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THE CONSTITUTIONALITY OF A FEDERAL CHILD LABOR LAW.

The broadening scope of the federal power over interstate commerce is nowhere more significantly illustrated than in the widespread movement for a federal child labor law.

The significance of the movement lies in the fact that it is an attempt to bring federal aid to the cure of what has become largely a federal problem. For it appears that the opposition to any improved child labor legislation in the States has come to be based largely upon the cry that legislation State by State is unfair; that it is unjust to expect the manufacturers of one State to compete with the manufacturers of an adjoining State with a totally different standard of child labor; that if the States are to advance, they should advance together. The argument reminds Congress that it is from the federal Constitution that every manufacturer is guaranteed the right to ship his goods freely into whatever State he pleases, provided only that they are merchantable and may be safely transported. Under the Constitution no State may lift a ban against the products of another State, whatever unequal advantage their manufacturer may have enjoyed, or from whatever inhuman working conditions his product may have sprung. The federal government enjoys this power in the case of imports—and has exercised it, for instance in the con-

vict labor clause of the tariff;—but not so the States themselves, who have parted with the power. There was a day when this was otherwise. But it was an evil day. It has been called the critical period of American history. The States could then lay embargoes and commercial prohibitions as they pleased. And it was largely due to the evils which attended the lodging of this particular power in so many sovereignties that the Constitution was adopted, in which, for the good of all it was surrendered to one. Where the hands of the States are tied the power of the federal government must be invoked for the benefit of all.

Passing, however, as beyond the scope of this discussion, the economic relation of such legislation to the problem of interstate competition and interstate commerce, let us ask and seek to answer the single question, is it constitutional?

To approach this problem as directly as possible, and to avoid retracing ground already traveled, let us pass at once to the point of furthest clearly established authority, as found in the decisions on the federal Lottery and Food and Drugs Acts. The constitutionality of both of these acts is beyond question. The former has been tried and found abundantly justified in an elaborate decision by the Supreme Court.[1] The latter has been frequently sustained in the lower courts,[2] and its constitutionality has been tacitly assumed in several cases involving its construction, before the Supreme Court.[3]

From these decisions we note two incontrovertible conclusions; first, that lottery tickets and misbranded and adulterated goods are articles of commerce; and, second, that regulation of interstate commerce in these articles may take the form of prohibition.

Do these conclusions support a federal law to prohibit interstate commerce in the products of child labor? If so, what are the limits of the power?

That there is a distinction between the two acts cited, and those earlier acts which sought to prohibit the carriage of articles

[1] 188 U. S. 321 (1903).

[2] 179 Fed. Rep 517; 181 Fed. Rep. 629; 180 Fed. Rep. 518; 175 Fed. Rep. 299; 179 Fed. Rep. 985.

[3] Hipolite Egg Co. v. U. S., 220 U. S. 45 (1910); U. S. v. Johnson, 221 U. S. 488 (1910); U. S. v. Lexington Mill Co., 232 U. S. 398 (1913).

likely to endanger commerce itself, as for instance nitro-glycerine or loose hay or other combustible materials, is obvious. In these acts the prohibition was designed primarily to protect the people from dangers incident to the physical carriage itself. In the two later acts relating to lotteries and adulterated and misbranded food products, however (as also in the case of those various other acts relating to falsely-branded dairy products and condemned carcasses of animals, and quarantined articles and obscene literature), it is obvious that the courts which sustained them have passed beyond the consideration of a danger to commerce inherent in the articles, and have looked to a possible injury to the public resulting from the future use of the articles by the consumer, after commerce has been terminated. The use of lottery tickets is calculated, in the judgment of Congress, to debauch the public morals. The circulation in commerce of misbranded and adulterated goods is calculated to deceive and injure the people who use such goods.

The single question, then, which presents itself is this: Can a *controlling* distinction be drawn between a power in Congress to prohibit the interstate transportation of articles adapted to deceive or defraud the consumer, or injure his health or morals, and articles whose manufacture has injured the health and morals of the children employed therein? In other words, may Congress look *forward* to the effect of such articles upon the consumer for whose benefit they are produced, but not *backward* to the effect of their manufacture upon the worker and the industry by which they are made?

