



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 7: The Republican Era – Powers of the National Government

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House Report on Convict Labor (1888)¹

In 1888, the U.S. House of Representatives took up several bills designed to restrict competition from goods made with prison labor. The Committee on Labor recommended that the Congress ban the interstate transportation of goods made by convicts, the importation into the United States of goods made by convicts, and the purchase by the federal government of goods made by convicts. Support for these bills came from a variety of manufacturing and labor union interests, several state governments that were in the process of banning contract labor in their own prisons, and good-government reform groups, such as the League of Women Voters. Opposition came from prison officials, contractors who worked with the prisons, and a separate group of state governments. Productive work was regarded as an essential part of the rehabilitation of criminals, the maintenance of good order in the prisons, and the financing of the prison system. Private businesses thought that prison labor was unfair competition and wanted it abolished. These competing demands made the restriction on the sale of the products of convict labor a complicated interference with the ability of state prisons to perform their central function.

There were substantial constitutional concerns about the power of Congress to ban the shipment of goods produced with convict labor. Labor Committee Chairman John O'Neill took the lead on the House floor in arguing that the Supreme Court had defined the power to regulate interstate commerce as "absolute and exclusive in its nature." Dissenting committee member Ralph Plumb took the lead on the House floor in arguing against the ban, contending that Congress was attempting to legislate prison reform for the states. Although Congress could restrict international trade, Plumb argued, the Constitution required the "freest trade" among the states, and Congress could not intervene to prevent the shipment of goods that were "unobjectionable" in themselves. Joliet prison, which was a large producer of goods for interstate sale, was located in Plumb's Illinois congressional district. O'Neill responded in part that Congress should be willing to make its views on prison labor known and to regard the constitutional question as belonging "rather to the courts than the legislature." When pressed, O'Neill admitted that the principles underlying the convict labor bill would also allow federal legislation banning the interstate shipment of goods produced by other "cheap labor," such as Chinese workers in California. Others drew the line at "illegitimate" commerce, which would allow Congress to ban diseased cattle from interstate commerce but not healthy cattle.² The House never held a final vote on the bill. The issue was periodically debated in Congress for the next thirty years, but legislation was never passed. O'Neill and Plumb rehearsed their arguments in competing committee reports to the House.

If Congress can ban goods made with convict labor from interstate commerce, are there any types of goods that Congress cannot ban? Could Congress single out a state and ban any goods from being shipped out of, say, Illinois? Could Congress ban the interstate shipment of otherwise innocent goods, such as milk? Should Congress refrain from passing legislation in the face of constitutional doubts, or when "great lawyers differ," should Congress "send the matter to the courts" to decide whether the law is constitutional or not?

Mr. O'NEILL (MO, Democrat) submitted the following Report:

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¹ Excerpt taken from House of Representatives, Committee on Labor, H.R. Report No. 2022: Convict Labor, 50th Cong., 1st sess. (1888).

² Cong. Record, 50th Cong., 1st sess. (1888): 4519, 4520, 4522.



Your committee believe that free labor engaged in various important productive industries suffers great and serious injury from the unequal and unjust competition to which it is subjected by the prevailing systems of employment of convict labor by many of the States. That individual State legislation is incompetent to furnish adequate relief. That the necessary power is alone vested in Congress. . . .

Although we are profoundly impressed with the conviction that the autonomy of the State should be preserved so far as possible under our dual form of government, yet nevertheless we feel it to be the duty of the national legislature to exert to the fullest extent those constitutional powers conferred by the wisdom of the fathers, when they are invoked, as in the present case by citizens exercising the sacred right of petition, and who furnish convincing proofs that their individual rights are assaulted and their property threatened with destruction.

It is not the purpose of the promoters of the bill to encroach upon the right of any State to employ its convicts in any manner that to it may seem best, nor even to seek to correct the evils resulting from such employment, so far as the State's own citizens are concerned, but to prevent such evils from extending to and involving the citizens of other States.

