

What Prohibition Has Done to America

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CHAPTER II

CREATING A NATION OF LAW- BREAKERS

IN his baccalaureate address as President of Yale University, in June, 1922, Dr. Angell felt called upon to say that in this country "the violation of law has never been so general nor so widely condoned as at present," and to add these impressive words of appeal to the young graduates:

This is a fact which strikes at the very heart of our system of government, and the young man entering upon his active career must decide whether he too will condone and even abet such disregard of law, or whether he will set his face firmly against such a course.

It is safe to say that there has never been a time in the history of our country when the President of a great university could have found it necessary to address the young Americans before him in any such language. There has never been a time when deliberate disregard of law was habitual among the classes which represent culture, achievement, and wealth-- the classes among whom respect for law is usually regarded as constant and instinctive. That such disregard now prevails is an assertion for which President Angell did not find it necessary to point to any evidence. It is universally admitted. Friends of Prohibition and enemies of Prohibition, at odds on everything else, are in entire agreement upon this. It is high time that thinking people went beyond the mere recognition of this fact and entered into a serious examination of the cause to which it is to be ascribed. Perhaps I should say the causes, for of course more causes than one enter into the matter. But I say the cause, for the reason that there is one cause which transcends all others, both in underlying importance and in the permanence of its nature. That cause does not reside in any special extravagances that there may be in the Volstead act. The cardinal grievance against which the unprecedented contempt for law among high-minded and law-abiding people is directed is not the Volstead act but the Eighteenth Amendment. The enactment of that Amendment was a monstrosity so gross that no thinking American thirty years ago would have regarded it as a possibility. It is not only a crime against the Constitution of the United States, and not only a crime against the whole spirit of our Federal system, but a crime against the first principles of rational government. The object of the Constitution of the United States is to imbed in the organic law of the country certain principles, and certain arrangements for the distribution of power, which shall be binding in a peculiar way upon generation after generation of the American people. Once so imbedded, it may prove to be impossible by anything short of a revolution to get them out, even though a very great majority of the people should desire to do so.

If laws regulating the ordinary personal conduct of individuals are to be entrenched in this way, one of the first conditions of respect for law necessarily falls to the ground. That practical maxim which is always appealed to, and rightly appealed to, in behalf of an unpopular law--the maxim that if the law is bad the way to get it repealed is to obey it and enforce it--loses its validity. If a majority cannot repeal the law--if it is perfectly conceivable, and even probable, that generation after generation may pass without the will of the majority having a chance to be put into effect--then it is idle to expect intelligent freemen to bow down in meek submission to its prescriptions. Apart from the question of distribution of governmental powers, it was until recently a matter of course to say that the purpose of the Constitution was to protect the rights of minorities. That it might ever be perverted to exactly the opposite purpose--to the purpose of fastening not only upon minorities but even upon majorities for an unlimited future the will of the majority for the time being--certainly never crossed the mind of any of the great men who framed the Constitution of the United States. Yet this is precisely what the Prohibition mania has done. The safeguards designed to protect freedom against thoughtless or wanton invasion have been seized upon as a means of protecting a denial of freedom against any practical possibility of repeal. Upon a matter concerning the ordinary practices of daily life, we and our children and our children's children are deprived of the possibility of taking such action as we think fit unless we can obtain the assent of two-thirds of both branches of Congress and the Legislatures of three-fourths of the States. To live under such a dispensation in such a matter is to live without the first essentials of a government of freemen. I admit that all this is not clearly in the minds of most of the people who break the law, or who condone or abet the breaking of the law. Nevertheless it is virtually in their minds. For, whenever an attempt is made to bring about a substantial change in the Prohibition law, the objection is immediately made that such a change would necessarily amount to a nullification of the Eighteenth Amendment. And so it would. People therefore feel in their hearts that they are confronted practically with no other choice but that of either supinely submitting to the full rigor of Prohibition, of trying to procure a law which nullifies the Constitution, or of expressing their resentment against an outrage on the first principles of the Constitution by contemptuous disregard of the law. It is a choice of evils; and it is not surprising that many good citizens regard the last of the three choices as the best. How far this contempt and this disregard has gone is but very imperfectly indicated by the things which were doubtless in President Angell's mind, and which are in the minds of most persons who publicly express their regret over the prevalence of law-breaking. What they are thinking about, what the Anti-Saloon League talks about, what the Prohibition enforcement officers expend their energy upon, is the sale of alcoholic drinks in public places and by bootleggers. But where the bootlegger and the restaurant-keeper counts his thousands, home brew counts its tens of thousands. To this subject there is a remarkable absence of attention on the part of the Anti-Saloon League and of the Prohibition enforcement service. They know that there are not hundreds of thousands but millions of people breaking the law by making their own liquors, but they dare not speak of it. They dare not go even so far as to make it universally known that the making of home brew is a violation of the law. To this day a very

considerable number of people who indulge in the practice are unaware that it is a violation of the law. And the reason for this careful and persistent silence is only too plain. To make conspicuous before the whole American people the fact that the law is being steadily and complacently violated in millions of decent American homes would bring about a realization of the demoralizing effect of Prohibition which its sponsors, fanatical as they are, very wisely shrink from facing.

How long this demoralization may last I shall not venture to predict. But it will not be overcome in a day; and it will not be overcome at all by means of exhortations. It is possible that enforcement will gradually become more and more efficient, and that the spirit of resistance may thus gradually be worn out. On the other hand it is also possible that means of evading the law may become more and more perfected by invention and otherwise, and that the melancholy and humiliating spectacle which we are now witnessing may be of very long duration. But in any case it has already lasted long enough to do incalculable and almost ineradicable harm. And for all this it is utterly idle to place the blame on those qualities of human nature which have led to the violation of the law. Of those qualities some are reprehensible and some are not only blameless but commendable. The great guilt is not that of the law-breakers but that of the lawmakers. It is childish to imagine that every law, no matter what its nature, can command respect. Nothing would be easier than to imagine laws which a very considerable number of perfectly wellmeaning people would be glad to have enacted, but which if enacted it would be not only the right, but the duty, of sound citizens to ignore. I do not say that the Eighteenth Amendment falls into this category. But it comes perilously near to doing so, and thousands of the best American citizens think that it actually does do so. It has degraded the Constitution of the United States. It has created a division among the people of the United States comparable only to that which was made by the awful issue of slavery and secession. That issue was a result of deepseated historical causes in the face of which the wisdom and patriotism of three generations of Americans found itself powerless. This new cleavage has been caused by an act of legislative folly unmatched in the history of free institutions. My hope--a distant and yet a sincere hope--is that the American people may, in spite of all difficulties, be awakened to a realization of that folly and restore the Constitution to its traditional dignity by a repeal, sooner or later, of the monstrous Amendment by which it has been defaced.