AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Separation of Powers

Yakus v. United States, 321 U.S. 414 (1944)

The Emergency Price Control Act of 1942 created a system of price controls during World War II. It did so by creating the Office of Price Administration, which had the authority to set prices of commodities and rents in order to achieve a number of goals set out in the Act. Violators of the price controls were criminally liable. The Act also created a process for protesting the prices set by the price administrator and for appealing the results of those protests to a specially constituted emergency court of appeals.

Albert Yakus was convicted of selling beef at prices above those set by the price administrator. The conviction was upheld in the circuit court and appealed to the Supreme Court. Yakus raised several constitutional challenges to the statute, including questions about the adequacy of the procedures for reviewing the decisions of the price administrator. In the excerpt below, the justices address another question: whether the Act violated the separation of powers by delegating too much lawmaking authority to the price administrator. In responding to this objection, the Court effectively put an end to constitutional challenges based on the non-delegation doctrine.

CHIEF JUSTICE STONE delivered the opinion of the Court.

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Congress enacted the Emergency Price Control Act in pursuance of a defined policy and required that the prices fixed by the Administrator should further that policy and conform to standards prescribed by the Act. The boundaries of the field of the Administrator's permissible action are marked by the statute. It directs that the prices fixed shall effectuate the declared policy of the Act to stabilize commodity prices so as to prevent war-time inflation and its enumerated disruptive causes and effects. In addition the prices established must be fair and equitable, and in fixing them the Administrator is directed to give due consideration, so far as practicable, to prevailing prices during the designated base period . . . .

The Act is thus an exercise by Congress of its legislative power. In it Congress has stated the legislative objective, has prescribed the method of achieving that objective--maximum price fixing--and has laid down standards to guide the administrative determination of both the occasions for the exercise of the price-fixing power, and the particular prices to be established. . . . The Act is unlike the National Industrial Recovery Act of June 16, 1933, 48 Stat. 195, considered in *Schechter Poultry Corp. v. United States* (1935) . . . which proclaimed in the broadest terms its purpose 'to rehabilitate industry and to conserve natural resources.' It prescribed no method of attaining that end save by the establishment of codes of fair competition, the nature of whose permissible provisions was left undefined. It provided no standards to which those codes were to conform. The function of formulating the codes was delegated, not to a public official responsible to Congress or the Executive, but to private individuals engaged in the industries to be regulated. . . .

The Constitution as a continuously operative charter of government does not demand the impossible or the impracticable. It does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to the application of the legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate. The essentials of the legislative function are the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct--

here the rule, with penal sanctions, that prices shall not be greater than those fixed by maximum price regulations which conform to standards and will tend to further the policy which Congress has established. These essentials are preserved when Congress has specified the basic conditions of fact upon whose existence or occurrence, ascertained from relevant data by a designated administrative agency, it directs that its statutory command shall be effective. It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment, and for the formulation of subsidiary administrative policy within the prescribed statutory framework. . . .

Nor does the doctrine of separation of powers deny to Congress power to direct that an administrative officer properly designated for that purpose have ample latitude within which he is to ascertain the conditions which Congress has made prerequisite to the operation of its legislative command. Acting within its constitutional power to fix prices it is for Congress to say whether the data on the basis of which prices are to be fixed are to be confined within a narrow or a broad range. In either case the only concern of courts is to ascertain whether the will of Congress has been obeyed. This depends not upon the breadth of the definition of the facts or conditions which the administrative officer is to find but upon the determination whether the definition sufficiently marks the field within which the Administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will.

As we have said: 'The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality . . . to perform its function.' . . . Hence it is irrelevant that Congress might itself have prescribed the maximum prices or have provided a more rigid standard by which they are to be fixed; for example, that all prices should be frozen at the levels obtaining during a certain period or on a certain date. . . . Congress is not confined to that method of executing its policy which involves the least possible delegation of discretion to administrative officers. . . . It is free to avoid the rigidity of such a system, which might well result in serious hardship, and to choose instead the flexibility attainable by the use of less restrictive standards. . . . Only if we could say that there is an absence of standards for the guidance of the Administrator's action, so that it would be impossible in a proper proceeding to ascertain whether the will of Congress has been obeyed, would we be justified in overriding its choice of means for effecting its declared purpose of preventing inflation.

The standards prescribed by the present Act, with the aid of the 'statement of the considerations' required to be made by the Administrator, are sufficiently definite and precise to enable Congress, the courts and the public to ascertain whether the Administrator, in fixing the designated prices, has conformed to those standards. . . . Hence we are unable to find in them an unauthorized delegation of legislative power. . . .

