

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

is that foreign corporations have less protection under the negative commerce clause.¹¹⁸⁶

The power to regulate foreign commerce was always broader than the states' power to tax it, an exercise of the "police power" recognized by Chief Justice Marshall in *Brown v. Maryland*.¹¹⁸⁷ That this power was constrained by notions of the national interest and preemption principles was evidenced in the cases striking down state efforts to curb and regulate the actions of shippers bringing persons into their ports.¹¹⁸⁸ On the other hand, quarantine legislation to protect the states' residents from disease and other hazards was commonly upheld though it regulated international commerce.¹¹⁸⁹ A state game-season law applied to criminalize the possession of a dead grouse imported from Russia was upheld because of the practical necessities of enforcement of domestic law.¹¹⁹⁰

Nowadays, state regulation of foreign commerce is likely to be judged by the extra factors set out in *Japan Line*.¹¹⁹¹ Thus, the application of a state civil rights law to a corporation transporting passengers outside the state to an island in a foreign province was sustained in an opinion emphasizing that, because of the particularistic geographic situation the foreign commerce involved was more conceptual than actual, there was only a remote hazard of conflict between state law and the law of the other country and little if any prospect of burdening foreign commerce.

Clause 4. The Congress shall have Power * * * To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

wide combined reporting." Id. at 330. Dissenting Justice Scalia noted that, although the Court's ruling correctly restored preemptive power to Congress, "it permits the authority to be exercised by silence. Id. at 332."

¹¹⁸⁶ *The Supreme Court, Leading Cases, 1993 Term*, 108 HARV. L. REV. 139, 139–49 (1993).

¹¹⁸⁷ 25 U.S. (12 Wheat.) 419, 443–44 (1827).

¹¹⁸⁸ *New York City v. Miln*, 36 U.S. (11 Pet.) 102 (1837) (upholding reporting requirements imposed on ships' masters), *overruled by* *Henderson v. Mayor of New York*, 92 U.S. 259 (1876); *Passenger Cases*, 48 U.S. (7 How.) 283 (1849)(1849); *Chy Lung v. Freeman*, 92 U.S. 275 (1876).

¹¹⁸⁹ *Campagne Francaise De Navigation a Vapeur v. Louisiana State Bd. of Health*, 186 U.S. 380 (1902); *Louisiana v. Texas*, 176 U.S. 1 (1900); *Morgan v. Louisiana*, 118 U.S. 455 (1886).

¹¹⁹⁰ *New York ex rel. Silz v. Hesterberg*, 211 U.S. 31 (1908).

¹¹⁹¹ *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 456 n.20 (1979) (construing *Bob-Lo Excursion Co. v. Michigan*, 333 U.S. 28 (1948)).