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What will America do with Prohibition?, 1924.



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"WHAT WILL AMERICA DO WITH PROHIBITION?"

RABBI ABBA HILLEL SILVER.

THE TEMPLE, SUNDAY MORNING,

MAY 25, 1924, CLEVELAND, O.

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JOSEPH T. KRAUS  
Shorthand  
Reporter  
CLEVELAND



I was prompted to speak on this subject, What Will America Do With Prohibition, by the attack which was recently made by Dr. Nicholas Murray Butler, president of Columbia university. Dr. Butler's attack--an analysis of how the Eighteenth Amendment has affected the moral quality of American life--was forceful, earnest, challenging. Dr. Butler did not speak as a partisan, nor as an interested party, but as an educator, a leader of thought; and, to my mind, he voiced not alone his sentiments but that of thousands of thoughtful citizens who are honestly disturbed by the wholesale disregard of this federal law, and by the rampant lawlessness, general lawlessness, which seems to have come in the wake of this prohibition measure.

*This latest*  
~~It seems that~~ criticism of prohibition ~~today~~ does not come from the old-time liquor interests, <sup>who</sup> ~~which~~ have largely by now converted their plants to other uses, nor does it come from the professional bootlegger, who seems to have found the Eighteenth Amendment quite lucrative and desirable. The criticism ~~seems to come from~~ <sup>now comes</sup> educators and social reformers, leaders of thought, who are seriously perturbed about the spread of <sup>the</sup> ~~this~~ liquor habit among classes and in localities where heretofore it did not exist; about the ~~fascination~~ <sup>fascination</sup> which it now seems to have for the youth of America, and about the carelessness and the indifference ~~and~~ ~~the utmost naturalness~~ with which decent, law-abiding citizens flaunt and mock this organic law of the land.



I think it is proper that we should review the position of Dr. Butler and his argument. All of his contentions in criticism of the prohibition law may be grouped under five headings. He, first of all, maintains that the law has not worked; that the law has wrought havoc in the moral life of the American people. To quote his own words: "As a result of the Eighteenth Amendment we now have a nation wide traffic in intoxicating liquors which is unlicensed, illicit, illegal and untaxed. We have introduced intoxicating liquor into parts of the country from which it had well nigh disappeared, and in hundreds of communities we have multiplied many times the saloon, if a saloon be defined as a place where intoxicating liquor may be purchased, whether for consumption on the premise or not. We have brought about a situation in which we challenge the ingenuity and sporting instinct of millions of young persons to test whether or not they can safely violate a law for which they have no respect."

In other words, Dr. Butler's first argument is that the law has not worked; that the law has defeated itself, in that it has extended the use and the abuse of intoxicating drink in America. His second argument seems to be this: that the law has worked immorally because it is in itself immoral; the Eighteenth Amendment is an immoral law. To use his words again: "The reason why the national prohibition law is not enforced is that it cannot be enforced. In its attempted forcible interference with



the food and drink and medicine of the people, it is a form of oppression to which a free people will never submit in silence. No liberal can possibly defend it. The unmoral conditions which have followed the ratification of the Eighteenth Amendment are the direct and natural results of its own immorality. The Volstead law tells a conscious lie when it defines as intoxicating that which everyone knows to be the contrary. It violates the Eighteenth Amendment when it attempts to interfere with the use of alcoholic liquor as medicine, and it affronts, if it does not invade, the Bill of Rights at every possible point. It is because this thing is wrong that it is the parent of wrong all over the land."

The third contention of Dr. Butler seems to be that not alone is this an immoral law, but that in the entire discussion of prohibition no moral issue was ever raised. Prohibition seems to have been thrust forward by the moral forces of this land as a moral issue. His contention is that nothing of that character was ever involved in the prohibition problem. I am quoting again: "There was originally no moral question raised by the policy of prohibition. It is no more moral or immoral to drink or to refrain from drinking alcoholic liquor than it is to eat or to refrain from eating roast beef or buckwheat cakes. Drunkenness, like gluttony, is a vice, because it shows lack of self-control and the excessive use of something which may in itself be not only innocent but beneficial. The pro-



visions of the Eighteenth Amendment reflect a state of mind, a condition of opinion, and have nothing more to do with morals than have the provisions of the Seventeenth Amendment, which relates to the mode of electing Senators."

His fourth contention is that as long as the law is a law, it is the duty of every citizen to obey it, but because the law is immoral, it is the duty of every citizen to fight it. Obey it as long as it is the law, but work for the repeal of the law. Again using his words: "My own feeling toward prohibition is exactly the feeling which my parents and my grandparents had toward slavery. I have looked upon the Volstead law precisely as they looked upon the Fugitive Slave law. Like Abraham Lincoln, I shall obey these laws so long as they remain upon the statute book; but like Abraham Lincoln, I shall not rest until they are repealed. The issue is one of plain, simple, unadorned morality."

