Growth of State Power Under Federal Constitution to Regulate Traffic in Intoxicating Liquors

Clifford R. Snider
GROWTH OF STATE POWER UNDER FEDERAL CONSTITUTION TO REGULATE TRAFFIC IN INTOXICATING LIQUORS

By Clifford R. Snider

I. INTRODUCTION

Perhaps no other question has given as much and as persistent worry to the legislators and jurists of the last half century as has the question of intoxicating liquors. The statute books are memoirs of tried and discarded attempts to solve the problem. In a study of the legislation upon the subject, varied and inconsistent as it has been, there are two outstanding powers conflicting at all times—the one with the other. The power given Congress by the federal constitution "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes," and the power of the states to provide for the welfare of the people commonly called the Police Power. While the one is expressly granted to Congress by the federal constitution, the other is inherent in the rights of the states, and they are entirely separate and distinct except where by the nature of the subject matter both are vitally concerned. Such is the nature of intoxicating liquors.

1 The writer of this article was awarded in September, 1917, one of the three Corpus Juris Scholarships of $500 each founded by the American Law Book Company in 1915 to encourage the study of the science and philosophy of law and to afford opportunity for graduate study in law. The Corpus Juris Scholarships are awarded to the writers of the three best theses on an assigned law subject as determined by a competent committee appointed to read and grade the theses submitted. Eligibility to compete is limited to those who, by reason of having received the highest scholarship honors in the work of the senior year in their respective law schools, have previously been awarded sets of the Cyclopedia of Law and Procedure with annotations to date, furnished by the American Law Book Company. Such awards may be made only in law schools having a three year course of resident study. Mr. Snider received the A.B. degree from West Virginia University in 1914 and the LL.B. degree upon graduation from the College of Law in June, 1917, with the highest standing in his class. For this he was awarded the Cyc prize by the faculty. As one of three winners of Corpus Juris Scholarships in competition with the winners of the Cyc prizes from other law schools, he is now registered as a graduate student in the Harvard Law School.

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2 CALVERT, REGULATION OF COMMERCE, 51; FREUND, POLICE POWER, 7; 2 WILLOUGHBY, CONSTITUTIONAL LAW, 310.
which have been shipped in interstate commerce from time im-
memorial and which upon arrival and use at destination affect
the people and by reason thereof fall within the police power of
the states. To properly determine the power of Congress and of
the several states in regard to the regulation of traffic in intoxi-
cating liquors it is first necessary to examine the same powers
when applied to other subject matter.

II. POWER BEFORE FEDERAL LEGISLATION

1. Interpretation of "Commerce Clause."

If the case of Gibbons v. Ogden, first interpreting the commerce
clause of the Constitution, can be said to establish only that navi-
gation is within the commercial powers of Congress and that a
federal coasting license is a sufficient authority to navigate the
public waters of a state, it would perhaps be unnecessary to con-
sider that remarkable decision. It is not unlikely that Mr. Chief
Justice Marshall intended to decide that question solely, but the
general language used without a doubt lays claim to exclusive con-
gressional authority for the regulation of interstate commerce. It
must be borne in mind that this case was concerned with privileges
secured under an act of Congress which were in conflict with a
monopoly granted by a state, and it is quite certain that where
Congress had intervened the great justice intended to say that the
federal power was exclusive. This conclusion is the reasonable
inference from the opinion of Mr. Chief Justice Marshall where
he says: "We may dismiss that inquiry—whether the power of
regulating commerce is surrendered by the mere grant to Congress,
or is retained until Congress shall exercise the power—because it
has been exercised, and the regulations which Congress deemed it
proper to make are now in full operation." A state statute in the
case of Brown v. Maryland required all importers of foreign goods
and wholesalers to pay a license fee for the privilege of sale. The
statute was held invalid as being repugnant to the Constitution on
the grounds both of taxation and as against the commerce clause.
After deciding that Congress has power to authorize the sale of
the articles which it introduces, the opinion continues: "Any pen-
alty inflicted on the importer for selling the article in his character

