

protection. Since 1937, in sharp contrast with the jurisprudence of the Canadian courts, the consistent beneficiary of this activism has been Washington, not the state capitals. The foundation of federal power over the environment is the commerce clause of Article I, section 8, which grants to Congress the authority "to regulate Commerce with foreign Nations, and among the several States." The Supreme Court has broadly interpreted "commerce" to include all forms of intercourse, including navigation, and authorized Congress to regulate all activities, including manufacturing and labor relations, which affect interstate commerce (see Gibbons v. Ogden [1824] and Wickard v. Filburn [1942]). The result is that the category of intrastate commerce, immune from federal regulation and reserved to the states under the Tenth Amendment, has for all practical purposes disappeared. The Court, furthermore, has said that Congress has a responsibility to keep the channels of commerce free of moral pollution. Federal law, accordingly, punishes automobile theft, kidnaping, and racial discrimination in public accommodations, on the assumption that a crossing of state lines has likely occurred (see Heart of Atlanta Motel v. United States [1964]). It remains to be seen whether the Supreme Court's 1995 ruling in United States v. Lopez, striking down a federal law banning weapons in public schools, is a harbinger of a judicial effort to reduce the scope of Congress's commerce power vis-à-vis the states. The general attitude of the justices is that because the states are represented in the federal House of Representatives and Senate, they are well positioned to look after their own interests through the political process and do not need judicial protection.

The Supreme Court acknowledged Congress's power to enact environmental legislation under the commerce clause in Hodel v. Virginia Surface Mining and Reclamation Association (VSMRA) (1981). Congress had argued that state laws regulating surface mining were inadequate and that national standards were necessary to insure that states did not pass weak regulations in