In answering this question, it is important to remember at the outset that we are concerned solely with the problem as to whether the proposed legislation is or is not a regulation of interstate commerce, within the meaning of the Constitution. If it is a regulation (and does not violate some specially protected right under the Constitution) it is constitutional. If not, it is not constitutional, and the question as to whether it *incidentally* affects the conditions of manufacture in a given State—conditions over which Congress itself has no primary right of control—is altogether beside the point.

We repeat that there is need to emphasize this point, for the argument that it is in effect an invasion of the police powers of the States is at the bottom of all the opposition which has been made to such legislation. This argument has been nowhere more aptly stated than by President Taft, who in a few sentences, in his recent little volume on Popular Government, attacks the proposed bill, and sums up his argument in these words:

> "In other words, it seeks indirectly, and by duress, to compel the States to pass a certain kind of legislation, that is completely within their discretion to enact or not."

With a sincerity of respect for the decisions of this great judge which is born of a personal study of every judicial decision which bears his name—the writer submits that this statement and the conclusion based upon it, are both erroneous. The bill does not compel the States—does not invite the States—to pass any legislation. It concerns itself only with legislation by Congress, and only with that phase of commerce which is under the sole jurisdiction of the federal government. In so far as it is true that this legislation may *indirectly* affect conditions in the States, this is wholly beside the question now presented, as is clear from a simple reference to the acts above referred to. For instance, so far as creating a national standard is concerned, what possible distinction can be drawn between the indirect effect of the Food and Drugs Act in establishing a national standard for food and drugs, and the indirect effect of the proposed federal Child Labor Bill?

The argument, then, looks to an incidental effect that ignores the inherent nature of the law as a prohibitory commerce act, and reminds us forcibly of the language of the Supreme Court in the first White Slave Case,[4] in reply to the contention that the Mann Act was "a subterfuge and an attempt to interfere with the police power of the States to regulate the morals of their citizens," and in consequence an invasion of the reserved powers of the States. Says the Court, in the language of Mr. Justice McKenna:

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[4] 227 U. S. 308, 321, 322 (1913).

"There is unquestionably a control in the States over the morals of their citizens, and, it may be admitted, it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the States, but there is a domain which the States cannot reach and over which Congress alone has power; and if such power be exerted to control what the States cannot it is an argument for—not against—its legality. Its exertion does not encroach upon the jurisdiction of the States. We have cited examples; others may be adduced. The Pure Food and Drugs Act is a conspicuous instance. In all of the instances a clash of national legislation with the power of the States was urged, and in all rejected.

"Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral."

This distinction has been even more clearly emphasized by one of the most distinguished authorities on constitutional and administrative law in the United States, Prof. Frank J. Goodnow, of Columbia University, now constitutional adviser of the Chinese Government and President-elect of Johns Hopkins University, in a small but notable volume entitled "Social Reform and the Constitution," in which he unequivocably declares in favor of the proposed legislation. After referring to the provision of the Constitution that the laws of Congress made in pursuance of the Constitution shall be the supreme law of the land, Prof. Goodnow remarks:

"Men's minds are peculiarly twisted when they argue, under a constitution containing such a provision, that a regulation purporting to be a regulation of interstate commerce is not such because it will necessarily have the incidental effect of regulating conditions of manufacture. The only reason why it will have this incidental effect is because in the economic conditions of the present day manufacturing has ceased to be a State, and has become an interstate matter. A State with no factory legislation can, in the present conditions of interstate transportation, underbid a State which seriously attempts to improve the conditions of manufacturing. The denial by the Federal Government of the

> right of the States to protect their laboring population against competition based on cheaper and lower conditions of labor, really makes it incumbent on the Federal Government to exercise its constitutional powers to the fullest extent in the interest of the laboring classes, which the States can no longer protect."

To return, then, to the question raised upon the decisions above noted, the inquiry presents itself as follows:

Is there a substantial distinction in principle between an act of Congress which regulates interstate commerce in an article with respect to certain qualities likely to affect the consumer, and an act which regulates commerce in articles with respect to the effect which the manufacture of such articles has had upon industry and the labor employed therein; in other words, is the protection of industry—the conservation and protection of its labor and the equalization of interstate competition through interstate commerce—a proper subject in whose interest may be enlisted the interstate commerce power of the Constitution?

