

THE STATE OF THE UNION

BY ALBERT JAY NOCK

The New Deal and Prohibition

I BELIEVE that when the historian looks back on the last twenty years of American life, the thing that will puzzle him most is the amount of self-inflicted punishment that Americans seem able to stand. They take it squarely on the chin at the slightest provocation, and do not even wait for the count before they are back for more. True, they have always been good at it. For instance, once on a time they were comparatively a free people, regulating a large portion of their lives to suit themselves. They had a great deal of freedom, as compared with other peoples of the world. But apparently they could not rest until they threw their freedom away. They made a present of it to their own politicians, who have made them sweat for their gullibility ever since. They put their liberties in the hands of a praetorian guard made up exactly on the old Roman model, and not only never got them back, but as long as that praetorian guard of professional politicians lives and thrives — which will be quite a while if its numbers keep on increasing at the present rate — they never will.

But though Americans have always known how to make the old-time Flagellants look like amateurs at the business of scourging themselves, it is only in the last twenty years that they have really shown what they can do. The plagues of Egypt, the flies, frogs, hail, locusts, murrain, boils, and blains, are as nothing by comparison with the curses they have brought down on themselves in that time, all of their own free will and accord. They diddled themselves into a

war to make the world safe for democracy — and look at democracy now! They took on the war debts, and financed the “reconstruction” of Europe — and now they are holding the bag. They fell for the “new economics” of blessed memory, and took a handsome fling at jazz-and-paper in the ’Twenties. They went in strong for Prohibition; and then, even before they came out from under that nightmare, they threw themselves body and soul into the fantastic imbecilities of the New Deal.

What a spectacle! There is no use, none in the world, of pretending that the praetorian guard dragooned, cajoled, or humbugged the people of this country into taking up with all this appalling nonsense, and at the same time pretending that the country is a republic in which the people are sovereign. You can not have it both ways. If the professional politicians, who are known of all men to be pliant mountebanks when they are not time-serving scoundrels, and are usually both — if these have power to herd the people headlong into such bizarre rascalities and follies against their will and judgment, then the country is not a republic but an oligarchy built on an imperial model, and its people are not citizens, but subjects. If on the other hand it is a republic and the people are sovereign, then the misfeasances of the professional politicians run straight back to the people who elected them. When Golden Rule Jones was Mayor of Toledo, a man wrote him for help, saying that whisky had been his ruin. Jones answered his letter, saying: “I do not believe

whisky has been your ruin. I believe it was the whisky that you drank.”

The reader may take his choice between these alternatives. No matter which of the two is right, the fact remains that the individual citizen, or subject, has lost the best that was in him. Whether he surrendered it or whether he let it be confiscated is not what I am so much concerned with at the moment — although the question is important enough and ought to be ventilated — as I am with the fact that it is gone. Not only his liberty is gone, but something much more valuable, his belief in liberty and his love of it, his power of quick and effective resentment against any tampering with the principle of liberty by anybody. This is as much as to say that his self-respect, dignity, his sense of what is due to him as a human being, has gone, and that is exactly what I mean to say. It has gone into the keeping of persons most notoriously unworthy of such a trust, or of any trust; persons capable of deliberately conniving, and who do connive, at the temporary ruin of their country for political purposes. I say this with respect to no particular party or faction, for however many nominally there may be of these, there are never actually more than two. As Mr. Jefferson said, “The nest of office being too small for them all to cuddle into at once, the contest is eternal which shall crowd the other out. For this purpose they are divided into two parties, the Ins and the Outs.”

In the last conversation I had with the late Brand Whitlock, a few months before his death, we spoke of the remarkably rapid dwindling of the sense of self-respect in America, and he asked me if I remembered how thoroughly the country was worked up by a little incident that took place only twenty-five years before. I remembered it well, because we had happened to be together at the time, and we had commented on the wholesome general resentment that

the outrage provoked. State prohibition was in force then, and somewhere down South a posse of state officials boarded a train and slashed open the suitcase of a through passenger who had stood on his rights and refused to unlock it. That incident went the length and breadth of the land, and was talked about in good plain language, not by a few doctrinaires, but by Tom, Dick, and Harry on the streets. Yet, as Mr. Whitlock said, in the America of twenty-five years later, such a thing would not even be news, and nowhere would there be a breath of indignation against it. Mr. Whitlock died, as an honorable man would wish to do, before he could see the upshot of most of the policies which the people of Prohibitionist and post-Prohibitionist America have inflicted on themselves in the name of good government. Many of us, indeed, appear or pretend not to see it even now.

