

Bird (F. W.)

The Province of Legislation in the Suppression of
Intemperance.

AN ESSAY

READ BEFORE

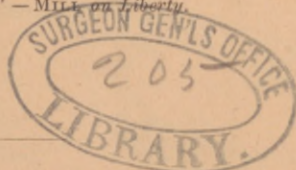
THE AMERICAN SOCIAL SCIENCE ASSOCIATION,

AT

SARATOGA, N.Y., SEPTEMBER 8, 1881,

By F. W. BIRD.

"The liberty of the individual must be thus far limited: *he must not make himself a nuisance to other people.*" — *MILL on Liberty.*



BOSTON:
FRANKLIN PRESS: RAND, AVERY, & CO.
1881.

with regard of
F. W. Bird

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ESSAY.



I HAVE been requested by your Association to prepare an essay upon "The Unrestricted Traffic in Intoxicating Drinks." I would prefer to state the question in this form: The province of legislation in limiting the sale of intoxicating drinks and the evils of intemperance. I shall not attempt to describe the sufferings of our entire community from this national curse. Seven hundred millions of dollars, it has been stated, are worse than wasted every year for intoxicating drinks. How many thousands of valuable lives, the revelations of the great day alone can tell. The drunkard's grave! where lie buried a father's hopes, a sister's love, a mother's tears and prayers. Who can count their number? Who can measure the aggregate of misery they cover? But these do not measure the extent of the woes of intemperance. Add the ruined health, the blighted lives of the thousands upon thousands who die of diseases caused and aggravated by moderate drinking, to which the doctors give respectable names. Add other thousand victims of medical prescriptions, as fatal to their victims in the White House as in the hovel, and we have an aggregate of woe appalling in its magnitude. If a foreign foe should invade the land, and take the lives of a tithe of the victims of intemperance, the whole people would arise to repel, or, once and forever, to crush, the common enemy.

This national appetite, which grows by what it feeds on, like the behemoth of Job,

"Who sinks a river, and who thirsts again,"

threatens, more than all other agencies, the defeat of our experiment of self-government. Lovers of the race, not blinded by self-interest or appetite, cannot differ as to the evils of intemperance. Unfortunately there exist wide differences as to the remedy.

I think we underrate the climatic influences which seem to necessitate the use of alcoholic stimulants. This, at least, is certain, that, during all the historic period, peoples living above certain parallels of latitude have indulged in the excessive use of intoxicating drinks. Any discussion which ignores this fact omits an important element of the great argument.

Another mistake of the advocates of legislation in the interest of temperance is found in the belief that statute law, not backed by an intelligent and earnest public opinion, can prove an effectual remedy for a great social evil. The stream cannot rise higher than its fountain; and while, as is the fact in regard to all prohibitory legislation, a majority of votes, from various considerations, are brought to enact prohibitory statutes, the constituencies are not in favor of the enforcement of the law. Take our Commonwealth of Massachusetts, where this law has had a longer and fairer trial than in any other community. In 1852 a prohibitory law, satisfactory to its friends, was enacted. I think no one, well acquainted with the public opinion of Massachusetts, will claim that a majority of our people had full faith in its accomplishing the results which its special friends expected; but, aware of the failure which had attended all previous legislation, a large majority of the people were glad to give the experiment a fair trial, and were sincerely desirous that it should succeed. From year to year amendments were made, to correct defects in the machinery of its execution, until it became as perfect, for its avowed purpose, as legal ingenuity could make it. Then it was repealed. Largely because it was found that it did not prohibit the sale; largely, also, because it did not diminish the evils of intemperance; mainly, because a majority of the voters were not in favor of enforcing a law which declared to be a crime the sale of an article which they themselves occasionally moderately used. The law was repealed in 1868. For sixteen years the friends of prohibition had the entire control of the legislation necessary to give it efficiency. The decisions of the courts pointed out defects, which the Legislature never failed to remedy; and the repeal grew out of the conviction that the law had failed,—that prohibition did not prohibit; especially that the law did not diminish the amount or the evils of intem-

perance; and a new experiment, prompted by the same desire to limit the evils of intemperance which had inspired the prohibitory law, produced the license law of 1868.

The license law of 1868 was repealed in 1869, and a prohibitory law enacted in its place. In 1875 this was in turn repealed, and the present license law was passed. This too has failed. Indeed, its repeal passed the House to its third reading, at the last session, by a good working majority; and it was referred to the Committee on Bills in the Third Reading. In the mean time the Republican politicians became alarmed at the prospect of meeting this disturbing question in the fall campaign, threatening the election of a Democratic governor. Whereupon the committee having the bill in charge, made the extraordinary discovery that the Act was unconstitutional because of the proviso referring it to the people; and the bill was rejected and the party saved!

Unreservedly admitting the right to pass prohibitory laws, I place opposition on the ground of the impossibility of their enforcement; beyond this, it may fairly be questioned whether enforcement so barren of results is desirable. An appetite so universal as the craving for stimulants cannot be controlled by arbitrary enactments; and, when reliance is placed upon these, self-discipline, which is the only parent of virtue, public or personal, fails to be practised.

It has always seemed to me that legislation in the interests of temperance begins at the wrong end. Whether in the form of regulation or prohibition, all the laws upon our statute-books are aimed at the sale of intoxicating drinks:—the real evil is the use of such drinks, and the universality of the use is attested by the fact of the consumption of \$700,000,000 worth annually in our country. While our people indulge in the use of this enormous amount, intoxicating drinks will be sold, law or no law.

Regulation in the form of license laws has proved equally inoperative. At the start, this kind of legislation encounters the objection which lies against all laws which grant special privileges to favored individuals or classes. If the sale of intoxicating drinks is a good thing, tending to the public welfare, one man has as good a right to sell them as another: if it is a bad thing, tending to the public injury, no man ought to be allowed to sell them. Always under "stringent"

laws, when the policy is to allow the sale by those who will sell only to "proper" persons, the large class to whom licenses are refused unite with the opponents of the system of license, and sooner or later the law is modified in favor of more free licenses or of prohibition.

