

# Dead Letters Among the Laws



"In Connecticut Colony days no expressions of affection were permitted on Sunday."

By FAITH MARIS

IT is no new thing, in this country or elsewhere, to see laws become dead letters. Lack of enforcement of prohibition may be unusual in that New York and other irreverent localities regard the law as an excuse for profiteering in liquor selling, but the experience of statutes widely disobeyed is as old as law itself.

There is no denying it. The most casual reading of history proves the fact, and most of us need only our own memories to verify it. Witness, for instance, the dead letter of New York's law against Sunday recreations. It stayed on the statute books for generations. Fishing on Sunday was unlawful, yet fishermen thronged the mountain streams and beaches without molestation. Probably few of them even knew that their sport was made legal on Sunday by the same recent enactment which permitted the hitherto illegal pastime of Sunday baseball.

So it has been in countless other cases. Laws which have been nominally enforced for decades have become dead letters, some of them without going through the form of repeal. Is it any wonder that the cynics among us are speculating whether prohibition will fall into this class? Maybe it will endure. Anyway, the speculation is interesting when one recalls the precedents of disregarded statutes through generations past.

Statutes to regulate and standardize the private life of the individual have been popular with the lawgivers of all times. Yet it can be demonstrated that the persistent effort to make men moral (that is, to make them conform to a code) has not been very successful. History shows nothing more clearly than that the suppression of vice has not eliminated vice, and the idea of reducing life to ritualistic conformity by laws, divine or human, hasn't been a triumph. But forcible conforming and reforming goes on. Today, with the Volstead act trying to be effective, it is refreshing to recall that at certain Bacchanalian festivals in pagan Greece it was a punishable offense not to be drunk, because a state of sobriety showed gross lack of reverence for the god of the grape. If the Bacchic enforcers of this law

were observing it in proper spirit, it is not likely that their persecution of offenders was severe. Today some of the officers who have promised to love, honor and obey the Eighteenth Amendment seem curiously obtuse in recognizing its violators.

The early Colonial laws regulating dress and Continental laws concerning décolletage and adornment have long since been discarded, but those designed to preserve the Calvinistic sanctity of the Sabbath are still popular with the lawmakers and still circumvented by the unregenerate. The blue laws of Connecticut have been a potent heritage whose influence has extended, with diminishing intensity, out toward the Pacific Coast through generations of lawmakers. In Connecticut colony days no expressions of affection were permitted on Sunday; no man could kiss his wife, nor could a mother caress her child. Running, or any movement save a slow, churchgoing gait, was prohibited. Compulsory worship at church, the sessions lasting from two to four hours, was required in most of the Colonies. The more tolerant Quakers of Pennsylvania did not make churchgoing compulsory, but barred atheists from their midst.

The States have adopted with modifications the Puritan code of Sunday observance. The laws against Sun-

day work, requiring the closing of theatres, shops and markets, and laws prohibiting hunting, fishing, card-playing and sometimes tennis, still exist rather generally throughout the country. There are also surviving remnants of blue-law severity in the local ordinances enforced in some rural districts prohibiting loafing on the streets or in any public place on Sunday.

Crossing the Continent several years ago, happy in temporary detachment from dates and places, a group of otherwise respectable citizens enlightened the flat stretches of the Middle West with poker. It was the Pullman porter who brought the players back to a law-infested world with a reminder that it was against the law of the Commonwealth of Kansas to deal cards on Sunday. But they risked arrest.

The statutes prohibiting fishing on Sunday have recalled Macaulay's dictum that the Puritans suppressed bear-baiting not because it caused suffering to the bear but because it gave pleasure to the spectators.

Related to Sunday observance are the widespread laws against blasphemy, also feebly enforced. Vagrancy in a majority of States is an offense against public welfare. In Connecticut vagrancy is sweepingly defined as any act of beggary, and

is punished by detention in the local workhouse, a law which sounds as if it had been framed by the Puritanic hand of Communism. One dislikes seeing the shadow of the workhouse behind every adventure along a friendly road. What would become of the Vachel Lindsays and the David Graysons if the vagrancy law was generally enforced? There are those who believe that the tramp of story-telling or poetizing proclivities should be subsidized, not repressed.

To revert to the moral State of Kansas: Campaign excitement is there curbed by a law prohibiting betting on elections—a law more specific than similar forgotten statutes in other States. There are widespread laws against lotteries and "raffles," although the ban is frequently lifted if the object is to raise money for a benevolent purpose, on the theory, perhaps, that anything is legitimate if done in a good cause. It reminds one of the Geneva, law enforced in Calvin's day, requiring all the inmates of the inns, save spies, to go to bed by 9 o'clock. In that happy day such frivolous pursuits as eating mince pie and reading the Book of Common Prayer were also banned, and no musical instruments save drum, trumpet and Jew's harp were deemed proper.

Fantastic legislation has always been rife during times of crisis, war and panic. After a panic of the nineties there was introduced in one of the Western States a bill for enacting the Decalogue in toto and providing suitable penalties for the violation of the various Commandments. There is still in existence a law providing for a public whipping post, chiefly for the benefit of wife-beaters, who receive from five to twenty lashes on bared back. Speaking of wife-beating recalls the West Indian code which gives the husband legal sanction to beat his wife.

Ingenuity in sidestepping the law is nearly always equal to the ingenuity of reforming legislators. An instance of violation of the spirit of a law under transparent veiling of legality is observed in the operation of the Nevada divorce statute. Six months' residence is required to make the suit valid. The statute also requires that the divorcon testify that he expects to make Nevada his permanent home—a provision which is thought to make more credible the charge of desertion. The plaintiff is duly coached by his lawyer to answer yes to this question. But there have been grave omissions, as when the New York lady forgot her instructions on this point and announced to the court in loud and disdainful tones that she had her ticket to New York in her stocking.

It has not been long since it was against the law of Indiana to smoke cigarettes. The efforts of the Anti-Tobacco Leaguers and the memory of the Pope who excommunicated all users of the weed are menacing reminders that a wave of reform may some day deprive all of us of this comfort. In Indiana a performing chimpanzee in a traveling show was once arraigned for smoking a cigarette, that being one of the tricks by which he supported his owner. The owner was forced to pay the fine. [In the Middle Ages lawsuits against animals were of common occurrence!]

The law providing punishment for unsuccessful would-be suicides, like a large portion of our Criminal Code, has been inherited from England, and dates from the era when a man's life belonged to his King, and any effort to do away with it must be punished as any other attempt to destroy property.

However, hedged about as we are by laws which regulate our activities, from the manner in which we cross a street to what we can say about the Government, a glance backward gives assurance of progress toward what Lord Acton declared the greatest achievement of modern times—the emancipation of individual conscience from the bondage of authority. We do not mark violators of a Commandment with a red-hot branding iron; we do not put to death those who refuse to worship God in the orthodox fashion or burn witches.