FEDERAL CONTROL OF CORPORATIONS

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Importance of Subject

The necessity of national control over interstate and foreign commerce was probably the most important cause inducing the adoption of the Constitution. Chief Justice Marshall in delivering the opinion in *Brown vs. Maryland*¹ said, "It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress." The growing importance of the Federal power granted by the Constitution is generally acknowledged. The great industrial development of the several States and the improvement of means of transportation and communication has tremendously increased the volume of interstate commerce. Without doubt the greater portion of the trade and commerce of this country is of an interstate nature. With this industrial development has come a corresponding increase in the use of the corporate form of organization for the conduct of business. From a total of three business corporations in the colonies in 1741² the number has increased until in 1916 there were approximately 350,000 corporations in the United States making annual tax returns to the national government.³ The great majority of these corporations are engaged in interstate commerce. The constant process of merger and consolidation, particularly during the period from 1880 to 1900, resulted in the creation of powerful corporations or combinations of almost unlimited resources, the existence of which was deemed a menace to government itself. By reason of their growing numbers and increasing size, the effective control by the national government of such organizations when engaged in interstate and foreign commerce is a matter of prime importance.

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¹ *Wheat.* 410, 446 (1827).
Source of Federal Power

The power of the Federal Government to regulate and control corporations is derived directly from the constitutional power vested in Congress to regulate commerce with foreign nations, and among the several States and with the Indian Tribes and the implied powers residing in the Government. The powers to lay and collect taxes, to establish post offices and post roads and possibly other powers may be employed in such a way as to amount to regulation.

The Power to Regulate Commerce

The power to regulate interstate and foreign commerce is the most important from the standpoint of corporate control. It embraces all the instrumentalities by which such commerce may be conducted and extends to corporations as well as to individuals. Corporations whose activities directly affect interstate commerce may also come within the reach of Federal control.

The courts refuse to lay down any rule for determining in advance what legislation can be enacted under the commerce clause. It has been held, however, that the power of the Federal Government under this clause is complete and exclusive, and qualified only by the restrictions expressed in the constitution.

And the power is stated in so general and inclusive terms as to extend its operation as fully to modern industrial conditions and instrumentalities as to those existing at the time of the adoption of the constitution. Congress may exercise the power to further other national interests than commerce as one constitutional power may be used to promote another object of power. It may likewise enact as regulations of commerce laws having the quality of police regulations. The fact that the exercise of the Federal

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5 Paul vs. Virginia, 8 Wall. (U. S.) 168, 182-3 (1868), 19 L. Ed. 357.
7 Lottery Case, 188 U. S. 321, 363 (1903).
8 Gibbons vs. Ogden, 9 Wheat. 1 (1824); Leisy vs. Hardin, 135 U. S. 100, 108 (1890); Walling vs. Michigan, 116 U. S. 445 (1886); Interstate Commerce Commission vs. Brimson, 154 U. S. 449, 471-472 (1894); Scranton vs. Wheeler, 179 U. S. 159 (1900); Adair vs. U. S., 208 U. S. 161, 180 (1908).
9 In re Debs, 158 U. S. 564, 591 (1895).
11 Vcease Bank vs. Fenno, 8 Wall. (U. S.) 533 (1869).
12 Hoke et al. vs. Smith, 227 U. S. 308 (1913); Seven Cases, etc., vs. U. S., 239 U. S. 510, 515 (1915); U. S. vs. Popper, 98 Fed. 423 (1899); Craig vs.
power of regulation incidentally affects intrastate commerce does not make such action unconstitutional. Indeed, such control may be exercised over intrastate commerce where it directly affects and is necessary to the effective regulation of interstate commerce. When a State corporation is employed as a means of restraining interstate commerce it may be dissolved by the Federal courts. And it appears probable that it is within the power of Congress to exclude State corporations from interstate and foreign commerce except upon compliance with such conditions as it may require in the public interests. The chief restrictions on the power of Congress in the exercise of the power to regulate commerce are the Fourth and Fifth Amendments.

**Power of incorporation**

A power to create corporations, although not expressly granted in words is vested in the Federal Government.

Congress is given the power to "exercise exclusive legislation" over the District of Columbia and "to make all needful rules and regulations" respecting the territories. In legislating for the District of Columbia and the Territories, the powers which may be exercised by the Federal Government, as the sole sovereign, are as full and complete as those of a State with respect to the persons and property within the State. The right of Congress to grant corporate franchises within these limits is therefore unquestioned. Among the corporations thus created by special act of Congress are educational institutions and insurance company, a savings bank and other corporations of a varied character. A general incorporation law has also been enacted by

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Murphy vs. Ramsey, 114 U. S. 15, 44 (1884); Bank vs. Yankton, 101 U. S. 129, 133 (1879); Capital Traction Co. vs. Hof, 174 U. S. 1 (1898).


Congress for the District of Columbia. Such corporations have the status of any State corporation and as such are forced to comply with the requirements of State laws as to foreign corporations. Federal statutes have also been enacted authorizing the granting of corporate franchises by territorial governments. The powers thus granted to Congress over the District and the territories are local in character and the power of incorporation included therein is of course limited to these jurisdictions. Whether or not Congress has an unqualified right to grant corporate franchises to engage in interstate and foreign commerce is not equally clear. It has been held to be within the power of the Federal Government to create corporations when they are an appropriate means of exercising constitutional powers. Thus it may incorporate banks as a means of carrying on the fiscal operations of the United States. The exercise of the power to grant corporate franchises when necessary to the promotion and regulation of interstate and foreign commerce comes within this rule. The power of Congress over foreign commerce in particular being unrestricted by any reserved rights in the States, it would appear as a proper exercise of power for it to create corporations to engage in foreign commerce as to incorporate companies for engaging in business in the District of Columbia or the territories. In 1870 Congress created the National Bolivian Navigation Co. and the debates preceding the passage of the act show such action was taken on the theory of a Federal power to grant charters for foreign commerce. In 1889 a charter of incorporation was granted to the Maritime Company of Nicaragua for the construction of a canal in Nicaragua for the purpose of facilitating commercial intercourse between the Atlantic and Pacific States and with foreign nations.

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate

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Footnotes:
- Code of Law, D. C., Chap. XVIII (1911).
- McCullough vs. Maryland, 4 Wheat. 316, 406-11 (1819); National Bank vs. Dearing, 01 U. S. 20, 33 (1875).
- Ibid.
- Luxton vs. North River Bridge Co., 153 U. S. 525, 529, 533 (1894); Pacific Railroad Removal Cases, 115 U. S. 1, 18 (1884); California vs. Pacific Railroad, 127 U. S. 1, 39, 40 (1887).
commerce with foreign nations.\(^8\) The power is complete and exclusive\(^8\) and includes the power to grant charters for the purpose of promoting and regulating such commerce.\(^9\) So eminent a jurist as Mr. Taft, when President, by special message to Congress urged the adoption of a Federal incorporation law and asserted its constitutionality.\(^2\) Congress has granted charters of incorporation to railway companies,\(^3\) a bridge company,\(^3\) a canal company,\(^3\) banks\(^3\) and telegraph companies.\(^3\) The constitutionality of the action of Congress in creating these corporations appears to be unquestioned.\(^4\) A corporation deriving all its corporate and other powers from Acts of Congress is strictly and purely a Federal corporation.\(^4\) Congress may also confer extensive powers and privileges on a State corporation and a corporation accepting them with the implied assent of the State, thereby submits itself to such legislative control by Congress as is reserved under the power of amendment.\(^2\) Two or more State corporations may be consolidated into one corporation under and by virtue of acts of Congress and the corporation thus formed becomes a Federal one succeeding to all the rights of the original corporation.\(^4\)

\(^{11}\) Brown vs. Houston, 114 U. S. 622, 630 (1885); Bowman vs. Ry. Co., 125 U. S. 465, 482 (1888); Crutcher vs. Kentucky, 141 U. S. 47, 57 (1891); Pittsburgh Col. Co. vs. Bates, 156 U. S. 577, 587 (1895); Lottery Case, 188 U. S. 321, 331 (1903).

\(^{12}\) Gibbons vs. Ogden, 9 Wheat. 1 (1824) and many cases.

\(^{13}\) Luxton vs. North River Bridge Co., 153 U. S. 525 (1894); Pacific Railroad Removal Cases, 115 U. S. 1, 18 (1884); California vs. Pacific Railroad, 127 U. S. 1, 39, 40 (1887).

\(^{14}\) Special Message of the President of the United States on Interstate Commerce and Anti-Trust Laws and Federal Incorporation, January 7, 1910.


