STAN. L. REV. 208 (1959) [hereinafter cited as Pre-emption as a Preferential Ground]. But see Note, A Framework for Preemption Analysis, 88 YALE L.J. 363 (1978), which argues that the Supreme Court's preemption decisions can be organized around a deference to state protection of vital in-state interests. This argument, however, leaves much unanswered. While the Supreme Court has been sensitive to a state's protection of interests left unaddressed or poorly protected by federal legislation, see notes 85 & 123 infra, this analysis does not provide any guidance for deciding when state protection must yield to federal interests.
16. A state statute is not always preempted when it compels a result contrary to federal legislation. See, e.g., Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware, 414 U.S. 117 (1973). See also notes 86-97 infra and accompanying text.
17. The utility of the Marsh doctrine, see note 8 supra, is severely restricted by
This Note demonstrates that the preemption doctrine is based on consistent rationales. From these rationales a paradigm is developed that is sufficiently concrete to be applied by attorneys and lower courts. Moreover, this paradigm is applicable to the problem of access to migrant-worker camps for federally funded programs. The supremacy clause compels such access: It mandates that the values promoted by federal antipoverty legislation be superior to state property interests. This constitutional mandate is violated when state private-property rules are permitted to frustrate the effectiveness of federal antipoverty programs established to assist migrant workers.

**BACKGROUND**

Title IV of the Economic Opportunity Act funds community-action programs designed to ameliorate the immediate and long term problems of migrant workers. These programs include training to help the migrant cope with technological changes in agricultural work, child day-care services, legal advice, and housing and sanitation improvement projects. Long work days and a lack of money and transportation force most migrant workers to live in camps located on the grower’s land and prevent them from leaving. Access to these camps is therefore a necessary precondition to the effectiveness of any migrant-worker program. However, growers fre-

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the Supreme Court’s 1976 decision in Hudgens v. NLRB, 424 U.S. 507 (1976). See text accompanying notes 69-68 infra. Landlord-tenant doctrines are not suitable for resolving the competing interests involved, and the common law development has created barriers to its use in a migrant-camp context. See generally Note, First Amendment and the Problem of Access to Migrant Labor Camps After Lloyd Corporation v. Tanner, 61 CORNELL L. REV. 560, 563-71 (1976); text accompanying notes 69-79 infra. Balancing equities based on traditional limitations on the prerogatives of private ownership was used effectively in State v. Shack, 58 N.J. 297, 277 A.2d 369 (1971), but it has been widely ignored. See text accompanying notes 80-84 infra.

19. Id. § 2902.
quently deny access by erecting high fences, hiring guards, and demanding that states enforce their criminal-trespass statutes.\footnote{21}

The migrant worker's overwhelming need for assistance is undeniable. Then-Senator Walter Mondale described the migrant camp as "a microcosm of nearly every social ill, every injustice, and everything shameful in our society: poverty almost beyond belief, rampant disease and malnutrition, racism, filth and squalor, pitiful children drained of pride and hope, exploitation and powerlessness."\footnote{22} While conditions have dramatically improved in some camps since Senator Mondale's observations in 1969,\footnote{23} conditions elsewhere remain archaic and brutal. In North Carolina and Florida, for example, migrant-farmworker crew leaders recently were convicted for slavery.\footnote{24} Housing remains a problem in a number of camps. Sleeping quarters range from air-conditioned mobile homes\footnote{25} to converted chicken coops,\footnote{26} large block bunkers with bare, concrete floors, and frame outbuildings with large holes in the floor and walls.\footnote{27} Families of six or more are forced to live in nine-feet-by-nine-feet rooms with two beds, and, in some camps, single men are housed with migrant families.\footnote{28} While some camps provide gas ranges and refrigerators,\footnote{29} in other camps families cook on open fires built on dirt floors in their rooms.\footnote{30} The housing frequently contains neither running water nor toilet facilities,\footnote{31} and some families are forced to live in cars parked along the roadside without access to water for bathing or sanitation.\footnote{32} These serious housing problems are exacerbated when temperatures in northern
camps drop below freezing at night. The lack of child-care services often forces children to work in the fields. Malnutrition among migrant children is ten times the national average. The severity of the migrant workers’ condition is reflected in their short life expectancy. The life expectancy of the average American is 72.8 years, that of a migrant worker only forty-nine—the average life expectancy for the country as a whole in 1901.

Means of Compelling Access

The ineffectiveness of alternative doctrines as tools for compelling access to migrant-worker camps illustrates the need for a preemption argument.

The Marsh Doctrine Before and After Hudgens v. NLRB. Until recently, courts found that by denying access, growers deny first amendment rights of free speech and association. The Supreme Court’s 1946 decision in *Marsh v. Alabama* provided the rationale for satisfying the threshold state-action requirement. *Marsh* held that a town built and maintained on private property by the Gulf Shipbuilding Company for Gulf’s employees could not exclude Jehovah’s Witnesses seeking to proselytize in the town’s

33. *Id.*; Note, *supra* note 20, at 113.
34. *Migrant Child Welfare, supra* note 1, at 20. If child care services are unavailable, most children are working in the fields by age four. *Id.*
42. The *Marsh* doctrine is generally referred to as the “company town doctrine,” but as the following analysis indicates, this phrase is too restrictive and misses the essential nature of the doctrine by limiting it to a public-function test. *See* text accompanying notes 43-47 infra.
business district. The Court held that the Jehovah's Witnesses and those who live in the town have first amendment rights that outweigh the private-property rights of the Gulf Shipbuilding Company. Legal title to the land was not dispositive of the balance between the competing interests. Instead, the holding was based on two factors: the public's interest in the free flow of information is independent of whether the land is privately held; and the Gulf town is identical to a public municipality. The town had its own residential housing, business district, sewers, sewage processing plant, police protection, and post office. In addition, the town's business district was used regularly by nonresidents. Although the Court in *Marsh* engaged in a public-function analysis, i.e., the extent to which the Gulf town is similar to a public municipality, it did so to measure the private-property interest that had to be weighed against first amendment rights. *Marsh* therefore departs from the traditional view that state action is a threshold question resolved without considering the underlying constitutional claim. *Marsh* compels courts to evaluate the private landowner's asserted right not to conform his or her conduct to constitutional standards. This right is then weighed against the first amendment rights of the speaker. *Marsh* held that at some point the private-property owner's use of his or her land diminishes his or her right not to conform to constitutional standards and the first amendment rights take precedence.

What kinds of use constitute sufficient diminution of private-property interests was tested in *Food Employees Local 590 v. Logan Valley Plaza, Inc.*, *Lloyd Corp. v. Tanner*, and *Hudgens v. NLRB*. The utility of the *Marsh* decision as a tool for allowing access to migrant-worker camps changed with each case.

The decision in *Logan Valley* focused on the public-function problems of *Marsh*. The Court held that union members have a first amendment right to picket stores located in a privately owned shopping center. The *Marsh* test was interpreted not to require that property possess every attribute of a public municipality be-

43. 326 U.S. at 509.
44. Id.
45. Id. at 504-05.
46. Id. at 502.
47. Id. at 502-03.
fore denial of first amendment rights by property owners will constitute state action and therefore be unconstitutional. The Court found the private shopping center's similarity to a public municipality's business district sufficient diminution of the landowner's property interest to give the first amendment rights precedence.

