AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 8: The New Deal and Great Society Era – Federalism

South Carolina State Highway Dept. v. Barnwell Bros., 303 U.S. 177 (1938)

In 1933, South Carolina adopted a statute that barred from state highways all trucks with a width exceeding 90 inches and loaded weight exceeding 20,000 pounds (or 10 tons). The regulation was unusual. Most trucks used in interstate transportation were 96 inches wide and over 10 tons in loaded weight. Only four states were as restrictive as South Carolina, and the federal government recommended a less restrictive standard. The creation of the national interstate highway system was still two decades away, but the federal government was already providing funds to help build and maintain state highways. The state highways in South Carolina were regularly used for interstate truck traffic and had been built to a standard that would readily accommodate trucks larger than the new state regulations.

Barnwell Brothers operated an interstate trucking company, and the company brought a suit against South Carolina in federal district court to block the enforcement of the new law that was joined by the Interstate Commerce Commission. The special three-judge panel on the district court ruled in the company's favor, concluding that the state regulations were not superseded by a federal statute and did not violate the due process clause of the Fourteenth Amendment but did unreasonably burden interstate commerce. The court enjoined the enforcement of the regulations, except on a few bridges that could not handle the larger load. (The state supreme court separately upheld the regulations against a variety of constitutional challenges.) The state appealed directly to the U.S. Supreme Court, which unanimously reversed the trial court.

The case turned on the standards to be used to determine whether state regulations unreasonably burdened interstate commerce. The Court emphasized that state highways were of particular concern to the states and that the commerce clause was especially concerned with laws that discriminated against interstate commerce. State regulations that incidentally affected interstate commerce were subject to minimal scrutiny, examining only whether the rules were within the power of the state and reasonably adapted to its purpose. Courts should not question legislative judgment on how best to protect the safety and quality of its highways.

Can Southern Pacific Co. v. Arizona *(1945) be reconciled with this decision? Are highways and railroads importantly different? Would the conclusion be different if this were a federal interstate highway rather than a state highway that carried interstate traffic? Is a constitutional prohibition on regulations burdening interstate commerce still meaningful after this decision?*

JUSTICE STONE delivered the opinion of the Court.

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While the constitutional grant to Congress of power to regulate interstate commerce has been held to operate of its own force to curtail state power in some measure, it did not forestall all state action affecting interstate commerce. Ever since *Willson v. Black Bird Creek Marsh* (1829) . . . , it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of congressional action has for the most part been left to the states by the decisions of this Court, subject to the other applicable constitutional restraints.

State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought to impinge upon the constitutional prohibition even though Congress has not acted. *Hall v. DeCuir* (1877) . . . . Underlying the stated rule has been the thought, often expressed in judicial opinion, that when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state. *Cooley v. Board of Wardens* (1852). . . .

The commerce clause by its own force, prohibits discrimination against interstate commerce, whatever its form or method, and the decisions of this Court have recognized that there is scope for its like operation when state legislation nominally of local concern is in point of fact aimed at interstate commerce, or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state. *Robbins v. Shelby County Taxing District* (1887). . . . It was to end these practices that the commerce clause was adopted. See *Gibbons v. Ogden* (1819) . . . The commerce clause has also been thought to set its own limitation upon state control of interstate rail carriers so as to preclude the subordination of the efficiency and convenience of interstate traffic to local service requirements.

But the present case affords no occasion for saying that the bare possession of power by Congress to regulate the interstate traffic forces the states to conform to standards which Congress might, but has not adopted, or curtails their power to take measures to insure the safety and conservation of their highways which may be applied to like traffic moving intrastate. Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned, and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse.

From the beginning it has been recognized that a state can, if it sees fit, build and maintain its own highways, canals, and railroads, and that in the absence of congressional action their regulation is peculiarly within its competence, even though interstate commerce is materially affected. . . . Congress not acting, state regulation of intrastate carriers has been upheld regardless of its effect upon interstate commerce. . . .

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Congress, in the exercise of its plenary power to regulate interstate commerce, may determine whether the burdens imposed on it by state regulation, otherwise permissible, are too great, and may, by legislation designed to secure uniformity or in other respects to protect the national interest in the commerce, curtail to some extent the state's regulatory power. But that is a legislative, not a judicial, function, to be performed in the light of the congressional judgment of what is appropriate regulation of interstate commerce, and the extent to which, in that field, state power and local interests should be required to yield to the national authority and interest. In the absence of such legislation the judicial function, under the commerce clause, Const. art. 1, s 8, cl. 3, as well as the Fourteenth Amendment, stops with the inquiry whether the state Legislature in adopting regulations such as the present has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought. *Sproles v. Binford* (1932).

Here the first inquiry has already been resolved by our decisions that a state may impose nondiscriminatory restrictions with respect to the character of motor vehicles moving in interstate commerce as a safety measure and as a means of securing the economical use of its highways. In resolving the second, courts do not sit as Legislatures, either state or national. They cannot act as

Congress does when, after weighing all the conflicting interests, state and national, it determines when and how much the state regulatory power shall yield to the larger interests of a national commerce. And in reviewing a state highway regulation where Congress has not acted, a court is not called upon, as are state Legislatures, to determine what, in its judgment, is the most suitable restriction to be applied of those that are possible, or to choose that one which in its opinion is best adapted to all the diverse interests affected. . . . When the action of a Legislature is within the scope of its power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for the determination of courts, but for the legislative body, on which rests the duty and responsibility of decision. . . . This is equally the case when the legislative power is one which may legitimately place an incidental burden on interstate commerce. It is not any the less a legislative power committed to the states because it affects interstate commerce, and courts are not any the more entitled, because interstate commerce is affected, to substitute their own for the legislative judgment. . . .

. . . . Being a legislative judgment it is presumed to be supported by facts known to the Legislature unless facts judicially known or proved preclude that possibility. Hence, in reviewing the present determination, we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis. . . . Not only does the record fail to exclude that possibility but it shows affirmatively that there is adequate support for the legislative judgment.

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The regulatory measures taken by South Carolina are within its legislative power. They do not infringe the Fourteenth Amendment, and the resulting burden on interstate commerce is not forbidden.

Reversed.

JUSTICE CARDOZO and JUSTICE REED took no part in the consideration or decision of this case.