\(^{17}\) 34 U. S. Stat. L. 809 (1896).

\(^{18}\) Act of February 5, 1791, Ch. 84; Act of April 10, 1816, Ch. 44. See McCullough vs. Maryland, 4 Wheat. 316 (1819); U. S. Rev. Stat., secs. 324-33, 513-5213; U. S. Comp. Stat., secs. 10055-10071; 38 U. S. Stat. L. 251 (1913); 30 U. S. Stat. L. 360 (1916).

\(^{19}\) 17 U. S. Stat. L. 412 (1873).


\(^{21}\) Pacific Railroad Removal Cases, 115 U. S. 1, 16 (1884); Central Pacific Ry. Co. vs. California, 162 U. S. 91, 165 (1896).

\(^{22}\) Sinking Fund Cases, 90 U. S. 700, 728 (1878).

Whether or not a Federal corporate franchise can include the franchise to produce as a necessary incident to the franchise to engage in interstate commerce, regardless of the attitude of the State where the processes of production and manufacture are carried on has not been decided by the courts. It has been held that production alone is not interstate commerce but the decisions so holding have possibly been qualified by subsequent decisions holding that the combination of power to restrain interstate commerce with the intent to use it may be within the reach of Federal regulation. Prominent Federal officials have argued that the right to produce is an absolutely essential incident to the right to engage in interstate commerce, the functions of production and exchange being economically inseparable, and that it must therefore be included in the Federal grant of the corporate franchise to engage in interstate commerce. It is, moreover, intimated in several cases involving the rights of Federal corporations doing business within the confines of a State, that Congress has the power to remove a corporation incorporated by itself in all its operations from the control of the State.

The reserved power to alter, amend, or repeal

The reserved power to alter, amend, or repeal residing in the State over corporations of its creation is found in all state constitutions. A similar power exists in the National Government. Over corporations created by it, Congress has all the rights which belong to any other Government as a sovereign, including the right to alter, amend, or repeal its charter, if such right is reserved. Where corporations have been created by acts of territorial legislatures, Congress having general and plenary power over the territories, can as a necessary incident of its sovereignty repeal such acts of incorporation. And where Congress has conferred rights and privileges upon a State corporation reserving a right of amendment, it can properly regulate the affairs of the

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corporation in a manner not inconsistent with the original State charter.  

Visitorial Power

Having power to create a corporation, Congress has all the rights with reference to such a corporation a State government has as a sovereign over creations of its legislative power. And where Congress grants powers and privileges to a State corporation which are accepted by that corporation, with the implied assent of the State, the corporation thereby submits itself to such legislative control as was reserved by Congress. Under this rule a right of visitation, in so far as it relates to the powers and privileges granted, could be reserved.

Congress also has extensive powers of investigation over State corporations engaged in interstate or foreign commerce. Whether or not the power is called a visitorial power, it is beyond doubt that in so far as the franchises granted by the State affect interstate commerce they must be exercised in subordination to the power of Congress to regulate such commerce, and in exercising this power the Federal Government may assert its sovereignty in the enforcement of its laws in as complete a manner as if the corporation were of its own creation. The denial of the right of investigation and examination into the affairs of a corporation would obviously largely defeat the object for which control of commerce among the States was placed with the National Government. Congress has the power to create administrative bodies to aid in the enforcement of its laws and to grant to such a body the power of investigation, including the power to compel the attendance of witnesses and production of books, documents and other papers relating to any subject within its jurisdiction. Several Federal statutes have granted to administrative agencies of the National Government very complete powers of

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*Sinking Fund Cases, 90 U. S. 700, 728 (1878).*

*U. S. vs. Union Pacific Ry. Co., 98 U. S. 569, 613 (1878).* See also Chap. 3.

*Sinking Fund Cases, 90 U. S. 700, 728 (1878).*

See Report, Judiciary Committee, House of Representatives, 59th Congress, 1st Session No. 2401.


*Interstate Commerce Commission vs. Brimson, 154 U. S. 447, 474 (1893); Interstate Commerce Commission vs. Baird, 194 U. S. 25 (1904).*
investigation, including the power of inspection of records, over corporations engaged in interstate or foreign commerce. The power of the Federal Government in this respect is limited by the Fourth and Fifth Amendments to the Constitution. A corporation however does not have the rights of an individual under these amendments. A corporation is a creature of the State, incorporated for the benefit of the public. It receives special privileges and franchises from the State, and its rights, powers and liabilities are limited by law. The State may exercise its visitorial power over such a corporation to inquire how its franchises and privileges are being employed, and the Federal Government has a similar right to determine whether or not its laws are being violated.

A corporation is protected by the Fourth Amendment from unreasonable search and seizure. It is not an unreasonable search and seizure, however, when a writ, requiring the production of the documents of a corporation, is definite and reasonable in its scope. When a corporation has gone out of existence, its books and papers retain their corporate character and remain subject to inspection and examination. The parties in whose possession its books and papers are left can claim no personal privilege under the Fourth Amendment against the lawful inspection and examination of such documents and have no legal right to prevent such inspection and examination. The act of an administrative body duly authorized by Congress in requiring monthly reports from carriers regarding the hours of labor of their employees does not constitute a violation of the Fourth Amendment.

While a corporation is a person within the meaning of the Fifth Amendment so that it can not be deprived of its liberty or property without due process of law, it is not protected under

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7 Paul vs. Virginia, 8 Wall. 168 (1868); Santa Clara County vs. Railroad, 118 U. S. 394 (1886); Smyth vs. Ames, 169 U. S. 466 (1898).
this amendment from self-incrimination for the reason that its corporate form, with its chartered privileges, distinguishes it from the individual when the authority of Government is in question. A corporation therefore cannot, on the ground of self-incrimination refuse a demand for the production and examination of its books when the demand is expressed in lawful process and confines its requirements within reasonable limits. The requirement of monthly reports from carriers by an authorized governmental agency is not a violation of the Fifth Amendment. Although under the immunity statutes a witness who is compelled to testify or produce documentary evidence or otherwise incriminate himself secures immunity from prosecution or subjection to any penalty or forfeiture for matters concerning which he testifies or produces evidence, such protection is personal, and does not extend to the corporation whose agent he is. When a subpoena or other process is issued by a duly authorized administrative body, the power to compel by fine or imprisonment the performance of the legal duty imposed by the United States through such process does not reside in such body but can only be exerted by a competent judicial tribunal having jurisdiction in the premises. Process may be directed to a corporation itself rather than to one of its officers.

**Interstate Commerce Commission Act and Supplemental Acts**

The control over common carriers, thus far exercised by Congress, is embodied in the provisions of the Act to Regulate Commerce of 1887 and amendments and certain other legislation of varied nature. The Interstate Commerce Commission, created by the original act with somewhat limited powers as an administrative body to aid in the enforcement of the act, now possesses powers of regulation and control of the most extensive character over common carriers in the corporate form or otherwise. Pipe lines, telegraph, telephone, and cable companies, as well as railroads, engaged in interstate or foreign commerce, are within its jurisdiction.

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64 Hale vs. Henkel, 201 U. S. 43, 69 (1906).
The acts mentioned are comprehensive, being aimed at the elimination of many practices, affecting shippers, competitors, and the internal affairs of the carriers, the existence of which are inimical to the best interests of the public.

With a view to maintaining competition between carriers, the pooling of freights and division of earnings is made unlawful. To preserve to the public the benefit of competition by water carriers it is also made unlawful for a railroad or other common carrier to own or have any interest in a competing water carrier.

