
A table of contents for *Bibliotheca Sacra* can be found here:

https://biblicalstudies.org.uk/articles_bib-sacra_01.php

ARTICLE III.

LABOR LEGISLATION.

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II.

WHEN the objects of a labor-union are to promote good fellowship and *esprit de corps* among members of the same craft, to raise the standard of workmanship, to educate members up to that standard so as to make their employment particularly desirable, to assist them in finding places and securing good wages, to procure for them safeguards against special dangers, and to take care of them and their families in cases of accident, disease, or other misfortune, it deserves and is likely to receive the hearty sympathy of the whole community and the active pecuniary support of men of means and philanthropic disposition.

When, however, a union manifests itself chiefly in selfish and unreasonable attempts to monopolize positions open to labor, to prevent others from learning, or working at, its particular trade, thus adding to the army of the unemployed, to exact for the poorest and laziest workman (provided he is a union man) the same wages as the best and most industrious can command, and by strikes, or legislation, to secure unjust advantages, it will sooner or later arouse the hostility of the whole community.

I understand that the Typographical Union in Cincinnati recently objected to the publication of a little newspaper at the House of Refuge, because, by this means, several boys were being taught to set type; that it "boycotts" all establishments which employ non-union print-

ers; and that in the fall of 1895, it blacklisted the members of the Board of Education who voted to award a contract for printing to a non-union house. If these are facts, and they were generally known, could that union command any sympathy or support outside of its own organization? Hundreds of strikes have had their origin and sole motive in the intent to coerce employers to introduce, or retain, union men and to drive out non-union men, even when the latter are better workmen and willing to work for less than union prices.

Combinations of manufacturers to prevent competition and raise the price of their products have always been considered unlawful and contrary to public policy, and such combinations are rebuked whenever brought before the courts. Combinations of individuals to secure a monopoly of any article of merchandise, commonly called "corners," are also condemned in the most severe terms. Combinations of laboring-men, in the dangerous form of secret societies, for monopolizing employment, excluding non-union men and raising the price of labor, are winked at and even considered praiseworthy by the unthinking. Can there be, indeed, one rule for the rich and another for the poor? If so, who is responsible for the situation?

Employers who have wearied of strife with the unions, and who prefer to have their employees receive their instructions from those who furnish them employment and pay them, instead of from some irresponsible chief, or walking delegate, have, in many cases, refused to employ union men and have insisted, as a part of the contract entered into with their employees, that they shall not join such associations.

Beginning in 1892, a wave of legislation swept over the country, and all persons and corporations in certain States were prohibited, under heavy penalties, from discharging any employee because he belonged to a labor-union, or

from making it a condition of employment that he should not belong to any such union.[1]

To build up a monopoly in any line of labor and to advance prices, it is necessary to limit competition by excluding all competitors. Accordingly the labor-unions have, with one accord, promoted the passage of Chinese exclusion acts by state legislatures and by Congress. The Chinese may not be highly civilized, and Chinatown may not be sweet scented, but there are more ignorant and dangerous people and viler dens in the purlieus of all our great cities. The great crime of the Chinaman was that he came to the Pacific coast at a time when white labor was largely directed to mining, and the wages for menial service rivaled the fees of professional men. "John" was glad to perform any service, and the lowest wages seemed princely to him. He built railroads, dug ditches and sewers, tilled the soil, washed and ironed dirty clothes, and performed domestic service. But for this, we should never have heard of the great moral and religious (?) crusade instituted by Dennis Kearney.

