Michigan Law Review

Volume 36 | Issue 3

1938

INTERSTATE COMMERCE - CONSTITUTIONALITY OF WEIGHT AND SIZE LIMITATIONS OF MOTOR CARRIERS - COMMERCE CLAUSE AND DUE PROCESS CLAUSE

Donald H. Larmee
University of Michigan Law School

INTERSTATE COMMERCE — CONSTITUTIONALITY OF WEIGHT AND SIZE LIMITATIONS OF MOTOR CARRIERS — COMMERCE CLAUSE AND DUE PROCESS CLAUSE — The District Court for the Eastern District of South Carolina had recently before it a well-presented case, *Barnwell Bros. Inc. v. South Carolina State Highway Dept.*,[1] involving the authority of the state to regulate the size and weight of motor vehicles operating on South Carolina's highways. The South Carolina statute in question[2] limited the width of motor trucks (including semi-trailers[3]) to ninety inches, and their gross weight[4] to 20,000 pounds.

[1] Barnwell Bros., Inc. v. South Carolina State Highway Dept., (D. C. S. C. 1937) 17 F. Supp. 803. Briefs were submitted on behalf of numerous trucking companies, three railroads, the Interstate Commerce Commission and state officials.

[2] S. C. Code (1934 Supp.), § 1617.

[3] Definition of semi-trailers as given by the act: "Semi-trailer means a vehicle designed to be attached to and having its front end supported by a motor truck or tractor."

[4] Gross weight is usually taken to mean the weight of the vehicle plus its standard load.

The validity of this statute was challenged upon three distinct grounds: (1) that it was a denial of due process guaranteed by the Fourteenth Amendment; (2) that the right of the states to regulate size and weight of the motor vehicles used in interstate commerce has been superseded by the Federal Motor Carrier Act of 1935;[5] and (3) that the statute as applied to vehicles used by interstate motor carriers placed an unreasonable burden upon interstate commerce. The three-judge court declared the statute valid in so far as the first two grounds of attack were concerned, but as to the third held that the statute placed an unreasonable burden upon interstate commerce, and therefore was unconstitutional as to interstate carriers.

I.

The problem facing the states in this field is the necessity for some type of regulation to preserve and conserve the use of their highways. Whether or not federal funds were used in the building of a highway, it is considered the property of the state in which it lies.[6] The state can protect this property by prohibiting injurious use and by levying a compensatory tax upon those who are allowed to use it. In order to protect the road surface, weight regulations are necessary, as the road soon would be pounded to pieces by vehicles for which the road had not been designed. To conserve the highways for their widest and most beneficial use, size regulations are required. Width regulations are needed to prevent oversize vehicles from monopolizing the highway space. Length regulations are needed to prevent the use of long vehicles or trains of vehicles which tend to sway, weave or "jackknife" to and fro across the highway making it dangerous for other cars to pass. Also, the longer the vehicle, the longer a car passing from behind must be driven upon the wrong side of the road. While the factors of safety and road protection are undoubtedly the moving force behind these regulations, there is the additional factor that these large and slow moving vehicles tend to decrease the enjoyment of the traveling public. In general, the traveling public will not be directly affected by these regulations, since less than three per cent of all motor vehicles are of over three ton capacity.[7]

[5] 49 Stat. L. 543 (1936), 49 U. S. C., § 302 (Supp. 1936).

[6] Kauper, "Federal Regulation of Motor Carriers," 33 MICH. L. REV. 1, 239 at 250 (1934); Morris v. Duby, 274 U. S. 135, 47 S. Ct. 548 (1927); Barnwell Bros., Inc. v. South Carolina State Highway Dept., (D. C. S. C. 1937) 17 F. Supp. 803.

[7] The figure is taken from the 1931 motor vehicle registrations as set forth in Kelly, "The Problem of Motor Vehicle Regulation," 13 PUBLIC ROADS 153 (1932). It is believed that these figures closely approximate the 1936 figures due to the upswing apparent in the 1934 and 1935 reports. U. S. Bureau of Public Roads, REPORT

2.