And last ly, his substitution for the Eighteenth Amendment is the abolition of the saloon, restriction and limitation in liquor traffic, and, of course, light wine and beer. To use his own words again: "With these obstacles to temperance out of the way (that is, after the amendment will have been repealed, abrogated), with the police power of the States, which should never have been diminished or invaded, restored to them, it will be quickly possible to build a constructive policy upon the foundation of the system which seems to work satisfactorily in the province of Quebec



and in Sweden. By this system the saloon is abolished, because it is made not only illegal but unprofitable, the consumption of alcoholic liquor is greatly diminished, the food and drink and medicine of its citizens in their own homes are not interfered with, and the immense revenues now illicitly appropriated by the bootlegger are restored to the public treasury, and the crushing burden of the taxpayer greatly relieved."

I suppose all possible arguments for the repeal of the prohibition amendment that one can think of will ultimately find their place in one of these five headings. I want to review these five arguments of Dr. Butler just a moment, to see where their strength lies and where their weakness lies. ~~His first~~ <sup>This</sup> argument, that the prohibition law has not worked, is substantially true, and only a fanatic, ~~a~~ partisan, will deliberately shut his eyes to the appalling disregard of this law in America today. Every observing <sup>ant</sup> citizen knows that bootlegging is rampant in these United States. We all know that America ~~is today~~ <sup>is today</sup> ~~wet~~ <sup>is today</sup> ~~and dry~~. ~~we all know~~ We all know that the border States and the seaboard States are almost as wet as the bodies of water they confine; ~~we all know~~ that while the United States has failed to develop a merchant marine, it has quite successfully succeeded in developing a liquor marine; ~~we all know~~ that the United States navy, which ~~so~~ successfully during the war checked the invisible German submarine, has been unable ~~successfully~~ to ~~meet the menace of~~ <sup>the</sup> rum runners, quite visible and in



*- we do know that real liquor, pure & common sense, the hidden drink and was for them with a phenomenon arising.*  
evidence all along our coast; and we do know that the youth of America now regards it as a matter of sporting ingenuity and cleverness--quite the thing to sport liquor at every occasion.

*still am inclined to ask myself:*

Now, granting these facts, I ask: Is it fair to pass judgment on the prohibition law at the present time? Is it fair to pass judgment upon the value and the effectiveness of a law which was so revolutionary in character that it <sup>must</sup> require decades to adjust the minds of the people to it,--~~to pass judgment upon it~~ at the present time, when it has been in force on a national scope ~~less~~ *less than a* <sup>single decade?</sup> ~~four years?~~ ~~I say~~ the measure was revolutionary because it demanded of men to come and look upon a practice as illegal what they had up to that time been in the habit of regarding quite <sup>legal and proper</sup> ~~proper~~, quite legal. Every revolution is followed by years of readjustment and mal-adjustment and unrest. ~~It~~ *stop* takes quite a time for normal conditions to be restored.

I believe that Dr. Butler's argument would have much more weight to it and much more cogency to it if prohibition in America had been tried four decades and been found wanting instead of four years. Critically and scientifically, no man is justified at the present time to pass final judgment upon this law. That, to my mind, is only a fair statement to make.

Dr. Butler's second contention, that the law works immorally because it is itself immoral, is, to my mind, quite inaccurate. One may call the prohibition law



unnecessary, one may call it impractical, but it is not immoral. Dr. Butler calls it immoral because it is oppressive; because it invades our Bill of Rights; because it attempts to regulate what we shall drink. And yet that is exactly what the state does all the time. The more civilized we become, the more we live in civilized communities, the more aggressive is the state in the restriction of what we regard as our inalienable rights. The state takes part of our income, or a large part of our income, as it wills, through taxation; the state compels us to educate ourselves and to educate our children, whether we wish it or no; the state tells us the sanitary conditions under which we must live, whether we will it or no; the state ordains that men shall have only one wife apiece, and women shall have only one husband apiece. And what is more serious, the state can take you and me and maim us and kill us by sending us to war, if it makes up its mind to do it.

