

Schechter Poultry v. United States (1935)

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Essential Guiding Question

To what extent did the Supreme Court's decision in *Schechter Poultry v. United States* change the national debate about federal regulation of economic activity during times of crisis?

Students should be able to answer the following questions at the end of the activity:

1. Identify and explain the circumstances that led to the creation of the National Industrial Recovery Act.
2. In what ways did NIRA challenge the idea of separation of powers between the legislative and executive branches?
3. What parts of the Constitution give the national government the power to regulate inter-state commerce?
4. What activities did the Schechter Poultry Company allegedly engage in that were contrary to the live poultry code?
5. Why did the Supreme Court find the live poultry code, written under the auspices of the NIRA, unconstitutional? (there are multiple answers to this)
6. How did Roosevelt react to the Court's decision in the Schechter Poultry case?
7. Given the Court's decision, what courses of action were open to Roosevelt in order to continue aggressive recover during the Depression?

Primary Sources:

1. Excerpts from the National Industrial Recovery Act (1933)
2. Jimmy Durante / NRA film clip
3. *New York Times* Article: "NRA Indictments Name Poultry Men", July 27, 1934
4. Excerpts from the United States Constitution: Article I and Amendment 10
5. Excerpts from the opinion of the court, *Schechter Poultry v. United States* (1935)
6. Excerpts from President Roosevelt's Press Conference (May 31, 1935)

HISTORICAL OVERVIEW

The **National Industrial Recovery Act (NIRA)** was created by the Congress during President Franklin D. Roosevelt's "first 100 days" in order to stabilize the nation's industries in the wake of the Great Depression. The act set up the National Recovery Administration and gave increased power to the President of the United States to regulate the economy. The centerpiece of the NRA was the power of the president to establish "codes of fair competition" for over 5,000 different industries. The "Live Poultry Code" approved by President Roosevelt in 1934 controlled the buying and selling of live chickens.

The Schechter family was engaged in the wholesale poultry business. It bought chickens at markets and railroad terminals in New York City for slaughter and resale to retail stores and butchers in New York City and surrounding counties. In 1934, four members of the Schechter family were arrested and indicted on various violations of the Live Poultry Code and the National Industrial Recover Act. They were convicted, and the convictions were upheld on appeal. They then turned to the Supreme Court, who were asked to review the convictions in the wake of the deepening national crisis.

Document #1: Excerpts from National Industrial Recovery Act of 1933

<http://www.ourdocuments.gov/doc.php?flash=true&doc=66&page=transcript>

AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Declaration of Policy. Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Codes of Fair Competition. Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry... represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein... and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them.... The President may... impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others....

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

Agreements and Licenses. Section 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce...

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof... no person shall... engage in or carry on any business, in or affecting interstate or foreign commerce... unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe.... Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than \$500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2(c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Section 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall

comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Critical thinking questions:

1. In what ways might the National Industrial Recovery Act help to improve the economic situation of the United States during the Great Depression?
2. According to the Act, what powers does the President have regarding private industry? What specific powers are given to the President by this Act?
3. What groups will the President work with in order to develop codes of fair competition?
4. What ideas of 'fair competition' might the President and his advisors address given the text of the document?
5. What problems do you foresee with this Act? What problems might the President face in carrying out these duties?

Document #2: Public Service Announcement in support of the NRA

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National Recovery Administration (NRA) Promo



0:07 / 2:50 [volume icon] [share icon] [fullscreen icon]

<http://www.youtube.com/watch?v=WJTxyz2dBck>

Critical thinking questions:

1. Why did Jimmy Durante ask the banker and exterminator to "give a man a job?" In part, what was the economic philosophy of the new deal legislation?
2. Why does Durante ask the exterminator to give his employees a vacation?
3. What do you make of the exchange between Durante and the "very sick woman"?
4. As a tool of communication, what are the video's strengths and weaknesses?
5. Do you think the video was effective in communicating its message?

NRA INDICTMENTS NAME POULTRY MEN

**Four Schechter Brothers Face
Charges of Selling Unfit
Chickens to Public.**

TWO CORPORATIONS LISTED

**Conspiracy and Violation of
Fair Practice Code Are Al-
leged in Sixty Counts.**

Indictments charging both conspiracy to violate and the violation of provisions of the NRA and the code of fair practice for the live poultry industry of the metropolitan area against four men in the live-poultry industry and two corporations they control were handed up by the Federal grand jury for the Eastern District of New York yesterday.