In October, 1878,[2] the State of Oregon prohibited the employment of Chinese on the streets of any city or incorporated town, or any public works or improvements, and declared that contractors who employed Chinamen should thereby forfeit their contracts, and the State or municipality should not be liable to them in any sum whatsoever. The constitutionality of this law was upheld in the state Supreme Court,[3] but denied in the Circuit Court of

[1] Ohio, April 14, 1892, p. 269; Indiana, Feb. 25, 1893, chap. 76, p. 146; Minnesota, March 3, 1893, chap. 25, p. 128; Missouri, March 6, 1893, p. 187; Idaho, March 6, 1893, p. 152; California, March 14, 1893, chap. 149, p. 176; Illinois, June 17, 1893, p. 98; New Jersey, May 15, 1894, chap. 212, p. 327; Massachusetts, May 26, 1894, chap. 437; June 22, 1894, chap. 508; Wisconsin, April 13, 1895, chap. 240; Connecticut, 1899, chap. 170.

[2] Laws, 1878, p. 9.

[3] Portland *v.* Baker, 8 Oregon 356.

the United States.[1] The state constitution of Oregon provided that no Chinaman, not a resident of the State at its adoption, should ever hold any real estate or mining claim, or *work* any mining claim therein.

California and Nevada enacted similar laws, and the latter provided further, that no right of way or charter, or other privileges for the construction of any public works (meaning railroads and ditches, as well as public buildings) by any railroad or other corporation or association, should be granted, except upon the express condition that no Mongolian or Chinese should be employed on or about the construction of such work in any capacity; and that any violation of the conditions of the Act should work a *forfeiture of all rights, privileges, and franchises* granted to such corporations or associations. A later California statute[2] provides that no supplies of any kind shall be purchased for the State which are wholly or partly the product of Mongolian labor.

The Chinese were attacked first, because they had fewest friends in this country, and it was easy to create a public sentiment against them, on account of their color, heathen religion, and the teeming population of the empire from which they came. But just as soon as the unions become strong enough, the white immigrants from European countries will be excluded also; and the high-protective tariff of Republican origin will be accompanied by acts prohibiting or greatly restricting foreign immigration, as it should be if the workingmen are to be *protected* against the "pauper labor of Europe." The competition of the aforesaid pauper labor is much more effective when the laborer is transferred to this side of the water than when he remains in the employ of capitalists on the other side.

Two States, Illinois[3] and New York,[4] have already passed

[1] Baker *v.* Portland, 5 Saw. 566. [2] March 17, 1887, p. 171.
[3] June 1, 1889, p. 2. [4] May 10, 1894, chap. 622.

acts prohibiting the employment of aliens on public works, and the language is almost the same as that of the Chinese exclusion acts of the Pacific States.

Idaho passed such a law February 2, 1899,[1] and provided, further, that it should

"be unlawful for any county government or municipal or private corporation organized under the laws of this State, or under the laws of another State or Territory, or in a foreign country, and doing business in this State, to give employment in any way to any alien who has failed, neglected, or refused, prior to the time such employment is given, to become naturalized or declare his intention to become a citizen of the United States";

and if any such alien is innocently employed, he must, on notice of the fact, be forthwith discharged.

It is plain that Idaho does not want foreign immigration of any sort.

By act of Congress[2] the importation and immigration of foreigners and aliens *under contract or agreement* to perform labor in the United States, its Territories, and the District of Columbia are prohibited, and, by subsequent acts, from $50,000 to $100,000 annually have been appropriated to ferret out and send back to Europe the emigrants who are prudent enough to secure the means of livelihood before crossing the ocean.

It needs no prophet to foretell that the less-desirable immigrants, who make no provision for their future, and who are more dangerous competitors on that very account, will soon be shut out, and that we shall see a "merry war" between the "protected industries" and "protected unions" in which, whoever wins, the general public is sure to suffer. As soon as "America is secured for Americans," we can expect an extension of such legislation as that of the New York stonecutters, already alluded to,[3] by which the laborers of each State will be protected against the labor of other States.

[1] Laws, 1899, p. 99. [2] Feb. 26, 1885, Vol. 23, p. 333. [3] See *supra*, p. 125.

