

# Washington University Law Review

---

Volume 4 | Issue 4

---

January 1919

## The Growth of Federal Control over Business Since the Establishment of the Interstate Commerce Commission

R. H. McRoberts

*Washington University School of Law*

Follow this and additional works at: [https://openscholarship.wustl.edu/law\\_lawreview](https://openscholarship.wustl.edu/law_lawreview)



Part of the [Commercial Law Commons](#)

---

### Recommended Citation

R. H. McRoberts, *The Growth of Federal Control over Business Since the Establishment of the Interstate Commerce Commission*, 4 ST. LOUIS L. REV. 192 (1919).

Available at: [https://openscholarship.wustl.edu/law\\_lawreview/vol4/iss4/4](https://openscholarship.wustl.edu/law_lawreview/vol4/iss4/4)

This Note is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact [digital@wumail.wustl.edu](mailto:digital@wumail.wustl.edu).

# ST. LOUIS LAW REVIEW

---

Published Quarterly During the University Year by the  
Undergraduates of Washington University School of Law.

---

## BOARD OF TRUSTEES

CHARLES NAGEL  
EDWARD C. ELIOT  
RICHARD L. GOODE  
JAMES A. SEDDON  
THEODORE RASSIEUR

JOHN F. LEE  
WALTER D. COLES  
FREDERICK N. JUDSON  
FRANKLIN FERRISS  
P. TAYLOR BRYAN

## EDITOR

P. F. PLUMMER

## BUSINESS MANGER

WESLEY A. LUEDERS

## ASSOCIATE EDITORS

J. H. ZUMBALEN

TYRRELL WILLIAMS

---

## NOTES

### THE GROWTH OF FEDERAL CONTROL OVER BUSINESS SINCE THE ESTABLISHMENT OF THE INTERSTATE COMMERCE COMMISSION

The last thirty-two years have marked an era of sweeping and important changes in our national government. To meet the new needs of business and commerce Congress has developed much greater powers than it exercised fifty or even thirty years ago and has extended its activity beyond its old limits until at the present time the legislative power of the Nation has reached a point that would have been regarded as dangerous by the framers of the Constitution. Yet this growth has been in response to a strong public demand, and has resulted favorably to the welfare of the people.

Owing to the limited length of this article, many important subjects can only be mentioned; numerous other interesting questions must be entirely omitted. It will, therefore, be attempted only to summarize the broad steps in the development of our system of Fed-

eral regulation of "trusts" and large combinations of capital; to point out the growth of the Federal Police Power over commerce; to show the relation of Federal to State Power over commerce; to indicate the use of the Taxing and Money Powers as a means of control over business; and to note the use of the Postal Power for the same purpose.

In the attempt to evolve a proper system of regulation of "big business," four methods have been tried corresponding to four different views of the public as to the source of the "trust" evil. First, it was thought that, since the "trusts" thrived on rebates and secret discrimination, the trusts would be destroyed if these were stopped. The result was the Commerce Act of 1887. The second method was the outgrowth of the theory that the act of combination itself was the source of evil and should be forbidden. This produced the Sherman Anti-trust Act of 1895. In the third period, it was admitted that the combination was an economically sound mode of doing business and that the evil lay in over-capitalization and stock-inflation. Publicity was the proper remedy for this and the result was the laws of 1903 and 1909. Finally, in the fourth stage, it was seen that some administrative body, independent of Congress, was needed to apply the regulative laws to the changing aspects of the problem.

#### THE INTERSTATE COMMERCE ACT.

The evil of railway discrimination in its infinite variety of modes has been one of the foremost questions arising from the regulation of commerce by the Federal Government and the entire practice was forbidden by the Act of 1887 and the amendment of 1903. Since the original act applied only to the carriers, it was difficult, if not impossible, to enforce it. However, the amendment of 1903<sup>1</sup> punished both shipper and carrier, and the grosser forms of rebating have steadily diminished. Innumerable attempts have been made to evade the act, but the law has been applied so as to include every device.

