Recalcitrant Rhode Island: MEN WHO LED OPPOSITION TO PROHIBITION IN CONGRESS.

New York Times (1857-1922); Jun 29, 1919; ProQuest Historical Newspapers: The New York Times
pg. 79

Recalcitrant Rhode Island

RHODE ISLAND'S Legislature has instructed her Attorney General to take what action he deems proper relating to the Eighteenth Amendment, which she has declined to ratify. The tiny State, smallest of the sisters which make up the nation, has also passed a law defining an intoxicant as a drink having more than 4 per cent. of alcohol, thus defying those statesmen in Washington who would brand any potation containing the least alcohol as intoxicating within the meaning of the statute.

What the Attorney General of Rhode Island is going to do about opposing the amendment is still in the lap of the gods, and it is likely to stay there until a more convenient season. In common with Connecticut and New Jersey, which have been quite as stubborn in maintaining their sovereignty at all times, "Little Rhody" is marking time. As the constitutional drought act is not yet in effect, and as Congress has not passed any enactment for enforcing it, eminent counsel who have been following the ruin question believe that for the present the Attorney General can do little. He needs must wait, they say, until some one enters the State and seeks to arrest a citizen for vending alcoholic beverages against the majesty and peace of these United States. Any citizen then may, with the aid of the legal adviser of the self-sufficient State of Rhode Island, take action.

It may be recalled that Rhode Island was born contrary, and has always had the courage of her beliefs from the days of her truculent founder, Roger Williams. That English clergyman could not live in amity with the Puritan forebears of Massachusetts, for he was a walking digest on the rights of the individual. He had come to this continent for freedom in thought and action, and he meant to have it. He spoke his mind all too freely and, therefore, had to take to the tall timber. After fourteen weeks of wandering in the wilderness he emerged upon the promised land which the Indians called Narragansett. There he set up the city of Providence, which to this day is proud of the Colonial Ishmael who called her into being.

Hardly had Rhode Island become a colony before both Massachusetts and Connecticut sought ways and means to absorb her settlements and plantations into their own territories. The reverend reformer thereupon went to England, and, finding King and Parliament at loggerheads, succeeded in getting a charter from the legislative body and came back with it to his fellow-colonists, who received him with glad acclaim. There was no grant of land with the charter, but Rhole Island was amply sufficient within herself to maintain her claims to her territory against all comers. The burning zeal to defend all her rights as a community was thus kindled in the bosoms of the islanders from the earliest days. This may account in some degree for the fact that, although never noted for consuming thirst, they are determined to retain their autonomy in the matter of alcohol.

Rhode Island so opposed the idea of a strong Central Government, after the war of the Revolution had been won, that she resolutely refused to send delegates to the Constitutional Convention. When the document was finally adopted Rhode Island and North Carolina did not ratify it until the Federal Government which it created was actually in operation. Being one of the last two of the colonies to ratify the instrument, therefore, "Rhody" ahs always seen fit to consider any constitutional change with the greatest care.

For years after independence had been won Rhode Island was a battleground over which Federalist and anti-Federalist stumped and roamed. There was enough of the Federal element to lend some secret aid and comfort to the constitutional idea, although not enough of it to send even one delegate to take part in its realization. Therefore, Rhode Island was constantly scored in the newspapers supported by the friends of centralized rule, and especially was she censured in the series of letters combined in the Federalist and written largely by Alexander Hamilton and James Madison.

"The half yearly representatives of Rhode Island," to quote from an issue ascribed to Hamilton, "would probably have been little affected in their deliberations on the iniquitious measures of that State by arguments drawn from the light in which such measures would be viewed by foreign nations, or even by sister States, while it can scarcely be doubted that if the concurrence of a select and stable body had been necessary, a regard to national character alone would have prevented the calamities under which that misguided people is now laboring."

The persistence of Rhode Island caused much discussion and also much righteous indignation in the adjoining Commonwealths of Massachusetts and Connecticut, and one of the orators of the day asked if it were not time "that this example of turpitude be dismembered and joined to those two States." This coming from Connecticut was more than the Rhode Islanders could bear, for the Land of the Wooden Nutmeg had always been such a stickler for State rights, and is to this day, that she was often referred to as being as contumacious as the Isle of Clams herself.

"Connecticut and Rhode Island," as Paul Leicester Ford was so fond of quoting, "are little republics embosomed in a gigantic empire."

Both these States had, indeed, enacted as their Constitutions their royal charters of the seventeenth century, and to this day they fairly bristle with sovereignty. Rhode Island, too, insisted that she should not be required to hasten in giving assent to the Constitution, in view of the fact that even the States which had been among the first to sign and ratify had held out until ten amendments had been granted. Many of her citizens had been made insolvent by the war, and she believed that she ought to work out her own fiscal salvation and issue her own money and manage her own internal affairs.

Especially did the diminutive Commonwealth stand out on her right to exercise all police powers within her borders, and it was not until the Tenth Amendment was interpreted as meaning that she should have such jurisdiction that she gave her reluctant compliance.

