A. L. A. SCHECHTER POULTRY CORP. ET AL. *v.* UNITED STATES

295 U.S. 495 (1935)

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Petitioners ... were convicted in the ... Eastern District Court of the United States for the Eastern District of New York on eighteen counts of an indictment charging violations of what is known as the "Live Poultry Code," ... By demurrer to the indictment ... , the defendants contended (1) that the Code had been adopted pursuant to an unconstitutional delegation by Congress of legislative power; ...

The defendants are slaughterhouse operators ... A. L. A. Schechter Poultry Corporation and Schechter Live Poultry Market are corporations conducting wholesale poultry slaughterhouse markets in Brooklyn, New York City. ... They buy the poultry for slaughter and resale. After the poultry is trucked to their slaughterhouse markets in Brooklyn, it is there sold, usually within twenty-four hours, to retail poultry dealers and butchers who sell directly to consumers. The poultry purchased from defendants is immediately slaughtered, prior to delivery, by shochtim in defendants' employ. ...

The "Live Poultry Code" [is a code of "fair competition" for those in the New York area live poultry industry. It] was promulgated under § 3 of the National Industrial Recovery Act ... [and] was approved by the President on April 13, 1934. ...

The Code ... provides that no employee, with certain exceptions, shall be permitted to work in excess of forty (40) hours in any one week, and that no employee, save as stated, "shall be paid in any pay period less than at the rate of fifty (50) cents per hour." ... The minimum number of employees, who shall be employed by slaughterhouse operators, is fixed ...

Provision is made for administration through an "industry advisory committee," to be selected by trade associations and members of the industry, and a "code supervisor" to be appointed, with the approval of the committee, by agreement between the Secretary of Agriculture and the Administrator for Industrial Recovery. ...

The seventh article, containing "trade practice provisions," prohibits various practices which are said to constitute "unfair methods of competition." ...

Of the eighteen counts of the indictment upon which the defendants were convicted, ... ten counts were for violation of the requirement (found in the "trade practice provisions") [that a wholesale seller could not allow a buyer to select particular chickens. Rather they had] ... "to accept the run of any half coop, coop, or coops ... [It was charged] that the defendants in selling to retail dealers and butchers had permitted "selections of individual chickens taken from particular coops and half coops." ...

[One other count] charged the sale to a butcher of an unfit chicken. ...

[The] Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot deal directly. We pointed out in the Panama Company case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality ... But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

[What] is meant by "fair competition" as the term is used in the Act? Does it refer to a category established in the law, and is the authority to make codes limited accordingly? Or is it used as a convenient designation for whatever set of laws the formulators of a code for a particular trade or industry may propose and the President may approve ... as being wise and beneficent provisions for the government of the trade or industry in order to accomplish the broad purposes of rehabilitation, correction and expansion which are stated in the first section of Title I?

The Act does not define "fair competition." "Unfair competition," as known to the common law, is a limited concept. ... In recent years, its scope has been extended. ...

The Federal Trade Commission Act (§ 5) introduced the expression "unfair methods of competition," which were declared to be unlawful. ... What are "unfair methods of competition" are thus to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest. To make this possible, Congress set up a special procedure. A Commission, a quasi-judicial body, was created. ...

In providing for codes, the National Industrial Recovery Act dispenses with this administrative procedure and with any administrative procedure of an analogous character. But the difference between the code plan of the Recovery Act and the scheme of the Federal Trade Commission Act lies not only in procedure but in subject matter. We cannot regard the "fair competition" of the codes as antithetical to the "unfair methods of competition" of the Federal Trade Commission Act. The "fair competition of the codes has a much broader range and a new significance. ...

For a statement of the authorized objectives and content of the "codes of fair competition" we are referred repeatedly to the "Declaration of Policy" in section one of Title I of the Recovery Act. ... That declaration embraces a broad range of objectives. ...

