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An Analysis of the Constitutionality and
Operation of Prohibition, Local Option, and License Laws

by

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1890.
Every state has the right to legislate in regard to that which concerns its protection, prosperity, and self preservation. When fundamental principles of law are violated or threatened and the continuance of such violation or menace will tend towards evil results the state very properly steps and legislates as it deems wise and expedient. Traffic in liquor has been seen to bring about the above results and has therefore been a fit subject for legislation in nearly all states. It is true that the mode of dealing with this question has been as varied as the results reached by such legislation. In some states it has been an utter failure, in others it has worked but unsatisfactorily, but these things instead of deterring law making in regard to liquor selling has rather increased the desire to find out
the best method of legislation which is likely to advance
the interests of society instead of becoming a further
burden upon the statute book.

The reason of a state's interference in this matter
is not based upon abstract considerations of right and
wrong. Indeed a state can even assume that liquor sell-
ing is neither one nor the other, but treat it as a mat-
ter of indifference. In case, however, it approaches
the subject in an ethical way, it discovers at a glance,
that it is a very different matter from that of fraud
or theft. Those are immediate and absolute offences
against the right of property or persons and cannot well
be conceived to be otherwise. Theft is an appropriation
of that which belongs to another, without his permission.

Liquor selling is the giving of that to another which he
asks for, in consideration of an equivalent, and may work no harm to either buyer or seller. It is plain, therefore, at the outset, that questions so dissimilar must be treated in a dissimilar way. To class together and forbid, under like penalties of the law, acts which are universally regarded as undoubted crimes, and acts which are conceived to be criminal or otherwise, according to circumstances, is to make all the difference between going with the sense of society or going against it. But this makes all the difference between the successful working of the law in regard to fraud and theft, and its comparative failure when so applied to the liquor traffic.

When the state interferes in the selling of liquor, it does so by reason of what is known as the "police
power" of such state. This is the power which is sup-
posed to reside in the legislature of a state to make
laws in regard to conduct which affects the society of
the state or attacks the fundamental principles of gov-
ernment. The use of "police power" by a state in deal-
ing with the liquor traffic has been upheld by every high
authority as doing only that which it has the legal right
to do. In regard to the liquor question, this power,
when exercised, takes the form of Prohibitory, Local
Option and License Laws.

The object of the present paper is to discuss the
constitutionality of such laws when passed, their relative
operation, and from the contrast thus drawn, determine
which is the most expedient and beneficial for a
state to adopt and place upon the Statute Books.
Prohibitory Laws.

This phase of police supervision is not only the most common, but the moral and economical conditions which induce its exercise, are so great and pressing, and the popular excitement attending all agitations against intemperance, like all popular agitations, is usually so little under the control of reason, that it is hard to obtain, from those who are attempting to form and mould public opinion, any approach to a dispassionate consideration of the constitutional limitations upon the police power of the state in their application to the regulation and prohibition of the liquor trade.

Drunkenness is distressingly common, notwithstanding the great increase in the number who practice and preach total abstinence from the use of intoxicating liquors;
and the multitude of cases of misery and want, caused
directly by this common vice, cry aloud for some measure
whereby the evil of drunkenness may be banished from the
earth.

It is no wonder, when the zealous reformer contem-
plates the careworn face of the drunkard's wife and the
rags of his children, that he appeals to the law making
power to enact any and all laws which seem to promise
the banishment of drunkenness; forgetting, as it is for
him to do, since, zealots are rarely possessed of a
philosophical and judicial mind, that to make a living
law it must be demanded, and its enactment compelled by
an irresistible public opinion; and where the law in
question does not have for its object the prevention or
punishment of a trespass upon rights, it is impossible
to obtain for it the enthusiastic and practically unanimous support, which is necessary to secure a proper enforcement of it. Furthermore, if in any community public opinion is so aroused into activity as to be able to secure the enforcement of a law, having for its object the prevention of a vice, the moral force of such a public opinion will be amply sufficient to suppress it.

