

## Cl. 2—Supremacy of the Constitution, Laws, and Treaties

to authorize indirect purchasers to recover for all overcharges passed on to them by direct purchasers was held to implicate no preemption concerns, because the federal antitrust laws had been interpreted to not permit indirect purchasers to recover under *federal* law; the state law may have been inconsistent with federal law but in no way did it frustrate federal objectives and policies.<sup>80</sup> The effect of federal policy was not strong enough to warrant a holding of preemption when a state authorized condemnation of abandoned railroad property after conclusion of an ICC proceeding permitting abandonment, although the railroad's opportunity costs in the property had been considered in the decision on abandonment.<sup>81</sup>

**Specific Applications**

***Federal Immunity Laws and State Courts.***—The operation of federal immunity acts<sup>82</sup> to preclude the use in state courts of incriminating statements and testimony given by a witness before a committee of Congress or a federal grand jury<sup>83</sup> illustrates direct federal preemption that is not contingent on state participation in a federal program. Because Congress in pursuance of its paramount authority to provide for the national defense, as complemented by the Necessary and Proper Clause, is competent to compel testimony of persons that is needed in order to legislate, it is competent to obtain such testimony over a witness's self-incrimination claim by immunizing him from prosecution on evidence thus revealed not only in federal courts but in state courts as well.<sup>84</sup>

***Priority of National Claims Over State Claims.***—Anticipating his argument in *McCulloch v. Maryland*,<sup>85</sup> Chief Justice Marshall in 1805 upheld an act of 1792 asserting for the United States a priority of its claims over those of the states against a debtor in bankruptcy.<sup>86</sup> The principle was later extended to federal enactments providing that taxes due to the United States by an insol-

<sup>80</sup> *California v. ARC America Corp.*, 490 U.S. 93 (1989).

<sup>81</sup> *Hayfield Northern Ry. v. Chicago & N.W. Transp. Co.*, 467 U.S. 622 (1984). See also *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987) (federal law's broad purpose of protecting shareholders as a group is furthered by state anti-takeover law); *Rose v. Rose*, 481 U.S. 619 (1987) (provision governing veterans' disability benefits protects veterans' families as well as veterans, hence state child-support order resulting in payment out of benefits is not preempted).

<sup>82</sup> Immunity laws operate to compel witnesses to testify even over self-incrimination claims by giving them an equivalent immunity from prosecution.

<sup>83</sup> *Adams v. Maryland*, 347 U.S. 179 (1954).

<sup>84</sup> *Ullmann v. United States*, 350 U.S. 422, 434–436 (1956). See also *Reina v. United States*, 364 U.S. 507, 510 (1960).

<sup>85</sup> 17 U.S. (4 Wheat.) 316 (1819).

<sup>86</sup> *United States v. Fisher*, 6 U.S. (2 Cr.) 358 (1805).