History, it is said, repeats itself. Legislation upon this subject illustrates emphatically the truth of this saying. I have taken some pains to collate from the statute-books of Massachusetts, as Colony, Province, and Commonwealth, a sketch of the legislation of two hundred and fifty years upon this subject. I think it must be admitted that no community could afford a better field for the trial of this experiment. From the landing of the Pilgrims to this day, a large majority of our people have been intelligently and earnestly in favor of all legislative measures promising to restrain and limit the evils of intemperance. These efforts, taking every form of regulation, every form of restriction to the extreme of prohibition, have failed,—the failure being proved and admitted by the frequent changes of legislation which, in the best judgment of the community, were considered necessary by the failure of preceding methods. At the risk of prolonging this essay beyond reasonable bounds, I here present sketches of this legislation as concise as is consistent with a full understanding of the case.

PLYMOUTH RECORDS.

April 1, 1633. — John Holmes *censured* for drunkenness, to sit in the stocks, and amerced in twenty shillings fine.

June 1, 1633. — It was enacted, that the person in whose house any were found, or suffered to drink, drunk, be left to the arbitrary fine and punishment of the Governor and Council, according to the nature and circumstance of the same.

March 2, 1635-36. It was ordered that none be suffered to retail wine or strong water, and suffer the same to be drunk in their houses, except it be at some inn or victualling-house, and there only to strangers at their first coming, not exceeding the value of twopence a person, and that no beer be sold in any such place to exceed twopence the Winchester quart.

Oct. 5, 1636. — By the jury, Thomas Savery was found guilty of drunkenness, and thought meet he should be whipped.

Jan. 5, 1635-36. — At this time Joseph Bidle was found guilty of being drunk by the jury, and was amerced forty shillings.

Oct. 2, 1637. — Mr. Stephen Hopkins, first presentment (for suffering men to drink in his house upon the Lord's Day, before the meeting be ended, and also upon the Lord's Day, both before and after the meetings, servants and others to drink more than for ordinary refreshing), is respited until the next court, that the testimony of John Barnes be had therein.

The same person was also presented for suffering servants and others to sit drinking in his house (contrary to the orders of this Court) and to play shovel-board, and such like misdemeanors, is therefor fined forty shillings.

Jan. 2, 1637-38. — Mr. Hopkins is presented for suffering drinking in his house, as *old Palmer*, James Cole, and William Reynolds.

Mr. Stephen Hopkins is presented for selling beer for two-pence the quart, not worth one penny a quart.

Also for selling wine at such excessive rates, to the oppressing and impoverishing of the colony.

Oct. 23, 1638-39. — Matthew Sutherland, being proved to be drunken, was set in the stocks.

March 5, 1638-39. — John Holmes, the messenger, presented for sitting up in the night, or all the night, drinking inordinately at John Emerson's house.

March 3, 1639-40. — Francis Sprague of Duxbury, for drawing and retailing wine at Duxbury, contrary to the express order of this Court, is fined by the Bench twenty shillings sterling.

Sept. 1, 1640. — Mr. Tast of Scituate, for drawing wine without license, is fined five shillings.

Francis Sprague of Duxbury, for the like, five shillings.

June 5, 1644. — Anthony Thatcher licensed to draw wine at Yarmouth; Henry Cobb, at Plymouth; William Barker, at Taunton; William Newland, at Sandwich; Edmund Elderden, at Scituate.

July 7, 1646. — *Francis Sprague* of Duxbury is licensed to keep an ordinary, and draw wine at Duxbury. Others, also, at divers places.

June 20, 1654. — *It is ordered*, That if any person or persons drink themselves drunk, for the first default (they shall pay) five shillings; for the second, ten shillings; and for the third, shall be set in the stocks.

Whereas there hath been great abuse, by trading wines, and other strong liquors, with the Indians, whereby they drink themselves drunk, and, in their drunkenness, commit much horrid wickedness, as murdering their nearest relations, etc., as by sad and woeful experience is made manifest; —

It is therefore ordered, That no person or persons whatsoever, from this time, trade any strong liquors, directly or indirectly, to the Indians within this jurisdiction, upon penalty of the forfeiture of the double value of the goods so traded for their first default; and fourfold for the second default; and for the third default, if an inhabitant, to lose the privilege of trading with the Indians for the future; and, if a stranger, to forfeit ten pounds sterling for the first default; twenty pounds sterling for the second; one half to the person informing, the other half to public uses.

1657. — Liberty is granted to Edward Bangs to draw and sell wines and strong waters at Eastham, provided it be for the refreshment of the English, and not be sold to the Indians.

March 2, 1657-58. — John Barnes, for his frequent abusing of himself in drunkenness, after former punishment and admonition, is fined five pounds: and in case any shall entertain him in their house in a way of drinking shall be fined the sum of twenty shillings; and if any of the town of Plymouth shall be found drinking in his company, every such to pay two shillings sixpence.

Oct. 2, 1658. — Thomas Lucas for being taken in drink, it being the second time he hath been convicted of this crime, he is, according to the order of the Court, fined ten shillings; and for his retailing strong liquors, himself confessing it, he is fined five shillings to the country's use.

March 1, 1658-59. — William Bassett, jun., is licensed by the Court to sell wine and strong waters at Sandwich for the refreshment of travellers, . . . but the said Bassett is not to permit any of the town to stay drinking at his house; also, John Richards and John Barnes at Plymouth on the same condition.

Oct. 6, 1659. — John Barnes was *disfranchised* for his frequent and abominable drunkenness.

Oct. 2, 1660. — Several persons fined for being drunk second and third times.

June 10, 1661. — Ordinary keepers at Plymouth prohibited selling to John Barnes, under penalty of fifty shillings.

March 3, 1662-63. — Several persons fined twenty-five shillings each for selling liquor to the Indians.

March 1, 1663-64. — At this Court Thomas Lucas was publicly whipped for being drunk the third time. He was sentenced formerly for being drunk the third time; nevertheless the execution thereof was *respected* (*sic*, probably *respited*) until he should be found drunk again, which accordingly was witnessed against him, and so the said punishment was inflicted on him as aforesaid.

June 9, 1665. — An account of liquors brought into the town of Eastham.

July 5, 1670. — Edward Sturgis, sen., is allowed to keep an ordinary at Yarmouth, and required to keep good order in his house in that respect, that rude fellows be not found nor suffered there to misdemean themselves.

John Woodcock is allowed by the Court to keep an ordinary at the Ten Mile River (so called), which is in the way from Rehoboth to the bay, and likewise enjoined to keep good order, that no unruliness or ribaldry be permitted there.

Other similar licenses about that time.