The temperance agitator does not usually dwell on the scientific objections to temperance laws, or if he does, he either gives to them a flat and unreasoning denial, which makes all further argument impossible, or he justifies the enactment of an otherwise useless law by the claim that the enactment would arouse public attention to the evils of intemperance, and by making persistent, though unsuccessful attempts, to enforce the law,
public opinion will be educated up to the point of giving proper support to the law.

Educate public opinion up to the point of giving proper support to the law! If there is one principle that the history of law and legislation teaches with unerring precision, it is, not only the utter futility, as a corrective measure, of law, whose enactment is not the necessary and unavoidable resultant of the social forces then at play in organized society, but also the great injury inflicted upon law in general by the enactment of laws before their time. Nothing so weakens the reverence of law, and diminishes its effectiveness as a restraint upon wrong and crime, as the passage of still born laws, laws which are dead letters before they have been promulgated to the people.
But these considerations constitute only philosophical objections to such laws, and can only be addressed to the legislative body, as reasons why they should not be passed. They do not enter into a consideration of the constitutionality of the laws after they have been enacted. If the Constitution does not prohibit the enactment of these laws, the only obstacle in the way of their passage is the unwillingness of the legislatures. The question to be answered is, therefore, are the laws for the regulation and prohibition of the liquor trade constitutional?

It is laid down as an invariable rule, that no trade can be subjected to police regulations of any kind, unless its prosecution involves some harm or injury to the public at large, or third persons, and in every case
the regulations cannot be extended beyond the evil which
is so restrained. (Beebe v. State, 28 Ind., 501; Austin
v. State, 10 Ohio, 581.) It has also been maintained,
and, I think, satisfactorily established, that no trade
can be prohibited altogether, unless the evil is inherent
in the character of the trade, so that the trade however
conducted, and whatever may be the character of the per-
son engaged in it, must necessarily produce injury upon
the public or upon individual third persons. It has
likewise been shown, that, while vice, as vice, can never
be the subject of criminal law, yet a trade, which has
for its object or necessary consequence the provision of
means for the gratification of vice, may be prohibited
and its prosecution made a criminal offence. These prin-
ciples, if sustainable at all, must have an universal
application. They admit of no exceptional cases.

Is then the absolute prohibition of the liquor traffic a constitutional exercise of legislative authority under the ordinary constitutional limitations? It may be said that the decisions of the courts in different parts of the country have very generally sustained laws for the prohibition of the sale of intoxicating liquors in any manner, form or bulk, whatever, and on the ground that the trade works an injury to society and may, therefore, be prohibited. (34 N. Y. 657; 2 Gray, 98; 14 Ill. 196; 33 Me. 559; 30 N. H. 279; 25 Conn. 290; 29 Kas. 252; s.c. 37 Am. Rep. 284.)

In 36 N. J. L. 72, it is said that, "The measures "best calculated to prevent those evils and preserve a "healthy tone of morals in the community, are subjects
"proper for the consideration of the legislature. Courts of justice have nothing to do with them other than to discharge their legitimate duties in carrying into execution such laws as the legislature may establish, unless, indeed, they find that the legislature in making a particular law has disregarded the restraints placed upon it by the Constitution of this State or of the United States."

Justice Miller, in Bartemeyer v. Iowa, 18 Wallace, (U. S.) 129, says, in the course of his opinion, "The weight of authority is overwhelmingly that no such unanimity has heretofore existed, as would prevent State Legislatures from regulating and even prohibiting the traffic in intoxicating drinks except in one solitary case."

"This exception is the case of a law operating so rigidly
"upon property in existence at the time of its passage,

"absolutely prohibiting its sale as to amount to a de-

"priving the owner of his property."

The citations and quotations might be continued

without end, but the invariable argument is that the liq-

uor traffic has following in its train certain evils,

which would not exist, if the trade were prohibited al-

together; consequently the trade may rightfully be pro-

hibited. The suppression and control of the public

disorders, caused by the keeping of saloons constitute a

heavy burden upon the tax payer, and the cause of them

may be removed by a prohibitory law, or restrained and

restricted in number by the imposition of a high license,

according as it may seem best to the law making power.

