Congress' second attempt to combat the Depression was the Agricultural Adjustment Act of 1933.[904] As discussed elsewhere,[905] the measure was set aside as an attempt to regulate production, a subject held to be "prohibited" to the United States by the Tenth Amendment.[906]

Bituminous Coal Conservation Act.—The third measure to be disallowed was the Guffey-Snyder Bituminous Coal Conservation Act of 1935.[907] The statute created a mechanism for the regulation of the price of soft coal, both that sold in interstate commerce and that sold "locally," and also provided for mechanisms to regulate hours of labor and wages in mines. The clauses of the act dealing with these two different matters were declared by the act itself to be separable so that the invalidity of the one set would not affect the validity of the other. This strategy, however, was ineffectual. A majority of the Court, speaking by Justice Sutherland, held that the act constituted one connected scheme of regulation, which, because it invaded the reserved powers of the states over conditions of employment in productive industry, violated the Constitution.[908]

Justice Sutherland's opinion started from Chief Justice Hughes' assertion in the *Schechter* case of the "fundamental" character of the distinction between "direct" and "indirect" effects—that is to say, from the doctrine of the *Sugar Trust* case. It then proceeded:

> Much stress is put upon the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment and irregularity of production and effect on prices; and it is insisted that interstate commerce is greatly affected thereby. But . . . the conclusive answer is that the evils are all local evils over which the Federal Government has no legislative control. The relation of employer and employee is a local relation. At common law, it is one of the domestic relations. The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclu-

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oughly repudiated so far as the distinction between "direct" and "indirect" effects is concerned. *Cf.* Perez v. United States, 402 U.S. 146 (1971). *See also* McDermott v. Wisconsin, 228 U.S. 115 (1913), which preceded *Schechter* by more than two decades.

The NIRA, however, was found to have several other constitutional infirmities besides its disregard, as illustrated by the Live Poultry Code, of the "fundamental" distinction between "direct" and "indirect" effects, namely, the delegation of standardless legislative power, the absence of any administrative procedural safeguards, the absence of judicial review, and the dominant role played by private groups in the general scheme of regulation.

[904] 48 Stat. 31.

[905] *See* Spending for the General Welfare, Conditional Grants-in-Aid, *supra*.

[906] United States v. Butler, 297 U.S. 1, 63–64, 68 (1936).

[907] 49 Stat. 991.

[908] Carter v. Carter Coal Co., 298 U.S. 238 (1936).