

Darrow Opposes Prohibition



Two of the most prominent public figures of the early twentieth century were attorney Clarence Darrow and Democratic politician William Jennings Bryan. Their contrasting views and actions perfectly represented the culture clash of the 1910s and 1920s. Darrow stood for civil liberties, rational thinking, and modernity, while Bryan symbolized rural America, Christian evangelicalism, and traditionalism. The two men faced off in a Dayton, Tennessee, courtroom in 1925 during the famous Scopes Trial. Bryan prosecuted teacher John Scopes, who was charged with breaking the Tennessee law against teaching evolution, and Clarence Darrow signed on as Scopes' defender.

But these leading figures opposed each other in another arena as well -- in the public debate over Prohibition. Bryan was a lifelong abstainer, raised in a Dry family. He championed the Prohibition cause in the 1910s, and his popular speeches in favor of temperance proved very effective during the campaign for passage of the amendment. Clarence Darrow, on the other hand, was a high-profile opponent of Prohibition. The following article, "The Ordeal of Prohibition," is Darrow's argument against the increasingly unpopular law. From Clarence Darrow, "The Ordeal of Prohibition," American Mercury August 1924.

It took many months for the inhabitants of the United States to realize that (at least theoretically) the country had gone dry. The Eighteenth Amendment and the Volstead Act were passed without submission to the people, who had been educated for nearly a century and a half to believe that they were the supreme power in the government of the land. A radical and revolutionary change in policy was made as a war measure, at a time when the great majority of citizens were engrossed in graver matters, and when none but a few zealots considered Prohibition important. While the legislation designed to put it into effect was pending, a large number of our young men were fighting in France and the whole country had its thoughts on the war. It was a favorable time for zealots to do their work.

But all that is now past. By whatever means it was done, and however slight may have been the understanding of the people, the fact is that Prohibition is entrenched today in the fundamental law of the nation, and, what is more important, that there are many men and powerful organizations who feel it to be their duty to enforce it. The impossibility of its complete repeal has only slowly dawned upon the American people. Even to modify the Volstead Act would require a political revolution; to repeal the Eighteenth Amendment is well-nigh inconceivable. Eleven or twelve million voters, properly distributed amongst the States that naturally support Prohibition, will suffice to keep it on the books. But does this mean that it will remain in force forever? Does it mean that millions of people who have no sense of wrong in making, selling or using intoxicating liquors will be subject for all time to drastic penalties and tyrannical judgements?

The question can be best answered by a glance at the history of the methods by which laws have been made and repealed in the past. Against the rash doctrine of the unthinking, so often heard today, that so long as a law is on the books it must and shall

be enforced, stands the almost universal experience of mankind. Probably no one who ever actually studied the growth and change of law and understood the true nature of government has ever held that so long as a statute is on the books it should be enforced. All such students know that it is an idle statement, made by men who are ignorant of history, or who are excessively eager to enforce some particular law.

Most laws grow out of the habits and customs of the people. These customs grow into mores and are finally embodied in laws. Long before statutes are passed, the great mass of men have formed their attitudes and ways of living and the statutes are simply codifications of existing folkways. Now and then, however, this natural process is changed. Some active minority, moved by religious zeal, political intolerance or special interest, finds itself able to pass a law that has not originated like the others in the customs and habits of the people. Such laws are often extremely arrogant and oppressive; they violate the conscience, the practice and the beliefs of a large number of the citizens of the state. No better illustration can be found than the body of statutes which shaped and directed the Inquisition. These were laws meant to enforce religious doctrines; they were passed alternately by Catholics and Protestants, depending upon which was in power at the time. During the three or four hundred years of violence and bloodshed that followed, many millions of human beings were directly put to death by execution or indirectly by war, and they comprised many of the best, the most intelligent, and the noblest people of the earth. The reign of terror devastated large portions of Europe and threatened completely to destroy freedom of thought and speech. Very few people in any country today would advocate the revival of any of those fierce and bloody laws. Civilization looks back upon them in amazement and horror. It feels a deep relief that the Inquisition is dead. But it forgets the method by which the laws underlying the Inquisition were got rid of.

