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States' Rights and National Prohibition

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REVIEWS

It is perhaps erroneous to say that municipalities have not entered the field of social science until recently. It seems they did a good deal of this in the middle ages according to the standards of the time, but they had a different emphasis upon the character of their work; social work was then carried on largely as a form of punishment or correction, not as a matter of compassion or a will to develop and benefit individual human beings. Thus even in the medieval hospitals, such as there were, the view was widely held that the patients had committed some reprehensible offense and the object of the hospital authorities was to beat them or exhort them into the good life before they died, it being assumed that they would die in due course and that nothing much could be done to delay this consummation.

The book is a thorough piece of work. For instance it has a consideration of medieval conditions and also a critical examination of the whole 19th century humanitarian movement together with a discussion of the English Poor Law as a form of governmental regulation rather than an effort at individual aid. There is a careful discussion of social work as a phase of religious zeal together with some consideration of the various idealistic communities that have valiently set forth in different stages of the world's history to effect a more perfect brotherhood of man on earth. There is of course a careful consideration of the child welfare movement and the different measures for settlement work together with a discussion of the modern methods of prevention in the field of disease, delinquency and crime. Professor Queen's entire book brings out very clearly the extraordinary contrast between the very impersonal methods that obtained nearly universally in social work as well as in the other sciences until about a hundred years ago as compared with the emphasis upon individualization that obtains today. Thus the medieval hospital used to punish people who had the smallpox and exhort them to mend their ways before they died. Similarly in the law it has hitherto been emphasized that the crime of larceny must be punished in keeping with the then current theological estimate of the seriousness of this offense, with the result that little account was taken of the individual who may have fallen into the class of those who committed larceny. It seems that the same extraordinary attitude has generally obtained in the field of medicine hitherto. Thus until recently it was the fashion to treat heart disease rather than an individual who was affected with heart disease. So if a man had heart disease he was treated in a certain way even though there were other elements in his physical difficulties that should have been considered in administering to these needs.


This is an attempt to work out a substitute for the present interpretation of the 18th amendment. The author alleges that his discussion is impartial and he expresses the hope that his conclusions will not cause people who disagree with him to impinge his reasoning. It seems to the writer that this pious hope is not likely to be fulfilled. Perhaps the discussion of such a universal question as prohibition is not likely to result in the reader's admiring the author's reasoning while he disagrees with his conclusions. Briefly, Mr. Stevenson takes the view that the 18th amendment
which provides for national prohibition might be interpreted as a further authority under the commerce clause so that the Federal government could prevent the importation and exportation of intoxicating liquors, while it would not commit itself one way or the other as to the manufacture and sale of such liquors within the sovereign states. Mr. Stevenson points out that before the Federal amendment provided for national prohibition nearly two-thirds of the states already had sweeping prohibition laws which were, on the whole, effectively enforced. He urges that now, however, under national prohibition, the prohibition laws are not enforced in the old prohibition states as effectively as in the past. He suggests that such an interpretation of the 18th amendment would enable the Federal government to withdraw from its impossible task of enforcing prohibition nationally. It would leave this burden with the states and each state would then assume the responsibility of enforcing local law according to the wishes of its own people. Thus he concludes they should have effective prohibition in all states where it is locally popular and in those centers where it is not popular the people would adopt laws that were adapted to their actual needs. At the same time the Federal amendment would be highly effectual in prohibiting the liquor traffic between the states. Mr. Stevenson submits some legal authority in favor if his view but it seems that most of his evidence is taken from political discussions or from statutes which further the present enforcement of the prohibition law.

Perhaps we believe what we want to believe and we think what we want to think and our much vaunted reasoning does not come into play as often as we suppose. The reviewer can only say that he cannot look hopefully upon the practical result of such an interpretation of the 18th amendment and that as a matter of law he thinks it impossible. Section one of the amendment provides:

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquor within ... the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

Perhaps many such amendments to the constitution may be nullified if Congress refuses to pass legislation that is adapted to its enforcement. Thus in Illinois they have had no redistricting for the election of members of the state legislature because the rural parts of this state refused to pass the necessary redistricting acts. If we assume however that the Federal Congress wishes to enforce the amendment according to its general tenor, then it would seem extraordinary to say that it should not prohibit the manufacture of liquor within the sovereign states in keeping with the express words above set forth.

The author urges at length that the eighteenth amendment if interpreted to prohibit liquor within the states is an invasion of private rights which are subject to regulation only by the several states. Hence it is an invasion of State sovereignty and is beyond the province of the constitution itself, which is an instrument of delegated powers. The author contends that the eighteenth sovereignty is and beyond the province of the constitution itself, which is an instrument of delegated powers. The author contends that the eighteenth amendment is not law in any state which failed to ratify it. It may well be urged that the eighteenth amendment was unwise as a matter of policy; but it is difficult for the reviewer to understand how anyone can seriously urge that a part of the constitution is unconstitutional as a matter of law.

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