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Constitutional Law--Due Process of Law--Price Fixing--Regulation of Labor Conditions--Bituminous Coal Act (Carter v. Carter Coal Co., 56 S. Ct. 855 (1936))

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Markets.[11] No rebutting facts were on the record.[12] Certainly the classification could not be declared arbitrary upon its face when the court had available the data in the *Nebbia* and *Borden Products Corp.* cases of which it could take judicial notice.[13] The court has held that a classification based upon a reasonable distinction is valid, even though some inequalities result in practice.[14] It has insisted that nothing short of "a clear and hostile determination" is invalid.[15] The object of time limitation in the *Mayflower Farms* case was not, as the majority said, to give one class an economic advantage over another. This may have resulted incidentally; the main object, of course, was to relieve an economic situation which the court had already authorized the state legislature to do. The problem was one for the legislature. When that body once determined that the time limitation had a reasonable relation to its desired purpose, and the facts reasonably justified that belief, it acted within its jurisdiction which the court had no right to invade.[16] As indicated by the *Mayflower Farms* case, the court may narrow its decision in the *Nebbia* case to a point of ineffectiveness by rejection of detailed regulations which are numberless in some industries, particularly the milk industry.[17]

T. B.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—PRICE FIXING —REGULATION OF LABOR CONDITIONS—BITUMINOUS COAL ACT.— Plaintiff, as a stockholder, sues to enjoin the defendant company and some of its officers from complying with the provisions of the Bitu-

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[11] Mayflower Farms v. Ten Eyck, 267 N. Y. 9, 195 N. E. 532 (1935), *aff'g*, 242 App. Div. 881, 275 N. Y. Supp. 669 (3d Dept. 1934).

[12] This is the reason for the decision in the Mayflower Farms case. But the court has said in Metropolitan Casualty Ins. Co. v. Brownell, 294 U. S. 580, 584, 55 Sup. Ct. 538, 540 (1935), "A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." It requires no convolutions of the imagination to conceive a state of facts to justify the discrimination in the Mayflower Farms case.

[13] WIGMORE, EVIDENCE (2d ed. 1923) § 2579.

[14] Metropolis Theatre Co. v. Chicago, 228 U. S. 61, 33 Sup. Ct. 441 (1930).

[15] Bell's Gap. R. R. v. Pennsylvania, 134 U. S. 232, 237, 10 Sup. Ct. 533 (1890).

[16] Finkelstein, *Judicial Self-Limitation* (1924) 37 HARV. L. REV. 338. Dissenting in the A. A. A. case, Stone, J., said, "The power of courts to declare a statute unconstitutional is subject to two guiding principles * * *. One is that courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint." United States v. Butler, 297 U. S. 1, 56 Sup. Ct. 312 (1936).

[17] Goldsmith and Winks, *loc. cit. supra*, note 2, at page 185. See (1936) 49 HARV. L. REV. 996.

minous Coal Conservation Act of 1935.[1] The Act declared the coal industry to be affected with national public interest, and that its regulation in respect to production, distribution of coal and labor relations was necessary to prevent waste and in order to permit proper servicing for the public, owners, and employees. Twenty-three coal districts covering the country were created, each with a district board having power to fix minimum prices for coal at every coal mine. A levy of 15% was to be made on the sale price of coal at each mine. Rebates were to be allowed to those producers complying with the code to be drafted by a National Bituminous Commission which also had fact finding power upon which to base its pronouncements. The labor provisions among other things authorized collective bargaining among employees and permitted the fixing of hours and wages by agreement between representatives of certain of the producers and representatives of a certain number of employees. From a judgment of the lower court, granting the injunction in part, and declaring the Act to be partly unconstitutional, the parties appeal on cross-writs of *certiorari*. *Held,* the Act, in its entirety is unconstitutional. Regulation of interstate commerce does not include the power to regulate labor conditions at coal mines; production of coal is local and is merely antecedent to commerce and not commerce itself. Delegation of legislative power to producers and employees to fix maximum hours and minimum wages is violative of the Fifth Amendment. The price fixing provisions are inextricably related to the labor provisions and must therefore fall with them. Cardozo, Brandeis and Stone, JJ., dissented. Hughes, C. J., dissented in part. *Carter* v. *Carter Coal Co.*, — U. S. —, 56 Sup. Ct. 855 (1936).