The validity of legislation imposing weight and size limitations may be challenged under the due process and commerce clauses of the Federal Constitution. These constitutional questions can best be approached by a brief survey of the scientific and legislative solutions to this problem of conservation of the highways. Highway engineers now generally agree that gross weight, much less load weight, has no direct bearing upon highway destruction. Wheel or axle load is the all important factor. A truck of a certain gross weight distributed equally upon more axles may be far less injurious to the highway than a truck of only one-half the total gross weight. It is true that gross weight is important for the preservation of bridges; but this is usually so high a maximum [8] that it can be neglected in this discussion. The wheel load recommended for standard paving by the leading investigatory bodies [9] on this subject is 8,000 pounds for vehicles with high pressure tires and 9,000 pounds for those with low pressure tires.

The legislators, however, have not felt bound to have their regulations follow out an exact scientific standard. The result is that we find wheel load, gross weight, and gross loads all being used as a standard for weight regulations designed to protect the road surface. Moreover, the numerical maximum, i.e., total tonnage permitted, varies even among states that use the same factor.[10]

Maximum width regulations must to some extent vary with the width of the roads upon which the vehicle is to be used. However, since both legislators, road designers, highway engineers, and truck manufacturers have generally agreed that ninety-six inches is the standard width to be used, we may dismiss the question of width regulations from this discussion.[11] As pointed out in the *Barnwell Brothers* case, any regulation that sets a maximum width below ninety-six inches

OF A SURVEY OF TRAFFIC ON THE FEDERAL-AID HIGHWAY SYSTEMS OF ELEVEN WESTERN STATES (1930), p. 11 shows approximately 15 per cent of all trucks are over three ton capacity.

[8] The accepted formula for maximum gross weight for a bridge is $W=C(L+40)$. W stands for gross weight; C for a coefficient determined by the states (700 being the minimum recommended) and L for distance in feet between the first and last axle. Using a minimum C, and L as only 20 feet, the maximum gross load would be about 42,000 pounds. Cf. with maximum load and gross weights in the cases discussed below.

[9] These organizations are listed in the Barnwell Brothers case, 17 F. Supp. 803 at 812.

[10] See the pamphlet prepared by the Research Department of the Four Wheel Drive Auto Company giving a comparative grouping of size and weight regulations of all states.

[11] Eighty-five per cent of all trucks made are of this width. Only two states have a maximum width of less than ninety-six inches.

is clearly unreasonable as applied to standard size roads. Obviously, however, the permissible width of a vehicle on a certain road cannot exceed one-half the width of the road.

The setting of maximum length of motor vehicles is not as yet capable of scientific determination; not only can no exact figure be set, as in width regulations, but, as yet, no standard has been set up relating the length of the vehicle to the evils to be prevented. Thus it is not strange that the laws regulating the length of vehicles vary widely.[12]

3.

The court in the *Barnwell Brothers* case, following several other recent cases cited in the opinion,[13] held that the Federal Motor Carrier Act gave to the Interstate Commerce Commission power only to investigate into the matter of size and weight limitations. Therefore Congress in enacting the act did not attempt to provide for federal regulation with respect to this field, with the result that the states can still place reasonable limitations upon the size and weight of vehicles used in interstate as well as intrastate commerce.[14] The question remains, however, how much can a regulation of size and weight vary from the scientific recommendation and still be upheld as reasonable legislation when attacked either under the interstate commerce or the due process clause?

In regard to weight limitations, an examination of the decisions of the Supreme Court upholding state regulations attacked under these clauses shows that the Court has not insisted that an axle or wheel load standard be used. The leading case in this field is *Morris v. Duby*,[15] decided in 1927. In that case the Oregon State Highway Commission reduced the maximum gross weight for a certain road from 22,000 pounds to 16,500 pounds. The plaintiffs sought to enjoin this order on the ground that it placed an unreasonable burden upon interstate commerce. The state claimed that the heavier weights were breaking down the road surface. The Court upheld the commissioner's order, pointing out that the commission's finding had not been contraverted by any evidence to the contrary. Therefore this case cannot be considered

[12] Some states prohibit or regulate only trailers and trailer units. For a comparative grouping of the length regulations, see the pamphlet prepared by the Research Department of the Four Wheel Drive Auto Company. Also see 86 A. L. R. 281 at 282 (1933).

[13] L. & L. Freight Lines v. Railroad Comm. of Florida, (D. C. Fla. 1936) 17 F. Supp. 13; Lowe v. Stoutamire, 123 Fla. 135, 166 So. 310 (1936); Railroad Comm. v. S. W. Greyhound Lines, (Tex. Civ. App. 1936) 92 S. W. (2d) 296.

