Hammer Vs. Dagenhart

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Appellant : Hammer

Respondent : Dagenhart

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U.S. Supreme Court Hammer v. Dagenhart, 247 U.S. 251 (1918)

Hammer v. Dagenhart

No. 704

Argued April 15, 16, 1918

Decided June 3, 1918

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

SYLLABUS

The Act of September 1, 1916, c. 432, 39 Stat. 675, prohibits transportation in interstate commerce of goods made at a factory in which, within thirty days prior to their removal therefrom, children under the age of 14 years have been employed or permitted to work, or children between the ages of 14 and 16 years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of 7 P.M. or before the hour of 6 A.M. *Held,* unconstitutional as exceeding the commerce power of Congress and invading the powers reserved to the States.

The power to regulate interstate commerce is the power to prescribe the rule by which the commerce is to be governed; in other words, to control the means by which it is carried on.

The court has never sustained a right to exclude save in cases where the character of the particular things excluded was such as to bring them peculiarly within the governmental authority of the State or Nation and render their exclusion, in effect, but a regulation of interstate transportation, necessary to prevent the accomplishment through that means of the evils inherent in them.

The manufacture of goods is not commerce, nor do the facts that they are intended for, and are afterwards shipped in, interstate commerce make their production a part of that commerce subject to the control of Congress.

The power to regulate interstate commerce was not intended as a means of enabling Congress to equalize the economic conditions in the States for the prevention of unfair competition among them by forbidding the interstate transportation of goods made under conditions which Congress deems productive of unfairness.

It was not intended as an authority to Congress to control the States in the exercise of their police power over local trade and manufacture, always existing and expressly reserved to them by the Tenth Amendment.

Affirmed.

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The case is stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the court.

A bill was filed in the United States District Court for the Western District of North Carolina by a father in his own behalf and as next friend of his two minor sons, one under the age of fourteen years and the other between the ages of fourteen and sixteen years, employees in a cotton mill at Charlotte, North Carolina, to enjoin the enforcement of the act of Congress intended to prevent interstate commerce in the products of child labor. Act of Sept. 1, 1916, c. 432, 39 Stat. 675.

The District Court held the act unconstitutional and entered a decree enjoining its enforcement. This appeal brings the case here. The first section of the act is in the margin. *

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Other sections of the act contain provisions for its enforcement and prescribe penalties for its violation.

The attack upon the act rests upon three propositions: first: it is not a regulation of interstate and foreign commerce; second: it contravenes the Tenth Amendment to the Constitution; third: it conflicts with the Fifth Amendment to the Constitution.

The controlling question for decision is: is it within the authority of Congress in regulating commerce among the States to prohibit the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to their removal therefrom, children under the age of fourteen have

been employed or permitted to work, or children between the ages of fourteen and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock P.M. or before the hour of 6 o'clock A.M.?

The power essential to the passage of this act, the Government contends, is found in the commerce clause of the Constitution, which authorizes Congress to regulate commerce with foreign nations and among the States.

In *Gibbons v. Ogden,* 9 Wheat. 1, Chief Justice Marshall, speaking for this court and defining the extent and nature of the commerce power, said, "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed." In other words, the power is one to control the means by which commerce is carried on, which is

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directly the contrary of the assumed right to forbid commerce from moving, and thus destroy it as to particular commodities. But it is insisted that adjudged cases in this court establish the doctrine that the power to regulate given to Congress incidentally includes the authority to prohibit the movement of ordinary commodities, and therefore that the subject is not open for discussion. The cases demonstrate the contrary. They rest upon the character of the particular subjects dealt with, and the fact that the scope of governmental authority, state or national, possessed over them is such that the authority to prohibit is as to them but the exertion of the power to regulate.

The first of these cases is *Champion v. Ames,* 188 U. S. 321 , the so-called *Lottery Case,* in which it was held that Congress might pass a law having the effect to keep the channels of commerce free from use in the transportation of tickets used in the promotion of lottery schemes. In *Hipolite Egg Co. v. United States,* 220 U. S. 45 , this court sustained the power of Congress to pass the Pure Food and Drug Act, which prohibited the introduction into the States by means of interstate commerce of impure foods and drugs. In *Hoke v. United*

States, 227 U. S. 308 , this court sustained the constitutionality of the so-called "White Slave Traffic Act," whereby the transportation of a woman in interstate commerce for the purpose of prostitution was forbidden. In that case, we said, having reference to the authority of Congress, under the regulatory power, to protect the channels of interstate commerce:

"If the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls. "

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In *Caminetti v. United States,* 242 U. S. 470 , we held that Congress might prohibit the transportation of women in interstate commerce for the purposes of debauchery and kindred purposes. In *Clark Distilling Co. v. Western Maryland Ry. Co.,* 242 U. S. 311 , the power of Congress over the transportation of intoxicating liquors was sustained. In the course of the opinion, it was said:

"The power conferred is to regulate, and the very terms of the grant would seem to repel the contention that only prohibition of movement in interstate commerce was embraced. And the cogency of this is manifest, since, if the doctrine were applied to those manifold and important subjects of interstate commerce as to which Congress from the beginning has regulated, not prohibited, the existence of government under the Constitution would be no longer possible."

