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# The Power of Congress to Regulate Commerce between the States

Andrew Strong White  
*Cornell Law School*

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The Power of Congress to regulate Commerce between  
the States.

by

Andrew Strong White.

## CHAPTER I.

The History of the commerce clause in the United States constitution.

## CHAPTER II.

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THE POWER OF CONGRESS TO  
REGULATE COMMERCE BETWEEN THE STATES.

CHAPTER I.

The History of the Commerce Clause in the United States  
Constitution.

Sec. 8, Sub. 3 of the U. S. constitution provides as follows; "The congress shall have power, to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." To obtain a thorough understanding of this important clause of the constitution it is imperative that we review its history, in order to determine how it came about that States peopled with inhabitants so jealous of their liberty, so averse to centralization of power, could have delegated this powerful prerogative to a general government. We will find the reason to be urgent necessity-

We note in the early history of the American colonies the unjust and tyrannical treatment of England. The growth of the spirit of retaliation and the steps that were taken toward independence. During this early period the colonies were governed by the crown of Great Britain or by Parliament. The representation of New England in the administration of her own affairs was indirect and insufficient. The tendency to form a separate union freed from monarchical oppression is illustrated by the New England Confederacy of 1643, the Temporary Congress of 1690, the Convention of 1754 and the Stamp Act Congress of 1765. Upon the outbreak of hostilities between the two countries in 1774, a provisional central government was established known as the Continental Congress. This government was revolutionary in its nature. The union formed under it was accepted by the people and the exercise of some undefined general powers were delegated to it. It was given the right to declare war, to conclude peace, to form alliances, and to contract debts on the credit of the Union. As the Congress commanded no credit either at home or abroad its provisions could rarely be put into effect. A government of this nature, bound by such

restrictions could not answer long the needs of a growing nation. The prospect of a great war with England emphasized the necessity for more efficient governmental machinery. It did not have the ability to enforce its laws and practically was no more than an advisory board. Its importance became so manifest that it was finally discarded.

A new government was formed under the Articles of Confederation and Perpetual Union in the year 1777. This instrument declared that; "each State retains its sovereignty, freedom, and independence and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States in Congress assembled." It was a league of friendship for their common defense and for the promotion of liberty. Although it was stronger and more efficient than the government it supplanted it was slow and inadequate for the purpose intended. It might make laws but it could not enforce them without the consent of the States. This necessitated a prolonged discussion of every fundamental step, gave room for jealousies and bred estrangement between the different sections of the country.

Up to this time no powers for the regulation of com-

merce, external or internal had been surrendered by the States except in the most general way. Act 6, Sec. 3 of the Articles provides that; "no State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or State in pursuance of any treaties already proposed by Congress to the courts of France and Spain." Act 9, provides that; "the United States in Congress assembled shall have sole and exclusive right and power of determining on peace and war, except in the cases of the 6th Article; of sending and receiving ambassadors; entering into treaties and alliances; provided, that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever." From this we see that the separate States retained the right to impose duties on imports. Although far from perfect this constitution existed through the long struggle for independence. It was more stable and more advanced than those which had

preceded it. It contained more elements of sovereignty. The chief significance of it was that it served as a stepping stone to something better. It illustrates the drift of popular thought towards the establishment of that last great plan of government for American freedom and independence, the present United States constitution.

The Articles of Confederation failed on account of their own weakness, their inability to enforce obedience, to raise money, and to maintain respect abroad. They were also defective because they provided no uniform laws to regulate commerce with foreign nations and among the several States. Each State passed its own rules and provisions. The result was that a few of the States which had the advantage of fine harbors prospered at the expense of those which were dependent upon them and this led to jealousies and rivalries which threatened a speed disruption of American peace and comfort. We can find no more elaborate dissertations on these subjects than those presented by Hamilton, Jay, and Ma<sup>d</sup>ison in various numbers of the Federalist.. It was largely through the influence of their pens that our present constitution was made possible in 1789.



Not that they originated anything but because they educated the people up to it by arguing them out of their innate prejudices against a strong central government.