The tendency in this direction is foreshadowed by the declarations and actions of Governor Tanner of Illinois, during the recent mining troubles in that State. Mine-owners, being unable to come to terms with striking miners living in the vicinity of the mines, imported miners from other States to carry on their operations. This importation was resented by the striking miners, and open violence was resorted to to terrorize and drive out the unwelcome visitors. When appealed to by the mine-owners, Governor Tanner admitted that there was no written law prohibiting the importation of laborers from other States, but intimated that the executive should follow some unwritten law, and do all it could to discourage such importation. It is, perhaps, unnecessary to point out that such a law, whether passed by the legislature of Illinois or evolved from the inner consciousness of Governor Tanner, would be in direct conflict with the Constitution of the United States, and with that policy which has heretofore made Illinois one of the leading States of the Union in wealth and population. Lincoln and Douglas were both immigrants from other States. The declared sympathy of the Executive, and failure to provide a force sufficient to keep the peace, resulted in much rioting and bloodshed and loss to all concerned.

III.

It has long been understood that the public welfare is promoted by employing convicts in some useful industry. It is better for the State to make penitentiaries, workhouses, reformatories, etc., self-supporting, as far as possible. It is better for the convict to be employed during his incarceration and to learn some useful trade. It is better for the public generally to have the fruits of his labor added to the sum of human wealth and to have a prospect, however faint, that a useful citizen may be turned out at

the end of his term, instead of a confirmed criminal, hopeless because helpless, and desperate because despairing. In order to suit the varying capacity, physical and mental, of criminals, there should be variety in the kind of employment offered, from the most menial to that which requires nicest skill. They should be all industries which are commonly practised in the State, so that he may have a chance of securing employment, as soon as he has served his term. It is better for them and better for the world, that a comparatively small number should be fitted for each of several trades than that all should learn one trade. These principles have been generally accepted and acted upon by prison reformers and state legislatures, and such men as Rutherford B. Hayes and General Brinkerhoff of Ohio have been prominent in advocating them. If convicts produce wealth, the public at large must be benefited. It cannot be otherwise.

But there is a class in every community that views with undisguised hostility every such effort to elevate and improve the convict. If convicts work at the same trade that he does, the average laborer sees in them only vile competitors who are taking the bread out of his mouth. They are no more able to appreciate the fact that the product of their labor is added to the sum total of human wealth, and that they are directly or indirectly the gainers by it, than the English operatives, at the beginning of this century, were able to see any advantage in the introduction of labor-saving machinery.

In East Tennessee, within the past five years, a number of convicts were hired out to work in coal-mines. The free miners working in other mines in the vicinity banded together, procured arms, and tried to overpower the state guards and free the convicts. So bitter was the hostility that the "state mines," as they were called, were besieged for many weeks, and the first companies of militia ordered

to support the guards were overawed by the display of force and malice, and ignominiously retreated, and the State actually had to yield and withdraw convicts for a time. In other States the opposition has been less open and violent, but has accomplished through legislation much more than could have been gained by force.

In Illinois, for many years, the convicts at Joliet were employed in developing and working the stone-quarries which abound in that vicinity. They quarried stone for the penitentiary itself and the various state institutions, and, there being still labor to spare, they were hired out to contractors at so much *per diem*, which was paid into the state treasury to prison account. It was a beneficial arrangement all around. But the free workmen in other stone-quarries disliked the idea of convicts' working in their line of trade, and disliked the competition between convict and free labor; and so in 1874[1] they succeeded in getting a law passed, providing that convicts should not be permitted to work in quarries outside of the state prison, except in quarrying stone for the use of the State. Thus a particular class was benefited, in their own estimation, at the expense of all the rest of the community.