Various practices by which one shipper or community can be favored as against another are prohibited. Thus unjust discriminations, undue and unreasonable preference, and unjust and unreasonable charges are made illegal. It is also made unlawful for a carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers, or any like kind of property, for a shorter than a longer distance over the same line or route in the same direction, when the shorter distance is included within the longer, or to charge any greater compensation for a through rate than the aggregate of the intermediate rates except under certain conditions specified in the act. False billing, weighing, classification or representations of contents of packages, either by the shipper or carrier are declared unlawful. It is also provided that carriers or others shall not give or receive information with reference to shipments without the consent of the shipper or consignee, with certain exceptions, such as when such information is given in response to legal process. The giving of free passes or transportation, except to certain classes such as employees of the carrier, ministers, and the like, is prohibited. The offering, granting, giving, soliciting, accepting or receiving of
rebates, concessions or discriminations is forbidden. Carriers are not permitted to prevent by any means shipments of freight from being continuous from the place of shipment to the place of destination, except where an interruption of the transit is made in good faith for some necessary purpose without any intent to circumvent the provisions of the law. Upon application of any lateral branch line of railroad, or of any shipper tendering interstate traffic for transportation, it is made the duty of carriers to construct and operate switch connections with such road or private side track where such connection is reasonably practicable, can be put in with safety, and will furnish sufficient business to justify its construction and maintenance. The carrier is required in this connection to furnish cars for the movement of such traffic tendered by such a railroad or shipper to the best of its ability without discrimination. Where a carrier transports commodities in which it has any interest the opportunities to discriminate in favor of such shipments are limitless. To eliminate this evil, it is made unlawful for any railroad company to transport in interstate or foreign commerce any commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority or in which it may have any interest direct or indirect, except such commodities as may be necessary and intended for its use in the conduct of its business as a common carrier. No vessel engaged in the coastwise or foreign trade of the United States is permitted to pass through the Panama Canal if owned, chartered, operated, or controlled by any person or company doing business in violation of the antitrust acts.

Regulations are also made with reference to the methods of the carrier as directed against its competitors. Thus carriers are required to afford all reasonable, proper, and equal facilities for the receiving, forwarding, and delivering of passengers and property to and from their lines and those connecting therewith and not to discriminate in their rates and charges between such connecting lines. This provision however does not go to the extent of requiring a carrier to give the use of its tracks or terminal facilities to another carrier engaged in a like business. The prohibition of unjust discriminations, rebates, etc., which may operate to the prejudice of a competing carrier has been mentioned. Under the provisions of sections two and three of the Clayton Act, certain price discriminations and exclusive dealing contracts are made unlawful where their effect may be to substantially lessen competi-
tion or tend to create a monopoly in any line of commerce. The Commission is empowered to enforce these provisions where applicable to common carriers.

The provisions of the act vary as to the enforcement of the prohibitions mentioned. A violation of the act is made a misdemeanor, punishable on conviction in any district court of the United States with fine or imprisonment, or both. The Interstate Commerce Commission is charged with the duty of aiding in the enforcement of the provisions of the act, and upon the request of the Commission, it is made the duty of any district attorney when the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General the necessary proceedings for the enforcement of the provisions of the act and punishment for violations thereof.

Powers of a far-reaching character are granted to the Commission not only to aid in the enforcement of the prohibitions of the act, but of a more general nature as well. Thus the Commission is given the power to determine and prescribe just and reasonable maximum rates and classifications to be observed by the carrier. Similarly, it is empowered to determine the reasonable maximum to be paid for any service rendered or instrumentality furnished by the owner of property transported. It is also authorized to suspend new schedules of rates or classifications as made by the carrier and make orders with reference to such proposed rates and classifications as would be proper in a proceeding initiated after the rate had become effective. It may also after hearing establish through routes and joint rates and classifications not only as between railroads but as well where the transportation is both by rail and water. A considerable measure of control over interstate traffic partly by rail and partly by water is granted to the Commission. It has the power to establish physical connection between the lines of the rail carrier and the dock of the water carrier; to establish through routes and joint rates over such rail and water lines, and to establish maximum proportional rates by rail to and from the ports to which the traffic is brought or from which it is taken by the water carrier. When a rail carrier enters into any arrangement with a water carrier operating from the United States to any foreign country, for the handling of through business between interior points and such foreign country, the Commission may require such a railroad to enter into similar arrangements with any or all other lines of steamships
operating from the same port to the same foreign country. Whenever a carrier has reduced its rates in competition with a water carrier, it cannot subsequently increase them unless after hearing by the Commission it shall be found that the proposed increase rests upon changed conditions other than the elimination of water competition. The Commission is also charged with the enforcement of certain provisions of the Clayton Act with reference to price discrimination, exclusive dealing contracts, and intercorporate relations.

In exercising its powers and enforcing the prohibitions of the act the Commission may conduct its proceedings in the manner most conducive to the dispatch of its business. Technical legal procedure is largely avoided. Complaints may be made to the Commission by any party briefly stating the facts alleged to be a violation of the law. A statement of the complaint must be forwarded to the common carrier, which must answer the complaint within a reasonable time specified by the Commission. The Commission thereupon is required to investigate the subject matter of the complaint and make a report thereon together with its decision and order or requirement in the premises. The Commission may also, on its own motion, initiate an investigation for a violation of the law, the procedure thereafter being substantially the same as that provided when complaint is made to it by outside parties. Carriers are made liable to parties injured for the full amount of damages sustained in consequence of a violation of the act and the Commission after hearing on a complaint made to it may make an order directing the carrier to pay damages to the complainant, if it determines that the complainant is entitled to such an award, for the violation. The Commission is authorized to grant rehearings and to suspend or modify its orders upon such notice and in such manner as it may deem proper. Appeal from an order of the Commission may be made to the United States District Courts. In case the carrier neglects or refuses to obey any order of the Commission other than the payment of money, the Commission or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the enforcement of the order. If after hearing the court determines the order was properly made, it enforces obedience by proper process. When an award of damages is made by the Commission and the carrier does not comply with the order for payment, the complainant or any persons for whose benefit such order was made may file a peti-
tion in the district court setting forth the cause for which he claims damages and the order of the Commission. The suit proceeds like any other civil suit for damages except that the findings and order of the Commission are prima facie evidence of the facts stated therein and the petitioner is not liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. In connection with proceedings before it, the Commission is given ample power to compel the attendance of witnesses and production of books and papers. Under the provisions of the immunity acts a natural person thus testifying under subpoena and under oath is not liable to prosecution or subjection to any penalty or forfeiture on account of any matters concerning which he testifies.

To aid the Commission in enforcing the act, and perhaps to furnish information for Congress on which to base legislation, the Commission is also given a general power of investigation into the management of the business of all common carriers subject to the act. It is also authorized to prescribe uniform systems of accounts to be kept by such carriers and to require annual and special reports from carriers as well as to prescribe the manner in which such reports shall be made. The Commission is further charged with the duty of ascertaining and reporting on the valuation of all property owned or used by such carriers.

In addition to the regulation of carriers under the Act to Regulate Commerce and its amendments, Congress has enacted laws regulating the form of bills of lading and the rights and liabilities of carriers in connection therewith, the operation of telegraph lines by Government aided railroad and telegraph companies, the rates of a canal company incorporated by the Federal Government, the transportation of mail, the use of safety appliances, the hours of service, and the transportation of explosives. The

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34 U. S. Stat. L. 809 (1906).
Interstate Commerce Commission is charged with certain duties in connection with the enforcement of these laws.

In addition to the above mentioned regulations of common carriers engaged in interstate and foreign commerce, Congress has recently enacted a law establishing an eight hour day for employees, the constitutionality of which has been upheld.

**Sherman Anti-Trust Act**

The Sherman Anti-Trust Act was passed July 2, 1890 to maintain free competition and to prevent the further growth of industrial organizations inimical to the public interests. Section 8 of the act expressly provides that corporations shall be subject to the provisions of the Act. The prohibitions of the act are included in sections 1 and 2. Section 1 declares illegal every contract, combination, or conspiracy in restraint of interstate or foreign trade or commerce. Section 2 makes any monopolization, any attempt to monopolize, or any combination or conspiracy to monopolize, such commerce equally unlawful. Similar penalties are provided for the violation of either section. The third section extends the provisions of the first section to commerce in any territory or the District of Columbia, or to commerce between these jurisdictions or between them and any state or foreign nations. The circuit courts of the United States are invested with jurisdiction by Sections 4 and 5, to enforce the law and it is made the duty of the district attorneys, under the direction of the Attorney General, to bring proceedings in equity to prevent and restrain violations of the law. Section 6 provides for the seizure and condemnation of property in the course of transportation in interstate commerce or to a foreign country owned by parties coming within the prohibitions of Section 1. Section 7 gives to any person injured by reason of any violation of the law a right to sue for treble damages together with costs and attorney’s fees.

The constitutionality of the act as a lawful regulation of commerce has been long established, and it has also been held that it is not void for uncertainty. The meaning of the term “restraint of trade” as employed in the act was at first broadly

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81 _26 U. S. Stat. L. 209_ (1890); _U. S. Comp. Stat. sec. 8820._
defined, but the later decisions of the Supreme Court have qualified it by applying the interpretation of the courts of the common law in England and this country with reference to restraint of trade and monopoly. The court now holds that the act must be given a reasonable construction and applying this rule holds that it only embraces acts, contracts, etc., unduly restricting competition or unduly obstructing or injuriously restraining trade.

