

"The authority of the Federal Government may not be pushed to such an extent as to destroy the distinction, which the Commerce Clause itself establishes, between commerce 'among the several States' and the internal concerns of a State."

And as Professor Charles Warren has observed, *The Supreme Court in United States History*, III, at 470:

"However the Court may interpret the provisions of the Constitution, it is still the Constitution which is the law and not the decisions of the Court."

II. FEDERAL-STATE REGULATION IN THE UNITED STATES

Passing on from the question of the Constitutional limit of the reach of federal power under the Commerce Clause, we shall explore briefly in certain selected areas just how this regulatory function is apportioned, in fact, between federal and state authorities. Congress, in an attempt to alleviate jurisdictional disputes, has placed specific limitations on federal authority in its legislation. For example, Sec. 201(b) of the *Federal Power Act*, 16 U.S.C.A. § 824(b), provides in part:

"The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line."¹

There is other evidence of federal respect for the efficacy of state regulation. For example, Congress frequently has authorized federal aids to state regulators. For many years, the ICC has invited state commissions to join hearings on common problems. The FPC often has supplied information to state commissions and has permitted state agencies to intervene as interested parties in hearings. On occasion, a federal commission has aided a state agency in presenting a case before the Supreme Court. The FCC and some state commissions have worked together on several nationwide investigations, primarily of telephone rates. Federal commissioners associate professionally with state commissioners through the National Association of Railroad and Utilities Commissioners and through regional associations of commissioners. Phillips, *The Economics of Regulation*, 118 (1965).

However, substantial conflict still exists over the allocation of jurisdiction to regulate. Commissioner McKeage of the California Public Utility Commission stated at 72 *Pub. Util. Fort.*, 66 (Nov. 21, 1963):

"* * * an ever increasing centripetal force in our federal government is aggressively destroying local authority and conveying that jurisdiction into the eager and waiting, not to say grasping, hands of the bureaus at Washington."

Though most people now favorably accept federal regulation, many believe that federal agencies have gone too far in regulating essentially "fringe interstate matters" and warn that unless this trend is reversed, "the entire fabric of state regulation of local matters may well disintegrate." Albert L. Sklar, Chairman of the Maryland Public Service Commission, quoted in 72 *Pub. Util. Fort.* 68 (Nov. 21, 1963).

There is increasing evidence that state regulators can be equally effective as, and often more effective than, their federal counterparts in areas primarily of intrastate concern. A striking and most current example of this development is seen in a recent lead article in *The Wall Street Journal*, (November 24, 1967) p. 1, col. 6 entitled "Securities Regulators Tighten Their Control Over Intrastate Sales: States Go Beyond the SEC's Rules on 'Full Disclosure,' Bar Issues Deemed Unfair". There it was reported that an increasing number of states are tightening control over securities transactions within their borders. It was noted that generally the states' regulatory philosophy shows a more far reaching

¹ In this regard it should be noted also that the use of the so-called *Shreveport* doctrine enunciated by the Supreme Court in *Houston, E. & W. Tex. Ry. v. United States*, 234 U.S. 342 (1914), was denied to the Federal Power Commission when Congress enacted Part II of the Federal Power Act regulating electric utility companies engaged in interstate commerce. That case sanctioned the exercise of federal power over intrastate rail rates because they competed with interstate rates to the injury of interstate commerce. This intent to limit the FPC is made clear by the comments of Rep. Cole, a sponsor of the legislation, in 79 *Cong. Rec.* 10384, June 28, 1935, where he said:

"As to the jurisdiction of the States and State commissions, I doubt if any State commission or State officials familiar with the bill as it is now before you will say that the jurisdiction of the States has not been safeguarded and protected in a fair and lawful way. In doing so we have tried—and I think successfully—to avoid the injection into the Federal control, which this title confers, the extension thereof into intrastate activities in the way that the *Shreveport* case might permit." [Emphasis added.]