The policy in Luther v. Borden

I want to briefly note what policy is being upheld or stuck down in Luther v. Borden because it bears some relationship to a couple of cases assigned for briefing. I may not have covered it in enough depth in class
The case arises out of a personal skirmish between people supporting the charter government and the Doerr insurgent government., For relating the case through time to the present the issue of which government is the real one is not of much importance.

 The real issue is whether there is a justiciable question, that is a question that the Supreme Court thinks it can decide or it ought to decide.. The Court has a certain amount of discretion in deciding or not deciding case that are presented to it. One aspect of that discretion is whether to use one of what is called its gate keeping powers. Recall that under Article III, for the Court to exercise its judicial power, the Court says it must be deciding a “case or controversy.” The main policy then is about the Supreme Court exercising its judicial power in particular kinds of cases. The Court has added that a case or controversy must be the kind of case or controversy it is suited to decide. Political questions are not of the nature.

Luther then can be characterized as a case upholding the Court’s policy of not deciding a particular kind of case or controversy. The Court does not decide the case because it is a political question. Then part of Luther is what is the political question the Court is not deciding. Another way of stating this is that the Court is upholding its power to not decide a case based on the political question doctrine. And a political question the Court cannot decide is what the Guaranty Clause, the guaranty of a Republican form of government, means in Article IV. The interpretation of that clause is a political question according to a majority in Luther and the Court defers to the legislative and executive branches for that interpretation. The Court looks to see which government in Rhode Island is considered by that branch to be the lawful government. See the discussion about this aspect in the :Luther case.

Reiterating the main “doorkeeping” issue the Court can explicity use to not decide a case that comes before it:

 A. Politiical question

 B. Standing

 C. Mootness

 D. Ripeness

When the Court uses one of these issues, for our comparative analysis the Court is the policy maker in the case. The question is then where the Court his upholding or striking down its policy to not take cases that have these doorkeeping issues.

While every case can be said to be about the Court’s policy about itself, such a position would not help us analyze the ebb and flow of nearly all of its cases over time. You could say Miln is about the Court’s ability to decide a case about state economic power and the Court upholds its power to do. But this is a big so what. No one contested the Court’s power or inclination to decide Miln or at least in the Court opinion there is no evidence that issue was being decided or considered. In Luther and other cases the issue of the Court’s power to decide the particular controversy is raised usually by the party being sued. . (As noted back in the 2nd and 3rd classes, this was one valid way to look at Marbury and not the only valid or useful way).

As I have noted above, some of the reasons the Court gives for not exercising its judicial power include, mootness(is there still a live dispute here), ripeness,(does this case give us the best set of facts or best situation to make a decision on this issue) and standing((does the complaining party have a judicial recognizable injury of some kind or represent an injured party).

Later cases flush out these doctrines and expand or limit the Court ability to make decisions that are denominated political questions. A famous 1962 case,Baker v. Carr, using a strict definition of political question doctrine say the issue of reapportionment is no longer a political question. The Court is essentially striking down its power to not review political questions by saying this case does not involve a political question. If doing what I call a Van geel comparison between Luther and Baker, you would come up with the following: Luther upholds Court’s policy of not taking political questions or not taking cases in which there is no case or controversy. The Court policy in Baker is to take something that looks like a political question. You end up in Box B because you have an uphold(Luther)/strikedown(Baker) sequence. This shows a narrowing of the scope of the Courts use political question to avoid deciding a particular set of issues, in Baker it was reapportionment. doctrine With the decision in Baker, the Court will decide not to take fewer cases where the issue is raised. The next case one might compasre to Baker may involve reapportionment. Depending on how the policy is stated, it could be about the political question doctrine, but more likely the best comparison is on a state policy about reapportionment. Again, there are many ways to look at the nature of the policy being upheld or struck down by the Supreme Court. As we go through the semester and on exams it will generally become clear which statement of the policy is best for comparison purposes. In the course, civil liberties, the policy involved is more obvious. In just about every case an individual is claiming a government at some level, local, state federal etc violated that individual’s rights under either the Bill of Rights, or one of the Amendments to the Constitution.

In this course sometime you have to look at the various angles there might be to state the policy that was upheld or struck down by the Court. We will discuss this more as we get closer to the first exam. For now, make sure you have in your brief something about what the government policy underconsideration is. In the relation to precedent part which comes after the part on legal reasoning, you should be doing a van Geel comparison of the policy in the case you have briefed with a prior case that is mentioned in the opinion You choice of prior case since many will be mentioned.