3 Crowley v. Christensen, 137 U. S. 86, 91 (1890).
5 1 Stat. at Larg., 305.
6 12 Wheat. 419 (U. S. 1827).
of importer, must be in opposition to the act of Congress which
authorizes importation. It would seem from this case that the
test of the validity of a state tax can be said to lie, not in the
exclusiveness of federal authority to regulate commerce, but rather
in the existence of federal statutes covering the same subject. While this is a slight departure from the previous case it does not
hold that the commercial power of Congress is not exclusive. In
the next case a corporation, under legislative authority from a
state, erected a dam across a navigable stream and banked the wa-
ter which was tidal. The state authorization of the corporation was
held to be a valid exercise of the reserved power of the state. Mr.
Chief Justice Marshall in substance said, that Congress had not
acted and that there was no federal law to which the state law was
repugnant so it must be held valid until Congress exercises its
power in a way to affect the question. Although this opinion is
short and unsatisfactory it can be said to lay the foundation for
"The present rule that the federal power is exclusive in matters
of general interest, while in local matters the states may legislate
until their action is superseded by Congress." After a large
change in the personnel of the Supreme Court, a statute, requir-
ing the masters of vessels to report their passengers to state author-
izations, was held valid as a proper police measure of the state and
not a regulation of commerce. The sanction of material interfer-
ence with interstate commerce was, therefore, given in this case,
the Supreme Court at the same time maintaining, in theory at
least, the doctrine of exclusive congressional authority. In less
than a score of years, and before the question of traffic in intoxi-
cating liquors came before the Supreme Court, the commerce-
clause of the Constitution had been subjected to limitations con-
ceded to the states, to make local and police regulations. Al-
though concessions were made, the question whether the grant of
commercial power to Congress was or was not exclusive, remained
to be definitely determined at a later time.

9 PRENTICE, FEDERAL POWER OVER CORPORATIONS AND CARRIERS, 101.
11 PRENTICE, FEDERAL POWER OVER CORPORATIONS AND CARRIERS, 106.
12 Mr. Justice Story and Mr. Justice Thompson were the only surviving members.
Mr. Justice Story said in his dissenting opinion that the late Mr. Chief Justice Mar-
shall concurred with him.
14 See 2 WILLOUGHBY, CONSTITUTIONAL LAW, 310 for the distinction between
police power and local regulation.
2. License Cases.

Repeatedly Congress has refused to enact prohibition laws on the theory that the regulation of traffic in intoxicating liquors, "so long as it does not come within the commercial or postal powers of the federal government, is purely a state function." The legislation of the states for the past half century upon the subject has been so great and changeable that it is possible to mention only the more general forms it has assumed. License of sale has at one time or another been general throughout the entire country. By this means while the sale was unlimited in most instances, except to minors and inebriates, it was confined to those who would pay the license fees and stay within reasonable bounds in the violation of laws. Local option, or the right of minor political subdivisions of a state to determine for themselves whether liquor traffic may be carried on within their limits, has also had quite a general trial. State-wide prohibition has at different times been attempted by a great many states, the object being to entirely forbid the manufacture, sale, and importation of liquors for beverage purposes within their limits. State dispensary systems, or sale in specified quantities eliminating the saloons, have been inaugurated and worked with more or less success in a few southern states. These are the most general forms of present state regulation and under them practically all the constitutional questions have arisen.

Under the license laws of three of the New England states the question of intoxicating liquors in interstate commerce first came before the Supreme Court. At a previous date it had been judicially determined that it was not competent for a state to interfere with the subjects of interstate commerce until the articles had been sold by the importer or had become mingled with the general mass of property in the state. Under this "original package" doctrine while the property remained in the hands of the