Among others, the following have been held by the courts to be violations of the act under the circumstances presented: Mergers, holding companies, agreements to fix prices, agreements to limit output, agreements to apportion output, attempts to corner the market, use of patents to accomplish restraint of trade and agreements to fix resale prices. And various competitive practices such as excessive price cutting, "fighting ships," boycotting and blacklisting, and inducing breach of competitors' contracts have been condemned by the courts under this act.

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84 U. S. vs. Trans. Missouri Freight Assoc., 166 U. S. 290 (1897).
89 Gibbs vs. McNeely, 118 Fed. 120 (1902); Craven vs. Carter Crumpe Co., 92 Fed. 470 (1899).
93 U. S. vs. Patten, 226 U. S. 525 (1913).
96 U. S. vs. Great Lakes Towing Co. et al., 217 Fed. 656, 659 (1914).
100 U. S. vs. Patterson et al., 222 Fed. 599, 650 (1915).
Wilson Tariff Act of 1894

In the Wilson Tariff Act, which became a law August 27, 1894, certain provisions were inserted in the nature of regulations of foreign commerce. Section 73 of the Act declares contrary to public policy, illegal and void every combination, conspiracy, trust, agreement, or contract of persons or corporations when any of them is engaged in importing articles into the United States, and when such combination is intended to operate in restraint of lawful trade or free competition in trade, or to increase the market price in the United States of any article imported or of any manufacture into which such imported article enters. Violation of the act is made a misdemeanor and penalties are provided. Sections 74, 75, 76 and 77 of the act are substantially identical in wording with Sections 4, 5, 6 and 7, respectively, of the Sherman Anti-Trust Act, except they are of course applicable to offenses under Section 73 of the Act.

Federal Reserve Act

Under the several acts providing for the organization of national banks and national banking associations, and defining their powers, such banks were made corporate bodies. Many regulations of the business of these banks were included in the acts concerning such matters as the use of circulating notes, rates of interest, withdrawal of capital, use of notes of other banks, the making of reports and the like. The control of the banking business secured and exercised by the Federal Government though these acts, however, proved inadequate.

The Federal Reserve Act was designed to remedy the evils of the national bank system and to provide a financial organization not only adequate to meet the growing requirements of American industry but also more effectively controlled by the National Government. Under the provisions of this act, the continental United States, including Alaska, is divided into Federal reserve districts, not less than eight nor more than twelve, the number being determined by the Federal Reserve Board. A Federal reserve city in which is located a Federal reserve bank is included in each district. Such Federal reserve banks are bodies corporate deriving their rights, powers and liabilities from the act. All national banks ex-

cept those located in Alaska or outside the continental United States are required by the act to subscribe to the capital stock of the Federal Reserve Bank for their district a sum equal to 6 per cent of their paid up capital stock and surplus, and thereby become member banks. Any national bank failing within one year after the passage of the act to thus become a member bank thereby forfeited all rights, privileges, and franchises granted to it either under the act or the national bank acts. The same penalty is imposed for the failure of any national bank to comply with the provisions of the act. The fact of noncompliance or violation of the law, however, can only be determined by a United States court of competent jurisdiction. Banks incorporated under the laws of any State may become member banks by purchase of stock in Federal reserve banks with the permission of the Federal Reserve Board. The amount of stock to be held by one party and the liability of stockholders is limited by the act. Member banks are given the power to accept a limited amount of certain drafts or bills of exchange, drawn under regulations prescribed by the Federal Reserve Board by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in such countries, dependencies, or possessions. Such member banks are also made subject to many of the provisions and penalties imposed by law on national banks.

Each Federal reserve bank may establish branch banks. As a corporate body, it is granted power to adopt and use a corporate seal, to have succession for a limited period, to sue and be sued, to make contracts, to appoint its directors, officers and employees with certain exceptions, to prescribe by-laws, to receive and circulate Federal reserve notes as described below, and to exercise all powers specifically granted and such incidental powers as are necessary to carry on the business of banking within the limitations prescribed by the act. The Chairman of the Board of Directors of each Federal reserve bank is appointed by the Federal Reserve Board and is known as a Federal reserve agent. In addition to receiving and circulating bank notes, under the same conditions, except as to limitation of issue to capital stock, prescribed in the law relating to the issuance of circulating notes of national banks, the Federal reserve banks are given the power, with certain qualifications, to receive deposits, to discount notes, drafts and bills of exchange, issued or drawn for agricultural,
industrial or commercial purposes, to make advances to member banks on their promissory notes properly secured as provided in the act, to accept under certain specified conditions drafts or bills of exchange drawn upon it which grow out of transactions involving the importation or exportation of goods or involving the domestic shipment of goods, to discount such acceptances which are endorsed by at least one member bank. Any Federal reserve bank may also, under rules and regulations prescribed by the Federal Reserve Board, purchase and sell in the open market, cable transfers, bankers' acceptances, and bills of exchange of the kinds made eligible for rediscount by the act. These banks are given power to deal in gold coin and bullion, to make loans thereon, to exchange Federal reserve notes for gold, gold coin, or gold certificates, and to contract for loans of gold coin or bullion, giving when necessary acceptable security including the hypothecation of United States bonds, or other securities which such banks are authorized to hold. Likewise under the conditions prescribed in the act and in accordance with rules and regulations prescribed by the Federal Reserve Board, they may buy and sell bonds and notes of the United States, and certain bills, notes, revenue bonds and warrants of any State, county, district, political subdivision, or municipality in the continental United States, including irrigation, drainage, and reclamation districts. The power is also granted every Federal reserve bank to purchase from member banks and sell bills of exchange arising out of commercial transactions as defined by the act. Such banks may also establish from time to time, subject to review and determination of the Federal Reserve Board, rates of discount to be charged by the bank. Any Federal reserve bank is also empowered to establish accounts with other Federal reserve banks for exchange purposes and with the consent of the Federal Reserve Board, to open and maintain accounts, appoint correspondents, and establish agencies in foreign countries and open and maintain banking accounts for such correspondents and agencies. The act regulates the management of such banks as to such matters as the increase or decrease of capital stock, the transfer or hypothecation of shares, the amount of indebtedness, the maintenance of reserves, the division of earnings and the like. These banks, including their capital stock and surplus thereon, and the income derived therefrom are made exempt from Federal, State, and local taxes except real estate taxes.
National banks not situated in a central reserve city are permitted under certain conditions to make loans on real estate. Such banks, located and doing business in cities of less than five thousand population are also authorized to act as agents for insurance companies. National banks, possessing a capital and surplus of one million dollars or more, may under certain circumstances described below, establish foreign branches, or invest in the stock of other banks engaged in a foreign banking business.

Over the banks thus created and empowered by Congress or brought within the reach of the act by its terms, the Federal Government through a board of seven members designated as the Federal Reserve Board exercises powers of regulation and control of the most extensive character. This Board is granted the power of general supervision over Federal reserve banks; and may make all rules and regulations necessary to enable it to perform its duties and exercise its powers. The power is given the Board to add to the number of cities classified as reserve or central reserve cities under existing law or to reclassify or terminate the designation of such cities. It can suspend the operation of any Federal reserve bank for violation of any of the provisions of the act and during the period of suspension take possession and administer its operation, or when deemed advisable liquidate and reorganize it. The Board is also granted the power subject to certain qualifications to suspend for a period not exceeding thirty days and from time to time to renew such suspensions for periods not exceeding fifteen days, any reserve requirements specified in the act. It can require bonds of Federal reserve agents. The Board is directed to promulgate regulations governing the transfer of funds and charges among Federal reserve banks and their branches and at its discretion may exercise the functions of a clearing house for Federal reserve banks or designate a Federal reserve bank to do so. Similarly it may require each Federal reserve bank to act as a clearing house for its member banks. It may also fix the charges imposed for the service of clearing or collection rendered by Federal reserve banks. It can require the writing off of doubtful or worthless assets upon the books and balance sheets of such banks. When not in contravention of State or local law, the Board can grant by special permit to any national bank making application the right to act as trustee, executive, or registrar of stocks and lands under such rules and regulations as the Board prescribes. It may permit, or on the affirmative
vote of at least five members of the Board can require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest fixed by it. On a like vote, it can permit member banks to carry in Federal reserve banks of their respective districts any portion of their reserve required by the law to be held in their own vaults. The Board may prescribe conditions and regulations under which any national banking association possessing a capital and surplus of $1,000,000 or more can establish branches in foreign countries or dependencies of the United States for the furtherance of the foreign commerce of the United States and to act if required to do so as fiscal agents of the United States, or under which it can invest within the limitations of the act in the stock of banks or banking corporations engaged in foreign banking business. Upon application of any Federal reserve bank, the Board may approve under certain circumstances the exchange of certain classes of bonds by the Secretary of the Treasury with Federal reserve banks. In connection with the retiring by any member bank of part of its circulating notes, the Board may require, under conditions specified in the act, the Federal reserve banks to purchase the bonds underlying such notes. The banks making the purchase are required to deposit lawful money for the purchase price with the Treasurer of the United States, who pays to the bank making the sale any balance due after deducting a sufficient sum to redeem its outstanding notes secured by such bonds, which notes are cancelled and permanently retired when redeemed. The banks making the purchase are permitted to take out an amount of circulating notes equal to the par value of such bonds.