The discrimination due to the difference in railway rates to different sections of the country, resulting from the natural interest of the railways to build up the long haul, was also attacked in the Law of 1887. Amidst the maze of conflicting interests between the various

---

1. "It shall be unlawful for any person, persons or corporation to offer, grant, give or to solicit, accept or receive any rebate, concession or discrimination, in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act."

"Every person or corporation, whether carrier or shipper, who shall knowingly offer, grant or give, or solicit, accept or receive any such rebate, concession or discrimination shall be deemed guilty of a misdemeanor."—Act Feb. 19, 1903, c. 703.

cities and sections of the country in their competition for the same markets, there was needed some impartial tribunal to survey the whole field of rates and consider each local question in its relation to the entire problem of industrial competition; such is the work of the Interstate Commerce Commission, which has been forced to become the economic Supreme Court of the American transport world.<sup>2</sup> In addition to the railways, the powers of the Commission extend to private car lines, express companies, parlor cars, sleeping cars, pipe lines, telegraph, telephone and cable companies, storage charges, shipment of goods partly by rail and partly by water, etc. Further, the Commission prescribes a uniform system of accounts for carriers and requires reports of their earnings. It enforces the law regarding safety appliances on interstate trains, and all rates and changes in rates are subject to its approval.

The results of these laws have amply justified their passage; rebates have not ceased but have been suppressed and severely punished; pooling has diminished; thousands of complaints are received and considered yearly and the beneficial results have been great. While there has been, of course, a certain amount of criticism of the Commission's rate-making, nevertheless the main results have been to carry out the purposes of the law in securing greater fairness for all shippers and all sections of the country.<sup>3</sup>

Generally speaking, the Federal authorities have no power over intrastate commerce, although an agency of intrastate transportation is subject to Federal regulation if its carriage forms part of the interstate system.<sup>4</sup> This doctrine was further extended, in 1911,<sup>5</sup> to the practical control of state trade where such comes in contact with the national commerce, and it was more firmly fixed by the decision in *Southern Railway vs. U. S.*,<sup>6</sup> construing the Federal Safety Appliance Act of 1903. As opposed to the extension of the Federal authority, it was held in the *Minnesota Rate Cases*<sup>7</sup> that a State Railway Commission might lower intrastate rates, even though approved interstate rates might thereby be affected. Thus, in effect, saying that unless

---

2. A special Commerce Court was established in 1910 to consider appeals from the rulings of the Commission, but unfortunately was abolished in 1913.

3. Another great service rendered by the Government has been its successful effort to avoid great railway strikes through arbitration. This has been done by means of the Erdman Act of 1898, as amended in 1913.

4. *The Daniel Ball*, 10 Wallace, 557; 1870.

5. *Baltimore and Ohio v. Interstate Commerce Commission*, 221 U. S. 612.

6. 222 U. S. 20; 1911.

7. 230 U. S. 352; 1913.

the Federal Government acts, any State Commission may lower rates on goods passing through its territory, simply by lowering the local rates within the state. However, it was decided in the Shreveport case<sup>8</sup> that local rates, established by the State Commission in such a way as to affect and influence interstate commerce, could be changed by the Federal Commission on the principle that when the Federal authorities act upon such cases, their authority is supreme.

#### THE SHERMAN ANTITRUST ACT.

The second step in the growth of Federal regulation, growing out of the belief that trusts and monopolies are evils in themselves, resulted in the Sherman Anti-Trust Act of 1890.<sup>9</sup> For years after its passage, in response to a vague public sentiment, it lay dormant upon the statute books, since its meaning was indefinite and its possible interpretation doubtful.

