

Sec. 1—The Congress

Legislative Powers

The modern doctrine may be traced to the 1928 case, *J. W. Hampton, Jr. & Co. v. United States*, in which the Court, speaking through Chief Justice Taft, upheld Congress' delegation to the President of the authority to set tariff rates that would equalize production costs in the United States and competing countries.⁵⁸ Although formally invoking the theory that Congress had merely established a contingency upon which the law became effective,⁵⁹ the Court's opinion also looked forward, emphasizing that in seeking the cooperation of another branch Congress was restrained only according to "common sense and the inherent necessities" of the situation.⁶⁰ This vague statement was elaborated somewhat in the statement that the Court would sustain delegations whenever Congress provided an "intelligible principle" to which the President or an agency must conform.⁶¹

In 1935, the Court struck down what it characterized as broad and unprecedented delegations in *Panama Refining v. Ryan*⁶² and *A. L. A. Schechter Poultry Corp. v. United States*.⁶³ Both cases involved provisions of the National Industrial Recovery Act. At issue in *Panama Refining* was a delegation to the President of authority to prohibit interstate transportation of what was known as "hot oil"—oil produced in excess of quotas set by state law. The problem was that the act provided no guidance to the President in determining whether or when to exercise this authority, and required no finding by the President as a condition of exercise of the authority. Congress "declared no policy, . . . established no standard, [and] laid down no rule," but rather "left the matter to the President without standard or rule, to be dealt with as he pleased."⁶⁴

At issue in *Schechter* was a delegation to the President of authority to promulgate codes of fair competition that could be drawn up by industry groups or prescribed by the President on his own initiative. The codes were required to implement the policies of the act, but those policies were so general as to be nothing more than

⁵⁸ 276 U.S. 394 (1928).

⁵⁹ The Court noted it had upheld a similar law in *Field v. Clark*, 143 U.S. 649 (1892), because the President "was the mere agent of the lawmaking department to ascertain and declare the event upon which its expressed will was to take effect." 276 U.S. at 410–411.

⁶⁰ 276 U.S. at 406.

⁶¹ 276 U.S. at 409. The "intelligible principle" test of *Hampton* is the same as the "legislative standards" test found in *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 530 (1935), and *Panama Refining Co. v. Ryan*, 293 U.S. 388, 421 (1935).

⁶² 293 U.S. 388 (1935).

⁶³ 295 U.S. 495 (1935).

⁶⁴ 293 U.S. at 430, 418, respectively. Similarly, the executive order exercising the authority contained no finding or other explanation by which the legality of the action could be tested. *Id.* at 431–33.