Under § 3, whatever "may tend to effectuate" these general purposes may be included in the "codes of fair competition." ... [T]he purpose is clearly disclosed to authorize new and controlling prohibitions through codes of laws which would embrace what the formulators would propose, and what the President would approve, or prescribe, as wise and beneficient measures for the government of trades and industries in order to bring about their rehabilitation, correction and development,

according to the general declaration of policy in section one. ...

The Government urges that the codes will "consist of rules of competition deemed fair for each industry by representative members of that industry -- by the persons most vitally concerned and most familiar with its problems." Instances are cited in which Congress has availed itself of such assistance; as *e.g.,* in the exercise of its authority over the public domain, with respect to the recognition of local customs or rules of miners as to mining claims, or, in matters of a more or less technical nature, as in designating the standard height of drawbars. But would it be seriously contended that Congress could delegate its legislative authority to trade or industrial associations or groups so as to empower them to enact the laws they deem to be wise and beneficent for the rehabilitation and expansion of their trade or industries? Could trade or industrial associations or groups be constituted legislative bodies for that purpose because such associations or groups are familiar with the problems of their enterprises? And, could an effort of that sort be made valid by such a preface of generalities as to permissible aims as we find in section 1 of title I? The answer is obvious. Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress.

The question, then, turns upon the authority which § 3 of the Recovery Act vests in the President to approve ...

[Accordingly,] we turn to the Recovery Act to ascertain what limits have been set to the exercise of the President's discretion. *First,* the President, as a condition of approval, is required to find that the trade or industrial associations or groups which propose a code, "impose no inequitable restrictions on admission to membership" and are "truly representative." ...

Second, the President is required to find that the code is not "designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them." ... But these restrictions leave virtually untouched the field of policy envisaged by section one ... The Act provides for the creation by the President of administrative agencies to assist him, but the action or reports of such agencies, or of his other assistants, ... have no sanction beyond the will of the President, who may accept, modify or reject them as he pleases. Such recommendations or findings in no way limit the authority which § 3 undertakes to vest in the President with no other conditions than those there specified. And this authority relates to a host of different trades and industries, thus extending the President's discretion to all the varieties of laws which he may deem to be beneficial in dealing with the vast array of commercial and industrial activities throughout the country. ...

Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, § 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion described in section one. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing

codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power. ...

MR. JUSTICE CARDOZO, concurring.

The delegated power of legislation which has found expression in this code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant ...

Here, in the case before us, is an attempted delegation not confined to any single act nor to any class or group of acts identified or described by reference to a standard. Here in effect is a roving commission to inquire into evils and upon discovery correct them. ...

If codes of fair competition are codes eliminating "unfair" methods of competition ascertained upon inquiry to prevail in one industry or another, there is no unlawful delegation of legislative functions when the President is directed to inquire into such practices and denounce them when discovered. ...

But there is another conception of codes of fair competition, their significance and function, which leads to very different consequences ... By this other conception a code is not to be restricted to the elimination of business practices that would be characterized by general acceptation as oppressive or unfair. It is to include whatever ordinances may be desirable or helpful for the well-being or prosperity of the industry affected. In that view, the function of its adoption is not merely negative, but positive; the planning of improvements as well as the extirpation of abuses. What is fair, as thus conceived, is not something to be contrasted with what is unfair or fraudulent or tricky. The extension becomes as wide as the field of industrial regulation. If that conception shall prevail, anything that Congress may do within the limits of the *commerce clause* for the betterment of business may be done by the President upon the recommendation of a trade association by calling it a code. This is delegation running riot. No such plenitude of power is susceptible of transfer. The statute, however, aims at nothing less, as one can learn both from its terms and from the administrative practice under it. ...

It sets up a comprehensive body of rules to promote the welfare of the industry, if not the welfare of the nation, without reference to standards, ethical or commercial, that could be known or predicted in advance of its adoption. One of the new rules, the source of ten counts in the indictment, is aimed at an established practice, not unethical or oppressive, the practice of selective buying. ...