June 5, 1671. — For the prevention of great abuse by the excessive drinking of liquors in ordinaries, this Court doth order that every ordinary keeper in this government shall be hereby empowered and required, that in case any person or persons do not attend order, but carry themselves uncivilly, by being importunately desirous of drink when denied, and do not leave the house when required, such ordinary keeper shall return their names to the next Court, that so they may be prosecuted according to the nature of the offence; and in case any ordinary keeper shall neglect so to do, he shall be fined five shillings for every default.

It is further ordered by this Court, that some two or three men be appointed in every town of this jurisdiction to have the inspection of the ordinaries, or in any places suspected, to take notice of such abuses as may arise in reference to the premises or otherwise, and make report thereof to the Court.

June 1, 1675. — Thomas Lewis, for being distempered with drink, it being so often, and that he hath borne several particular punishments gradually, and cannot be reclaimed, it was ordered concerning him, that all that sell drink be strictly ordered and prohibited to let him have none.

Oct. 30, 1678. — Francis Combe is licensed by the Court to keep an ordinary at his house in Middleborough for entertainment of strangers, and is allowed to draw and sell beer, wine, and liquors there, for the entertainment and refreshment of travellers, and is hereby required to keep good orders in his house, that there arise no just cause of blame by his negligence in that behalf.

March 8, 1678-79. — Whereas David Turner, Joseph Studley, and Peter Worthylake are complained of for their abusive frequenting the ordinaries in Scituate, spending their time there, and expending their estates, so as they are become very poor, these are therefore to require all such ordinary-keepers as are in Scituate to take effectual course that the said persons be not entertained so frequently and unnecessarily, contrary to the laws of this government, in their houses, nor any other like them, as such ordinary-keepers will answer it at their peril.

June 5, 1684. — This Court grants liberty unto Isaac Howland to keep an ordinary at Middleborough, and to be provided with such necessaries for that purpose as are requisite, as lodging and victuals for men, and fodder for horses ; and that he keep good orders in his house, that he incur no just blame by his negligence.

Similar licenses granted elsewhere.

Oct. 27, 1685. — The Court have granted liberty to Thomas Leonard, and Shadrack Wilsborn of Taunton, to sell strong liquors by the gallon, so that they are careful not to sell to such as will abuse the same.

June, 1686. — The Court hath granted liberty to Margaret Muffee of Scituate to retail strong liquors in the town of Scituate aforesaid, to such as buy it and carry it out of door, or from her house and not drink it there, and likewise that she shall not sell liquors by less quantities than one gallon, and be careful whom she sells it to.

Oct. 2, 1689. — Ordered by this Court that whosoever shall inform against any person for retailing any strong drink without license, and prosecute his said information to effect such informer, shall have one moiety or half the fine that such retailer shall be, according to law, sentenced to pay. And if any shall inform and prosecute as aforesaid against any innkeeper for the breach of any law of this colony that concerns innholders, he shall likewise have half the fine.

Dec. 25, 1689. — Whereas divers acts and orders have been lately made by the General Court prohibiting any person from selling by retail any kind of strong drink without license, it is now, therefore, further ordered, and by this Court declared, that whosoever shall, without license, sell and deliver a less quantity, at one time, to any person or persons, than five gallons of wine, brandy, rum, or strong liquors, or less than a quarter-cask of cider, every such seller is by law deemed, judged, and accounted a retailer, and as such to be proceeded against as the law directs.

MASSACHUSETTS BAY RECORDS.

The first entry in the Records of Massachusetts Bay was as follows, dated Sept. 3, 1633: "Robert Coles is fined ten shillings, and enjoyned to stand with a white sheet of paper on his back, whereon '*a drunkard*' shall be written in great letters, and to stand therewith so long as the Court thinks meet, for abusing himself shamefully with drink."

And on the same date, fines and labor of various kinds were established as the penalty for drunkenness.

Nov. 20, 1637.—It was ordered by the Court that “Keepers of inns or common victuallers’ houses should not sell, or have in their houses, any wine or strong waters, nor any beer or other drink, other than such as may and shall be sold for one penny the quart at most, and shall not brew their own beer, but buy of common brewers.” And that “Common brewers shall not sell to any inn or common victualler any beer or drink of *stronger size* than such as may and shall be afforded at the rate of eight shillings per barrel.” And also that “No single man shall lodge or remain in any inn or common victualler’s longer than for their necessary occasions.”

May 22, 1639.—It was ordered that “Those who are permitted to retail wines and strong water should not sell any to be drunk in their houses.”

Sept. 4, 1639.—It was ordered that “Drinking healths be forbidden under penalty of twelve shillings fine.”

Oct. 18, 1648.—It was ordered that “If any person who is by this Court allowed to sell wine or beer shall from this time forward *conceal in his house* any person that shall be found drunken, and shall not forthwith procure a constable whereby such drunken person may be brought before some magistrate, to the end he may receive condign punishment, . . . he shall forfeit to the use of the country five pounds for every such default.”

Jan. 18, 1645.—It was provided that “Public houses be granted (licensed) by the Court.”

That “the price of beer be fixed at two-cents a quart.”

The “penalty for drunkenness” was fixed for “the seller at five shillings for such offence;” for “every person found drunk, ten shillings;” for “every excessive drinking, three shillings;” for “sitting idle and continuing drinking over half an hour, two shillings and sixpence;” for “excessive drinking, — above half a pint of wine for each person, — second offence, double fine; third offence, treble fine, or, if unable to pay, *twenty stripes*;” for “excessive drinking, *three hours in the stocks*;” and for “fourth offence, imprisonment.”

May 14, 1645.—It was provided, that, in order to keep a public house, be a common victualler, vintner, taverner, etc., a license should be had of the Quarter Court in the shire where the applicant dwells.

A fine of twenty shillings per week was imposed for unlicensed persons selling.

A penalty of five shillings for continuing tippling above the space of half an hour. Excessive drinking was defined to be when more than half a pint of wine is allowed at one time, for one person to drink.

Second offence of drunkenness was made liable to double fine, and third offence to treble fine, or, if unable to pay, the offender was to receive ten stripes, or be set in the stocks three hours. For fourth offence, to be imprisoned until he give two good sureties for good behavior.

It was also provided that no laborer should be forced to receive payment in wine.