Although recognizing that the private-property interest was reduced by the public-function attributes of the land, the Court focused on the relationship between the activity of the union picketers and the property's use. Logan Valley explicitly left open the question whether first amendment rights will overcome private-property interests if the first amendment activity is unrelated to the landowner's use of the property.

The Court in Lloyd addressed this question in the context of whether distribution of antiwar leaflets in a shopping center is protected by the first amendment. The Court reversed the Ninth Circuit, holding that since the first amendment activity at issue was unrelated to the uses of the property, the property owners could prohibit distribution of the leaflets.

Courts frequently have granted access to migrant-worker camps on the basis of Logan Valley's interpretation of Marsh. These courts relied on both the liberalized public-function analysis in Logan Valley, and the balancing test that is the essence of the Marsh doctrine. However, since Marsh and Logan Valley are often read only as public-function cases concerned only with the extent to which private property has public attributes, the Lloyd holding—that first amendment activity must be related to the use

51. 391 U.S. at 325. Justice Black, who wrote the majority opinion in Marsh, vigorously dissented in Logan Valley on the ground that Marsh was only intended to reach property possessing every attribute of the Marsh town. Id. at 330-33 (Black, J., dissenting). However, he was simply drawing the line at a different point than the majority. He did not question the balancing nature of the test.
52. Id. at 318-19.
53. Id. at 319-20.
54. Id. at 320 n.9.
56. 407 U.S. at 564-65.
57. Id. at 570. The availability of alternative means of communication, although discussed in Lloyd, id. at 566-67, was not an independent ground for the decision. It was used only as an indicator of whether the first amendment activity bore a sufficiently close relation to the uses of the property.
of the property to satisfy the state-action requirement—created confusion about the breadth of the Marsh doctrine and its utility in a migrant-camp context. Courts and commentators, focusing on the apparent constriction of the public-function test in Lloyd, interpreted this decision as narrowing the balancing aspects of the Marsh doctrine. While a number of courts continued to grant access to migrant camps after Lloyd, Hudgens v. NLRB appears to have ended the Marsh doctrine's utility in the migrant-camp context.

Hudgens, which involved facts virtually identical to those in Logan Valley, held that the existence of a first amendment right cannot depend on the content of the speech, i.e., whether the first amendment activity is related to the uses of the property. The Court did not, however, undertake a fresh examination of what factors should be applied to the balance. Instead, it read Marsh as resting entirely on public-function grounds and concluded that the similarity between a shopping center and the business district of a public municipality is insufficient: The Marsh doctrine applies only to privately owned property that contains every attribute of a public municipality.

The rule articulated in Hudgens places most migrant-worker camps beyond the ambit of Marsh since the camps generally are not open to the public and do not provide most of the services that the Marsh town made available. Courts that granted access to migrant-worker camps under a Marsh rationale prior to Hudgens

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60. See Asociacion de Trabajadores Agricolas v. Green Giant Co., 518 F.2d 130, 136-37 (3d Cir. 1975); Franceschina v. Morgan, 346 F. Supp. 833, 838 (S.D. Ind. 1972) (finding Lloyd had limited Logan Valley and therefore access to migrant-worker camps could not be granted on Marsh doctrine rationale); Comment, supra note 41. But see Note, supra note 17 (concluding that Lloyd still provided best means for compelling access to migrant-worker camps).

61. See, e.g., Asociacion de Trabajadores Agricolas v. Green Giant Co., 518 F.2d 130, 136-37 (3d Cir. 1975); Franceschina v. Morgan, 346 F. Supp. 833, 838 (S.D. Ind. 1972) (finding Lloyd had limited Logan Valley and therefore access to migrant-worker camps could not be granted on Marsh doctrine rationale); Comment, supra note 41.


64. 424 U.S. at 520.

65. Id. at 518-20.

66. Compare text accompanying notes 20-34 supra with text accompanying note 47 supra.
will no longer do so. Therefore, the isolation and lack of services that form the basis of the complaints protect the camps from a finding of state action. The camps' most odious attributes insulate them from judicial intervention.

Landlord-Tenant.—Courts have granted access to migrant-worker camps on the basis of a tenant's right to receive guests. The threshold determination whether the migrant worker is a tenant or occupies as an incident of employment without the rights of tenancy may be dispositive of the access question. While the cases hold that one who occupies incident to employment does not


Hudgens is also being narrowly construed outside the migrant-camp context. See, e.g., Eastex, Inc. v. NLRB, 556 F.2d 1280 (5th Cir. 1977) (per curiam), aff'd, 437 U.S. 556 (1978). In Eastex the Fifth Circuit, on a petition for a rehearing, modified its decree allowing distribution of union-sponsored circulars on company grounds by deleting references to first amendment protection in order to conform to the Hudgens decision. The court let its decree stand on the alternative ground, announced in its original decision, that the union organizers have a right to access under § 7 of the National Labor Relations Act, 29 U.S.C. § 157 (1976). See Eastex, Inc. v. NLRB, 550 F.2d 198 (5th Cir.), modified on rehearing, 556 F.2d 1280 (5th Cir. 1977) (per curiam), aff'd, 437 U.S. 556 (1978). Accord, People v. Bush, 39 N.Y.2d 529, 349 N.E.2d 832, 384 N.Y.S.2d 733 (1976) (no first amendment right to picket supermarket in privately owned shopping center).

68. See sources cited notes 20 & 21 supra.


enjoy tenancy rights, the cases do not address the issue of whether such a classification also gives landlords the right to limit an occupant's ability to receive invited visitors. The resolution of this issue may turn on whether the source of the right to receive guests is a tenancy right or a first amendment right of association. In either case, there remains the question whether the right to receive invited guests affords effective access to the camps.

Since migrants are often unaware of the existence of programs to assist them, access predicated on invitation is doomed to failure. Even if the migrant is aware that a program exists, he or she often is unable to communicate with those outside the camp. These problems make solicitation a necessary component of effective access. However, property owners have the right to prohibit solicitation on their property, and the prohibitions may not require consent of the tenants. Moreover, the utility of landlord-tenant doctrine is further diminished by the holding in some jurisdictions that a tenant can contract away the right to receive certain guests. These jurisdictions would likely uphold a lease agreement prohibiting solicitation, since this right is arguably less fundamental than the right to receive invited guests. However, if the right to

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71. In Walton v. Darby Town Houses, Inc., 395 F. Supp. 553 (E.D. Pa. 1975), the court stated in dicta that someone who occupies as an incident of employment can be evicted for the exercise of his or her first amendment rights. Id. at 558.

72. See United States v. Robel, 389 U.S. 258, 283 n.7 (1967) (right of association specifically protected by first amendment); Griswold v. Connecticut, 381 U.S. 479 (1965) (exact basis of holding unclear) (rights of association guaranteed by first amendment extend beyond associations for political purposes to encompass association of two people in marriage); Brotherhood of R.R. Trainmen v. Virginia ex rel. Va. State Bar, 377 U.S. 1, 5-7 (1964) (right of railroad workers to gather together for lawful purpose of helping and advising each other in asserting various statutory rights is protected by first amendment). There is, however, a threshold requirement of state action. See text accompanying notes 78 & 79 infra.


74. See State v. Fox, 82 Wash. 2d 289, 291, 510 P.2d 230, 232 (1973), cert. denied, 414 U.S. 1130 (1974). The one telephone in the migrant camp was located in the company office and migrant workers needed permission to use it. Id.