And, concluding the discussion which sustained the authority of the Government to prohibit the transportation of liquor in interstate commerce, the court said:

". . . the exceptional nature of the subject here regulated is the basis upon which the exceptional power exerted must rest, and affords no ground for any fear that such power may be constitutionally extended to things which it may not, consistently with the guarantees of the Constitution, embrace."

In each of these instances, the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended.

This element is wanting in the present case. The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the States who employ children within the prohibited ages. The act, in its effect, does not regulate

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transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States. The goods shipped are, of themselves, harmless. The act permits them to be freely shipped after thirty days from the time of their removal from the factory. When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to federal control under the commerce power.

Commerce

"consists of intercourse and traffic, and includes the transportation of persons land property, as well as the purchase, sale and exchange of commodities."

The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. *Delaware, Lackawanna & Western R.R. Co. v. Yurkonis,* 238 U. S. 439 .

Over interstate transportation or its incidents, the regulatory power of Congress is ample, but the production of articles intended for interstate commerce is a matter of local regulation.

"When the commerce begins is determined not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state."

(Mr. Justice Jackson in *In re Green,* 52 Fed.Rep. 113.) This principle has been recognized often in this court. *Coe v. Errol,* 116 U. S. 517 ; *Bacon v. Illinois,* 227 U. S. 504 , and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the

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framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. *Kidd v. Pearson,* 128 U. S. 1 , 128 U. S. 21 .

It is further contended that the authority of Congress may be exerted to control interstate commerce in the shipment of child-made goods because of the effect of the circulation of such goods in other States where the evil of this class of labor has been recognized by local legislation, and the right to thus employ child labor has been more rigorously restrained than in the State of production. In other words, that the unfair competition thus engendered may be controlled by closing the channels of interstate commerce to manufacturers in those States where the local laws do not meet what Congress deems to be the more just standard of other States.

There is no power vested in Congress to require the States to exercise their police power so as to prevent possible unfair competition. Many causes may cooperate to give one State, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress a general authority to equalize such conditions. In some of the States, laws have been passed fixing minimum wages for women, in others, the local law regulates the hours of labor of women in various employments. Business done in such States may be at an economic disadvantage when compared with States which

have no such regulations; surely, this fact does not give Congress the power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other States and approved by Congress.

The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the

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States in their exercise of the police power over local trade and manufacture.

The grant of authority over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the States in the Tenth Amendment to the Constitution.

Police regulations relating to the internal trade and affairs of the States have been uniformly recognized as within such control. "This," said this court in *United States v. Dewitt,* 9 Wall. 41, 76 U. S. 45 ,

"has been so frequently declared by this court, results so obviously from the terms of the Constitution, and has been so fully explained and supported on former occasions that we think it unnecessary to enter again upon the discussion."

See Keller v. United States, 213 U. S. 138 , 213 U. S. 144 , 213 U. S. 145 , 213 U. S. 146 . Cooley's Constitutional Limitations, 7th ed., p. 11.

In the judgment which established the broad power of Congress over interstate commerce, Chief Justice Marshall said (9 Wheat. 22 U. S. 203):

"They [inspection laws] act upon the subject before it becomes an article of foreign commerce, or of commerce among the states, and prepare it for that purpose. They form a portion of that immense mass of legislation which embraces everything within the territory of a state not surrendered to the general government, all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as

well as laws for regulating the internal commerce of a state and those which respect turnpike roads, ferries, &c.;, are component parts of this mass."

And in *Dartmouth College v. Woodward,* 4 Wheat. 518, 17 U. S. 629 , the same great judge said:

"That the framers of the constitution did not intend to restrain the states in the regulation of their civil institutions, adopted for internal government, and that

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the instrument they have given us is not to be so construed may be admitted."

That there should be limitations upon the right to employ children in mines and factories in the interest of their own and the public welfare, all will admit. That such employment is generally deemed to require regulation is shown by the fact that the brief of counsel states that every State in the Union has a law upon the subject, limiting the right to thus employ children. In North Carolina, the State wherein is located the factory in which the employment was had in the present case, no child under twelve years of age is permitted to work.

