

the extent of present use or speculation as to future needs. . . . What it has it may keep and give no one a reason for its will.”³⁰¹ This holding has since been disapproved, but on interstate commerce rather than due process grounds.³⁰² States may, however, enact and enforce a variety of conservation measures for the protection of watersheds.³⁰³

Similarly, a state has sufficient control over fish and wild game found within its boundaries³⁰⁴ so that it may regulate or prohibit fishing and hunting.³⁰⁵ For the effective enforcement of such restrictions, a state may also forbid the possession within its borders of special instruments of violations, such as nets, traps, and seines, regardless of the time of acquisition or the protestations of lawful intentions on the part of a particular possessor.³⁰⁶ The Court has also upheld a state law restricting a commercial reduction plant from accepting more fish than it could process without spoilage in order to conserve fish found within its waters, even allowing the application of such restriction to fish imported into the state from adjacent international waters.³⁰⁷

The Court’s early decisions rested on the legal fiction that the states owned the fish and wild game within their borders, and thus could reserve these possessions for use by their own citizens.³⁰⁸ The Court soon backed away from the ownership fiction,³⁰⁹ and in *Hughes v. Oklahoma*³¹⁰ it formally overruled prior case law, indicating that state conservation measures discriminating against out-of-state persons were to be measured under the Commerce Clause. Although a state’s “concerns for conservation and protection of wild animals”

³⁰¹ *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 356–57 (1908).

³⁰² *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982). *See also* *City of Altus v. Carr*, 255 F. Supp. 828 (W.D. Tex.), *aff’d per curiam*, 385 U.S. 35 (1966).

³⁰³ *See, e.g., Perley v. North Carolina*, 249 U.S. 510 (1919) (upholding law requiring the removal of timber refuse from the vicinity of a watershed to prevent the spread of fire and consequent damage to such watershed).

³⁰⁴ *Bayside Fish Co. v. Gentry*, 297 U.S. 422, 426 (1936).

³⁰⁵ *Manchester v. Massachusetts*, 139 U.S. 240 (1891); *Geer v. Connecticut*, 161 U.S. 519 (1896).

³⁰⁶ *Miller v. McLaughlin*, 281 U.S. 261, 264 (1930).

³⁰⁷ *Bayside Fish Co. v. Gentry*, 297 U.S. 422 (1936). *See also* *New York ex rel. Silz v. Hesterberg*, 211 U.S. 31 (1908) (upholding law proscribing possession during the closed season of game imported from abroad).

³⁰⁸ *Geer v. Connecticut*, 161 U.S. 519, 529 (1896).

³⁰⁹ *See, e.g., Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1 (1928) (invalidating Louisiana statute prohibiting transportation outside the state of shrimp taken in state waters, unless the head and shell had first been removed); *Toomer v. Witsell*, 334 U.S. 385 (1948) (invalidating law discriminating against out-of-state commercial fishermen); *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265, 284 (1977) (state could not discriminate in favor of its residents against out-of-state fishermen in federally licensed ships).

³¹⁰ 441 U.S. 322 (1979) (formally overruling *Geer*).