PROHIBITION

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PROHIBITION;

IT IS IN VIOLATION OF THE RESERVED RIGHTS OF THE CITIZEN;

IS NOT SANCTIONED BY THE TEACHINGS OF THE BIBLE;

AND

IS IMPRACTICABLE AND DELUSIVE AS A TEMPERANCE EXPEDIENT.

BY

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OF THE ST. LOUIS BAR.

TOGETHER WITH AN

ADDRESS BY EX-GOV. CHARLES ROBINSON, OF KANSAS.

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1884.

INTRODUCTORY.

THE late renewal, by an ever restless element of society, of the long dormant agitation in favor of legislation prohibiting the manufacture and sale of intoxicating drinks, has had the effect of—more generally than ever before—directing public attention to the nature of such laws, and their effect upon the communities where they have been tested. History has been defined as "philosophy teaching by example," and certainly when any law seriously affecting the personal rights and property interests of the people is proposed, it is the part of wisdom to enquire how such laws have operated upon the people of other States where they have been tried. License laws have been in vogue almost ever since the earliest history of the colonies, and have been altered and amended from time to time, until it may reasonably be claimed, for them, that they have attained as near to perfection in the codes of some of the States, as the nature of such legislation is capable of reaching, and it would be, to the legislator, a very useful study to follow their development from the crude Act of the Massachusetts colony in 1636, licensing inns to retail "wine, strong water and beer," to their culmination in the wise regulations of to-day. But my purpose now is to deal more directly with that class of laws which, repudiating all attempts at regulation, have for their sole object the complete prohibition of the liquor traffic, as such, and I will present a very brief outline of the history of prohibitory legislation in the States where it has been tried. It would be interesting to enter into details, in each case, and to particularly inquire into the causes of the abandonment of this class of legislation by so many of the States that originally tried it, but my space will not admit of this, and I must content myself with a meagre summary of the mere legislative history of prohibition, adding the single observation, that, the fact of its abandonment, by all those States, is very strong presumptive evidence against the wisdom and practicability of prohibition. The first attempt at prohibition was in Massachusetts in 1848, when an effort was made to pass an Act providing for the appointment of agents in the several Municipalities to sell liquor for "use in the arts and for medicinal and sacramental purposes," and providing penalties for sales made in any other way. This bill failed to pass—and Maine became the pioneer in this species of legislation.

In 1851, that Commonwealth enacted what is now universally known as

THE MAINE LIQUOR LAW.

A minute, thorough and comprehensive Statute, containing well defined forms of procedure, stringent penal sanctions and in short, as was believed, every provision which legislative wisdom could devise for securing the objects sought by the law. The effect was the most intense political excitement, resulting ultimately in mobs, riots and bloodshed, until in 1856 the legislature repealed the law and enacted a license law, which was in turn repealed in 1858, and the prohibitory law re-enacted. By this time the people of the cities had come to understand that the law was a *bugbear*, so far as the cities were concerned, and political organizations no longer combined for its overthrow. That it failed utterly, to mitigate the evils of intemperance, will be fully shown further on.

MASSACHUSETTS first enacted the Maine law in 1852, with certain features relating to searches and seizures which the Supreme Court of that State declared unconstitutional in 1854, and in 1855 the legislature thoroughly revised the law, and so amended it that subsequent judicial criticism failed to discover a flaw in it. This endured, in the midst of much political turmoil until 1868, when it was repealed and a stringent license law substituted for it, only to be in its turn repealed in 1869, to give way for the re-enactment of the prohibition law, the same year. This was bolstered up with ameliorating provisions; such as the exemption of cider, the appointment of State agencies, &c., but its existence was finally wiped out, in 1875, in favor of license. Attempts have been made since that time to submit a prohibitory amendment to the Constitution of the State, but thus far they have failed. The Massachusetts people are evidently sick of such legislation, and it is believed that they will continue their refusal to fix it upon themselves in the permanent form of fundamental law.