The Board is given authority to be exercised at its discretion to issue Federal reserve notes for the purpose of making advances to Federal reserve banks and to supervise and regulate their retirement. Any Federal reserve bank may make application to the local Federal reserve agent for Federal reserve notes accompanying such application by collateral security of an equivalent amount and of the kind specified in the act. If granting the application, the Board supplies the bank with the notes through the Federal reserve agent, the bank being charged with the amount of the notes with interest thereon at a rate determined by the Board. The bank is required by the act to maintain a large gold reserve against its Federal reserve notes in circulation, and the Board may at any time require additional security to that originally provided.
Moreover, the notes upon delivery became along with certain other obligations a first and paramount lien on the assets of such bank. Specific provisions of the act govern the circulation and redemption of the notes.

The Board may examine at its discretion the accounts, books and affairs of Federal reserve banks and member banks and require any statements or reports it deems necessary. It may also approve the examination by a Federal reserve bank of member banks within its district. In the case of state banks and trust companies which are stockholders in any Federal reserve bank the Board can direct the holding of special examinations or may at its discretion authorize examinations by the State authorities to be accepted. Branches of national banking associations established in foreign countries are likewise subject to special examinations ordered by the Board at any time.

A Federal Advisory Council is also created by the act consisting of as many members as there are Federal reserve districts. This council is granted the power to confer with the Federal Reserve Board on general business conditions, to make oral or written representations concerning matters within the jurisdiction of the Board and to call for information and make recommendations as to discount rates, rediscount business, note issues, reserve conditions in the various districts, the purchase and sale of gold or securities by reserve banks, open market operations by such banks and the general affairs of the reserve banking system.

**Federal Trade Commission Act**

The Federal Trade Commission act of September 26, 1914, brought within the control of a federal agency all persons, partnerships and corporations engaged in interstate and foreign commerce except banks and common carriers within the jurisdiction of the Federal Reserve Board and the Interstate Commerce Commission, respectively. The term "corporation" as used in the act and as herein discussed means any company or association, incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital and capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members. The Commission created by the act consists of five members and

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exercises important powers, administrative and quasi-judicial in nature.

The most important provision of the act from the standpoint of regulation is that declaring unfair methods of competition unlawful when employed in interstate and foreign commerce. The phrase unfair methods of competition is not capable of exact definition because it was the intent of the framers of the act that it should be broad enough to include all unfair practices as they may come into use and because the determination of the fairness or unfairness of a competitive method often depends upon the circumstances of the particular case. The Commission has held that the branding of fabrics as silk which contain no silk is an unfair method of competition. Rulings have also been issued by the Commission covering complaints where on investigation by the Commission such practices as misbranding, disparagement of competitors' goods, circulation under the guise of trade news of misrepresentations of a character unfair and detrimental to a competitor, and price discrimination by absorption of freights, have been discontinued, no further action therefore being taken by the Commission. The Commission has also issued informal rulings applicable only to the particular facts presented in the ruling, where such practices as the making of exclusive territory and exclusive agency contracts, the manufacture of repair parts for unpatented articles, and certain refusals to sell have been held not to be unfair methods of competition. Such rulings, however, are not conclusive on the Commission, and may be modified at any time. The courts have condemned as unfair competition such practices as inducing the breach of competitors' contracts, enticing employees under contract from the service of competitors, inducing the betrayal or misuse of trade secrets or confidential information, unfairly appropriating values, such as

267 Walker vs. Cronin, 107 Mass. 551 (1871); Kenney vs. Scarborough Map Co., 74 S. E. 772 (1912) (Ga.).
information contained in stock quotations, etc., created by competitors' expenditures, defaming competitors and disparaging their goods either by words or acts, intimidating competitors' customers by threats of infringement suits made in bad faith, combining to cut off competitors' supplies or to destroy their market, interfering with competitors' business by intimidation, or obstruction of such competitors or their customers, bribing employees of a competitor, and passing off one's goods as the goods of another.

The procedure in enforcing the provision of the act as to unfair methods of competition is substantially similar to the procedure of the Interstate Commerce Commission, except that complaints are made only by the Commission, and when it has reason to believe that an unfair method of competition is being used and that a proceeding by it would be to the interest of the public. Under practically the same procedure the Commission is empowered to enforce certain provisions of the Clayton Act as to price discriminations, exclusive dealing contracts, interlocking directorates, and intercorporate stock holdings.

The Commission is also granted very important powers in furtherance of the enforcement of the antitrust acts. Thus in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust acts, the court may, upon the conclusion of the testimony, if it shall then be of the opinion that the complainant is entitled to relief, refer the suit to the Commission as a master in chancery, to ascertain and report an appropriate form of decree. The court, however, may adopt or reject the report of the Commission made to it, in whole or in part, and

210 Board of Trade vs. Christie Grain & Stock Co., 198 U. S. 236 (1905); Hunt vs. New York Stock Exchange, 205 U. S. 322 (1907); National Telegraph News Co. vs. Western Union Telegraph Co., 119 Fed. 294 (1902); Prest-O-Lite Co. vs. Davis et al., 209 Fed. 917 (1913).

211 Continental Insurance Co. vs. Board of Fire Underwriters of the Pacific et al., 67 Fed. 310, 323 (1895); Holmes vs. Clisby, 118 Ga. 820, 824 (1903).


213 Jackson et al. vs. Stanfield et al., 137 Ind. 592 (1894); Bailey vs. Master Plumbers, 103 Tenn. 99 (1899).

214 Standard Oil Co. vs. Doyle, 118 Ky. 662, 670 (1904); Attorney General vs. National Cash Register Co., 143 N. W. 420; Economist Furnace Co. vs. Wrought Iron Range Co. et al., 86 Fed. 1010 (1898).


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enter such a decree as the nature of the case may in its judgment require. Whenever a final decree has been entered against any corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, the Commission may upon its own initiative make investigation of the manner in which the decree has been or is being carried out, and upon application of the Attorney General it is its duty to make such an investigation. Under the law it must transmit a report embodying its findings and recommendations to the Attorney General, but it may also in its discretion make the report public. Upon the direction of the President or either House of Congress the Commission is empowered to investigate and report the facts relating to any alleged violation of the antitrust acts by any corporation. Upon the application of the Attorney General it may also investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management and conduct of business in accordance with law.

The Commission is also granted very broad investigative powers, both as to the organization, business, conduct, practices and management of corporations within its jurisdiction and also over trade conditions in and with foreign countries where combinations or other conditions may affect the foreign trade of the United States. The Commission is authorized to require by general or special orders corporations within its jurisdiction to file in such form as the Commission may prescribe annual or special reports, or both, or answers in writing to specific questions regarding the organization, business, conduct, practices, management, and relation to other corporations, partnerships and individuals of the respective corporations filing such reports or answers. Likewise, the Commission may classify corporations from time to time and make rules and regulations for the proper carrying out of the provisions of the act. The Commission may make public such information obtained by it as it may deem expedient in the public interest, except trade secrets and names of customers. It also may make annual and special reports to Congress and submit therewith recommendations for additional legislation.

For the purposes of the Act it is provided that the Commission or its duly authorized agents shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated
or proceeded against, and shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matters under investigation. Testimony may also be taken by deposition. In case of disobedience to a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the inquiry is being carried on, which court may issue an order compelling obedience, and may punish failure to obey the order as a contempt of the court. An immunity provision as to testimony before the Commission similar to that in the immunity provisions of 1903 and 1906 is included in the act.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States may issue writs of mandamus commanding any person or corporation to comply with the provisions of the act or any order of the Commission made in pursuance thereof. Penalties by way of fine or imprisonment or both are provided for disobedience of a subpoena or lawful requirement of the Commission, for falsification of accounts, records or documentary evidence, for wilful refusal to permit the inspection of records and documentary evidence, and taking copies, and for failure to file reports as required by the Commission. Similar penalties are imposed on officers or employees of the Commission for making public without the authority of the Commission any information obtained by it.