By our federal constitution the power to regulate commerce with foreign nations and between the States is delegated to Congress. Perhaps the most important cause leading to the adoption of the constitution of the United States was the system of taxation and discrimination practiced prior to its adoption. "It was intended," said the learned judge in *Cook v State of Pa.* 97 U. S. 566 in his allusion to the power conferred upon Congress to regulate Commerce, "to guard against any taxation by the States which would interfere with the freest interchange of commodities among the people of the different states" or, as was suggested by Mr. Madison in 1781, "it was indispensably necessary that in the United States, in Congress assembled should be vested with the right of superintending the commercial relations of every State, that none might take place which would be contrary to the general interests." The intention to remove the discriminations which existed under the Confederation further appears by Sec. 9 of

Article I. of the Constitution which provides that;  
"No tax or duty shall be laid on any articles exported from any State. No preference shall be given by any regulation of commerce, or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another."

A striking example of this same evil, and its cure, in another nation is to be seen in the recent history of the states now composing the German Empire. In its early history it was composed of separate states which though lying contiguously to each other, peopled by the same race, and speaking the German language, were distinct and separate municipalities, each with its own system of duties and taxation. Upon the frontiers of these states the custom officials were posted to collect a duty on all articles of commerce. This system became so burdensome on travellers and merchants and was the source of so much discontent that it led to a commercial union called the German Zollverein. It is a significant fact that the German empire united commercially before it did politically.

The Austrian empire was relieved from a similar situation by Joseph II. and it is quite an interesting and

important truth that all nations have gradually swept away these barriers to the progress of freer national and inter-national commercial relations.

The commercial clause in the United States Constitution was not an original conception but merely the embodiment of a most advanced theory for the regulation of commerce.

## CHAPTER II.

The Interpretation and Construction of the Commerce  
Clause of the United States Constitution.

It is impossible to define the limits of Congressional power over commerce for the reason that its scope is being constantly widened with the advance of civilization and commercial methods.

The provisions of the constitution which serve as land marks to the constitutional lawyer in interpreting its meaning are as follows.

Art. I. S. 8, Sub. 3.

That Congress shall have power, "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Art. I. S. 10, Sub. 2.

That no State shall without the consent of Congress "lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

Art. I. S. 9, Sub. 5.

"No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another."

Judge Cooley in his Principles of Constitutional Law says; "the word commerce is not limited to traffic; to buying and selling and exchange of commodities; but it comprehends navigation also, and all that is included in commercial intercourse between nations and ports of nations in all its branches and is regulated by prescribing rules for carrying on that intercourse." Wherever therefore, navigation is not entirely confined to one state it comes under the power of Congress. Although it is easy to establish this general proposition it is most difficult to draw a well defined line between the conflicting interests of State and nation. Since the late decision of the U. S. Supreme Court in the case of the "State of Maine v. the Grand Trunk R. R. of Canada" we are given reason to doubt that there are any settled limits beyond which the States may not go. Prior to this decision it was supposed to be well settled that a

State could not tax the receipts of inter-state commerce but the conclusion to be drawn from this case is that it can. The great weight of authority has been against such a view. In the case of the Philadelphia and Southern Mail S. S. Co. v. The Commonwealth of Pennsylvania it was held that; "The imposition of a tax by the State of Pennsylvania, upon a steamship company incorporated under the laws of Pennsylvania, upon the gross receipts of such company, derived from the transportation of persons and property by sea between different States, and to and from foreign countries, is a regulation of inter-state and foreign commerce, in conflict with the exclusive power of Congress under the constitution of the United States." These cases serve to illustrate the conflict of holdings and show the unsettled condition of the law.

The flexibility of the Federal constitution has never been so well exemplified as by its commerce clause. Invention has changed the method of business, introduced new principles, and created new occupations. The progress of science has revolutionized business. Commercial and industrial affairs are constantly changing and improving. With this growth our law has developed. The provisions of the Constitution are applied to prin-

ciples never dreamed of by its makers. It was forty years after the adoption of the Constitution before a steamboat was successfully used to take part in the actual transportation of goods and the navigation of the waters of the country. The railroad, the steamboat, the telegraph, are modern inventions that have raised important questions for our courts to decide.