[14] See Kauper, "Federal Regulation of Motor Carriers," 33 MICH. L. REV. 1, 239 at 241 (1934), for a discussion of the federal authority in this field.

[15] 274 U. S. 135, 47 S. Ct. 548 (1927).

as good authority for the proposition that the gross weight standard of limitations is a reasonable one, as it did not appear that the wheel load relationship between the weight of vehicles and the stress caused by their use upon the highway was emphasized or even discussed before the Court. In 1932 the Supreme Court in the case of *Sproles v. Binford*,[16] was faced with a similar problem involving an interstate motor carrier. This time the Court had before it a Texas statute limiting the maximum load weight to 7,000 pounds. The statute was attacked as unconstitutional under both the commerce and the due process clauses. Here more of an effort was made to show that the standard of load weight was unreasonable. Counsel for the appellants pointed out that the load weight standard was contrary to sound engineering principles, which hold that the problem of highway damage from weight must be solved by regulating wheel loads.[17] However, the Court upheld the validity of the statute as against both grounds of attack.[18]

It is seen, therefore, that instead of requiring an accurate relationship between the regulation and the result sought to be accomplished —i.e. protection of the highway—the Court has allowed gross weight and even load weight standards to be used. Furthermore, the Court allowed almost unbounded legislative discretion in applying these standards when it upheld the 7,000 pound load weight limitation in the *Sproles* case. If such a low load limitation were adopted by other states, long haul trucking would vanish and interstate motor commerce would be seriously impaired. The court in the *Barnwell Brothers* case, armed with a comprehensive knowledge of the situation from both engineering and legal points of view, reached a more desirable result. It is true that the court in its opinion did not say that the states must adopt the wheel load standard, but it did imply that it would judge the validity of a gross weight regulation by that standard. In other words, if a maximum gross weight when converted into wheel loads is un-

[16] 286 U. S. 374, 52 S. Ct. 581 (1932).

[17] See arguments of counsel, 286 U. S. 374 at 376 (1932).

[18] It is the writer's opinion that the weight limitation before the Court in the Sproles case was clearly unreasonable if the sole purpose of the limitation was to protect the highways. However, since the statute allowed greater loads in the case of motor vehicles making short hauls to and from common carrier stations than to motor trucks in general, it seems clear that the real purpose of the statute was to favor railroads by checking motor truck competition. The Court indicated that the state could properly consider this factor in determining what use could be made of its highways. Note the following passage taken from the opinion:

"we perceive no constitutional ground for denying to the State the right to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain." Sproles v. Binford, 286 U. S. 374 at 394, 52 S. Ct. 581 (1932).

reasonably low it will not be upheld. While this is an important step forward, it is not entirely clear whether it will result in allowing the gross weight regulation that is reasonable as to the average type of vehicle to be valid as to all, or whether it will result in an independent determination of the validity of the regulation as applied to each type of truck. The former alternative will merely produce a more reasonable application of the gross weight standard, which is in itself inaccurate. As a result, no incentive will be provided to design trucks less harmful to the road surface than the average. The immediate reaction to the second alternative is that it will create a vast amount of litigation, but the more far reaching effect of it will be to cause the states to adopt a wheel load standard of weight limitations.

The adoption of the wheel load standard does not mean that the validity of the regulation should depend upon scientific exactness. As expressed in the often-quoted saying of Chief Justice Hughes in the *Sproles* case,[19] "Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make scientific precision a criterion of constitutional power would be to subject the states to intolerable supervision hostile to the basic principles of Government." The requirement that weight limitations be based upon axle or wheel loads would not violate this policy. It would only require a reasonable relationship between the regulation and its purpose. The maximum wheel load set up should be within the legislative discretion. The determination of this maximum depends upon many factors, including the type of road surface, the amount of traffic upon the road, and the type of tires used upon the vehicle. For example, in the *Barnwell* case, the court pointed out that the majority of the roads in question were of standard paving and capable of withstanding 8,000 pound wheel loads if high pressure tires were used or 9,000 pound wheel loads if low pressure tires were used. It is well to note that even though a certain small stretch is not capable of withstanding such usage, the state cannot legislate for this one stretch. The court said that it would be unreasonable to exclude from a 2,400 mile chain of good highway all interstate commerce because of a few weak links.

The decision in the *Barnwell* case indicates that the courts are probably more lenient in upholding weight limitations when attacked solely upon the ground of due process where interstate carriers are not involved. The court acquiesed in a decision of the state supreme court[20] upholding the statute under the due process clause. If we consider the power to make weight regulations as generating from the state's power

[19] 286 U. S. 374 at 388, 52 S. Ct. 581 (1932).