For a categorical denial of the existence of any such distinction let me quote from a recent unpublished article by Prof. W. W. Willoughby, of Johns Hopkins University, lately president of the American Academy of Political and Social Science, and, like Prof. Goodnow, one of the leading authorities in the country upon constitutional and administrative law. In an earlier treatise upon constitutional law Prof. Willoughby expressed a doubt as to the constitutionality of the legislation now proposed. In the article to which I refer, however, he presents in no uncertain terms his later conclusion in its support:

> "The distinction between conditions of production and purposes, or modes of use, of commodities, though a real one will probably not be held controlling. In neither case has Congress a direct regulative power—over neither the conditions of production nor the mode or use of consumption. If, therefore, in either case, the prohibition can be construed to be, in fact, a regulation of interstate or of foreign commerce, neither the ultimate effect nor the legislative intent embodied in the law may be inquired into by the courts. In result, then, it is to be admitted that the lottery case is authority for the doctrine that interstate carriers may be prohibited from carrying, or

shippers or manufacturers from sending, from State to State, and to foreign countries, commodities produced under conditions so objectionable as to be subject to control as to their manufacture by the States, under an exercise of their police powers or of a character designed or appropriate for a use which might similarly be forbidden by law."

Is this conclusion correct? Does the protection of industry —the protection of the manufacturer and the protection of the worker who produces these articles of commerce—fall within the rightful function of the interstate commerce power of the Constitution?

With this precise question before us, in the light of what I have said, let me invite consideration to certain propositions which have an important bearing upon the interpretation of this clause.

The power of which we are speaking is to be found in some twenty-one words of the Federal Constitution, as follows:[5]

> "The Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes."

As will be seen, three powers are here included in a single sentence, of which the power which we are now considering appears as second among the number.

Obviously there is nothing in the *wording* of this clause to suggest a distinction between power to regulate commerce with foreign nations and the power to regulate commerce among the several States, and, as a matter of fact, it has been repeatedly declared that, so far as the phrase above referred to is concerned, the power is identical.

Said Mr. Chief Justice Marshall in *Gibbons* v. *Ogden*,[6] that landmark on the interstate commerce clause:

> " * * * the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States."

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[5] Article I, §7.

[6] 9 Wheaton, 1, 194 (1824).

Mr. Justice Johnson remarked in the same case:[7]

"The power to regulate foreign commerce is given in the same words and in the same breath, as it were, with that over the commerce of the States, and with the Indian tribes, but the language which grants the power as to one description of commerce, grants it to all; and, in fact, if ever the exercise of a right or acquiescence in a construction could be inferred from contemporaneous and continued assent, it is that of the exclusive effect of this grant."

Said Mr. Justice Taney in the License Cases:[8]

"The power to regulate commerce among the several States is granted to Congress in the same clause, and by the same words, as the power to regulate commerce with foreign nations; and coextensive with it."

Said Mr. Justice Matthews, in *Bowman* v. *Chicago & North Western Railway Co.*:[9]

"A power conferred upon Congress to regulate commerce among the States is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. The grant is conceived in the same terms and the two powers are undoubtedly of the same class and character, and equally extensive."

Said Mr. Justice Bradley in *Brown* v. *Houston*:[10]

"The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations."

And in *Crutcher* v. *Kentucky*:[11]

"It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce."

And after pointing out that the power of Congress includes the duty of providing for the security of the people of the United States—in relation to foreign corporate bodies, and foreign indi-

[7] 9 Wheaton, 228 (1824).
[8] 5 Howard, 504, 578 (1847).
[9] 125 U. S. 465, 482 (1888).
[10] 114 U. S. 622, 630 (1885).
[11] 141 U. S. 47, 58 (1891).

viduals with whom they may have relations of foreign commerce, he continued:

> "And the same thing is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceivable between the two."

So, too, in an earlier case, in the Circuit Court,[12] before his appointment to the Supreme Court, he said:

> "We think that the power of Congress is supreme over the whole subject, unimpeded and unembarrassed by State lines or State laws; that in this matter the country is one, and the work to be accomplished is national; and that State interests, State jealousies, and State prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no States."

Said Mr. Justice Field, in *Pittsburgh & Southern Coal Co.* v. *Bates*:[13]

> "The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations."

Said Judge Davis, in *United States* v. *Forty-three Gallons of Whisky*:[14]

> "Congress now has the exclusive, the absolute power to regulate commerce with the Indian tribes, a power as broad and as free from restrictions as that to regulate commerce with foreign countries."

