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Repeal of the Prohibition Amendment

Affirmative

GEN. RANSOM H. GILLET

Negative

REV. JOHN HAYNES HOLMES



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REPEAL OF THE PROHIBITION AMENDMENT

INTRODUCTION

The Men's Club of the Community Church of New York, recognizing an increasing interest in public debate on important questions and desiring to give it as much encouragement as possible, appointed a Committee on Public Debate.

Believing that the prohibition question was one of great interest and importance this committee arranged a debate between the Rev. John Haynes Holmes, Minister of the Community Church, and General Ransom Gillett, General Counsel of the Association Against the Prohibition Amendment.

This debate was held at the Lexington Theatre in New York City, March 7, 1923, Mr. Henry Morgenthau presiding, and a stenographic report of the debate as it actually took place is contained in the following pages.

RANSOM H. GILLETT

General Ransom H. Gillett (referred to in the debate as Colonel Gillett), General Counsel of the Association Against the Prohibition Amendment, a distinguished soldier and a fighting "wet" is the man who successfully conducted the legal operations at Albany before Justice Staley to declare the Anti-Saloon League of New York a political body. Until the entry of this country into the World War he practiced as an attorney in Albany. In 1920 he served as Republican Assemblyman from Columbia County in the New York State Legislature and in that capacity took a prominent part in the anti-prohibition legislation. During the war, General Gillett was Major of the 105th Infantry and was severely wounded on the Hindenberg line, where he was repeatedly cited for bravery. On his return to this country he was made commanding officer of his regiment and in December, 1922 was breveted Brigadier General by the United States government. He is a partner in the law firm of Carlin and Gillett of New York, Albany and Troy, and has been general counsel of the Association Against the Prohibition Amendment since May 1st, 1922.

The Association Against the Prohibition Amendment is an organization of prominent citizens, representing many shades of belief in politics and religion. Its headquarters is at 56 West 45th Street, New York.

JOHN HAYNES HOLMES

Reverend John Haynes Holmes is pastor of the Community Church of New York, formerly the Church of the Messiah. He was ordained and installed as minister of the Third Religious Society (Unitarian), Dorchester, Massachusetts, in 1904, becoming pastor of the Church of the Messiah in 1907. He left Unitarianism in 1919 and became independent. Dr. Holmes is also the editor of

Unity (Chicago), assistant editor of The World Tomorrow (New York), director of the Civil Liberties Bureau since 1917, and is also the author of numerous books, sermons, pamphlets and magazine articles.



REPEAL OF THE PROHIBITION AMENDMENT

GEN. RANSOM H. GILLET

versus

REV. JOHN HAYNES HOLMES

RESOLVED: *That the Prohibition Amendment be repealed.*

Chairman Morgenthau

LADIES AND GENTLEMEN: I don't know whether I shouldn't take my introduction rather as a slam, because Mr. Williams said that the moment they found that I would accept it would make the meeting a success, but they didn't consult me where the meeting was to be held and whether they were to charge anything. But this meeting reminds me of a story that I heard where a man was appointed as arbitrator in a matter. He was sitting in his house, and although it was quite irregular, first one side told their side of the story and as they left he said to them, "You are right." Well the next afternoon the other side came and they told their side of the story and he said, "You appear to be right." Then his wife who had listened both times said, "Tell me, John; they can't both be right."

"No, you are right."

Now we are going to listen tonight to what these gentlemen say. They can't both be right and you will have to try and see which one of them presents the best arguments. Both gentlemen are well known. Each one of them is a distinct partisan in this matter, but in this question there is a third party and that is the people. And so we must try (I in your behalf) to see just how far they should go and where we should stop them. I

have come to this conclusion: that the old adage that you can lead a horse to water and you can't make him drink has been changed a little bit lately. You can provide prohibition but you can't stop the men from drinking.

Now, my friends, I am not going to entertain you, because I have been a speaker much more frequently than a moderator and I have frequently hoped that somebody was present who could issue an injunction against the chairman from making too many speeches and not allowing the speakers to address the meeting.

I am going to have the extreme privilege to keep order between these two gentlemen. I don't think I will have to exert much force and I am going to present to you, first, Colonel Gillett, General Counsel of the Association Against the Prohibition Amendment.

REPEAL OF THE PROHIBITION AMENDMENT

AFFIRMATIVE

Ransom H. Gillett

MR. CHAIRMAN, LADIES AND GENTLEMEN: I had the unalloyed pleasure of speaking in Boston last night with my good friend, Wayne B. Wheeler, the General Counsel for the Anti-Saloon League. The audience was not nearly as intelligent, not nearly as large, as this one. I was more or less shocked at an occurrence. I have always thought that Boston was the center and hub of the intellectual life and development of the United States. I arrived in the afternoon and met some of the gentlemen who were to stage this "dog fight" that was to be pulled off, and in the course of the conversation I said that I had an idea that we were approaching this subject of prohibition from an entirely wrong angle; my experience in New York and Delaware and Maryland and other states had led me to believe that it had had but very little effect upon the consumption of alcohol, but that it was more or less a question which involved the Bill of Rights.

