

knowledges no limitations other than are prescribed in the Constitution.' . . . That power can neither be enlarged nor diminished by the exercise or non-exercise of state power. . . . It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attended the exercise of the police power of the states. . . . Our conclusion is unaffected by the Tenth Amendment which . . . states but a truism that all is retained which has not been surrendered."<sup>30</sup>

But even prior to 1937 not all federal statutes promoting objectives which had traditionally been regarded as the responsibilities of the states had been held invalid. In *Hamilton v. Kentucky Distilleries Co.*,<sup>31</sup> a unanimous Court, in an opinion by Justice Brandeis, upheld "War Prohibition," saying, "That the United States lacks the police power, and that this was reserved to the States by the Tenth Amendment, is true. But it is nonetheless true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a State of its police power."<sup>32</sup> And, in a series of cases that today seems irreconcilable with *Hammer v. Dagenhart*, the Court sustained federal laws penalizing the interstate transportation of lottery tickets,<sup>33</sup> of women for immoral purposes,<sup>34</sup> of stolen automobiles,<sup>35</sup> and of tick-infected cattle,<sup>36</sup> as well as a statute prohibiting the mailing of obscene matter.<sup>37</sup> It affirmed the power of Congress to punish the forgery of bills of lading purporting to cover interstate shipments of merchandise,<sup>38</sup> to subject prison-made goods moved from one state to another to the laws of the receiving state,<sup>39</sup> to regulate prescriptions for the medicinal use of liquor as an appropriate measure for the enforcement of the Eighteenth Amendment,<sup>40</sup> and to control extortionate means of collecting and attempting to collect payments on loans, even when all aspects of the credit transaction took place within one state's boundaries.<sup>41</sup> More recently, the Court upheld provisions of federal surface mining law

<sup>30</sup> 312 U.S. 100, 114, 123, 124 (1941). See also *Fernandez v. Wiener*, 326 U.S. 340, 362 (1945).

<sup>31</sup> 251 U.S. 146 (1919).

<sup>32</sup> 251 U.S. at 156.

<sup>33</sup> *Lottery Case (Champion v. Ames)*, 188 U.S. 321 (1903).

<sup>34</sup> *Hoke v. United States*, 227 U.S. 308 (1913).

<sup>35</sup> *Brooks v. United States*, 267 U.S. 432 (1925).

<sup>36</sup> *Thornton v. United States*, 271 U.S. 414 (1926).

<sup>37</sup> *Roth v. United States*, 354 U.S. 476 (1957).

<sup>38</sup> *United States v. Ferger*, 250 U.S. 199 (1919).

<sup>39</sup> *Kentucky Whip & Collar Co. v. Ill. Cent. R.R.*, 299 U.S. 334 (1937).

<sup>40</sup> *Everard's Breweries v. Day*, 265 U.S. 545 (1924).

<sup>41</sup> *Perez v. United States*, 402 U.S. 146 (1971).