AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

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

**Missouri, Kansas & Texas Railway Co. v Haber, 169 U.S. 613 (1898)**

*In 1884, Congress had passed the Animal Industry Act, which made it the duty of the federal Commissioner of Agriculture to issue any necessary rules for “the speedy and effectual suppression and extirpation” of dangerous and contagious diseases among livestock. The act also prohibited any railroad company or steam vessel from transporting from one state or territory to another any livestock affected with any contagious, infectious or communicable disease and prohibited driving on foot any livestock known to be infected with a contagious disease, but specifically excluding Texas fever from those regulations as it related to “cattle being transported by rail to market for slaughter, when the same are unloaded only to be fed and watered in lots on the way thereto.”*

*In 1884, Kansas created the Live Stock Sanitary Commission, which was empowered to adopt such regulations as were necessary to protect “the health of the domestic animals of the state from all contagious or infectious diseases of a malignant character.” The law was driven in no small part by the spread of a tick-borne cattle infestation known as Texas fever, which was decimating the cattle industry of the Midwest. In 1891, Kansas supplemented its existing laws with a new criminal prohibition on anyone mounting a cattle drive through the state at any time other than December and January or keeping on a range within the state any cattle capable of communicating Texas fever. Anyone who violated the statute was also liable for any damages that might result from the spread of the disease.*

*Charles Haber lost his herd of cattle in Kansas to Texas fever, and he brought suit in the Kansas courts to recover damages from ranchers who kept cattle in Texas and the railroad that had transported that livestock capable of communicating Texas fever in the spring of 1892 and delivered them to a stockyard in Kansas. That livestock had been transported in violation of the Kansas statute. A Kansas jury found in favor of Haber, and that judgment was affirmed by the state supreme court. The railroad appealed to the U.S. Supreme Court, contending that the Kansas statute was in conflict with the interstate commerce clause of the Constitution and the federal Animal Industry Act. In an 8-1 decision, the Court affirmed the ruling of the state court, holding that the Kansas was a valid exercise of the state police power in detailing the liability among entities operating within the state. It did not impermissibly interfere with interstate commerce, and it was not preempted by federal regulations which did not seek to occupy the entire field.*

JUSTICE HARLAN, delivered the opinion of the Court.

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Are the acts of Congress and the regulations established under their authority of such a character that the legislation of Kansas is without effect so far as it relates to injury done to domestic cattle by the bringing into that State of cattle liable to impart or capable of communicating Texas, splenic, or Spanish fever to domestic cattle?

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. . . . While the states were invited to cooperate with the general government in the execution and enforcement of the act, whatever power they had to protect their domestic cattle against such diseases was left untouched and unimpaired by the act of Congress.

The act of Congress did not assume to give any corporation, company, or person the affirmative right to transport from one state to another state cattle that were liable to impart or capable of communicating contagious, infectious, or communicable diseases. On the contrary, it was made a misdemeanor to deliver for transportation, or to transport or drive from one state to another, cattle known to be affected with contagious, infectious, or communicable diseases. Whether a corporation transporting, or the person causing to be transported, from one state to another, cattle of the class specified in the Kansas statute should be liable in a civil action for any damages sustained by the owners of domestic cattle by reason of the introduction into their State of such diseased cattle is a subject about which the Animal Industry Act did not make any provision. . . .

. . . . It may be that in the transportation of the cattle in question from Pecos County, Texas through the infected district, all the regulations prescribed by the Secretary were observed. But that fact does not show that Congress intended or assumed to exempt any one complying with those regulations from liability to the owners of domestic cattle to which were communicated the contagious disease with which the cattle brought into the state were affected. The controlling object of the regulations was to prevent the spreading from one state to another of the cattle disease in question, not to deprive anyone of the right to recover damages for injury inflicted upon his domestic cattle by reason of their being brought into contact with diseased cattle.