"Why," said a gentleman, "what is this Bill of Rights? Is it up before your legislature in Albany this winter?"

I explained that it always was before every legislature and that rather gave me the hunch that I had better scrap the more or less eloquent and learned address that I had prepared in some effort to get ready for Dr. Wheeler, and it was more or less of a shock to be to find that any well informed, average intelligent citizen of the United States didn't know what the Bill of Rights was, and that was just the case.

We have been so accustomed to talking about prohibition from the beverage standpoint that we have entirely lost sight of the governmental principle involved. If you want to stop the use of alcohol as a beverage you can find a dozen much better ways of doing it than by forbidding it by law, all of which have been tried out and experimented with and many of which are not working successfully in other countries.

Prohibiting the importation, exportation, transportation or possession of intoxicating liquors by a constitutional amendment has no more effect upon the thirst or general habits of a community of citizens than the old sumptuary laws that the kings of England used to pass regulating the length of the toe that a man might wear on his boot, or the length of a veil a woman might wear on her head. Sumptuary legislation has no place in a constitution. It is ineffective, it is inapt and it is most unusual that so intelligent and highly civilized a nation as the United States of America could ever be induced to take the step that they did with regard to writing into their fundamental charter a prohibition against drinking, after the history through which this nation has gone to reach its present position.

It is very interesting to talk about the various methods and means of beating the law and the various exciting adventures and things that happen to people that dally with it, and all that sort of thing; it is more or less moving to consider the statistics of the drunkards' wives and their children and their cousins and aunts and brothers; it is an appeal to the very best and highest parts of the human mind to stress and lay down the doctrine that you are your brother's keeper. Morality, humanity, social welfare, and those things which were urged upon this nation as the moving cause for enacting or for writing into the Constitution the 18th Amendment, which prohibits the use of intoxicating liquors, are, as I say, beyond criticism. The trouble is that they are absolutely and entirely beside the point. Constitutions

and laws are very peculiar things. Law is nothing more nor less than the common consensus of the community in which it operates. A law which is perfectly operative and perfectly apt to conditions in the borough of Manhattan would be utterly useless, inapt and unenforcible in a crossroads in Indiana, where two or three people live around a country store. Traffic regulations are absolutely essential upon Manhattan island. You couldn't get along without them. Put a traffic policeman at the corner of the road that leads from, we will say, Smith's hotel to the post office down by the railroad on the Iowa Central, in some little town in Illinois, and he would die of ennui. There wouldn't be more than two or three vehicles pass him in a week. That is the difference between trying to apply a universal law to varying and different conditions. We have been persuaded that to drink alcohol is a sin. It was no more of a sin to drink alcohol; it is no more of a sin to get drunk than it is to bring on acute indigestion by over-indulgence in some particular food that you like. There is no question of morality about it at all. It is a question of self-control and self-respect and decency. So that the beverage aspect of prohibition is the very least of the problem that we have brought upon ourselves and which we must now solve, and that problem is the question of governmental functions.

The United States government was instituted among men as the creature, as the servant of thirteen sovereign, independent commonwealths who had just finished driving out of their homes and their communities what, in those days, they called a tyrant. These thirteen communities, were each with different climatic conditions, each inhabited by different kinds of people, some were French, some were British, some were Irish—all the nationalities of the world had come to the North American continent in the search of what they called freedom—whether intellectual, religious or personal, it made no difference. They found that it was necessary to have

some central clearing house through which they could coordinate their efforts toward public defense and general intercourse as between their thirteen sovereign, separate states, and so they created the government of the United States of America. And if you will read the charter or contract which they introduced, from one end to the other, you will never find in it anything that is prohibitive. There was no question of forbidding the United States government to do anything. It was authorized to coin money; it was authorized to attend to the public defense; it was authorized to attend to internal communication by post roads; matters of that kind; but it was not forbidden to do anything, and its powers of government—and our ancestors had had a very considerable experience in how powerful government was over the individual citizen—were reserved to the central reservoir from which it came, namely to the people.