This Tenth Amendment reads:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The paragraph has been interpreted to mean that the people may rise and nullify the acts of their own State Legislatures, which would give them the power to pass even on such subjects as liquor prohibition, if they so desired. Rhode Island would stand squarely on her right to prevent the sale and manufacture of intoxicating drink, if her people willed it, and she might even go so far, as some States have done, as to prevent the vending within her borders of beverages containing malt and no alcohol. But when her people are against the Federal anti-liquor dictum, she contends that the Federal Government has no right to impose it upon them.

The question of enforcement in Rhode Island has a more biting zest because of the fighting qualities which are inherent in that State. She would be likely to stand out the longest because the wording of the first section of the dry Eighteenth Amendment is likely to open up many grounds for debate.

"After one year," to employ the exact phrase, "from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from, the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

What is an intoxicating drink? As the National Legislature has not yet promulgated its understanding as to what shall be considered an intoxicant for the purpose of enforcing the Eighteenth Amendment, what shall be said regarding the Rhode Island standard of 4 per cent.?

Eminent counsel representing the national brewing interests are seeking to establish in the courts that beer containing 2.75 per cent. of alcohol or less is not intoxicating. Here is a question of fact: Can the Supreme Court of the United States decide what is a fact, as well as pass upon fine points of law? Shall the definition of what is intoxicating be left to the judgment of juries, who, in every case, whether held before the Rhode Island Assizes or not, must pass again and again upon what shall constitute the error of Noah?

It is specified in Section 2 of the arid amendment that "Congress shall have concurrent power to enforce this article by appropriate legislation."

As Rhode Island has not concurred in the original legislation of the nation on this subject, what rule of reason shall apply concerning the thirst of her citizens? If she has not exercised any power to prevent their libations, how can she concur in prohibition?

The report of the committee of the State Bar Association of Connecticut, signed by such jurists as Silas A. Robinson, Milton A. Shumway, Joseph P. Tuttle, Seymour C. Loomis, and Christopher L. Loomis, is illuminating because Rhode Island and Connecticut, although they traditionally disagree, think much alike on matters of State sovereignty.

"This provision," says the report, "is so clearly wrong that to make it a part of the Constitution would be a most unfortunate event. It would introduce an element of confusion in the enforcement of a great police power. No matter what views may be entertained by a person on the subject of national prohibition, it is of the utmost importance that in respect to matters confided to the Federal Government the Government should have supreme power.

"If this amendment means, as it says, that 'the Congress shall have concurrent power to enforce this article by appropriate legislation,' and as that necessarily implies that there must be concurrent action by all the States and the United States, all agreeing on the exact form of legislation, then it would be an absurdity, for it is too much to expect that all the States and the United States would exactly agree on subjects about which the several States are in conflict and where there is so much diversity of opinion.

"The subject under consideration would be what constitutes intoxicating liquors—that is, what percentage of alcohol would make a liquid intoxicating? The range of legislation would probably be anywhere from one-half of 1 per cent. to 5 per cent.

"Another subject about which the Congress and the forty-eight States would not agree would be what constitutes 'beverage purposes.' There would be easily forty-nine laws on the subject, and no person would know how he stood in respect thereto, for, while acting entirely within the laws of one State, he might be acting exactly contrary to the laws of other States, and perhaps contrary to the law of the United States.

"The States already have the power to prohibit the transportation and the dealing in and use of liquor within themselves, and the United States Congress has passed an act prohibiting the transportation of liquor in any State or through any State where it is prohibited by the State Government. The Supreme Court of the United States has approved and found the act constitutional. This law is known as the Webb-Kenyon act.

"The very evident intent, then, of the Prohibition amendment is to force its provisions upon those States which do not want it. It is clear that in such States at least there must be endless conflict between the Federal and the State authorities under this Section 2, where 'concurrent power' is given."

The report also sets forth that in cases in reference to boundary waters between different States it has been decided that, where there is concurrent power of these waters, no regulations by either can be effective unless consented to by the other.

The Bar Association of the City of New York urged the New York State Legislature not to ratify the amendment in its present form, especially because of the confusion about current jurisdiction, which in its opinion would induce a confusion of power and a conflict of jurisdiction far reaching in its consequences. The Legislature of New York, however, did ratify the amendment, although it postponed enacting a law for its enforcement and defining intoxicating liquors.

Austin G. Fox, in his brief against prohibition submitted at a hearing before the joint Judiciary and Excise Commission of the New York Legislature, in carrying out the instructions of the President of the New York State Bar Association, Charles E. Hughes, dwelt upon some of the phases of State rights raised by Rhode Island.

"This amendment," said he, "seems to be drawn in a form that must make it equally objectionable to the disciples of Madison and those of Jefferson. If the Federal Government is to be intrusted with this power it is no concern whatever of the States. If the States are to enforce it by appropriate legislation, why should the Congress be permitted to interfere?

"Let us assume that the prohibition of the manufacture and sale of intoxicating liquors is desirable and that the principle ought to be embodied in the Federal Constitution. It is for those who advocate the amendment to show that, in its present form, it is expedient, or at least not inexpedient, to insert it in the Federal Constitution. This is the first time that any one has suggested that it is expedient to state in terms that Congress and the several States shall have concurrent power to enforce any article of the Constitution by appropriate legislation."