In Louisiana, convicts may be employed in building or repairing levees, railroads, canals, etc., but under no circumstances, declared the Act of July 10, 1890,[2] were they to be employed in the cultivation, planting, or gathering of any agricultural crop, such as rice, sugar, cotton, or corn. In 1894 the patrons of husbandry were not quite so strong politically, and the proviso against the employment of convicts in agricultural labor was repealed.[3]

In Oregon[4] and Washington,[5] diversity of employment was abolished by statute, and the only industries open to

[1] Act of March 25th, Cothran's R. S., p. 1076. [2] Chap. 114, p. 156.
[3] Act of July 11, 1894, chap. 134. [4] Act of Feb. 20, 1893, L. 32.
[5] Act of March 9, 1893, chap. 86, p. 212.

convicts in 1893 and 1894 were the manufacture of jute fabrics and brick-making. The first was adopted in both States, because there was little or no jute manufacturing outside of the penitentiary, and no operatives to be unpleasantly affected. But where shall the convict who has served his term at jute manufacturing, go to secure employment when his term expires?

In Oregon, a succeeding legislature was obliged to repeal the jute manufacturing act, and to declare that, "inasmuch as the convicts in the penitentiary are now idle, and there is no law authorizing their employment, and it is of great public advantage that the convicts be employed and earning money for the benefit of the State, an emergency exists,"[1] etc., and the governor was authorized to contract for the employment of convicts, without restriction as to the nature of employment.

In Colorado, convicts are employed in construction of state ditches under the direction of the penitentiary commissioners, and it was enacted in 1889[2] that said commissioners should "not hire out any convict for the purpose of carrying on an industry that comes in competition with free labor in the State." It was also enacted[3] that neither convicts nor any material made by convicts should be imported from another State, and persons violating said act could be fined from $300 to $1,000, or imprisoned from three months to five years, at the discretion of the Court.

In Kansas, prior to 1879, the state authorities could contract for the employment of convict labor in any kind of manufacturing, with suitable provisions as to the custody, health, and good treatment of the prisoners[4]; but, by Act of March 11, 1879,[5] all convicts not required to supply existing contracts for labor, were to be employed in sinking

[1] Laws, Feb. 23, 1895, pp. 40, 41.
[2] Mills, Annotated Statutes, Sec. 3447. [3] *Ibid.*, Secs. 3447–3450.
[4] Gen. Statutes, Secs. 6440–6446. [5] Chap. 87.

shafts and developing and operating coal-mines on coal-lands owned by the State.[1]

In Alabama, they may be employed in any kind of labor selected by the managers of the penitentiary *except mining.*[2]

In Massachusetts, it was enacted in 1883[3] that the number of convicts employed in various trades should be restricted to a given number in each trade, and in 1887,[4] that the number employed in any one industry should not exceed one-twentieth of the number employed in such industry in the State, and not more than 250 in any one industry, and in 1894[5] that the number of prisoners employed in the manufacture of reed and rattan goods should be reduced to 75 in all prisons and reformatories.[6]

In New York,[7] it was enacted that no prisoner was to be employed in making or finishing fur or wool hats, making or laundering shirts, collars, or cuffs, or in setting type, or printing. Except in *setting type or printing matter for use in the prison* (!) no products of printing or type-setting in the prison were to be put upon the market or sold. Prisoners, however, were allowed to make hats, shirts, etc., for use in the prison, or in other state institutions.

Thus the hatmakers, the shirt and collar makers, and the typographical union secured their innings. Two years later the broom and brush makers "came to the bat," and knocked out in close succession two acts protecting them against prison competition. The first[8] absolutely prohibited the manufacture for sale of any brushes in the Albany penitentiary, and the second[9] provided that the number of

[1] Gen. Statutes, Sec. 6449. [2] Act of Feb. 14, 1893, p. 210.
[3] Chap. 217. [4] Chap. 447. [5] Chap. 460.
[6] Other acts attempting to fix limits on convict employment that should be satisfactory to particular unions were passed May 18, 1897, chap. 412; June 9, 1897, chap. 480.
[7] Act of 1892, chap. 130, amending Act of 1890, chap. 395.
[8] April 2, 1894, chap. 237. [9] May 21, 1894, chap. 737.

convicts employed in making brooms or brushes of broom-corn, at any penal or reformatory institutions of the State, should be limited to five per cent of the total number of persons employed in such industries in the State.