Prior to the institution of the United States of America, every government in the world had arisen over the people. It was the result of conquest; it was the result of might and force imposing a government upon a people, and these refugees from the world where that kind of government had always been in vogue figured it was time to start something new, and they did, they started a government out of the people and not over the people. They were particularly careful to see that they didn't put too much power into the hands of this centralized government, because they had just had a most illuminating and startling experience of how far government with absolute power can go to make a citizen's life, his liberty and his pursuit of happiness, not only figments of the imagination but make it utterly impossible for him to pursue those three courses of human conduct. And so while they did not forbid this central authority from doing anything, they were very precise and clear as to what it could do and all other powers and rights were reserved to the people. Seventeen amendments in one

hundred and some odd years were added to that document and in not one of them was anything prohibitive. This government was never a government by verboten. Nothing was forbidden. The citizen could, and it was intended that he should, do anything that pleased him as long as it did not impinge or infringe upon the freedom of his neighbor, until, as I say, in the excess of our zeal to further civilization, to carry up social welfare to the point where it would be a benefit and a lasting blessing to all mankind, we, the people, acting through the forms of procedure prescribed in our law, wrote into our Constitution the word "prohibit" and what has been the result?

It hasn't prohibited anything particularly. The most eloquent and zealous exponents of the theory of prohibition by government admit today that it is a well-nigh hopeless task to attempt to enforce it. The President of these United States, a man in whose hands and to whose brain comes all the information along any line which affects the people from all over the United States, declared no later than yesterday, that conditions were such in the Bureau of Prohibition Enforcement that it could not be put under civil service because it was necessary to summarily remove so many of the employees in that bureau, daily, that it was of no use trying to make it a stable affair.

The same conditions, my friends, apply in Des Moines, Iowa that apply in New York. As a matter of fact the people in Kansas make better whiskey than they do on the East Side because they know how and have been at it longer. The whiskey they make in South Carolina from the corn (and by the way, do you know that in that country they figure their acreage in gallons and not in bushels?) is much better whiskey than they can make in Canada or Scotland and they have been making it right along—I am talking now only of dry territory—in Carolina for over a century and in Kansas since long before Kansas became a state. So that the

actual facts of the matter are that prohibition as a means of stopping us from drinking alcohol has not succeeded, and it never can succeed.

If there was any one place in the United States of America that ought to have absolutely wiped out the use of alcohol as a beverage, it is the state of Maine. Maine has been dry since soon after the dove found that olive branch that he brought back to Noah. Maine was and is today the center of the Jamaica ginger traffic, and no later than last night I heard President Charles W. Eliot of Harvard University say that he had been spending his summers for the last fifty years on an island off the coast of Maine (I think it is Mt. Desert) and he said it was perfectly shocking in the last fifty years to consider the amount of whiskey the inhabitants of that island had drunk, and that is the dry state of Maine.

The same conditions apply in Arizona, Washington, Wisconsin, Minnesota, North Dakota, so that by writing prohibition into the Constitution we haven't in the slightest prohibited the use of alcohol as a beverage.

Done away with the legalized liquor traffic? Yes. Taken the saloon out of our public life and out of our social life? Yes. Those are about the only two things we have accomplished that are of any particular benefit to the human race. But here is what we have brought about: in doing that we have thrown away, cast aside, the guarantees that are laid down in our Constitution which have protected us for the last two hundred years from the oppression of government by tyrants. Now it makes no difference whether the government under which we live consists of one man or of some five hundred and thirty men that we call a Congress and a Senate, a President and a Supreme Court. The principle of government remains the same. When those three distinct branches of government which our forefathers created in order that there should not become a centralization of power over the citizen, when we finally work around to where this centralization takes place, instead

of being governed by one tyrant, we are governed by some two or three hundred unless we watch the certain result that is bound to follow when we fool with a principle involved in this question. The Bill of Rights that my good friend in Boston was thinking perhaps might be the subject of the inquiry by our legislature provided three very precious and important privileges and rights, conveyed those rights upon the citizens of this country. One was the presumption of innocence when accused of crime. Another was the insuring of a trial by jury when a citizen is accused of crime. The other was the humanitarian principle that a criminal once having expiated his offense by punishment should not again be punished for the same offense. I don't care how you feel about prohibition. I don't care how you feel on the subject of intoxicating liquors, whether as a beverage or medicine. I don't care about the effect of the retail liquor traffic, or of the saloon, or of the criminal political influence that the commercialized liquor traffic exerted. That has nothing to do with it. There are three principles that if you sacrifice you are heading your government straight for destruction.

