AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Separation of Powers/Presidential War and Foreign Affairs Powers

**United States v. Guy W. Capps, Inc., 204 F.2d 655** (4th Cir. 1953)

*As part of a price support program, the Agricultural Act of 1948 committed the United States government to purchasing all potatoes that could not be sold commercially at a desired price. In order to help sustain that program, the Secretary of State entered into an executive agreement with the Canadian ambassador in which Canada committed to regulating the export of potatoes into the United States and the United States committed not to impose regulations or punitive tariffs on the import of potatoes.*

*Guy W. Capps, Inc., a Virginia business, entered into a contract to buy potatoes from a Canadian exporter and stated that the use of the potatoes would be compliant with the regulations but diverted the shipment to a retail grocery company, which was a violation of the regulations governing the use of Canadian potatoes. The United States filed suit in federal district court seeking monetary damages from Capps because the additional American-grown potatoes the government would have to purchase as a result of the import of the Canadian potatoes. The district court dismissed the suit on the grounds that the government could not demonstrate damages.*

*On appeal, the circuit court affirmed the dismissal of the suit, but on different grounds. The circuit court concluded that the executive agreement between the United States and Canada was void and unenforceable in federal courts for being in conflict with federal statutes. Only Congress had the constitutional authority to regulate international trade, and the executive branch could not impose legally binding trade regulations through executive agreements with foreign countries.*

JUDGE PARKER.

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In the Agricultural Act of 1948, Congress had legislated specifically with respect to the limitations which might be imposed on imports if it was thought that they would render ineffective or materially interfere with any program or operation undertaken pursuant to that act. . . .

There was no pretense of complying with the requirements of this statute. The President did not cause an investigation to be made by the Tariff Commission, the Commission did not conduct an investigation or make findings or recommendations, and the President made no findings of fact and issued no proclamation imposing quantitative limitations and determined no representative period for the application of the 50% limitation contained in the proviso. All that occurred in the making of this executive agreement, the effect of which was to exclude entirely a food product of a foreign country from importation into the United States, was an exchange of correspondence between the Acting Secretary of State and the Canadian Ambassador. Since the purpose of the agreement as well as its effect was to bar imports which would interfere with the Agricultural Adjustment program, it was necessary that the provisions of this statute be complied with and an executive agreement excluding such imports which failed to comply with it was void. . . . As was said by Chief Justice Hughes . . . "We are not dealing with action which, appropriately belonging to the executive province, is not the subject of judicial review or with the presumptions attaching to executive action . . . we are concerned with the question of the delegation of legislative power.

It is argued, however, that the validity of the executive agreement was not dependent upon the Act of Congress but was made pursuant to the inherent powers of the President under the Constitution. The answer is that while the President has certain inherent powers under the Constitution such as the power pertaining to his position as Commander in Chief of Army and Navy and the power necessary to see that the laws are faithfully executed, the power to regulate interstate and foreign commerce is not among the powers incident to the Presidential office, but is expressly vested by the Constitution in the Congress. It cannot be upheld as an exercise of the power to see that the laws are faithfully executed, for, as said by Mr. Justice Holmes in his dissenting opinion in *Myers v. United States* (1926), "The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power.” In the recent case of *Youngstown Sheet & Tube Co. v. Sawyer* (1952), the Supreme Court dealt with the question in the following pertinent language:

"Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that `All legislative Powers herein granted shall be vested in a Congress of the United States. . . .' After granting many powers to the Congress, Article I goes on to provide that Congress may `make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.'"

The rule was well stated by Mr. Justice Jackson in his concurring opinion in the case last cited as follows:

"When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system."

We think that whatever the power of the executive with respect to making executive trade agreements regulating foreign commerce in the absence of action by Congress, it is clear that the executive may not through entering into such an agreement avoid complying with a regulation prescribed by Congress. Imports from a foreign country are foreign commerce subject to regulation, so far as this country is concerned, by Congress alone. The executive may not by-pass congressional limitations regulating such commerce by entering into an agreement with the foreign country that the regulation be exercised by that country through its control over exports. Even though the regulation prescribed by the executive agreement be more desirable than that prescribed by Congressional action, it is the latter which must be accepted as the expression of national policy.

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*Affirmed*.