Under this Act there have arisen a number of important questions but, owing to the limited space, only a few of the leading decisions can be mentioned. In the first case it was held that the Act does not apply to manufacturing,<sup>10</sup> although a manufacturing company distributing its products in interstate commerce is included and agreements not to compete or imposing oppressive conditions upon the buyer or seller are illegal.<sup>11</sup> The Act applies to the railways and prohibits *every* combination, reasonable or unreasonable.<sup>12</sup> In 1898 this ruling, although later modified, was reaffirmed and strengthened.<sup>13</sup> Then it was held that combinations of local exchanges dealing in products which have been the subject of interstate commerce are not in violation of the Act.<sup>14</sup> In 1898, also, the Supreme Court ruled

---

8. *Houston Railway Company v. U. S.*, 234 U. S. 342; 1914.

9. Act July 2, 1890, c. 647, Sec. 1. "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both punishments, in the discretion of the court." Its constitutionality was upheld in the cases cited later in this section and in *U. S. v. Am. Naval Stores Co.*, 186 Fed. 592; 1909; *U. S. v. Patterson*, 201 Fed. 697; 1912; *C. & O. Fuel Co. v. U. S.*, 115 Fed. 610; 1902; *U. S. v. Winslow*, 227 U. S. 202; 1913; *Nash v. U. S.*, 229 U. S. 373; 1913; *Bigelow v. C. & H. Mining Co.*, 167 Fed. 721; 1909.

10. *U. S. v. E. C. Knight Sugar Refining Co.*, 156 U. S. 1; 1895.

11. *Swift et al. v. United States*, 196 U. S. 375; 1905.

12. *United States v. Trans-Missouri Freight Association*, 166 U. S. 290; 1897. By the Wilson Tariff Act of Aug. 27, 1894, c. 349, the principle was extended to combinations restraining imports from foreign countries.

13. *United States v. Joint Traffic Association*, 171 U. S. 505.

14. *Hopkins v. United States*, 171 U. S. 578; 1898; *Anderson v. United States*, 171 U. S. 604; 1898. Closely related to these cases is that of *Board of Trade of Chicago v. Christie Grain and Stock Company*, 198 U. S. 236; 1905.

that, while a monopoly of manufacturing is not illegal, an agreement preventing competition in the sale and shipment of articles in interstate commerce is forbidden.<sup>15</sup> Next, the "holding company" was declared illegal and the Court said that the possible suppression of competition and the obvious attempt to obtain it were sufficient, although the result had not been immediately secured.<sup>16</sup> In 1911 the legality of the "holding company" was again passed on by the Supreme Court in the famous Standard Oil and Tobacco Trust cases,<sup>17</sup> which mark the great turning point in the interpretation of the Act. These decisions enunciate the famous "Rule of Reason" which is, in substance, that combinations based on increased efficiency will be permitted, while the destructive combination whose purpose is to suppress competition in order to obtain higher prices will be forbidden. The test is, briefly—"What is the purpose and effect of the combine?" This rule was more clearly presented and applied in the important Saint Louis Terminal Association case.<sup>18</sup> In 1908 it was held that the Act applied to combinations of labor as well as of capital and that an interstate labor boycott is illegal;<sup>19</sup> and in 1914 it was finally settled that a retailers' boycott against certain wholesalers, together with the circulation of blacklists, is forbidden.<sup>20</sup> In 1913, it was held that a "Corner" in staple products was also included.<sup>21</sup> Then it was decided that, while a patentee cannot use his right to establish a monopoly over an entirely separate product, the patent right included the legal right to sell the patented articles upon any terms the owner desired.<sup>22</sup> But, in the next year the Supreme Court held that, when the seller has actually transferred the right of ownership in his prod-

---

15. *United States, Addyston Pipe Company v.*, 176 U. S. 211; 1899. A similar point arose in *Montague and Company v. Lowry*, 193 U. S. 38; 1904, with a like decision. See also *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 205; 1912; *Continental Wall Paper Co. v. Lewis Voight & Sons Co.*, 212 U. S. 227; 1909.

16. *Northern Securities Company v. United States*, 193 U. S. 197; 1904.

17. *Standard Oil Company v. United States*, 221 U. S. 1; 1911. *United States v. American Tobacco Company*, 221 U. S. 106; 1911.