VERMONT enacted a prohibitory statute in 1852, and has steadily maintained it in her code ever since, and although it has not been rigidly enforced, the effect upon the State has been so disastrous, that it is one of the three States which lag so far behind in the race of material prosperity that they seem to be going the other way. Vermont is just a little better State to emigrate from, than it was in the days of Douglass.

NEW HAMPSHIRE enacted prohibition in 1855, and has retained it on her statute book ever since, and though the efforts made to enforce it there have not been so frantic as in

Maine, the effect upon her prosperity is such that she is another of the above mentioned States that seem to have stood still while their more liberal sisters have made wondrous progress in the march of material prosperity—Maine, New Hampshire and Vermont are the only States originally submitting to it that have not thrown off the incubus, and further on I will show what it has done for them.

RHODE ISLAND first enacted the law in 1852, and amended it in 1853; in 1863 it was repealed and a license law enacted instead. In 1865, local option was engrafted onto the license law. This continued until early in 1874, when prohibition was again enacted in the midst of such active opposition that the question was made an issue in the canvass of the same year, and repudiated by the election of a legislature which repealed it in 1875, since which time the people of the Island State have steered clear of prohibition.

CONNECTICUT enacted the law in 1854, but there was never any attempt made to secure its rigid enforcement, and such perfunctory and partial enforcement as marked its history there, was spasmodic until the final repeal in 1872.

NEW YORK passed a prohibition statute in 1854, but at that time the Empire State had as her Governor a clear-headed statesman, Horatio Seymour, who vetoed it, but the furore for paternal legislation and fanatical interference by the State with the reserved rights of the citizen, was greater then than it has ever been since, and at the next election, a prohibitionist, Myron H. Clark, was elected governor, and in 1855 the legislature again enacted the law, and the governor signed it, but it was so alien to the views of the cosmopolitan population of that great State, that it had a very brief existence. The highest court of the State in 1856, declared some of its provisions unconstitutional, and the people being already tired of it, the repeal followed in 1857, since which time, New York has had a license law.

DELAWARE passed a modified prohibitory Act in 1855, but even that was so repugnant to the liberal sentiments of the people of that glorious little State, that it was superseded by a license law in 1857, and no serious attempt has ever been made to re-enact it there.

MICHIGAN passed the law in 1853, contingent upon its ratification by a popular vote. This was done, and the act declared unconstitutional on account of that feature of it, and the law was re-enacted without the submission clause in 1855. This law remained on the statute book until 1875, when it was repealed, and as the constitution of the State prohibited the passage of a license law, one imposing a tax and authorizing an additional one by cities was enacted as the only regulation possible.

Some very interesting and suggestive facts have lately been published by a leading Michigan newspaper, showing that there are nothing like so many places where liquor can be had under the high tax imposed as there were under prohibition, and that drunkenness in the cities and large towns has correspondingly decreased.

IOWA passed the statutory act in 1855, and modified it in 1858 by the exclusion of wine and beer from its operation. Not deeming this sufficient, a constitutional amendment was submitted, making a sweeping prohibition of all intoxicants. This was carried by a popular vote last year, but was declared unconstitutional because of the failure of the legislature to conform to the constitution in the passage of the act of submission. There has just been passed by the Iowa legislature a very sweeping prohibitory bill.

ILLINOIS enacted it in 1855, submitted it to a popular vote and it was repudiated by the people at the polls.

MINNESOTA also enacted it in 1852, in a form repugnant to the constitution of that State, and it was consequently declared unconstitutional by the Supreme Court, since which time that State has managed to get along under license.

IN WISCONSIN it was twice passed and twice vetoed, in 1855, which seemed to settle it in that State.

OHIO AND MARYLAND enacted it in 1855, but it was very short-lived in both those States, though Ohio has since agitated the question of its renewal.

INDIANA AND NEBRASKA enacted the law in 1855, and both got rid of it very soon. The former submitted it again in 1882, but the people repudiated it, and the latter has lately gone in for very high license as a substitute for positive prohibition.

