

The Meaning of the Supreme Court Decision on National Prohibition

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Mr. Wheeler made the original draft of the National Prohibition Law, defended it in the courts and before the Judiciary Committee in Congress. The court decided all of the eleven contested points in complete accord with his theory. At the last hearing to repeal War Prohibition before the House Committee, December 13, 1919, Mr. Kernan of New York, speaking for the wets, said, "If the wets had had the brains to have secured the brains of Wayne B. Wheeler, they would not be in the fix they are today."—EDITOR.

I

The fact of submission by the Congress was sufficient evidence that Congress deemed it necessary.

It was contended that the resolution submitting the Eighteenth Amendment was invalid because it omitted the words "deemed it necessary" which were found in Article V of the Constitution.

II

Two-thirds of the membership, providing a quorum was present, was all that was necessary to submit the amendment.

The opposition claimed that it meant two-thirds of all elected.

III

Referendum provisions of the States cannot be applied to amendments to the Constitution of the United States.

The liquor interest and a few of the courts held that Article V of the Federal Constitution authorized a referendum vote in the States on ratification. The Supreme Court sustained our contention that Article V authorized only the Legislature or a convention to accept or reject amendments, and when Congress named the Legislature as a body to act, its disposition of the matter was final.

IV

It was within the power of Congress to submit the Eighteenth Amendment providing for Prohibition of the beverage liquor traffic.

In the Rhode Island and New Jersey cases it was argued that the Eighteenth Amendment was not an amendment to the Constitution but an addition to it and was revolutionary. In other words they claimed because the words "intoxicating liquor" were not in the Constitution, you could not amend the Constitution with reference to a subject matter not embodied in the Constitution.

V

The Eighteenth Amendment, by lawful proposal and ratification, has become a part of the Constitution, and must be respected and given effect the same as other provisions of that instrument.

It was contended that because the amendment was not legally proposed and ratified it could not be a part of the Constitution.

VI

The first section of the amendment applies to all the territory of the United States that is now in operation, binds all legislative bodies, courts, public officers and individuals within those limits, and of its own force invalidates every legislative act, whether by Congress, by State legislature, or by territorial assembly, which authorizes or sanctions what the section prohibits.

This makes clear that Congress or a State legislature may carry out the purpose of the Eighteenth Amendment, but it cannot invalidate it by hostile or conflicting legislation. In other words Congress cannot define intoxicating liquor in a way to legalize a liquor actually intoxicating.

VII

The second section of the amendment—the one declaring “the Congress and the several States shall have concurrent power to enforce this article by appropriate legislation”—does not enable Congress or the several States to defeat or thwart the Prohibition, but only to enforce it by appropriate means.

This conclusion of the court makes clear the power of legislative bodies to enforce the Prohibition by appropriate means. The State courts have already held that the purpose of the prohibition legislation is to prevent the means by which individuals get liquor for beverage use. It gives practically unlimited power to prohibit manufacture, sale, possession or other means by which individuals secure beverage liquor.

VIII

The power is not joint and not divided. It does not require that legislation thereunder by Congress to be effective shall be approved or sanctioned by the several States or any of them.

It was urged that the legislation adopted by Congress could not be effective until it was ratified by the States. Such a construction would permit the wet States to remain wet, and destroy the purpose of the amendment.

IX

The power confided to Congress by that section, while not exclusive, is territorially coextensive with the prohibition of the first section, embraces manufacture and other interstate transactions as well as importation, exportation and interstate traffic, and is in no wise dependent on or affected by action or inaction on the part of the several States or any of them.

This means that both Congress and the States may adopt prohibition laws, but the prohibition by Congress is not dependent upon the sanction or inaction on the part of the States.

X

The power conferred on Congress is constitutional and may be exerted against the disposal for beverage purposes of liquors manufactured before and after the amendment went into operation.

It was contended that the amendment could not operate upon liquors made before the Constitutional law went into effect.

XI

The limits of the power of Congress were not transcended by the Volstead act, which prohibits liquors containing one-half of one per cent alcohol fit for beverage use.

The conclusion reaffirmed the decision in the New York Beer Case making

it clear that if prohibition is to be enforced effectively the standard adopted in the Prohibition Code must be maintained.

The liquor interests' last hope was that the court would construe concurrent power to mean contra-current power. We contended from the beginning that concurrent power meant cooperating power to carry out the purpose of the Eighteenth Amendment and not to nullify it; that either the State or Congress could enact any law prohibiting the beverage liquor traffic or pass any act having a reasonable relation to its enforcement. When such a law was enacted the other unit of Government could not legalize what was lawfully prohibited. If there should be a conflict between the State and a lawful act of Congress then Section Two of the Eighteenth Amendment and Article VI of the Federal Constitution would make the Federal law the supreme law of the land.

The opposition contended that concurrent power, which was inserted in the Constitution itself for the first time, was an anomaly and made the Federal Prohibition Code inoperative unless it was accepted by the States themselves. Chief Justice White in answering this contention, said: "I cannot accept this interpretation, since it would result simply in declaring that the provisions of the second section, avowedly enacted to provide means for carrying out the first, must be so interpreted as to practically nullify the first." Justice McKenna dissented from the decision of the court on concurrent power, and Justice McReynolds concurred with a reservation that certain questions of construction under the Eighteenth Amendment will inevitably arise and demand solution later on. The decision on the whole is conclusive and sweeping in its effect. It decides all the main contentions of the liquor interests against them and in favor of national prohibition. The Federal Prohibition Code was the first complete national prohibition law ever adopted by any great nation. In some respects it was experimental, but it was based upon fundamental principles sustained by the Supreme Court of the States in the enactment of similar laws. The decision will go down in history as one of the great judicial landmarks in the progress of our civilization. There will be an effort in Congress and in the State Legislatures to nullify the law, and we will meet the practical problem of law enforcement for years to come, but this decision will be the judicial foundation upon which prohibition will rest through the ages.

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