It is expressly provided that the act shall not alter, modify or repeal the antitrust acts or the acts to regulate commerce or in any way interfere with their enforcement.

Clayton Anti-Trust Act\footnote{38 U. S. Stat. L. 730 (1914); U. S. Comp. Stat. 8835a.}

Various provisions of the Clayton Act are regulative in character and the word "person" when used in the act is defined as including corporations. The word "commerce" as used in the act includes interstate and foreign commerce, or commerce in the Territories, the District of Columbia or any insular possession under the jurisdiction of the United States except the Philippine Islands. The word is used in this sense in this discussion.

Section 2 makes it unlawful for any person engaged in commerce in the course of such commerce to directly or indirectly discriminate in price between different purchasers of commodities,
which commodities are sold for use, consumption, or resale within the jurisdiction of the United States, where the effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce, with the proviso added that this shall not prevent discriminations in price made on account of differences in quality or quantity of the commodity sold, on account of differences in the cost of selling or transportation, or in order to meet competition, in good faith, and with the further proviso that this shall not prevent persons from selecting their own customers in bona fide transactions not in restraint of trade.

Section 3 declares it unlawful for any person engaged in commerce to lease or make a sale or contract of sale of commodities, patented or unpatented, for use, consumption, or resale within the jurisdiction of the United States or to fix a price therefor or a discount from such price, on the condition that the lessee or purchaser shall not use or deal in the commodities of a competitor, where the effect of such lease, sale, or contract of sale or of such condition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Section 7 declares that no corporation engaged in commerce shall acquire stock in another corporation where the effect may be to substantially lessen competition between them, or to restrain commerce in any community; or tend to create a monopoly in any line of commerce, and that no corporation shall acquire the stock of two or more corporations engaged in commerce where the effect of such acquisition or the voting of such stock may be to lessen competition between the corporations whose stock is so acquired, or to restrain commerce in any community, or tend to create a monopoly of any line of commerce. But it is also provided that these prohibitions shall not apply to the mere investment by one corporation in the stock of another, or to the formation of subsidiary corporations for carrying on the immediate lawful business of a corporation or the natural extensions thereof, where the effect is not to substantially lessen competition, or to the acquisition by a water carrier, subject to the laws to regulate commerce, of the stock of a branch line, or an extension where there is no substantial competition between them. These prohibitions, it is provided, shall not have a retroactive effect or make lawful anything prohibited or made illegal by the anti-trust laws.

Section 8 prohibits all corporations engaged in commerce any one of which has capital, surplus, and undivided profits exceeding $1,000,000, except banks and common carriers subject to the act
to regulate commerce of February 4, 1887, from having common directors after two years from the enactment of the law, if such corporations are to have been competitors so that the elimination of competition between them would be a violation of the anti-trust laws. Similarly, it is provided that no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000. Every private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, is made ineligible by law to be a director in any bank or banking association organized or operating under national laws. No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding census of the United States, is permitted to have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place. Provisos are added that nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares; that a director or other officer or employee of a bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State, where the entire capital stock of one is owned by stockholders in the other; and that a director of Class A of a Federal reserve bank as defined in the Federal Reserve Act may be an officer or director or both in one member bank. This section was amended in 1916,118 so as to permit, subject to the consent of the Federal Reserve Board, any officer, director, or employee of any member bank or Class A director of a Federal reserve bank to be an officer, director, or employee of not more than two other banks, banking associations or trust companies, which are not in substantial competition with such member bank, whether organized under Federal or State law. A subsequent amendment119 permits interlocking personnels of this

sort subject to the approval of the Federal Reserve Board as
banks engaged in a foreign banking business, in the capital stock
between member banks of the Federal reserve system and certain
of which such members banks have invested, as authorized by law.

Section 10 provides that after two years\(^{120}\) from the approval of
the law common carriers engaged in commerce shall not have any
dealings in securities, supplies, or other articles of commerce, nor
make or have contracts for construction or maintenance of
any kind to the amount of more than $50,000 in the aggregate, in
any one year, with another corporation, firm partnership or
association, where they have common directors, officers, or agents,
or where a person, occupying such a position with the common
carrier, is substantially interested in the other concern, unless
such dealings shall be with the lowest bidder on competitive bids
under regulations prescribed by the Interstate Commerce Com-
mission. Punishment is prescribed for any person who directly
or indirectly prevents or attempts to prevent anyone from bidding
or to prevent free and fair competition among the bidders. Pro-
vision is made for reports on such dealings to the Interstate Com-
merce Commission, and penalties are provided for common car-
riers or their directors, officers, or agents who aid or abet in
violating the prohibitions of this section.

The methods of enforcing the prohibitions of sections 2, 3, 7,
and 8 of the Act are fourfold. Section 11 gives to the Interstate
Commerce Commission, the Federal Reserve Board and the Fed-
eral Trade Commission, respectively, the authority to enforce
these provisions in so far as they affect persons or corporations
subject to their jurisdiction. The procedure is substantially the
same as that prescribed for the Federal Trade Commission with
respect to unfair methods of competition, with the exception that
the provision as to the public interest appearing, is eliminated.
The orders of each Commission are finally enforced by court
injunction in case of disobedience. Section 15 gives to U. S.
District Attorneys the right and makes it their duty, under the
direction of the Attorney General, to bring suits in equity to
restrain violations of the law. Section 4 gives to any person
injured by a violation of the law the right to sue in the United
States courts and recover threefold damages. Section 16 gives
to any person, firm, corporation, or association the right to relief

\(^{120}\) Public Resolution #33, 64th Congress, in effect August 31, 1916, defers
the date on which this section shall become effective to April 15, 1917. 39
by injunction for threatened loss or damage by a violation of
the antitrust laws, including sections 2, 3, 7, and 8 of this act
under the same conditions as such relief would be granted by a
court of equity, except with respect to matters subject to the
jurisdiction of the Interstate Commerce Commission regarding
common carriers.

Section 5 provides that a final decree in a proceeding in equity
brought by the United States under the antitrust laws shall be
prima facie evidence against the defendant in any suit brought
by any other party under those laws, with respect to all matters
in which the decree would be an estoppel between the parties.
It is provided, however, that this shall not apply to consent decrees
which are entered without taking testimony or to such decrees in
certain other cases. This section also provides in substance that
when the United States institutes a proceeding under the anti-
trust laws the statutory limitations with respect to the period in
which a private suit may be brought which is based in whole or in
part on the matter complained of shall be suspended during the
pendency of such proceeding. Certain other provisions are con-
tained in the act foreign to the subject matter of this article.

United States Shipping Board Act\(^{121}\)

Important regulations of common carriers by water engaged
in interstate and foreign commerce and of persons carrying on
the business of forwarding or furnishing wharfage, dock, ware-
house, or other terminal facilities in connection with such carriers
are contained in the act creating the United States Shipping Board.
Intrastate commerce is expressly excluded from the operation of
the act. Such carriers in the corporate form or otherwise are
subject to the act. The term person as used in the act is defined
as including corporations.

Carriers subject to the law are prohibited from engaging in
various practices unfair to competitors or shippers. Thus the
payment of deferred rebates to any shipper is made unlawful.
A deferred rebate is defined by the act as meaning the returning
of any portion of the freight money by a carrier to any shipper
as a consideration for the giving of all or any portion of his ship-
ments to the same or any other carrier or for any other purpose,
the payment of which is deferred beyond the completion of the
service for which it is paid, and is made only if, during both


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the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement. It is likewise declared unlawful for a carrier to use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. A fighting ship as defined by the act is a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of such trade. The act also makes it unlawful for a carrier to retaliate against any shipper by refusing or threatening to refuse space accommodations where such are available, or to resort to other discriminating or unfair methods because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment or for any other reason. A carrier is also prohibited from making any unfair or unjustly discriminatory contract with any shipper based in the volume of freight offered or from unfairly treating or unjustly discriminating against any shipper in the matter of cargo space accommodations and other facilities, or in the loading and landing of freight in proper condition, or in the adjustment and settlement of claims.

