

## CONTROLLING LEGAL PRINCIPLES

### *Free Exercise Clause Decision – “Contemplation of Justice”*

*United States v. Constantine, 296 U.S. 287 (1935)*



The provision, if regarded as part of the machinery for enforcing the Eighteenth Amendment, fell automatically with the repeal of that Amendment. P. 296 U. S. 293.

In concluding that the law imposed a penalty in aid of the enforcement of the Eighteenth Amendment, and therefore fell with its repeal, the court relied upon the legislative history and administrative interpretation of § 701, and also thought such a construction necessary to avoid a serious question under Article I, § 8, of the Constitution as to the uniformity of operation of the Act throughout the United States. The government insists that the section was not a part of the machinery for enforcing the prohibition amendment, but a revenue measure levying an excise conformably to the Constitution.

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**We think the administrative practice has little bearing**

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**upon the question of the nature of the exaction.** During the life of the Amendment, collection was lawful whether the demand was for a tax or a penalty, and the classification by the administrative officers was therefore immaterial. Congress then had power, in the enforcement of prohibition, to impose penalties for violations of national prohibitory laws. [Footnote 8]

The concession of such a power would open the door to unlimited regulation of matters of state concern by federal authority. **The regulation of the conduct of its own citizens belongs to the state, not to the United States.** The right to impose sanctions for violations of the state's laws inheres in the body of its citizens speaking through their representatives. So far as the reservations of the Tenth Amendment were qualified by the adoption of the Eighteenth, the qualification has been abolished.

Thoughts, Words and Actions for Plaintiff's Quintessential Rights of the First Amendment:  
*Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause*

The point here is that the exaction is in no proper sense a tax, but a penalty imposed in addition to any the state may decree for the violation of a state law. The cases cited dealt with taxes concededly within the realm of the federal power of taxation. They are not authority where, as in the present instance, under the guise of a taxing act, the purpose is to usurp the police powers of the state. [Footnote 20]

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[Footnote 8]

Section 2 of the Eighteenth Amendment directed that the Congress and the several states should have concurrent power of enforcement by appropriate legislation. *Compare National Prohibition Cases*, 253 U. S. 350; *United States v. Lanza*, 260 U. S. 377; *Hebert v. Louisiana*, 272 U. S. 312.

[Footnote 20]

*Bailey v. Drexel Furniture Co.*, 259 U. S. 20; *Hill v. Wallace*, 259 U. S. 44; *Linder v. United States*, 268 U. S. 5, 268 U. S. 17.

MR. JUSTICE CARDOZO.

I think the judgment should be reversed.

"Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. **One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.**"

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE join in this opinion.