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States' Rights and National Prohibition

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States' Rights and National Prohibition, by Archibald E. Stevenson. Clark Boardman Co.: Philadelphia. 1927. Pages 157. Price \$2.50.

This is an attempt to work out a substitute for the present interpretation of the 18th amendment. The author alleges that his discussion is impartial and he expresses the hope that his conclusions will not cause people who disagree with him to impinge his reasoning. It seems to the writer that this pious hope is not likely to be fulfilled. Perhaps the discussion of such a universal question as prohibition is not likely to result in the reader's admiring the author's reasoning while he disagrees with his conclusions. Briefly, Mr. Stevenson takes the view that the 18th amendment

which provides for national prohibition might be interpreted as a further authority under the commerce clause so that the Federal government could prevent the importation and exportation of intoxicating liquors, while it would not commit itself one way or the other as to the manufacture and sale of such liquors within the sovereign states. Mr. Stevenson points out that before the Federal amendment provided for national prohibition nearly two-thirds of the states already had sweeping prohibition laws which were, on the whole, effectively enforced. He urges that now, however, under national prohibition, the prohibition laws are not enforced in the old prohibition states as effectively as in the past. He suggests that such an interpretation of the 18th amendment would enable the Federal government to withdraw from its impossible task of enforcing prohibition nationally. It would leave this burden with the states and each state would then assume the responsibility of enforcing local law according to the wishes of its own people. Thus he concludes they should have effective prohibition in all states where it is locally popular and in those centers where it is not popular the people would adopt laws that were adapted to their actual needs. At the same time the Federal amendment would be highly effectual in prohibiting the liquor traffic between the states. Mr. Stevenson submits some legal authority in favor of his view but it seems that most of his evidence is taken from political discussions or from statutes which further the present enforcement of the prohibition law.

Perhaps we believe what we want to believe and we think what we want to think and our much vaunted reasoning does not come into play as often as we suppose. The reviewer can only say that he cannot look hopefully upon the practical result of such an interpretation of the 18th amendment and that as a matter of law he thinks it impossible. Section one of the amendment provides:

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquor within . . . the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

Perhaps many such amendments to the constitution may be nullified if Congress refuses to pass legislation that is adapted to its enforcement. Thus in Illinois they have had no redistricting for the election of members of the state legislature because the rural parts of this state refused to pass the necessary redistricting acts. If we assume however that the Federal Congress wishes to enforce the amendment according to its general tenor, then it would seem extraordinary to say that it should not prohibit the manufacture of liquor within the sovereign states in keeping with the express words above set forth.

The author urges at length that the eighteenth amendment if interpreted to prohibit liquor within the states is an invasion of private rights which are subject to regulation only by the several states. Hence it is an invasion of State sovereignty and is beyond the province of the constitution itself, which is an instrument of delegated powers. The author contends that the eighteenth amendment is not law in any state which failed to ratify it. It may well be urged that the eighteenth amendment was unwise as a matter of policy; but it is difficult for the reviewer to understand how anyone can seriously urge that a part of the constitution is unconstitutional as a matter of law.

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