So many of the States that originally passed prohibitory laws having repealed them when found to be unsatisfactory, a movement has been set on foot by the ultra-zealous supporters of such legislation, to fix it in the constitutions of the States. They can not, or will not, trust the people to deal with it as with all ordinary legitimate matters of legislation, by making it the law, and repealing it when they find it does not answer. They want it made a part of the fundamental law, so that when the people discover, by actual experience, that it is a fraud, they will find tenfold more difficulty in getting rid of it than they would if it were a simple statue, repealable by the legislature. They raise the cry that the opponents of prohibition are afraid to trust the people, when in fact it is they who fear to trust the people. If the people want prohibition, they can elect a legislature that will enact it, and then when they find it does not suit them they can elect

another that will repeal it; and if the law can stop the manufacture and sale of liquor at all, a statute can do it just as well as a constitutional provision, and better, as such a provision would have no effect whatever until vitalized by a statute. In a republic the people enact laws by their representative bodies, and not directly by the voice of the whole people as in a pure democracy, and there is nothing in the nature of this class of legislation which should give it privileges above those enjoyed by ordinary subjects of law-making. Hence, I have opposed, and shall oppose, the submission of the question to a popular vote. As well present a chapter on crimes and their punishment, or those providing a code of procedure in civil cases, to a vote of the whole people. If prohibition is not a legitimate subject of legislation it cannot be made so by constitutional provision, and if it be such subject, no force can be added to the law by making it a part of the constitution.

KANSAS was not content with the passage of a mere prohibitory statute, but must have the principle engrafted upon her fundamental law, which was done in 1881, and the necessary legislation had to carry it into effect on paper; and since the first of May of that year, this development of prohibition has been on trial in that state, with what success or lack of success is a matter of general notoriety. Kansas is the only state that has made prohibition a part of its organic law, and Kansas is tired enough of it to change it if it could be done by a mere act of her legislature instead of by the acts of two legislatures and a popular vote on the question. As before stated, Iowa tried it but by bungling in the manner of doing it, failed and has now fallen back upon statutory prohibition; which is, as before suggested, much less objectionable than the organic form, as it is more easily disposed of by repeal, when no longer supported by the moral consciousness of the citizens of the State; and when no longer tolerable.

No attempt has ever been made in Missouri to pass a prohibitory statute; but the efforts of the friends of the movement have for some years past been directed to securing a prohibitory amendment to the constitution of the State.

The question of incorporating prohibition into their organic law has lately been submitted by their legislatures, to the people of Indiana, Ohio and North Carolina, and voted down, and efforts are being made to have it submitted again in those States as well as in several others.

The New York Assembly has just voted down such a measure, by a very small vote.

Voting the measure down at the polls does not satisfy its friends. They become only the more clamorous for another submission—and the public mind is kept in a state of very undesirable agitation, and worst of all, legitimate agencies for the promotion of temperance are abandoned, wholly or partially, for people say "why work for the temperance cause when we are to have prohibition so that no one *can* get liquor. People will then be obliged to live temperately and we can save our time, labor and money." Of course they learn better under prohibition, but in the meantime the usual legitimate and effective temperance agencies are suspended.

PROHIBITION.

All objections to that class of legislation, which seeks by legal enactment to prevent the manufacture and sale of intoxicating liquor, and which has come to be universally described by the comprehensive term, "prohibition," may be presented under three general heads:

1ST. IT IS IN VIOLATION OF THE RESERVED RIGHTS OF THE CITIZEN.

2D. IT IS NOT SANCTIONED BY THE TEACHINGS OF THE BIBLE.

3D. IT IS IMPRACTICABLE AND DELUSIVE, AS A TEMPERANCE EXPEDIENT.

I.

PROHIBITION IS IN VIOLATION OF THE RESERVED RIGHTS OF THE CITIZEN.

The State is a voluntary aggregation of men politically associated for the single purpose of mutual protection, and so long as it confines its action to this object, there is unanimous agreement between its members, and its strength is equal to the entire strength of all its members. But let the State assume any other function, and disagreement immediately ensues, and the more duties it has imposed upon it, the greater the dissenting minority becomes, and the greater the dissatisfaction. Besides, the State's power to perform its legitimate functions is lessened by this division of duties, that power is given to non-essentials which should go to the proper performance of the essential.

