

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

struction of public roads to new states granted statehood.⁸³⁶ Acquisition and settlement of California stimulated interest in railway lines to the West, but it was not until the Civil War that Congress voted for aid in the construction of a line from the Missouri River to the Pacific; four years later, it chartered the Union Pacific Company.⁸³⁷

The litigation growing out of these and subsequent activities settled several propositions. First, Congress may provide highways and railways for interstate transportation;⁸³⁸ second, it may charter private corporations for that purpose; third, it may vest such corporations with the power of eminent domain in the states; and fourth, it may exempt their franchises from state taxation.⁸³⁹

Congressional regulation of railroads may be said to have begun in 1866. By the Garfield Act, Congress authorized all railroad companies operating by steam to interconnect with each other “so as to form continuous lines for the transportation of passengers, freight, troops, governmental supplies, and mails, to their destination.”⁸⁴⁰ An act of the same year provided federal chartering and protection from conflicting state regulations to companies formed to construct and operate telegraph lines.⁸⁴¹ Another act regulated the transportation by railroad of livestock so as to preserve the health and safety of the animals.⁸⁴²

Interstate and Intrastate Rate Regulation.—Congress’ entry into the rate regulation field was preceded by state attempts to curb the abuses of the rail lines in the Middle West, which culminated in the “Granger Movement.” Because the businesses were locally owned, the Court at first upheld state laws as not constituting a burden on interstate commerce;⁸⁴³ but after the various business panics of the 1870s and 1880s drove numerous small companies into bankruptcy and led to consolidation, there emerged great interstate systems. Thus in 1886, the Court held that a state may not set charges for carriage even within its own boundaries of goods

⁸³⁶ Cf. *Indiana v. United States*, 148 U.S. 148 (1893).

⁸³⁷ 12 Stat. 489 (1862); 13 Stat. 356 (1864); 14 Stat. 79 (1866).

⁸³⁸ The result then as well as now might have followed from Congress’ power of spending, independently of the Commerce Clause, as well as from its war and postal powers, which were also invoked by the Court in this connection.

⁸³⁹ *Thomson v. Pacific R.R.*, 76 U.S. (9 Wall.) 579 (1870); *California v. Pacific R.R. Co. (Pacific Ry. Cases)*, 127 U.S. 1 (1888); *Cherokee Nation v. Southern Kansas Ry.*, 135 U.S. 641 (1890); *Luxton v. North River Bridge Co.*, 153 U.S. 525 (1894).

⁸⁴⁰ 14 Stat. 66 (1866).

⁸⁴¹ 14 Stat. 221 (1866).

⁸⁴² 17 Stat. 353 (1873).

⁸⁴³ *Munn v. Illinois*, 94 U.S. 113 (1877); *Chicago B. & Q. R. Co. v. Iowa*, 94 U.S. 155 (1877); *Peik v. Chicago & N.W. Ry.*, 94 U.S. 164 (1877); *Pickard v. Pullman Southern Car Co.*, 117 U.S. 34 (1886).