There is an almost unbroken array of judicial de-
decisions sustaining the constitutionality of prohibitory liquor laws, and it seems to me very clearly that such decisions are founded on both principle and authority and right in so declaring the law constitutional.

**Operation of Prohibitory Laws.**

Public opinion at present seems to think that such prohibitory laws are at the best, both impracticable and inexpedient. If it is contended, on the one side, that prohibition is the only sure way of preventing intemperance, and the evils resultant therefrom, the reply is, on the other, that it is a case of attempting too much; that as human nature goes, it is a would-be prohibition of that which cannot be prohibited, namely, the love of drink and the love of gain to be derived in the selling of liquor. To think that the law can completely cut
off these two objects of desire which multitudes are determined to have, and which multitudes, within certain limits, believe to be legitimate, is to overestimate the power of the law and to underestimate the strength of these powerful passions. In the case of the prohibition of the sale of liquor, the country at large is against the law, and with the law-breakers. At least, to the extent that it is so, the law is inexpedient, and, in the nature of the case, must largely fail of its object.

In large cities the law has been found to be a failure, and the failure of prohibition in cities is not far from being its failure altogether. The law is especially wanted where there is the greatest amount of crime and lawlessness, and this is notoriously the case in ci-
ties, as it always is bound to be. If the law works well only in the rural districts, it fails of its object, but this even is good as far as it goes, but would be like an army carrying the outposts, and leaving the enemy unharmed his fortifications and entrenchments. As a matter of fact, the cities of any state embrace more than half its population, and nine-tenths of the vicious and lawless characters. These cities are the centers and stronghold of the liquor trade, and, of course, of those crimes growing out of the sale of liquor. If, then, the law breaks down where it is most needed, it is even worse than the evil it seeks to remedy. It reveals what never ought to be revealed, that the thing forbidden is stronger than the law which forbids it.

The inefficient working of prohibition may be seen
in the fact, that the feeling throughout the country is one of positive reaction against it. Public opinion sees what the law in justice to itself ought to do and what really lies beyond its province and capacity.

Selfish interests alone do not cause this feeling, but the sense of unwisdom and the inexpediency of the law, coupled with selfish interest on the part of the most unselfish and reflective of people. A law, to work well, must be founded in right reason. Convince the public of that and prohibition will work as well in preventing the sale of liquor as in preventing any crime whatever. But a law which is conceived to be equally the product of good intentions and intemperate zeal, will work, perhaps, as long as its friends are able to enforce it, but will end, probably, in not working at all.
Local Option Laws.

We next in order come to consider the operation of the so styled, Local Option Laws, that is, laws prohibiting or licensing the sale of liquor, as the majority of electors in a given community may determine. And here, as before, we come upon the question, whether such laws are constitutional.

It would seem, as if the question of the acceptance or the rejection of a municipal charter can be referred to the voters of the locality specially interested, it would be equally competent to refer the question whether a state law establishing a particular police regulation, should be of force in such locality or not. Most charters refer questions of local government, including police regulations, to the local authorities, on the suppo-
sition that they are better able to decide for themselves upon the needs, as well as the sentiments of their constituents, than the legislature possibly can be, and are therefore more competent to judge what local regulations are important; and also how far the local sentiment will assist in their enforcement. The same reasons would apply in favor of permitting the people of the locality to accept or reject for themselves a particular police regulation, since this is only allowing them less extension of powers of local government than a municipal charter would confer.

A few cases in point will illustrate the case and also aid in the settlement of the question.

In New Hampshire an act was passed declaring bowling-alleys, situate within twenty-five rods of a dwell-
ing-house, nuisances, but the statute was to be in force
only in those towns in which it should be adopted in
town-meeting. In the case of the State v. Noyes, 10
Post. 293, where the constitutionality of this statute
was brought in question, it was held to be constitutional.

