

**BENCH VS. BAR, OR,
JUDICIAL ANSWERS TO
SALOON ARGUMENTS**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649301010

Bench Vs. Bar, Or, Judicial Answers to Saloon Arguments by Lemuel D. Lilly

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Cover @ 2017

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Judicial Answers to Saloon Arguments

By

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July 10
Columbus, Ohio

Westerville, Ohio
The American Issue Publishing Company
1910

1915-14

THE PURPOSES OF GOVERNMENT.

The purposes of government are nowhere more clearly set out than in the preamble to the National Constitution. These purposes are: to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

The union has been perfected, justice has been established, domestic tranquility is insured, the common defense is provided for, and we are engaged today in the task of promoting the general welfare and securing the blessings of liberty to ourselves and our posterity.

The promotion of the general welfare is something that cannot be accomplished in a day or any fixed time; it is a work that is continuing in its nature. It involves the development of public character, and public character can only be advanced by slow degrees and persistent work. The public welfare can be promoted in no better way than by the protection and advancement of public morals.

Gladstone's maxim was that it is the duty of government to make it as easy as possible to do right and as hard as possible to do wrong.

In all the essentials of patriotism, Washington still remains our first American. In his farewell address he said: "Morality is a necessary spring of popular government, * * * * "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness."

In a republic where the people govern themselves, intelligence and morality are the two corner stones of the temple of liberty—intelligence enough to comprehend the issues of state when they are presented, and moral character enough to do the right thing when the public welfare calls for our services.

The immoral man does not help manage the government; the government must help manage him. Anything which lessens the disposition or ability of a man to govern himself, lessens his disposition and ability to help govern others. Every

citizen, who for any cause, cannot, or will not, govern himself, is a crumbling stone in the temple of liberty. The immoral man is, therefore, an element of weakness in a republic, and any business or institution which produces the immoral man is an enemy of the state.

The constitution of Ohio recognizes these moral truths as fundamental by the following provisions, viz: "Religion, morality and knowledge, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction," Art. I, Sec. 7.

LEGISLATURE HAS FULLEST AUTHORITY TO PROMOTE GENERAL WELFARE.

These moral principles are not mere fancies for patriotic holidays. They are the most necessary elements of every day conduct. Both the federal and the state courts have given their fullest sanction to all laws which promote the general welfare.

The general welfare consists of many different things. Without attempting to enumerate all the elements of the public welfare, it will be sufficient for this discussion to say, that the general welfare includes the public safety, public health, public comfort, public morals, public convenience and general prosperity. These objects are attained in the administration of the government by the application of the police powers of the states.

The police power is the power of promoting the general welfare by restraining and regulating the use of liberty and property. An act of government comes within the police power of the state, if it aims to secure and promote the general welfare, even though it acts by restraint and compulsion.

The public welfare is promoted by improving the social and economic conditions affecting the community at large, with the view of securing the greatest good to the greatest number. Some people think they have expressed the whole truth when they proclaim that government rests upon the consent of the governed. This declaration is a great truth but in these days of a great political awakening men are giving appropriate emphasis to another truth equally vital, that government rests upon the necessity of putting even inherent rights under such control as is essential to their preservation. To this end every individual, every sovereign citizen, must submit to such re-

straints in the exercise of his liberty or the use of his property as may be required to remove or reduce the danger of the abuse of those rights by those who are careless or unscrupulous.

The police power may be exercised for the protection of society from crime, for the preservation of safety and health and for the promotion of public morals. Government has a right to promote public morals because immorality has no right to existence or toleration, and because vice impairs the strength of the community and spreads evil example and tends to corrupt others.

The foregoing statement of the police power is supported by a multitude of judicial opinions. A few citations are appropriate.

In the case of *Booth v. People*, 186 Ill. 43, 78 Am. St. Rep. 229, 231, the Supreme Court of Illinois says: "The state inherently possesses, and the general assembly may lawfully exercise, such power of restraint upon private rights as may be found to be necessary and appropriate to promote the health, comfort, safety and welfare of society. This power is known as the police power of the state. In the exercise of this power, the general assembly may, by valid enactments—i.e., "due process of law"—prohibit all things hurtful to the comfort, safety and welfare of society, even though the prohibition invade the right of liberty or property of an individual."

The New York Court of Appeals, in the matter of *Jacobs*, 98 N. Y. 98, 50 Am. Rep. 641, says of the police power: "That power is very broad and comprehensive, and is exercised to promote the health, comfort, safety and welfare of society. Its exercise in extreme cases is frequently justified by the maxim *salus populi suprema lex est*. Under it the conduct of an individual and the use of property may be regulated so as to interfere, to some extent, with the freedom of the one and the enjoyment of the other; and in cases of great emergency engendering overruling necessity, property may be taken or destroyed without compensation, and without what is commonly called due process of law."

In *Commonwealth v. Alger*, 7 Cush. 53, 84, Shaw, Chief Justice of Massachusetts, says that the "police power was vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the

good and welfare of the Commonwealth and of the subjects of the same."

In the case of *Board of Pharmacy v. Cassidy*, 74 S. W. Rep. 732, the Kentucky Court of Appeals says: "All courts agree that the police power of the state extends to all regulations affecting the lives, limbs, health, comfort, good order, morals, peace and safety of society, and hence may be exercised on many subjects and in numerous ways."