[20] State ex rel. Daniel v. John P. Nutt Co., 180 S. C. 19, 185 S. E. 25 (1935), cert. den. 297 U. S. 724, 56 S. Ct. 668 (1936).

to protect its property, there appears to be no inherent reason why the question of the validity of such a regulation should not be answered the same under either clause. Certainly the Supreme Court in *Morris v. Duby*[21] and *Sproles v. Binford*[22] did not seem to make any distinction between the due process clause and the commerce clause on the question of reasonableness of the limitations. Both clauses demand that the relationship between the weight regulation and the preservation of the highway be a reasonable one. Since the truck used by an intrastate motor carrier will do the same amount of injury to a highway if employed by an interstate carrier, the regulations should be valid or invalid as to both. However, if we grant the state's power to place weight limitations upon trucks for the purpose of restricting competition against the railroads, as appears to have been done in the *Sproles* case,[23] then the result may well be different, since the state ordinarily has no power to restrict competition in interstate commerce.

Analogous to the police regulations placing maximum weight limitations are the taxing measures graduated according to the amount of destruction the use of that vehicle does to the road surface.[24] The theory of such taxation is that the more destructive a vehicle is to the road surface, the more it should contribute to the cost of building and repairing such roads. The logical conclusion, then, is that taxes of this character should be based upon wheel loads and the amount of use such a vehicle makes of the state's highway system. The states have digressed widely from what is thus believed to be the correct theory. Instead of wheel or axle loads being the measure of taxation, we find horse power, carrying capacity, gross weight, gross receipts, and piston displacement being used.[25] Of the comparatively few cases to reach the Supreme Court, the objection raised in them to most of the statutes in question has been that they place an undue burden upon interstate commerce. But even under this attack the statutes have usually been upheld.[26] Thus the cases show that in the field of taxation the Court is even more reluctant to invalidate compensation regulations than it is to invalidate police regulations. A very loose relationship between the

[21] 274 U. S. 135, 47 S. Ct. 548 (1927).

[22] 286 U. S. 374, 52 S. Ct. 581 (1932).

[23] See note 18, supra.

[24] For a general discussion of these taxes, see Kauper, "State Taxation of Interstate Motor Carriers," 32 MICH. L. REV. 1, 171, 351, especially 171 et seq. (1933); also, NAT. INDUS. CONF. BD., TAXATION OF MOTOR VEHICLE TRANSPORTATION, 12 (1932).

[25] See charts set out in NAT. INDUS. CONF. BD., TAXATION OF MOTOR VEHICLE TRANSPORTATION, 43-52 (1932); also 68 A. L. R. 200 (1930).

[26] Kauper, "State Taxation of Interstate Motor Carriers," 32 MICH. L. REV. 1, 171 at 176 et seq., 351 (1933).

measure of taxation and the destruction to the road surface will suffice in this field.

Length limitations, not being capable of any scientific determination, are also generally upheld. In the case of *State v. Wetzel*[27] an over-all length limitation was upheld although the truck owner had shown that the statute excluded from the road a truck and semi-trailer unit that was much safer than some units permitted. The Court in its decision pointed out that the legislation in this field cannot be perfect. While mere length alone is not decisive of the amount of swaying or weaving of a unit, it does bear a reasonable relation to it and this is a proper measure of limitation.

In conclusion, it is seen that the states have power to regulate the size and weight of motor vehicles. Regulations of width create little trouble because the practice has become crystallized. Regulations of length are recognized as promoting safety, but as yet there is no scientific standard between length and safety. Regulations of weight, whether designed to preserve the road surface, or to compensate the state for the wear caused by the use of a motor vehicle, should use wheel or axle load as the standard. As yet the courts have not insisted that either be used. It is hoped that the decision in the *Barnwell* case points the way towards recognition of the wheel load standard as the exclusive standard because it embraces the true relationship between the object of the regulation, i.e. the weight of the motor vehicle, and the result that the legislation seeks to accomplish, the protection of the highway. Administrative convenience may delay the adoption of this standard in the field of taxation, but it should be no great barrier in the field of maximum weight limitations.

Donald H. Larmee

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[27] 208 Wis. 603, 243 N. W. 768, 86 A. L. R. 274 at 281 (1932).