

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

rationale by which manufacturing,⁶⁹¹ mining,⁶⁹² business transactions,⁶⁹³ and the like are conceived to be part of an integrated commercial whole and therefore subject to the reach of the commerce power.

Entire categories of federal legislation, such as prohibitions on criminal activities, are based primarily on the concept that crossing a state line creates federal jurisdiction.⁶⁹⁴ This power also allows Congress to regulate or prohibit obstructions or impediments to such movement. In *United States v. Ferger*,⁶⁹⁵ the defendants had been indicted for issuing a false bill of lading to cover a fictitious shipment in interstate commerce. In response to the argument that Congress had no power to exercise criminal jurisdiction over the defendants, Chief Justice White wrote: "But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce . . . and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."⁶⁹⁶

To Regulate.— "We are now arrived at the inquiry—what is this power?" wrote the Chief Justice expansively in *Gibbons*. "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent,

⁶⁹¹ *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

⁶⁹² *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381 (1940). See also *Hodel v. Virginia Surface Mining & Recl. Ass'n*, 452 U.S. 264, 275–283 (1981); *Mulford v. Smith*, 307 U.S. 38 (1939) (agricultural production).

⁶⁹³ *Swift & Co. v. United States*, 196 U.S. 375 (1905); *Stafford v. Wallace*, 258 U.S. 495 (1922); *Chicago Board of Trade v. Olsen*, 262 U.S. 1 (1923).

⁶⁹⁴ *E.g.*, *Hoke v. United States*, 227 U.S. 308 (1913) (transportation of women for purposes of prostitution); *Gooch v. United States*, 297 U.S. 124 (1936) (transportation of kidnap victims); *Brooks v. United States*, 267 U.S. 432 (1925) (transportation of stolen autos). For example, in *Scarborough v. United States*, 431 U.S. 563 (1977), the Court upheld a conviction for possession of a firearm by a felon upon a mere showing that the gun had sometime previously traveled in interstate commerce, and in *Barrett v. United States*, 423 U.S. 212 (1976), upheld a conviction for receipt of a firearm on the same showing. The Court does require Congress in these cases to speak plainly in order to reach such activity, inasmuch as historical state police powers are involved. *United States v. Bass*, 404 U.S. 336 (1971).

⁶⁹⁵ 250 U.S. 199 (1919).

⁶⁹⁶ 250 U.S. at 203.