18. *United States v. Terminal Railroad Association of Saint Louis*, 224 U. S. 383; 1912.

19. *Loewe v. Lawlor (The Danbury Hatters' Case)*, 208 U. S. 274; 1908. See also *Buck's Stove and Range Company v. Gompers et al.*, 221 U. S. 418; 1911. As a result of these decisions and the consequent political pressure of the labor unions, an amendment was attached to the Clayton Act of 1914, legalizing the boycott in any dispute affecting interstate commerce so far as the Federal Laws are concerned. However, as to the effect of Sec. 20, see address of ex-Pres. Taft in Proceedings of American Bar Association, 1914.

20. *Eastern States Retail Lumber Dealers' Association v. U. S.*, 234 U. S. 600; 1914.

21. *United States v. James A. Patten et al.*, 226 U. S. 525; 1913.

22. *Henry V. Dick (The Rotary Mimeograph Case)*, 224 U. S. 1; 1912.

uct, it cannot reserve the right to fix the price at which it should be subsequently resold.<sup>23</sup> As for the question of price-fixing where no patent rights are involved, it was held that a producer might control the manufacture of his product by a secret formula but, after once selling the article, he could not make an agreement with dealers fixing the re-sale price to other persons.<sup>24</sup>

As a summary of the practical effects of the Act upon business and the changes which should be made in the law itself, it might be said:

First, in its application to many predatory and destructive combinations, the Act has been an expression of a sound public policy and has exerted a healthy influence to discourage business piracy.

Second, it has been mistakenly applied to many combinations simply because of their form or size,<sup>25</sup> although a number of them were based on the soundest economic principles. Its chief purpose should be to prevent illegal destruction of competition rather than the growth of large concerns or the unification of industries.

Third, it should not apply to railways, since they are amply regulated by the Interstate Commerce Commission, which is more suited and better informed on the subject to secure the desired results.

Fourth, some device or scheme is needed to sift out those combinations which, irrespective of size or form, are conducted fairly and efficiently, from those which employ destructive and oppressive methods of doing business. The most practical means yet suggested is the Federal Trade Commission and this proposal has ultimately led to the fourth great step in our national policy of business regulation.

#### THE BUREAU OF CORPORATIONS AND THE CORPORATION TAX.

In the third stage of our national policy, the doctrine of "Publicity" held the popular attention. As a result of the crash caused by the collapse of the grossly overcapitalized corporations floated during

---

23. *Bower & Company v. O'Donnell*, 229 U. S. 1; 1913. (The Sanatogen Case.) Later in the same year this decision was followed in *Straus & Straus v. The American Publishers Association and the American Booksellers Association*, 231 U. S. 222; 1913. See also *U. S. v. Kellogg Co.*, 222 Fed. 725.

24. *Miles Company v. Park Drug Company*, 220 U. S. 373; 1911. The court said: "The public is entitled to the benefit of competition between wholesalers and retailers. Such competition may not be destroyed by agreement if the agreement is made by the manufacturers of the product itself." The importance of this decision can only be realized when the magnitude of the practice of "price protection" is considered. It has been severely criticised on economic grounds.

25. *United States v. International Harvester Company*, 214 Fed. 987; 1915.

the business boom following the War of 1898, the belief arose that the prime evil of the "trusts" or combinations was "watered stock" and the ease of fraudulent promotion. Publicity was thought to be the remedy and the result was the creation, in 1903, of a Bureau of Corporations. The Commissioner of Corporations was given power to examine the organization, conduct and management of all interstate businesses, except the railways, and a number of important investigations were made, some of which were the lumber, steel, oil, and tobacco industries, sugar refining, inland waterways, water-power companies, and the marketing of cotton. The bureau not only threw light upon business conditions through published data but, through potential publicity, prevented or stopped without prosecution many evil practices.