Now let's see what has happened. In January of this year the Supreme Court of the United States handed down a decision in what is known as the Lanza case. Lanza was a citizen in the state of Washington. In Washington they had a particularly virulent and peculiar state liquor enforcement law. The state authorities found Lanza in some act in contravention to their state law. They indicted him, tried him and punished him. They fined him and put him in prison. When he had finished his term of incarceration in the Washington state jail, the Federal prohibition authorities took him before a Federal grand jury, indicted him for the same offense upon the same evidence used in the state court, tried him upon the same evidence, secured a conviction and imposed a sentence upon him, and he appealed upon the ground that he had been placed twice in jeopardy for the

same offense, and upon the ground that if that sentence was carried out he would be punished twice for the same act. Don't let's minimize the principle involved simply because this happened to be a case of a violation of the liquor law. The principle is that if that result stands in the jurisprudence of this country then we have wiped out that portion of the Bill of Rights which guarantees that you nor you nor you shall never be put twice in jeopardy for the same offense, and the Supreme Court held that Lanza could be punished twice, once by the state and once by the Federal government.

That is the principle that is enunciated in the Lanza case and if that is the case, if you should violate the law, knowingly or unknowingly, it makes but small difference what the intent is, if you, living in Iowa, being a farmer, where they regulate railroads so closely that the number of baskets in each station is regulated by state law, if you violate one provision of the transportation act of the state of Iowa, as a shipper, as a railroad man, as a passenger, or anything else, the state of Iowa can punish you, and it so happens under the interstate commerce laws that now exist the United States government can punish you too.

That is way aside from the liquor question, Gentlemen. That is way beyond the question of morality, so far as the use of intoxicating liquors are concerned, and that comes right down home. The state of Utah arrested some of its most prominent citizens the other day for smoking in public places. It is a perfect exercise of the police power of the several states. It is not at all unlikely that if some of our more vigorous and well organized minorities keep hammering away at Congressmen down there we will have an anti-smoking law put upon the United States statute books. If that is done, the citizen of New York who violates the law of Utah may be punished by the state of Utah while he is there and after he returns to his domicile in New York he may be pun-

ished by the Federal government, and what brought it about? Prohibition, nothing else.

It is a strange thing that we can't get away from this question of liquor. I have heard a dozen of these very eminent and eloquent prohibition exhorters talk about the terrible curse of rum. Nobody disputes that. Talk about the evil influence of the beverage liquor traffic—everybody knows all about it; that is no news. But, good heavens, you don't have to drink liquor unless you want to. There is no law that compels a man or woman to drink alcohol. But let me tell you this, it is just as logical and just as natural as day follows night that if we once give our government power to prohibit, we must give it power to compel. And that is the difference between a constitution that never prohibited anything and the constitution that prohibits anything, the difference between tyranny and free government. Oh, dismiss your minds of all this terrible evil that has been held up to us. Society, social welfare, humanity, nothing can be more important to human kind than man. Nothing can be more dear or precious to the state than the welfare of its citizens, but for heaven's sake don't let's sacrifice the very things that make our state great in order to save some poor fool from his folly. In order to instill self-control and self-respect and the power to dominate yourself, don't let's sacrifice the inviolable, the ancient landmarks of government, in a hopeless cause. Prohibition has done away with guarantees against a double jeopardy. It has done away with the trial by jury. I care not how criminal a citizen of the United States may be, our juridical system is founded upon the fact that we presume every man innocent until he is proven guilty. The tyrants of Rome didn't feel that way about it. Julius Caesar, Nero, Alexander, the Greeks, the Visigoths. Before making that Magna Charta, signed at Runnymede, tyrants ruled England, and even to this day in Italy and France government doesn't feel its citizens are innocent until they are proven not guilty. They take

the opposite view. Russia ran on that basis and what did they have? They had the spies and secret police, those who would go out and take a man from his home and lock him up on suspicion. The man was guilty unless he proved himself innocent.

Now I don't believe the American nation wants that kind of thing written into their laws. I don't believe that we are ready to overturn the system upon which we have based the application of our criminal laws ever since this country was started simply because we had the criminal liquor traffic, or simply because we had a great many men who ought to have been sober getting drunk on Saturday night. I don't believe we are ready to sacrifice that principle, but again don't lose sight of the fact that the use of alcohol isn't involved in the question of the trial by jury in the slightest. It is one of the principles of government that is involved and that principle is abrogated by Section 32 of the Volstead law which says that upon accusation by (if you like) a police officer (that is what our prohibition enforcement officers are, and some of them are good, some are bad, and some are a good deal worse than that) they may go before a magistrate in any part of the district, and the United States District Court covers a wide area. Up in my country the man who lives in Plattsburg has to come down to Albany to attend the meetings of the court. The man who lives in Columbia county must come to New York city to appear in court. It isn't done as it is here on the island of Manhattan. We have no Interborough up in that country. A man who was accused of moonshining was arraigned in New York city on the sworn testimony of a police officer. He had to come down one hundred and sixty or seventy miles to answer to a perfectly groundless charge. Nobody paid him for his time, however. Such a man and such a police officer may go before any United States District Judge and swear to the fact on information and belief that you are the owner of a house in which he suspects that liquor is being manu-