Finally we may quote again from Professor Willoughby:

> "It is believed, therefore, that so far as the grant contained in the commerce clause is concerned, no valid distinction between interstate and foreign commerce can be drawn."

The above quotations are sufficient to establish the substantial identity of the powers over foreign and over interstate commerce.

The next proposition to which I would call attention is that the power thus established in a single phrase of the Constitu-

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[12] Stockton v. Baltimore & New York Rwy. Co., 32 Fed. Rep. 9, 17 (1887).
[13] 156 U. S. 577, 587 (1895).
[14] 3 Otto, 188 (1876).

tion has been frequently exercised in the form of *prohibition* for the protection of the commerce and industry of the nation. The justification of the embargo *under the commerce clause* is a conspicuous example. As before, we have the authority of Mr. Chief Justice Marshall, who said, in *Gibbons* v. *Ogden,*[15] in discussing the power of Congress under the commerce clause:

> "The universally acknowledged power of the Government to impose embargoes must also be considered as showing that all America is united in that construction which comprehends navigation in the word commerce. Gentlemen have said, in argument, that this is a branch of the war-making power, and that an embargo is an instrument of war, not a regulation of trade. That it may be, and often is, used as an instrument of war, can not be denied, but not all embargoes are of this description. They are sometimes resorted to without a view to war, and with a single view to commerce. When Congress imposed that embargo which, for a time, engaged the attention of every man in the United States, the avowed object of the law was the protection of commerce and the avoiding of war."

To the same effect is the language of Mr. Justice Daniel, speaking for the Supreme Court in *United States* v. *Mangold:*[16]

> "Since the passage of the embargo and nonintercourse laws, and the repeated judicial sanctions those statutes have received it can scarcely, in this day, be open to doubt that every subject falling within legitimate sphere of the commerce regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the importance of the interests of the Nation."

So, too, Judge Davis, of the United States district for Massachusetts, in the case of *United States* v. *William,*[17] in which he sustained the constitutionality of the recent embargo act:

> "Further, the power to regulate commerce is not to be confined to the adoption of measures exclusively beneficial to commerce itself, or tending to its advancement, but in our national system, as in all modern sovereignties, it is also to be considered as an instrument for other purposes of general policy and interest."

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[15] *Supra,* n. 6.

[16] 9 How. 560 (1850).

[17] 28 Fed. Cases, 614 (1808).

The greatest of all commentators on the Constitution, Justice Joseph Story,[18] wrote:

> "Foreign and domestic intercourse has been universally understood to be within the national power. How, otherwise, could our theory of prohibition and nonintercourse be defended? From what other source has been derived the power of laying embargoes in a time of peace and without any reference to war or its operations? Yet this power has been universally admitted to be constitutional, even in times of the highest political excitement."

In *Gibbons* v. *Ogden,*[19] in demonstrating that the power to regulate commerce included the regulation of vessels employed in transporting passengers, Judge Marshall emphasized his conclusions by pointing out that it was clearly recognized by the framers of the Constitution that the power to regulate included the power to prohibit, for the reason that they inserted an express exception to such power in the article forbidding Congress to prohibit the importation of slaves until 1808:

> "This section has always been considered as an exception from the power to regulate commerce, and so far as an exception from a power proves its existence, this section proves that the power to regulate commerce applies equally to the regulation of vessels employed in transportating men who pass from place to place, voluntarily, and to those who pass involuntarily."

In a scholarly essay, The Commercial Power of Congress, Mr. David Walter Brown, of the New York Bar, thus summarizes the activities of the early Congresses in pursuance of the commerce power, and comments on an alleged distinction between the power over foreign and interstate commerce:

> "The policy of restriction included measures of two kinds: (1) the prohibition of the importation of foreign commodities and of the entry of foreign vessels into our ports; and (2) embargoes upon commerce. They illustrate, upon a grand scale and in a drastic manner, the application of the commercial power of Congress to the attainment of great national ends, through restrictions placed upon various branches of trade, and extending even to total prohibition; and in so far as the precedents furnished by them are authoritative, they indicate the

[18] Vol. 2, page 1060 (Edition of 1833).
[19] *Supra,* n. 6.

unsoundness of the view that the power of Congress to regulate commerce is restricted to the passing of measures to advance it, but stops short of the power to prohibit it * * *

"Attempts have been made to distinguish between the power to impose restrictions and embargoes upon foreign and upon interstate commerce, the former power being admitted, the latter denied; but the distinction is not supported by the text of the Constitution, nor by the decisions of the Supreme Court; and, as we shall see more clearly in the chapter which considers the embargo laws of Jefferson's administration, it was not recognized by him."