We have no rights other than the rights which the state gives us, and when the state denies us a privilege, it is only depriving us of a privilege which the state originally granted to us. If the state finds that liquor is unnecessary and harmful and deprives us of it, it becomes ipso facto moral. If the state decides that polygamy is no longer necessary,--polygamy, which once upon a time was highly moral, as long as society regarded it as necessary and helpful,--then polygamy becomes immoral, and the state is within its moral right to declare that right



immoral. Once upon a time the state decided slavery was moral and recognized slavery, but then the progressive thought of society and the wisdom and experience of society discovered that slavery was unnecessary and harmful, and declared itself, and that institution, once upon a time moral, became immoral by the sanction and the say-so of the state. And so when the state declares that a certain food, a certain drink, or a certain dress, if you wish, is harmful to the general well being of the community, the state is within its moral right so to do; so that while the prohibition law may be called impracticable and unnecessary, it cannot be branded as immoral because it is oppressive.

The third contention of Dr. Butler that there was no moral issue involved, that it is just as moral to drink as it is to eat roast beef and buckwheat cakes, is quite true; that if the state should ever make up its mind that the eating of roast beef makes for poverty and for irregularity in employment, and for increase in crime, and prohibits the eating of roast beef or that delectable dish of buckwheat cakes, the state will be absolutely within its rights. But it has not yet been established that crime in any one year increased because of a generous indulgence upon the part of the citizens in roast beef.

Dr. Butler's fourth contention, that a citizen should obey the law but fight it, is absolutely true. The fact that a measure is declared a law does not mean that the citizens of that state be forever after enjoined against



criticizing that law or demanding its repeal. That would forever stop progress; that would forever make an amendment impossible. But it is only fair to say that denouncing the law as vehemently, as vigorously as Dr. Butler has done, a law which has never yet had a chance to show the good which it can do, is to make that law contemptuous in the eyes of the people and to make the enforcement of that law even more difficult than it is today. Abraham Lincoln criticized the Fugitive Slave law and the institution of slavery after slavery had 150 years time to prove its worth and value in America, and failed to establish its usefulness. National prohibition has had four years under the most difficult conditions to prove its value. If there is any good in that measure--and to my mind, two-thirds of the American people think that there is good in that measure--then these drastic criticisms from men of authority, to whom men look for guidance, will make it impossible for that good ever to have a chance to show itself.

And lastly, his substitute for the Eighteenth Amendment is, to my mind, quite unfeasible. You cannot abolish the saloon and have it at the same time; you cannot sell liquor even under restricted conditions and close supervision, and wine and beer, without having a place where these things are sold; in other words, a saloon. And those who argue for light wine and beer are, to my mind, not facing the issue squarely. The bootleggers are deriving their trade not in light wine and in beer but in hard liquor. The



American people is not craving for wine (I mean those who are craving at all) or beer, but for whiskey, and there is no guarantee at all that with the restoration of light wine and beer there will not be quite a thriving and profitable trade in bootlegging of liquor continued even then.

I am approaching this problem not with the desire to advocate prohibition or to present to you the pros and cons of the argument; to my mind, we have passed far beyond it. As a matter of principle, I am opposed to all kinds of prohibitory measures; as a matter of principle, I do not like men, other men, to interfere with my food and my drink and my dress; as a matter of principle, I regard this tendency which has developed in this land, to censor and prohibit and restrict and interfere, itself quite a menacing and dangerous one, for that tendency, once gaining momentum, it is quite difficult to check it.

But we are not confronted now with a theory; we are confronted with a situation. The law has been enacted; it is now one of the basic laws of our republic; it was sanctioned by the will of the people. And I should like to stress that thought. I am completely convinced that were the prohibition measure again submitted to the vote of the American people, it would again be voted upon favorably overwhelmingly. Do not be misguided by the vociferous proclamations in the columns of your newspapers, and do not think that the criticisms heard here and there, especially in some quarters of our large cities, are indicative of the



real sentiment of the rank and file of the American people spread over this great land. They are for prohibition; they will vote for it again and again, if necessary.

Now, this is the situation: there is the law, and ~~There~~ <sup>the prob</sup> are only three possible attitudes that we can take towards ~~that~~ <sup>the prob</sup> law; (1) to repeal it, (2) to ignore it, (3) to enforce it. ~~The~~ <sup>here</sup> law cannot be repealed. ~~Not alone will no party assume the responsibility of fathering the repeal of the law, and thereby meeting political disaster, but~~ <sup>And will continue for a long time.</sup> it is quite clear to a student of conditions that those forces which are lined up for the retention of that law are <sup>now</sup> in control of this government. The women of America will again vote for the law; the great organized churches of America will again work for the law; the Southern states <sup>the moral defects will again begin run to its depths.</sup> will favor the law; the employers of America will <sup>by & large</sup> favor the law--~~even the very employers who have quite~~ <sup>they</sup> perspicaciously, rather full-sighted, stocked their cellars before the law was passed.