In interpreting and construing the constitution we find a labyrinth of conflicting decisions and dicta as regards the relations existing between the general government and the separate States in reference to the power to regulate commerce. To put each in its proper sphere is a difficult task. The exclusive jurisdiction of Congress over subjects of inter-state commerce has not been judiciously recognized until a recent period. Prior to 1886 by an almost unanimous concurrence of decisions the States were permitted to exercise in certain cases control over inter-state commerce. Since the passage of the Inter-State Commerce Act this has been somewhat modified. In the case of *Munn v. the State of Illinois* 94 U. S. 113, the judge said; "It is not everything which effects commerce, which amounts to a regulation of it within the meaning of the constitution.

The regulation of elevators is of domestic concern and until congress acts directly in reference to inter-state relations the State may exercise all acts of government over them," although it was conceded that inter-state commerce was effected by such regulation, and also in the case of the Chi. B. & Q. R. R. v. the State of Iowa 94 U. S. 155, the court said ; "A State may pass such rules as are necessary to promote the welfare of its citizens within its own jurisdiction even though those without the State may be indirectly effected." As early as 1829 the same general principle was held in Wilson v. Blackbird Creek Marsh Co. 2 Peters 245, and as late as 1882 in Transportation Co v. Petersburg 107 U. S. 691, where it was held that; "Wharfage charges were subject to local State laws and that until Congress has acted the U. S. could not act through its courts upon the subject."

The States have seldom if ever claimed the right to interfere directly with inter-state commerce. In 1870 in 15 Wallace 232, an act of the Pennsylvania legislature was held void which levied a tax upon all freight carried through the State by any railroad and in Hall v. De Cuir 95 U. S. 485, the courts said; "It is hard to



draw the line which separates the powers of the States from the exclusive powers of Congress but we may safely say that a State which seeks to impose a direct burden upon inter-state commerce or to interfere directly with its freedom does encroach on the exclusive power of Congress." In *Gibbons v. Ogden* 9 Wheaton 1, it was held that; "A State law giving Livingstone and Fulton the exclusive right to navigate New York waters with steam was held unconstitutional as a direct interference with commerce. In 107 U. S. 678 a regulation of the times of opening and closing bridges was considered within the jurisdiction of the State as only indirectly effecting commerce. In the case of the *Pensacola Tel. Co. v. Western etc. Tel Co.* 96 U. S. 1 the court held; "That it is not only the right but the duty of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation." By a comparison of these cases one may observe that to constitute commerce between the States it is essential that it be not confined to one state exclusively but concern more than one. Judge Cooley aptly says; "The commerce of a State which congress may con-

trol must be in some stage of its progress extra-territorial". In *Veazie v. Moor* 14 Hun. 568 it is held that; "Because the products of domestic enterprise in agriculture or manufactures or in the arts may ultimately become the subjects of commerce outside the State, it cannot be properly concluded, that the control of the means or the encroachments by which enterprise is fostered and protected is implied in this important grant of power." And again in *U. S. v DeWitt* 9 Wall. 41 the court said; "To a law of congress which undertakes to regulate the sale of an article within a State, and to impose penalties for preparing, offering for sale, or selling it except after it has been subjected to a prescribed test as a protection against explosions, is inoperative within State limits." The principle that congress has only such powers as are delegated to it by the constitution is well illustrated in the last case cited. Where Congress has jurisdiction it is exclusive and although it may never have legislated on the subject it is an encroachment on its domain and void for a State to do so. It was so held in *Welton v Missouri* 9 U. S. 275 Judge Cooley says; "Inaction by Congress is equivalent to a declaration that the commerce

under its control shall remain free and untrammelled."

By careful sifting of the cases on this subject we are enable to lay down a few general propositions which are useful in the study of this part of the constitution.

Firstly, it is a fundamental deduction from the authorities that the States cannot pass regulations effecting the navigation of public waters, the case of *Gibbons v Ogden* 9 Wheaton 1 before referred to is authority for this statement, also the case of *Mann v New Orleans* 112 U. S. 69 in which it was held that; " A statute of Louisiana imposing a license tax, not on the vessel as property, but on the business of owning and operating tow-boats between New Orleans and the Gulf of Mexico, is invalid, as it puts a price on the privilege of navigating the Mississippi." The law is in some cases clear and evidently well settled but many fine distinctions still exist. A good illustration of this is that while Congress takes upon itself the duty of maintaining harbors and rivers in navigable condition, also the building of light-houses and piers, it leaves to the States the regulation of their own pilot and quarantine laws.