The indictments are against the A. L. A. Schechter Poultry Corporation of 858 East Fifty-second Street, Brooklyn; the Schechter Live Poultry Market, Inc., of 991 Rockaway Avenue, Brooklyn, and Joseph, Martin, Alex and Aaron Schechter, described as joint proprietors and owners of the corporations.

The indictments include sixty counts, the most lengthy thus far found under the NRA. It is the first real test of the issue of the constitutionality of the NRA. This case, it is believed, will be a determining factor in deciding whether the Federal Government has jurisdiction to interfere in a local industry on the grounds that the matter affects interstate commerce.

Poultry Unfit Is Charge.

The presentment decrees that the conspiracy charged including an agreement "to sell for human consumption unfit poultry in violation of the code," and that the sale of uninspected poultry encouraged violations by others in the industry. The alleged conspiracy, it is charged, caused "a disruption of the normal flow of interstate commerce in live poultry coming into the State of New York from other States," and obstructed and prevented the accomplishment of the purposes of the code.

The presentment further charged that both price and quality were affected by the practices alleged. Authorities on the industry declared in this connection that the practices charged resulted in making New York a dumping ground for diseased live poultry for which shippers can find no market in other large cities. They added that the effect of this can be realized when it is recalled that 98 per cent of the city's live poultry comes from the South and West, and a few coops of diseased chickens will contaminate a whole carload. Experts disagreed on whether these poultry diseases are communicable to humans, some alleging that they are.

Investigation Lasts Month.

The indictments were handed up to Federal Judge Clarence G. Galston after more than a month of investigation under Walter L. Rice, special assistant to the United States Attorney General, and Leo J. Hickey, United States Attorney for the Eastern District. Associated with them were Arthur M. Loeb, attorney for the live poultry code, and his assistant, Irving Dale.

Conviction on the conspiracy indictment carries the possibility of imprisonment up to two years and a fine up to \$10,000. The other counts make the defendants liable to fines of \$500 each on each indictment. If the men are convicted on all counts and maximum fines levied, the government could collect \$180,000.

The indictments also are regarded as of especial interest because the live poultry code is one of the few that comes under both the NRA and AAA. The live poultry code, which has been in operation since May 16, covers an industry with a turnover of 200,000,000 pounds in normal years, and a gross of 176,000,000 last year. It has grown up around the requirements of Orthodox Jews for ritualistically killed chickens and has been torn by strife for many years.

**Critical Thinking Questions for Document #3:
“NRA Indictments Name Poultry Men”, *New York Times*, July 27, 1934**

1. What is an indictment? In what court were the Schechter brothers and their companies indicted?
2. What were the charges brought against the Schechters? How many charges did the Schechters face?
3. In what ways might this case against the Schechters have importance beyond their particular poultry business?
4. Why would the United States government decide to prosecute this case? Why do you think the United States government believes that these laws are important to “industrial recovery”?

Document #4: Excerpts from The Constitution of the United States

<http://www.law.cornell.edu/constitution>

Article 1, Section 1: All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Article 1, Section 8: [Congress shall have the power] to Regulate Commerce with foreign nations, and among the several States.

Article 1, Section 8: [Congress shall have the power] to make all laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other powers vested by this constitution in the Government of the United States, or in any Department or Officer thereof.

Tenth Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Critical thinking questions:

1. According to the Constitution, what group makes law? Are there limits on this group's ability to regulate commerce? Explain.
2. Does Congress have the power to do whatever it needs to do (make law) to ensure that proper execution will occur? Explain.
3. Does Congress have the power to regulate people's livelihood? Explain.
4. What does the Tenth Amendment say about the power of state governments?

Document #5: Excerpts from the Opinion of the Court, *A.L.A. Schechter Poultry Corp., et al v. United States*

<http://laws.findlaw.com/us/295/495.html>

295 U.S. 495, Decided May 27, 1935

The "Live Poultry Code" was promulgated [set out] under § 3 of the National Industrial Recovery Act. [It] authorizes the President to approve "codes of fair competition." Such a code may be approved for a trade or industry, upon application by one or more trade or industrial associations or groups.... The President approved the Code by an executive order.... Violation of any provision of a code "in any transaction in or affecting interstate or foreign commerce" is a misdemeanor punishable by a fine....