76. Id.

77. See, e.g., Southerland Dev. Corp. v. Ehrler's Dairy, Inc., 468 S.W.2d 284, 290-97 (Ky. 1971). It is not difficult to imagine the migrant's employment contract under these circumstances. The court in Southerland, however, narrowly construed the lease and allowed entry of guests. Id. at 287. For a discussion of the ability of a municipality to prohibit door-to-door solicitation, see Annot., 48 L. Ed. 2d 917 (1977).
receive guests is derived from the Constitution, rather than from the incidents of tenancy, then the tenant may not be able to contract away these rights, and solicitation may be the only effective means of protecting the occupant's first amendment rights of association. The utility of a first amendment right in this context is questionable, however, since such a right is only protected from state action. After Hudgens v. NLRB, it is unlikely that a court will find state action in a private landlord's denial of a tenant's first amendment rights.

In addition, the landlord-tenant analysis is inadequate because its underlying rationales do not provide tools for meeting the complex needs and the competing interests involved. Landlord-tenant doctrines were not developed to remedy the access problems inherent in the migrant workers' unique situation or to facilitate the work of programs established to help them. These doctrines are silent about how best to balance the needs of migrants against the private-property rights of the grower.

Balancing the Rights of Migrant Workers Against Private-Property Rights: State v. Shack. A unanimous New Jersey Supreme Court granted access to a migrant camp on the ground that "[p]roperty rights serve human values. They are recognized to that end, and are limited by it." The court held that the right of a property owner to pursue his farming activities without interference does not give him the right to isolate migrant workers, or to deny or interfere with their right "to live in dignity and to enjoy associations customary among our citizens." The court continued: "These rights are too fundamental to be denied on the basis of an interest in real property and too fragile to be left to the unequal bargaining strength of the parties." However, this analysis has been ignored by all but the most sympathetic courts, and even they have been reluctant to use it as the sole basis for their decisions.

79. See text accompanying notes 63-65 supra.
81. Id. at 303, 277 A.2d at 372.
82. Id. at 308, 277 A.2d at 374.
83. Id., 277 A.2d 374-75 (citations omitted).
The Advantages of Preemption

The supremacy clause doctrine of preemption avoids the pitfalls of the methods of analysis just discussed. It is a traditional doctrine that can be applied to the access problem without straining the doctrine's original rationale. In addition, it provides a mechanism for resolving the conflict between the interests involved. Although the supremacy clause does not involve a balancing test, it strikes a balance by both ensuring federal supremacy and protecting state interests. The doctrine protects state interests by limiting preemption's scope to that which is necessary to ensure that federally protected values are not subordinated to state interests. The program's needs, therefore, define the extent of access: Access cannot exceed what is necessary to ensure the effectiveness of the federal antipoverty programs. This limitation protects the property rights of the growers from unnecessary diminution.

85. This feature of the supremacy clause, together with the clear-statement requirement, see text accompanying notes 165-169 infra, provides the Court precise and principled tools for protecting the role of the states in the federal system. The Court's misguided efforts in National League of Cities v. Usery, 426 U.S. 833 (1976), can only produce confusion since the National League of Cities standard is vague and unworkable. See note 90 infra. The role of preemption in protecting state sovereignty in an era of increasing centralization is illustrated by Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1960), and cases in the labor dispute area, an area tightly governed by federal legislation and agency regulations. See, e.g., Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 436 U.S. 180 (1978) (states can enjoin trespass by union picketers even though trespass is arguably protected by National Labor Relations Act). The Sears decision is based on a dual finding that the impact of the federal legislative scheme would be minimal, and, given the structure of the NLRB grievance procedures, the employer/landowner would be without effective relief if he or she could not resort to state courts. Id. at 207. See also Farmer v. United Bhd. of Carpenters and Joiners, 430 U.S. 290 (1977) (suit by union member against union for intentional infliction of emotional harm allowed on grounds that plaintiff sought relief that NLRB could not award) (minimal possibility of conflict with federal policy noted); International Ass'n of Machinists v. Gonzales, 356 U.S. 617 (1958) (union's claim that expelled union member's sole remedy is through NLRB rejected on same grounds as those relied on in Farmer); UAW v. Wisconsin Employment Relations Bd., 351 U.S. 266 (1956) (NLRA not intended as exclusive means of controlling union violence and state has right to control such activity) (emphasizing traditional position of states as guardians of public against violence). For cases in a nonlabor context, see, e.g., Kewanee Oil Co. v. Bicron Oil Corp., 416 U.S. 470 (1974) (upholding Ohio trade secrets statute despite federal patent laws and prior decisions preempting state unfair trade practice statutes); California v. Zook, 336 U.S. 725 (1949) (within state power to impose higher penalties for crime defined in federal statute on ground that Congress and Interstate Commerce Commission intended to give each state option of imposing higher penalties if state believes problem more severe in its jurisdiction).
A Unified Theory of Preemption

Inadequate scholarly and judicial attention has been given to developing a unified approach to preemption problems. Scholarly comment often concentrates on inconsistencies in judicial decisions and prescribes formulas for future decisionmaking. While many of these prescriptions may be desirable, they have been widely ignored and are therefore unlikely to be helpful in allowing access. Judicial decisions have used overly broad language to describe the tests they apply. The resulting confusion restricts the possible applications of preemption and produces erroneous decisions when courts fall prey to their own broad code words and overlook the analysis underlying the Supreme Court's decisions. This section develops a paradigm that provides both a rationale for prior preemption decisions and a framework for using the preemption doctrine to force courts to grant access to migrant-worker camps.

The supremacy clause does not define substantive rights or allocate areas of power between the federal and state systems. Its

86. E.g., Hirsch, supra note 15. This is not intended to suggest that there have not been shifts in the Court's attitude towards preemption. These shifts have been the result of changing views of federalism, Note, The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court, 75 COLUM. L. REV. 623 (1975), and are inevitable since the supremacy clause is the mediator in our federal system, see notes 90 & 91 infra and accompanying text. However, the history of the Supreme Court's interpretation of the supremacy clause illustrates an evolving standard that this Note analyzes.

87. Hirsch, supra note 15; Pre-emption as a Preferential Ground, supra note 15.

88. See note 95 infra.

89. The dangers of this broad inquiry are evident in the Court's decision in Kesler v. Department of Public Safety, 369 U.S. 153 (1962), overruled, Perez v. Campbell, 402 U.S. 637 (1971). See text accompanying notes 128-140 infra. In Napier v. Atlantic Coast Line R.R., 272 U.S. 605 (1926), the Court invalidated state regulations aimed at protecting the health and comfort of the railroad's employees and passengers, because of federal regulations directed at safety, even though the Court found: (1) There was no physical conflict between the devices required by the state and those mandated by federal regulation, id. at 610-11; (2) the interference with interstate commerce would be incidental, id. at 612; and (3) there was no congressional intent to ensure national uniformity, id. at 613. The Court drew an inference of congressional intent to preempt solely from the broad grant of authority by Congress to the Interstate Commerce Commission. Id. at 613. Contra, Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1960). For discussion of Huron Portland Cement, see notes 122-127 infra.