The whole power and duty of a State, of this Union, is to prevent the aggressions of individuals on the rights of each other. To provide the means and appliances of government, and to contribute its quota towards the protection of the Nation from its foreign enemies.

All restraints or limitations imposed by law, upon the natural rights of the citizen must be clearly referable to the legitimate exercise of some of these powers, and to a necessary performance of this duty. All laws which assume to interfere in the mere moral conduct of man, or with the material interests of the community, are based on principles that are thoroughly unsound, as tending to the paternal, centralized form of government, and to the multiplication of offices, and the creation of boards which interfere with the rights of the citizen and burden him with unwelcome taxes. Such laws tamper with the moral freedom and personal rights of the individual, and tyrannize over the minutiæ of his daily life, in the attempt to mould him by legislation into virtue. They are the expression of the ignorant fervor of those who have vastly more power than experience; whose zeal is not according to knowledge, and whose sympathies for the frailties and self-imposed ills of the weak are not qualified by any considerations for the rights which the strong and the weak alike possess.

Those who would extend the functions of the State beyond the primary duties here defined, base their demands upon the assumption that "it is the duty of the State to enact all such laws as will promote the general welfare of the people." This is the door through which have entered nearly all the legislative ills which have ever afflicted mankind. Rivers of human blood have been made to flow in accordance with laws that were professedly framed for the promotion of "the public welfare." Millions of lives have been violently taken under the same sanction. Martyrs of the truth have been burned at the stake in almost every country in vindication of such laws. The prisons of every land have been crowded for ages with persons unjustly incarcerated by their authority. Who can estimate the anguish, the heartbreaks, the vast total of human suffering entailed on the children of men in the name of laws promulgated "for the welfare of the people?" Churchmen have burned Sectaries, and been in turn burned by them, and both have burned thousands of their own faith; chains, whippings and banishments have been visited on other thousands of every faith, all in the name of laws made "for the welfare of the people."

We no longer hang, burn or imprison people for the "glory of God," but we place them under legal restrictions and limitations, and still dog and sometimes imprison them, and in many ways hamper and harass them, all for their own good and the "general welfare of the people."

Most of our burdens are imposed under the same specious pretense. We are overrun with officers, federal, state and municipal, three out of every four of whom are for the purpose of carrying out paternal regulations established "for the welfare of the people," and none of which are of real advantage to those for and on behalf of whom they were professedly provided, and who are called on, with great regularity, to bear the burdens of their support. We have boards for this and for that, officers of this and of that; we have this and that "institution" established by law "for the welfare of the people," and most of which could be dispensed with, to the immediate and lasting benefit of all concerned.

The fact is, we have altogether too much law, and especially have we an immense mass of the character indicated, all of which ought to be swept off the statute books "for the welfare of the people."

We shall have to come to it sooner or later, and the sooner the better. The State and its municipalities will then be confined to the duties of preserving order and administering justice, and the people, relieved of many burdens which they are now obliged to bear in the name of the law, will be left free to look after and take care of their own welfare. The number of offices will be largely reduced, and the opportunities for and incentives to peculation and public plunder will be correspondingly diminished, so that we may then hope to see the stream of corruption, which is now so threatening, dried up because of the endless failure of its fountains.

Of all the laws growing out of this assumed paternal relation of the State to its citizens, none are so obnoxious as those which attempt to supervise the morals and direct the personal habits of the people, because they make a direct assault upon the inalienable rights of personal liberty, which are so much dearer to every freeman than are those pertaining merely to property. And, whether limiting the cost of a dinner, prescribing the cut of a coat, or prohibiting the use of certain articles of food and drink, such laws are alike unwarranted in the very constitution and nature of man's relation to his fellow-man, and are impertinent, offensive, and tyrannical in fact.