In the course of the opinion the Court says: "Assuming
"that the legislature has the right to confer the power
"of local regulations upon cities and towns, that is,
"the power to pass ordinances and by-laws in such terms
"and with such provisions, in the classes of cases to
"which the power extends, as they may think proper, it
"seems to us hardly possible seriously to contend that
"the legislature may not confer power to adopt within
"such municipality a law drawn up and framed by them-
selves."
Again the legislature of Delaware in 1848 passed an act authorizing the citizens of the several counties of the state to decide by ballot whether the license to retail intoxicating liquors should be permitted. By the act a general election was to be held, and the question was to be settled by a majority vote. If a majority was cast against the measure, then it should be unlawful to sell liquor in that county; but if a majority should be cast in favor of license, then such license should be regulated by the provisions of the act.

In the case of Rice v. Foster, 4 Harr. 470, the Court of Errors and Appeals of that State held the act void, upon the broad ground that it was an attempted delegation of the trust to make laws, and that the legislature had no authority to delegate to the people that
trust which only resided in that body.

In Massachusetts the same question was decided contra in the case of The Commonwealth v. Bennet, 103 Mass. 27, and also decided contra in Bancroft v. Dennes, 21 Vt. 456. The decision was placed upon what seems to me the impregnable ground, "that the subject, although not embraced within the ordinary power to make by-laws and ordinances, falls within the class of police regulations which may be entrusted by the legislature, by express enactment, to municipal authority."

By statute in Indiana it was enacted that no person should retail spiritous liquors, except for sacramental, mechanical, chemical, medicinal, or culinary purposes, without the consent of the majority of the legal voters of the proper township, who might cast their votes
for license at the April election; nor without filing
with the County Auditor a bond as therein prescribed, and
upon the filing of which the Auditor was to issue to the
person filing the same, a license to retail spirituous
liquors, which was to be good for one year from the date
of the election.

This act was held to be void upon the same ground
above quoted. Maize v. State, 4 Ind. 342. This case
follows the previous decisions in Pennsylvania and Del-
aware, and it has since been followed by another decision
of the Supreme Court of that State, except that while in
the first case, only that portion of the statute which
provided for the submission to the people was held void,
in the latter case, that unconstitutional provision was
held to affect the whole statute with infirmity and ren-

But at the present time it seems that the clear weight of authority is in support of legislation of this nature, commonly known as *local option*.

38 N. J. 72; 42 Conn. 384; 20 Am. Rep. 83; 110 Mass. 357; 38 Wis. 504; 51 Ill. 34.

**Operation of Local Option Laws.**

Assuming now that such laws are constitutional, let us see how they will be likely to work. And here we should say it would be a case of attempting too little, as prohibition is a case of attempting too much. So far as the great cities are concerned, local option would either mean no law at all, or as little as possible.

The voters in the cities of New York, for instance, in a majority of which liquor laws of any sort are so dif-
ficult of enforcement, would as soon vote away their suffrage as exercise their will in voting prohibition.

Prohibition for a state law, would never be possible, were it not that the vote in rural districts in its favor is more than a match for the vote in cities against it. For example, take local option in the matter of granting licenses. As the matter now stands, the excise boards of the cities of New York State are largely committed to the liquor interest, and licenses are granted beyond all excess of the needs of the community, and with a few exceptions, to all who apply for them. Take away the law altogether, and, it is to be feared, the local will would mean nothing less than free whiskey. From aldermen who are largely interested, if not directly engaged in the liquor business, and the excise boards who
grant licenses to the larger proportion of those who apply, and, as a rule, upon the easiest possible terms, it would be a natural and easy step to will having no excise boards at all and no tax for selling liquor.

It is by no means certain but local option in cities, if not restrained by state law, would declare itself against those reasonable and prudent restrictions forbidding the sale of liquor to minors, as also on Sundays and on certain hours of the night. It is beyond dispute, that these just regulations are largely evaded, while there is a powerful constituency which, if they had their own way about it, would have them swept away from the statute-book.