Secondly, in regard to the importation of property from another State or country. It is without doubt settled law that a State cannot tax nor require an importer to take out a license to carry on his business, as such a tax or license would necessarily be a restraint on inter-state commerce and consequently void. Such was the holding in *Brown v Maryland*, 12 Wheaton 419. In the case of *Waring v the Mayor* 8 Wall 110 it was held "That imported articles may be taxed after they have passed from the hands of the importer even when they remain in the original package. There is a conflict of authority on this point it having been frequently held that an imported article continues an article of commerce so long as it remains in the original package. The law on this point was however definitely settled by 26 Statutes at Large 313 which provides that; "All liquors transported into another State, or remaining therein for use should, upon arrival in the State, be subject to its laws as though produced there, and should not be exempt therefrom by reason of being introduced therein in the original package."

Thirdly, as to the regulations affecting the bringing into a State of persons from another State or country.

It has been held on several occasions by the U. S.

Supreme court that, a State law requiring a tax to be imposed on each immigrant landing and seeking admittance at its port of entry was unconstitutional. In the celebrated Passenger Cases 7 How. 283 the court held that; "A law of N. Y. State requiring every master of a vessel bringing passengers from other countries, and landing them within its limits, to pay to the State a certain sum per head for every such passenger was a usurpation of federal power and consequently unconstitutional and void," and in Henderson v Mayor 92 U. S. 259 it was held that; "An act which imposed a burdensome condition on the shipmaster with an alternative payment of a small sum of money, for each passenger landed, was held void as being a tax on the shipowner for the right to land the passenger, and in effect a tax on the passenger himself."

Fourthly, as to laws affecting the exportation of property to another State or country. It seems to be well settled that a State cannot impose a tax on the mere act of exportation. In the case of Almy v California 24 How. 169 a stamp duty imposed on all bills of lading of goods sent out of the State was held invalid : as a direct interference with inter-state and foreign

commerce. In *State v. Indiana and Ohio Gas Co.* 120 Md. 575 the courts said that; "A State cannot forbid the conduct from it in pipes of natural gas." It has however on various occasions been absurdly claimed that goods produced in a State <sup>and</sup> prepared for shipment out of the State should be exempt from taxation. This proposition has never received any judicial sanction. In *Coe v. Enol* 116 U. S. 517 the court maintained that; "The main fact that property produced in the State is ready for shipment and that the owner intends to ship it, will not exempt it from State taxation, " and where the manufacture of an article is forbidden by law as in the case of oleomargarine or liquor it can't be made or distilled solely because it is intended for export. It was so held in *Kidd v. Pearson* 128 U. S. 1.

Fifthly, as to regulations of the business of carrying property and persons in the prosecution of foreign and inter-state commerce.

There is no controversy over the question of inter-state commerce. The regulation of it is left exclusively to the separate States. They have however no jurisdic-

tion over inter-state commerce except such as is necessary to enforce their police regulations. Congress has general power over all commerce which involves the interests of more than one State. In the case of State Freight Tax 15 Wall 232 a statute of Pennsylvania imposing a tax to be paid by railroads upon freight taken up within the State and carried out of it, and taken up without the State and brought within it was held void. That a State could not tax the gross receipts of inter-state commerce was considered law prior to the "Maine" case. It is however obvious that the conclusion to be drawn from the reasoning in this case is that it can. It might be claimed that the "Maine" case was foreshadowed by the holding in Pullman Palace Car Co. v. Pa. 11 Sup. Ct. Reports 876 but I think there is a clear distinction. In the latter case a statute of Pennsylvania imposed a tax, on the capital stock of every railroad and car company in the proportion which the number of miles operated by it within the State bore to the whole number operated by it every where, was upheld as to the non-resident Pullman Car Company, "because it had within the State

constantly engaged in its business, though mainly operated in inter-state journeys, a certain number of its cars, which thus acquired a situs there for taxation, the tax being in reality upon the cars as property". This holding is by no means unchallenged but the drift of judicial opinion seems to be in its direction. The court was divided upon the question. The prevailing opinion distinguished this tax from an occupation or license tax, or a tax on the right of transit, and extended the doctrine to the W. U. Tel. Co. v. Mass. 125 U. S. 530, when a like tax on fixed property was sustained.

