

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

brought from without the state or destined to points outside it, as that power lay exclusively with Congress.⁸⁴⁴

In the following year, Congress passed the original Interstate Commerce Act.⁸⁴⁵ The Interstate Commerce Commission (ICC) was authorized to pass upon the “reasonableness” of all rates by railroads for the transportation of goods or persons in interstate commerce and to order the discontinuance of all charges found to be “unreasonable.” In *ICC v. Brimson*,⁸⁴⁶ the Court upheld the act as “necessary and proper” for the enforcement of the Commerce Clause, and also sustained the commission’s power to go to court to secure compliance with its orders. Later decisions circumscribed somewhat the ICC’s power.⁸⁴⁷

Expansion of the commission’s authority came in the Hepburn Act of 1906⁸⁴⁸ and the Mann-Elkins Act of 1910.⁸⁴⁹ By the former, the commission was explicitly empowered, after a full hearing on a complaint, “to determine and prescribe just and reasonable” maximum rates; by the latter, it was authorized to set rates on its own initiative and empowered to suspend any increase in rates by a carrier until it reviewed the change. At the same time, the commission’s jurisdiction was extended to telegraphs, telephones, and cables.⁸⁵⁰ By the Motor Carrier Act of 1935,⁸⁵¹ the ICC was authorized to regulate the transportation of persons and property by motor vehicle common carriers.

The modern powers of the commission were largely defined by the Transportation Acts of 1920⁸⁵² and 1940.⁸⁵³ The jurisdiction of the commission covers not only the characteristics of the rail, motor, and water carriers in commerce among the states but also the

⁸⁴⁴ *Wabash, St. L. & P. Ry. Co. v. Illinois*, 118 U.S. 557 (1886). A variety of state regulations have been struck down on the burdening-of-commerce rationale. *E.g.*, *Southern Pacific Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761 (1945) (train length); *Napier v. Atlantic Coast Line R.R.*, 272 U.S. 605 (1926) (locomotive accessories); *Pennsylvania R.R. v. Public Service Comm’n*, 250 U.S. 566 (1919). But the Court has largely exempted regulations with a safety purpose, even a questionable one. *Brotherhood of Firemen v. Chicago, R.I. & P. R.R.*, 393 U.S. 129 (1968).

⁸⁴⁵ 24 Stat. 379 (1887).

⁸⁴⁶ 154 U.S. 447, 470 (1894).

⁸⁴⁷ *ICC v. Alabama Midland Ry.*, 168 U.S. 144 (1897); *Cincinnati, N.O. & Texas Pacific Ry. v. ICC*, 162 U.S. 184 (1896).

⁸⁴⁸ 34 Stat. 584.

⁸⁴⁹ 36 Stat. 539.

⁸⁵⁰ These regulatory powers are now vested, of course, in the Federal Communications Commission.

⁸⁵¹ 49 Stat. 543 (1935).

⁸⁵² 41 Stat. 474.

⁸⁵³ 54 Stat. 898, U.S.C. §§ 1 *et seq.* The two acts were “intended . . . to provide a completely integrated interstate regulatory system over motor, railroad, and water carriers.” *United States v. Pennsylvania R.R.*, 323 U.S. 612, 618–19 (1945). The ICC’s powers include authority to determine the reasonableness of a joint through