

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

and acknowledges no limitations, other than are prescribed in the constitution . . . If, as has always been understood, the sovereignty of congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States.”⁶⁹⁷

Of course, the power to regulate commerce includes the power to prescribe conditions and rules for the carrying-on of commercial transactions, the keeping-free of channels of commerce, and the regulating of prices and terms of sale. By adding an element of commerce to other types of legislation, however, the power has also been vastly extended to such ends as enforcing majority conceptions of morality,⁶⁹⁸ banning racial discrimination in public accommodations,⁶⁹⁹ and protecting the public against evils both natural and contrived by people.⁷⁰⁰ “Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty, or the spread of any evil or harm to the people of other states from the state of origin. In doing this, it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce.”⁷⁰¹

Thus, for instance, the Court upheld a federal statute prohibiting the shipment in interstate commerce of goods made with child labor, not because the goods were intrinsically harmful but in order to extirpate child labor. There, the Court said: “It is no objection to the assertion of the power to regulate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states.”⁷⁰² The power to regulate interstate commerce is, therefore, rightly regarded as the most potent grant of authority in section 8.

⁶⁹⁷ *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 196–197 (1824).

⁶⁹⁸ *E.g.*, *Caminetti v. United States*, 242 U.S. 470 (1917) (transportation of female across state line for noncommercial sexual purposes); *Cleveland v. United States*, 329 U.S. 14 (1946) (transportation of plural wives across state lines by Mormons); *United States v. Simpson*, 252 U.S. 465 (1920) (transportation of five quarts of whiskey across state line for personal consumption).

⁶⁹⁹ *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964); *Katzenbach v. McClung*, 379 U.S. 294 (1964); *Daniel v. Paul*, 395 U.S. 298 (1969).

⁷⁰⁰ *E.g.*, *Reid v. Colorado*, 187 U.S. 137 (1902) (transportation of diseased livestock across state line); *Perez v. United States*, 402 U.S. 146 (1971) (prohibition of all loan-sharking).

⁷⁰¹ *Brooks v. United States*, 267 U.S. 432, 436–37 (1925).

⁷⁰² *United States v. Darby*, 312 U.S. 100, 114 (1941).