A law which compels you to drain a filthy pond under the direction of the Board of Health, is tolerable, because you can see that not only your neighbor's health, but your own also may be really jeopardized by the vicinity of the impure water; and the law which compels you to contribute of your substance towards the support of a hospital may be submitted to, because it appeals to the chari-

table instincts of the heart. But when the attempt is made to deprive you of certain articles of food, or drink, under the specious pretense that it is necessary to do so in order to prevent your neighbor, if you please, from injuring his health by indulging to excess in such food or drink, you feel that any such attempt is an unwarrantable infringement of your personal rights, an unbearable abridgment of your personal liberty, and is not justified in the least, by the reasons given for the act. You at once rebel, and demand that no such method be adopted of visiting upon you the effects of your neighbor's lack of self-control, or of protecting him from the effects of his self-indulgence; you insist that he alone should be punished for his acts; you will not admit the logic of going without your beefsteak to prevent your neighbor from having a surfeit; nor of being deprived of your glass of beer to prevent his filling himself to overflowing with bad whisky. You insist that there would be as much reason in stopping the sale of gunpowder to prevent some one from shooting himself; or that of rope to prevent some one else from hanging himself. The prohibitionist will say that the man who drinks whisky is very much more likely to hurt himself thereby than the man who carries gunpowder or a rope is to hurt himself with either; but the reply is, that neither the gunpowder nor the rope, should be sold to the man who has shown suicidal tendencies, and that he who is likely to hurt himself with drink should not be allowed to purchase it, and that neither the State nor any other power can legitimately interfere to prevent the purchase, by any one else, of either the gunpowder, the rope, or the food or liquor.

There is, in enacting statutes which have for their only sanction the general welfare of the people, the twofold difficulty of first determining whether—in the opinion of the majority—they really are for the general welfare, and then of fixing upon forms that will be most beneficial.

The legislature must first conclude whether such a law, upon a given subject, will be for the general good, and then they must fix upon the form in which it will best meet the object.

The first and most serious of these difficulties is never encountered in the passage of laws which are clearly within the legitimate domain of legislation. There is never any question whether there should be laws against murder, theft, or other crimes; nor whether courts of justice should be established and governed by law, but when measures are presented in a legislative body proposing to declare that a crime which is not naturally a crime, and to punish it as such, or to establish, for instance, State supervision of any private business, or State control of the private habits of citizens, they are often met by the considerate negative of the majority and at once receive their merited quietus; and if favorably entertained and passed, it is always against the earnest protest of a large and intelligent minority. In brief, laws that are for the real welfare of the people, and which grow out of the natural order of things, meet with opposition only as to form; while those that are outside of that order encounter opposition as to substance, more even than to form. The former harmonize with men's sense of justice, whilst the latter violate it.

It is true that there are many persons—lawyers included—who believe that the people may through their legislature enact any law which will not conflict with the constitution of the State or of the United States, or with any law of congress. In other words, that there are no subjects or matters that may not be legislated upon, and the *dicta* of many of our courts tend to support that view. So fearful are they of seeming to curtail the powers of the representative department, that they have erred in the other direction, by conceding to it powers, which, in the nature of things, it cannot possess.

State constitutions confer no powers upon legislatures; they are limitations upon the powers of such bodies. Outside of constitutions, State legislatures may enact laws upon any matter pertaining to the primary objects of government as herein defined. But when they assume to legislate outside of the scope of those fundamental powers, their acts have neither the vitality nor the moral force of law, but are simply usurpations under the forms of law. They may conform to the letter of State constitutions, but they violate that higher constitution "the natural order of things," and assail and trample under foot the sacred personal rights of the citizen. Can the intelligent reader fail to see that all enactments technically known as "prohibitory," constitutional or statutory, clearly belong to the class here denounced as usurpations.

Extensive religious combinations have been formed throughout the country with the object of securing the enactment of prohibitory laws, and of perpetuating and rendering more stringent the Sunday laws. Such combinations are full of danger to the religious rights of the people, for by their insidous encroachments they tend to undermine and destroy those constitutional safeguards which are the true guarantees of civil and religious liberty. Religious intolerance is the most tyrannical of all depotisms, and the most powerful. "All religious depotism commences by combination and influence, and when that influence begins to operate upon the political institutions of the country, the civil power soon bends under it, and the catastrophe of other

nations furnishes an awful warning of the consequences."