90. Freeman, Dynamic Federalism and the Concept of Preemption, 21 DE PAUL L. REV. 630, 635 (1972). See also Petro, Federal Pre-emption—A Comment, 33 N.Y.U. L. REV. 691, 694-95 (1958). Professor Petro challenges the presumption that Congress has unlimited power to legislate and preempt. He raises the specter of a
primary function is to mediate between concurrent exercises of power by fifty sovereign states and the federal government. The supremacy clause dictates the position of the national government in this federal system.\textsuperscript{91} Refining this dictate into a workable standard capable of regulating conflicts inherent in a dynamic balance of power has proven difficult.

Preemption often is divided artificially into three categories:\textsuperscript{92} (1) When Congress has exercised its power with the intent to exclude all state action in an area, state legislation is preempted even if there is no direct conflict;\textsuperscript{93} (2) when the subject of federal legis-

\textsuperscript{91} It has been hypothesized that if the Constitution had not specifically stated that the laws of the federal government are supreme, U.S. CONST. art. VI, cl. 2, this would have been implied from the creation of a national government. See McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 429 (1819) (Marshall, C.J.); The Federalist No. 33, at 157-58 (A. Hamilton) (Everyman ed. 1911); 3 J. Story, Commentaries on the Constitution § 1831, at 693 (1833).


lation is traditionally the exclusive concern of the federal government, state regulation is preempted;\textsuperscript{94} and (3) when neither the subject matter nor the legislation indicates an intent to preclude all state action, the state is permitted to address problems in the area covered by the federal legislation if enforcement of the state statute does not conflict with the federal legislation.\textsuperscript{95} Federal antipoverty legislation falls into the latter category.

But delineating three categories masks the underlying unity of preemption. The delineation primarily results from a focus on the language rather than the facts of the cases or the underlying rationales of the decisions. The danger of the categories is that they imply a checklist approach to preemption analysis\textsuperscript{96} inappropriate

\textsuperscript{94} See, e.g., Hines v. Davidowitz, 312 U.S. 52 (1941) (Pennsylvania statute imposing registration requirements on aliens residing within Commonwealth invalid); Chy Lung v. Freeman, 92 U.S. 275 (1876) (California statute imposing added restrictions on immigrants entering United States through California ports invalid despite absence of conflicting federal law).

\textsuperscript{95} See, e.g., Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 479 (1974) (state enforcement of trade secrets statute upheld, since copyright and patent clause of Constitution, U.S. Const. art. I, § 8, cl. 8, is not grant of exclusive power to national government; states free to encourage invention as long as legislation does not "conflict with the operation of the laws in this area passed by Congress"); Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 141-43 (1963) (United States Department of Agriculture ripeness standards not intended to establish uniform tests; states therefore free to adopt their own standards); California v. Zook, 336 U.S. 725 (1949) (states permitted to impose penalties on federally defined crimes that are higher than federal penalties, because federal statute contemplated that problem might be more serious in some states than in others); Union Brokerage Co. v. Jensen, 322 U.S. 202, 207-09 (1944) (federal licensing of customhouse broker does not exempt brokerage house from state statute requiring foreign corporations to obtain certificate of authority as precondition to bringing suit in state court); Parker v. Brown, 317 U.S. 341, 350-52, 358 (1943) (California agricultural policy sustained even though some of its goals conflict with federal agricultural policy since federal statute encourages state programs and California had not acted contrary to federal policy). Compare McDermott v. Wisconsin, 228 U.S. 115, 117, 132-34 (1913) (struck down state statute requiring labels as inconsistent with federal labeling requirements because opportunity for federal inspection occurs only after goods leave interstate commerce and states cannot require destruction of evidence federal government needs to ensure compliance), with Savage v. Jones, 225 U.S. 501, 532-35 (1912) (state statute requiring disclosure of ingredients in feeding stuffs for domestic animals upheld, because Food and Drug Act of 1906, ch. 3915, 34 Stat. 768, does not apply to disclosure or nondisclosure of ingredients).

Other language used by the Supreme Court to describe the conflict test indicates a state statute will be struck down if "contrary to," "repugnant to," "irreconcilable with," "inconsistent with," "in violation of," "interferes with," or "curtails" the "purpose of" federal legislation. These phrases are included in Hines v. Davidowitz, 312 U.S. 52, 67 (1941) (footnote omitted).

given the complexities of the problem and its implications for the states.

The inquiry in all three categories is whether the values created by the federal legislation are subordinated by enforcement of the state statute. Preemption in the first category is premised on a finding that federal legislation is designed to ensure a nationally uniform standard or policy.\(^\text{97}\) State regulation therefore undermines the uniformity value, irrespective of the degree of actual conflict. Even when state statutes are automatically preempted because they attempt to regulate an area in which the national government traditionally exercises exclusive jurisdiction,\(^\text{98}\) the Supreme Court has indicated a willingness to allow concurrent exercises of state power if none of the reasons for exclusive federal jurisdiction are implicated.\(^\text{99}\) Therefore, although the Court has preempted state statutes that impose burdens on aliens because the adverse consequences for American foreign policy would affect every state,\(^\text{100}\) the Court recently upheld a California statute regulating the employment of illegal aliens.\(^\text{101}\) The Court distinguished its prior holdings—that states cannot regulate aliens—by noting that the California statute protects the rights of legal aliens, rather than adding to their burdens.\(^\text{102}\) Therefore, no adverse for-
eign policy consequences flow from enforcement of the California statute. In the third category, the inquiry is also into the values created by the federal legislation and the degree to which they are subordinated by enforcement of the state statute. However, in this category the values are more numerous and must be carefully identified.

Preemption questions are usually addressed in terms of "purpose" and "conflict," not "values" and "subordination." A "values" test is preferable to the traditional "purposes" test because it focuses the inquiry in a way which the purposes test does not. The stated purpose of a statute is often overly broad. For example, the National Labor Relations Act's statement of purpose is a sweeping assertion of the benefits of collective bargaining and the need to encourage it. The value of national uniformity was discovered only after detailed examination of its provisions and legislative history. Congress rarely addresses the federalism or preemption implications of its legislation. Focusing on values avoids looking for nonexistent statements of intent to preempt or to occupy the field. It focuses a court's examination of legislation on ascertaining what problems the legislation addresses, what factors motivated enactment of the legislation, what goals the legislation seeks to achieve, and how the legislation attempts to achieve its goals. This analysis enables a court to accurately evaluate the impact of a state statute on federal legislation.

More important than the distinction between values and purpose is the focus on "subordination" rather than "conflict"—or the other broad code words used by the Supreme Court to describe its preemption test. "Conflict" describes a broad range of interplay between state and federal legislation, only some of which gives rise to preemption. "Subordination," on the other hand, indicates the
kinds of interplay that violate the supremacy clause. It accomplishments this by providing a standard more sensitive to preemption concerns. Preemption’s core function is to maintain the national government’s superiority and integrity from the undertow of local interests. Therefore, preemption is concerned with particular types of conflict: those in which enforcement of state policy undermines federal values. Conflict in objectives is irrelevant, as is dissimilar purpose. Instead, the focus is whether enforcement of a state statute subordinates federally protected values to ones that a state may consider more important. In the migrant-camp context the inquiry is whether enforcement of state private-property rules makes those values superior to values underlying federal antipoverty legislation.

