Supplementary Material

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

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Stafford v. Wallace, 258 U.S. 495 (1922)

The scope of congressional power to regulate national economic activity was a continual source of political and constitutional conflict from the late nineteenth century through the New Deal. The Court emphasized that the congressional authority to regulate commerce among the states extended only to intrastate activities that directly affected interstate commerce. Congress could not regulate purely intrastate activities or intrastate activities that only indirectly affected interstate commerce. The congressional power to regulate goods and activities within interstate commerce itself was clear but narrow.

The Packers and Stockyard Act of 1921 imposed federal regulations on the livestock dealers in the large stockyards that received cattle from ranchers in the West and shipped cattle to the consumers in the East. Concern that the operators of the stockyards entered into conspiracies in restraint of trade and imposed excessive costs on the cattle market was widespread. Many doubted that those highly profitable stockyards in the middle of the country were adequately regulated by local authorities. But the stockyards were themselves located wholly within state boundaries, and the buying and selling that occurred there was local and traditionally subject to local control. In United States v. Hopkins *(1898), the Court concluded that members of the Kansas City cattle exchange did not violate the Sherman Antitrust Act with their fees on cattle sales in the stockyard. In* Swift and Co. v. United States *(1905), the Court found that a group of cattle buyers who bought and butchered cattle in several midwestern states and sold the resulting beef in the eastern states did violate the Sherman Act barring monopolies in interstate commerce. Rather than continuing to rely on the broad terms of the 1890 Sherman Act, Congress responded to the inflation of food prices during World War I by specifically targeting the stockyards for federal regulation of their fees and services.*

The Stafford Brothers, who operated a stockyard in Chicago, filed suit in a federal district court seeking an injunction preventing Secretary of Agriculture Henry C. Wallace from enforcing the Packers and Stockyard Act. Although operating some of the largest stockyards in the world, with over 90 percent of their business involving out-of-state cattle, the plaintiffs contended that they were an Illinois business conducting local transactions on their grounds in the city of Chicago and thus were outside the constitutional scope of federal regulatory power. The district court declined to issue the injunction, and the stockyard owners brought an appeal directly to the U.S. Supreme Court. In a 7–1 decision, the Court affirmed the lower court and upheld the statute as a valid regulation of interstate commerce. The case is particularly notable for introducing the metaphor of a "stream of commerce" that might make facilities such as stockyards sitting at the "throat" of the stream a direct part of interstate commerce. Congress had an interest in making sure that the stream of interstate commerce flowed unimpeded, and that meant that these crucial intermediaries could not be allowed to create obstacles to the efficient national movement of goods.

What are the potential distinctions and similarities between Hopkins, Swift, *and* Stafford*? How does* Stafford *compare to* E.C. Knight v. United States *(1895), the sugar case that initially interpreted the scope of the Sherman Act and developed the direct-indirect effect test? Is the "stream of commerce" metaphor a reasonable adjustment to the realities of modern industry? What else might be regulated under the stream of commerce approach? What might still be outside the scope of federal regulatory authority?*

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CHIEF JUSTICE TAFT delivered the opinion of the Court.

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. . . . It was for Congress to decide, from its general information and from such special evidence as was brought before it, the nature of the evils actually present or threatening, and to take such steps by legislation within its power as it deemed proper to remedy them. It is helpful for us in interpreting the effect and scope of the act in order to determine its validity to know the conditions under which Congress acted. . . .

The Packers and Stockyards Act of 1921 seeks to regulate the business of the packers done in interstate commerce and forbids them to engage in unfair, discriminatory or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly in the business. . . . A stockyards is defined to be a place conducted for profit as a public market, with pens in which livestock are received and kept for sale or shipment in interstate commerce. Yards with a superficial area of less than 20,000 square feet are not within the act. . . .

The object to be secured by the act is the free and unburdened flow of livestock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as livestock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market.

The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. . . . The control that the packers have had in the stockyards by reason of ownership and constant use, the relation of landlord and tenant between the stockyards owner, on the one hand, and the commission men and the dealers, on the other, the power of assignment of pens and other facilities by that owner to commission men and dealers, all create a situation full of opportunity and temptation to the prejudice of the absent shipper and owner in the neglect of the livestock, in the mala fides of the sale, in the exorbitant prices obtained, in the unreasonableness of the charges for services rendered.

The stockyards are not a place of rest or final destination. Thousands of head of livestock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one State to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. . . . The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to its continuity. The origin of the livestock is in the West, its ultimate destination known to, and intended by, all engaged in the business is in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce.

The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of *Munn v. Illinois* (1877). Nor is there any doubt that in the receipt of livestock by rail and in their delivery by rail the stockyards are an interstate commerce agency. . . . The only question here is whether the business done in the stockyards between the receipt of

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the livestock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation. A similar question has been before this court and had great consideration in *Swift & Co. v. United States* (1905). The judgment in that case gives a clear and comprehensive exposition which leaves to us in this case little but the obvious application of the principles there declared.

. . . . [The *Swift* Court said]:

> "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another State from that of the seller and of the cattle."

The application of the commerce clause of the Constitution in the *Swift* Case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.

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It is manifest that Congress framed the Packers and Stockyards Act in keeping with the principles announced and applied in the opinion in the *Swift* Case. . . .

. . . . Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent.

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[T]he line is distinct between this case and *Hopkins v. United States* (1898). All that was decided there was that the local business of commission merchants was not commerce among the States, even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. They only furnished certain facilities for the sales. Therefore, there again the effects of the combination of brokers upon the commerce was only indirect and not within the act. Whether the case would have been different if the combination had resulted in exorbitant charges, was left open. . . . [I]f the result of the combination of commission men in the *Hopkins* Case had been to impose exorbitant charges on the passage of the livestock through the stockyards from one State to another, the case would have been different, as the court suggests. The effect on interstate commerce in such a case would have been direct. . . .

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As already noted, the word "commerce" when used in the act is defined to be interstate and foreign commerce. Its provisions are carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially. Thus construed and applied, we think the act clearly within congressional power and valid.

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The orders of the District Court refusing the interlocutory injunctions are *affirmed*.

JUSTICE MCREYNOLDS dissents.

JUSTICE DAY did not sit in these cases and took no part in their decision.

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