

# ON PROHIBITION AND LIBERTY

1914

----- *Percy Andreae* -----

Prohibition became law with the passage of the Eighteenth Amendment banning the sale of intoxicating liquors in 1919, but it was achieved only after years of heated debate. One side of the debate was voiced by Percy Andreae when he spoke at a banquet for foreign journalists in 1914. In this speech, Andreae argued that prohibition was dangerous because it threatened individual liberties and freedoms. While his remarks generated response across the country, little is now known about Andreae. In 1933, the Eighteenth Amendment was repealed.

## **THINK THROUGH HISTORY: Forming and Supporting Opinions**

Does Andreae's argument about the areas of social life properly governed by laws have a constitutional basis? Why or why not?

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*Mr. President, Members of the American Association of Foreign Language Newspapers, and Ladies and Gentlemen:*

I once heard "Personal Liberty" rather flippantly described as "the privilege which every free-born citizen enjoys of preventing his neighbor from doing what he likes."

Sarcastic as it may sound, I am not at all sure that this definition of personal liberty, as practiced to-day by quite a goodly number of our fellow-citizens, is entirely beside the truth. The fact is that the best of us are more prompt to recognize our own individual rights than we are to recognize the individual rights of our neighbor, and here perhaps lies the root of all that is controversial about the question of personal liberty to-day.

For, that the question of what constitutes personal liberty *is* a subject of controversy, and somewhat bitter controversy, in this enlightened age of ours, is a fact admitting of no doubt. I venture to go further and assert that this great principle, for which men have fought and died in all ages, has perhaps never been in greater jeopardy, has never been subject to more insidious attack, than it is at the present day, when the word "freedom" is on every man's lips, and the boast that man is his own sovereign forms the burden of every patriotic song.

Of course, the day of the despotic ruler, who sacrificed the liberties of the people on the altar of his own ambition, is gone. We choose our own rulers, and even in many monarchical countries the voice of the people counts in government to-day as it never counted in history before. This means that we have gained our political liberty, and it is, of course, a mighty achievement to have wrested this great possession from the powerful few who, in past ages, withheld it from us for the purpose of their own gain and aggrandizement. But,

like all human achievements, it has brought with it its dangers as well as its blessings.

Personal liberty, as we well know, is something quite distinct from political liberty, and the danger which we can never be careful enough to guard against is that the acquisition of the one may involve us in the loss or the curtailment of the other. When every man becomes potentially a law-maker the temptation of the sovereign individual, both individually and collectively, to regard himself as his brother's keeper, called upon to direct and regulate his brother's conduct and habits and morals, is liable to create a system of tyranny which may prove to be even worse in its effects upon the community at large than the yoke of the ancient form of despotic government which we have succeeded in throwing off.

Nowhere, it seems to me, does this truth apply with greater force than it does in this country, where the customs, the habits, the ideals and the social needs of those who have made it their adopted home and refuge vary as much as the creeds and nationalities vary from which their ranks have been recruited. If one creed or nationality, even though it exceed all others in numbers, should seek, by misuse of its political liberty, to impose its particular customs, opinions and beliefs upon the rest of the citizenship, the conflict between political liberty and personal liberty must at once become acute, to the detriment, not only of the individuals whose liberties are involved, but of the community as a whole. For there is only one way in which the issue of such a conflict can be determined. It must last until the rights of the individual are vindicated, because our individual rights are our heritage from Nature, and no human power can permanently suppress them. They consist, not in the political rights which the many have obtained by conquest from the few, but in the natural rights which each of us must seek from the other, each of us must concede to the other, and each of us must defend from the other and for the other, as long as the world lasts; the God-given rights of individual man as distinguished from the man-given rights of the community of which he forms a constituent part.

There is no need to define what these rights are. The history of government has long ago defined them for all of us, and their limits have been set, and will always be set, by actual experience.

But here is the crux of this whole great question, as it confronts us to-day. It is just history, and the experience of those who lived before us, which are strangely lost sight of in the tendencies of many of our present-day reformers. They suffer from a perfect rage, not only to accelerate the slow and steady processes of Nature, but to correct and even arrest them; and, since the making of laws is now in our own hands, they demand that we shall devote our law-making power, not only to the correction of the defects of our weaker fellow-men, but to the correction of that which they believe to be the defects of Nature herself, who created those weaker fellow-men.

Education has become to them a mere secondary auxiliary in shaping our lightning course towards perfection. Mankind, if we are to believe them, can be made honest, and righteous, and sober, and moral, and what not, by a mere stroke of the legislative pen. The stern truth is forgotten, which history has so often and so painfully impressed upon humanity, that law can successfully

concern itself only with the actions of man towards man, but can never determine or control the actions of individual man in such matters as concern himself alone.

