delegation of the latter required action of the people through conventions in the several states. The Eighteenth Amendment being of the latter character, the ratification by state legislatures, so the argument ran, was invalid. The Supreme Court rejected the argument. It found the language of Article V too clear to admit of reading any exception into it by implication.

The term "legislatures" as used in Article V means deliberative, representative bodies of the type which in 1789 exercised the legislative power in the several states. It does not comprehend the popular referendum, which has subsequently become a part of the legislative process in many of the states. A state may not validly condition ratification of a proposed constitutional amendment on its approval by such a referendum.[67] In the words of the Court: "[T]he function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State."[68]

Authentication and Proclamation.—Formerly, official notice from a state legislature, duly authenticated, that it had ratified a proposed amendment went to the Secretary of State, upon whom it was binding, "being certified by his proclamation, [was] conclusive upon the courts" as against any objection which might be subsequently raised as to the regularity of the legislative procedure by which ratification was brought about.[69] This function of the Secretary was first transferred to a functionary called the Administrator of General Services,[70] and then to the Archivist of the United States.[71] In *Dillon v. Gloss*,[72] the Supreme Court held that the Eighteenth Amendment became operative on the date of ratification by the thirty-sixth state, rather than on the later date of the proclamation issued by the Secretary of State, and doubtless the same rule holds as to a similar proclamation by the Archivist.

Judicial Review Under Article V

Prior to 1939, the Supreme Court had taken cognizance of a number of diverse objections to the validity of specific amendments. Apart from holding that official notice of ratification by the

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[67] Hawke v. Smith, 253 U.S. 221, 231 (1920).

[68] Leser v. Garnett, 258 U.S. 130, 137 (1922).

[69] Act of April 20, 1818, § 2, 3 Stat. 439. The language quoted in the text is from Leser v. Garnett, 258 U.S. 130, 137 (1922).

[70] 65 Stat. 710–711, § 2; Reorg. Plan No. 20 of 1950, § 1(c), 64 Stat. 1272.

[71] National Archives and Records Administration Act of 1984, 98 Stat. 2291, 1 U.S.C. § 106b.

[72] 256 U.S. 368, 376 (1921).