In 1909 a provision for a corporation tax was incorporated in the Tariff Act of that year, so as to include the intrastate concerns not within the jurisdiction of the Bureau of Corporations. The levy was imposed according to net income and a report was required giving information as to the financial status of every corporation in the country. The publicity movement, aided by these laws, resulted in a complete revolution in the publicity methods of most of the great producing companies, and almost every large corporation became desirous of securing public approval. They wished to sell stock to a large number of small investors in order to secure a public interest in the success of their enterprises, and they needed a favorable public sentiment to profitably market their wares. Finally they learned that no corporation is strong enough to defy public opinion and successfully wage war with the government.

#### THE FEDERAL TRADE COMMISSION AND THE CLAYTON ACT.

In the fourth and final stage of our policy of Federal control, it was seen that Congress, a legislative body, could not handle the problem of "trusts" and combinations in its rapidly changing aspects and details. Congress could only fix a few general principles and create an administrative body, composed of specialists, to devote its entire time to this one subject.

The result was the passage, in 1914, of the Federal Trade Commission Act,<sup>26</sup> which, in addition to the creation of the Commission, contained the important provision "That unfair methods of competition in commerce are hereby declared unlawful."<sup>27</sup> The powers of this Commission may be briefly summarized as follows:

---

26. Act Sept. 26, 1914, c. 311; 38 Stat. 717 et seq.

27. *Supra* Sec. 5.



First, to prevent unfair methods of competition. It may summon parties complained of to a formal hearing and make a final decree, subject to review upon appeal by the Federal Courts.

Second, to gather, compile and publish information on the organization, management, practices, etc., of any interstate concern.

Third, to require reports and answers to interrogatories from such corporations.

Fourth, to investigate the carrying out of, and obedience to, a court decree under the Sherman Act.

Fifth, at the direction of Congress or the President to investigate violations of the Anti-Trust Acts.

Sixth, upon application of the Attorney General to make recommendations for the readjustment of corporations violating the Anti-Trust Acts so as to bring them within the law.

Seventh, to classify corporations and make rules and regulations for carrying out the Act.

Eighth, to investigate foreign trade conditions and their effect upon our foreign business.

It will be seen that, in general, the Commission has the same power over commercial companies that the Interstate Commerce Commission has over railroads. It not only investigates but has full power to issue such orders and make such regulations as may be needed to carry out the central principles upon which the law is based.

Later, in the same year, 1914, the Clayton Act<sup>28</sup> was passed, supplementing the prior Anti-Trust Laws. It strengthened the legal position of the injured competitor as to the district of bringing suit, by allowing him to use decisions obtained by the Government, and by giving him the right to a preliminary injunction. The individual liability of directors, officers and agents of corporations was fixed.<sup>29</sup> The evil of price discrimination, where its effect is to lessen competition or tend to create a monopoly, was attacked and the use of "tying clauses" was forbidden,<sup>30</sup> thus revoking the decision in *Henry v. Dick*. It provided against interlocking directorates, holding companies, and a too close relation between common carriers and shippers. Finally, the Act sought to amend the labor law dealing with injunctions and boycotts, but the wording of these provisions is so indefinite that an extended

---

28. Act Oct. 15, 1914, c. 323; 38 Stat. 730 et seq.

29. *Supra* Sec. 14.

30. Act Oct. 15, 1914, c. 323, Sec. 14.

interpretation by the courts must be had in order to determine the exact meaning of the law.<sup>31</sup>

Many have criticized the Trade Commission Law and one important change has been suggested. None of the Anti-Trust laws are superseded by this Act and the powers of the Commission are of a negative character—it may forbid, investigate and prohibit, but it may not permit. It has therefore been suggested that the Commission be given power to legalize agreements between corporations; to dissolve combinations which are destructive and to permit advantageous ones. This affirmative and declaratory power, it is claimed, would supply the much needed element of certainty in our regulative laws, although many able men strongly oppose such extension of power.

There have been a number of proposals for a system of Federal License and Incorporation Laws, but, since they have not yet been acted upon, they need not be discussed at this time.