As to local option outside of the cities, it would, no doubt, work effectually on the whole, but quite un-
equally. When the local will declares for prohibition, the law might be practical and expedient in the sense of its being carried out, but the feeling could not be removed from a class of thoughtful minds that this is the way of making the law do more than properly comes within its province. Inasmuch as prohibition fails because of the feeling that it is to some extent grounded on wrong reason, no local will can make it right, and this opposing will must always be an obstacle to the law's enforcement.

There is no doubt but that local option works differently in different localities, and that to one or the other's disadvantage. Suppose that local option had become the law in Delaware, and that one county had voted for prohibition, and the adjoining one for license,
the result would have been that the liquor trade would
be driven from one county to the other, making the one's
loss the other's gain, or still better, the one's good
the other's evil. No liquor would be sold in one county
and certainly a great deal more in the other. In pro-
portion as the first was rid of crime and intemperance,
they would abound in the second. This method is not the
one for the suppression of vice and intemperance, but is
only a means of shifting the burden from one place to another.

What legislation does contemplate in this country, is
a steady working of the law and the reduction of intem-
perance and crime to a minimum throughout the state at
large. The state, that is, the government, is not con-
cerned in the interest of one locality more than another.

Its option is not local, but general, being concerned to
prevent vice and crime in the aggregate and not in this and that portion of the state. It seems certain that local option of itself would be an inadequate method of dealing with the liquor question, and, as a matter of fact, very few states have left the matter to be determined in this way.

Upon the other hand, as a matter of police regulation, it would seem as if the local judgment should control, and local option laws, are conceived to be of real service when made supplementary to the law of the state, and not acting in opposition to it. Local option can never be relied upon, in itself, and least of all in large cities, it may be of real service when acting on the line and in advance of the general statute. The legislature, in allowing it, presumes that the local will
very often demands, and can effect more than the general will can accomplish at large, and that, therefore, the latter should not, save within certain limits, be the law of the former. The legislation of this or any other state is to do the best it can for all of its citizens, and if local law can do something better for those immediately concerned, it may be allowed to do so.

The law of a state should be sure of its ground, otherwise it may seem unreasonable that the local will should not be allowed to declare less than the general will, in some instances, as well as none. For instance, in Franklin v. Westfall, 27 Kas. 614, it was decided that the power to grant licenses is taken away by the prohibitory law. But, what if in certain localities, if not the state at large, there is no doubt whatever
that a certain number of licenses would be better than prohibition? Is local option in that case to be compelled to conform to what is worse, instead of willing something better? Certainly, if a state which enacts a license law may permit certain towns to have prohibition, it does not appear why another state which enacts a prohibitory law may not permit certain towns to grant licenses. At any rate, it by no means follows that local option in the one case is all right, and in the other all wrong.

License Laws.

The right of a state to tax professions and occupations, unless there is some special constitutional prohibition of it, seems to be very generally conceded. Taxes may assume the form of duties, imposts and excises,
and those collected by the national government are very largely of the latter class. They may also assume the form of license fees for the carrying on of a profession or an occupation. The most common objection raised to the enforcement of a license tax, is, that it offends the constitutional provision, which requires uniformity of taxation, since the determination of the sum that shall be required of each trade or occupation must necessarily, in some degree, be arbitrary, and the amount more or less irregular. But the courts have very generally held, that the constitutional requirement as to the uniformity of taxation has no reference to taxation of occupations. 78 N. C. 419; 49 Miss. 449; 34 Am. Rep. 449; 33 Mich. 406; 38 Wis. 428; 53 Ill. 737; 41 Ind. 7; 32 Mich. 406; 38 Wis. 428; 53 Ill. 554.
Another important question in connection with licenses, is the nature of the right or privilege acquired by a license, strictly so called. A license tax, as a tax, confers no right of any kind; it simply lays a burden upon an occupation and creates the duty to pay the tax. In 34 N. Y. 657, our Court of Appeals says:

"These licenses to sell liquor are not contracts between the state and the person licensed, giving the latter vested rights, protected on general principles and by the Constitution of the United States against subsequent legislation, nor are they property" in any legal or constitutional sense. They have neither the qualities of a contract nor of property, but are merely temporary permits to do what otherwise would be an offense against a general law. They form a portion of the in-
"Ternul police system of the state; are issued in the
"exercise of its police powers, and are subject to the
"direction of the state government, which may modify,
"revoke or continue them as it may deem fit."