This decision together with the New York Minimum Wage [2] decision have been denounced as creating a "no man's land" where neither federal nor state government can regulate labor conditions.[3] In effect, this "no man's land" becomes the domain of property,[4] the sanctity of which cannot be invaded by legislation espousing the needs of labor.[5] And so it is that legislative power is made sterile by these two decisions rendered by five to four votes.[6]

The federal government has power to regulate interstate com-

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[1] Popularly referred to as the Guffey Coal Act, 49 Stat. —, 15 U. S. C. A. §§ 801-27 (1935). See Note (1936) 45 YALE L. J. 493.

[2] Morehead v. People *ex rel.* Tipaldo, — U. S. —, 56 Sup. Ct. 918 (1936).

[3] Comment by President Roosevelt, N. Y. Times, June 3, 1936, p. 1, col. 7.

[4] COHEN, LAW AND THE SOCIAL ORDER (1934) chapter on the *Nature of Property;* Pound, *Liberty of Contract* (1909), 18 YALE L. J. 454; Lerner, *Supreme Court and American Capitalism* (1933) 42 YALE L. J. 668.

[5] ELLIOTT, NEED FOR CONSTITUTIONAL REFORM (1935); COMMONS, LEGAL FOUNDATIONS OF CAPITALISM (1924); Frankfurter, *Hours of Labor and Realism in Constitutional Law* (1916) 29 HARV. L. REV. 353; *cf.* Sayre, *Labor and the Courts* (1930) 39 YALE L. J. 682.

[6] BOUDIN, GOVERNMENT BY JUDICIARY (1932); Powell, *Judiciality of Minimum Wage Legislation* (1924) 37 HARV. L. REV. 545 (The author's discussion of judicial "head counting" is interesting).

merce and such matters as directly affect it.[7] Commerce may be protected against any dangers which threaten it and Congress may adopt appropriate measures to effect this end.[8] The exercise of this power to regulate is subject to the constitutional restriction of the due process clause.[9] What constitutes "interstate commerce" and what directly affects it are questions which have consistently plagued the courts.[10] The record in the instant case indicated that the sales were for the most part interstate sales and that the coal industry was affected with a national public interest. More extensive findings were made by the lower court.[11] Assuming these facts, the "causal relation" [12] between price fixing and the sale of coal was such as to authorize congressional regulation of prices. The principal opinion purports to leave open the question of federal price fixing.[13] It would seem that price fixing in regard to wages or fixing of hours bears no legal distinction from fixing of prices in the sale of commodities.[14] If one is unconstitutional under the Fifth Amendment, the other is also. Having concluded that the *production* of coal was a matter of local concern, it is difficult to perceive how the majority can in the future logically declare the *sale* of coal to be a matter affecting interstate commerce.[15]

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[7] Minnesota Rate Cases, 230 U. S. 352, 398, 33 Sup. Ct. 729 (1913); Gibbons v. Ogden, 9 Wheat. 1, 196 (U. S. 1824).

[8] Second Employers' Liability Cases, 223 U. S. 1, 51, 32 Sup. Ct. 169 (1912); Texas & N. O. R. Co. v. Brotherhood of Railway Clerks, 281 U. S. 548, 570, 50 Sup. Ct. 427 (1930).

[9] Hamilton v. Kentucky Distilleries Co., 251 U. S. 146, 40 Sup. Ct. 106 (1919); Interstate Commerce Commission v. Union Pacific R. Co., 222 U. S. 541, 32 Sup. Ct. 108 (1912); St. Joseph Stock Yard Co. v. United States, 298 U. S. 38, 56 Sup. Ct. 720 (1936).

[10] Powell, *Commerce, Pensions and Codes* (1936) 49 HARV. L. REV. 1, 193; Frankfurter, *Taney and the Commerce Clause* (1936) 49 HARV. L. REV. 1006; Grant, *Commerce, Production, and the Fiscal Powers of Congress* (1936) 45 YALE L. J. 751.