#### FEDERAL POLICE POWER OVER INTERSTATE COMMERCE.

It is often said that the Federal Government has no police power. However, other powers, specifically granted to Congress by the Constitution, are sometimes used for the same purpose and justify the discussion of certain Acts under the above head

The so-called Mann Act,<sup>32</sup> passed in 1910, forbids the transporting of any woman or girl in interstate or foreign commerce for immoral purposes. It has been consistently upheld by the courts, and at least one important doctrine as to the extent of Federal authority over interstate trade has grown out of it. The Supreme Court laid down the rule that no one has an absolute right to pass in interstate commerce, if such right is intended to be exercised for a purpose which Congress considers immoral or injurious to the community.

The question arose whether or not Congress has the power to set up other moral standards and prohibitions in interstate commerce by reason of the law,<sup>33</sup> passed in 1895, for the suppression of the lottery traffic, and the Supreme Court held<sup>34</sup> that the power to regulate included the power to prohibit, which power Congress could use to exclude from commerce any objectionable and dangerous elements.

With the Pure Food Laws, a new and very important side of Federal control over interstate commerce has developed. Since Con-

31. See address of Ex-President Taft in Proceedings of American Bar Association, 1914.

32. Act June 18, 1910, c. 309.

33. Act Oct. 23, 1895, c. 423. To the same effect see Acts of 1897 forbidding interstate trade in articles intended for an immoral purpose and the circulation of improper literature. *Pepper v. U. S.*, 98 Fed. 423; 1899.

34. *Champion v. Ames*, 188 U. S. 321; 1903.

gress had no power to directly prevent the adulteration of manufactured food and drugs, resort was had to the power to regulate interstate commerce and, in 1906 the Food and Drugs Act<sup>35</sup> and the Meat Inspection Act,<sup>36</sup> prohibiting the circulation in interstate trade of all foods, drugs, beverages and meats, not prepared according to the rules and standards authorized by Congress. The practical effect of these two acts has been more beneficial than that of any other two laws passed within a generation. The whole Food and Drug manufacturing industry has been revolutionized and purity of product is earnestly sought by most concerns. Furthermore, these acts are supreme in their field and their authority extends over all shipments of food and drugs to the time they reach the retail purchaser.<sup>37</sup> Similar laws have been passed regulating seeds, grains, and other agricultural products, grain standards, warehouses, insect pests, insecticides and fungicides, viruses, serums, toxins, antitoxins, and analogous products, teas, opium, and falsely stamped gold or silver or goods manufactured therefrom.<sup>38</sup>

The Federal Railway Safety Acts<sup>39</sup> have been repeatedly upheld and the Law of 1907,<sup>40</sup> limiting the number of hours of labor of persons operating interstate trains, was approved as a proper exercise of the power to regulate commerce, although it would apply also to employees engaged in intrastate commerce.<sup>41</sup>

In 1916, Congress, for the purposes of regulation, placed a prohibition upon the shipment of products of factories employing child labor. The purpose of the Act was obviously to do away with this practice and, according to the rule followed in similar cases, it would seem that the courts would refuse to inquire into the object of the law. However, the Supreme Court held the law to be unconstitutional as beyond the powers of Congress.<sup>42</sup> The same result was sought to be obtained by taxation in the War Revenue Bill of 1918.

#### THE RELATION OF FEDERAL TO STATE POWERS OVER COMMERCE.

In spite of the general trend toward Federal control, the power of the States has really increased rather than diminished. The early rule was that no State could interfere in national trade,<sup>43</sup> but gradu-

---

35. Act June 30, 1906, c. 3915, 34 Stat. 768 et seq.

36. Act June 30, 1906, c. 3913.

37. *McDermott v. Wisconsin*, 228 U. S. 115; 1913.

38. *United States Compiled Statutes*, Ann. Title LVI B.

39. Act March 2, 1893, c. 196; and Act Apr. 14, 1910, c. 160.

40. Act March 4, 1907, c. 2939.

41. *B. & O. v. Interstate Commerce Commission*, 221 U. S. 612; 1911.

