Schechter Poultry Corp v. United States

295 U.S. 495 (1935); May 27, 1935

At the core of President Roosevelt's early New Deal programs was Section 3 of the National Industrial Recovery Act, which authorized the President (through an administrative agency, the National Recovery Administration or NRA) to establish a wide range of regulatory codes for businesses. The Schechter brothers, who operated a small, very local, kosher poultry company, allowed customers to select their chickens. This ran afoul of an NRA policy requiring customers to 'accept the run of any half coop, coop, or coops, as purchased by slaughterhouse operators'—in other words, the customer could not pick the chicken, but had to take the first one possible. The Schecters contended that the NRA policy was an unconstitutional delegation of legislative power to the executive and exceeded the enumerated powers of the federal government. Excerpts from the sections on federalism are printed below.

[opinion text excerpted from https://supreme.justia.com/cases/federal/us/295/495/]

CHIEF JUSTICE HUGHES delivered the opinion of the Court.

We are told that the provision of the statute authorizing the adoption of codes must be viewed in the light of the grave national crisis with which Congress was confronted. Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged. Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power.…The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extraconstitutional authority were anticipated and precluded by the explicit terms of the Tenth Amendment…

[On] the application of the provisions of the Live Poultry Code to intrastate transactions:

Were these transactions "*in*" interstate commerce? Much is made of the fact that almost all the poultry coming to New York is sent there from other States. But the code provisions, as here applied, do not concern the transportation of the poultry from other States to New York, or the transactions of the commission men or others to whom it is consigned, or the sales made by such consignees to defendants. When defendants had made their purchases, whether at the West Washington Market in New York City or at the railroad terminals serving the City, or elsewhere, the poultry was trucked to their slaughterhouses in Brooklyn for local disposition. The interstate transactions in relation to that poultry then ended…

The undisputed facts thus afford no warrant for the argument that the poultry handled by defendants at their slaughterhouse markets was in a "*current*" or "*flow*" of interstate commerce, and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived, and has become commingled with the mass of property within the State, and is there held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest within the

State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce….

In determining how far the federal government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle… [W]here the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprise and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the State over its domestic concerns would exist only by sufferance of the federal government….

[T]he distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the federal power, and, for all practical purposes, we should have a completely centralized government…

It is not the province of the Court to consider the economic advantages or disadvantage of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it.

JUSTICE CARDOZO wrote a concurring opinion.

…If that conception shall prevail, anything that Congress may do within the limits of the commerce clause for the betterment of business may be done by the President upon the recommendation of a trade association by calling it a code. This is delegation running riot. No such plenitude of power is susceptible of transfer. The statute, however, aims at nothing less, as one can learn both from its terms and from the administrative practice under it.

But there is another objection, far-reaching and incurable, aside from any defect of unlawful delegation. If this code had been adopted by Congress itself, and not by the President, on the advice of an industrial association, it would even then be void unless authority to adopt it is included in the grant of power "to regulate commerce with foreign nations a among the several states." United States Constitution, Art. I, § 8

I find no authority in that grant for the regulation of wages and hours of labor in the intrastate transactions that make up the defendants' business. As to this feature of the case, little can be added to the opinion of the court. There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours "is an elastic medium which transmits all tremors throughout its territory; the only question is of their size." [Judge Learned Hand in the court below]. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. What is near and what is distant may at times be uncertain. There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our federal system.

Throughout 1935 and 1936, the Court, although often by narrower margins, continued to hold that much of what Roosevelt wanted to do exceeded the constitutionally enumerated powers of

the federal government and thus violated the Tenth Amendment. Although other decisions, especially the Court's blocking of state *minimum wage laws, were widely condemned, the decision overturning the National Industrial Recovery Act was broadly well received, as the program had become quite unpopular.* (*In addition, and unlike with the cases overturning state legislation which progressives and conservatives alike viewed as the courts interfering with the rights of the states, even progressives were uneasy with the sweeping federal power asserted to justify the National Industrial Recovery Act.)*

While some historians speculate that Roosevelt was quietly relieved to be rid of the program, in a speech shortly after the Schecter *case Roosevelt decried the judges as defenders of a "horse-and-buggy" understanding of the economy. (Ironically, in his states' rights phase, then Governor Roosevelt had specifically endorsed the same understanding of the interstate commerce clause a few years earlier in a speech he gave to the nation's governors in July 1929.)*

But things were different now, Roosevelt believed, and he was impatient with those who questioned the powers Roosevelt believed the federal government needed to wield. In a controversial speech shortly before the 1936 presidential election, Roosevelt decried skeptics of his New Deal as "already aliens to the spirit of American democracy [who should] emigrate and try their lot under some foreign flag in which they have more confidence"; in another speech, he described them as "economic royalists".

