



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

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

In re Debs, 158 U.S. 564 (1895)

The strike against the Pullman Car Company expanded into a general railroad strike when the American Railway Union, under the leadership of Eugene Debs, announced a boycott against any train that included Pullman cars. Over the objection of the Illinois governor, the Department of Justice requested and received from a federal judge an injunction against obstructions of the operation of the railroads. This strategy had the advantage that a judge acting alone could punish the disobedience of an injunction, while a criminal conviction would only come after a jury trial. Debs, among others, was held in criminal contempt for violating the injunction, as federal troops fought with strikers and secured the railroads. Debs was convicted in a widely watched trial, despite the best efforts of his celebrated defense attorney Clarence Darrow. On appeal of the contempt citation, the question for the Supreme Court was whether the federal government had general authority to use force to prevent obstructions to interstate railroads and whether the courts could support such efforts through the expedience of injunctions rather than through the more formal processes of a criminal prosecution. Note especially the difference in tone regarding the scope of federal power in this case as compared to the discussion in U.S. v. E. C. Knight (1895). Unlike E.C. Knight, Debs was a unanimous opinion by the Court. What might explain the difference?

JUSTICE BREWER delivered the opinion of the Court.

....

First. What are the relations of the general government to interstate commerce and the transportation of the mails? They are those of direct supervision, control, and management. While under the dual system which prevails with us the powers of government are distributed between the State and the Nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts directly upon the citizen, and not through the intermediate agency of the State. . . .

... "We hold it to be an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent. . . ." Justice Bradley in *Ex parte Siebold* (1880). . . .

Among the powers expressly given to the national government are the control of interstate commerce and the creation and management of a post office system for the nation. Article I, section 8, of the Constitution provides that "the Congress shall have power. . . . Third, to regulate commerce with foreign nations and among the several States, and with the Indian tribes. . . . Seventh, to establish post offices and post roads."

....

The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws.

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... [W]hile it is not the province of the government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of



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matters which by the Constitution are entrusted to the care of the Nation, and concerning which the Nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those constitutional duties.

The national government, given by the Constitution power to regulate interstate commerce, has by express statute assumed jurisdiction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers and duties of a government to remove obstructions from the highways under its control.

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... If ever there was a special exigency, one which demanded that the court should do all that courts can do, it was disclosed by this bill, and we need not turn to the public history of the day, which only reaffirms with clearest emphasis all its allegations.

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... It must be borne in mind that this bill was not simply to enjoin a mob and mob violence. It was not a bill to command a keeping of the peace; much less was its purport to restrain the defendants from abandoning whatever employment they were engaged in. The right of any laborer, or any number of laborers, to quit work was not challenged. The scope and purpose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels and the mails are carried.

..

A most earnest and eloquent appeal was made to us in eulogy of the heroic spirit of those who threw up their employment, and gave up their means of earning a livelihood, not in defense of their own rights, but in sympathy for and to assist others whom they believed to be wronged. We yield to none in our admiration of any act of heroism or self-sacrifice, but we may be permitted to add that it is a lesson which cannot be learned too soon or too thoroughly that under this government of and by the people the means of redress of all wrongs are through the courts and at the ballot-box, and that no wrong, real or fancied, carries with it legal warrant to invite as a means of redress the cooperation of a mob, with its accompanying acts of violence.

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The petition for a writ of *habeas corpus* is *Denied*.