42. *Hammer v. Dagenhart*, 38 S. C. R. 539; 1918.

43. *Gibbons v. Ogden*, 9 Wheaton 1; 1824; *Brown v. Maryland*, 12 Wheaton 419; 1827.

ally State power was extended. First, it was held that the States might regulate certain detail matters of a local nature, in the absence of any action by Congress.<sup>44</sup> Then they were permitted to pass sanitary and inspection laws, provided they did not unnecessarily impede interstate commerce,<sup>45</sup> and reasonable safety laws, although affecting interstate trade, were held valid, where Congress had not acted.<sup>46</sup> Reasonable State laws to prevent fraud were also upheld.<sup>47</sup> Further, State laws for public convenience and the better service of public utility corporations, even though they affect interstate commerce, are constitutional, if reasonable.<sup>48</sup> State wage laws may also be applied to companies engaged in interstate trade, if reasonable,<sup>49</sup> and in numerous other instances, State laws affecting interstate commerce have been upheld.<sup>50</sup> With the adoption of the 18th Amendment, the question of State prohibition laws has been finally settled and a discussion of the mass of interesting problems arising under them may be omitted.

The remedy for the present confusing and conflicting State regulations would seem to be a more extended uniform regulation by the Federal Government, particularly of the railways, the express, telephone, telegraph, and cable companies. Where such matters are left to the discretion of the States, the regulations will inevitably be influenced by local public opinion and prejudice. Contrary to the general public sentiment, more, rather than less, Federal regulation of those matters strictly national in their nature, is needed.

THE TAXATION<sup>51</sup> AND MONEY<sup>52</sup> POWERS OF CONGRESS.

Congress may, as a general rule, tax anything except the State

---

44. *Cooley v. The Port Wardens of Philadelphia*, 12 Howard, 299; 1851; *Escanaba Company v. Chicago*, 107 U. S. 678; 1882; *Bowman v. Chicago Railway Co.*, 125 U. S. 507; 1888.

45. *Railroad v. Hasen*, 95 U. S., 465; 1877.

46. *New York, New Haven and Hartford Rd. v. New York*, 165 U. S. 628; 1897; *Smith v. Alabama*, 124 U. S. 465; 1888; *Patterson v. Kentucky*, 97 U. S. 501; 1878.

47. *Plumley v. Massachusetts*, 155 U. S. 461; 1895; *Schollenberger v. Pennsylvania*, 171 U. S. 1; 1898.

48. *Lake Shore & Mich. Southern v. Ohio*, 173 U. S. 285; 1899; *C. C. C. & Saint Louis Railway v. Illinois*, 177 U. S. 514; 1900; *Atlantic Coast Line v. Railroad Commissioners of South Carolina*, 207 U. S. 328; 1907.

49. *Erie Railroad v. John Williams*, 233 U. S. 685; 1914.

50. *International Text Book Company v. Pigg*, 217 U. S. 91; 1910; *The frigate Gray v. The ship Fraser*, 21 Howard 184; 1859; *Wilson v. The Marsh Company*, 2 Peters 245.

51. Constitutional Provisions: "The Congress shall have power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States." Const. Act. I, Sec. 8, Sub. 1. "The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Amend. Art. XVI.

governments and their agents,<sup>53</sup> while the States may tax anything except interstate commerce, imports and exports, the tonnage of ships entering their ports, and the agencies of the national government.<sup>54</sup> The taxing power is generally construed in a broad free spirit by the Courts, and whenever there is a disputed question of constitutionality, Congress is given the benefit of the doubt. This has resulted in the use of this power by the Federal Government to regulate business in many ways where it would otherwise be impotent. One out of many examples of such use is the tax laid on artificially colored oleomargarine by the Acts of 1886 and 1902, which was upheld<sup>55</sup> and the rule enunciated that, since Congress unquestionably had the power to levy excises, the selection of the objects upon which they should be laid was subject only to its own sound discretion. The Courts would not inquire into the objects for which the tax might be laid, although a contrary result seems to have been reached in the recent case<sup>56</sup> denying the constitutionality of the Child Labor Law.<sup>57</sup>