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12 From Lectures on Constitutional Law, by James Parker Hall, Dean of University of Chicago Law School.
13 FREUND, POLICE POWER, 195 et seq.; 23 Cyc 43; STIMSON, POPULAR LAW MAKING, 342.
14 FREUND, POLICE POWER, 198.
15 Ibid., 205.
16 Ibid., 202.
17 Ibid., 205.
18 Massachusetts, New Hampshire and Rhode Island.
20 Brown v. Maryland, 12 Wheat. 419 (U. S. 1827).
importer in its original form it was free from state taxation or control. The result of the License Cases was the affirmance of the constitutionality of state laws requiring the payment of a license fee by the importer before sale could be made in the original packages of importation. In nine different opinions the state laws were justified, but upon so many different theories that the only question definitely decided was that they were valid. These opinions worked out on different theories have tended to confuse and render uncertain the law upon the division of state and federal authority over interstate commerce. It was later said that a majority of the judges thought the power of Congress not exclusive for shortly after this decision a majority refused to affirm that the power of Congress was exclusive. The substance of the opinions seems to be that the "original package" doctrine applies only to cases where Congress has expressly or impliedly authorized the importation, and as Congress had made no regulation on the subject under consideration, it was competent for the states to regulate it as soon as it was landed within their borders. The *dictum* in *Brown v. Maryland* that "we suppose the principles laid down in this case to apply equally to importations from a sister state" was not followed, and the transit being at an end the articles were subject to state tax from which arises the inference that their sale could have been prohibited entirely. The logical result of the License Cases, therefore, would give the states full control of intoxicating liquors upon completion of their interstate journey.


The case of *Cooley v. Board of Wardens,* is important for the establishment of a definite rule for the interpretation of the "commerce clause." A state statute required vessels to receive pilots for entering or leaving its ports with a penalty for failure to do so. It was contended that it was incompetent for a state to enact such a law. In the opinion of a majority of the Supreme Court "the mere grant to Congress of the power to regulate commerce

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22 *Calvert, Regulation of Commerce,* 121; 14 Harv. L. Rev. 542; 1 So. L. Q. 303.
23 See dissenting opinion of Mr. Justice Gray in *Leisy v. Hardin,* 135 U. S. 100, 135 et seq: (1890).
24 *Passenger Cases,* 7 How. 283, 470, 559 (1849).
25 This would not be true if the shipment were from a foreign country and an import duty were paid.
26 12 How. 299 (U. S. 1851).
did not deprive the states of power to regulate pilots.'" Although
the only point decided was as to pilots the Court by dictum sug-
gested what has since become the general rule that "Whatever sub-
jects of this power are in their nature national, or admit only
of one uniform system or plan of regulation, may justly be said
to be of such a nature as to require exclusive legislation by Con-
gress."
Congress had legislated upon the subject of pilots but
the regulations made were in nowise concerned in this case. And
it is interesting to note that the question of how far any leg-
islation by Congress may be deemed to operate as an exclusion of
all state legislation on the same subject was expressly left open
by the Court. By this decision it was made clear that the states
may make regulations concerning local matters, even though inter-
state commerce is affected thereby, yet it is a difficult task to dis-
tinguish what matters are of a purely local character from those
of such general nature or interest which admit only of congres-

sional control. To determine from the decisions where this divi-
sion line lay, except its influence on the traffic in liquors, is be-
yond the scope of this paper.

The question of personal and property rights under the federal
constitution, as affected by state legislation in the exercise of po-
lice power, was definitely settled in the case of Mugler v. Kansas. That

case arose upon a state statute to carry into effect a constitu-
tional amendment inhibiting the manufacture or sale, with a few
unimportant exceptions, of intoxicating liquors. It had previously
been considered that the states had full power to regulate the in-
trastate liquor traffic, but total prohibition was questioned as
beyond that limit. Admitting the right of a state to prohibit the
manufacture of intoxicating liquors within her limits, to be there
sold or bartered for use as a beverage, it was contended that "no
convention or legislature has the right, under our form of govern-
ment, to prohibit any citizen from manufacturing for his own use,
or for export, or storage, any article of food or drink not endanger-