In their misdirected zeal, those religionists who seek by means of political combinations, to secure the enactment of laws to make men temperate and moral, are sowing the wind, and let us be careful that the whole country does not reap the whirlwind.

As an illustration of the spirit and purposes of these organizations, a news paragraph is presented, which was cut from the *Globe-Democrat*, published the same day the text was written:

WANT THE CONSTITUTION CHANGED.

"PHILADELPHIA, PA., March 14.—The National Reform Association to-day announced a Convention to begin in this city on the evening of March 24, and to continue the next day, for the purpose of discussing the principles and aims of the national reform movement. The call says the movement "seeks to strengthen the Christian elements in our national life, as the Christian Sabbath and marriage laws, and the Bible in the public schools. It opposes carrying mails on the Lord's day, which has been a fruitful parent of nearly all our public Sabbath desecration, polygamy and easy divorces now so common, and license liquor traffic in any form. The object of the movement is to secure an amendment to the Constitution recognizing Christian laws as the fundamental law of the land."

There are Christian elements in our social life, but none in "our national life." The infidel and the Jew have as much claim to the protection of our laws as has the Christian. This is not a Christian land. It is a land of religious freedom, and the aspiration of every lover of liberty is that it may long remain such, despite the "National Reform Association," and all similar politico-religious organizations.

The same paper contains an editorial paragraph, describing the dilemma of a distinguished Missouri Congressman, who had "objected to the receipt, by the House, of some resolutions passed by a Methodist Conference, in favor of the restriction of the liquor traffic in the District of Columbia." The objection was made, because, as the Congressman put it, "the conference has no business to instruct Congress." The paper then informs us that "the Methodist brethren are represented to be organizing for the Congressman's suppression at the first opportunity." Like a true statesman, he denied the right of this powerful religious organization to instruct Congress on any matter, much less one upon which they held peculiar views—not shared in by the great mass of the people—and because he did this fearlessly, he is to be "suppressed." Every reader has seen many similar paragraphs. Little notice is taken of the action of such organizations, but let the brewers or distillers make the least movement towards defending their business from the assaults of such organizations, and immediately a howl goes up that "our liberties are menaced by the combination of the whisky interest for political purposes." Under such circumstances, it is useless to point to the fact that no convention or meeting of brewers, or of liquor men, has ever passed, or for a moment entertained any proposition looking to any sort of interference with any one else's rights. It is enough to awaken the vigilance of all these politico-religious watchmen over the morals of others, that the representatives of the liquor interest meet at all, and discuss the best methods of protecting their interests, though never a word be said about politics. My deliberate opinion is that there is vastly more danger to our liberties from a single meeting of political preachers than from all the meetings ever held by the brewers and others interested in the liquor traffic combined.

Under our form of government, where the constitution is based on universal suffrage, the restraints of law owe all their force to public opinion. No statute, whether right or wrong, can be enforced against an adverse public sentiment, and conversely any statute, whether right or wrong, will be obeyed so long as it remains the correct exponent of a nearly unanimous public opinion. Nor can any force be added to a statute by the imposition of severe penalties, for only while the law remains the true representative of public opinion will the penalties be enforced, and then not because they belong to the law, but because they are the means provided by which public opinion visits its condemnation upon the violators of the law, so that when the statute ceases to represent public opinion, the penalty of its violation will no longer be enforced, with any certainty.

Laws that legitimately grow out of the structure of society, that is to say, all such laws as have for their object the protection of the citizen, in his civil rights, his person and property, and which tend to the due administration of justice, are always sustained by public opinion; it may be divided, and may wholly change as to the mere form of such laws, but its support of their substance is constant and unchangeable. For instance: public opinion may be divided, or it may change upon the question of the proper form of the law and the penalty denounced against larceny; but it will constantly maintain that larceny is a crime, and insist on its punishment by some form of law. But laws which do not grow out of the primary duty of the State to society in its structural needs, but which originate in some of the moods of a changeful public opinion, exist in substance only so long as the mood of public opinion lasts in which