Court as the final arbiter in drawing the line between the mutually exclusive, reciprocally limiting fields of power occupied by the national and state governments.[135]

Until recently, it appeared that in fact and in theory the Court had repudiated this doctrine,[136] but, in *National League of Cities v. Usery*,[137] it revived part of this state police power limitation upon the exercise of delegated federal power. However, the decision was by a closely divided Court and subsequent interpretations closely cabined the development and then overruled the case.

Following the demise of the "doctrine of dual federalism" in the 1930s, the Court confronted the question whether Congress had the power to regulate state conduct and activities to the same extent, primarily under the Commerce Clause, as it did to regulate private conduct and activities to the exclusion of state law.[138] In *United States v. California*,[139] upholding the validity of the application of a federal safety law to a state-owned railroad being operated as a nonprofit entity, the Court, speaking through Justice Stone, denied the existence of an implied limitation upon Congress's plenary power to regulate commerce when a state instrumentality was involved. "The state can no more deny the power if its exercise has been authorized by Congress than can an individual." [140] Although the state in operating the railroad was acting as a sovereign and within the powers reserved to the states, the Court said, its exercise was "in subordination to the power to regulate interstate commerce, which has been granted specifically to the national government. The sovereign power of the states is necessarily diminished to the extent of the grants of power to the Federal Government in the Constitution." [141]

A series of cases followed in which the Court refused to construct any state immunity from regulation when Congress acted pur-

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[135] 46 U.S. at 573–74.

[136] Representative early cases include NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); Steward Machine Co. v. Davis, 301 U.S. 548 (1937); Helvering v. Davis, 301 U.S. 619 (1937); United States v. Darby, 312 U.S. 100 (1941). Among the cases incompatible with the theory was Maryland v. Wirtz, 392 U.S. 183 (1968).

[137] 426 U.S. 833 (1976).

[138] On the doctrine of "dual federalism," *see* the commentary by the originator of the phrase, Professor Corwin. E. Corwin, The Twilight of the Supreme Court—A History of Our Constitutional Theory 10–51 (1934); The Commerce Power Versus States Rights 115–172 (1936); A Constitution of Powers in a Secular State 1–28 (1951).

[139] 297 U.S. 175 (1936).

[140] 297 U.S. at 185.

[141] 297 U.S. at 184.