27 PRENTICE, FEDERAL POWER OVER CORPORATIONS AND CARRIERS, 115; 2 WIL-
LOUGHBURY, CONSTITUTIONAL LAW, 657. The rule established by this case was sug-
gested in Gibbons v. Ogden, discussed in Wilson v. Blackbird Creek Marsh Co.,
and was the basis of Mr. Justice Woodbury's opinion in the License Cases. See 4, 8
and 20 supra.
28 27 Stat. at Large, 54. Congress declared "That all pilots in the bays, inlets,
rivers, harbors, and ports of the United States shall continue to be regulated in
conformity with the existing laws of the states."
29 CONLEY v. Board of Wardens, 12 How. 298, 320 (U. S. 1851).
30 123 U. S. 623 (1887).
31 FREUND, POLICE POWER, 214 et seq.
The Supreme Court held that the power to determine such questions is legislative and that under their police powers the states must decide what is "needful for the protection of the public morals, the public health, or the public safety." And it was also held that deprivation of use of property, the chief value of which was its fitness for the manufacture of intoxicating liquors, was not a taking of property for public use without compensation or depriving the citizen of his property without due process of law, on the principle that "no one may rightfully do that which the law-making power, upon reasonable grounds, declares to be prejudicial to the general welfare." The state-wide prohibition law was, therefore, held valid in all respects. There remained but one avenue to secure the coveted beverage, and that was the interstate commerce route. If previous adjudications were to be strictly adhered to there could not be much trouble to the states from that source, except in importations from foreign countries, but state power over goods brought from a sister state, as was announced in the License Cases, was destined to be overthrown.

4. License Cases Doctrine Rejected.

An Iowa statute as a part of a state-wide prohibition system forbade common carriers to bring intoxicating liquor into the state for consignees not authorized to receive the same. An interstate carrier refused to accept in a neighboring state such consignments for transportation, and in a suit for this refusal, the question came to the Supreme Court. That the state law operated as a regulation of commerce among the states was the decision of the Court. "The power to regulate or forbid the sale of a commodity does not carry with it the right and power to prevent its introduction from another state," therefore, intoxicating liquors can be introduced against the will of the people and the state is powerless to prevent it. While this case can not be said to be a reversal of the License Cases the result obtained was, at least, unfriendly to them. For it was also held that state regulations as to liquor are not analogous to those concerning diseased cattle, or meat, or other things detri-
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mental to the safety and health of the community, and not a valid exercise of police power so far as they affected interstate commerce. This put a limitation upon the police power of the states which was soon to be taken advantage of by liquor dealers. The case of *Leisy v. Hardin*, decided two years later, had an injurious effect upon the prohibition laws of the same state, having arisen upon the same statute. Beer was transported into the state and there offered for sale in the "original packages" of transportation. The Court disregarded the result reached in the License Cases and applied the "original package" doctrine wrongly to this case. The foundation of that doctrine was upon the right granted by Congress to sell the imported articles in a state, implied from the collection of an import duty by the federal government, and there is no basis for its extension to commerce between the states in contravention of their police power. But the Court argued that if the importation from another state is allowed the sale of the imported article must also be allowed, "by which act alone it would become mingled in the common mass of property within the state." The Court also in substance said that it was the intention of Congress that interstate commerce should remain free and unrestricted inferred from the absence of regulations upon it. This argument is well met by the dissenting opinion to the effect that the silence of Congress upon the subject after the decision in the License Cases required the inference that the law as then declared by the Supreme Court was considered satisfactory. But the result was that intoxicating liquors had been given a new status. The same protection as given to foreign imports was thus accorded. The subject became national in character in spite of the local character in which it had previously been regarded. The states had lost power they had enjoyed, perhaps passively, for nearly fifty years, and their only hope rested in congressional legislation which would restrict importation of intoxicants sufficiently to render effective their police regulations.

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78 135 U. S. 100 (1890).
79 Brown v. Maryland, 12 Wheat. 419 (U. S. 1827); Austin v. Tennessee, 179 U. S. 343 (1900); see also 22, supra.
80 Leisy v. Hardin, 135 U. S. 100, 124 (1890); 8 Harv. L. Rev. 353.
81 See 23, supra.
82 License Cases, 5 How. 504 (U. S. 1847).
83 14 Columbia L. Rev. 321, 323.
II. POWER SECURED BY FEDERAL LEGISLATION