It took religious persecution more than a hundreds years to die in Europe. It lingered in some countries long after it was dead in others. It was not disposed of at last by repealing the various civil and canonical laws under which hundred of thousands had been burned at the stake and tortured in the most horrible ways; it perished through the growth of scientific knowledge and rationalism in the churches and out.

Along with these laws, and really a part of them, was the code which punished the crime of witchcraft. This, like the code of the Inquisition, was a part of both the civil and the canonical law. The statutes were numerous and brutal in the extreme. They provided for torture, for burning, and for even more horrible modes of killing. After the death of the witch, his or her estate was confiscated. These cruel and barbarous laws were in effect all over Europe and spread to America; they were in force, at one place or another, for three hundred years. Now and then some judge or ecclesiastic who was more enlightened and humane than the others refused to put witches to death, and so prosecutions would tend to fall off. But at some subsequent time they would be resumed again by a sudden flaming of religious fanaticism. Joan of Arc was one of the noblest victims of fanaticism. Would our modern Prohibitions have approved of her death on the ground that the law was on the books? Would they have solemnly mouthed the foolish phrase that "the best way to get rid of a bad law is to enforce it?"

The long code of laws in America which have passed into history under the name of the Blue Laws furnish another illustration of the way in which fanaticism burdens the statute-books with oppressive legislation, and also of the way in which the common sense of the people finally disposes of it. It would be hard to find a variety of conduct

that the Blue Laws did not attempt to regulate or any expression of pleasure that was not frowned upon or forbidden. They forbade women to dress their hair in a way that would attract attention, or to wear ribbons or silks. They forbade attending theatres; all kinds of travel on Sunday, except going to and from church; sleeping in church, not attending church, and the playing of any game of any sort on Sunday. They regulated the diet of the people, and of course regulated it so that they could eat nothing which tasted good or was expensive. They constituted, in brief, a desperate crusade against joy. Their theory was that good people would have pleasures after death, and the less joy they indulged in on earth the more they would get in the hereafter.

Politicians, Better Government Associations and Law Enforcement Leagues loudly proclaimed that all these laws must be observed; that so long as they were on the books they must be enforced. They are, however, not enforced today-- even though many of them have not been repealed. Theatres were forbidden in Boston, but there were plenty of playhouses in New York and the well-to-do who lived in Boston and believed in enforcing the law went to New York and attended the theatre there, just as they now go to Havana, Canada, Mexico and England for a drink. Later, theatres were built in Boston, at first under the pretense that they were not theatres at all, but only lecture-halls. In them songs were sung and women walked on tight ropes. The people grew bolder and bolder as their natural impulses asserted themselves. The performances were prosecuted, but the juries acquitted them and judges began distinguishing what the law meant until it finally meant nothing.

Most of the other Blue Laws died the same way. The law compelled going to church on Sunday, but many people would not go. The law forbade sleeping in church, but they slept. Women wore ribbons and silks and curled their hair in spite of the law. Children were children, and played on Sunday. Occasionally, after they had been long ignored, under the impetus of a general housecleaning, some of the old statutes were repealed. But many remain on the books today; they are not worth repealing, for they are dead.

The history of the past is carried into the present. All of our codes are filled with obsolete laws. The Fugitive Slave Law was never obeyed in the North; it took more than a law to compel a humane white man to send a black man back to slavery. The Sunday laws today in many states of the Union forbid the publication of newspapers, the running of trains and street cars, riding and driving for pleasure, attending moving picture shows, playing any game, the starting out of boats on voyages, or the doing of any work except works of necessity. Nearly all these laws are dead, though they still remain on the books. They are dead because they do not fit the age. They are not now a part of the customs, habits and mores of the people. They could not be enforced.

No one even quotes the foolish statement of General Grant that the "best way to repeal a bad law is to enforce it." No doubt Grant was a good soldier, but he was never suspected of being a philosopher or an historian. The way to get rid of a bad law, which means a law obnoxious to large masses of people, is not by trying to keep it alive, but by letting it die a natural death. This is the way that society has always followed in dealing with unjust laws. The tax laws are a part of our civil and criminal codes, yet those who shout the loudest for enforcing Prohibition never pretend to obey them. When a man argues that a law must be enforced so long as it is a law, or that the best way to repeal a bad law is to enforce it, he is talking about some law he wants enforced and not about a law that he believes is tyrannical and unjust.

