

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

Court's subsequent determination that Congress is not necessarily so limited in its power reduces the importance of the Commerce Clause in this area.⁹⁹²

Congressional Regulation of Criminal Misconduct

Federal criminal jurisdiction based on the commerce power, and frequently combined with the postal power, has historically been an auxiliary criminal jurisdiction. That is, Congress has made federal crimes of acts that constitute state crimes on the basis of some contact, however tangential, with a matter subject to congressional regulation even though the federal interest in the acts may be minimal.⁹⁹³ Examples of this type of federal criminal statute abound, including the Mann Act, designed to outlaw interstate white slavery,⁹⁹⁴ the Dyer Act, punishing interstate transportation of stolen automobiles,⁹⁹⁵ and the Lindbergh Law, punishing interstate transportation of kidnaped persons.⁹⁹⁶ But, just as in other areas, Congress has gone beyond a proscription of the use of interstate facilities in the commission of a crime, it has expanded the scope of its jurisdiction in the criminal law area. Typical of this expansion is a statute making it a federal offense to "in any way or degree obstruct . . . delay . . . or affect . . . commerce . . . by robbery or extortion" ⁹⁹⁷ With the expansion of the scope of the reach of "commerce" the statute potentially could reach crimes involving practically all business concerns, although it appears to be used principally against organized crime.

The most far-reaching measure the Court has sustained is the "loan-sharking" prohibition of the Consumer Credit Protection Act.⁹⁹⁸ The title affirmatively finds that extortionate credit transactions affect interstate commerce because loan sharks are in a class largely controlled by organized crime with a substantially adverse effect on interstate commerce. Upholding the statute, the Court found that though individual loan-sharking activities may be intrastate in nature, it is still within Congress' power to determine that it was within

⁹⁹² The Fair Housing Act (Title VIII of the Civil Rights Act of 1968), 82 Stat. 73, 81, 42 U.S.C. §§ 3601 *et seq.*, was based on the Commerce Clause, but in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), the Court held that legislation that prohibited discrimination in housing could be based on the Thirteenth Amendment and made operative against private parties.

⁹⁹³ *E.g.*, *Barrett v. United States*, 423 U.S. 212 (1976); *Scarborough v. United States*, 431 U.S. 563 (1977); *Lewis v. United States*, 445 U.S. 55 (1980); *McElroy v. United States*, 455 U.S. 642 (1982).

⁹⁹⁴ 18 U.S.C. § 2421.

⁹⁹⁵ 18 U.S.C. § 2312.

⁹⁹⁶ 18 U.S.C. § 1201.

⁹⁹⁷ 18 U.S.C. § 1951. *See also* 18 U.S.C. § 1952.

⁹⁹⁸ Title II, 82 Stat. 159 (1968), 18 U.S.C. §§ 891 *et seq.*