Thus, the Court held, the Amendment does not bar a prosecution under the Sherman Antitrust Act of producers, wholesalers, and retailers charged with conspiring to fix and maintain retail prices of alcoholic beverages in Colorado.[40] In a concurring opinion, supported by Justice Roberts, Justice Frankfurter took the position that if the State of Colorado had in fact "authorized the transactions here complained of, the Sherman Law could not override such exercise of state power. . . . [Because] the Sherman Law . . . can have no greater potency than the Commerce Clause itself, it must equally yield to state power drawn from the Twenty-first Amendment."[41]

Following a review of the cases in this area, the Court has observed "that there is no bright line between federal and state powers over liquor. The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system. Although States retain substantial discretion to establish other liquor regulations, those controls may be subject to the federal commerce power in appropriate situations. The competing state and federal interests can be reconciled only after careful scrutiny of those concerns in a 'concrete case.'"[42] Invalidating under the Sherman Act a state fair trade scheme imposing a resale price maintenance policy for wine, the Court balanced the federal interest in free enterprise expressed through the antitrust laws against the asserted state interests in promoting temperance and orderly marketing conditions. Because the state courts had found that the policy under attack promoted neither interest significantly, the Supreme Court experienced no difficulty in concluding that the federal interest prevailed. Whether more substantial state interests or means more suited to promoting the state interests would survive attack under federal legislation must await further litigation.

Congress may condition receipt of federal highway funds on a state's agreeing to raise the minimum drinking age to 21, the Twenty-first Amendment not constituting an "independent constitutional bar" to this sort of spending power exercise even though Congress may lack the power to achieve its purpose directly.[43]

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[40] United States v. Frankfort Distilleries, 324 U.S. 293, 297–99 (1945).

[41] 324 U.S. at 301–02. For application of federal laws, *see* William Jameson & Co. v. Morgenthau, 307 U.S. 171 (1939); Kiefer-Stewart Co. v. Jos. E. Seagram & Sons, 340 U.S. 211 (1951); Schwegmann Bros. v. Calvert Corp., 341 U.S. 384 (1951); Joseph E. Seagram & Sons v. Hostetter, 384 U.S. 35 (1966); Burke v. Ford, 389 U.S. 320 (1967).

[42] California Retail Liquor Dealers Ass'n v. Midcal Aluminum, 445 U.S. 97, 110 (1980).

[43] South Dakota v. Dole, 483 U.S. 203, 210 (1987).