AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Powers of the National Government

Carter v. Carter Coal Co., 298 U.S. 238 (1936)

The 1935 decisions, while disturbing, were not crucial to the New Deal. The statutes at issue had already fallen out of favor with the administration. Moreover, from the perspective of the government, these initial losses in Court might be explained by poor legal preparation. The Bituminous Coal Conservation Act of 1935 was more central to the New Deal program. Unlike the poultry business, coal mining was a major industry that New Dealers wanted placed under national control. The act authorized a commission to fix minimum and maximum prices on coal. It required coal companies to recognize unions and pay minimum wages. Companies that refused had to pay a large tax on their products. When some members of Congress raised constitutional issues with this proposed measure, President Roosevelt sent the following letter to the chair of the relevant subcommittee, Representative Samuel B. Hill.

My dear Mr. Hill:

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> *Admitting that mining coal, considered separately and apart from its distribution in the flow of interstate commerce, is an intrastate transaction, the constitutionality of the provisions based on the commerce clause of the Constitution depends upon the final conclusion as to whether production conditions directly affect, promote or obstruct interstate commerce in the commodity.*
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> *Manifestly, no one is in a position to give assurance that the proposed act will withstand constitutional tests, for the simple fact that you can get not ten but a thousand differing legal opinions on the subject. But the situation is so urgent and the benefits of the legislation so evident that all doubts should be resolved in favor of the bill, leaving to the courts, in an orderly fashion, the ultimate question of constitutionality. A decision by the Supreme Court relative to this measure would be helpful as indicating, with increasing clarity, the constitutional limits within which this Government must operate. . . . I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation.*[1]

The Carter Coal Case *arose when stockholders in the company sought injunctions blocking the Carter Coal Company from complying with the act or paying the taxes for non-compliance and against the government from collecting the tax. Among the issues facing the courts were whether these suits were premature and whether all the constitutional objections to the act needed to be addressed at this time. Both Congress and the Roosevelt Justice Department made a major effort to demonstrate how this act was a necessary regulation of interstate commerce. Several state attorneys general filed amicus briefs asserting that national regulation was necessary. Nevertheless, in a sharp blow to the New Deal, the Supreme Court by a 6-3 vote declared the entire measure unconstitutional. Hughes would only have struck down the minimum wage provisions of the act, while leaving in place (for now) the price-fixing provisions. The dissenters did not address the constitutionality of the minimum-wage provisions, but would have upheld the price-fixing provisions. The same majority had voted down the Agricultural Adjustment Act in* United States v. Butler *(1936) a few months earlier. Notice that the three liberal justices who had voted against some New Deal programs in 1934 and 1935 voted in 1936 to sustain both the Bituminous Coal Act and AAA. Does Justice Stone's dissent provide adequate constitutional justification for this switch, or do you believe the issues in*

[1] Donald G. Morgan, *Congress and the Constitution* (Cambridge, Mass.: Harvard University Press, 1966), 424.

Carter *were constitutionally similar to those in* Schechter*?*

JUSTICE SUTHERLAND delivered the opinion of the Court.

. . . . [T]he powers which Congress undertook to exercise are not specific but of the most general character -- namely, to protect the general public interest and the health and comfort of the people, to conserve privately-owned coal, maintain just relations between producers and employees and others, and promote the general welfare, by controlling nation-wide production and distribution of coal. These, it may be conceded, are objects of great worth; but are they ends, the attainment of which has been committed by the Constitution to the federal government? This is a vital question; for nothing is more certain than that beneficent aims, however great or well directed, can never serve in lieu of constitutional power.

The ruling and firmly established principle is that the powers which the general government may exercise are only those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers. Whether the end sought to be attained by an act of Congress is legitimate is wholly a matter of constitutional power and not at all of legislative discretion. Legislative congressional discretion begins with the choice of means and ends with the adoption of methods and details to carry the delegated powers into effect. . . . Thus, it may be said that to a constitutional end many ways are open; but to an end not within the terms of the Constitution, all ways are closed.