It is said that the statute of Kansas giving a right of action for damages is, in itself, a regulation of commerce among the states, and therefore inconsistent with the power of Congress to regulate such commerce. But that statute is not, within the meaning of the Constitution nor in any just sense, a regulation of commerce among the states. It cannot be supposed to have been so intended, even if its validity were to depend upon the intent with which it was enacted. It did nothing more than declare, as a rule of civil liability in Kansas, that anyone driving, shipping, or transporting, or causing to be driven, shipped, or transported into or through any county in that state cattle liable to impart or capable of communicating Texas, splenic, or Spanish fever to domestic cattle should be responsible in damages to any persons injured thereby. In fact, the state law is in aid of the objects which Congress had in view when it passed the Animal Industry Act. It was passed in execution of a power with which the state did not part when entering the Union -- namely, the power to protect the people in the enjoyment of their rights of property, and to provide for the redress of wrongs within its limits. We must not be understood as saying that this power may be so exerted as to defeat or burden the exercise of any power granted to Congress. On the contrary, a state statute, although enacted in pursuance of a power not surrendered to the general government, must in the execution of its provisions yield in case of conflict to a statute constitutionally enacted under authority conferred upon Congress, and this, as was said by Justice Nelson, speaking for the Court in Sinnot v. Davenport (1859), "without regard to the source of power whence the state legislature derived its enactment." This results, as was said by Chief Justice Marshall in *Gibbons v. Ogden* (1824)*,* as well from the nature of the government as from the words of the Constitution. . . .

Nor is the statute of Kansas to be deemed a regulation of commerce among the states, simply because it may incidentally or indirectly affect such commerce. *Hennington v. Georgia* (1896). Although the power of Congress to regulate commerce among the states, and the power of the states to regulate their purely domestic affairs, are distinct powers which in their application may at times bear upon the same subject, no collision that would disturb the harmony of the national and state governments or produce any conflict between the two governments in the exercise of their respective powers need occur unless the national government, acting within the limits of its constitutional authority, takes under its immediate control and exclusive supervision the entire subject to which the state legislation may refer. "The same bale of goods," Justice Johnson well said in his concurring opinion in Gibbons v. Ogden,

"the same cask of provisions, or the same ship, that may be the subject of commercial regulations, may also be the vehicle of disease. And the health laws that require them to be stopped and ventilated are no more intended as regulations on commerce than the laws which permit their importation are intended to inoculate the community with disease. Their different purposes mark the distinction between the powers brought into action, and, while frankly exercised, they can produce no serious collision."

It is therefore a mistake to say that the Kansas statute, so far as it gives a right of action for injuries arising from disease communicated to domestic cattle by cattle of a particular kind brought into the state, comes into conflict with any regulation established under the authority of Congress to prevent the spread of contagious or infectious diseases from one state to another. That statute we repeat, only embodies a rule of civil conduct prescribed by a state whose government is competent to regulate -- in subordination always to the supreme law of the land and its own fundamental law -- the relative rights and obligations of all within its jurisdiction. Neither corporations nor individuals are entitled, by force alone of the Constitution of the United States and without liability for injuries resulting therefrom to others, to bring into one state from another state cattle liable to impart or capable of communicating disease to domestic cattle. The contrary cannot be affirmed under any sound interpretation of the Constitution.

This Court, while sustaining the power of Congress to regulate commerce among the states, has steadily adhered to the principle that the states possess, because they have never surrendered, the power to protect the public health, the public morals, and the public safety, by any legislation appropriate to that end which does not encroach upon rights guaranteed by the national Constitution, nor come in conflict with acts of Congress passed in pursuance of that instrument. Although the powers of a state must in their exercise give way to a power exerted by Congress under the Constitution, it has never been adjudged that that instrument, by its own force, gives any one the right to introduce into a state, against its will, cattle so affected with disease that their presence in the state will be dangerous to domestic cattle.