It is generally accepted that a statute is an invalid exercise of state police power and conflicts with federal legislation if it either requires something that federal law prohibits, or provides for state decisionmaking about matters committed to federal discretion. The Supreme Court, however, recently upheld a California


108. See, e.g., Carleson v. Remillard, 406 U.S. 598 (1972) (invalidating state statute defining absent parent for purposes of Aid to Families with Dependent Children as not including serviceman stationed away from home, contradicting Social Security Act); Sperry v. Florida ex rel. Fla. Bar, 373 U.S. 379 (1963) (invalidating attempt by Florida to enjoin nonlawyer licensed to practice before United States Patent Office from preparing or prosecuting patent applications before Patent Office on grounds that this constitutes practice of law without license); Davis v. Elmira Sav. Bank, 161 U.S. 275 (1896) (invalidating state law which required that bankrupt national bank give priority to deposits of other banks, because federal statute required that all depositors be treated equally in receiving their pro rata share).

109. See Ray v. Atlantic Richfield Co., 435 U.S. 151, 175-78 (1978) (United States Secretary of Transportation was given authority to balance competing factors in setting weight and speed limits for ocean tankers, and states cannot impose higher standards); Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956) (Arkansas may not subject contractor bidding for federal job to state determination of whether he meets minimum criteria, since federal statute requires federal government to make similar determinations when deciding whether to accept bid). In Leslie Miller, Inc. it was irrelevant to the Court's decision that the state criteria were harmonious with, and substantially similar to, the federal standards. The dispositive factor was the state's ability to exercise its police power to veto a decision made by the federal government. Id. at 190. In First Iowa Hydro-Elec. Coop. v. Federal Power Comm'n, 328 U.S. 152 (1946), the Court refused to sustain a state licensing provision, even though the Federal Power Act, ch. 285, 41 Stat. 1063 (1920), as amended by Public Utility
The regulation requiring the arbitration clause was promulgated by the New York Stock Exchange (NYSE) pursuant to section 6 of the Securities Exchange Act of 1934 (the 1934 Act). The regulation provided that a dispute between a member of the NYSE and one of the member's employees must be subject to arbitration at the request of either party. The Court based its decision in Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware on a finding that none of the values that the federal legislation seeks to protect would be undermined by sustaining California's invalidation of the arbitration clause. Specifically, the Court found that the 1934 Act was designed "to insure fair dealing and to protect investors from harmful or unfair trading practices." The Court reached this conclusion after examining the federal supervision provided for in the 1934 Act over the otherwise independent exchanges. The Court ascertained what values the 1934 Act seeks to promote by examining which types of cases justify intervention by the Securities and Exchange Commission and by examining the sections of the 1934 Act that express the standards for judging exchange rules. The rule requiring arbitration was then measured against these values. The Court concluded that any relation between the rule and the value is "extremely attenuated and peripheral, if it exists.
This conclusion is strengthened by the language of section 6, pursuant to which the NYSE regulation at issue was promulgated. Section 6 provides "for the expulsion, suspension, or disciplining of a member 'for conduct or proceeding inconsistent with just and equitable principles of trade.'" Thus, the Court concluded that despite the apparent conflict between federal and state mandates, the California statute need not yield to the NYSE rule. This holding was based on the conclusion that enforcement of the state statute would not subordinate any value protected by the 1934 Act.

Two seemingly inconsistent cases, Huron Portland Cement Co. v. Detroit and Perez v. Campbell, illustrate the Supreme Court's focus on whether enforcement of state law subordinates federally protected rights and values. Huron permitted enforcement of Detroit's Smoke Abatement Code against a ship licensed by the federal government. The federal license was only issued after inspectors determined that the ship conformed with federal safety regulations. The Court found that Detroit's ordinance was designed to protect the legitimate local concerns of public health and the cleanliness of the community, whereas the federal law

117. Id. at 135 (quoting Amicus Brief of the United States at 9).
118. Id. at 134 n.13 (quoting 15 U.S.C. § 78f(b) (1976)).
119. Id. at 134-36. In reaching this conclusion, the Court also found that national uniformity in this area is not a value the 1934 Act sought to further. Preemption is, therefore, not mandated on those grounds. Id. at 136-39. See notes 93 & 97 supra and accompanying text. See also Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1974) (Ohio trade secrets statute does not conflict with federal patent legislation, despite earlier decisions invalidating unfair trade practice statutes, see, e.g., Compco Corp. v. Day-Brite Lighting, Inc., 376 U.S. 234 (1964); Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 225 (1964); Sola Elec. Co. v. Jefferson Elec. Co., 317 U.S. 173 (1942)). The Court distinguished unfair trade practice statutes on the ground that they disturb the balance struck by federal patent laws between encouraging competition and encouraging invention. Unfair trade practice statutes protect inventions that federal patent laws declare unpatentable and, therefore, in the public domain. Trade secrets statutes, on the other hand, do not disturb the balance, since the inferior protections they provide do not discourage entry into the patent system, and they only protect information not available to the public. The states, therefore, cannot provide protections afforded or withheld by federal patent laws, but the states are free to protect employers from industrial espionage and unethical conduct by employees. 416 U.S. at 484-93.
120. 362 U.S. 440 (1960).
121. 405 U.S. 637 (1971).
123. 362 U.S. at 442. This finding triggers two rebuttable presumptions: There
was designed to ensure the seaworthiness of the vessel. Since the Court found that the boilers could comply with both federal safety standards and local air pollution control standards, there was no conflict between the local regulation and the purpose and effect of the federal statute. The result would have been different if, for example, the federal policy had been to promote the cheapest possible transportation of goods in interstate commerce, provided the vessels meet minimum federal safety requirements. In such a case, the supremacy clause precludes the state from subordinating the federal value of cheap transportation to the state value of clean air.

Justice Douglas dissented in Huron, focusing, not on the values and rights the federal law sought to further and protect, but on the coincidence of the federal and local laws: both sought to regulate the quality of the boiler. Since the federal government had licensed the same boiler that Detroit sought to subject to a higher standard, Justice Douglas found the two laws in conflict. However, as the majority pointed out, enforcement of the Smoke Abatement Code would not subordinate any federal value to one of the state.


124. 362 U.S. at 445.


Although the result in *Huron* differs from that in *Perez v. Campbell*, the analysis is the same in both cases. In *Perez* the Court overruled two of its prior decisions and refused to permit enforcement of an Arizona statute that suspended the driver’s license of a judgment debtor when the judgment resulted from an automobile accident and remained unsatisfied for sixty days. The license remained suspended until the judgment was satisfied, irrespective of a discharge in bankruptcy under the Federal Bankruptcy Act. The Arizona courts explicitly declared the purpose of the statute to be the protection of those using Arizona’s highways from judgment-proof drivers.

Dissenting in *Perez*, Justice Blackmun emphasized the legitimate and important state interest, and the divergent purposes of the statutes. This was the approach taken in *Kesler v. Department of Public Safety* and *Reitz v. Mealey*, the cases *Perez* expressly overruled. Emphasizing the “complicated demands of our federalism,” the Court in *Kesler* focused on the widely divergent purposes of the state statute and the Federal Bankruptcy Act. The Court dismissed the argument that the statute is actually a device for collecting debts discharged in bankruptcy. It was, the Court said, within the traditional state police power to protect the life...
and limb of its citizens, and there was no "clear collision with a national law." The Court apparently defined "clear collision" as "conflicting purpose." Huron can be read as establishing a dissimilar purpose/local interest test similar to that advanced by Justice Blackmun's Perez dissent. Under this formulation of the preemption test, antipoverty programs would not preempt state private-property statutes since the two statutes address unrelated needs. However, the analysis in Huron focused on the effect enforcing the state statute would have on federally protected values.