The directions that the prices fixed shall be fair and equitable, that in addition they shall tend to promote the purposes of the Act, and that in promulgating them consideration shall be given to prices prevailing in a stated base period, confer no greater reach for administrative determination than the power to fix just and reasonable rates. . .; or the power to approve consolidations in the 'public interest' . . .; or the power to regulate radio stations engaged in chain broadcasting 'as public interest, convenience or necessity requires' . . .; or the power to prohibit 'unfair methods of competition' not defined or forbidden by the common law. . .; or the direction that in allotting marketing quotas among states and producers due consideration be given to a variety of economic factors . . .; or the similar direction that in adjusting tariffs to meet differences in costs of production the President 'take into consideration' 'in so far as he finds it practicable' a variety of economic matters . . .; or the similar authority, in making classifications within an industry, to consider various named and unnamed 'relevant factors' and determine the respective weights attributable to each [all sustained in prior cases].

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JUSTICE ROBERTS, dissenting.

I dissent. . . . I am of opinion that the Act unconstitutionally delegates legislative power to the Administrator. As I read the opinion of the court it holds the Act valid on the ground that sufficiently

precise standards are prescribed to confine the Administrator's regulations and orders within fixed limits, and that judicial review is provided effectively to prohibit his transgression of those limits. I believe that analysis demonstrates the contrary. I proceed, therefore, to examine the statute.

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The Supposed Standards for the Administrator's Guidance.

The Act provides that any regulation or order must be 'generally fair and equitable' in the Administrator's judgment; but coupled with this injunction is another that the order and regulation must be such as, in the judgment of the Administrator, is necessary or proper to effectuate the purposes of the Act.

I turn, therefore, to the stated purposes to ascertain what, if any, limits the statute places upon the Administrator's exercise of his powers.

[The Act] states seven purposes, which should be set forth separately as follows:

> 'to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents;'

In order to exercise his power anent this purpose the Administrator will have to form a judgment as to what stabilization means, and what are speculative, unwarranted and abnormal increases in price. It hardly need be said that men may differ radically as to the connotation of these terms and that it would be very difficult to convict anyone of error of judgment in so classifying a given economic phenomenon.

> 'to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency;'

To accomplish this purpose the Administrator must form a judgment as to what constitutes profiteering, hoarding, manipulation or speculation. As if the administrative discretion were not sufficiently broad there is added the phrase 'other disruptive practices', which seems to leave the Administrator at large in the formation of opinion as to whether any practice is disruptive.

> 'to assure that defense appropriations are not dissipated by excessive prices;'

It is not clear--to me at least--what is the limit of this purpose. I can conceive that an honest Administrator might, without laying himself open to the charge of exceeding his powers, make any kind of order or regulation based upon the view that otherwise defense appropriations by Congress might be dissipated by what he considers excessive prices. How his exercise of judgment in connection with this purpose could be thought excessive it is impossible for me to say.

> 'to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living;'

The Administrator's judgment that any price policy will tend to affect the classes mentioned in this purpose from what he may decide to be 'undue impairment of their standard of living' would seem to be so sweeping that it would be impossible to convict him of an error of judgment in any conclusion he might reach.

> 'to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices;'

Of course Congress might have included in the catalogue of beneficiaries churches, hospitals, labor unions, banks and trust companies and other praiseworthy organizations, without rendering the 'standard' any more vague.

> 'to assist in securing adequate production of commodities and facilities;'

Here is a purpose which seems, to some extent at least, to permit the easing of price restrictions; for it would appear that diminishment of price would hardly assist in promoting production. Thus the Administrator, and he alone, is to balance two competing policies and strike the happy mean between them. Who shall say his conclusion is so indubitably wrong as to be properly characterized as 'arbitrary or capricious'.

> 'to prevent a post emergency collapse of values;'

This purpose, or 'standard', seems to permit adoption by the Administrator of any conceivable policy. I have difficulty in envisaging any price policy in support of which some economic data or opinion could not be cited to show that it would tend to prevent post emergency collapse of values.

These seven purposes must, I submit, be considered as separate and independent. Any action taken by the Administrator which, in his judgment, promotes any one or more of them is within the granted power. If, in his judgment, any action by him is necessary or appropriate to the accomplishment of one or more of them, the Act gives sanction to his order or regulation.

Reflection will demonstrate that in fact the Act sets no limits upon the discretion or judgment of the Administrator. His commission is to take any action with respect to prices which he believes will preserve what he deems a sound economy during the emergency and prevent what he considers to be a disruption of such a sound economy in the post war period. His judgment, founded as it may be, on his studies and investigations, as well as other economic data, even though contrary to the great weight of current opinion or authority, is the final touchstone of the validity of his action.

I shall not repeat what I have said in *Bowles* v. *Willingham* (1944). . . . I have there quoted the so-called standards prescribed in the National Industrial Recovery Act. Comparison of them with those of the present Act, and perusal of what was said concerning them in *A.L.A. Schechter Poultry Corp. v. United States*. . . leaves no doubt that the decision is now overruled. There, as here, the 'code' or regulation, to become effective, had to be found by the Executive to 'tend to effectuate the policy' of the Act.

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JUSTICE RUTLEDGE, with whom JUSTICE MURPHY joins, dissenting.

[Justices Rutledge and Murphy agreed with the majority on the delegation issue. They dissented because they believed the statute unconstitutionally prohibited state and federal trial courts from considering whether any particular regulation was legally promulgated]