It is much easier to pass a new law than to repeal an old one. Legislation which represents special interests or is demanded by organized associations which make a great show of power before law-making bodies is seldom met by strong opposition. The force which demands the law is active and persistent; its insistence leads politicians to believe that a large mass of men is behind it. But when the statute goes into effect it may create serious oppression and violent disorder; it may come into conflict with the desires and prejudices of the majority of the people affected by it. But, once it is on the books, an active minority can easily prevent its repeal. It is only by the steady resistance of the people that it is eventually destroyed.

In spite of the common opinion, this method has always been the ruling one in getting rid of bad laws. It is Nature's way of letting the old die by opposition, neglect and disuse. If it were not in operation there could be no real progress in the law. If history were not replete with illustrations, if philosophy did not plainly show that this must be the method of society's growth, it would be easier to understand the people who so glibly argue that, whatever the cruelty or the hardship, the law must be enforced while it is on the books. A law cannot be taken off the books while it is complacently obeyed. Constant protest is the only manner that history offers the common people of having their way in the making and administration of the law.

All this, of course, does not mean that all laws are or should be habitually violated. The larger part of criminal code represents the ideas of right and wrong of nearly all our people. But the sumptuary laws that regulate individual conduct and custom are never believed in by the great mass of the people. Men, unfortunately, are in the habit of being influenced by aphorisms and catchwords. We continually hear of "Law and Order," as if they always went together and law came first. As a matter of fact, order is the mother of law, and the law which seriously overturns habits and customs does not promote order, but interferes with it instead. The enforcement of an unpopular law by drastic threats, by increasing penalties, by more cruelty, is not the administration of justice; it is tyranny under the form of law.

All laws are made, altered and amended in the same way. When a large class does not respect them, but believes them to be tyrannical, unjust or oppressive, they cannot be enforced. It is a popular idea that the majority should rule. But this does not mean that the people should vote on every question affecting human life, and that the majority should then pass penal statutes to make the rest conform. No society can hold together that does not have a broad toleration for minorities. To enforce the obedience of minorities by criminal statute because a mere majority is found to have certain views is tyranny and must result in endless disorder and suffering.

When the advocates of Prohibition urge that all laws must be enforced, they really refer only to the Prohibition laws. They do not refer to the numerous other laws in every State in the Union that have never been enforced. Even the drastic Volstead Act has not prevented and cannot prevent the use of alcoholic beverages. The acreage of grapes has rapidly increased since it was passed and the price gone up with the demand. The government is afraid to interfere with the farmer's cider. The fruit grower is making money. The dandelion is now the national flower. Everyone who wants alcoholic beverages is fast learning how to make them at home. In the old days the housewife's education was not complete unless she had learned how to brew. She lost the art because it became cheaper to buy beer. She has lost the art of making bread in the same way, for she can now buy bread at the store. But she can learn to make bread again, for she has

already learned to brew. It is evident that no law can now be passed to prevent her. Even should Congress pass such a law, it would be impossible to find enough Prohibition agents to enforce it, or to get the taxes to pay them. The folly of the attempt must soon convince even the more intelligent Prohibitionists that all this legislation is both a tragedy and a hoax.

A wise ruler studies the customs and habits of his people and tries to fit laws and institutions to their folk ways, knowing perfectly well that any other method will cause violence and evil; he knows that fitting laws to men is like fitting clothes to men. The man comes first and both the laws and the clothes should be fitted to him. Instead of increasing penalties, stimulating cruelty, and redoubling the search for violators, he should take a lesson from the Trajan, the Roman Emperor, as shown by his correspondence with Pliny. About the year 112, when the campaign against the Christians was in full sway in the Empire Pliny, who was the governor of a province, wrote to Trajan for instructions as to how to carry on the prosecutions. The Emperor replied: "Do not go out of your way to look for them."

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