It may be desirable that such laws be uniform, but our Federal Government is one of enumerated powers; "this principle," declared Chief Justice Marshall in *McCulloch v. Maryland,* 4 Wheat. 316, "is universally admitted."

A statute must be judged by its natural and reasonable effect. *Collins v. New Hampshire,* 171 U. S. 30 , 171 U. S. 33 , 171 U. S. 34 . The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. *Pipe Line Cases,* 234 U. S. 548 , 234 U. S. 560 . The maintenance of the authority of the States over matters purely local is as essential to the preservation of our institutions, as is the conservation of the supremacy of the federal power in all matters entrusted to the Nation by the Federal Constitution.

In interpreting the Constitution, it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them

and to the people the powers not expressly delegated to the National Government are reserved. *Lane County v. Oregon,* 7 Wall. 71, 74 U. S. 76 . The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent, and has never been surrendered to the general government.

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New York v. Miln, 11 Pet. 102, 36 U. S. 139 ; *Slaughter House Cases,* 16 Wall. 36, 83 U. S. 63 ; *Kidd v. Pearson, supra.* To sustain this statute would not be, in our judgment, a recognition of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the States.

We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations, and not by an invasion of the powers of the States. This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously with the other, the duties entrusted to it by the Constitution.

In our view, the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely state authority. Thus, the act in a two-fold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce, but also exerts a power as to a purely local matter to which the federal authority does not extend. The far-reaching result of upholding the act cannot be more plainly indicated than by pointing out that, if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power

of the States over local matters may be eliminated, and, thus, our system of government be practically destroyed.

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For these reasons, we hold that this law exceeds the constitutional authority of Congress. It follows that the decree of the District Court must be

Affirmed.

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"That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian."

MR. JUSTICE HOLMES, dissenting.

The single question in this case is whether Congress has power to prohibit the shipment in interstate or foreign commerce of any product of a cotton mill situated in the United States in which, within thirty days before the removal of the product, children under fourteen have been employed or children between fourteen and sixteen have been employed more than eight hours in a day, or more than six days in any week, or between seven in the evening and six in the morning. The objection urged against the power is that the States have exclusive control over their methods of production, and that Congress cannot meddle with them, and,

taking the proposition in the sense of direct intermeddling, I agree to it, and suppose that no one denies it. But if an act is within the powers specifically conferred upon Congress, it seems to me that it is not made any less constitutional because of the indirect effects that it may have, however obvious it may be that it will have those effects, and that we are not at liberty upon such grounds to hold it void.

The first step in my argument is to make plain what no one is likely to dispute -- that the statute in question is within the power expressly given to Congress if considered only as to its immediate effects, and that, if invalid, it is so only upon some collateral ground. The statute confines itself to prohibiting the carriage of certain goods in interstate or foreign commerce. Congress is given power to regulate such commerce in unqualified terms. It would not be argued today that the power to regulate does not include the power to prohibit. Regulation means the prohibition of something, and when interstate

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commerce is the matter to be regulated, I cannot doubt that the regulation may prohibit any part of such commerce that Congress sees fit to forbid. At all events, it is established by the *Lottery Case* and others that have followed it that a law is not beyond the regulative power of Congress merely because it prohibits certain transportation out and out. *Champion v. Ames,* 188 U. S. 321 , 188 U. S. 355 , 188 U. S. 359 , *et seq.* So I repeat that this statute, in its immediate operation, is clearly within the Congress' constitutional power.

The question, then, is narrowed to whether the exercise of its otherwise constitutional power by Congress can be pronounced unconstitutional because of its possible reaction upon the conduct of the States in a matter upon which I have admitted that they are free from direct control. I should have thought that that matter had been disposed of so fully as to leave no room for doubt. I should have thought that the most conspicuous decisions of this Court had made it clear that the power to regulate commerce and other constitutional powers could not be cut down or qualified by the fact that it might interfere with the carrying out of the

domestic policy of any State.