[11] Carter v. Carter Coal Co., — U. S. —, 56 Sup. Ct. 855, 861 (1936). See 12 F. Supp. 570 (W. D. Ky. 1935).

[12] In his dissenting opinion in the instant case, Cardozo, J., points out the difficulty of attempting to determine what "directly" affects interstate commerce. He says, "What the cases really mean is that the causal relation in such circumstances is so close and intimate and obvious as to permit it to be called direct without subjecting the word to an unfair or excessive strain." Dissenting opinion, 56 Sup. Ct. 855, 880 (1936).

[13] See note 15, *infra*.

[14] See the dissenting opinions of Stone, J., and Hughes, C. J., in Morehead v. People *ex rel.* Tipaldo, — U. S. —, 56 Sup. Ct. 926, 932 (1936), which rely heavily upon Nebbia v. New York, 291 U. S. 502, 56 Sup. Ct. 829 (1934), for their conclusions.

[15] Sutherland, J., seems to cast doubt by innuendo concerning the constitutionality of federal price fixing. Writing for the majority in the instant case, he said: "The price fixing provisions of the code are thus disposed of without coming to the question of their constitutionality; but neither this disposition of the matter, nor anything we have said is to be taken as indicating that the court is of opinion that these provisions, if separately enacted, could be sustained."

A crude provision of the Act, justifiably attacked by the majority, was the delegation of power to certain producers and mine workers authorizing them to fix wages and hours. In the light of *Panama Oil Refining Co.* v. *Ryan*[16] and *Schechter Poultry Corp.* v. *United States*,[17] the provision was a display of poor judgment and policy. The delegation was to a body, not impartial, but consisting of members having conflicting interests with few defined standards to guide its action.[18] Conceding this weakness in the Act, the decision as a whole, nevertheless, is unfortunate for its sweeping assertion of "fundamental principles" which if applied literally will predestine most future social legislation to death at inception.

T. B.

CONSTITUTIONAL LAW—POLICE POWER—VALIDATION OF THE NEW YORK UNEMPLOYMENT INSURANCE LAW.—Complainant at Special Term sought a declaratory judgment nullifying the Unemployment Insurance Law of New York[1] as unconstitutional and wholly void under both federal and state constitutions.[2] In acquiescing to complainant's request the question whether complainant was

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[16] Panama Oil Refining Co. v. Ryan, 293 U. S. 388, 55 Sup. Ct. 241 (1935).

[17] Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 Sup. Ct. 837 (1935).

[18] Note (1931) 31 MICH. L. REV. 786 (delegation of federal legislative power to executive or administrative agencies); Note (1935) 48 HARV. L. REV. 798; Baesler, *A Suggested Classification of the Decisions on Delegation of Legislative Power* (1935) 15 B. U. L. REV. 507.

[1] N. Y. LABOR LAW (1936) §§ 502-531. In general its main features embrace a 3% payroll tax on all employers who maintain a staff of at least four persons for a period of thirteen or more calendar weeks of the year in any employment in which all or the greater part of the work is to be performed within the state. The assessments will be pooled into a single fund, payments from which will begin in two years. To entitle an applicant to its benefits, he must register and subject himself to a three-week waiting period. If he has had ninety days of employment in the preceding twelve months or one hundred and thirty in the twenty-four months prior to the time his benefits are to commence, eligibility is his. Any employee whose unemployment was through his own wrongful conduct or other industrial controversy is penalized an additional seven weeks waiting period. A recipient of its benefits, who refuses an offer of employment for which he is fitted, is disqualified provided that acceptance would not require him to join a union, or become involved in an industrial dispute, or cause him to travel unreasonable distances or work for a salary far less than paid in similar work. Payments of benefits are made in the ratio of one week of benefits for every fifteen days of employment. These payments shall be made at the rate of fifty per centum of employee's full time weekly wage but in no event to be more than fifteen dollars per week or less than five. See Legis. (1935) 10 ST. JOHN'S L. REV. 147.

[2] U. S. CONST. Amend. 14, § 1; N. Y. CONST. art. 1, § 6.