ducers, for instance, has occasioned judicial censure. In *Baldwin v. G.A.F. Seelig.*,[1090] the Court had before it a complex state price-fixing scheme for milk, in which the state, in order to keep the price of milk artificially high within the state, required milk dealers buying out-of-state to pay producers, wherever they were, what the dealers had to pay within the state, and, thus, in-state producers were protected. And, in *H. P. Hood & Sons, Inc. v. Du Mond*,[1091] the Court struck down a state refusal to grant an out-of-state milk distributor a license to operate a milk receiving station within the state on the basis that the additional diversion of local milk to the other state would impair the supply for the in-state market.[1092]

"Dormant Commerce Clause": The Modern Law

Transition from the old law to the modern standard occurred relatively smoothly in the field of regulation,[1093] but in the area of taxation the passage was choppy and often witnessed retreats and advances.[1094] In any event, both taxation and regulation now are evaluated under a judicial balancing formula comparing the burden on interstate commerce with the importance of the state interest, save for discriminatory state action that cannot be justified at all.

Taxation.—During the 1940s and 1950s, there was conflict within the Court between the view that interstate commerce could not be taxed at all, at least "directly," and the view that the negative com-

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producers were also disadvantaged by the law. For a modern application of the principle of these cases, *see* Fort Gratiot Sanitary Landfill v. Michigan Nat. Res. Dep't, 504 U.S. 353 (1992) (forbidding landfills from accepting out-of-county wastes). *See also* C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383, 391 (1994) (discrimination against interstate commerce not preserved because local businesses also suffer).

[1090] 294 U.S. 511 (1935). *See also* Polar Ice Cream & Creamery Co. v. Andrews, 375 U.S. 361 (1964). With regard to products originating within the state, the Court had no difficulty with price fixing. Nebbia v. New York, 291 U.S. 502 (1934).

[1091] 336 U.S. 525 (1949). For the most recent case in this saga, *see* West Lynn Creamery, Inc. v. Healy, 512 U.S. 186 (1994).

[1092] Not only is a state forbidden to bar an interstate market to protect local interests, a state may not combat discrimination against its own products by admitting only products (here, again, milk) from states that have reciprocity agreements with it. Great Atlantic & Pacific Tea Co. v. Cottrell, 424 U.S. 366 (1976).

[1093] Formulation of a balancing test was achieved in Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945), and was thereafter maintained more or less consistently. The Court's current phrasing of the test was in Pike v. Bruce Church, Inc., 397 U.S. 137 (1970).

[1094] Indeed, scholars dispute just when the modern standard was firmly adopted. The conventional view is that it was articulated in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), but there also seems little doubt that the foundation of the present law was laid in Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959).