

FDR and the Supreme Court

FDR Press Conference after the *Schechter Poultry* Case (Selections)

May 31, 1935

The whole tendency over these years has been to view the interstate commerce clause in the light of present-day civilization. The country was in the horse-and-buggy age when that clause was written and if you go back to the debates on the Federal Constitution you will find in 1787 that one of the impelling motives for putting in that clause was this: There wasn't much interstate commerce at all—probably 80 or 90 percent of the human beings in the thirteen original States were completely self-supporting within their own communities.

They got their own food, their own clothes; they swapped or bought with any old kind of currency, because we had thirteen different kinds of currency. They bought from their neighbors and sold to their neighbors. However, there was quite a fear that each of the thirteen States could impose tariff barriers against each other and they ruled that out. They would not let the States impose tariff barriers, but they were afraid that the lawyers of that day would find some other method by which a State could discriminate against its neighbors on one side or the other, or discriminate in favor of its neighbors on one side or the other. Therefore, the interstate commerce clause was put into the Constitution with the general objective of preventing discrimination by one of these Sovereign States against another Sovereign State.

They had in those days no problems relating to employment. They had no problems relating to the earning capacity of people—what the man in Massachusetts earned, what his buying power was. Nobody had ever thought of what the wages were or the buying capacity in the slave-holding States of the South. There were no social questions in those days. The question of health on a national basis had never been discussed. The question of fair business practices had never been discussed. The word was unknown in the vocabulary of the Founding Fathers. The ethics of the period were very different from what they are today. If one man could skin a fellow and get away with it, why, that was all right.

In other words, the whole picture was a different one when the interstate commerce clause was put into the Constitution from what it is now. Since that time, because of the improvement in transportation, because of the fact that, as we know, what happens in one State has a good deal of influence on the people in another State, we have developed an entirely different philosophy.

The prosperity of the farmer does have an effect today on the manufacturer in Pittsburgh. The prosperity of the clothing worker in the city of New York has an effect on the prosperity of the farmer in Wisconsin, and so it goes. We are interdependent—we are tied in together. And the hope has been that we could, through a period of years, interpret the interstate commerce clause of the Constitution in the light of these new things that have come to the country. It has been our hope that under the interstate commerce clause we could recognize by legislation and by judicial decision that a harmful practice in one section of the country could be prevented on the theory that it was doing harm to another section of the country. That was why the Congress for a good many years, and most lawyers, have had the thought that in drafting legislation we could depend on an interpretation that would enlarge the Constitutional meaning of interstate commerce to include not only those matters of direct interstate commerce, but also those matters which indirectly affect interstate commerce.

The implication, largely because of what we call obiter dicta in this opinion, the implication of this opinion is that we have gone back, that the Supreme Court will no longer take into consideration anything that indirectly may affect interstate commerce. That hereafter they will decide the only thing in interstate commerce over which they can permit the exercise of Federal

jurisdiction is goods in transit plus, perhaps, a very small number of transactions which would directly affect goods in transit.

[...]

And so it does bring us up rather squarely as to the big issue in the country and as to how we are going to solve it. The big issue is this: Does this decision mean that the United States Government has no control over any national economic problem?

The simple example is crop adjustment. Are we going to take the hands of the Federal Government completely off any effort to adjust the growing of national crops, and go right straight back to the old principle that every farmer is a lord of his own farm and can do anything he wants, raise anything, any old time, in any quantity, and sell any time he wants? You and I know perfectly well that if we completely abandon crop control—I don't care whether it is the present method or, let us say, the McNary-Haugen method, because, after all, that is a Federal method, too—if we are to abandon Federal relationship to any national crop, we shall again have thirty-six-cent wheat. You can't stop it. Under present world conditions we will have five-cent cotton. That is obvious.

And then you come down to the next series of things—manufacturing. We have tried to improve the economic conditions of certain forms of manufacturing. I am not talking about the social conditions now. I am talking about the economic conditions, giving to manufacturers a chance to eliminate things that we have nationally concluded are not fair. For example, the chain stores going into little communities or big communities all over the country and starting a system of loss leaders. Of course anybody who does his own marketing, and all you ladies of the press will appreciate this, knows perfectly well that where there is the loss-leader system and you are trying to get along on a budget, you are going to look into the chain-store window and see what the loss leader is each day. You may get a can of peas for fourteen cents instead of eighteen cents; naturally you wait and buy the loss leader. The chain store can afford to put out loss leaders; but the independent grocery store cannot.

A number of States—and here we come down to the last question—have attempted to take away the privileges or the advantages that come to very large nationwide businesses, by imposing special taxes on chain stores, but only a few States have succeeded in doing it. And that is a very good illustration of the difficulty of correcting economic conditions by forty-eight separate actions.

[...]

And so we are facing a very, very great national non-partisan issue. We have got to decide one way or the other. I don't mean this summer or winter or next fall, but over a period, perhaps, of five years or ten years we have got to decide: whether we are going to relegate to the forty-eight States practically all control over economic conditions—not only State economic conditions but national economic conditions; and along with that whether we are going to relegate to the States all control over social and working conditions throughout the country regardless of whether those conditions have a very definite significance and effect in other States outside of the individual States. That is one side of the picture. The other side of the picture is whether in some way we are going to turn over or restore to—whichever way you choose to put it—turn over or restore to the Federal Government the powers which exist in the national Governments of every other Nation in the world to enact and administer laws that have a bearing on, and general control over, national economic problems and national social problems.