The manufacture of oleomargarine is as much a matter of state regulation as the manufacture of cotton cloth. Congress levied a tax upon the compound when colored so as to resemble butter that was so great as obviously to prohibit the manufacture and sale. In a very elaborate discussion, the present Chief Justice excluded any inquiry into the purpose of an act which, apart from that purpose, was within the power of Congress. *McCray v. United States,* 195 U. S. 27 . As to foreign commerce *see Weber v. Freed,* 239 U. S. 325 , 239 U. S. 329 ; *Brolan v. United States,* 236 U. S. 216 , 236 U. S. 217 ; *Buttfield v. Stranahan,* 192 U. S. 470 . Fifty years ago, a tax on state banks the obvious purpose and actual effect of which was to drive them, or at least

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their circulation, out of existence was sustained although the result was one that Congress had no constitutional power to require. The Court made short work of the argument as to the purpose of the act. "The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers." *Veazie Bank v. Fenno,* 8 Wall. 533. So it well might have been argued that the corporation tax was intended, under the guise of a revenue measure, to secure a control not otherwise belonging to Congress, but the tax was sustained, and the objection, so far as noticed, was disposed of by citing *McCray v. United States. Flint v. Stone Tracy Co.,* 220 U. S. 107 . And to come to cases upon interstate commerce, notwithstanding *United States v. E. C. Knight Co.,* 156 U. S. 1 , the Sherman Act has been made an instrument for the breaking up of combinations in restraint of trade and monopolies, using the power to regulate commerce as a foothold, but not proceeding because that commerce was the end actually in mind. The objection that the control of the States over production was interfered with was urged again and again, but always in vain. *Standard Oil Co. v. United States,* 221 U. S. 1 , 221 U. S. 68 , 221 U. S. 69 . *United States v. American Tobacco Co.,* 221 U. S. 1 06, 221 U. S. 184 . *Hoke v. United States,* 227 U. S. 308 , 227 U. S. 321 , 227 U. S. 322 . *See finally and especially Seven Cases of Eckman's Alterative v. United States,* 239 U. S. 510 , 239 U. S.

514 , 239 U. S. 515 . The Pure Food and Drug Act which was sustained in *Hipolite Egg Co. v. United States,* 220 U. S. 45 , with the intimation that "no trade can be carried on between the States to which it [the power of Congress to regulate commerce] does not extend," 220 U. S. 57 , applies not merely to articles that the changing opinions of the time condemn as intrinsically harmful, but to others innocent in themselves, simply on the ground that the order for them was induced by a preliminary fraud. *Weeks v. United States,* 245 U. S. 618 . It does not matter whether the supposed

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evil precedes or follows the transportation. It is enough that, in the opinion of Congress, the transportation encourages the evil. I may add that, in the cases on the so-called White Slave Act, it was established that the means adopted by Congress as convenient to the exercise of its power might have the character of police regulations. *Hoke v. United States,* 227 U. S. 308 , 227 U. S. 323 . *Caminetti v. United States,* 242 U. S. 470 , 242 U. S. 492 . In *Clark Distilling Co. v. Western Maryland R. Co.,* 242 U. S. 311 , 242 U. S. 328 , *Leisy v. Hardin,* 135 U. S. 100 , 135 U. S. 108 , is quoted with seeming approval to the effect that

"a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State unless placed there by congressional action. I see no reason for that proposition not applying here."

The notion that prohibition is any less prohibition when applied to things now thought evil I do not understand. But if there is any matter upon which civilized countries have agreed -- far more unanimously than they have with regard to intoxicants and some other matters over which this country is now emotionally aroused -- it is the evil of premature and excessive child labor. I should have thought that, if we were to introduce our own moral conceptions where in my opinion they do not belong, this was preeminently a case for upholding the exercise of all its powers by the United States.

But I had thought that the propriety of the exercise of a power admitted to exist in some cases was for the consideration of Congress alone, and that this Court always had disavowed the right to intrude its judgment upon questions of policy or morals. It is not for this Court to pronounce when prohibition is necessary to regulation -- if it ever may be necessary -- to say that it is permissible as against strong drink, but not as against the product of ruined lives.

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The act does not meddle with anything belonging to the States. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the state line, they are no longer within their rights. If there were no Constitution and no Congress, their power to cross the line would depend upon their neighbors. Under the Constitution, such commerce belongs not to the States, but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have upon the activities of the States. Instead of being encountered by a prohibitive tariff at her boundaries, the State encounters the public policy of the United States, which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the nation as a whole. If, as has been the case within the memory of men still living, a State should take a different view of the propriety of sustaining a lottery from that which generally prevails, I cannot believe that the fact would require a different decision from that reached in *Champion v. Ames.* Yet, in that case, it would be said with quite as much force as in this that Congress was attempting to intermeddle with the State's domestic affairs. The national welfare, as understood by Congress, may require a different attitude within its sphere from that of some self-seeking State. It seems to me entirely constitutional for Congress to enforce its understanding by all the means at its command.

MR. JUSTICE Mc KENNA MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE concur in this opinion.