I think, for instance, that no one has adequately remarked the ease and naturalness of the transition from Prohibition to the New Deal. Some one may have done it, but if so it has escaped me. There is a complete parallel between them. They are alike in their inception. They are alike in their professed intention. As for their fundamental principle, they are so far alike that the one is a mere expansion of the other. They are alike in respect of the quality of the people who support them, alike in respect of the kind of apologists they attract to their service; and finally, they are alike in their effect upon the spirit and character of the nation.

Alike in their origin, both were brought about by a *coup d'état*, the work of a determined minority at a time when the country was writhing in one of its recurrent spasms of discreditable and senseless funk — or, I should rather say, when it had passed beyond its norm of imbecile apathy and gone into the stage of vociferous idiocy. Not long ago I had a letter from a French friend

who remarked that *quand les Américains se mettent à être nerveux, ils dépassent tout commentaire*, which is indeed true, so I imagine that what I have just said is perhaps the best one can do by way of describing the country's state of mind. Prohibition came when we were "making a business of being nervous" about the great cause of righteousness that we were defending against the furious Goth and fiery Hun. The New Deal came when we were making a business of being nervous about the depression; that is, nervous about having to pay collectively the due and just penalty of our collective ignorance, carelessness, and culpable greed.

Prohibition and the New Deal are alike in their professed intention, if one may put it so, to "do us for our own good". Both assumed the guise of disinterested benevolence towards the body politic. In the one case we were adjudged incapable of setting up an adequate social defense against the seductions of vicious rum-sellers; in the other, of defending ourselves against injuries wrought by malefactors of great wealth; therefore the State would obligingly come forward and take the job off our hands. In the case of Prohibition we can now see what those professions amounted to, and we are beginning to see what they amount to in the case of the New Deal; and in either case we see nothing but what we might have seen at the outset — and what some of us did see — by a brief glance at the kind of people engaged in promoting both these nostrums, and a briefer glance at their record. We see now that the promotion of Prohibition was purely professional, and there is nothing to prevent our seeing that so was the promotion of the New Deal. In 1932 the local politicians and the political hangers-on who together make up the "machine" — and of whom there are more in America than there were lice

in Egypt in Moses' day — saw a great starving-time ahead of them, and when the New Deal was broached they fell upon it with yells of joy, as one who comes upon an oasis of date-palms in a trackless desert. Their dearth was miraculously turned into plenty. Faced with a dead stoppage of their machine from lack of money to keep it going, they suddenly found themselves with more money in their hands than they had ever imagined there was in the world.

Prohibition and the New Deal are alike in their fundamental principle, which is the principle of coercion. Prohibition proposed to make the nation sober by *force majeure*, and incidentally to charge a thundering brokerage for doing the job. It said to us, "This is all for your own good, and you ought to fall in line cheerfully, but if you do not fall in, we will make you." The New Deal proposes a redistribution of wealth, and is charging a brokerage that makes the janizaries of the Anti-Saloon League look like pickpockets at a county fair. The national headquarters of the New Deal has a slush-fund of something over four billion dollars to blow in between now and next November, and about 700,000 devoted healers on the job of seeing that it is spent where it will bring the best results. All this, we are told, is for our own good, and we ought to appreciate it, but whether we appreciate it or not, we must take it.

The two enterprises are alike also in respect of the quality of the people who support it. There are some statistics available on this. About four years ago — in November, 1931, to be exact — Mr. Henry L. Mencken published in this magazine the results of an elaborate statistical study which he had been making in collaboration with Mr. Charles Angoff in order to determine the relative cultural standing of the forty-eight states. He tabulated his findings in the form of a list of the states, arranged in the order of

their approach to civilization, and he has stated publicly that his table has never been successfully challenged.

In 1932 Mr. Mencken compared his table with the returns of the *Literary Digest's* poll on Prohibition, and found that they fitted precisely. Nearly all the states that turned in heavy majorities against Prohibition stood high on his table, and nearly all that supported it stood low. In the *Baltimore Evening Sun* of January 13, 1936, he made a similar comparison with the *Digest's* poll on the New Deal, and got a similar result. The more nearly civilized states are against it, and the more uncivilized states are for it. He says:

In the five most civilized of American states, according to the Angoff-Mencken table, the percentage of voters voting for the New Deal is but 32.32; in the five least civilized states it is 67.68, or more than double. . . . Of the states giving the New Deal less than 30% of their votes (seven in number) all are among the first twenty-two; of those giving it more than 70% (two in number) both are among the last three. Of those giving it less than 35% (thirteen in number) all are among the first twenty-eight; of those giving it more than 65% (four in number) all are clumped together at the bottom. Finally, of those giving it less than 40% (twenty-two in number) all are among the first thirty-three; and of those giving it more than 60% (eight in number) all are among the last eleven.