This principle is illustrated in many adjudged cases. In Railroad Co. v. Husen (1878)(a case much relied on by the plaintiff in error), this Court held to be unconstitutional a statute of Missouri declaring that no Texas, Mexican, or Indian cattle not kept the entire previous winter in that state should be driven or otherwise conveyed into or remain in any county in that state between the first day of March and the first day of November in each year. . . .

The decision in that case was placed distinctly on the ground that although the state could prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the state, it could not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce, and the Missouri statute was held to be unconstitutional because it went beyond the necessities of the case, having been so drawn as to exclude all Texas, Mexican, or Indian cattle from the state (except cattle to be transported across and out of the state), whether free from disease or not, or whether they would or would not do injury to the inhabitants of the state.

No such criticism can be made of the statute of Kansas. It does not prohibit the bringing into the State of all Texas cattle. It does not in any true sense prohibit or burden any commerce among the states specifically authorized by Congress, but, for purposes of self-protection only and in the exercise of its inherent power to protect the property of its people, declared that any corporation or person bringing into the state or driving into or through any county of the state cattle liable to impart or capable of communicating Texas, splenic, or Spanish fever to domestic cattle, should be responsible in damages to any one to whose cattle that disease was communicated by the cattle so brought into the state.

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In Patterson v. Kentucky (1878)this Court said that "the states may, by police regulations, protect their people against the introduction within their respective limits of infected merchandise," and, by like regulations, "exclude from their midst, not only convicts, paupers, idiots, lunatics, and persons likely to become a public charge, but animals having contagious diseases."

So it has been held that, in the absence of legislation by Congress on the subject, a state may prescribe as a rule of civil conduct that engineers on railroad trains engaged in the transportation of passengers and freight, including interstate trains, shall undergo an examination by a state board as to their qualifications before becoming entitled to operate locomotive engines within such state, and that persons employed on railways shall be subjected to like examination with respect to their powers of vision. *Smith v. Alabama* (1888).

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These cases all proceed upon the ground that the regulation of the enjoyment of the relative rights, and the performance of the duties, of all persons within the jurisdiction of a state, belong primarily to such state, under its reserved power to provide for the safety of all persons and property within its limits, and that even if the subject of such regulations be one that may be taken under the exclusive control of Congress and be reached by national legislation, any action taken by the state upon that subject that does not directly interfere with rights secured by the Constitution of the United States or by some valid act of Congress must be respected until Congress intervenes.

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. . . . If the carrier takes diseased cattle into a state, it does so subject for any injury thereby done to domestic cattle to such liability as may arise under any law of the state that does not go beyond the necessities of the case and burden or prohibit interstate commerce. A statute prescribing as a rule of civil conduct that a person or corporation bringing into the state cattle that are known, or which by proper diligence could be known, to be capable of communicating disease to domestic cattle cannot be regarded as beyond the necessities of the case. . . .

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*Affirmed*.

JUSTICE BREWER, dissenting.

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I am not disposed to belittle this question, or the difficulties which attend the effort to prevent a communication of Texas fever and the injuries which result therefrom. On the contrary, I fully appreciate the importance of securing to all stock owners in Kansas and elsewhere the fullest protection against this so fatal disease, and believe that stringent measures may properly be adopted to accomplish this result. I differ with my brethren only as to the authority by which such measures should be enacted and as to the validity of the legislation before us. It is conceded in the opinion of the majority that Congress has full control over interstate commerce, and that it is the only authority by which that commerce can be regulated. On the other hand, it is equally clear, as pointed out, that the states may make many police restrictions and provisions which, while indirectly affecting interstate commerce, do not directly regulate it, and the question is whether this particular statute comes within the category of such police regulations.

It must be premised that Southern cattle which are capable of communicating this disease are not necessarily themselves diseased, or their meat unfit for consumption. This is not a mere conjecture, but a well established fact. . . .