Four members of the Schechter family] were convicted in the District Court of the United States for the Eastern District of New York on eighteen counts of an indictment charging violations of the "Live Poultry Code," and on an additional count for conspiracy to commit such violations.... The Circuit Court of Appeals sustained the conviction on the conspiracy count and on sixteen counts for violation of the Code.

New York City is the largest live-poultry market in the United States. Ninety-six percent of the live poultry there marketed comes from other States.... The defendants are slaughterhouse operators..... Defendants ordinarily purchase their live poultry from commission men at the West Washington Market in New York City or at the railroad terminals serving the City, but occasionally they purchase from commission men in Philadelphia. 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.... Defendants do not sell poultry in interstate commerce.

We are told that the provision of the statute authorizing the adoption of codes must be viewed in the light of the grave national crisis with which Congress was confronted. Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged. Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority.

The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Art I, § 1. And the Congress is authorized "To make all laws which shall be necessary and proper for carrying into execution" its general powers. Art. I, § 8, par. 18. The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.

We turn to the Recovery Act to ascertain what limits have been set to the exercise of the President's discretion.... We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.

Were these transactions "in" interstate commerce? When defendants had made their purchases, whether at the West Washington Market in New York City or at the railroad terminals serving the City, or elsewhere, the poultry was trucked to their slaughterhouses in Brooklyn for local disposition. The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughterhouse markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers.

Neither the slaughtering nor the sales by defendants were transactions in interstate commerce. The undisputed facts thus afford no warrant for the argument that the poultry handled by defendants at their slaughterhouse markets was in a "current" or "flow" of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived...and is there held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other States.

Critical thinking questions:

1. Given the critical economic situation when Franklin Roosevelt assumed office in March and the possibility of even more business failures, was the NIRA a reasonable response to the crisis? Explain your answer.
2. Should “extraordinary conditions” allow temporary delegations of power from one branch of the federal government to another? Why or why not? Explain your answer.
3. Did the Supreme Court take a realistic view of interstate commerce? Explain your answer.

Document #6: Excerpt from President Roosevelt's Press Conference, May 31, 1935

http://newdeal.feri.org/court/fdr5_31_35.htm

The implications of this decision are much more important than almost certainly any decision of my lifetime or yours, more important than any decision probably since the *Dred Scott* case, because they bring the country as a whole up against a very practical question.

Now we come down to this big thing. The implication of the provisions as applied to intrastate transactions... . Since 1885 the Court in various decisions has enlarged on the definition of interstate commerce—railroad cases, coal cases and so forth and so on. It was clearly the opinion of the Congress before this decision and the opinion of various attorneys-general, regardless of party, that the words "interstate commerce" applied not only to an actual shipment of goods but also to a great many other things that affected interstate commerce... .

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.

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... .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.

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?

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.

You see the implications of the decision... It is a question for national decision on a very important problem of Government. We are the only Nation in the world that has not solved that problem. We thought we were solving it, and now it has been thrown right straight in our faces. We have been relegated to the horse-and-buggy definition of interstate commerce.

Critical thinking questions:

1. Why do you believe President Roosevelt compared *Schechter* with *Dred Scott*?
2. How have developments since the 1800s changed the meaning of “interstate commerce,” according to President Roosevelt?
3. President Roosevelt insisted that the degree of federal control of the national economy was a “non-partisan” issue. Do you believe this to be true? Why or why not?
4. Why did President Roosevelt say that there should be a deadline for resolution of the problems?

ASSESSMENT:

Given what you've learned about the Supreme Court's response to some of FDR's New Deal programs, evaluate the current efforts being made by both the President and Congress with regard to the recession. Which policies and programs do you think are most effective? Why? Which do you think will face the biggest challenges in the courts? Why? What is your prognosis for the future of the American economy based on these measures (both short and long term)?

To locate relevant information, visit www.recovery.gov, the websites of elected officials and political parties, and various press outlets.

Choose one of the options and create a high quality, academically rigorous response to the above ideas.

Potential activities (given consent of your teacher):

1. letter to a legislator (local/state/federal)
2. newspaper editorial
3. broadcast news commentary
4. background brief for a member of the White House staff
5. propaganda video for the Obama administration
6. YouTube video version of all of the above