These principles, in various forms of expression, but always with the same general meaning, have been recognized by the Courts of every state in the Union. There are no exceptions. The principle could not be more clearly stated by multiplying quotations from the opinions of the Courts.

However, some clearer understanding of the general principles may be had by reference to a few concrete illustrations of the exercise of the power in various cases. The police power has been exercised to prevent fraud, *People v. Wagner*, (Mich.) 24 Am. St. Rep. 141; to protect public health, (*Ga.*) *Morris v. Columbus*, 66 Am. St. Rep. 243; to prohibit persons coming from a place infected with contagious disease (72 Am. St. Rep. 458); to compel compulsory vaccination, *State v. Hay*, (N. C.) 78 Am. St. Rep. 691; to restrain the manufacture and sale of oleomargarine, *Butler v. Chambers*, (Minn.) 1 Am. St. Rep. 638; to regulate the sale of lard substances and of food prepared therefrom, *State v. Aslesen*, (Minn.) 36 Am. St. Rep. 620; to prescribe sanitary regulations for dairymen and other milk dealers, *State v. Broadbelt*, (Md.) 73 Am. St. Rep. 201; to require a railroad company to give signals at highway crossings, *Ry. Co. v. Slater*, (Ill.) 16 Am. St. Rep. 242; to prohibit any person from using any building for a stable for more than four horses, unless licensed to do so, *Newton v. Joyce*, (Mass.) 55 Am. St. Rep. 385; to regulate the keeping of dogs, *Griggs v. Macon*, (*Ga.*) 68 Am. St. Rep. 134; to require that water be furnished in sufficient quantities in tenement houses, *Health Department v. Rector*, (N. Y.) 45 Am. St. Rep. 579; to punish habitual drunkenness, *St. Joseph v. Harris*, 59 Mo. App. 122; to regulate the sale of intoxicating liquors, *Miller v. State*, 3 O. S. 486; to prohibit base ball on Sunday, *State v. Powell*, 58 O. S. 324.

These decisions from the State Courts have the fullest sanction of the Supreme Court of the United States. That court has said time after time that the several states have a right to protect the public health and the public morals.

The court has said: Power to protect the general welfare is not limited. (*N. O. Gaas Light Co. v. La. Light Co.*, 6 Sup.

Ct. Rep. 262.) * * * * The police power "extends to all matters affecting the public health or the public morals." (Stone v. Mississippi, 101 U. S. 814.) In sustaining the Kansas Prohibition statute in 1887, the Court said: "Everything prejudicial to the health or morals of a city may be removed," (Mugler v. Kansas, 123 U. S. 623.) "Whatever is contrary to public policy or inimical to the public interests is subject to the police power of the state." (L. & N. Ry. Co., v. Kentucky, 161 U. S. 677.) The police power "May be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances." (Holden v. Hardy, 169 U. S. 366.)

Perhaps the strongest statement of the doctrine to be found any where is in the case of *Lawton v. Steele*, 152 U. S. 133, where the United States Supreme Court thus proclaims it: "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the union. It is universally conceded to include everything essential to the public safety, health and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the state may order the destruction of a house falling to decay or otherwise endangering the lives of passersby; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of gambling houses and places where intoxicating liquors are sold."

POWER TO PROTECT PUBLIC MORALS IS INHERENT.

The right of the state to protect itself against crime and misery is a law of nature, enjoyed by society before constitutions were ever adopted, and is as fundamental as the right of self-defense in the individual.

In *Tredway v. Riley*, 32 Nebr. 495, the Supreme Court of Nebraska quotes as good law the language of Mr. Justice Mc

Lean in the License cases, 5 How. 580, where he says the police power "is a power essential to self-preservation, and exists, necessarily, in every organized community. It is, indeed, the law of nature, and is possessed by man in his individual capacity."

In *State v. Aiken*, 26 L. R. A. 352, the South Carolina Supreme Court says of the police power: "The origin of this power must be sought in the very purpose and frame work of organized society. It is fundamental and essential to government. It is a necessary and inherent attribute of sovereignty. It antedates all laws, and may be described as the assumption on which constitutions rest; for the state, whether we regard it as an association of individuals or as a moral organism, must have the right of self-protection, and the power to preserve its own existence in safety and prosperity, else it could neither fulfill the law of its being nor discharge its duties to the individual. And to this end it is necessarily invested with power to enact such measures as are adapted to secure its own authority and peace, and preserve its constituent members safety, health and morality."

The Supreme Court of Tennessee thus expresses the same proposition:

"The first right of a state, as of a man, is self-protection, and with the state that right involves the universally acknowledged power and duty to enact and enforce all such laws, not in plain conflict with some provision of the State or federal constitution, as may rightly be deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people." (*Harbison v. Knoxville Iron Co.*, 103 Tenn. 421, 76 Am. St. Rep. 682.)

The United States Supreme Court is in full accord with these state decisions. That Court has said:

"No legislature can bargain away the public health or public morals. The people themselves cannot do it, much less their servants. (*Stone v. Mississippi*, 101 U. S. 814.) "No corporation or individual can acquire any rights, by contract or otherwise, which the government may not annul and take away, if the exercise of such rights becomes detrimental to the public health or the public morals." (*Gas Light Co. v. La. Light Co.*, 6 Sup. Ct. Rep. 262.) "This power legitimately exercised, can neither be limited by contract, nor bartered away by legislation." (*Holden v. Hardy*, 169 U. S. 366.)