If, then, the power to regulate commerce between the States is identical with the power to regulate foreign commerce, it is submitted that the same moving considerations for the protection of commerce and industry which have directed the action of Congress in regard to foreign commerce must be permitted to apply also to commerce between the States. In other words (subject to the limitation hereafter discussed), the power to regulate interstate commerce may be exercised—and exercised to the point of prohibition—for the protection of the industries of the Nation so far as those industries are directly affected in the exercise of that power.

The identity which has been emphasized above, however, is not meant to suggest that the power of Congress over foreign commerce, is not, by reason of certain other constitutional grants, broader than the power over commerce between the States. In the case of foreign commerce there are no State rights to be considered. Where Congress might prohibit the importation of merchandise from certain countries, it could obviously not discriminate, in interstate commerce, between the States. So far, however, as no such special circumstance or limitation suggests itself, the powers may be considered together and as identical.

This conclusion at once invites the question—May exclusion be arbitrary? If not, what are the limits of Congressional power, and does the same rule apply to both interstate and foreign commerce?

The reply to the inquiry is two-fold: (1) that it has never yet been squarely decided, and is at least a question of serious

doubt, whether Congress may *arbitrarily* prohibit the introduction of any articles into the United States; and (2), that even if such a broad power must be conceded in the case of foreign commerce, any such assumption of arbitrary power in the case of foreign commerce must yield to the restrictions of the due process clause, in the case of commerce between the States.

Probably the broadest statement of the power of Congress over foreign commerce is found in the case of *Butterfield* v. *Stranahan*,[20] where the Supreme Court, in sustaining the right of Congress to prohibit the importation of inferior teas, reminds us that Congress has, from the beginning, exercised a plenary power in the exclusion of merchandise brought from foreign countries, both by embargoes and prohibitory tariffs, and has also "in other tariff legislation asserted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion," illustrating this statement by the laws regulating the degree of strength of drugs and chemicals entitled to admission to the United States.

In this case, however, it is to be noted, that the facts of the case itself and of the cases cited in the opinion are very far from supporting an arbitrary discretion.

That no such arbitrary discretion exists *either* as to foreign *or* as to interstate commerce is the view of Professor Willoughby, who states his conclusions as follows in the article above referred to:

> "The question as to the extent to which Congress is limited by the due process of law requirement when exercising the power granted it by the commerce clause, is one not wholly free from difficulty, but this much at least is clear, that Congress may not, under the guise of an exercise of its commerce power, any more than it may under the guise of any of its other powers, work a direct deprivation of a particular property right or a direct impairment of a specific contract right. From this it follows that, granting that an individual has a vested right to engage in interstate or foreign commerce, he can not be arbitrarily excluded therefrom, either as a shipper or

[20] 192 U. S. 470 (1904).

carrier or importer, except in so far as such exclusion may fairly be held to be incidental to the regulation of such commerce."

Apart, however, from the question of foreign commerce, the Supreme Court has expressly declared that the power to regulate interstate commerce is not arbitrary, but is subject to possible restrictions arising out of the Fifth Amendment, and otherwise from the Constitution. This position has best been stated by the Supreme Court in the Lottery Case [21] as follows:

"It is said, however, that the principle that in order to suppress lotteries carried on through interstate commerce. Congress may arbitrarily exclude from commerce among the States any article, commodity, or thing, of whatever kind or nature, or however useful or valuable, which it may choose, no matter with what motive, to declare shall not be carried from one State to another. It will be time enough to consider the constitutionality of such legislation when we must do so. The present case does not require the court to declare the full extent of the power that Congress may exercise in the regulation of commerce among the States. We may, however, repeat, in this connection, what the court has heretofore said, that the power of Congress to regulate commerce among the States, although plenary, can not be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution.. This power, therefore, may not be exercised so as to infringe rights secured or protected by that instrument. It would not be difficult to imagine legislation that would be justly liable to such an objection as that stated and be hostile to the objects for the accomplishment of which Congress was invested with the general power to regulate commerce among the several States.