Under the circumstances, then, it is scarcely surprising that all the activities of that particular class of reformers which I am describing should proceed from a basis which is the very opposite from that upon which our civilization and general social structure have been erected. For, whereas law, as we generally understand it, has always sprung from and been established by custom, they are to-day trying to reverse the process and establish custom by law. Whereas, we have hitherto largely left it to Nature to deal with the small percentage of defectives she produces, and have made our customs and usages conform to the character of the huge percentage of normal beings, they are to-day adopting the opposite course and are not only attempting to take the defectives out of Nature's experienced hands, but are actually demanding of normal man that he shall shape his customs and his habits to suit the needs and the weaknesses of the comparatively few defectives among us.

In saying this, I am not casting any doubt upon the motives of these good people. They are excellent, of course. But the question is not whether their motives are excellent, but whether, by acting upon them, they will attain the excellent object they are seeking to obtain.

The fact is that we cannot, by law, subordinate the faculties of the strong to the needs of the weak without destroying the very essence of that which has made the majority of men to-day the strong, reliant and competent beings they are—their personal liberty. It is true that wise laws have done much to direct the activities of men into worthy channels, even more perhaps than unwise laws have undone. But our would-be uplifters forget that individual man himself has risen, and is still rising, above the inherent weakness of all animal nature, not by compulsion of law, or by the coercion of his superiors, but by reason of the exercise of his God-given individual free will, his power of self-restraint, and by those higher faculties which religion and culture have developed in him....

No man...who has studied the history of government...needs to be told that the safe-guarding of that which we call the personal liberty of man is the primary and most vital essential to all human progress, and that no law affecting that liberty in the slightest particular, however charitable, however estimable the motives may appear that prompt it, can be enacted without danger to the whole system upon which our civilization is founded.

Unhappily, the men who have acquired this knowledge, and who possess this experience, are only too often not the men who assemble in our legislative halls, with the mandate of the people to make their laws for them. And here we have an anomalous condition presented to us which has often puzzled me, and which I offer for your earnest thought and consideration.

We demand of every profession upon which, directly or indirectly, the public welfare is dependent, that its members, before being permitted to enter it, shall receive previous instruction and training...The physician, the jurist, the teacher and the preacher are required to give evidence of their fitness to follow their respective professions before they are licensed to practice them. Yet the most

important profession of all, that of the law-maker, is open unconditionally to every adult citizen, and its members are selected by the people haphazard, without inquiry into their fitness, and without consideration of their knowledge and experience of the intricate problems of law and government with which the world has grappled since history began.

Is it entirely to be wondered at that legislation, under these circumstances, frequently runs riot, and that it is guided by impulse and sentiment, and by the often artificially created clamor of the untutored multitude, rather than by logic and reason and the caution that comes with accumulated knowledge and training? Our schools and universities teach the evolution of law, the interpretation of law, and the practice of law. But the science which concerns itself with the effect and the bearings of law, the science which defines the true scope of legislation, and inculcates the lessons to be learned from its successes and failures, the science, in short, which deals with the natural restrictions and limitations of the law-making power, has, I believe, no chair in any university in the world.

Is this condition subject to remedy? Or would any change in it be incompatible with the preservation of our political liberty? It would be a bold man who presumed to answer the question off-hand. But whether it be subject to remedy or not, the condition itself, I submit, is the primary cause of the multitude of freak laws which clog our statute books, the dead-letter laws which breed among us so much pestilent contempt of duly constituted authority, those unburied corpses, in other words, that bestrew the battlefield on which political liberty and personal liberty are to-day so fiercely contending for their respective rights.

The victory at this day is still with personal liberty. But for how long? The forces of tyranny and oppression are ever with us, and they surround that battlefield to-day in their full array, awaiting the opportunity to fall upon both champions and bind them hand and foot with the chains forged by fanaticism and intolerance.

And if these forces should ever accomplish their purpose, what then? Read the printed publications and the open declarations of these insidious foes of the liberties which the millions of your best and sturdiest fellow-citizens came to this great republic to preserve and enjoy, and they will tell you "what then." They will tell you, as nothing else can tell you, that if there is one prayer more than any other which every true citizen of this great country should offer up morn and night to the Giver of all things, it is the prayer that our free America may be preserved from the curse of racial and social and religious prejudices and intolerances, for they are the harbingers of disaster to all that we cherish under the name of freedom and liberty.

Source: "Address Delivered at the Annual Banquet of the American Association of Foreign-Language Newspapers" by Percy Andreae. Reprinted in *The Prohibition Movement* by Percy Andreae (Chicago: Felix Mendelsohn, 1915), pp. 241-259.

**THINK THROUGH HISTORY : ANSWER**

Some students may answer that Andreae's argument does not have a constitutional basis because he argues that personal liberty is distinct from political liberty. These students may note that he invokes "the God-given rights of individual man as distinguished from the man-given rights of the community of which he forms a constituent part," those man-given rights being those granted by the Constitution. Other students may answer that Andreae's argument does have a constitutional basis, because the Ninth Amendment grants people personal liberty on all matters not addressed by the Constitution, including the consumption of alcoholic beverages. These students may note that the many liberties stemming from the Ninth Amendment can be gradually reduced through the sort of legislative activity mentioned by Andreae.