to [his] resale or use" thereof.[23] Likewise, New York is precluded from terminating the business of an airport dealer who, under sanction of federal customs laws, acquired "tax-free liquors for export" from out-of-state sources for resale exclusively to airline passengers, with delivery deferred until the latter arrive at foreign destinations.[24] Similarly, a state "affirmation law" prohibiting wholesalers from charging lower prices on out-of-state sales than those already approved for in-state sales is invalid as a direct regulation of interstate commerce. "The Commerce Clause operates with full force whenever one State attempts to regulate the transportation and sale of alcoholic beverages destined for distribution and consumption in a foreign country . . . or another State."[25]

Effect of Section 2 upon Other Constitutional Provisions.— Notwithstanding the 1936 assertion that "[a] classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth,"[26] the Court has now in a series of cases acknowledged that § 2 of the Twenty-first Amendment did not repeal provisions of the Constitution adopted before ratification of the Twenty-first, save for the severe cabining of Commerce Clause application to the liquor traffic, but it has formulated no consistent rationale for a determination of the effect of the later provision upon earlier ones. In *Craig v. Boren*,[27] the Court invalidated a state law that prescribed different minimum drinking ages for men and women as violating the Equal Protection Clause. To the state's Twenty-first Amendment argument, the Court replied that the Amendment "primarily created an exception to the normal operation of the Commerce Clause" and that its "relevance . . . to other constitutional provisions" is doubtful. "'Neither the text nor the history of the Twenty-first Amendment suggests that it qualifies individual rights protected by the Bill of Rights and the Fourteenth Amendment where

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[23] Department of Revenue v. Beam Distillers, 377 U.S. 341 (1964). The Court distinguished Gordon v. Texas, 355 U.S. 369 (1958) and De Bary v. Louisiana, 227 U.S. 108 (1913).

[24] Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324 (1964).

[25] Brown-Forman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573, 585 (1986) (citation omitted). *Accord*, Healy v. Beer Institute, 491 U.S. 324 (1989).

[26] State Bd. of Equalization v. Young's Market Co., 299 U.S. 59, 64 (1936). In Craig v. Boren, 429 U.S. 190, 206–07 (1976), this case and others like it are distinguished as involving the importation of intoxicants into a state, an area of increased state regulatory power, and as involving purely economic regulation traditionally meriting only restrained review. Neither distinguishing element, of course, addresses the precise language quoted. For consideration of equal protection analysis in an analogous situation, the statutory exemption of state insurance regulations from Commerce Clause purview, *see* Western & Southern Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648, 655–74 (1981).

[27] 429 U.S. 190 (1976).