There is no easier or more tempting opportunity for
the practice of tyranny than in the police control of
occupations. Good and bad motives often combine to ac-
complish this kind of tyranny. The zeal of the reform-
er, as well as cupidity and self interest, must alike be
guarded against. Both are apt to prompt the employment
of means, to attain the end desired, which the constitu-
tion prohibits. It has been often explained and stated,
that police powers must, when exerted in any direction,
be confined to the imposition of those restrictions and
burdens which are necessary to promote the general wel-
fare and prevent public injury.

No man can claim the right to make a trade or business a vice. A business that panders to vice, may and should be strenuously prohibited if possible, and if not possible, then burdened so heavily with licenses as to diminish in number these hurtful trades or occupations.

When such license burdens are laid upon the trade of liquor selling, they are known technically as High Licenses.

"Such laws", says Cooley, "as assume to regulate and to prohibit the sale by other persons than those who are licensed by the public authority, have not sustained any serious question of constitutional powers." (Cooley's Const. Lim. 718)
Operation of High License Laws.

This method of dealing with the liquor trade does not go against the general sense of the community, and cannot well be conceived to be any violation of individual rights. Without defining the act in an ethical way, the law regulating the sale of liquor is determined by the undoubted fact that liquor selling is, in its consequences, prejudicial and injurious to the community; that is, it is a fruitful, not to say principal, source of poverty, crime and vice, and a serious hindrance to the object for which the state exists. On this ground, without losing sight of what the community may rightfully have, but wrongfully make use of, the law surrounds the traffic with such restrictions as will be likely to limit it, as far as may be, the evils growing out of it.
This much the law has a right to do, and it were vain to attempt more if it is powerless to accomplish it.

Consequently, the license system has always been the favorite method of dealing with the liquor question throughout the country. In general, license commissioners are appointed to grant licenses to persons of approved character. A fee is exacted to cover the expenses of supervision; while in most states persons so taking out licenses are forbidden to sell to minors, on Sundays, and on certain hours of the night. This much, at least, would seem to commend itself to reason.

As to granting licenses to persons of good moral character, it is evident that persons of an immoral character, such as ex-convicts, suspected thieves, keepers of houses of ill fame, etc., would not only resort to
every shift and turn to evade the law, but would nat-
urally make their places of business resorts for vicious
persons like themselves. And it is an open question
whether a person who sells liquor is a person of "good
moral character", but it is not the province of this
paper to discuss and attempt to settle it. Places
kept by such persons would be a menace to the community
over and above any disturbances and danger which might
arise from the abuse of intoxicating liquors. Against
the peril likely to arise from such establishments, so-
ciety is bound to be protected.

This regulation takes the form of a license for
which a fee is exacted, because it is manifestly just
that such persons should pay the expenses of looking after
their places of business. The burden which falls upon
society in consequence of the liquor traffic will be very great, in any case, and it ought not to pay the additional cost of police supervision which the trade calls for. If society is bound to be just to the liquor seller, it is certainly bound to be just to itself, and to those of its citizens who derive no possible benefit from liquor selling, and perhaps, positive harm.

When the law forbids the sale of liquor to minors, it does so upon the presumption that such restraint is in accordance with the wishes of their parents; that minors have not come to an age when they would be likely to use liquor with discretion, and that the sale to such persons would, in a majority of cases, be injurious to them and inflict a corresponding burden upon society.