The law cannot be repealed. Now, it may be ignored; it may be ignored as the Fourteenth <sup>+ 15</sup> Amendment ~~is~~ <sup>an</sup> ignored in ~~some~~ <sup>the</sup> Southern states--the amendment which gives the negro the right to vote, and which is denied to him by the connivance of <sup>citizens and</sup> the officials, ~~in some of the Southern states.~~ But while ~~that~~ <sup>these</sup> amendment may be ignored, the Eighteenth Amendment cannot be ignored. To deny ~~the~~ <sup>the</sup> men <sup>the right to</sup> vote is injustice enough, but it does not make for ~~national~~ corruption, ~~it does not make for national~~ <sup>and</sup> immorality, ~~it~~



~~does not make for national disaster.~~ But to ignore the enforcement of the Eighteenth Amendment is to corrupt the whole political structure of America; it is to make for vice; ~~it is to make for graft; it is to make for~~ <sup>And for</sup> immorality. It is to eat of the very vitals of our government. You cannot have an illicit trade carried on extensively without ~~the~~ <sup>th</sup> connivance of the government without undermining the very foundations of that government, and the American people will come to realize that fact sooner or later. ~~The laxity in enforcing the law will become so great that the common sense of the American people will assert itself.~~

The law cannot be ignored, ~~and that~~ <sup>there</sup> is only one ~~way out, to my mind,~~ <sup>the way</sup> and that is to enforce the law. I think it is rather ~~vain folly~~ <sup>unreasonable</sup> to assume that the United States government, once it makes up its mind to enforce this law, is incapable of doing it. A government that can enforce custom regulation, a government that can supervise and control the smallest article imported into America, a government that can control the narcotic trade, is not unable, too weak, to control the liquor trade. The trouble is ~~our~~ <sup>that</sup> government has not yet made up its mind to enforce ~~the law~~ <sup>that</sup> the trouble is that the men who are designated to be the enforcers of the law are political henchmen and political appointees; the trouble is that politics has mixed itself up in this enforcement of the prohibition law, and wherever politics mixes itself up in a law it ~~damns~~ <sup>damns</sup> and destroys it; it corrupts it.



Instead of putting every agent upon a merit system and making him subject to civil service requirements, which would test his ability and his character and his fitness for the work, our shrewd congressmen coempted this organization, preempted it from the civil service law, and made these agents political appointees. With what result? That these men are quite easily victimized by bribery, by corruption, and the law is quite easily called to relieve an offender from the penalty which is justly his. The case of Mr. McConnell in Pennsylvania is one illustrative of what I mean. We had such a case right here in our own community not so very many months ago. Mr. McConnell was appointed by Senator Penrose as the chief dry enforcement agent of Pennsylvania. He was at it a few months when a conscientious assistant district attorney discovered that that man was amassing a fortune through corruption, through working hand in hand with the liquor interests of the state. This Mr. Walnut was about to present his findings to the grand jury, and word was sent to him from Washington to postpone it. A few months later he tried it again, and again word was sent from headquarters in Washington to postpone action; and he tried it a third time, and when he became very insistent, because conditions in the state were becoming scandalous, he received word from Mr. Daugherty--this man who was compelled to retire from the cabinet because the soviet government wanted it--Mr. Daugherty sent him a brief note dismissing him, and when the indignation of the people began



to assert itself, headquarters got this man McConnell and his henchmen indicted, and the trial dragged on for months, until one day the government officials arose in court and said, "We are very sorry, but it seems that most of our evidence has strangely disappeared; we have lost it." And Mr. McConnell and his forty or fifty henchmen were set free. You know, this practice of evidence and papers disappearing has become quite commonplace in our government in recent years.

Now, there is the situation--politics linked up with the enforcement of a law, and as long as that condition will prevail, the law will not be enforced. All that is required is a reorganization of the prohibition bureau; the placing of the hundreds or the thousands of men delegated to the enforcement of this law upon a civil service basis--honest men--and I am quite confident that within the briefest possible time prohibition will be enforced 90% in this land. It should be enforced. If after two or three decades we find that law needs to be modified a bit, we will modify it; if we find it is too rigorous or stringent, then it is time to amend it then. For the time being, that law has not been given a chance, and it is, to my mind, the duty of the American government and of the American people to give this law a chance.

It may hold within itself possibilities of great good for the American people. Liquor is not a necessity, and the saloon is not an indispensable institution



in social life. There are races, strong races and fine races of people who have done very well without wine and without liquor. This law has been enacted; it is on our statute books; it should be given a fair and honest trial to see what it can do.

If you ask me what will the American people do with prohibition, I will say just one word: the American people ultimately will make up its mind to enforce it.

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