To meet the intolerable situation produced by Bowman v. Chicago Ry. Co. and Leisy v. Hardin Congress passed the Wilson Act⁴⁴ which provided: "That all intoxicating liquors shipped into any state or territory or remaining therein for use, sale, or storage, should, upon arrival therein, be subject to the laws of such state or territory, enacted in the exercise of its police powers, as though such liquor had been produced therein, and should not be exempt therefrom because introduced in original packages or otherwise." Upon a sale in the original package of a quantity of liquor in "dry Kansas" the constitutionality of this act was determined.⁴⁵ The Court in effect said that so long as Congress had not acted on interstate commerce in a way to allow the laws of the states to operate upon it, it was the will of Congress that commerce should remain free and untrammeled, but when Congress had spoken the result must be to operate as a restraint upon the freedom which silence had insured. The Act was not regarded as giving permission to the states, but rather as taking from intoxicating liquors their interstate commercial character. Power was not delegated to the states but privilege was removed from the subject matter.⁴⁶ Certainly the right of re-sale of an imported article cannot be said to belong to that article if Congress sees fit to take it away and those who argue that by this Act there was a delegation of power to the states must have lost sight of that fact. The power of the states was not increased in the least but such power as they already had was made applicable to the res. With the Act declared constitutional the states for a brief period were enabled to make their prohibitory laws effective. But this lasted so long only as the exact effect of the Wilson Act was yet undetermined.⁴⁷ The first case to come before the Supreme Court after the Act had been declared constitutional was in regard to the validity of the Dispensary Law of one of the southern states.⁴⁸ Restrictions upon the right to import were imposed by the law, and at the same time

⁴⁴ 26 Stat. at Large 313, Comp. Stat. 1913, § 8739; 4 Harv. L. Rev. 221; 19 Harv. L. Rev. 53.
⁴⁷ 4 Va. L. Rev. 303 et seq.
⁴⁸ Scott v. Donald, 165 U. S. 58 (1897); 2 Willoughby, CONSTITUTIONAL LAW 683 et seq.
it gave to duly authorized agents of the state the right to sell intoxicating liquors, thereby recognizing them as lawful commodities. Rightly the Court held that the state law was unconstitutional as a discrimination between domestic and interstate commerce and that it did not fall within the purview of the Wilson Act. While the decision in this case was but local in its application the dissent of Mr. Justice Brown shows that he regarded the Wilson Act as a withdrawal of intoxicating liquors entirely from the operation of the commerce clause of the Constitution and permission to the states to regulate the traffic in them under their powers of police as they might deem best.\textsuperscript{49} If this were the intention and result of the Act the Dispensary Law would of necessity be valid and the decision erroneous.\textsuperscript{50} But, the succeeding cases do not hold that intoxicating liquors were deprived of their interstate commercial character by the Wilson Act.


In the case of \textit{Rhodes v. Iowa} a consignment of liquor was seized under state authority while in possession of a common carrier before delivery to the consignee.\textsuperscript{51} The agent of the carrier was proceeded against for unlawful transportation of liquor and convicted. The sole question was could the state law apply to the liquor while in transit. The Court construed the word "arrival" in the Wilson Act, not to mean arrival at the state line, but at the point of destination and delivery to the consignee.\textsuperscript{52} Therefore, until such delivery to the consignee, within a reasonable time, were made, the state statute could not attach, for the goods were protected by reason of their interstate commercial character.\textsuperscript{53} The statute was invalid and the defendant was discharged with the result that residents could import liquors for their own use into the state which was powerless to interfere until the packages reached them. It was also held in \textit{Vance v. Vandercook Co.}, a case decided at the same time,\textsuperscript{54} that it is competent for states to establish and maintain dispensary systems as they have under the Wilson Act not only the power to forbid, but to regulate and restrict, the sale of intoxicating liquors as well. To these holdings there were very strong dissenting opinions, the first being an ar-

