AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 7: The Republican Era – Federalism/States and the Commerce Clause

**Compagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health, 186 U.S. 380 (1902)**

*A Louisiana state statute of 1898 empowered the state board of health to exclude healthy persons from a locality infested with a contagious disease regardless of whether the person came from within the state of Louisiana or from outside the state. In that same year, a French corporation sailed a steamship with freight and passengers from ports in France and Italy to United States. Some of the passengers were American citizens, but most were Italians seeking to immigrate to the Louisiana, which at that point was encouraging workers from Italy to come to the state to work on the plantations. When the steamship arrived at the state quarantine station on the Mississippi River and downriver from New Orleans, it was inspected and certified free from infectious diseases. Nonetheless, the steamship was detained because several of the parishes of Louisiana were then under quarantine because of an outbreak of yellow fever. No similar effort was made to prevent the arrival of passengers by rail from the interior of the United States.*

*The French corporation sought an injunction in state court preventing the board of health from continuing to detain the steamship and monetary damages from the board and its members. The trial court declined to issue the injunction, but the corporation later supplemented its suit to account for costs in incurred by being redirected to Pensacola, Florida, to disembark passengers before returning again to New Orleans to unload cargo. The trial court dismissed the suit, and on appeal to the state supreme court that judgment was affirmed. The corporation appealed to the U.S. Supreme Court, arguing that the state’s action intruded on the federal jurisdiction to regulate interstate and foreign commerce. The state court emphasized that the 1898 statute had arisen from the city’s experience during an 1897 epidemic, when the arrival of passengers from abroad was “added fuel” that made combatting the epidemic more difficult. In a 7-2 ruling, the U.S. Supreme Court affirmed the state supreme court, finding the board of health’s actions consistent with the state police powers and not in conflict with federal power under the commerce clause.*

JUSTICE WHITE, delivered the opinion of the Court.

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That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States although their operation affects interstate or foreign commerce is not an open question. The doctrine was elaborately examined and stated in *Morgan Steamship Company v. Louisiana Board of Health* (1886). . . .

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Despite these conclusive adjudications, it is earnestly insisted in the argument at bar that, by a correct appreciation of all the decisions of this Court on the subject, the rule will be discovered to be that the states may enact quarantine or other health laws for the protection of their inhabitants, but that such laws, if they operate upon or directly affect interstate or foreign commerce, are repugnant to the Constitution of the United States independently of whether Congress has legislated on such subjects. To sustain this contention, a most copious reference is made to many cases decided by this Court where the nature and extent of the power of Congress to regulate commerce was considered and the validity of state legislation asserted to be repugnant to such power was passed upon. . . . [A]fter duly considering the cases relied upon, that we find them inapposite to the doctrine they are cited to sustain, and hence, when they are correctly appreciated, none of them conflicts with the settled rule announced by this Court in the cases to which we have referred.

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. . . . True it is that, in some of the cases relied on in the argument, it was held that a state law absolutely prohibiting the introduction, under all circumstances, of objects actually affected with disease, was valid because such objects were not legitimate commerce. But this implies no limitation on the power to regulate by health laws the subjects of legitimate commerce. In other words, the power exists, until Congress has acted, to incidentally regulate by health and quarantine laws even although interstate and foreign commerce is affected, and the power to absolutely prohibit additionally obtains where the thing prohibited is not commerce, and hence not embraced in either interstate or foreign commerce. True also, it was held in some of the cases referred to by counsel that where the introduction of a given article was absolutely prohibited by a state law upon the asserted theory that the health of the inhabitants would be aided by the enforcement of the prohibition, it was decided that, as the article which it was thus sought to prohibit was a well known article of commerce, and therefore the legitimate subject of interstate commerce, it could not be removed from that category by the prohibitive effect of state legislation. But this case does not involve that question, since it does not present the attempted exercise by the State of the power to absolutely prohibit the introduction of an article of commerce, but merely requires us to decide whether a state law which regulates the introduction of persons and property into a district infested with contagious or infections diseases is void because to enforce such regulation will burden interstate and foreign commerce and therefore violate the Constitution of the United States. . . .

And the views which we have previously expressed suffice to dispose of the contention that the subjecting of the vessel of the plaintiff in error to the restriction imposed by the quarantine and health law of the state operated to deprive the defendant in error of its property without due process of law, in violation of the Fourteenth Amendment. It having been ascertained that the regulation was lawfully adopted and enforced, the contention demonstrates its own unsoundness, since, in the last analysis, it reduces itself to the proposition that the effect of the Fourteenth Amendment was to strip the government, whether state or national, of all power to enact regulations protecting the health and safety of the people, or, what is equivalent thereto, necessarily amounts to saying that such laws, when lawfully enacted, cannot be enforced against person or property without violating the Constitution. In other words, that the lawful powers of government which the Constitution has conferred may not be exerted without bringing about a violation of the Constitution.

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*Affirmed*.

JUSTICE BROWN, with HARLAN, dissenting.

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I have no doubt of the power to quarantine all vessels arriving in the Mississippi from foreign ports for a sufficient length of time to enable the health officers to determine whether there are among her passengers any persons afflicted with a contagious disease. But the State of Louisiana undertakes to do far more than this. It authorizes the State Board of Health at its discretion, to “prohibit the introduction into any infected portion of the state of persons acclimated, unacclimated, or said to be immune, when in its judgment the introduction of said persons would add to or increase the prevalence of the disease.” . . .

In other words, the Board of Health is authorized and assumes to prohibit in all portions of the state which it chooses to declare in quarantine, the introduction or immigration of all persons from outside the quarantine district, whether infected or uninfected, sick or will, sound or unsound, feeble or healthy, and that too not for the few days necessary to establish the sanitary status of such persons, but for an indefinite and possibly permanent period. I think this is not a necessary or proper exercise of the police power, and falls within that numerous class of cases which hold that states may not, in the assumed exercise of police power, interfere with foreign or interstate commerce.

The only excuse offered for such a wholesale exclusion of immigrants is . . . amounts to this: that the admission even of healthy persons adds to the possibility of the contagion's being communicated upon the principle of adding fuel to the flame. It does not increase the danger of contagion by adding infected persons to the population, since the bill avers that all the immigrants were healthy and sound. All it could possibly do is to increase the number of persons who might become ill if permitted to be added to the population. This is a danger not to the population, but to the immigrants. It seems to me that this is a possibility too remote to justify the drastic measure of a total exclusion of all classes of immigrants, and that the opinion of the Court is directly in the teeth of *Railroad Company v. Husen* (1878)*,* wherein a state statute which prohibited the driving or conveying of any Texas, Mexican, or Indian cattle into the state between March 1 and November 1 in each year was held to be in conflict with the commerce clause of the Constitution. Such statute was declared to be more than a quarantine regulation, and not a legitimate exercise of the police power of the state. . . . The statute was held to be a plain intrusion upon the exclusive domain of Congress, that it was not a quarantine law, not an inspection law, and was objectionable because it prohibited the introduction of cattle no matter whether they may do an injury to the inhabitants of a state or not. . . .

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