Nov. 4, 1646. — The following law was passed :—

“ Forasmuch as drunkenness is a vice to be abhorred of all nations, especially of those who hold out and profess the gospel of Christ Jesus, and seeing any strict law against the sin will not prevail, unless the cause be taken away,

“ It is therefore ordered by this Court, —

“ 1. That no merchant, company, or any other person whatsoever shall, after the first day of the first month, sell any wine under a quarter-cask, neither by quart, gallon, or any other measure, but only to such taverns as are licensed by the Court to retail wine, or any one whom the Court may license to sell per the gallon; and whosoever shall transgress this order shall pay ten shillings to the treasury of the county, to be levied by distress on his goods and chattels: and where there is no estate found, such delinquent against this order to be imprisoned during the Court’s pleasure.

“ 2. That no taverner be licensed to sell wine but shall first pay a fine to the treasury, and a yearly rent for his said license also.

“ 3. That the constables have power from time to time, not only to enter into and search the taverns for any disorder that may be found to punish according to law, either the taverner that suffereth misdemeanor in his house, or any other offenders there; as also to search any house suspected to sell contrary to the order; also any taverner or other person that shall inform against any transgression of the order shall have half of the fine for his encouragement: this to be of force to the end of the next Court of Elections, and no longer, unless the Court otherwise order.

“ It is ordered and enacted that no person or persons having license to keep a common house of entertainment shall suffer any person or persons at unreasonable times to drink or tipple in their houses upon pain to forfeit for every fine for each person so tipping five shillings; and it is declared to be unreasonable times any time after nine of the clock.

“ This law doth not intend, nevertheless, to hinder the entertainment of seafaring men, or land travellers, in the night season, when they come first ashore, or from their journey, in such houses for their necessary refreshment, or when they prepare for their voyage or journey next day early, so that there be no disorder

amongst them; and every person that shall be found so tippling, he shall forfeit for every such offence five shillings, and for default of payment to be imprisoned till he shall pay it, or be set in the stocks an hour or more, not exceeding three hours, as the season will permit, on a market-day; nor shall any person or persons sell any strong water, wine, or beer, in their own houses, to any stranger or neighbor to drink, as those that have license to keep houses of common entertainment may do, upon pain to forfeit every time for each offence ten shillings; and if any such private person be not able or be unwilling to pay his fine, the constable, by warrant from the magistrates, shall set such a person in the stocks an hour or more, not exceeding three hours, as the season will permit; nor shall any person or persons not licensed sell wines by retail, which is intended any measure less than a quarter-cask, to any persons or families, upon pain of forfeiting for every time so selling wine ten shillings; nor shall any merchant, company, owner, keeper of wines, or other person, that hath the government of them, suffer any person or persons to drink to excess, or drunkenness, in their wine-cellars, ships, other vessels, or places where wines do lie, on pain to forfeit for each person drinking to excess or drunkenness ten shillings: the offences against this law are to be heard and determined according to the law made against drunkenness the 13th of the third month, 1645, by any one magistrate, who shall hereby have power, by warrant, to send for parties and witness, and to examine the said witnesses upon oath, and the parties without oath, concerning any offence against the law, or the said law of drunkenness; and if any party voluntarily confess his offence against any breach of these laws, his oath shall be taken, and be a sufficient witness against any other offending at the same time; and the penalties forfeited on this law to be in such sort levied and disposed as is appointed in the said law against drunkenness. And be it further enacted, that if any person that keepeth, or shall hereafter keep, a common house for entertainment, shall be lawfully convicted the third time for any offence against any branch of the law against drunkenness, or this law, then every person so convicted shall, for the space of three years next ensuing the said conviction, be disabled to keep any such house of common entertainment, or sell beer, wine, or the like, and shall be discharged for the said offence by warrant from any one of the magistrates, unless the Court shall see cause to continue them, at their discretion."

Nov. 13, 1644. — The following record is made: —

"The Court, apprehending that it is not fit to deprive the Indians of any lawful comfort which God alloweth to all men by use

of wine, do order that it shall be lawful for all such as are, or shall be, allowed license to retail wines, to sell also to the Indians so much as may be fit for their needful use or refreshing."

Oct. 18, 1648. — It was provided that "Licensed sellers by two persons chosen by themselves (one for Boston and one for Charlestown) *might search places* suspected of being places where wine is sold by unlicensed persons, and arrest persons drinking, as witnesses before the magistrate."

Oct. 17, 1654. — "Tippling, or sitting drinking wine or beer," was forbidden under a penalty for first offence of twenty shillings; second offence, five pounds; third offence, twenty pounds bond for good behavior, or imprisonment." A penalty was also provided "for the seller of twenty pounds, and forfeiture of license."

Dec. 31, 1661. — Selling liquor was forbidden less than a quarter of a cask delivered at one and the same time.

Oct. 12, 1670. — Selectmen were enjoined to take special care and notice of, and forbid, tippling. If any person disobeys, to be fined five shillings or be set in the stocks.

July 4, 1684. — It was provided that licensed persons complaining of and convicting unlicensed persons should have half of the fine.

In 1692-93 may be found the following preamble to a law passed that year: —

And "Forasmuch as the ancient, true, and principal use of inns, taverns, ale-houses, victualling-houses, and other houses of common entertainment is for receipt, relief, and lodging of travellers and strangers, and the refreshment of persons upon lawful business, or for the necessary supply of the wants of such poor persons as are not able by greater quantities to make their provision of victuals, and are not intended for entertainment and harboring lewd or idle people to spend or consume their time there; therefore, to prevent the mischiefs and great disorders happening daily by the abuse of such houses, it is further enacted," etc. (The act forbids the use or keeping of cards, dice, and other implements of gaming.)

By an earlier section of the same law, the fine for unlicensed selling is made for the first offence forty shillings, one-half to the informant and one-half to the use of the poor of the town; for second offence, forty shillings and sureties for good behavior.

By the law of 1694-95, retailers are to sell no other sorts of drink than what they are licensed to, nor to suffer persons to drink in their houses.

Officers were to inspect public houses, and to present such as sell without license. A penalty was established for officers receiving any bribe.

Selectmen were to cause reputed drunkards to be posted up, and a penalty imposed on keepers of public houses giving them entertainment.