The majority in Perez followed the analysis in Huron and held that the absence of conflict between the purposes of the two statutes is irrelevant since a conflict exists between the operation of the state statute and the purpose of the federal bankruptcy laws. The Court recognized that the state statute makes the state's policy of protecting those who use its highways superior to the federal policy of giving discharged "debtors 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preëxisting debt.'" Therefore, the state policy was required to yield. Kesler and Reitz were overruled because both decisions failed to recognize that even though the federal and state statutes sought unrelated purposes, and even though the state statutes sought to protect important local concerns unaddressed by federal legislation, their enforcement would necessarily subordinate federally protected values.

Since only state action is preempted, the problem of what constitutes state action must be addressed. This problem is made particularly acute in a migrant-camp context by the absence of a formal relationship between the grower and the state. The requi-
site nexus, therefore, appears to be absent in most cases. Moreover, the requirement of state action poses a threshold barrier: Without a finding of state action the court will not reach the merits of the claim.

The state-action doctrine gives cognizance to the recognized limitations on the Constitution, which, with the exception of the thirteenth amendment, imposes standards of conduct only on governments and leaves the actions of private individuals to the vicissitudes of social interaction. After years of expanding the definition of state action to the point where some commentators declared that there is no longer any meaningful legal distinction between private and governmental action, the Supreme Court has begun to restrict the scope of what constitutes state action and to reestablish the right of private parties to act without conforming their behavior to constitutional standards.

The Supreme Court recently refused to find that private conduct was state action despite the state grant of the right to self help, the state grant of monopoly to a public utility with state regulation of the monopoly’s tariffs, the licensing and regulation of a private club by the state liquor authorities, and the private


144. U.S. CONST. amend. XIII. Restrictions on individuals’ conduct are also imposed by those sections of the Constitution that establish the qualifications for holding elected federal positions. Id. art. I, § 2, cl. 2; id. art. I, § 3, cl. 3; id. art. II, § 1, cl. 5.

145. The Civil Rights Cases, 109 U.S. 3 (1883). This doctrine has been upheld as recently as Flagg Bros. v. Brooks, 436 U.S. 149, 156 (1978).


ownership of the equivalent of a town's business district.\textsuperscript{151} However, the issue is fundamentally different in a preemption context. In nonpreemption cases, the state-action inquiry determines whether the individual is free to choose how to act, or whether he or she is required to conform to constitutional standards. The issue is not the authority of the government to regulate conduct.\textsuperscript{152} The issue in a preemption context is whether the state's creation of certain rights subordinates federally protected values. The rule established by the supremacy clause is that the state cannot make the values it chooses to protect superior to those created by Congress. Therefore, while state creation of private-property rights is not, by itself, sufficient state action to require a private-property owner to conform his or her behavior to constitutional standards,\textsuperscript{153} it is sufficient state action to require the rights of private property to yield to the values implicit in federal antipoverty legislation.\textsuperscript{154} The distinction is based on the reasons for the state-action requirement.\textsuperscript{155}

**Legislative History and Access Through Preemption**

Preemption precludes states from enforcing their trespass or private-property rules when enforcement would undermine the effectiveness of a federal antipoverty program. The test is not the similarity between federal and state statutes,\textsuperscript{156} but whether en-

\textsuperscript{151} Hudgens v. NLRB, 424 U.S. 507 (1976).

\textsuperscript{152} The Civil Rights Cases, 109 U.S. 3 (1883), considered the state-action doctrine, in part, a restriction on the ability of the federal government to legislate. This function of the doctrine is no longer important given the Supreme Court's expansive construction of the commerce clause. See Katzenback v. McClung, 379 U.S. 294 (1964), and Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964) (statutes virtually identical to those in Civil Rights Cases enforced in virtually identical fact situation). But see National League of Cities v. Usery, 426 U.S. 833 (1976), which invalidated an act of Congress passed in reliance on commerce clause powers, because Congress exceeded its power to legislate when it impaired a state's ability to "function effectively in a federal system," id. at 852 (quoting Fry v. United States, 421 U.S. 542, 547 n.7 (1975)).

\textsuperscript{153} See, e.g., Hudgens v. NLRB, 424 U.S. 507 (1976).

\textsuperscript{154} See id. at 521-23. In Hudgens the Court ruled that although the union members did not have a constitutional right to picket in the shopping center, the right of union members to organize granted by Congress under § 7 of the National Labor Relations Act, 29 U.S.C. § 157 (1976), may require private-property owners to grant access. The Court remanded the case to the NLRB for findings on this issue. 424 U.S. at 521-23.

\textsuperscript{155} See text accompanying notes 145 & 152 supra.

for the enforcement of state property laws subordinates federally protected values. The supremacy clause of the Constitution does not allow states to protect private-property rights at the expense of values protected by federal legislation. The first inquiry, therefore, must be into what values underlie the federal antipoverty legislation.

The Economic Opportunity Act,157 under which the migrant-worker programs are funded,158 was enacted as part of President

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158. Amended 42 U.S.C., supra note 2, §§ 2901-2906. The Act addresses what the House committee report described as one of the most persistent problems in American society, H.R. REP. No. 1458, 88th Cong., 2d Sess. 24-25, reprinted in [1964] U.S. CODE CONG. & AD. NEWS 2900, 2923, by assisting “States, political subdivisions of States, public and nonprofit agencies, institutions, organizations, farm associations, or individuals in establishing and operating programs of assistance to migrant agricultural employees and their families,” id. at 25, reprinted in [1964] U.S. CODE CONG. & AD. NEWS at 2924. The programs funded directly under Title IV are intended to supplement urban and rural community action programs funded under Title II, 42 U.S.C. §§ 2781-2797 (1976), as amended by Economic Opportunity Amendments of 1978, Pub. L. No. 95-568, §§ 4, 17, 92 Stat. 2425, by focusing directly on the special needs of migrant workers and their families. The uniqueness of the migrant-worker problem was reemphasized in 1978 when Congress removed the migrant-aid provisions of the Economic Opportunity Act from the rural-poverty title and established a separate title for migrant-worker programs. See note 2 supra. Amended 42 U.S.C., supra note 2, § 2901, which states the purpose of Title IV, and id. § 2902, which sets out the programs to be funded by Title IV, provide as follows:

§ 2901. Statement of purpose

The purpose of this title is to assist migrant and seasonal farmworkers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society.

§ 2902. Financial assistance

(a) The Director may provide financial assistance to assist State and local agencies, private nonprofit institutions, and cooperatives in developing and carrying out programs to fulfill the purpose of this title.

(b) Programs assisted under this title may include projects or activities—

(1) to meet the immediate needs of migrant and seasonal farmworkers and their families, such as day care for children, education, health services, improved housing and sanitation (including the provision and maintenance of emergency and temporary housing and sanitation facilities), legal advice and representation, and consumer training and counseling;

(2) to promote increased community acceptance of migrant and seasonal farmworkers and their families; and

(3) to equip unskilled migrant and seasonal farmworkers and members of their families, as appropriate, through education and developmental programs to meet the changing demands in agricultural employment brought about by technological advancement and to take advantage of opportunities available to improve their well-being and
Johnson's comprehensive Great Society legislation designed to end "serious poverty in the midst of plenty." It grew out of a recognition of three realities: The desperate and shameful condition of our nation's poor; the fragmentation and ineffectiveness of existing federal programs; and the national scope of the problem. The Economic Opportunity Act seeks to provide a comprehensive program to attack the multiple causes of poverty on a national scale through local efforts coordinated by the federal government. The Act embodies the human values implicit in a desire to give the poor of our Nation the tools to lead productive lives in a complex society. The legislation seeks to ensure the American ideal of self-sufficiency by gaining regular or permanent employment or by participating in available federally assisted employment or training programs.


161. Poverty is a national problem, requiring improved national organization and support. But this attack, to be effective, must also be organized at the State and the local level and must be supported and directed by State and local efforts.

... But whatever the cause, our joint Federal-local effort must pursue poverty, pursue it wherever it exists—in city slums and small towns, in sharecropper shacks or in migrant worker camps, on Indian Reservations, among whites as well as the Negroes, among the young as well as the aged, in the boom towns and in the depressed areas.


equal opportunity. It recognizes the right of the poor to share in the Nation’s affluence and lead lives of dignity as fully participating members of society.

Consistent with the federalism concerns which lie at the heart of any preemption analysis, courts often have narrowly construed the rights and values created by federal legislation in order to soften the impact on local authority. This canon of construction, used in areas other than preemption, is often referred to as the “clear-statement requirement.” It mandates that “unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.”

163. “Unfortunately, many Americans live on the outskirts of hope—some because of their poverty, and some because of their color, and all too many because of both. Our task is to help replace their despair with opportunity.” Annual Message to the Congress on the State of the Union (Jan. 8, 1964), 1 PUB. PAPERS OF LYNDON B. JOHNSON, 1963-64, at 112, 113-14 (1965); Special Message to Congress Proposing a Nationwide War on the Sources of Poverty (Mar. 16, 1964), 1 PUB. PAPERS OF LYNDON B. JOHNSON, 1963-64, at 375, 375-80 (1965); Economic Opportunity Act Hearings, supra note 160, at 20, 25, 1510 (statement of R. Sargent Shriver, Director, Peace Corps, and Director-designate, Office of Economic Opportunity); id. at 184, 192 (statement of W. Willard Wirtz, Secretary of Labor). The Economic Opportunity Act of 1964 is a program “to provide the poor people of our Nation with the human skills and resources with which they, themselves, will earn their rightful place in society.” H.R. REP. No. 1458, 88th Cong., 2d Sess. 2, reprinted in [1964] U.S. CODE CONG. & AD. NEWS 2900, 2902.

164. See H.R. REP. No. 1458, 88th Cong., 2d Sess. 1-2, reprinted in [1964] U.S. CODE CONG. & AD. NEWS 2900, 2902. See Folgueras v. Hassle, 331 F. Supp. 615, 622 (W.D. Mich. 1971) (recognizing right of migrant workers to receive benefits provided by Economic Opportunity Act programs). President Johnson wrote that he viewed the Great Society legislation as an extension of the Bill of Rights. When our fundamental American rights were set forth by the Founding Fathers, they reflected the concerns of a people who sought freedom in their time. But in our time a broadened concept of freedom requires that every American have the right to a healthy body, a full education, a decent home, and the opportunity to develop to the best of his talents.

L. JOHNSON, supra note 160, at 104.

165. See, e.g., Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963); California v. Zook, 336 U.S. 725 (1949); Penn Dairies, Inc. v. Milk Control Comm’n, 318 U.S. 261 (1943). In Savage v. Jones, 225 U.S. 501 (1912), the Court construed the Food and Drug Act of 1906, ch. 3915, 34 Stat. 768, which was enacted “to prevent adulteration and misbranding” of foods and drugs and to keep such articles out of interstate commerce, 225 U.S. at 529, not to apply to disclosure or nondisclosure of ingredients and, therefore, not to preempt a state statute that required all feeding stuffs for domestic animals to include ingredients on the labels.


arose to provide an additional check on expansion of federal power at the expense of the states. The emphasis is on congressional action rather than judicial interpretation: The interests of the states are represented in Congress; therefore, state sovereignty should not be diminished unless the states consent in Congress to the diminution of their prerogatives. The inevitable frictions caused by the expansion of central authority are reduced by insisting that the balance be struck in the forum where the potential losers in the struggle have the most influence and the greatest opportunity to structure the realignment of power. The clear-statement requirement ensures that Congress addresses a central issue of all federal legislation: the correct balance between federal involvement and state control.

While the clear-statement requirement might lead a court to narrowly construe the Economic Opportunity Act and deny access, the legislative history indicates that Congress squarely faced the federalism questions and clearly defined the relationship between the programs and the states. In so doing, Congress further clarified the Act's underlying values.

The Act bypasses the states, the traditional conduits of federal aid, and establishes a direct partnership between the federal government and the people of the local communities. The House report accompanying the legislation explains that "local citizens know and understand their communities best and that they will be the ones to seize the initiative and provide sustained, vigorous leadership." But the reasons for bypassing the states go deeper, since the Act as originally proposed ignored elected community officials and permitted the establishment of private local agencies. These agencies were to receive direct federal funding. Opponents of the bill feared this would undermine the viability of state and lo-

168. Id. at 349-50. See Frankfurter, supra note 166, at 539-40.
170. Economic Opportunity Act Hearings, supra note 160, at 20, 21 (statement of R. Sargent Shriver, Director, Peace Corps, and Director-designate, Office of Economic Opportunity); see sources cited note 174 infra.
The bill's proponents, however, resisted efforts to return the states to full partnership on the ground that it would place the states between the poor and the programs established to help them.174

Representative Frelinghuysen, ranking minority member of the Subcommittee on Poverty Program and the House Committee on Education and Labor, the subcommittee and committee that considered the Economic Opportunity Act of 1964, and opposition floor leader, delivered a stern warning concerning what he considered dangerous implications of the bill for federal-state relations. Id. at 18210-11 (remarks of Rep. Frelinghuysen, opposition floor leader). The following quotations are indicative of his remarks and the views of those who opposed the bill on federalism grounds:

Finally, we must reject this bill because it is absolutely contrary to every sound principle we have developed in the establishment of Federal relations with State and local government, and with private organizations and individuals.

The real issue before us is whether we approve and endorse—in the guise of a war on poverty or for any other reason—a massive, unbridled extension of Federal authority into the public and private affairs of every community in this country. We must decide whether or not to approve an extension of Federal Power with no semblance of meaningful responsibility, direction, or participation by State and local government.

When all its wordy provisions are reduced to a basic proposition, it is that the power to make every decision, to approve every course of action, to select every beneficiary, is left to a single, appointive Federal official.

What is the really new and different element in these two programs, aside from the degree of Federal direction? It is the concept of Federal subvention of work done for private organizations. Which organization and what kind of work? Any—I repeat—any nonprofit organization which is carrying on "work in the public interest."

Commentators who examined the administration of the Act demonstrated that this fear was justified. See Leach, The Federal Role in the War on Poverty Program, 31 Law & Contemp. Probs. 18, 27-32 (1966); Note, Participation of the Poor: Section 202(a)(3) Organizations Under the Economic Opportunity Act of 1964, 75 Yale L.J. 599 (1966). The value to constitutional litigation of statements made by opponents of a bill has been illustrated as recently as Quern v. Jordan, 99 S. Ct. 1139 (1979). In Quern, Justice Rehnquist, writing for the majority, considered the silence of the opponents of a bill evidence that the bill was not intended to produce a radical transformation in eleventh amendment immunity. Id. at 1146. In contrast, when considering the Economic Opportunity Act of 1964, Congress extensively debated the role of state and local governments in the new antipoverty program.

174. See Economic Opportunity Act Hearings, supra note 160, 1539-40 (ex-
The original bill was amended to reestablish the states as full partners in the antipoverty program by giving each governor veto power over programs established in his or her state. While private agencies still received directed federal funding, the veto power gave the governors leverage to influence and shape the programs established in their states. However, congressional proponents of direct federal funding have succeeded in gradually increasing the immunity of the programs from interference by state and local governments. The veto was modified the following year in a series of close votes to give the Director of the Community Services Administration authority to override the veto without change between Rep. Bell and R. Sargent Shriver, Director, Peace Corps, and Director-designate, Office of Economic Opportunity; id. at 213 (exchange between Rep. Roosevelt and W. Willard Wirtz, Secretary of Labor); id. at 164-65 (exchange between Rep. Frelinghuysen, ranking minority member, and Anthony J. Celebrezze, Secretary of HEW); id. at 144-45 (exchange between Rep. Griffin and Secretary Celebrezze); id. at 105 (exchange between Rep. Taft and R. Sargent Shriver); id. at 78 (exchange between Rep. Goodell and R. Sargent Shriver); 110 CONG. REC. 16765-67 (1964) (remarks of Sen. Ribicoff); id. at 16719-20 (remarks of Sen. Clark). 175. 110 CONG. REC. 16741 (1964). The House accepted the Senate's version of the bill. Id. at 18650. See Economic Opportunity Act of 1964, Pub. L. No. 88-452, § 209(c), 78 Stat. 508. 176. The debate over repeal in 1965 mirrored the debate in 1964, see notes 173 & 174 supra and accompanying text. See 111 CONG. REC. 20663 (1965) (remarks of Sen. Prouty, proposing amendment to retain veto); id. at 20661 (remarks of Sen. Yarborough in opposition to retention of veto); id. at 20658 (exchange between Sens. Saltonstall, Fannin and Lausche); id. at 20656 (remarks of Sen. McNamara, floor manager of bill); id. at 20655 (remarks of Sen. Javits outlining Administration's objections to veto); id. at 17931 (remarks of Rep. Quie for retention of veto); id. at 17930 (remarks of Rep. Ryan against veto); id. at 17929-30 (remarks of Rep. Olsen of Montana against veto); id. at 17927 (remarks of Rep. Ford against veto); id. at 17923 (remarks of Rep. Ayres, sponsor of amendment to retain veto). Debate concerning whether to abolish the veto also brought out evidence to support the fears of opponents of the veto. See id. at 20660-61 (remarks of Sen. Yarborough); id. at 20656 (remarks of Sen. McNamara, floor manager of bill); id. at 17929-30 (remarks of Rep. Olsen of Montana); id. at 17927-28 (remarks of Rep. Goodell). Opponents of the veto also expressed fear that the mere existence of the veto would allow governors to shape programs in their states. Id. at 20656 (remarks of Sen. McNamara, floor manager of bill); id. at 17923 (remarks of Rep. Ayres, applauding leverage which veto power gave governors to shape programs). The remarks of Senator Yarborough indicate that these fears were justified. Id. at 20660 (remarks of Sen. Yarborough). For examples of votes on amendments to restore the veto, which had been deleted when the bill was in committee, see id. at 21113 (amendment of Sen. Prouty defeated by vote of 44 to 48); id. at 20664 (amendment of Sen. Fannin defeated by vote of 45 to 45). 177. The Director of the Community Services Administration is the successor to the Director of the Office of Economic Opportunity, which has been disbanded. 42 U.S.C. § 2941(a) (1976).
cause.\textsuperscript{178} As modified in 1965, the Director's override powers did not extend to vetoes of VISTA\textsuperscript{179} or Job Corps and Work Training programs.\textsuperscript{180} Congress expressly rejected an amendment to give state legislatures the power to override the governor's veto instead of reposing this power with the Director of the Community Services Administration.\textsuperscript{181} Congress thus was concerned with any control over programs at the state or local level. The continued movement away from state control of federal antipoverty programs indicates that Congress clearly intends that the programs be free from state interference.

In 1967, the Act was amended to create community-action agencies.\textsuperscript{182} These agencies are charged with coordinating the diverse programs in their communities and mobilizing community resources to fight poverty.\textsuperscript{183} The state may designate itself as an agency, or it may appoint any political subdivision, nonprofit agency, or a combination thereof.\textsuperscript{184} However, the Director of the Community Services Administration retains the power to designate a private, nonprofit community-action agency if a state or political subdivision refuses to establish one, or if the government community-action agency fails in its responsibilities to the poor in the community.\textsuperscript{185} The Director is given complete discretion and authority to bypass the government agency if he or she feels that action necessary to ensure that the poor of the community receive the help to which they are entitled.\textsuperscript{186} Moreover, the community-action agencies are required to provide mechanisms for the poor of the community to have input into the decisionmaking process.\textsuperscript{187}

\textsuperscript{178} Id. \textsection 2834. The veto power does not extend to assistance to institutions of higher learning. \textit{Id.}

\textsuperscript{179} Id. \textsection 603, 78 Stat. 508 (current version at 42 U.S.C. \textsection 4951-5085 (1976)).

\textsuperscript{180} Id. \textsection 101-116 (current version at 29 U.S.C. \textsection 911-929 (1976)).

\textsuperscript{181} 111 CONG. REC. 20669 (1965) (defeated by vote of 44 to 47).


\textsuperscript{184} 42 U.S.C. \textsection 2790(a) (1976).


\textsuperscript{186} \textit{Id.}

Thus, even though the responsibilities of state and local governments in the war on poverty have increased, Congress has retained a direct partnership between the federal government and the poor of each community.\footnote{188} Congress has been unwilling to allow anything to interfere with this partnership or to prevent the poor from getting the help Congress has provided.

**CONCLUSION**

The preemption cases are consistent if the vocabulary is particularized to reflect the actual analyses of the courts. While there have been inconsistent decisions, often the product of failure to look beyond the overly broad language of the cases, and a certain amount of shifting to reflect changing notions of federalism, the cases evidence a developing, unified doctrine of preemption applicable to a variety of situations. Preemption is an important tool for regulating the dynamics of the federal system and preserving the place of the states in that system.

In the migrant-camp context, preemption mandates that in a conflict between the private-property rights of the growers and the needs of the migrant workers, the scales should be tipped in favor of the needs of the migrants. A court faced with a demand by a federally funded antipoverty organization for injunctive relief from a grower’s denial of access should grant the injunction to the extent access is necessary for the effective functioning of the program. Congress made the effectiveness of the antipoverty program superior to the states’ interests. The supremacy clause gives effect to this intent, while minimizing the impact on the interests of the states.

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