In Louisiana[1] it is made unlawful to sell brooms made in the different state penitentiaries by convicts, etc., unless each broom is stamped, or labeled in large letters, "convict made"; and the penalty for a violation of the law is a fine of not less than $50, or imprisonment not less than 30 days, or both.

The Ohio Legislature in 1892[2] enacted that the number of convicts to be employed in any one branch of industry should not exceed five per cent of the total number of persons employed in such industry in the State outside of prisons, penitentiary, workhouses, and reformatories, except in industries where less than fifty free laborers are employed. In 1893[3] the percentage allowed was increased to ten, but it still operates as a serious check on the employment of labor in certain industries.

In 1893[4] the legislature prohibited the managers of penal, reformatory, or *charitable* institutions, or asylums from putting in machinery, or engaging in the manufacture of knit or woolen goods, except such as may be needed in the institution itself. I understand this last clause was not in the original bill, but was inserted, only after a most vigorous personal canvass by Dr. Doran of the Imbecile Asylum, to save his outlay in machinery and carry out, in part at least, his plans for employing the higher grade of pupils in the woolen industry.

In 1888[5] it provided against the importation and sale of goods made by convict labor in any other State, unless conspicuously branded, labeled, or marked "convict-made,"

[1] Act of July 11, 1894, chap. 132. [2] Vol. 89, p. 346.
[3] Vol. 90, p. 237. [4] Vol. 90, p. 224.
[5] Act of March 15, Vol. 85, p. 92.

and this act was amended in 1893[1] and applied to convict goods made in Ohio, and finally, to cap the climax, the legislature provided, in May, 1894,[2] that no one should sell or keep for sale convict-made goods, unless licensed to do so; that he should pay $500 for a license, and give a bond of not less than $5,000; and that he should display his license in the most conspicuous place in his office or store—thus notifying the world that he was a *licensed dealer in convict-made goods.* He was further required to make an annual report of his purchases and sales, stating prices of purchase, and giving names, residences, and street numbers of all purchasers. By the Act of 1893, all goods sold by him, made by convicts in Ohio or elsewhere, are also required to be conspicuously branded, labeled, or marked "*convict-made.*" The object was, of course, to discourage the sale of such goods, and thus accomplish indirectly, what perhaps could not have been accomplished directly, the abolition of the system of employing convicts in any line of manufacturing. Of course few people care to brand themselves conspicuously as dealers in convict-made goods, or to pay $500 and give a $5,000 bond for such a privilege. Fewer still would care to have their purchases of such goods reported annually, and be subjected to opprobrium and possible boycott. If no one cares to sell the goods under such conditions and no one buys, no one will care to manufacture with convict labor, and contracts for such labor could not be let. The state authorities might continue manufacturing on state account, but they could not dispose of the goods. Even if it were possible to find a market for such goods outside of the State, retaliatory legislation may be expected just as soon as the legislatures of neighboring States convene and the foreign markets will soon be closed.

The evil results of this legislation soon became apparent

[1] Act of April 27, Vol. 90, p. 319. [2] Vol. 91, p. 346.

in Ohio. The penitentiary, which had been for the most part self-sustaining, began running behind at the average rate of $200 per day, and this deficiency increased as existing contracts expired. Within two years, more than half of the prisoners were without occupation, and their *morale* suffered greatly in consequence. In January, 1895, there were several affrays between prisoners, and a general riot occurred in one of the prison-houses. The number of guards had to be increased in order to maintain order and prevent violent outbreaks. The number of cases of insanity developed among the prisoners increased alarmingly.