In the case of Houston vs. Moore the judgment of the court was delivered by Mr. Justice Washington, who said that to subject citizens to the operation of two laws upon the same subject, dictated by distinct wills, particularly in a case inflicting pains and penalties, was something very much like oppression, if not worse.

"In short," said the jurist, "I am altogether incapable of comprehending how two distinct wills can, at the same time, be exercised in relation to the same subject, to be effectual and at the same time compatible with each other."

The views of another New York jurist, Edgar M. Cullen, a retired Chief Judge of the Court of Appeals, were given a few months since and have a bearing on the Rhode Island contention.

"There is no justification for Federal control of the subject at all," he wrote. "We all believe in home rule. The observance of this principle, instead of weakening our loyalty to national unity, is the dominant cause of our devotion to it. It needs no amendment to the Constitution to protect the rights of the prohibition States. Under recent acts of Congress, and the decision of the Supreme Court construing them, a prohibition State has the same absolute power to forbid not only the manufacture but the sale of liquors, but to restrain their importation into the State, as if the State were an independent nation. But what those States seek is not to protect their own people, but to rule those of other States. It cannot be denied, however, that this is eminently a human trait, but nevertheless a most unfortunate one and productive of great evil."

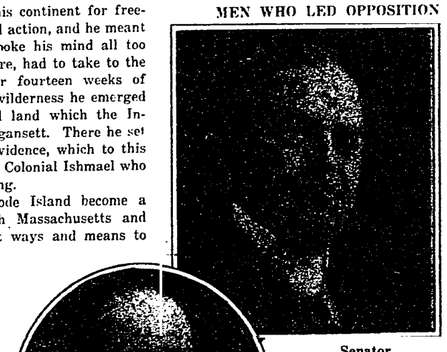
There is a reflex also of the view of the States which have not ratified the prohibition amendment in a recent letter directed by William H. Taft, ex-President of the United States, to Allen B. Lincoln of Hartford, Conn. He wrote:

"The regulation of the sale and use of intoxicating liquors should be retained by the States. They can experiment and improve. They have full power, and the Federal Government has helped them by making it a Federal offense to import liquor into their borders if they forbid it. If the power of regulation is committed irrevocably to the General Government, the next generation will live deeply to regret it.

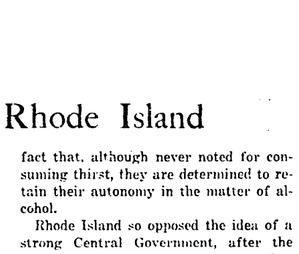
"For these reasons, therefore, first, because a permanent national liquor law in many communities will prove unenforceable for lack of local public sympathy; second, because attempted enforcement will require an enormous number of Federal policemen and detectives, giving undue power to a sinister and partisan subordinate of the National Administration; and, third, because it means an unwise structural change in the relations between the people of the States and the Central Government and a strain to the integrity of the Union. I am opposed to a national prohibition amendment."

These are some of the considerations and the opinions which embolden Rhode Island, as one of the three States still opposed to the approaching drought, to come out boldly against the measure, which in the opinion of the majority of her lawmakers and of many lawyers throughout the country is at variance with her long-established decision to maintain herself as sovereign in all things relating to the habits of her citizenry.

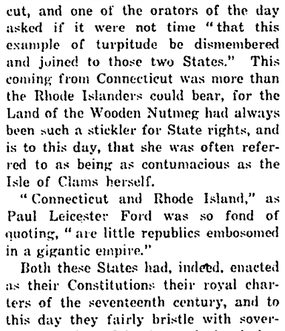
MEN WHO LED OPPOSITION TO PROHIBITION IN CONGRESS.



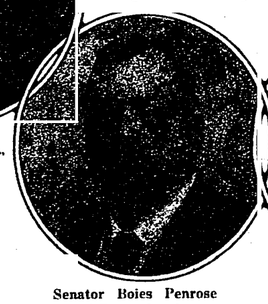
Senator James W. Wadsworth, Jr., of New York.



Senator Oscar W. Underwood of Alabama.
© Harris & Ewing.



Representative James A. Gallivan of Massachusetts.
© Paul Thompson.



Senator Boies Penrose of Pennsylvania.
© Underwood & Underwood

Representative Adolph J. Sabath of Illinois.
© G. V. Buck.

Representative Thomas Gallagher of Illinois.
© Harris & Ewing.

PROHIBITION LEADERS IN THE SENATE AND HOUSE.

Senator A. T. Barkley of Kentucky.
© G. V. Buck

Senator Morris Sheppard of Texas.
© Harris & Ewing

Senator Wesley L. Jones of Washington.

Senator W. S. Kenyon of Iowa.
© Harris & Ewing.

Congressman Joseph E. Ransdell of Louisiana.
© Harris & Ewing

Congressman Charles R. Crisp of Georgia.
© Harris & Ewing

Congressman Simeon D. Fess, of Ohio.
© Harris & Ewing.

Elihu Root.
Photo by Harris & Ewing.

W. D. Guthrie.
Photo by Paul Thompson.