

**PROHIBITION: THE PRINCIPLE, THE POLICY
AND THE PARTY; A DISPASSIONATE
STUDY OF THE ARGUMENTS
FOR AND AGAINST PROHIBITORY LAW,
AND THE REASONS GOVERNING THE
POLITICAL ACTION OF ITS ADVOCATES**

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Prohibition: the principle, the policy and the party; a dispassionate study of the arguments for and against prohibitory law, and the reasons governing the political action of its advocates by E. J. Wheeler

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E. J. WHEELER

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PART I. THE PRINCIPLE.

IS PROHIBITION IN ACCORD WITH WISE PRINCIPLES OF STATESMANSHIP?

"No legislation founded on unsound principles can accomplish a permanent good, whatever be the present seeming."—PREFACE TO BISHOP'S STATUTORY CRIMES.

"MEN are four," says an Arabic proverb:

"He who knows not, and knows not he knows not. He is a fool; shun him.

"He who knows not, and knows he knows not. He is simple; teach him.

"He who knows, and knows not he knows. He is asleep; wake him.

"He who knows, and knows that he knows. He is wise; follow him."

The only difficulty with this, as with so many other wise deliverances, lies in its application. For it frequently happens that the man who knows not that he knows not, and the man who knows that he knows, manifest the same characteristics, being equally positive and equally sincere. If emphasis in assertion is to be sole guide in deciding the righteousness of a cause, we shall be forced generally to conclude that each side is right.

Certainly this would be the case in the discus-

sion of Prohibition, which has been characterized on both sides with much warmth of feeling and a consequent warmth of utterance. It has been made a theme of heated controversy in the realm of science, of philosophy, and of religion. It is a question that touches on one side vested interests of vast proportions, and, on another, social habits that have become rooted in custom and appetite. Add to these causes of contention, those which have arisen of late years in the realm of politics, and it is not, perhaps, to be wondered at that the subject is rarely approached in the calm spirit of philosophic inquiry. What has been written or spoken has, almost invariably, taken the form of a plea by an advocate or an assault by an adversary. There is, of course, in all public movements, an important place for impassioned appeal and invective. Light without heat is as sterile in the moral as in the physical world. But there is an equally important place for the calm and impartial consideration of facts and principles.

Prohibition is something more than a sentiment. It is a definite legislative enactment proposed as a remedy for certain ills. It is not enough to prove that those ills exist. That they do exist, proves the need of *some* remedy, and their magnitude proves the urgency of that need; but it can not prove that the remedy proposed is the proper one, nor what is the proper mode of its application.

Before Prohibition can be accepted as a remedy

for the drink-evil, three questions must be asked and answered, namely :

1. Is it in accord with wise principles of statesmanship ?

2. Does it, in actual operation, give reasonable assurance of being an efficient and practicable policy ?

3. Can it be attained, and at what sacrifices ?

To these three questions Parts I, II, and III of this work are respectively directed.

1. The Legal Phase of the Subject.

In considering the governmental principles involved in prohibitory law, the legal and constitutional rights of government are those which naturally call for first consideration. What rights a State possesses, and what rights it is wise to exercise, are, however, entirely distinct questions. In other words, the legal right and the moral right are by no means the same. The Government has, for instance, at all times, a legal right to declare war, but not the moral right to do so, except for sufficient cause.

The legal right (without reference now to the moral right) of the government over all forms of trade and traffic is one that has been firmly established for generations. It can, under law, regulate, suppress, or destroy any form of traffic which it considers inimical to the well-being of the State. "It is the undoubted and reserved power of every State here," said the United States Supreme

Court," as a political body, to decide * * * what "kind of property and business it will tolerate and "protect." Trade and traffic are, indeed, the outgrowth of organized society. The appetite for meat is one present to the savage; but the traffic in meat-stuffs, the barter and sale, is possible only under social organization of some sort, and social organization is possible only under some form of law. Since then, all traffic is, in a sense, the creature of law, the power of law to impose upon it whatever conditions may be necessary, has been one recognized in every form of government. It is doubtful if any State could exist that did not retain this power. As a matter of fact, a very large proportion of the acts of legislation in all governments, are but exercises of this power over the commercial transactions among its people.

It is of first importance to bear in mind that Prohibition deals with the *traffic* in liquor—with the acts of barter and sale, not the act of drinking. Practically, this distinction may amount to little; but legally it is a distinction of vital importance. The law that forbids a man to sell a certain commodity and the law that forbids him to use it, may be very wide apart in the principles of jurisprudence involved, for the act of selling is an act of public consequence, while the act of using may or may not be. The act of drinking a glass of liquor, for instance, is one that may affect no one but the man himself who drinks; but offering for sale to the public the same glass of

liquor is an act that is of a public character and affects the public interest.

For four hundred years, the laws of England have recognized in the liquor traffic a proper subject for legislative action. As early as 1603 an act forbidding a publican, under the penalty of ten pounds, to allow men to stay and tiddle in his house, was passed, and since then a long series of nearly five hundred regulative acts have gone on the records of English jurisprudence.

Similarly, in the United States the traffic has from the first been recognized as a fit subject for legislative action. In the Continental Congress, February 27, 1774, a resolution was passed as follows:

“*Resolved*, That it be recommended to the several legislatures of the United States immediately to pass laws the most effectual for putting an immediate stop to the pernicious practice of distilling grain, by which the most extensive evils are likely to be derived if not quickly prevented.”

Here, then, in the birthplace of the American Republic, as well as in the wide variety of statute and constitutional laws, regulative, restrictive, or prohibitive, enacted in every State of the nation since, the barter and sale of liquor has been recognized as a public affair, subject to public control.

Prohibition, then, whether or not it is a wise exercise of power, would not inject any new and