

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

of government.”⁸¹² In short, it is Congress, and not the Court, which is authorized by the Constitution to regulate commerce.⁸¹³

The law and doctrine of the earlier cases with respect to the fostering and protection of navigation are well summed up in a frequently cited passage from the Court’s opinion in *Gilman v. Philadelphia*.⁸¹⁴ “Commerce includes navigation. The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all requisite legislation by Congress. This necessarily includes the power to keep them open and free from any obstruction to their navigation, interposed by the States or otherwise; to remove such obstructions when they exist; and to provide, by such sanctions as they may deem proper, against the occurrence of the evil and for the punishment of offenders. For these purposes, Congress possesses all the powers which existed in the States before the adoption of the national Constitution, and which have always existed in the Parliament in England.”⁸¹⁵

Thus, Congress was within its powers in vesting the Secretary of War with power to determine whether a structure of any nature in or over a navigable stream is an obstruction to navigation and to order its abatement if he so finds.⁸¹⁶ Nor is the United States required to compensate the owners of such structures for their loss, since they were always subject to the servitude represented by Con-

⁸¹² *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 430 (1856). “It is Congress, and not the Judicial Department, to which the Constitution has given the power to regulate commerce with foreign nations and among the several States. The courts can never take the initiative on this subject.” *Transportation Co. v. Parkersburg*, 107 U.S. 691, 701 (1883). See also *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408 (1946); *Robertson v. California*, 328 U.S. 440 (1946).

⁸¹³ But see *In re Debs*, 158 U.S. 564 (1895), in which the Court held that in the absence of legislative authorization the Executive had power to seek and federal courts to grant injunctive relief to remove obstructions to interstate commerce and the free flow of the mail.

⁸¹⁴ 70 U.S. (3 Wall.) 713 (1866).

⁸¹⁵ 70 U.S. at 724–25.

⁸¹⁶ *Union Bridge Co. v. United States*, 204 U.S. 364 (1907). See also *Monongahela Bridge Co. v. United States*, 216 U.S. 177 (1910); *Wisconsin v. Illinois*, 278 U.S. 367 (1929). The United States may seek injunctive or declaratory relief requiring the removal of obstructions to commerce by those negligently responsible for them or it may itself remove the obstructions and proceed against the responsible party for costs. *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960); *Wyandotte Transportation Co. v. United States*, 389 U.S. 191 (1967). Congress’ power in this area is newly demonstrated by legislation aimed at pollution and environmental degradation. In confirming the title of the states to certain waters under the Submerged Lands Act, 67 Stat. 29 (1953), 43 U.S.C. §§ 1301 *et seq.*, Congress was careful to retain authority over the waters for purposes of commerce, navigation, and the like. *United States v. Rands*, 389 U.S. 121, 127 (1967).