concern for the public than does the federal regulatory philosophy, and that the States are moving to regulate practices heretofore left unregulated by the SEC. The report continued:

"Besides interpreting state laws as broadly as possible, more state securities regulators are venturing into areas already policed by the SEC. Securities commissioners in Kansas, Indiana, Texas, Washington and other states say they aren't satisfied with the SEC's requirement that companies issuing stock supply formal prospectuses to purchasers."

A look at three other selected areas shows that, in fact, Congress and the federal courts have in many cases limited the regulatory reach of federal agencies in favor of regulation by state authorities, with apparently successful results.

A. Transmission of Petroleum Products

It has long been settled that states have the power to regulate both the production and the local distribution of oil. Searls, *Present Status of Federal and State Jurisdiction in Connection with Regulation of, Exploration for, and Conservation, Production and Sale of Oil and Gas*, 15th Oil & Gas Inst. 8 (1964). State regulation in the oil industry has been limited almost entirely to conservation efforts including proration programs, "ratable take" statutes, and market demand statutes. These provide all comers a fair chance at extracting and finding ready markets for their oil while at the same time limiting production to current consumption needs in order to conserve the obviously essential natural resource. Mr. Searls points out (*id.* at 12) that "The states have done a magnificent job."

State regulation in this field is complemented by federal activity in a number of ways including antitrust enforcement, the imposition of import quotas, and the requiring of estimates of demand and reports of storage. The federal enforcement of the *Connally Act*, 49 Stat. 30 (1935), 15 U.S.C.A. §§ 715–715(m), which prohibits the shipment in interstate commerce of oil produced in violation of state conservation regulations, is a major factor in making those regulations workable. Searls, *id.* at 18.

A major area of federal regulation over oil pipelines is under the *Hepburn Act*, 34 Stat. 584 (1906), 49 U.S.C.A. § 1 *et seq.* Jurisdiction is given to the ICC over "common carriers" engaged in the "transportation of oil or other commodity . . . by pipeline . . . from one State . . . to any other State . . . ." 49 U.S.C.A. § 1(1)(b).

The *Hepburn Act*, which also regulates common carriers by rail and water, shows a high degree of awareness of the "double aspect" of the regulatory function between federal and state authorities. Intrastate transportation is excluded from federal regulation by Sec. 1(2)(a), which provides:

"The provisions of this chapter . . . shall not apply to the transportation of passengers, of property, or to the receiving, delivering, storage, or handling of property, wholly within one State . . . except as otherwise provided in this chapter."

Transactions involving pipeline carriers were included when subsequent legislation extended the authority of the ICC to include carrier consolidations, 41 Stat. 456 (1920), and intercarrier agreements, 62 Stat. 472 (1948). On the other hand, ICC authority has not been extended to control of the entry of new pipelines or the abandonment of old ones, the regulation of pipeline securities, or the severance of the transportation function from ownership of the commodities transported. Jones, ***Cases and Materials on Regulated Industries*** 73–74 (1967).[2]

B. Motor Carriers

The states enacted the first regulations relating to the motor carrier industry. Early regulations were designed primarily for safety purposes and control of the use of the public highways. By 1932, every state except Delaware regulated passenger transportation by motor carrier and 39 states regulated the movement of property.

But even at that time the state commissions already had begun to grapple with the problem of the regulation of interstate versus intrastate operations. The Supreme Court had decided in 1925 in *Michigan Pub. Util. Comm'n* v. *Duke*, 266 U.S. 570 (1925), that Michigan could not regulate interstate commerce and

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[2] One case has held that oil pooled from two pipelines, one interstate and one purely intrastate, was subject to either interstate rates or intrastate rates in the proportion of the flow from each line, *Humble Oil and Ref. Co.* v. *Texas and Pac. Ry.*, 289 S.W. 2d 547 (Tex. 1956).