Fortunately the constitutionality of the Act of May 19, 1894, was questioned at an early date, and in May, 1897, the Supreme Court of Ohio declared it to be invalid.[1] Similar laws have been passed in Colorado,[2] Kentucky,[3] Indiana,[4] and New York.[5]

The difficulty of getting a law passed that shall be satisfactory to all the interests involved, and stand the test of constitutional analysis, is well illustrated by this series of New York statutes. The law of 1894, chap. 698, was declared invalid in People *v.* Hawkins, 85 Hun. 43, chiefly on the ground that it discriminated between convict-made goods manufactured in another State and the same class of goods made in New York, which was contrary to the Constitution of the United States. Thereupon the law of 1896, chap. 931, was passed, extending the operation of the law to convict-made goods manufactured in New York, which eliminated the objection founded on its violation of the interstate commerce provision of the United States Constitution. This last law was declared to be unconstitutional

[1] Arnold *v.* Yanders, 56 O. S, 417.

[2] 1889, Mills Ann. Stat. Secs. 3447–3450.

[3] March 12, 1894, chap. 58. [4] March 15, 1895, chap. 162.

[5] 1887, chap. 323; May 11, 1893, chap. 692; May 14, 1894, chap. 698; May 27, 1896, chap. 931; May 13, 1897, p. 472.

by the Court of Appeals of New York in People *v.* Hawkins, 157 N. Y. 1, at its October Term, 1898. Assuming "that the purpose of the law was to promote the welfare of the laboring classes by suppressing, in some measure, the sale of prison-made goods" (p. 6), and that there is no difference in the quality of goods made in or outside of prison, the Court goes on to state that there is no warrant in the Constitution for restricting the right to deal in such goods, because manufactured by one class of workmen rather than another.

The Court says:—

"The question is reduced to the simple inquiry whether the legislature under the guise of the police power can regulate the price of labor by depressing, through the penalties of the criminal law, the price of goods in the market made by one class of workmen and correspondingly enhancing the price of goods made by another class. . . . If the police power extends to the protection of certain workmen in their wages against the competition of other workmen in penal institutions, why not extend it to other forms of competition? Why not give the workman who has a large family to support some advantage over the one who has no family at all? Why not give the old and feeble a helping hand by legislation against the competition of the young and strong? Why not give to women, the weaker sex, who are often the victims of improvidence and want, a preference by statute over the men? Why confine such legislation to scrubbing brushes and like articles made in prisons, when multitudes of men engaged in farming, mercantile pursuits and almost every vocation in life are struggling against competition. . . . The statute in question is in conflict with the Constitution of this State, since it interferes with the right to acquire, possess, and dispose of property, and with the liberty of the individual to earn a living by dealing in the articles embraced in the scope of the law. It is an unauthorized limitation upon the freedom of the individual to buy and sell all such articles, subject only to the law of supply and demand, and the legislation is not within the scope of the police power" (pp. 10, 11).

It would be easy to fill a volume with other instances of class legislation just as vicious and one-sided. It is apparent to the impartial reader of such laws that no broad principle is involved, and that the good of the community as a whole has not been considered. The union that happened to be represented in the legislature, or to have exer-

ted the greatest political influence at the time, secured its own selfish ends at the expense of all others.

"Eternal vigilance is the price of liberty!" It is unnecessary for the average citizen to pay close attention to strikes. Public opinion is easily aroused by overt acts of violence and intimidation, and our municipal police forces, backed up by the state militia and the United States troops, can cope successfully with that form of attack on personal liberty and property. But the organized, determined effort to abridge liberty of contract, the freedom of employers and employees to engage in any enterprise on such terms as are mutually satisfactory, the right of property holders to protect their property, and the right of the State to require that the inmates of prisons, reformatories, and charitable institutions shall work, for their own good and for the good of the public, at any trade or industry which promises best results, should be met by determined opposition in the legislatures and at the polls. Wise, conservative men should be nominated and elected, instead of men who can be bribed by the hope of political advancement, or intimidated by threats of opposition and boycotting on the part of labor organizations. Such laws as are here mentioned ought, every one of them, to be repealed, and a public sentiment ought to be awakened that will prevent the passage of such laws in the future.