Some of his advisors and members of Congress suggested a constitutional amendment that would give a targeted expansion of federal regulatory authority, allowing it, for example, to regulate wages and working conditions. Roosevelt instead suggested adding new members of the Supreme Court who might be more favorable to him. In a fireside chat about his proposal, he made the case that "we cannot yield our constitutional destiny to the personal judgment of a few men who, being fearful of the future, would deny us the necessary means of dealing with the present."

While it was ostensibly to help relieve the older justices of work, most observers believed the plan was an attempt to circumvent the separation of powers, and even many Roosevelt allies criticized the plan, which Roosevelt soon withdrew. Shortly thereafter, the Supreme Court approved some of Roosevelt's other initiatives, which led many to speculate that the Court had reversed itself in response to the threat of "court-packing", although it now appears that the decisions were made before "court-packing" was announced.

Nonetheless, Roosevelt got his way in the end; justices began retiring from the Court, such that by the end of his presidency, Roosevelt had appointed nearly every member on it, and these new appointees approved Roosevelt's new understanding of the commerce clause. Now, the federal government would be able not just to regulate interstate commerce directly, but also to regulate any economic activity that substantially affected interstate commerce. Even more than that, in the case of Wickard v. Filburn*, the Court said that even seemingly small economic activities could be regulated if, in the aggregate, all similar activities could affect interstate commerce.*

Wickard v. Filburn

317 U.S. 111 (1942); November 9, 1942

Farmer Roscoe Filburn was fined for growing more wheat than he had been allotted under an Agricultural Adjustment Act production quota, which sought to raise prices by reducing the supply. He contended that, because the excess wheat had been used for livestock raised on his farm—in other words, it was not sold in commerce, much less across state lines--- he had not engaged in interstate commerce and thus was beyond the reach of federal commerce powers.

[opinion text excerpted from https://supreme.justia.com/cases/federal/us/317/111/]

JUSTICE JACKSON delivered the opinion of the Court.

It is urged that …Congress does not possess the power it has in this instance sought to exercise. The question would merit little consideration except for the fact that this Act extends federal regulation to production not intended in any part for commerce, but wholly for consumption on the farm….

In the *Shreveport Rate Cases,* the Court held that railroad rates of an admittedly intrastate character and fixed by authority of the state might, nevertheless, be revised by the Federal Government because of the economic effects which they had upon interstate commerce. The opinion of Mr. Justice Hughes found federal intervention constitutionally authorized because of "matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance."

Whether the subject of the regulation in question was "production," "consumption," or "marketing" is, therefore, not material for purposes of deciding the question of federal power before us. That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it. The same consideration might help in determining whether, in the absence of Congressional action, it would be permissible for the state to exert its power on the subject matter, even though, in so doing, it to some degree affected interstate commerce. But even if appellee's activity be local, and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect."

[Jackson then undertakes a lengthy survey of the state of the wheat farming industry, concluding that the] effect of consumption of home-grown wheat on interstate commerce is due to the fact that it constitutes the most variable factor in the disappearance of the wheat crop…

The maintenance by government regulation of a price for wheat undoubtedly can be accomplished as effectively by sustaining or increasing the demand as by limiting the supply. The effect of the statute before us is to restrict the amount which may be produced for market and the extent, as well, to which one may forestall resort to the market by producing to meet his own needs. That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial.

It is well established by decisions of this Court that the power to regulate commerce includes the power to regulate the prices at which commodities in that commerce are dealt in and practices affecting such prices. One of the primary purposes of the Act in question was to increase the market price of wheat, and, to that end, to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions… [I]f we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce. … This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.