By the law of 1695-96, keepers of unlicensed houses, if detected and convicted, and unable to satisfy the fine imposed by law, and cannot be punished by imprisonment without wrong to their families, are to be *openly whipped* not less than ten nor more than fifteen stripes. Officers were empowered to enter unlicensed houses of any person suspected of selling without license, having been once convicted thereof, and to search for strong drink, and to seize and secure the same, and the liquor to be forfeited (except such as may be adjudged necessary for the use of the family), one moiety to go to the party that seized and informed of the same, and one moiety to the poor of the town.

1698, 1st session, chap. 10, provides that licensed persons shall suffer no apprentice, servant, or negro to sit drinking.

SECT. 2. Neither shall any licensed person suffer any inhabitant of such town where he dwells, or coming thither from any other town, to sit drinking or tipping in his or her house, or any of the dependencies thereof, or to continue there above the space of one hour (other than travellers, persons upon business, or extraordinary occasions), on the penalty of ten shillings for each offence.

SECT. 3 fines persons tipping or drinking, contrary to this Act, three shillings and fourpence, or they are to be set in the stocks not exceeding four hours' time.

SECT. 4 provides that licensed persons shall not suffer any person to drink to drunkenness or excess in his or her house, nor shall suffer any person as his or her guest to be or remain in such house, on the Lord's Day (other than travellers, strangers, or such as come thither for necessary refreshment), on pain of forfeiting the sum of five shillings for every offence.

SECT. 5 provides that all fines shall go, one moiety thereof to the use of the poor of the town, and one moiety to the informer.

SECT. 6 provides that two sureties of five pounds each be furnished by the person licensed.

SECT. 7 gives tithingmen power to inspect licensed houses, and to inform of misdemeanors and disorders.

SECT. 12 provides that no more persons shall be licensed to keep public houses than what are necessary for refreshment of travellers, etc.

1711-12, March. Chap. 6. *Preamble to and Provisions of Law passed.* — "Whereas the laws, at several times established by the government of this Her Majesty's province of the Massachusetts Bay, and now in force, have made good and wholesome pro-

vision for the regulation of inns, taverns, ale-houses, victuallers, and other houses for common entertainment, and retailers of strong liquors out of doors, and for preventing of tippling and drunkenness, declaring that such licensed houses ought to be improved to the right end and uses for which they are designed; namely, for the receiving, refreshment, and entertainment of travellers and strangers, and to serve the public occasions of the towns and places in which they are, and not to be nurseries of vice and debauchery, as is too frequently practised by some, to the hurt of many persons by misspending their time and money in such houses, to the ruin of families."

SECT. 1 provides that the laws against drunkenness, profaneness, and other immoralities, together with this Act, be solemnly read by the town-clerk in each town, at their anniversary town-meeting in March, from time to time.

SECT. 2 directs all justices, sheriffs, grand jurors, tithingmen, constables, etc., to see said laws observed; "and the selectmen and other principal well-disposed persons in each town, desirous of a reformation, are hereby exhorted and directed to countenance, accompany, assist, and join with" said officers in endeavoring to discover and suppress all unlicensed houses, and vice, immorality, and profaneness.

SECT. 3. A list of names of persons for license to be transmitted to the selectmen.

SECT. 4. None to be originally licensed but upon the recommendation of the selectmen. Licenses not to be renewed until complaints be heard and judged of.

SECT. 5. Licensed persons not suitably provided, to be deprived.

SECT. 6. Town-dwellers prohibited drinking in public houses after nine at night.

SECT. 10. Common drunkards to be posted up at retailers'.

SECT. 12. Selectmen to appoint informers.

1716-17, 1st Session. — Some new provisions of law were added.

Chap. 1. — SECT. 7. Penalty of £10 for selling without license, one-half to poor, one-half to informer.

SECT. 8. Justices of the peace to examine on oath persons who resort to unlicensed houses, and to bind over such witnesses, and the persons suspected of selling, to the next general sessions of the peace.

SECT. 9. Persons refusing to give evidence, to be subject to the same penalty as those convicted of selling without license.

1721. Chap. 1. Preamble to Sect. 8. — "And notwithstanding the laws made against selling strong drink without license, many people, not regarding the penalties and forfeitures in said acts, do

receive and entertain persons in their houses, and sell great quantities of spirits and other strong drink, by reason whereof great debaucheries are committed and kept secret, and *such as take and pay for their licenses are injured* thereby. Be it therefore enacted,

“SECT. 8. That whosoever, after the twenty-ninth day of June, 1721, shall presume to sell brandy, rum, or other distilled spirits, wine, beer, cider, or perry, or any other strong drink, without license first had and obtained from the general sessions of the peace,” shall forfeit ten pounds — one-third to poor, one-third to commissioner (of excise), one-third to informant — and costs. Refusing or neglecting to pay, not exceeding twenty nor less than ten stripes, and stand committed in the common jail ten days, or pay costs.

SECT. 9. Same as sect. 8 of 1716-17.

SECT. 10. Same as sect. 9 of 1716-17.

1726-27. — SECT. 8. Selling without license, penalty for £10, — one-third to poor, one-third to collector of excise, one-third to informant, — or, refusing to pay, to common jail for forty days at least.

SECT. 9. Forbidden to sell by children or servant or any other member of the family.

SECT. 10. Two credible persons who have bought strong drink, sufficient evidence to convict.

SECT. 11. Suspected houses to be examined under the oath of persons resorting to unlicensed places.

SECT. 11. Person refusing to give evidence, to be liable to same penalty as unlicensed dealer.

1727. *Chap. 1.* — Substantial re-enactment of same law.

1732-33. — Substantial re-enactment of same law.

1740. *Chap. 3.* — Similar enactment. No substantial difference.

1742-43, 1745-46, 1748-49, similar enactments to those previous, except addition in law of 1748-49, providing that after conviction of selling without license, the offender shall enter into bonds of twenty pounds for good behavior, or, refusing or neglecting, to be imprisoned until he shall comply.

1751-52, 1752-53, 1753-54, 1754-55, similar enactments.

1755-56, similar enactment with this addition: “Whereas, in order to elude the design of this act, some persons may join together, and buy wine, rum, brandy, and other spirits distilled in quantities above twenty-five gallons, and afterwards divide the same among themselves in less quantities, be it therefore enacted,

SECT. 8. That “Persons not licensed joining together in purchasing liquors and dividing the same, are liable to same forfeiture as for selling without license.”

SECT. 9 also provides that liquors *lent* or *delivered*, on consideration of returning the same or like liquors, shall be deemed a sale, and liable to same penalty as absolute sale of the same.