To sum up the situation we find that Congress has power to regulate commerce with foreign nations and between the States. There is no concurrent jurisdiction between Congress and the States but the States are allowed to pass such police regulations as they deem necessary to protect the health, comfort <sup>and</sup> welfare of their citizens.

In the discussion of this subject I have followed largely a classification suggested by Judge Cooley as it is the clearest presentation of the great mass of authority touching directly or indirectly upon this important sub-



ject. The illustrative cases have been chosen with care and selected as the clearest embodiment of the principles laid down.

## CHAPTER III.

## The Police power of the States.

The United States constitutional limitation upon the power of a State to legislate over its own affairs is found in, Amendment XIV Sec. 1. which reads as follows: "nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." This is a fundamental principle of justice. It was acknowledged by King John of England in the Magna Charta. In 1789 when the States were asked to ratify the proposed constitution of the United States, as drawn up at Philadelphia, they imposed the condition that they should be guaranteed certain rights. This was granted and upon the adoption of the constitution Congress passed the first ten amendments in substance a Bill of Rights. With this assurance, for the security of their liberties, the States ratified the

constitution and by so doing became parts of one sovereign nation. The fifth of these amendments read; "no persons shall be deprived of life, liberty, and property without due process of law."

Under the constitution of the United States the separate States retained only such elements of sovereignty as they had not delegated to Congress and within their proper sphere were left to legislate for their own welfare and happiness. The Federal government is one of delegated authority its scope is definitely defined, and it cannot act except within its prescribed sphere. The power of the different States to legislate for their own health and prosperity is commonly known as the Police power. Blackstone defines it to be; "The due regulation and domestic order of the kingdom, whereby the inhabitants of a State like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood and good manners, and to be decent, industrious and inoffensive in their respective stations."

To comprehend the discussion of this subject an ex-

planation is necessary of the meaning of the constitutional guaranty that; "No State shall deprive its citizens of life, liberty or prosperity without due process of law." I can find no fitter words of explanation than those used by the court in the case of *Bertholf v O'Reilly* 74 N. Y. 509 where it was aptly said; "The main guaranty of private rights against unjust legislation is found in that memorable clause in the Bill of Rights, that, no man shall be deprived of life, liberty or property without due process of law. This guaranty is not construed in any narrow or technical sense. The right to life may be invaded without its destruction. One may be deprived of his liberty, in a constitutional sense, without putting his person in confinement. Property may be taken without manual interference therewith or its physical destruction. The right to life includes the right of the individual to his body in its completeness and without its dismemberment, the right to liberty, the right to exercise his faculties and to follow a lawful avocation for the support of life, the right of property, the right to acquire property and enjoy it in any way con-

sistent with the equal rights of others and the just exactions and demands of the State."

By "due process of law" is meant that no person shall be deprived of life, liberty or property without a fair trial. The term is synonymous with "law of the land" which means according to fundamental principles of justice. In *Thorpe v Rutland, etc., R. R.* 27 Vt. 150 the court said; "The police power of the State extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State." These laws are passed by the legislature of the State and if they are adapted to protect the peace, health and good order of the people the judicial department cannot interfere.

It was held in the important *Slaughter House Cases*, 6 Wallace 36 that, "a State law granting to a State corporation the exclusive right for a term of years to control the slaughtering of cattle in and near to one of its cities, and requiring that all cattle and other animals intended for sale or slaughter in that district shall be brought to the yards and slaughter houses of

the corporation, and authorizing the corporation to exact certain prescribed fees for the use of wharves and for each animal landed or slaughtered, may be maintained as a State regulation of police."

The regulation of the sale of intoxicating liquors also belongs to the States, but a State cannot prohibit the importation of liquor nor its sale in the original package, for it is then an article of commerce and under the control of Congress. The principles have been repeatedly laid down by the U. S. Supreme court. It was held in the License Cases 5 How. 504 and in *Mugler v Kansas* 123 U. S. 623. They remain in so far as they have not been superceded by statute.