The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to purposes affecting the nation as a whole with which the states severally cannot deal or cannot adequately deal, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have never been accepted but always definitely rejected by this court. Mr. Justice Story, as early as 1816, laid down the cardinal rule, which has ever since been followed -- that the general government "can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication." *Martin* v. *Hunter's Lessee* (1816). . . . In the Framers Convention, the proposal to confer a general power akin to that just discussed was included in Mr. Randolph's resolutions, the sixth of which, among other things, declared that the National Legislature ought to enjoy the legislative rights vested in Congress by the Confederation, and "moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation." The convention, however, declined to confer upon Congress power in such general terms; instead of which it carefully limited the powers which it thought wise to entrust to Congress by specifying them, thereby denying all others not granted expressly or by necessary implication. It made no grant of authority to Congress to legislate substantively for the general welfare , . . . and no such authority exists, save as the general welfare may be promoted by the exercise of the powers which are granted.

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. . . . The commerce clause vests in Congress the power -- "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." . . . . We first inquire, then -- What is commerce?

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As used in the Constitution, the word "commerce" is the equivalent of the phrase "intercourse for the purposes of trade," and includes transportation, purchase, sale, and exchange of commodities between the citizens of the different states. And the power to regulate commerce embraces the instruments by which commerce is carried on. . . .

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That commodities produced or manufactured within a state are intended to be sold or transported outside the state does not render their production or manufacture subject to federal regulation under the commerce clause. . . .

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We have seen that the word "commerce" is the equivalent of the phrase "intercourse for the purposes of trade." Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor and working conditions, the bargaining in respect of these things -- whether carried on separately or collectively -- each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. . . . Mining brings the subject matter of commerce into existence. Commerce disposes of it.

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That the production of every commodity intended for interstate sale and transportation has some effect upon interstate commerce may be, if it has not already been, freely granted; and we are brought to the final and decisive inquiry, whether here that effect is direct . . . or indirect. The distinction is not formal, but substantial in the highest degree, as we pointed out in the *Schechter* case . . . .

. . . .The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about. If the production by one man of a single ton of coal intended for interstate sale and shipment, and actually so sold and shipped, affects interstate commerce indirectly, the effect does not become direct by multiplying the tonnage, or increasing the number of men employed, or adding to the expense or complexities of the business, or by all combined. . . . . [The] question is not -- What is the *extent* of the local activity or condition, or the *extent* of the effect produced upon interstate commerce? but -- What is the *relation* between the activity or condition and the effect?

Much stress is put upon the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment and irregularity of production and effect on prices; and it is insisted that interstate commerce is *greatly* affected thereby. But, in addition to what has just been said, the conclusive answer is that the evils are all local evils over which the federal government has no legislative control. The relation of employer and employee is a local relation.

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CHIEF JUSTICE HUGHES, concurring in part and dissenting in part.

I agree that . . . . production -- in this case mining -- which precedes commerce, is not itself commerce; and that the power to regulate commerce among the several States is not a power to regulate industry within the State.

The power to regulate interstate commerce embraces the power to protect that commerce from injury whatever may be the source of the dangers which threaten it, and to adopt any appropriate means to that end. . . . Congress thus has adequate authority to maintain the orderly conduct of interstate commerce and to provide for the peaceful settlement of disputes which threaten it. . . . But Congress may not use this protective authority as a pretext for the exertion of power to regulate activities and relations within the States which affect interstate commerce only indirectly. Otherwise, in view of the multitude of indirect effects, Congress in its discretion could assume control of virtually all the activities of the people to the subversion of the fundamental principle of the Constitution. If the people desire to give Congress the power to regulate industries within the State, and the relations of employers and employees in those industries, they are at liberty to declare their will in the appropriate manner, but it is not for the Court to amend the Constitution by judicial decision.

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. . . . The Court has repeatedly stated that the power to regulate interstate commerce among the several States is supreme and plenary. . . .We are not at liberty to deny to the Congress, with respect to interstate commerce, a power commensurate with that enjoyed by the States in the regulation of their internal commerce. . . .