1755-56, seventh session, similar enactment to foregoing.

1758-59 forbids selling to negroes, mulattoes, Indians, or child, or other person under the age of discretion.

1760, Feb. 12, similar law.

1761, Jan. 22, similar law.

1762-74, similar law.

Feb. 28, 1787. — SECT. 1 prohibits selling by retail, of a less quantity than twenty gallons, and that delivered and carried away at one time, under forfeiture of twenty pounds.

SECT. 2. Licenses to be yearly renewed, and licensee to be approved by the selectmen.

Licensee to be sworn to bear true faith and allegiance to the Commonwealth of Massachusetts.

No license to be renewed to person complained of under previous license.

SECT. 3. Innholders and taverners at all times to be furnished with suitable provisions, etc., on pain of being deprived of their license.

SECT. 5. Penalty of forty shillings for keeping implements of gaming.

SECT. 6. Penalty of thirty shillings for suffering dancing or revelling.

SECT. 7. Forfeiture of twenty shillings for suffering persons to drink to excess.

SECT. 8. Penalty for second breach of this act twenty pounds, and two sufficient sureties for good order. For third offence, forfeiture of license, and no renewal for three years.

SECT. 9. Failure to pay fine and costs, to be openly whipped not more than fifteen, nor less than ten, stripes, and stand committed until fine is paid.

SECT. 10. Persons licensed shall be bound to the Commonwealth in two sureties not to break any of the laws made, etc.

SECT. 15. Justices directed not to license more persons than are necessary for the public good.

SECT. 16. Selectmen shall cause the names of common drunkards, etc., to be posted in the houses of taverners, and other licensed houses. Keepers to forfeit thirty shillings if they sell to such persons.

SECT. 17. Selectmen shall forbid licensed persons to sell spirituous liquors to excessive drinkers, idlers, and misspenders of time. Penalty for, twenty shillings.

SECT. 18. Innholders who shall trust or give credit for more than ten shillings to inhabitants of his town, or not more than five miles distant, shall lose such sums trusted, and all action for recovery debarred.

SECT. 19. Tithingmen to be chosen annually to inspect all licensed houses, and inform of all disorders.

SECT. 20. Fines, one-half to county, and one-half to informer or prosecutor.

June 22, 1789. — Whereas the manufacture of strong beer, ale, and other malt liquors, will promote the purposes of husbandry and commerce by encouraging the growth of such materials as are peculiarly congenial to our soil and climate, and by producing a valuable article of exportation, and whereas the wholesome qualities of malt liquors greatly recommend them to general use, as an important means of preserving the health of the citizens of the Commonwealth, and of preventing the pernicious effects of spirituous liquors,

Therefore be it enacted, etc., All brew-houses that produce a hundred barrels of beer annually, to be exempt from taxation or duties five years.

March 12, 1808. — If selectmen unreasonably neglect or refuse to give approbation to be an innholder or retailer, the Court of Sessions within the county may grant license.

1819. Chap. 65. — Whenever selectmen have *posted* names of common drunkards, etc., and forbidden sale of liquor to them, any person purchasing *for* them shall pay the sum of ten dollars.

Innholder, victualler, or retailer suffering any minor, tippler, common drunkard, or gambler to remain in his or her house, or shall furnish them with strong liquors, shall forfeit and pay a fine of ten dollars, and forfeit license, not to be renewed for three years.

Feb. 21, 1820. Chap. 256. — Additional fee of four dollars to be paid by licensees for the use of the Commonwealth.

1831. Chap. 136. — “Ten-gallon law,” so called.

SECT. 1. Sale of liquor by person presuming to be a common victualler, etc. (by retail, or in a less quantity than ten gallons, and that delivered and carried away all at one time), unless duly licensed therefor according to law, forfeiture of thirty dollars.

Sale of spirituous liquors by *any* person, penalty of ten dollars.

SECT. 2. Presuming to be a common victualler, etc., and selling wine, beer, ale, cider, or any fermented liquors in less quantity than ten gallons, all carried away at one time, forfeit thirty dollars; and for each offence, ten dollars.

Excise for license under this section, one dollar:

SECT. 3. Presuming to be a *common seller* of brandy, rum, and of wines, etc., by retail, or in a less quantity than ten gallons, all delivered and carried away at one time, without license, thirty dollars fine, and each offence, ten dollars.

Excise for license, five dollars.

SECT. 4. Presuming to be a common seller of wine, etc., same fine, and excise, one dollar.

SECT. 5 forbids licensed common victuallers, etc., to retail any liquors "*except to be drunk or spent in or about his or her house, or part or dependencies of the same.*"

Also forbids licensed common retailers of brandy, rum, etc., to retail any distilled or fermented liquors *to be drunk in his or her house or shop, etc.*, under penalty in each case of thirty dollars.

Provided, nevertheless, that the mayor, etc., of the city of Boston, and selectmen of towns, *may* license common retailers of beer, ale, and cider, to be drunk on premises, upon such terms and conditions as shall seem to them just and proper.

SECT. 6. Selectmen to take oath to faithfully discharge their duties, etc.

March 24, 1832. — SECT. 1. No person shall presume to be an innholder, or seller of wine, brandy, rum, or any other spirituous liquor, to be used and consumed in or about his or her premises, without license, as is herein provided, on pain of forfeiting the sum of one hundred dollars. Penalty for selling spirituous liquors, or *any mixed liquors, part of which is spirituous,* without license, etc., twenty dollars.

SECT. 2. Retailers of wine, brandy, rum, etc., *without* license, in less quantity than ten gallons, delivered and carried away at one time, twenty dollars for each offence.

Licensed retailers selling liquors to be drunk in his house, etc., penalty, twenty dollars.

SECT. 3. Person presuming to be a common victualler or seller of wine, brandy, rum, etc., to be used and consumed about his premises without license, forfeits one hundred dollars, and twenty dollars for each offence.

SECT. 4. Mayor and aldermen of Boston may license as many persons as, in their apprehension, the public good may require.

SECT. 5. Penalty for keeping open shop on the Lord's Day, or later hour than ten o'clock P.M., of any working day, ten dollars.

SECT. 6. Mayor and alderman may license for Boston, county courts for counties.

SECT. 7. Licenses to be yearly renewed.

SECT. 8. May also license without fee.

SECT. 9. Conditions of license, certificate of good moral character.