Carriers subject to the act, and also any person carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with water carriers are forbidden to directly or indirectly employ certain practices. To make or give an undue or reasonable preference or advantage to, or to subject to an undue or unreasonable prejudice or disadvantage, any particular person, locality, or description of traffic is prohibited. Similarly, it is unlawful to allow any person to obtain transportation for property at less than the regular rates by means of false billings, classifications, weights or any other unfair means. It is likewise declared to be unlawful to induce, persuade or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing water carrier as favorable a rate of insurance on a vessel or cargo, having due regard to the class of the vessel or cargo, as is granted to such carrier or person. The disclosure of information with reference to shipments without the consent of the shipper or consignee is forbidden except in certain instances as for example where such information is given in response to legal process.

Penalties in the way of fines and in some instances imprisonment are provided for violations of the act.
The shipping board is also vested with power to prevent violations of the act subject to review of its orders by the courts.

General powers of regulation as well as those of a character necessary for an effective enforcement of the act are granted to the Board. Thus the Board may determine, prescribe and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation or practice. Whenever it finds rates unjustly discriminatory between shippers or ports or prejudicial to exporters of the United States are being charged, it may correct the same and may make an order that the carrier shall discontinue it. Likewise it may establish just and reasonable charges and prescribe just and reasonable regulations relating to the receiving, handling, transporting, storing or delivering of property. Whenever a carrier reduces its freight rates to and from competitive points below a fair and remunerative basis, with the intent of driving out or injuring a competitor, it can not increase such rates unless the board after hearing finds that the proposed increase rests upon changed conditions other than the elimination of such competition. The board may also disapprove, cancel, or modify any agreement whether or not previously approved or disapproved by it in whole or in part, which it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters of the United States and their competitors, or to be in violation of the act, or to operate to the detriment of the commerce of the United States. When a party is injured as a result of the violation of the act, the board may, if complaint is made to it within two years after the cause of action has accrued, direct the payment of full reparation to the complainant for such injury. To aid the board in effectually enforcing the act, as well as for other purposes, the board is given the power to require periodical or special reports or memoranda of facts from any carrier subject to the act, and to compel by subpoena the attendance of witnesses and production of documentary and other evidence.

In exercising the powers granted and in preventing violations of the act, the form of procedure to be followed by the Board is provided by the law, and is substantially the same as that before the Interstate Commerce Commission.

Very important provisions are contained in the act, providing for the creation of a naval auxiliary and merchant marine.

An express reservation is made in the act that none of its provisions are to be construed so as to affect the power or jurisdiction
of the Interstate Commerce Commission, nor to confer upon the Board concurrent power or jurisdiction over any matter within the power or jurisdiction of that commission.

An Act to Increase the Revenue and for Other Purposes, of September, 8, 1916.122

Title VIII of this act is headed "Unfair Competition" and contains important regulations over persons, the word "person" being defined by the act as including partnerships, corporations and associations. The chief prohibition is against the practice of "dumping." Section 801 makes it unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell, or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of the exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported, after adding to the market value or wholesale price, freight, duty, and other charges necessarily incidental to the importation and sale of the articles in the United States, provided that such act or acts are done with the intent of destroying or injuring or preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States. Violations or combinations or conspiracies to violate this section are made misdemeanors punishable by fine or imprisonment or both. Any person injured in his business or property because of a violation or combination or conspiracy to violate the section may sue and recover threefold damages.

Section 802 effects a regulation by providing that a special double duty shall be levied and collected on any article produced in a foreign country which is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person. A proviso is added, however, that this section shall not be interpreted as preventing the establishment in this country by a foreign producer of an exclusive agency for the sale of his products in the

United States nor to prevent such exclusive agent from agreeing not to use, purchase or deal in the article of any other person. This proviso, however, it is expressly provided shall not be construed to exempt any article imported by such an exclusive agent if he is required by the foreign producer or if it is agreed between such agent and the foreign producer that any agreement, understanding, or condition set out in the section, shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States. Section 803 provides that the Secretary of the Treasury shall make rules and regulations necessary to carry out the provisions of this section.

Section 806 of this act authorizes the President of the United States, during the existence of a war in which the United States is not engaged, to direct the detention of vessels by withholding clearance or by formal notice forbidding departure when he is satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent country making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions, or to any citizen of the United States residing in neutral countries abroad, or is subjecting such parties or traffic to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight or passengers, or in any other respect whatsoever.

Other provisions not directed at the regulation and control of corporations are included under this title of the act.

Miscellaneous Regulations

A considerable degree of control of corporate activities and indirectly over production is effected by the National Government through the statutory prohibition of the transportation in interstate or foreign commerce of products manufactured under conditions or offered for sale in a form not complying with the requirements of such statutes. As the business of most corporations is probably at least partially interstate in character, such a method of regulation and control although indirect has far-reaching effects. Thus under the Child Labor Act of September 1, 1916,123 it is

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made unlawful for any producer, manufacturer, or dealer to ship or deliver for shipment in interstate or foreign commerce any article or commodity in the production of which children under specified ages have been employed within thirty days prior to the removal of the article from the establishment producing the article, or permitted to work more than eight hours a day, or more than six days a week, or after 7 p. m. or before 6 a. m. Adequate provisions for enforcement are provided.

The Food and Drugs Act of 1906\[124] prohibits the shipment in interstate or foreign commerce of foods and drugs which are adulterated or misbranded under the definition of the act. The manufacture of such foods and drugs in the Territories or insular possessions of the United States or in the District of Columbia is also prohibited. The act of July 1, 1902,\[125] makes somewhat similar prohibitions as to articles falsely labeled or branded as to the State or Territory in which they are made, produced, or grown. Other Federal statutes applicable to corporations prohibit the misbranding under certain circumstances of apples in barrels,\[126] of insecticides and fungicides,\[127] of gold and silver or products manufactured therefrom,\[128] of mixed flour,\[129] of filled cheese,\[130] or the use of false or deceptive trade names on meats or meat products,\[131] and prohibit in most instances the transportation of such commodities in interstate and foreign commerce.

The Meat Inspection Acts of 1890, 1906, and 1907,\[132] provide for a system of inspection under the supervision of the Department of Agriculture of establishments in which cattle, sheep, swine, or goats are slaughtered, or their carcasses or food products derived from the same are prepared, and prohibits the transportation of such products in interstate commerce unless the various requirements of the act as to inspection, branding, sanitary conditions, and the like, are complied with. It has been estimated by an official of the Department of Agriculture that 60 per cent. of the cattle, sheep, swine, and goats slaughtered in the United States

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are killed and the products made therefrom prepared under the inspection of that department as provided by these acts. Subsequent acts have extended the provisions of this law to imported meats and reindeer, and somewhat similar provisions have been enacted for the inspection of dairy products intended for export and renovated butter. Certain other statutes with reference to the transportation of live stock are made applicable to corporations and various regulations also made as to the importation or interstate transportation of insect pests and of nursery stock. The transportation of serums, viruses, etc., in interstate or foreign commerce is prohibited unless such products are prepared at an establishment duly licensed by the Secretary of the Treasury under the provisions of the act and marked in a way prescribed by the act. The Grain Standards Act of 1916, which is made applicable to corporations, provides for the establishment of official grain standards and prohibits interstate or foreign shipments of grain sold by grade thereafter unless inspected and complying with such standards.

By the act of March 2, 1897, the importation of any merchandise as tea, which is inferior in purity, quality and fitness for consumption to certain standards prescribed in the act is made unlawful. The act of August 3, 1912, establishes standard grades for apples when packed in barrels for shipments in interstate and foreign commerce.

The Cotton Futures Act of 1916, although a taxing measure, regulates future dealings in cotton and corporations are brought within its terms. The U. S. Warehouse Act, also enacted in 1916, authorizes the Secretary to license warehouses in which

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any agricultural product may be stored for interstate or foreign commerce, on their application for such a license, and to exercise various powers of inspection, classification and regulation over such warehouses and the practices engaged in by them. The transacting of business as a custom house broker can be engaged customs at any port of entry.146

The Federal Farm Loan Act147 provides for the creation of corporations in the form of Federal land banks, national farm loan associations and joint stock land banks, to engage chiefly in the business of making loans on farm lands, over which the Federal Farm Loan Bank created by the act exercises complete control.

The Tariff Commission148 is granted the power to investigate tariff relations, commercial treaties, economic alliances and conditions, causes and effects relating to the competition of foreign industries with those of the United States and in connection therewith is given the power to inspect and copy books and papers and to compel the attendance of witnesses and giving of testimony. Temporary commissions have been created by Congress for purposes of investigation with certain limited powers affecting corporations. Thus the Commission in Industrial Relations, created by the Act of August 23, 1912,149 was given among other powers the power to inquire into the general conditions of labor in the principal industries of the United States, especially those carried on in corporate form, and in connection therewith was given the authority to summon and compel the attendance of witnesses and to compel testimony.