The prohibition and the manufacture of oleomargarine in imitation of butter has been held constitutional in along list of cases. In *Powell v Pennsylvania* 127 U. S. 678 a statute of the State of Pennsylvania forbidding the manufacture and sale any substitute for butter was held constitutional and the court declared that it was not in its province to declare the act unconstitutional but that the remedy of the oppressed

was at the polls and through the legislature. The grounds for these decisions were that liquor and oleomargarine being detrimental to the health and good morals of its citizens the States could constitutionally prohibit their use by the exercise of their police power.

The States may regulate the transportation of petroleum, natural gas, and high explosives through their territory.

Immigrants suspected of having contagious diseases may be detained, inspected and dealt with as necessity requires. In the case of *R. R. Co. v Husen* 95 U. S. 465 the court held that; "While we unhesitatingly admit that a State may pass sanitary laws and laws for the protection of life, liberty, property or health within its borders, while it may prevent persons and animals suffering under contagious and infectious diseases, or convicts, etc. from entering the State and while for the purpose of self-preservation it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the State beyond what is absolutely necessary for self-protection. It may not, under cover of exerting its po-

lice power, substantially prohibit or burden either foreign or inter-state commerce. The police power of a State cannot obstruct foreign commerce beyond the necessity of its exercise and under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal constitution." The regulation of the pilot and harbor laws is left to the States although Congress has concurrent jurisdiction. In *Sprague v Thompson* 118 U. S. 90 the court held that, "The regulations must not discriminate between vessels from different States." It was also held constitutional for the State of Alabama to pass a law requiring that all locomotive engineers be examined for color blindness in *Smith v Alabama* 124 U. S. 465. The State may also require of railroad corporations that they maintain gates or flagmen at crossings to protect the lives of its citizens. Cattle guards may also be required.

While it is true that the waters of a State that form a part of the highways of inter-state and foreign commerce are under the control of Congress the States at all times have the right to improve those which are entirely



within their borders, and to establish ferries across them, and to make ferry companies take out licenses from the States for the privilege. *Ferry Company v East St Louis* 107 U. S. 365. In some cases, noteworthy among which is *Gilman v Phil.* 3 Wall 713 the States have been allowed to interfere to some extent with commerce. In the case sighted above the court held that; "A State under the protection of federal law might ridge a navigable stream even when it was to some extent an impediment to commerce."

A State has the right to impose such duty on imports and exports from and to foreign countries as are necessary to execute its inspection laws. United States Constitution. Art. 1. S. 10. Cl.v.

In 1885 the Supreme court of the United States said, in *Gloucester Ferry Co. v The State of Pennsylvania* 114 U. S. 196, "As to those subjects of commerce which are local or limited in their nature or sphere of action, the State may prescribe regulations until Congress assumes control of them; as to such as are national in their character and require uniformity of regulation the power of Congress is exclusive and until Congress acts such com-

merce is entitled to be free from State exactions and burdens. "Up to 1886 we find from a review of the leading cases that in the absence of express regulations by Congress inter-state commerce might be burdened to a large extent if the burdensome laws but took the nature of police regulations. This sort of thing has however been largely checked since the passage of the Inter-state Commerce Act. In the case of *In re Barber* 39 Fed. Reporter 64, a statute of Minnesota which in the guise of a police regulation required that all dressed meats offered for sale in that State should be inspected alive twenty-four hours before such sale was held unconstitutional as a usurpation of federal power. In *Mugler v Kansas* 123 U. S. 623 the court held that; "A State when providing for the protection of the public health, the public morals for public safety is subject to the paramount authority of the constitution of the United States; and may not violate rights secured or guaranteed by that instrument or interfere with the execution of power confided to the general government."

While, on the one hand, a State must not use its police power as an instrument of fraud the United States gov-

ernment must not, on the other, declare police laws of the States unconstitutional simply because they may remotely effect inter-state commerce. Congress, in its delegated capacity, has absolutely exclusive power within its own domain but this great power must be used with justice and not contrary to the absolute rights of the people.

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**Mugler v Kansas** 123 U. S. 623.