



United States v. E.C. Knight Company (1895):

[In this case, the Court certainly had a limited view of the reach of the Commerce Clause by Congress. It relied upon the manufacture-commerce dichotomy where a manufacturers' combination controlling 98% of the Nation's domestic sugar refining capacity was held to be outside the reach of the Sherman Act. Conspiracies to control manufacture, agriculture, mining, production, wages, or prices, the Court explained, had too "indirect" an effect on interstate commerce to be controlled by Congress. What follows is a short version of the *Knight* Opinion and Dissent.]

OPINION: [After the American Sugar Refining Company had acquired nearly complete control of the manufacture of refined sugar within the United States, the Federal Government brought this action to effectively undo the recent purchases. The claim was that by entering into the purchases, the defendants had combined and conspired **to restrain the trade and commerce in refined sugar among the several States and with foreign nations**, contrary to the Sherman Act of Congress.]

It cannot be denied that the power of a State to protect the lives, health, and property of its citizens, and to preserve good order and the public morals...is a power originally and always belonging to the States, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive. **The relief of the citizens of each State from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the States to deal with**, and this court has recognized their possession of that power even to the extent of holding that an employment or business carried on by private individuals, when it becomes...a practical monopoly, to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community, is subject to regulation by state legislative power. **On the other hand, the power of Congress to regulate commerce among the several States is also exclusive...** "Commerce, undoubtedly, is traffic," said Chief Justice Marshall, "but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse." **That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the State.** *Gibbons v.*

Ogden.¹

The argument is that the power to control the **manufacture** of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the general government in the exercise of the power to regulate commerce may repress such monopoly directly and set aside the instruments which have created it...

It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality...

The Court does not refer to police power in the sense of "cops." The "police power of States" is from the 10th Amendment to the Constitution, which reserves to the states the rights and powers "not delegated to the United States." It includes protection of the welfare, safety, health and even morals of the public. Police powers include licensing, inspection, zoning, safety regulations (which cover a lot of territory), quarantines, and working conditions as well as law enforcement. In short, police powers are the basis of a host of state regulatory statutes.

Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the States...may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce...

In the early going, the Court took a rather narrow view of what constituted "commerce among the several states."

In *Gibbons v. Ogden*,...the state laws, which were held inoperative, were instances of direct interference with, or regulations of, interstate or international commerce; yet in *Kidd v. Pearson*, the refusal of a State to allow articles to be manufactured within her borders even for export was held not to directly affect external commerce, and state legislation which, in a great variety of ways,

¹Case 1-14 on this website.

affected interstate commerce and persons engaged in it, has been frequently sustained because the interference was not direct.

Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower prices or wages, might unquestionably tend to restrain external as well as domestic trade, **but the restraint would be an indirect result**, however inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combination, or conspiracy...

[What the Sherman Act] struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; **but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations.** The object was manifestly private gain in the manufacture of the commodity, but not through the control of interstate or foreign commerce. It is true that the bill alleged that the products of these refineries were sold and distributed among the several States, and that all the companies were engaged in trade or commerce with the several States and with foreign nations; but this was no more than to say that trade and commerce served manufacture to fulfill its function. Sugar was refined for sale, and sales were probably made at Philadelphia for consumption, and undoubtedly for resale by the first purchasers throughout Pennsylvania and other States, and refined sugar was also forwarded by the companies to other States for sale. Nevertheless it does not follow that an attempt to monopolize...the manufacture was an attempt...to monopolize commerce, even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked. **There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree.** The subject-matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the status quo before the transfers; yet the act of Congress only authorized the Circuit Courts to proceed by way of preventing and restraining violations of the act in respect of contracts, combinations, or conspiracies in restraint of interstate or international trade or commerce. The Circuit Court declined, upon the pleadings and proofs, to grant the relief prayed, and dismissed the bill, and we are of opinion that the Circuit Court of Appeals did not err in affirming that decree...

DISSENT: MR. JUSTICE HARLAN... **The court holds it to be vital in our system of government to recognize and give effect to both the commercial power of the nation and the police powers of the States, to the end that the Union be strengthened and the autonomy of the States preserved. In this view I entirely concur...** But it is equally true that the preservation of the just authority of the General Government is essential as well to the safety of the States as to the attainment of the important ends for which that government was ordained by the People of the United States; and the destruction of that authority would be fatal to the peace and well-being of the American people. The Constitution which enumerates the powers committed to the nation for **objects of interest to the people of all the States** should not, therefore, be subjected to an

interpretation so rigid, technical, and narrow, that those objects cannot be accomplished...

Although in dissent, Justice Harlan adds a wise element to our search for wisdom. Perhaps "commerce among the several states" exists only where the power sought regulates **objects of interest to the people of all the States**. In other words, is the issue national in scope or local?

It may be admitted that an act which did nothing more than forbid...the mere refining of sugar in any State, would be in excess of any power granted to Congress. But the act of 1890 is not of that character. It does not strike at the manufacture simply of articles that are legitimate or recognized subjects of commerce, but at combinations that unduly restrain, because they monopolize, the buying and selling of articles which are to go into interstate commerce...These principles underlie the act of Congress, which has for its sole object the protection of such trade and commerce as the Constitution confides to national control, and the question is presented whether the combination assailed by this suit is an unlawful restraint upon interstate trade in a necessary article of food which, as every one knows, has always entered, now enters and must continue to enter, in vast quantities, into commerce among the States...

In my judgment, the citizens of the several States composing the Union are entitled, of right, to buy goods in the State where they are manufactured, or in any other State, without being confronted by an illegal combination whose business extends throughout the whole country, which by the law everywhere is an enemy to the public interests, and which prevents such buying, except at prices arbitrarily fixed by it. I insist that the free course of trade among the States cannot coexist with such combinations. When I speak of trade I mean the buying and selling of articles of every kind that are recognized articles of interstate commerce. Whatever improperly obstructs the free course of interstate intercourse and trade, as involved in the buying and selling of articles to be carried from one State to another, may be reached by Congress, under its authority to regulate commerce among the States. The exercise of that authority so as to make trade among the States, in all recognized articles of commerce, absolutely free from unreasonable or illegal restrictions imposed by combinations, is justified by an express grant of power to Congress and would redound to the welfare of the whole country. **I am unable to perceive that any such result would imperil the autonomy of the States, especially as that result cannot be attained through the action of any one State...**

While the States retain, because they have never surrendered, full control of their completely internal traffic, it was not intended by the framers of the Constitution that any part of interstate commerce should be excluded from the control of Congress. Each State can reach and suppress combinations so far as they unlawfully restrain its interior trade, while the national government may reach and suppress them so far as they unlawfully restrain trade among the States.