"But, as often said, the possible abuse of a power is not an argument against its existence. There is probably no governmental power that may not be exerted to the injury of the public. If what is done by Congress is manifestly in excess of the powers granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people. But if what Congress does is within the limits of its power and is simply unwise or injurious, the remedy is that suggested by Chief Justice Marshall, in *Gibbons v. Ogden,* when he said:

"The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents

[21] *Supra,* n. 1.

possess at elections are in this, as in many other instances, as that, or example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments."

The true solution of the problem—a solution which avoids the dangers pointed out in the citation above, is, in the judgment of the writer, correctly summarized in the following conclusions presented to the Supreme Court by Mr. James M. Beck in his successful argument for the government in the Lottery Cases:

"The power to prohibit exists for any purpose referable to the legitimate objects of government, such as the preservation of health, the protection of morals, and the safety of life.

"It is not essential, however, for the Government to contend for an absolute power of prohibition, and it may well be that where a prohibition is not referable to some of the police powers of a sovereign State, or to the great aims for which all government is founded, and where therefore such prohibition is an undue tresspass upon the liberties of the citizens, that the judicial department of the Government would have the power to declare such a law void. The bill of rights contained in the amendments to the Constitution may well prohibit many arbitrary and unwarranted prohibitions of trade between the States."

This statement is in effect the same as that presented by Prof. Willoughby in the following language:

"In result, then, it is to be admitted that the lottery case is authority for the doctrine that interstate carriers may be prohibited from carrying or shippers or manufacturers from sending from State to State and to foreign countries commodities produced under conditions so objectionable as to be subject to control, as to their manufacture, *by the States under an exercise of their police powers* or of a character designed or appropriate for a use which might similarly be forbidden by law."

This police power test calls to mind at once the recent utterances of the Supreme Court in the White Slave Cases. In the first of these [22] Mr. Justice McKenna, speaking for a unanimous court in sustaining the White Slave Act, used this language:

[22] Hoke v. U. S., 227 U. S. 308, 323 (1913).

> "The principle established by the cases is the simple one, when rid of confusing and distracting considerations, that Congress has power over transportation 'among the several States'; that the power is complete in itself, and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations. *Gloucester Ferry Co.* v. *Pennsylvania,* 114 U. S. 196, 215; Cooley, Constitutional Limitations, 7th ed. 856. We have no hesitation, therefore, in pronouncing the act of June 25, 1910, a legal exercise of the power of Congress."

This declaration was repeated by Mr. Justice Pitney in the later of these cases,[23] in which after declaring that the prohibition of the act is not confined to transportation, supported this conclusion as follows:

> "As has already been decided, it has the quality of a police regulation, although enacted in the exercise of the power to regulate interstate commerce (*Hoke* v. *United States, 227* U. S. 308, 323; *Gloucester Ferry Co.* v. *Pennsylvania,* 114 U. S. 196, 217); and since this power is complete in itself, it was discretionary with Congress whether the prohibition should be extended to transportation by others than common carriers."

The test above suggested clearly avoids the constitutional objection pointed out by the Supreme Court in the language quoted from the Lottery Case, as also the obvious dilemma of the argument *ad absurdum*—which proved so fatal to Senator Beveridge during the course of his speech in 1907, in which he courageously defended the contention that the power was *arbitrary*—and that its exercise was wholly a matter of *policy,* never one of *power.*

In conclusion, then, it is submitted that if it is true that "the power of Congress over interstate commerce is as absolute as it is over foreign commerce," and that a prohibition on the importation of convict-made goods is a valid exercise, not of the taxing power but of the power to regulate commerce; if it is true that Congress has in its tariff acts, prohibitory or otherwise, avowedly had in mind the protection of the manufacturer and

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[23] Wilson v. U. S., 232 U. S. 563, 567 (Feb. 24, 1914).

the artisan; if it is true that the power to regulate commerce, as stated by Justice Marshall, "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution"; and if it is true, as the Supreme Court declares in the White Slave Case, that "if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs," it can also be taken from "the enslavement in prostitution and debauchery of women, and, more insistently, of girls," —surely it may equally be denied to a commerce which arises in and thrives upon conditions of child employment which Congress conceives to be a menace to the general welfare of the Nation.

Such legislation is not an attempt to impose a federal standard upon the internal affairs of any State. It is merely a declaration that the channels of interstate commerce shall not be polluted by being used to support a condition of child slavery shocking to the moral sense of the people. It is a regulation of the commerce between the States.

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Philadelphia.