SECT. 10. Every licensed innholder shall be furnished with suitable provision for the refreshment and entertainment of strangers and travellers.

SECT. 11. Dice, cards, billiards, and gaming implements, and use forbidden under penalty of ten dollars.

SECT. 12. No innholder or common victualler shall permit any person to drink to excess in his place of business, under penalty of five dollars.

SECT. 13. Giving credit for liquor to be drunk on his premises, shall lose and forfeit all sums so credited.

SECT. 14. Mayor and selectmen shall forbid selling to persons drinking excessively or wasting time, under penalty of twenty dollars.

SECT. 15. Fines and forfeitures, how to be collected.

April 19, 1838. — Fifteen-gallon cans (so called), passed.

Feb. 11, 1840. — Ditto, repealed.

March 14, 1844. — In all prosecutions for selling, the legal presumption shall be that the defendant has *not* been licensed.

1850. Chap. 232. — License law amended.

SECT. 1. Striking out "spirituous" wherever it occurs, and inserting in place thereof "intoxicating."

SECT. 2. The county commissioners in the several counties, upon the recommendation of the selectmen of the town in which such persons may reside, and the mayor and aldermen of the several cities, may authorize by license, for a period of time not exceeding one year, and revocable at their pleasure, as many persons as they shall think the public good may require, to sell, in the towns or cities where they reside, intoxicating liquors in a less quantity than *twenty-eight gallons*, and that delivered and carried away all at one time for mechanical and medicinal purposes only.

SECT. 3. Penalty for selling contrary to law: third offence, one to ten hundred dollars recognizance, to be forfeited if he violate the law again.

1852. — *Chap. 322.* — Prohibitory law, so called.

1854. — Several amendatory acts passed.

1868. Chap. 14. — License law passed. Prohibitory law repealed.

Chap. 311. — Amendments to license law unimportant.

Chap. 318. — Amendments to license law unimportant.

Chap. 344. — Amendments to license law unimportant.

1869. Chap. 191. — No licenses to be issued or have force or validity after 30th April.

Chap. 415. — Prohibitory law re-enacted.

Chap. 442. — Unimportant amendment.

1870. *Chap. 389.* — Amendments unimportant allowing manufacture and sale of malt liquors.

Chap. 391. — Unimportant amendments.

1875. *Chap. 99.* — License law passed. Prohibitory law repealed.

Such are the results of legislation in Massachusetts for two hundred and fifty years. Such, too, have been the results in Maine, and, indeed, in other States where it may be admitted that the conditions for a successful trial of the experiment have been less favorable. I mean, the results have been not only failures to suppress the sale, but more conspicuously failures to suppress the use, of intoxicating drinks. Undoubtedly, certainly in Massachusetts for the last fifty years, since the temperance agitation commenced, there has been a steady improvement in the drinking habits of the better portion of the community. I fear that, in the lowest classes, the change has been in the opposite direction. But this change, careful observation tends to prove, has been the result of an improved public opinion, and not due to any form of law, except so far as proposed legislation has led to public discussion. What is the remedy?

Let it be borne in mind that the thing to be done is to suppress intemperance, not to stop rum-selling. It may be admitted that, so far as any system of license or prohibition diminishes the facilities for procuring intoxicating drinks, the use might thereby be diminished; but all experience, I think, clearly shows that legislation has not materially affected consumption.

Noah did not buy the wine upon which he became "drunken" at a corner grocery; and from that day to this the means of intoxication have always been found when the appetite craved a stimulant.

This craving creates the demand, and attempts arbitrarily to check the supply have never yet been successful. The problem is not of easy solution.

"To mend a world's a vast design;"

and in the case of an evil so pervading all classes of the community, he is a rash man who claims that his prescription will prove a panacea for a disease which has so long defied the wisdom and philanthropy of modern times. Still, the task must not be abandoned as hopeless.

First, Let the good cause be kept out of politics.

Second, The community must be educated out of the error that alcohol is ever useful as food, as a stimulant, or for medical prescriptions, as restoratives of health and strength. These three topics would require volumes, for their discussion and enforcement, and can only be suggested now.

Third, The social habits of the community, specially of the natural leaders of thought and public opinion, must be radically changed. "If meat make my brother to offend, I will eat no flesh while the world standeth, lest I make my brother to offend."

Fourth, If legislation is to be invoked at all, it must deal directly with the drinking, and not with the sale. Intemperance is to be treated as a disease, over which the victim has no control, and as a practice injurious to the drunkard and dangerous to the community. As a disease, hospitals should be provided, just as for insanity; as a habit, harmful to the individual and to the community, restraint is just as legitimate and just as necessary as for robbery or burglary. The right of society to deprive dangerous persons of their liberty, of course cannot be denied. The methods of its exercise will readily be found when public opinion shall attack the evil-doers as well as accessories before the fact. We shall not restore the whipping-post of our fathers. I am not sure that they were not wise in subjecting the drunkard to the discipline of the stocks.

Fifth, I think that the province of legislation as to the unrestricted sale of intoxicating drinks has this extent, — to treat as nuisances places of sale which are dangerous to the community, and to abate them like other nuisances. This admits, of course, the right of regulation and prohibition; but it recognizes what all experience in the history of license and prohibitory laws proves, — the necessity of an intelligent and earnest public opinion to the enforcement and effectiveness of law.

Sixth, A "civil damage" law, holding the seller liable for all damages resulting from the sale. "If an ox gore a man or a woman that they die; . . . and if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, . . . the ox shall be stoned, and his owner shall be put to death" (Exod. xxi.

28, 29). From the day when Moses transmitted this "judgment" to the children of Israel, this liability for knowingly injuring one's neighbors, whether embodied in the *lex talionis* or in the deliberate enactments of civilized Christian peoples, has been recognized. Surely it may properly be applied to agencies, whether through principals or accessories, of so many woes as result from the sale of intoxicating drinks.

Seventh, After all, and above all, education, "moral suasion," must remain the effective means for the suppression of intemperance. The history of the Washingtonian movement emphasizes this statement. That work showed greater results in reforming individuals and in diminishing the evils of intemperance, than all other agencies before or since. Combining the efforts of all the earnest friends of temperance, it was rapidly forming the public opinion which is essential to all works of reform; until, in an evil hour, legislation was invoked, — aimed primarily at the sale, and not at the use, of intoxicating drinks. The result was, that the sentiment of the friends of temperance was divided; education, especially of the young, was neglected. This great Cause allied itself with politics. Notorious drunkards became eligible candidates for the Legislature, if only they would vote for prohibition. Philanthropy was degraded by the alliance; and humanity, if not irreparably, has been very seriously injured in the house of its friends.