. . . . Hence it is that these Southern cattle, although they may have ticks upon them, and thus be liable to communicate the disease to Northern cattle, may be entirely free from any disease, their meat a perfectly healthy article of food, and they themselves legitimate subjects of commerce. If they are, when brought into the North, pastured at a distance from native cattle, and the latter are not thereafter permitted to range in the field in which the former have been kept, the disease will not be communicated; the Southern cattle may safely be fattened, and prepared for market and use. It is only when the native cattle are permitted to pasture in or near the grounds in which the Southern cattle are or have recently been kept that injury results. The case presented therefore is not that of legislation to prevent importation of diseased meat -- that which in itself is unhealthy and unfit for use -- but something which, if improperly or carelessly handled, may communicate disease and do injury. The very phraseology of the statute indicates this. It does not name diseased cattle, but only those liable to communicate disease. If other Northern states follow with like legislation, commerce between the two sections of the country in this most important product of portions of the South will be practically interrupted.

The cases referred to in the opinion of the majority in which the police power of the state has been sustained were cases in which the restrictions or regulations only indirectly affected interstate commerce. . . . Nothing of that kind is prescribed by this statute. No inspection is provided for by the state; none required of the carrier; no duty imposed in respect to the handling and care of the cattle while in its possession. It simply prescribes the conditions upon which the carrier may bring cattle into the state, to-wit, liability not merely for injury which its own improper handling may cause, but for injury which may result at any time thereafter from any future improper handling by the consignee or subsequent party into whose custody the cattle may pass. It seems to me, beyond any peradventure, this is legislation directly regulating commerce between the states, and, as such, is within the sole dominion of Congress. It materially affects the conduct of the carrier outside of the limits of the state, and that is one of the tests of invalidity. *Hall v. De Cuir* (1877). Suppose cattle are presented to a carrier in Texas for shipment to Kansas, can it properly refuse to receive and transmit? Can it plead the Kansas statute in defense of its duty as a common carrier? If it says that the cattle have ticks upon them, and therefore are liable to communicate Texas fever, or, if not having ticks upon them, may otherwise (as shown by the verdict of this jury) communicate the disease, the shipper may reply that he intends them for immediate slaughter, and that they are a legitimate article of commerce. But that will not relieve the carrier. The liability imposed by the Kansas statute does not depend upon the intent with which the cattle are shipped into the state, and, having delivered them to the consignee, the carrier has no further control. Although shipped with the intention of immediate slaughter, the consignee may change his mind and pasture them in the state. Whatever may have been the intention of the shipment, the liability of the carrier is the same.

I cannot believe that the carrier is thus placed beneath the upper and the nether millstone, liable, under the law of Texas to the owner of the cattle if he refuses to ship them and liable to anyone in Kansas, under the Kansas statute, if injuries result from the improper handling by the consignee or others. . . . Gunpowder, dynamite, many of the drugs used in medicine, while legitimate articles of commerce and of great value for certain purposes, may, if improperly or carelessly handled, be the means of doing immense injury. Can a state say to a carrier,

"You may bring gunpowder or any other article of danger into the state, but, if you know its dangerous character, you shall be responsible for all damages that it may cause in the hands of the consignee or any subsequent party through improper handling?"

It certainly places it in the power of the state to most materially interfere with interstate commerce if it can prescribe that as a condition of its being carried on. The number of articles and the amount of interstate commerce thus subjected to the will of the state can scarcely be overestimated.

It is undoubtedly true that legislation should be had in respect to matters of this kind, but, in my judgment, such legislation can only come from Congress, and that body, and that body alone, can prescribe the conditions upon which commerce in these cattle can be carried on. Congress has legislated, but only partially, and the fact that its legislation does not go so far as in the judgment of the Legislature of Kansas is required is not, in my opinion, sufficient to warrant the state in enacting this statute. For these reasons, thus briefly stated, I am compelled to dissent from the opinion of the court.