The "Money Power" of Congress, by its very nature, has not been used for the purpose of directly regulating business, although the indirect effects of its use are of the greatest importance. The most important exercise of this power, in recent years, was the passage of the Federal Reserve Act of 1913, creating Federal Reserve Banks, authorized to issue Federal Reserve notes on the security of commercial paper, thus providing for an "elastic" currency to meet the changing necessities of business. The Federal Farm Loan Act of 1916 was passed to establish a system of rural credits, and the effect of these two laws, by the consensus of opinion, has been of the utmost benefit to the financial world and the country as a whole.

#### THE POSTAL POWER<sup>58</sup> OF CONGRESS.

The extent of the postal power of Congress and its effect upon business can only be realized when the dependence of every concern

---

52. Constitutional Provisions: "To borrow money on the credit of the United States." Const. Art. I, Sec. 8, Sub. 2. "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures." Const. Art. I, Sec. 8, Sub. 5. "To provide for the punishment of counterfeiting the securities and current coin of the United States." Const. Art. I, Sec. 8, Sub. 6.

53. *Tax Collector v. Day*, 11 Wall. 113; 1870. *Veazie Bank v. Feuno*, 8 Wall. 533; 1869; *U. S. v. The B. & O. Ry. Co.*, 17 Wall 322; 1873; *Pollock v. The Farmers' Loan & Trust Co.*, 158 U. S. 601; 1895; *South Carolina v. U. S.* 437; 1905.

54. *McCulloch v. Maryland*, 4 Wheaton, 316; 1819.

55. *McCray v. United States*, 205 U. S. 27; 1904.

56. *Hammer v. Dagenhart*, 38 S. C. R. 581.

57. Act Sept. 1, 1916, c. 432, 39 Stat. 675.

58. "To establish post offices and post roads." Const. Art. I, Sec. 8, Sub. 7.

upon the use of the mails is considered. In addition, there was established, in 1910, a Postal Savings Bank, and, in 1913, the Parcel Post in direct competition with the express companies.

However, this power has only been used for purposes of regulation in connection with the "fraud orders" issued by the Postmaster General. These are administrative decrees issued against those firms proven to be engaged in a fraudulent business, and its effect is to exclude their circulars, letters, etc., from the mails. It is a most drastic administrative power and is frequently resisted by impostors and others detected in attempts to defraud the public by false advertising methods.<sup>59</sup>

#### CONCLUSION.

In conclusion, it might well be said that "the Government today is a silent partner in every large business. Public regulation has grown steadily in all fields, and in spite of the outcry raised against paternalism and radicalism, a close examination of our regulative laws, shows that most of them are really designed to *protect* and *preserve* the business welfare of the community."<sup>60</sup> It has been realized that the law of supply and demand is not, under modern conditions and methods of doing business, sufficient to protect the consumer from the producer. The buyer no longer knows personally the producer or the wholesaler of the goods he purchases, since trade has become so extended in scope as to be called national or even international. Not only may producers combine and stifle competition but fraud may be practiced in so many ways that the consumer can no longer protect himself by his own efforts. Further, it was seen that the old rule of "caveat emptor," although it may have been practicable several generations ago, can not be wholly relied upon today in the purchase of stocks, bonds, and securities. And finally, it has been recognized that the small producer should be protected and safeguarded, both for the purpose of securing to the consumer the benefit of competition and to preserve the individual rights of each such producer.

R. H. McROBERTS.

---

59. *Deggs v. Hitchcock*, 233 U. S. 639; 1913. *Public Cleaning House v. Coyne*, 194 U. S. 497. *Am. Sch. Mag. Healing v. McAnnulty*, 187 U. S. 94.  
60. Young—"The New American Government and Its Work." Page 11.