From this it may be seen that, precisely like Prohibition, the New Deal, as Mr. Mencken concludes, "makes its most powerful appeal, not to the intelligent and enlightened moiety of the American people, but to the ignorant and credulous. It is, in truth, demagoguery pure and simple, quackery undiluted. . . . The states that show a majority for it, including the anomalous Utah,

are exactly the states that inflicted the Eighteenth Amendment on us, and most of them are still dry. Also they are the states whose people still believe by large majorities that William Jennings Bryan was a profounder scientist than Darwin, that any man who pays his debts is an enemy to society, and that a horsehair put into a bottle of water will turn into a snake".

As for its moral effect upon the nation, the New Deal simply carries on Prohibition's work of making corruption and hypocrisy respectable. Both enterprises are bureaucratic, both are coercive; and, as Mr. Jefferson said, the moral effect of coercion is "to make one-half the world fools, and the other half hypocrites; to support roguery and error all over the earth". And what has Prohibition had to show by way of offset? Simply nothing. What has the New Deal to show, so far? Can anybody point to a single one of its policies that has really worked? I know of none. No recovery in business is due to it. It has as many unemployed on its hands as it ever had, and as many derelicts. Its agricultural policy is said to have worked, but, as the Supreme Court observed, that simply amounted to the expropriation of money from one group for the benefit of another; in other words, it amounted to larceny, and official larceny always works. The unofficial practitioners of that art who are now in Sing Sing were simply at a disadvantage.

Prohibition and the New Deal, in short, breed straight back to the incredible appetite of the American people for self-inflicted punishment. One wonders how long they can take it, and how hard; and above all, one wonders, when the New Deal has gone the way of Prohibition, what more dismal and depraving form of self-torture they will turn to next.

CIRCUMSTANTIAL EVIDENCE

BY EDWIN BORCHARD

CIRCUMSTANTIAL evidence, because of the continued prevalence of sensational criminal cases in this country, has again become the subject of widespread discussion and dispute. Numerous articles have been written designed to prove that it is infallible and worthy of greater credence than direct evidence. An old familiar phrase has even been resurrected: "Witnesses may lie, but circumstances cannot." It is wise, however, to be cautious in such matters. For, while it is true that circumstances are often convincing and conclusive, they may also be misleading and unreliable. Since the publication in 1932 of my book, *Convicting the Innocent*, a number of striking cases have occurred which show again the danger of blind dependence upon this type of evidence.

It is perhaps not the circumstances themselves which lie, for they are usually inanimate, but the conclusions which human beings draw from them. In other words, circumstances can lead to correct as well as incorrect results, depending in turn upon other circumstances, such as gullibility, eagerness, passion, accident, and the sheer fallibility of human nature.

Circumstantial evidence is supposedly entitled to special weight because it derives from several connected sources and is thus less likely to be falsely prepared or to be tainted by perjury or error. But its vulnerability, as Chief Justice Shaw of Massachusetts once said in a celebrated case, is that a jury must not only weigh the evi-

dence of facts, but it must also draw conclusions from them; and in doing that, may be led by prejudice or partiality or other state of mind to make hasty or false deductions.

The fact is that circumstantial evidence is rarely the only evidence upon which a conviction is obtained. It usually appears in association with an erroneous identification, or "expert" testimony, or a prior criminal record, or suppression of evidence, or perjury, which influences the jury to give undue weight to the circumstantial evidence and to draw false inferences from it. If any major signpost in the trail of evidence leading to the desired goal is misread by the jury, it is pretty certain that the wrong road will be taken and the wrong destination reached. If the jurors strongly believe in the truth of some major premise, such as the presence of the accused at a crucial place at a certain time, the rest of the circumstances will in their minds take on a color consistent with that primary conclusion; whereas if the major premises have been misconceived, the circumstances would assume a different aspect and lead to a different inference. Circumstantial evidence thus rarely appears in isolation; and any number of attendant or collateral facts or emotions or beliefs can serve to color it and falsify its true significance.

I have gathered together a half-dozen cases which illustrate these axioms. Here they are, just as they occurred in various sections of America: