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I.

PROGRESS AND POVERTY.

THE title of Mr. George's well-known work is enough to explain its popularity. It is not only an inquiry into the cause of industrial depressions and of increase of want with increase of wealth, but it purports to have found the remedy. A medical student, when leaving college, is often told to have faith in himself, not to look perplexed or doubtful when he has made his diagnosis, but to give his prescriptions with an air of cheerfulness and assurance. Your patient is likely to have faith in you if you have faith in yourself, whereas if you tell him that there is nothing wrong with him, or that there is no remedy for his trouble, he is not unlikely to betake himself to the first quack who comes along, laden with sympathy and a panacea. Undoubtedly, Mr. George has faith in himself and in the remedy he prescribes, and he has succeeded in inspiring his followers with a like faith. His views have been subjected to criticism from many sides, but he would probably say to-day what he said in 1880 in the preface to the fourth edition of "Progress and Poverty."—"There has been nothing in the criticisms they have received to induce any change or modification of these views—in fact, I have yet to see an objection not answered in advance in the book itself." The language of his followers about the book is even more extreme. "To the law and to the testimony" is their cheerful watchword on every occasion. Start a difficulty or submit a case, and the answer is, "Read 'Progress and Poverty.'" When this has been done, and still light does not appear, "Read 'Progress and Poverty' again," is pretty sure to be the next prescription, and the next. A gentleman who undertakes to answer criticisms made

VI.

LEGISLATIVE RESTRICTION OF EVILS.

THOUGH all crimes are evils, all evils are not crimes. Gambling, Sabbath-breaking, liquor-drinking, contempt of law, habitual litigation, unwholesome bodily habits, bad diet, unsanitary homes, fine-print newspapers, demagogism in politics, strikes and lockouts, immature legislation, incompetent discussion in science and theology, and a great variety of other things that one might mention at random are evils; whether they are crimes, or in what circumstances they become crimes, is another question. Probably no one would dispute the reality of this distinction. It is not necessary for the purposes of this paper to define it, but only to call attention to it and fix it in mind.

Legislation has to do with evils as well as with crimes, and in some cases has to do with crimes not only as crimes, but as evils. This, too, would be admitted by every thoughtful person. So would the fact that legislation concerning evils, as distinguished from criminal legislation, on the one hand, and from mere regulation of civil affairs, on the other, is now very much to the front among public questions that are being discussed. Most clergymen are in receipt, almost weekly, of communications asking their aid in promoting or hindering legislation concerning the Sabbath, legislation against bad literature and art, divorce reform legislation, legislation on betting and gambling, legislation concerning the prisons, concerning the public charities, concerning the public schools, concerning labor and wages, concerning the suffrage, concerning the sale of liquors, concerning truant children. Further, I suppose that all of us who advocate different sides of these different questions find that much of what our friends publish in regard to them, and most of what our opponents publish, is either untrue, or at least crude; this is itself a great evil, though one that cannot be reached by legislation. There is, therefore, plenty of reason for studying, even in a somewhat informal way, some of the principles that underlie the question of the legislative restriction of evils.

1. *Testimony to truth and right is an important incidental function*

of law. There can hardly be any difference of opinion as to this, though important differences of opinion arise from neglecting to observe the limits of the principle. The giving of testimony is not the main purpose of a law, but, as a matter of fact, every law sets the mark of public approbation on that which it prescribes, and of public disapproval on that which it condemns. It follows that a law is bad if it puts the public in the position of giving false testimony, and especially if the false testimony consists in testifying that some wrong is right. Most emphatically, every law which is of the nature of a sanction of evil or of a compromise with evil is to be condemned.

But this applies, let it be remembered, to the testimony of a law, as fairly interpreted, and not to somebody's mistaken idea of its meaning. Whether a license law is a sanction of the evils of the liquor traffic is one question; whether a good many people will regard it as such a sanction is another question. When a law, in its proper meaning and intention, or in its actual and natural effect, really amounts to a public approval of a wrong or a falsehood, it is an immoral law; when it has that effect, however, only because it is misrepresented or misunderstood, the case is different; in this case, all that can be required from the law-makers is that they take due pains to avoid doing harm, even through a misunderstanding.

The value of law as testimony to what is right and true and good may be broken not only by legislation that favors the wrong or compromises with it, but equally by inconsiderate legislation intended to favor the right. In our times, in America, at least, this is an evil more prevalent than the other, and one that does vastly more harm. To say nothing, as yet, of the effect of legislation of this kind in diminishing our reverence for law and preventing the enforcement of law, we are now noticing the different fact that whenever, through the carelessness or prejudice or haste of the law-makers, the law demeans itself by telling untruths in order to help the cause of truth, it thus discredits every point of its own testimony to the truth.

2. *But law is mainly not mere testimony, but a rule of conduct to be enforced.* At this point the function of law differs from that of preaching. It is the business of the preacher to warn the offender, to reason with him, to entreat him to cease offending; it is the business of law to lay hold of him, and compel him to cease, or punish him for not ceasing. Religious teachers should speak with authority, but they destroy their own influence when, as in the ages of persecution, they rely upon compulsion instead of upon their power to persuade; the law ought to appeal to reason and con-

science, but it commits suicide if it ceases to compel for the sake of trying to persuade. Laws which are a dead letter are themselves a dreadful evil. They foster contempt for law. They train a people to lawlessness. They weaken the power of every law that is not itself a dead letter. Deliberately to pass laws with the expectation that they will not be enforced is an immorality as far-reaching in its disastrous effects as any that can be imagined. In these times of alleged public corruption, and of anarchism and dynamite, the weakening of law is, throughout the civilized world, the one public evil that is more to be feared than any other. The drink curse, for example, though monstrous, is a mere bagatelle compared with it.

If two laws were proposed against some evil, the one forbidding certain forms of it, and likely to be enforced, and the other forbidding it more sweepingly, but very certain not to be enforced, a thousand earnest men and women in our country would spring to the front, advocating the second of these proposed laws in preference to the first. Their argument would be that the second testifies against the evil at points where the first does not testify against it, and that we ought to testify to the truth though the heavens fall. But, friends, consider for a moment the nature of the testimony given by the law you advocate. It testifies to two propositions, and not to one only. It testifies, first, that the evil in question is an evil, and secondly, that the doers of the said evil will now be punished and the evil suppressed by the power of the State. But by the supposition with which we started, your statute (since it will not be enforced) tells a lie when it testifies to the second of these propositions; who, then, will believe it when it testifies to the first? A dead-letter statute is worthless as testimony against the evil at which it is aimed; and it is itself an evil and a menace to all good, for it is a standing proof that law is not majestic, but may be despised and disregarded with impunity.

Our statute books are burdened with well-meant legislation of this kind. A library of it might be collected. The spirit of loyalty and the public conscience have been deadened by it. It is a well-nigh insuperable barrier in the way of every really wise legislator and of every faithful magistrate who wishes to execute the laws. Thus to sacrifice the central function of law in the interest of one of its incidental functions is a damaging mistake. To testify against the whole of an evil, as a substitute for suppressing a part of it, may not be a crime, but its consequences have often been worse than those of the worst crimes. No law ought ever to be passed or advocated except for the purpose of being enforced, nor without some reasonable prospect that it will actually be enforced.

A different form of this error is committed when men so attack evils that the attack is virtually an attack on law. Of course, legislative sins, whether of omission or of commission, need to be contended against ; but he who contends against them should, above all men, make sure that he is full of reverence for law, and that he is not willing to discredit loyalty for the sake of hearing himself say something smart. When a man, finding that most of his countrymen disagree with him as to the best methods of getting rid of some evil, proceeds persistently to repeat that his country is in league with hell, that its laws are articles of partnership with the iniquity he is fighting, that its revenues are " blood-money," that all citizens who reverence law are, in virtue of that fact, accomplices in wickedness, that man should seriously ask himself whether he is not engaged in the same sort of business for which the Chicago Anarchists were hanged. If he is a good man, a man of character and gifts and influence, he will, of course, avoid following the example of the Anarchists to the extent of actual criminality ; but these very facts will render his influence in favor of lawlessness far greater than theirs. If any of us are tempted to indulge in indiscretions of this sort, justifying ourselves on the plea of the purity of our intentions, we may as well remember that, to some extent, God and men will hold us responsible for the consequences that actually follow our acts, and not merely for those that we would prefer to have follow them.

3. *For legislation to transcend its own proper limits is a most dangerous evil.* Human laws have limitations different from those of the divine law. God is all-wise, all-powerful, all-just ; no human ruler or State is so. Human governments may do injustice or may make mistakes ; if they do, the evil is immeasurably greater than when individuals do injustice or make mistakes—as much greater as the vast power of the State is greater than that of the individual. It is a more serious thing for an express train to run off the track than for a child to slip on a sidewalk. The dangers from tyranny are only second to those from anarchy. The civil history of mankind has been mainly the history of struggles against abuses perpetrated by governments. The problem of advancing civilization has been to prevent society from being ground into pieces by government, without allowing it to fly to pieces for lack of government. The instinct of civil power is for destroying its own limitations and becoming despotism. No truth is more trite than that eternal vigilance is the price of liberty. The great way-marks of progress are the Declarations of Rights, the Magna Chartas, the Constitutions of the peoples of the earth ; and these have often been wrested from

governments by bloody conflicts. When government persistently oversteps its just limits, the result is revolution ; either successful revolution, resulting in a depleted but gradually recuperating national life, or unsuccessful revolution, followed by national decay. We in America have, happily, known little of this by experience, but we cannot expect always to avoid the common experiences of mankind. The wise legislator will recognize the limits of the sphere of legislation, and carefully keep within them.

All legislation that has stood the test of experience accepts this fact—the fact of its own limited sphere. Morally, murder is culpable homicide ; but in this sense of the term, there are no laws anywhere in civilized nations forbidding murder ; there are only laws defining certain forms of murder, forbidding these, and assigning penalties for them. If a self-indulgent husband slowly crushes his wife to death by unkindness, or an incompetent and ill-tempered wife nags the life out of her husband, or a frivolous mother, in her worship of style, sacrifices her daughter to consumption, or a merciless school board drives a percentage of nervous children into brain disease or premature decay, these may be, morally, instances of murder ; but in these and a thousand similar cases the law recognizes its powerlessness to prohibit the murder and enforce the prohibition. What is true of laws against murder is true of laws against most crimes, and is often yet more true of laws against evils as distinguished from crimes. Human law is compelled to accept the fact of its own lack of power ; the great bulk of human wrong-doing is beyond its reach, is something of which it cannot lay hold ; the utmost it can do is to recognize the relatively few cases of which it can lay hold, and define and prohibit these, taking care to maintain its own majesty by enforcing its prohibitions.

Very important among these limits to legislation is its obligation to avoid trenching upon certain personal rights of men. The leaders in what is now known as the personal liberty movement have been shrewd enough to give to their bad project the name of a great truth. In America we have hitherto been so fortunate as not greatly to feel our need of the protection afforded by certain principles of personal right, principles that are defined in our Declaration of Independence, in our Constitution, and in other similar documents among the nations ; but the principles are none the less important, and the time will come when we shall be in a desperate state if they lose their power to shield us. We cannot afford to batter down any bulwark of human rights because some evil-doer may take shelter behind the bulwark, and thus make it inconvenient for justice to get at him. Every citizen has a right to demand that his government

leave him free from unreasonable restrictions of his movements, or espionage over them, from needless search of his premises, or seizure of his person or goods ; that it avoid subjecting him to loss of liberty, property, or natural gifts, by way of penalty or otherwise, without due process of law, including the opportunity to defend his case ; that if accused, he shall be tried by his peers, shall be presumed innocent till proved guilty, shall be convicted only on evidence proving facts, and not on mere rumors or conjectures, shall be confronted with the witnesses against him, shall not be required to criminate himself. None of us would consent, for ourselves, to waive any of these rights ; if we would consent, any just court would hesitate to allow the waiver ; any letting down of the standard of personal rights is a step backward toward the substitution of the arbitrary will of a tyrant for the decision of just and equal laws. It is easy to say that Anarchists or dynamiters or dramsellers should be outlawed ; yet every reflecting man sees that outlawry can never be just, save as a temporary remedy in the most extreme cases. Permanently to deny to even the worst citizen his equal claim under the law is the most high-handed crime a nation can commit.

Legislation has also its limits in the fact of the limited powers and knowledge of those who make and execute the laws. In defining offences for prohibition, law must confine itself to such acts as ordinary human judgment can recognize, and such as human skill can reasonably be expected, in most cases, to bring to account. In the case of certain classes of evils this limitation throws especial difficulties in the way of legislation. Liquor intended for purposes of drunkenness may not differ chemically from liquor intended for legitimate purposes. An apartment may be equally fitted for prayer or for debauchery.

Especially under a popular government, as distinguished from a despotism, the power of legislation to effect anything is greatly limited by the question whether public opinion will sustain it. There is no difficulty in enforcing ordinary laws against homicide, or assault, or theft, or robbery, because ninety-nine per cent of the people of any country see the importance of executing such laws, and desire to have them executed. But how is it, anywhere on the face of the earth, with laws against smuggling ? There are plenty of Americans returning from abroad who are too high-minded themselves to evade payment of duties ; do most of them believe that all their neighbors are equally high-minded ? Just at present all our political parties, except the doctrinaire portion of that headed by Mr. George, are clamoring for the more rigid taxation of mortgage notes and other indebtedness. In certain localities legislative action

for this end has been recently taken. At the present time thousands of reputable citizens have just been assigning their property of this kind to persons in other States, or otherwise concealing it from the assessor. Condemn these persons if you will ; this paper has no call to defend them ; but it is a fact that when the average conscientious, law-abiding citizen regards a law as iniquitous, his obedience to that law will depend on a game of skill between the Government and himself, and in this game the Government will generally be the loser. This may very likely be a proof of human depravity, but it is none the less a fact—a fact which a wise man should consider in the legislation he makes or advocates. A despotism may enforce any law. When some great crisis reduces a popular government temporarily to a despotism, any law can be enforced for the time being. But in ordinary circumstances a popular government, or its people, will not enforce a law which a strong minority regard as a violation of their rights ; the only way for such a government to secure the enforcement of such a law is so to frame it that many men will have a strong personal interest in having it enforced.

Legislation should also be limited by the fact that it is folly to attempt to go counter to natural laws. Unquestionably, for example, it is an evil that a poor man, with his little farm heavily mortgaged, should be compelled to pay double the rates of interest paid by government, and, in addition, to bear the heaviest part of the burdens of taxation. The customary attempt at a remedy is the adding of the mortgage note to the assessment roll, with the idea that the money-lender will thus be compelled to pay a share of the taxes. The attempt has always proved a failure, and experienced assessors know that it always will be a failure ; but the public have an infatuation for it, and demagogues, together with many politicians who are not demagogues, are forever renewing it. If a man has a farm worth two thousand dollars, and another man has a mortgage on it for eleven hundred dollars, and has assigned the mortgage to a third man as security for a loan of nine hundred dollars, that does not make the whole interest of the three men in the farm to be four thousand dollars. There is no property there except the farm ; the only difference is that the farm is really owned by the three men instead of by the one. To tax the notes in addition to taxing the farm is simply to make that piece of property pay a double tax. If this be avoided by distributing the assessed value of the land among the three owners, who doubts that the lender and borrower will take this into consideration when they make their contract, so that the borrower will either pay a higher rate of interest, or will, by agreement, pay all the taxes? And who doubts, further, that every

attempt to tax indebtedness offers a premium on successful fraud, and tends to drive sensitively honest money-lenders out of the market, leaving borrowers (poor borrowers, especially) to the mercy of those who are less scrupulous?

This evil can never be obviated by thus trying to sweep water upstream with a broom. On the other hand, it would be effectually done away with by simply recognizing the equity of natural law as applied to the case. The fact that government bonds are exempt from taxation is the most important of the considerations that make the interest on them so low; the fact that our laws technically sanction the taxing of debts, and that every debt is subject to the risk that the law may be made operative against it, largely explains the fact that the farm mortgage pays double the rate of interest paid by government. If it were permanently settled that no debts are taxable, there is no reason why the farmer's rate of interest should not go down nearly to the rate paid by government. It is simple equity that a property tax should be levied on property, and on nothing but property. Real estate can afford to pay taxes, if more than the amount has previously been deducted from the interest it would otherwise have had to pay. Lenders, the good and the bad alike, carry their share of the public burdens, when divinely established natural laws collect this in advance, out of their incomes. Natural law is here equitable, as it always is. The true remedy for the existing evil is to accept the equitable natural law, and abide by it. The present set of the tide of legislation is in the direction of a reform against nature. As the result of it, we may safely predict times of distress for honest lenders, times of far greater distress for borrowers, and times of rich harvest for unscrupulous money-hawks.

What is true of this class of legislation is true elsewhere. There are natural lines of remedy for certain evils. One can best learn how to deal with evils by studying human nature and the nature of things. The legislation which, instead of doing this, blindly attempts to force the movement of remedy along unnatural lines, is mistaken legislation.

In our fight against the grog-shops during the past forty-two years, we have tried the experiment of about thirty State prohibitory laws or constitutions in more than half that number of States; of these, the present laws of Maine, Iowa, and Kansas have proved a moderate success; most of the others have not only proved failures, but have demoralized public opinion where they existed, hindering all legal restriction of intemperance. We may as well face this fact; it is of no use to deny it; it is of no use to explain that

prohibition would have been a good thing if it had been properly enforced ; it is of no use to meet the case by reviling the moral and religious people of the country, or by publishing pictures of Christian ministers drawing in the same yoke with grog-sellers. It is simply a fact that this often tried and much urged experiment has hitherto usually proved a failure ; we may as well try to ascertain the causes of the failure, that we may be wiser in our future attempts. These causes lie largely in the neglect of prohibitory temperance legislation to recognize the proper limits of the field of legislation. In some instances the laws passed have been in violation of personal rights or constitutional principles, and have been so declared by the courts, or have been for that reason promptly repealed. In most instances, they have been laws representing the opinion of a majority, but regarded by a strong minority as a violation of their rights, and have thus been without any sufficient support of public opinion to overcome the opposition they have met. They have been so framed as to make it extremely difficult to obtain evidence for securing convictions, except by processes dangerous to human rights. A man who believes it to be morally wrong to drink liquor in a saloon cannot consistently put himself or any other man in a condition to testify, from personal knowledge, to an alleged violation of prohibitory law ; when such a law is so framed that every person who is really competent to testify has an interest in withholding the truth, the law is not easy to execute.

It is due to facts of this sort that laws prohibiting evils so often, in highly moral communities, fail of even moderate success. Certain remedies, commonly proposed, can only aggravate the disease. One of these is the passing of supplementary laws invading the rights of the innocent, for the purpose of getting a better grip upon the guilty. Another is the passing of constitutional amendments ; as if police regulations were any more likely to be enforced when called by the name of fundamental law ! Again, it is urged that if we would place in power a political party organized for the purpose, laws of this sort would be executed ; this has been tried, with the very worst results, and for the evident reason that it gives to such laws the outward character of purely partisan legislation.

The true remedy lies in a very different direction—namely, in the recognition of the true limits of the sphere of legislation, and the effort to make legislation effective within these limits. If thirteen twentieths of our population regard all selling of liquors for beverages as an evil, while six twentieths more protest against this view, but recognize the fact that certain great evils attend the sale of liquors for beverages, it is evident that laws against these attendant

evils, which are regarded as evils by nineteen twentieths of the population, are likely to be sustained by public opinion, and to be enforced, whatever might be done with laws against the mere sale of liquors. The very first step in wise legislation is to separate these latter cases from the others and deal with them by themselves. If the drinking-places were made fewer and compelled to pay the expenses of putting themselves under surveillance, so that restrictions upon them could be enforced, thus protecting the community from the nuisance of drunkenness, and largely removing temptation from boys and persons deficient in self-control, this would be a great gain, whatever became of the remaining parts of the drink curse. Legislation for this purpose ought to be had by itself, and ought to be put in shape such as to command the respect even of men who denounce prohibition as tyranny, and disbelieve in total abstinence. As a second point, let laws for this purpose be so framed that the men who submit to them shall have a direct and evident personal interest in preventing others from evading them; only in this way is it possible habitually to secure evidence that will make convictions sure, without resorting to tyrannical devices. And thirdly, let all such laws be framed with sensitive regard to the fact that he who tries to suppress the rumseller has no more right to be unjust than has the rumseller himself.

It is evident that in some of these respects a restrictive tax law has great advantages over what is commonly called prohibitory law. Let a man pay a heavy special tax, and place himself under restrictions, and he will have an interest to prevent other men from escaping the tax and the restrictions. As a matter of fact, the United States internal revenue collector in Maine has always been able to find some hundreds of retail dealers there, many of them the same persons for whom the local authorities search in vain when they are trying to execute the local law. The license laws of fifty years ago were generally executed.

4. *No. legislation concerning an evil is to be presumed to be a sanction of the evil.* Legislation is never to be fairly understood as approving evil, unless it approves it unambiguously. The presumption is always against the interpretation that regards a law as favoring the evil with which it deals. Law is to be presumed to be decent, unless the facts actually prove it to be filthy.

I do not see how any reasonable person can doubt this principle as a general statement; but, unfortunately, there is a very prevalent public sentiment which denies it, when applied to particular cases. It was so in the anti-slavery conflict. Certain men persistently asserted that the regulation of slavery by the national law and consti-

tution was the sanctioning of slavery, and when the final crisis came, the prevalence of this falsehood was a terrible element of weakness in the national cause. As another similar instance, Jesus wrought a miracle on a slave, in recognition of a slave-holder's faith, and the apostles gave directions for the conduct of both master and slave; and Jesus and the apostles did this without requiring that the relation of slave-holding should forthwith cease; further, the law of Moses restricted slave-holding, polygamy, concubinage, blood-revenge, instead of absolutely prohibiting these in all cases; these things are not on record in the Bible as instances of the human frailty of Moses or Paul or their contemporaries, but as things which they did by divine direction. Infidelity alleges these instances in proof that the God of the Bible is an immoral God, who sanctions evil by regulating it, instead of prohibiting it. The true reply is that such regulation as this is not a sanction of the evil. It recognizes the evil, not as something to be maintained, but as an existing fact, which God does not see fit to abolish by miracle, and which is therefore to be dealt with wisely, and not foolishly.

The taxation of property which may be employed for evil, or of a business which may minister to evil, whether such taxation be general or special, is in no sense a sanction of the evil. This is still true even if there be some peculiar connection between the property or the business and the evil. Nothing could be more absurd than the exempting of property or business from taxation on the ground that it belonged to bad men or was put to bad uses. If no property were taxed except that which belongs to the saints and is piously used, the saints would be obliged to emigrate. And if a tax be special, and be accompanied by restrictions, it may have the effect of distinctly discriminating against the evil as an evil.

Probably, if this doctrine could be circulated without being connected in thought with current temperance discussions, it would be instantly accepted by all persons of sense. Unfortunately, however, good men have been affirming the contrary doctrine now for fifty years in the interest of the good cause of temperance. The idea that to tax the liquor traffic is to sanction it is a conviction by force of habit in the minds of many, so fixed that it has with them all the force of an intuitive truth or a judgment of conscience. They think of it as self-evident that only prohibitory legislation (so called) disapproves an evil, while all other legislation sanctions it. They are oblivious of the evident fact that what is called prohibitory legislation is only the prohibiting of certain forms of the evil, and that every form of restrictive legislation is also the prohibiting of certain forms of the evil. They also neglect the logical principle just laid

down, and argue as if the rule were that law is to be presumed to be filthy unless it takes special pains to mention that it is decent.

A notable instance of this is now before the public. Some twenty-five years ago the United States imposed a tax on the manufacture of distilled spirits so high as to be practically prohibitive. The result was that the Government received no revenue from this source, while the country was flooded with whisky, which was everywhere on sale at prices equal to about half the Government tax. This failure was followed by legislation which fixed the tax at the rate which was thought most likely to produce the highest revenue. A majority, probably, of the men who were responsible for these laws were in their own States advocates of prohibitory legislation. They did not intend any approval of intemperance. They disbelieved, however, in the idea that iniquity should be exempt from taxes. They supposed they were testifying against the evils of intoxicating drinks when they discriminated against these, placing upon them a disproportionately large part of the burdens of taxation. As a matter of fact, this legislation has been followed by a steady diminution in the consumption of distilled spirits, the per capita consumption having lessened something like one half. This legislation was primarily intended not for the promotion of temperance, but to raise a revenue for the nation in its hour of need ; but probably no other legislation, within the same period, has accomplished so much as this in restraining the evils of intemperance. Yet many temperance advocates are in the habit of speaking of this revenue as the "profits of an unholy partnership ; the nation's share for twenty years in the blood-money of the liquor crime." There is grave danger that this kind of talk will supply the liquor interest with just the help it needs to secure the repeal of this most efficient form of restriction.

