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

United States v. Darby, 312 U.S. 100 (1941)

United States v. Darby *marked the clear break with the recent constitutional past. The justices in that case unanimously ruled that Congress had the power to regulate wages and hours of employment. The Court ended its effort to analyze economic regulation in terms of a stream of interstate commerce and direct effects on interstate commerce. Rather than distinguish* Hammer v. Dagenhart *(1918) or* Carter v. Carter Coal Co. *(1936), Justice Stone's opinion overruled the former and declared that the latter had already been overruled, along with any other past precedent limiting congressional power over goods produced for interstate commerce. No conservative remained on the bench to deliver a dissent. After* Darby, *Congress was recognized to have unlimited power to regulate the production of any good intended to be shipped in interstate commerce.*

Darby *involved a challenge to the Fair Labor Standards Act (FLSA) of 1938. The FLSA imposed a national minimum wage, maximum working hours, and prohibited child labor for all businesses engaged in interstate commerce. Darby Lumber was charged with violating the Act in a federal district court in Georgia. The district court quashed the indictment on the grounds that Darby's lumberyard was purely local and therefore constitutionally exempt from the FLSA. The government appealed directly to the Supreme Court.*

JUSTICE STONE delivered the opinion of the Court.

The two principal questions raised by the record in this case are, *first*, whether Congress has constitutional power to prohibit the shipment in interstate commerce of lumber manufactured by employees whose wages are less than a prescribed minimum or whose weekly hours of labor at that wage are greater than a prescribed maximum, and, *second*, whether it has power to prohibit the employment of workmen in the production of goods "for interstate commerce" at other than prescribed wages and hours. . . .

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While manufacture is not of itself interstate commerce, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. . . .. It is conceded that the power of Congress to prohibit transportation in interstate commerce includes noxious articles . . . ., kidnapped persons, . . . and articles such as intoxicating liquor or convict made goods, traffic in which is forbidden or restricted by the laws of the state of destination. . . .

But it is said that the present prohibition falls within the scope of none of these categories; that while the prohibition is nominally a regulation of the commerce its motive or purpose is regulation of wages and hours of persons engaged in manufacture, the control of which has been reserved to the states and upon which Georgia and some of the states of destination have placed no restriction; that the effect of the present statute is not to exclude the proscribed articles from interstate commerce in aid of state regulation . . . , but instead, under the guise of a regulation of interstate commerce, it undertakes to regulate wages and hours within the state contrary to the policy of the state which has elected to leave them unregulated.

The power of Congress over interstate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." . . . Congress, following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce, is free to exclude from the commerce articles whose

use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare, even though the state has not sought to regulate their use.

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The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows. The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control. . . . Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause. Subject only to that limitation, presently to be considered, we conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress.

In the more than a century which has elapsed since the decision of *Gibbons* v. *Ogden* (1824), these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause, that there would be little occasion for repeating them now were it not for the decision of this Court twenty-two years ago in *Hammer* v. *Dagenhart* (1918). . . . In that case it was held by a bare majority of the Court over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved, that Congress was without power to exclude the products of child labor from interstate commerce. The reasoning and conclusion of the Court's opinion there cannot be reconciled with the conclusion which we have reached, that the power of Congress under the Commerce Clause is plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution.

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The conclusion is inescapable that *Hammer* v. *Dagenhart*, was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision and that such vitality, as a precedent, as it then had has long since been exhausted. It should be and now is overruled.

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There remains the question whether such restriction on the production of goods for commerce is a permissible exercise of the commerce power. The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See *McCulloch v. Maryland* (1819). . . .

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Congress, having by the present Act adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards, it may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. Such legislation has often been sustained with respect to powers, other than the commerce power granted to the national government, when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government. . . . A familiar like exercise of power is the regulation of intrastate transactions which are so commingled with or related to interstate commerce that all must be regulated if the interstate commerce is to be effectively controlled. . . . Similarly Congress may require inspection and preventive treatment of all cattle in a disease infected area in order to prevent shipment in interstate commerce of some of the cattle without the treatment. . . . It may prohibit the removal, at destination, of labels required by the Pure Food & Drugs Act to be affixed to articles transported in interstate commerce. . . . And we have recently held that Congress in the exercise of its power to require inspection and grading of tobacco shipped in interstate commerce may compel such inspection and grading of all tobacco sold at local auction rooms from which a substantial part but not all of the tobacco sold is shipped in interstate commerce. . . .

. . . [T]the evils aimed at by the Act are the spread of substandard labor conditions through the

use of the facilities of interstate commerce for competition by the goods so produced with those produced under the prescribed or better labor conditions; and the consequent dislocation of the commerce itself caused by the impairment or destruction of local businesses by competition made effective through interstate commerce. . . .

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The means adopted by §15 (a) (2) for the protection of interstate commerce by the suppression of the production of the condemned goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the commerce power. . . . Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recognized that in present day industry, competition by a small part may affect the whole and that the total effect of the competition of many small producers may be great. . . .

So far as *Carter* v. *Carter Coal Co.* (1936) is inconsistent with this conclusion, its doctrine is limited in principle by the decisions under the Sherman Act and the National Labor Relations Act, which we have cited and which we follow.

Our conclusion is unaffected by the Tenth Amendment which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers. . . .

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Reversed.