Whether the policy of fixing prices of commodities sold in interstate commerce is a sound policy is not for our consideration. The question of that policy, and of its particular applications, is for Congress.

The exercise of the power of regulation is subject to the constitutional restriction of the due process clause, and if in fixing rates, prices or conditions of competition, that requirement is transgressed, the judicial power may be invoked to the end that the constitutional limitation may be maintained. . . .

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Upon what ground, then, can it be said that this plan for the regulation of transactions in interstate commerce in coal is beyond the constitutional power of Congress? The Court reaches that conclusion in the view that the invalidity of the labor provisions requires us to condemn the Act in its entirety. I am unable to concur in that opinion. I think that the express provisions of the Act preclude such a finding of inseparability.

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In this view, the Act, and the Code for which it provides, may be sustained in relation to the provisions for marketing in interstate commerce, and the decisions of the courts below, so far as they accomplish that result, should be affirmed.

JUSTICE CARDOZO, with JUSTICE BRANDEIS and JUSTICE STONE, dissenting.

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First: I am satisfied that the Act is within the power of the central government in so far as it provides for minimum and maximum prices upon sales of bituminous coal in the transactions of interstate commerce and in those of intrastate commerce where interstate commerce is directly or intimately affected. Whether it is valid also in other provisions that have been considered and condemned in the opinion of the court, I do not find it necessary to determine at this time. Silence must not be taken as importing acquiescence. . . .

(1) With reference to the first objection, the obvious and sufficient answer is, so far as the Act is directed to interstate transactions, that sales made in such conditions constitute interstate commerce, and do not merely "affect" it. . . . To regulate the price for such transactions is to regulate commerce itself, and not alone its antecedent conditions or its ultimate consequences. The very act of sale is limited and governed. Prices in interstate transactions may not be regulated by the states.

Regulation of prices being an exercise of the commerce power in respect of interstate transactions, the question remains whether it comes within that power as applied to intrastate sales where interstate prices are directly or intimately affected. Mining and agriculture and manufacture are not interstate commerce considered by themselves, yet their relation to that commerce may be such that for the protection of the one there is need to regulate the other. . . . .

Sometimes it is said that the relation must be "direct" to bring that power into play. In many circumstances such a description will be sufficiently precise to meet the needs of the occasion. But a great principle of constitutional law is not susceptible of comprehensive statement in an adjective. The underlying thought is merely this, that "the law is not indifferent to considerations of degree." . . . It cannot be indifferent to them without an expansion of the commerce clause that would absorb or imperil the reserved powers of the states. At times . . . the waves of causation will have radiated so far that their undulatory motion, if discernible at all, will be too faint or obscure, too broken by crosscurrents, to be heeded by the law. In such circumstances the holding is not directed at prices or wages considered in the abstract, but at prices or wages in particular conditions. The relation may be tenuous or the opposite according to the facts. Always the setting of the facts is to be viewed if one would know the closeness of the tie. Perhaps, if one group of adjectives is to be chosen in preference to another, "intimate" and "remote" will be found to be as good as any. At all events, "direct" and "indirect," even if accepted as sufficient, must not be read too narrowly. A survey of the cases shows that the words have been interpreted with suppleness of adaptation and flexibility of meaning. The power is as broad as the need that evokes it.

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The commerce clause being accepted as a sufficient source of power, the next inquiry must be whether the power has been exercised consistently with the Fifth Amendment. . . .

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Congress was not condemned to inaction in the face of price wars and wage wars so pregnant with disaster. Commerce had been choked and burdened; its normal flow had been diverted from one state to another; there had been bankruptcy and waste and ruin alike for capital and for labor. The liberty protected by the Fifth Amendment does not include the right to persist in this anarchic riot. . . . After making every allowance for difference of opinion as to the most efficient cure, the student of the subject is confronted with the indisputable truth that there were ills to be corrected, and ills that had a direct relation to the maintenance of commerce among the states without friction or diversion. An evil existing, and also the power to correct it, the lawmakers were at liberty to use their own discretion in the selection of the means.

My vote is for affirmance. . . .