The same fallacy appears in the following excerpt :

"Will any candid man pretend that the State may first impose and collect a tax on a business, and then proceed to suppress that business as illegal or immoral? The simple taxing of a business is not only a legislative consent to its being carried on, but is a recognition of its existence without the least suggestion of disapproval."

It is true that "the simple taxing of a business," if it is possible to tax a business simply—that is, without imposing restrictions upon it, "is a recognition of its existence without the least suggestion of disapproval." But it is also without the least suggestion of approval, and if the business be evil, approval is not to be presumed. It is not true that the taxing is a "legislative consent." The taxing takes the fact as it finds it, neither consenting to it nor the opposite ;

it is not dealing with the business as an evil or otherwise, but simply as a possible source of revenue. The assessor assesses ; he has nothing to do with consenting or refusing to consent ; that belongs to another department. If the business is something that ought not to be consented to, no consent is to be presumed. If the writer of that paragraph should happen to have a business plant that stands in the way of some public improvement, or that comes to acquire an unsanitary character, or that comes to include within itself an illegal or criminal factor, he may find, to his cost, that the law has no scruple in regard to suppressing a business as illegal or immoral from its having previously imposed and collected a tax upon it. Simple taxation is not sanction. Special taxation is not sanction, unless sanction is specifically provided for as a part of the contract. Special taxation accompanied by restriction and for purposes of restriction, in the case of an acknowledged evil, is sharp condemnation, instead of being sanction.

A good deal of fallacious reasoning is connected with the idea that revenues raised by tax are payment to the State for the protection it affords ; from this it is argued that the taxing of property used for evil purposes is of the nature of a corrupt bargain whereby the State agrees to protect the evil in exchange for the money paid. But it is true only in general that the money paid in taxes is an equivalent for the protection rendered. The citizen who pays no taxes is as much entitled to protection as if he paid. Unless there is a specific bargain to that effect, the business that pays a special tax is entitled to exactly the same protection as if it paid none, and to no more. There is a sense in which the evil-doer is as much entitled to the protection of the law as the well-doer ; and in no other sense than this does his being taxed bring him within the protection of the law.

The merits of the case are not necessarily changed if the special tax be put into the form of a license. It is always a valid objection to license, in connection with evils, that it seems, verbally, to be approval. This objection has peculiar strength in America, at present, from the fact that so many people are convinced that license means approval. That this is a mistaken conviction does not change the fact that it is a real conviction ; and a wise legislator will not go counter to public opinion for the sake of a mere word, when no real principle is at stake. These considerations are a sufficient reason for avoiding the form and name of license in legislating against evils. But as a matter of fact, even license gives no approval to the thing licensed, unless such approval is specifically made a part of the transaction. Even the licensing of something which the law had previ-

ously forbidden would not necessarily be an approval of the thing licensed ; it might be merely the announcement that the law had found a more feasible way of opposing what it formerly prohibited. In all the usual cases, license is neither approval nor disapproval of the thing licensed, but is simply a convenient way of collecting a tax or of establishing restrictions.

5. *Within such limits as have been indicated, the most feasible legislation is also morally the best.* Where the direct prohibition of evils is feasible, that is the simplest thing to do with them ; where it is not feasible, it is morally (in its effect, not, of course, in the intention of its advocates) as bad as legislation can be. Where legislation based on the idea of restrictive tax, or of civil damages, will best accomplish the purpose, that is the legislation we want, especially since all such legislation necessarily involves prohibitive local option, in fact, at least, even if not in form. But in order to reach the best results, we have got to rid ourselves of the idea that a restrictive tax law, or a law for civil damages, is of the nature of a compromise with evil, or is a mere stepping-stone to prohibition ; if the stepping-stone were itself mire, it would be a poor stepping-stone. If we are to advocate such laws, we must advocate them because they are themselves righteous laws. We have got to come to the understanding that a restrictive tax law is just as distinct a condemnation of what is evil in that which it restricts, as any form of legislation can possibly be. We have got to recognize the fact that doing what we can to put a stop to an evil is better testimony against the evil than is our railing at men who have their eyes open, because they see the impossibility of some other proposed mode of stopping the evil. When good men see eye to eye on these points, they will be able to effect something in the way of the legislative restriction of evils.

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