It stands to reason that liquor sellers should have
no exceptional privileges to conduct business upon Sunday, to say nothing of what people are entitled to who devote the day to religious uses and rest; while unrestricted sale at hours when honest people are in bed, would only result in injury to those who drink at such times, and in disturbance of society at large. Hence the restrictions upon the sale of liquor on Sundays and on certain hours of the night is just and reasonable.

Such restrictions violate no rights and are a measure of self protection, at the same time that the law accommodates itself to all legitimate wants.

In comparing the relative operation of the different methods of dealing with the liquor trade, and pronouncing in favor of license laws, it is not contended that the operation of these laws have always been satis-
factory. We will acknowledge that liquor laws of all sorts have been a disgrace to the statute book; also that society will never bring that steady exertion of will power to ensure the execution of the laws relating to the liquor traffic, which it brings to bear in respect to such positive and undoubted offences as theft and arson. But it is one thing to have a law work imperfectly or fail completely, because it is felt to be impracticable; another to have it fall into abeyance on account of the apathy of its friends and the continual and active hostility of its enemies, when there is no doubt about its wisdom and justness. In the one case the law is a failure in itself or in consequence of a divided state of public opinion concerning it. In the other, it is only a seeming failure, while public opin-
ion in regard to it is essentially united. This seems to be the case at the present time, as between prohibition and license laws. The drift of public opinion is strongly away from one, and as strongly towards the other.

In saying this, there is no occasion to deny that license laws have been shamefully violated in every particular. Examples of the gross violations of these laws can be seen in almost every city and town of the state. Excise Commissioners in these places exercise very little discretion in regard to the character of the applicants; some of the latter to whom licenses are granted being notoriously vicious and depraved. Then, again, instead of using their discretion to grant licenses somewhat in proportion to the needs of the community, if liquor be a need, they construed the law to mean that
licenses should be issued to all persons of approved character, and this, accordingly, is done. For example, in New York City in 1883, of the nine thousand seventy-nine licenses granted, four thousand eight hundred nineteen were for keeping hotels. Furthermore, of the latter, four thousand seven hundred sixty-nine paid the lower fee seventy-five dollars, while the highest fee, two hundred fifty dollars was exacted of only twenty.

Of course the majority of these places were only hotels in name being nothing more than saloons for the sale of liquor.

The above illustrates well what is meant by the revival and enforcement of a law, which in the opinion of the public, is none the less just and reasonable, however it is suspended and apparently dead for the time being.
Indeed, the particular turn the temperance movement is now taking is that of enforcing the law. The laws forbidding the sale of liquor on Sundays and at certain hours of the night have been in many places scarcely more than a dead letter, but their justness is not questioned for a single moment. That being the case, nothing is wanted but a steady putting forth of will power and arousing the people from their like drowsiness to have them enforced, and this happily is being done.

It is felt that there is law enough, and that, too, good law which can very largely mitigate the evils incident to the liquor trade, if only put in proper execution.

It is only bad law about which the people will not rally-- law which ought never to have been enacted in the first place-- the principles and method of which
never commended themselves to thoughtful men, and which was framed rather in obedience to popular clamor than according to the clearest dictates of legislative wisdom.

That the public is not losing faith in license laws as an effective method of dealing with the liquor question we can see in the important and general movement in the direction of limiting the number of saloons to a given percentage of the population, coupled with the so called "high license". License plainly ought to mean, and was plainly intended by the law, to mean, a lessening of the evils incident to liquor selling and intemperance, by lessening the number of drinking places. The law is designed to accommodate itself to the needs and demands of the public in the matter of ardent spirits, but nothing
more than that, and should be straining in the way of permitting too few saloons rather than too many. In large cities the latter is too true, the law being a lit-
tle more than a form of restriction that does not re-
strict. It may be said, and is so argued, that it makes no difference in regard to the amount of drinking whether the number of dram shops is greater or less. Perhaps this is so, but it is certainly no less true that the majority of liquor saloons are places of resort and tempt-
ation, holding out all manner of inducements to drink, over and above supplying the natural demands of the pub-
ic. It is an undisputed fact that there is the great-
est amount of pauperism and crime where there is the largest number of saloons, and people must settle the question themselves whether drinkers produce dram shops
or dram shops produce drinkers. But the fewer the num-
ber of drinking places the easier they are controlled
and located.