I am well aware how very far short this discussion falls of what is due to your Association and to the subject. I am well aware, too, how unpopular, how odious is the advocacy of what is called "free rum." This general feeling has grown out of the prominence which has been mistakenly given to the sale of intoxicating drinks, rather than to the use; thus directing public attention to sellers as the authors of all the evils of intemperance. But I am profoundly impressed with the conviction that the efforts in this direction have failed; that they have not appreciably diminished the sale — hardly in the slightest degree the use — of intoxicating drinks; and that the time has fully come for the union of all good men and women in some more effective means for the suppression of intemperance, — the greatest menace to our experiment of self-government, and to all the hopes of philanthropy and humanity.

APPENDIX.

WHILE reading the foregoing essay at Saratoga, the time occupied being less than that taken by the other speakers, I interpolated from time to time a few remarks by way of illustration or amplification. So far as I can recall them, they were substantially as follows:—

Imperfect on my part as this discussion has been, and incapable as I felt of doing justice to it, I welcomed the opportunity to present the subject in a light in which it had not been viewed by many earnest friends of restrictive legislation. For many years I have been denounced by extreme prohibitionists as a “Rummy,” and by the liquor interests as their bitter opponent. Since my mother tried to impress upon my mind in my boyhood that alcohol is a poison, and always injurious, (alas that I did not make the lesson the rule of my life!) I have believed and do believe that alcoholic stimulants, taken in any quantity, in any condition of the system, healthful or diseased, never do good, but are always hurtful. My conviction is, that, until the delusion that the good feeling following the use of stimulants proves that they impart strength is dispelled from the minds, both of the medical profession and of the community, no permanent and general improvement in the drinking habits of the people can be expected. “Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil.” Waiving the question of the special inspiration of the “Preacher,” we must recognize a universal truth in this declaration. Unfortunately, the artificial strength which follows the use of stimulants has led millions into the path which leads to blighted hopes, ruined health, and a drunkard’s grave.

The theory upon which prohibitory laws are founded is, that liquor-selling is a crime. The failure of such laws grows out of the lack of the belief on the part of the community in the truth of the theory. A conspicuous illustration of this want of harmony between theory and practice is furnished in certain recent transactions in the good town of Quincy in our State. At the last annual town-meeting the voters of the town, by a large majority,

elected an active prohibitionist as a police officer, with special instructions to enforce the restrictive provisions of the license laws. This gentleman proceeded, in earnestness and good faith, obeying the declared wishes of the people and his own sincere conviction, to adopt such methods for detecting violations of these laws as are universally approved in regard to other criminal laws. His efforts were too successful; and, in the full tide of successful experiment, he was removed by the selectmen. Had the town of Quincy been infested by a gang of burglars, the precise methods which this officer adopted for the detection of violations of the license laws would have received the unanimous approval of the town.

It is a common argument that the fees for licenses put money into the public treasury. To my mind this argument loses all its force when it is remembered that such legislation lends the sanction of law to an injurious traffic. Again, when we consider the woes which result from intemperance, to which, certainly, the sale must be admitted to contribute, all money received for the allowance of such a traffic must be regarded as the price of blood; and I envy not the feelings of the father who is truthfully told by his son, "Father, I took my first degree in intemperance in the gilded saloon licensed by a law passed by your vote."

My remarks at Saratoga have met the criticism that I did not suggest any effective, practical remedy. My kind critic, will you please suggest one? The civilized world has invoked for two or three centuries all conceivable aid in this direction, by means of legislation; and we are no nearer to a conclusion as to methods in which the best friends of temperance agree. Of the right of the community to protect itself against an evil of such magnitude, there can be no doubt. John Stuart Mill, in his work on "Liberty," says, "The liberty of the individual must be thus far limited: he must not make himself a nuisance to other people." Just where and how this interference for the protection of society is to be exercised, is the problem which has taxed, and thus far baffled, the wisdom of statesmen and philanthropists.

LEGISLATION IN RHODE ISLAND.

While preparing the sketch of legislation in Massachusetts, I learned that Mr. Justice Stiness, of the Supreme Court of Rhode Island, read, before a committee of the Legislature of that State last winter, a paper containing a similar sketch of the legislation against strong drink by the State of Rhode Island and Providence Plantations. From the year 1647, when the first General Assembly was held, to the present year, legislation upon this subject has shown, as in Massachusetts, the anxiety of the people to regulate

the sale of intoxicating drinks, with the same experience of failure and frequent change. The system, for two centuries, was one of license under various forms, with the exception that in 1654 a stringent prohibitory law was passed, forbidding the sale of "liquors" to Indians. Whether this was intended to prohibit the sale of wines to Indians, does not appear. In our Plymouth Colony, in the same year, an act was passed, as will be seen by referring to the Plymouth records for that year, prohibiting the sale to Indians of any "strong liquors." In the preamble, "wines and other strong liquors" are put in the same category. (By the way, referring to the legislation of the Massachusetts Bay, we find that "the Court, apprehending that it is not fit to deprive the Indians of any lawful comfort, which God allows to all men, by use of wines, do order that it shall be lawful . . . to sell also to the Indians so much as may be fit for their needful use or refreshing.") I do not find that prohibitory laws, as applied to the Indians in Rhode Island and the Plymouth Colony, had any marked effect of improving the drinking habits of Indians in those colonies over those of Massachusetts Bay.

In 1852 a strict prohibitory law was passed in Rhode Island. In 1853 amendments were passed, remedying some defects which had been found in the law of 1852. This law, with modifications from time to time in the direction of prohibition, was repealed in 1863, and a license system adopted in its stead. In 1874 the license laws were repealed, and a prohibitory law passed. In 1875 this was again repealed, and license laws again passed. With unimportant amendments from time to time, this is the system in Rhode Island to-day, — a record of earnest effort and uniform failure. Have we wandered over two and a half centuries of legislation

"To bring back but this message of despair?"

There is no occasion for despair. The whole people are wiser and stronger than any portion of them; and when public attention is aroused to the extent of the evil, and legislation, wisely directed, united with moral means, is invoked, effective remedies will be found.