\textsuperscript{49} Scott v. Donald, 165 U. S. 58, 102 (1897).
\textsuperscript{50} Ibid., 107.
\textsuperscript{51} 170 U. S. 412 (1898).
\textsuperscript{52} Ibid., 421.
\textsuperscript{53} Vance v. Vandercook Co. (No. 1), 170 U. S. 438, 462 (1898).
\textsuperscript{54} Vance v. Vandercook Co. (No. 1), 170 U. S. 438 (1898).
gument against limiting the Wilson Act to re-sale within the states;\textsuperscript{55} while the second argued that if it were once conceded that a state may regulate and restrict an article of interstate commerce, the sale and use of which being lawful within that state, it is just as reasonable that it can also forbid its importation.\textsuperscript{56} There are in fact no inconsistencies in these cases if the Wilson Act was considered to permit the states to regulate re-sale of the imported liquor solely, and doubtless the Court so construed it, inferred from the decision in the following case. The limitation on the Wilson Act in \textit{American Express Co. v. Iowa}\textsuperscript{57} probably gave prohibition advocates more concern than all the others combined. It was held that a state could not prohibit consignments of liquor being paid for on delivery; on the theory that such a statute if valid would have an extraterritorial effect in rendering contracts, valid where made, invalid and inoperative. The Court said that the contracts were valid and since they clearly concerned interstate commerce they must be enforced even though the domicile of the consignee said that the contracts were in fact made at the place of delivery.\textsuperscript{58} After these decisions the express companies became veritable distributaries for the liquor dealers who manipulated their shipments by means of fictitious names and effectively evaded the state laws.\textsuperscript{59}

Whether or not the Wilson Act as narrowed was the relief sought by Congress to be given the states, it must be conceded that the result was the logical outcome of the decision\textsuperscript{60} declaring it constitutional. For in the words of that decision the Act of Congress "'imparted no power to the state not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.'" The limitations upon the Act did not as was commonly supposed rob the states of their power, but the Act itself fell short of granting what the states desired. There was, however, in the Wilson Act one gain for the states in that they could under their police power prohibit the re-sale of intoxicating

\textsuperscript{55}Rhodes v. Iowa, 170 U. S. 412, 426 (1898). Mr. Justice Gray dissented with whom Mr. Justice Harlan and Mr. Justice Brown concurred.

\textsuperscript{56}Vance v. Vandercook Co. (No. 1), 170 U. S. 438, 467 (1898). Mr. Justice Shiras dissented in part, with whom concurred Mr. Chief Justice Fuller and Mr. Justice McKenna.

\textsuperscript{57}196 U. S. 133, 143 (1905).

\textsuperscript{58}Adams Express Co. v. Kentucky, 208 U. S. 129 (1907); 2 Willoughby, \textit{Constitutional Law}, 692.

\textsuperscript{59}20 Case & Com. 448; 4 Va. L. Rev. 353, 364.

\textsuperscript{60}In re Rahrer, 140 U. S. 545 (1891).
liquors in the original packages even when imported from foreign countries. Theoretically state power was not yet as great under the License Cases, while practically it was greater by reason of its extension to foreign importations. Nevertheless the Wilson Act was generally conceded to have been a failure.

Some of the practices permitted under the decisions following the Wilson Act are now forbidden by the United States Penal Code. To knowingly deliver intoxicating liquors to a person other than the bona fide consignee renders the offender liable to fine and imprisonment. Shipments of intoxicating liquors to be paid for upon delivery are under penalty prohibited. It is likewise unlawful for a consignor to ship liquors unless the packages are labeled in a prescribed manner. While in these provisions, which apply only to interstate shipments, there is no grant of power to the states, their passage by Congress shows a willingness on the part of the federal government to cooperate with and to aid the states in making their prohibitory laws effective. In fact by recent enactment and by a bill now pending Congress seems to have reversed its former policy in respect to liquor legislation and now to regard regulation of the traffic as a national governmental function.