Yet we do not believe that it was the intent of the framers of the Federal Constitution, nor of the States ratifying it, that any of the States should become great manufacturing corporations, gigantic trusts, so to speak, carrying on productive industries to the destruction of the business of its citizens.

. . . .

The right of Congress to prohibit the introduction of foreigners and aliens, under contract or agreement to perform labor, into the United States has not been questioned.

Congress has not hesitated to protect domestic industries, and free labor employed therein, by levying heavy customs duties upon the products of the cheap labor of Europe when imported into this country – a feature of the tariff that commends itself to all.

Congress disregarded State lines when it passed the act prohibiting the *transportation* of live-stock affected with any contagious disease from *one State to another*.

Congress wisely arrested the immigration of Chinese by passing restriction acts, because the interests of free labor suffered injuriously therefrom.

Congress protected the farming interests by taxing oleomargarine and its congeners, and subjecting its production and sale to the burdens of the internal-revenue system.

Federal laws vigorously expel foreign paupers and convicts from the Federal Union.

. . . .

These several acts derive their validity, as does the bill under consideration, from those clauses in the Constitution, together with the necessary and proper implications therefrom, that confer the power and impose the duty upon Congress to regulate commerce, foreign and interstate, establish justice, and promote the general welfare.

The Supreme Court of the United States has repeatedly decided that this power to regulate commerce is exclusively vested in Congress, and that no residuum, however small, resides in the States since the adoption of the Federal Constitution; that the grant of the whole to the General Government is incompatible with a grant to the States of a part; that the supremacy of the laws of Congress, in cases of collision with State laws, is secured in the article which declares that the laws of Congress, passed in pursuance of the powers granted, shall be the supreme law.

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Finally, your committee base the authority of Congress to pass this bill not only upon the right in the national legislature to regulate commerce between the States, to establish justice, to promote the general welfare, as expressly conferred in the Constitution; but in that fundamental principle upon which all legitimate sovereignty rests, that the welfare of the people is the supreme law.

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Mr. PLUMB (IL, Republican) submitted the following Minority Report:

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In considering the proposed bill the question may first properly be asked, Has Congress the power, under the Constitution, to pass such a bill?



It seems a palpable violation of the Constitution. Bearing in mind the familiar principle that the constitution of the United States is a grant of certain enumerated powers, and that Congress can only exercise such powers as are actually granted by this instrument, we may search in vain for any authority to enact such a law. The power "to regulate commerce with foreign nations and among the several States" can not be invoked as a warrant for exercising the power here assumed. This power to regulate commerce "was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating state legislation" *Railway Company v. Richmond* (1873). The reverse of this is the avowed object of this bill. It assumes to prohibit, under penalties and forfeitures, the transportation from one State to another of certain articles of merchandise - not for the purpose of regulating commerce - but "to protect free labor and the industries in which it is employed." It institutes an unwarranted, if not odious, discrimination; it prohibits the transportation of goods, wares, or merchandise, however intrinsically useful, simply because they have been manufactured by the State itself, or under State laws and State regulations. A grosser invasion of State authority and State rights can not be conceived. It is a direct attack upon State laws and State institutions. Suppose, in *antebellum* times, Congress had prohibited the transportation of cotton and sugar from one State to another because produced by slave labor, what would have been said as to the constitutionality of such an act of Congress?

Again, it is said to be a familiar principle of law that the power to regulate does not imply the power to prohibit; but this bill assumes to absolutely prohibit the transportation from one State to another of a specified class of merchandise. The power to prohibit the transportation of a class of merchandise involves the power to prohibit the transportation of all merchandise, and are gentlemen prepared to say that Congress possesses the power to erect such a Chinese wall as this between the States of this Union?

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Prison labor is purely a local question, and must vary in its methods with location and climate. It may be furthermore be regarded as a police regulation over which individual States must have sole jurisdiction.

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