As to the matter of raising the license, it would
have the effect, in the first place to cut off that class of
groceries which are least needed, thus bringing about
"the survival of the fittest", if you can use that term
properly in respect to saloons. This is a consumption
greatly to be desired, not only because a large percent-
age of poverty and crime is associated with such resorts,
but because the greatest mischief arises from drinking
adulterated and cheap liquors. By having but one sa-
looon to every five hundred of the population, for in-
stance, in large cities, and by increasing the fee to a
minimum of $500., the majority of low grog shops would
be driven from the field, since any number of people can pay $50 or $75 for a license, who cannot pay $500.

It has been felt, that one of the greatest defects of the license system throughout the country, has been in not definitely limiting the power of the excise boards.

The consequence has been that by granting license wholesale, and generally at the lowest fee, they have flooded the cities with saloons, and that of the lowest character. There is a decided and growing feeling that this abuse must be stopped.

By raising the license fee, liquor dealers themselves would be on the side of the law's enforcement, since they who have paid largely for the privilege of selling liquor would ill endure illicit sale at the hands of others. What rum-seller will concern himself
about watching and prosecuting an offending party in consideration of his defrauding the excise board out of $30. or even $75. A license fee of $500. each, for a thousand saloons would reach the considerate sum of $300,000. -- an amount which those liquor dealers who have paid it into the treasury must manage to get back, and would be quite unwilling to have illicit dealers retain at the other's expense. This is the way in which high license has been found to work in those places in which it has been tried, and it cannot well be conceived to work otherwise. The successful working of High License is seen in the state of Massachusetts. Since its adoption in 1889 in sixteen cities of that State, the number of saloons has been reduced from 3022 to 1257, and the revenue from saloons has increased 50 per cent.!
This is certainly an encouragement to supporters of High License Laws.

One of the best features of such a law is that it gives the excise boards no discretion aside from a definite number of licenses and a definite fee. It is just this which makes all the difference between the triumph of the law over liquor dealers or the triumph of liquor dealers over the law. The law's defeat, or at least its most unsatisfactory working, is owing to the fact that it is strained and perverted in the interest of the liquor dealers. To have aldermen and excise boards who will construe the law in their favor is one of the special things aimed at in local elections, and one of the chief sources of mischief in municipal government.

Once take away from the excise commissioners any such
power to prevent the law, and one very disturbing and corrupting element would be eliminated in connection with city politics. Liquor dealers, as such, will not care who are the aldermen and excise boards, if, in any case, only a definite number of licenses can be granted, and at a certain fee.

Such a method of dealing with the liquor traffic is now growing in favor in the country and seems likely to prevail, because it may combine all other methods, so far as they are at all practicable and expedient. For instance, it may retain; and whenever in force, does retain, all the features of the law forbidding the sale of liquors to minors and sale on Sundays, etc. Then, again, in allowing one saloon for, say, every five hundred popu-ulation in large cities, and increasing the license fee
to a minimum of five hundred dollars, the law may have it discretionary, in rural districts, to have no saloons at all, if such is the will of the great body of electors, or to license at any figure above five hundred dollars, thus combining the principle of local option and prohibition. No considerate liquor law would force intoxicating drinks upon any community which does not wish it, and is determined not to have it.

In favoring such a High License Law, it may be said, that it does not seem to conflict with the reasonable wants or prejudices of the community. It does not attempt the impossible, and makes suitable provision for a demand which it seems vain to disregard and more than vain to try to defeat by any form of legislation.
Beyond this the law contemplates that minimum of pauperism and crime, which the state, having a due regard for the liberties and legitimate wants of its citizens, is bound to effect, and which all good citizens, whether they drink or abstain from drinking, wish to see accomplished.

Frank R. Benton