The Wilson Act having failed to give the desired relief and in response to an increasing sentiment that Congress should take further action the Webb-Kenyon Act was the result. Substantially the Act is as follows: "The shipment or transportation of intoxicating liquor, from one state into any other state, which is intended to be received, possessed, sold, or in any manner used, in violation of any law of such state is hereby prohibited." The case of chief importance arose under the stringent prohibition laws of West Virginia and the Webb-Kenyon law was declared constitutional in a sweeping decision. The questions determined were, that Congress may exclude intoxicating liquors from interstate commerce for such states as prohibit its sale, that such ex-

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63 Food-Control Bill.
clusion allows the state laws to attach at the state line to consignments of liquor instead of in the hands of the consignee, and that Congress has not delegated its power to regulate commerce to the states. Is this decision consistent with American Constitutional Jurisprudence? The answer is: if Wilson Act is constitutional, yes; if not, no. By that Act Congress exercising its plenary authority in the regulation of commerce simply said, that intoxicating liquors are no longer to enjoy the protection of interstate commerce which had been implied from its failure to enact laws applicable to the subject. Thus the privilege of being sold or otherwise used by the consignee against the will of the people of the state was taken away. The police power of the states which had been lying in abeyance during the long period of silence by Congress came forward to do the people’s will. From that date it was competent for the states to enact laws and make them attach to the subject-matter as soon as it was in the hands of the consignees. This was held to be not a delegation of power to the states. The Webb-Kényon law extends this principle to the boundary lines of the states. If Congress could say that intoxicating liquor has no protection from the federal government after it reaches the hands of the consignee, it follows that it may remove this protection at an earlier time, and this is what it did. But this protection is removed only from such liquor as will be prohibited at its destination. That is, prohibited by valid laws of the consignee state. Before the Wilson Act it was incompetent for a state to pass valid laws concerning even receipt of intoxicants, but afterwards its laws were valid and Congress recognized them. Congress, therefore, said that the states may regulate receipt, possession, sale, and use of intoxicating liquors after they are in the hands of consignees without interference by the federal government. The power to make these regulations was not granted by Congress but was inherent in the states by reason of their sovereignty. It is true that they could not exercise this power so long as inaction of Congress inferred that it had been granted to the federal government, but the inference did not take it away. The Wilson Act revived this power by removing the restraint of its exercise. The Webb-Kényon law goes a step further and in effect says, that where the states see fit to exercise their power as revealed to them by the Wilson Act other restraints will also be removed.67 The

67 2 Cornell L. Q. 283; 17 Columbia L. Rev. 144; 26 Yale L. J. 399. "As the power to regulate which was manifested in the Wilson Act, and that which was
Webb-Kenyon law, therefore, is consistent with the Wilson law, is not a delegation of congressional power to the states, and is in accord with American Constitutional Jurisprudence.

IV. CONCLUSION

To avoid a recurrence of the vexatious questions which arose under the Articles of Confederation, the framers of the Constitution wisely left the question of regulation of commerce in the hands of the federal government. There were local matters, however, which the states felt called upon to regulate and conflicts soon arose. At first the Supreme Court was very slow indeed to acknowledge that any power whatever in respect to interstate commerce was left in the domain of the states, but as the federal government grew in strength and gained the people’s confidence this harsh rule was gradually relaxed. First state legislation in purely local matters of commerce was valid where Congress had not legislated. Next the states could determine rules for ships entering and leaving their ports even though Congress had enacted laws on the subject. Then they were permitted to require a license fee for the sale of intoxicating liquors. And finally they could generally keep out what would be dangerous to the health and morals of their citizens. As public opinion began to regard intoxicating liquor in this latter category an attempt was made by the states to exclude it. This attempt met with failure and liquor was given the status of a foreign import affording it special protection from the federal government. What power the states had exercised in respect to it was taken away, except as applied wholly intrastate. To remedy a bad situation Congress was importuned and the result was a law by which the states were enabled to prohibit re-sale on the original packages. While the states gained in a measure what they desired they were still unable to put into practice the laws on their statute books, so they sought further and more stringent legislation. The Webb-Kenyon law as a result enables the most drastic of these laws to be enforced. This is done by a withdrawal of privilege from the subject matter and not by a delegation of federal power to the states over it. The policy of the federal government to aid and to cooperate with the states is now fully assured and the traffic in intoxicating liquors which so long enjoyed immunity because of a chasm between the state and the federal governments bids fair now to be made amenable to law.

exerted in enacting the Webb-Kenyon Law, are essentially identical, the one being but a larger degree of exertion of the identical power, etc.” See 66 supra.