In 1910150 a Commission was created to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations subject to the provisions of the Act to Regulate Commerce and the power of Congress to regulate and affect the same. The Adamson Act151 also provided for a commission of three members to observe the operation and effects of the institution of the 8-hour standard work day provided for in the act and the facts and conditions affecting the relations between the common carriers and their employees for a limited period and to report its findings to the

President and Congress. Numerous other investigatory bodies of lesser importance have been created from time to time.

Various regulations have been enacted by Congress over vessels engaged in interstate or foreign commerce with reference to such matters as registry, clearance, inspection, accommodations for passengers and merchandise and similar matters which affect and control corporations in their management of such vessels.\(^{152}\)

Corporations are prohibited from making money contributions in connection with political campaigns.\(^{153}\) Various requirements, such as making reports and permitting inspection of books and papers, are imposed on corporations by certain revenue measures.\(^{154}\)

Important regulations of commerce in various products have also been effected through taxation measures as discussed below. The National Government is also given control in time of actual or imminent war over carriers and under certain circumstances manufacturing plants necessary for the manufacture of armor, munitions and supplies.\(^{155}\)

### The Power to Lay and Collect Taxes

The power to lay and collect taxes, subject to the qualifications on the power expressed in the Constitution, can probably be used in a supplementary way to effect the regulation and control of corporations engaged in interstate and foreign commerce. In the exercise of the power of taxation, Congress has the widest discretion and the courts will not interfere with its action even though the tax levied is in the judicial mind unwise or oppressive, the responsibility of Congress in such instances being to the people by whom its members are elected.\(^{156}\) Congress can impose a tax on the privilege of doing business in a corporate capacity even though the corporation taxed is created by a State, the franchise of incorporation granted by the State not being a governmental agency of the State.\(^{157}\) And it would appear probable that Con-

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\(^{152}\) U. S. Comp. Stat. (1916), secs. 7707-7788; 7789-7810; 7833-7995; 7997-8035; 8036-8038; 8052-8146; 8151-8275.


\(^{156}\) Pease Bank vs. Fenno, 8 Wall. 533, 548 (1869); McCray vs. United States, 195 U. S. 27, 58 (1904); Spencer vs. Merchant, 125 U. S. 345, 355 (1887).

gress could place a tax upon the privilege of exercising in interstate commerce corporate privileges granted by a State for it would be merely a charge on the doing of business in a field of commerce over which Congress has exclusive jurisdiction and the employment of the constitutional power to tax would be in aid of the constitutional power to regulate commerce. Such a tax would not come within the constitutional limitations on the taxing power as being on exports, or as a direct tax, or as not being uniform, or as an arbitrary and unreasonable classification.

Congress has enacted several statutes which in effect amounted to regulations of commerce. In 1866, Congress passed an act providing for a 10 per cent. tax on the amount of notes of any person, State bank, or State banking association used for circulation. The obvious purpose was to drive such notes out of circulation rather than to provide revenue. The law was held to be a constitutional exercise of the taxing power in aid of the power to provide a national currency.

In 1886, Congress also enacted a law which, as amended in 1902, imposed a tax of 10 cents per pound upon the manufacture and sale of oleomargarine when colored to imitate butter, although the uncolored product was taxed but 4 cent per pound. The evident purpose of the act was to regulate the production of oleomargarine, by preventing through heavy taxation the manufacture and sale of the colored product. The act was held valid as a legitimate exercise of the taxing power, the court holding that courts had no power to restrain the lawful exercise of the taxing power merely on the assumption that a wrongful purpose or motive had caused the power to be exerted.

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258 See Dooley vs. U. S., 183 U. S. 151 (1901); Cornell vs. Coyne, 192 U. S. 418, 427 (1904).
259 Flint vs. Stone Tracy Co., 220 U. S. 108 (1911); Spreckels Sugar Refining Co. vs. McClain, 192 U. S. 397 (1904).
261 Flint vs. Stone Tracy Co., 220 U. S. 107 (1911); Brushaber vs. Union Pac. R. R., 240 U. S. 1, 25 (1915).
In 1914, the cotton futures act\textsuperscript{166} was enacted which, while on its face primarily a taxing measure, was in practical effect a regulation of the business of cotton exchanges designed to eliminate certain evils of future dealing in cotton. A tax of 2 cents per pound on contracts of sale of cotton for future delivery was imposed by the act, but exemptions from the tax were made if such contracts complied with certain conditions clearly aimed to correct existing evils of future dealing. This act subsequently was held to be unconstitutional but solely on the ground that the bill from which the statute resulted and which was a revenue measure did not originate in the House.\textsuperscript{167} The act was reëncacted in 1916.\textsuperscript{168}

The Harrison Anti-Narcotic Act\textsuperscript{169} of 1914 provides for the payment of a special tax of $1 per annum and the registration with a collector of internal revenue by every person (including corporations), who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium and certain other drugs. Parties not complying with these requirements are barred from commerce in such drugs and the business of parties registering and paying the tax is subjected to the most stringent requirements and regulations. The history of the act shows beyond doubt that the act was not intended as a revenue measure but was directed at the suppression of the secret trade in the drugs mentioned in the act. The Supreme Court, however, has indicated that the act is constitutional and is to be considered as a revenue measure although it has a moral end as well.\textsuperscript{170} The Circuit Court of Appeals of the second circuit in discussing this statute said, "It cannot now be questioned in any lower court that the Harrison Act is a revenue measure or tax law and is to be construed as such (United States vs. Fin Fuey Moy, 241 U. S. 394; a decision which deprives of authority the judgment of this court in Wilson vs. United States, 229 Fed. Rep. 344). This being the ruling, it makes no difference that the history of the statute as revealed by public discussions, reports of committees and contemporaneous common knowledge, proves that nothing was further from the mind of Congress than to obtain contributions to the support of Government through or by means of this statute. The notorious fact that it was intended to prevent a secret or

\textsuperscript{166} 38 U. S. Stat. L. 693 (1914).
\textsuperscript{167} Hubbard vs. Lowe, 226 Fed. 135 (1915).
\textsuperscript{169} 38 U. S. Stat. L. 785 (1914); U. S. Comp. Stat. (1916), sec. 6287g.
\textsuperscript{170} United States vs. Fin Fuey Moy, 241 U. S. 394, 402 (1916).
unauthorized dissemination of habit-forming drugs is no longer material. It is a revenue act even though it has a moral end as well as revenue in view (241 U. S., at 402). 171

The Act of April 9, 1912, prohibits the exportation or importation of certain kinds of phosphorous matches and levies a tax of 2 cents per hundred on all such matches manufactured and sold in the United States. 172 The act was clearly designed as a regulation of commerce rather than as a revenue measure. Taxes have also been levied by the Federal Government on filled cheese 173 and mixed flour 174 which were intended at least partially as commercial regulations of the manufacture and sale of such articles.

The power to levy and collect taxes in order to provide for the general welfare would appear therefore to include the exercise of the taxing power in the interests of the public for purposes other than revenue solely. Within the discretion of Congress and within reasonable limits it can be employed as an aid to the commerce power in regulating corporate activities.

The Power to Establish Post Offices and Post Roads

The postal service is not an indispensable adjunct of civil government but is a public function assumed and established by Congress for the public welfare and Congress may therefore annex to it any conditions it sees fit. 175 The power granted to Congress is complete and carries with it the right to exercise all the powers necessary to make it effective, 176 including the right to exclude parties from using the mails. 177 Probably, however, Congress could not lawfully discriminate between persons or corporations in the same class and standing in the same relation to the Government. 178 The necessity of the use of the mails for the effective conduct of interstate commerce under present conditions makes this power of possible importance in controlling the activities of corporations. Congress has enacted statutes denying to corporations as well as persons the right to use the mails for conducting lotteries or any scheme or device for obtaining money or property

176 In re Rapier, 143 U. S. 110, 134 (1892).
177 Public Clearing House vs. Coyne, supra.
178 Ibid., p. 507.
through the mails by means of false or fraudulent pretenses.\textsuperscript{179} These statutes have been held to be constitutional.\textsuperscript{180} It would appear to be within the power of Congress to deny the use of the mails to any class of corporations whose existence and methods of doing business were inimical to the public interests.

\textsuperscript{179} Revised Stat., U. S., Secs. 3929, 4041.
\textsuperscript{180} Public Clearing House vs. Coyne, 194 U. S. 497 (1904).