

The Federal Government and Public Morals

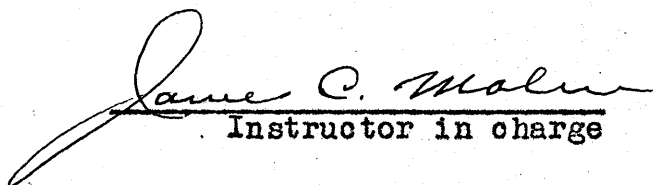
by


Brunetta M. Jimison

^{Edoc.}
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Approved by:


Instructor in charge


Head of Department

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Preface

The Federal Government and Public Morals is too broad a subject for such a work as this. Naturally it breaks up into many problems, only two of which have been touched upon here. The material on "Lotteries" and "Obscene Literature" has never been collected although both subjects have been widely discussed. The facts are so entwined and overshadowed by other issues and problems, that to isolate the scattered and fragmentary evidence, and write it into a continued story becomes quite a complex problem. To do this effectively, one should have access to newspaper files and court records from all parts of the country. The ever changing moral problems and their influence on the economic and political history of the nation, seems to me, a vitally important, and an almost untouched field of research.

Brunetta Jimison

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INTRODUCTION

To the present generation the word "lottery" carries a suggestion of gambling and a vague idea that the institution was outlawed because of its demoralizing effect. Changing moral conceptions have placed this gambling device in that list of things which might have been a subject for the once famous cartoon strip, "Them Days Is Gone Forever". The stupendous business carried on by the lotteries; the support given them by the church, state and nation; the gradual rise of public sentiment against the lottery as a nuisance; and the later development of that sentiment into a state and national crusade against the lottery institution forms an interesting story.

For lotteries have occupied a definite place in the colonial and national history of the United States. Before 1860 very few voices had been raised against the lottery. Many churches considered them as one of their chief means of support. Colonial and national leaders advocated them, and considered the net profits from lotteries as only another form of legitimate taxation. Changing conditions of life brought new moral ideas and by 1870 a demand for the

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abolition of the lottery was becoming insistent. This feeling grew as the struggle with the powerful Louisiana Lottery dragged on. The period from 1885 to 1890 is marked by the growth of this anti-lottery agitation, culminating with the National legislation of 1890, 1894 and 1897, which effectively put a stop to this once favorite form of gambling.

Chapter I

Lotteries As An Approved Institution.

Meaning of the word - Beginnings of
lotteries - In the colonies - In church history -
As a means of educational support - For various
enterprises - Sentiment for and against - Approval
of the government through legislative acts of 1812,
1820 and 1827 - The Supreme Court Decision of 1821 -
The wide spread power and influence of lotteries -
The lotteries as great corporations - The number
operating in 1832 - Interesting side-lights.

Chapter I

The word lottery has no definite significance. It may be applied to any process of determining prizes by lot, whether the object be amusement, gambling or public profit. The word is derived from the Italian *lotteria* cf., French *lotterie*, formed from *lotto*, lot, game of chance. It is in origin a Teutonic word, adopted into the Romanic languages. Primarily 'lot' meant the object, such as a disc or counter of wood, a pebble bean or the like which was cast by chance under divine guidance to settle disputes, divisions of property, etc., much as we flip a coin today -- only there was more importance connected with the decision. From this has been derived the present meaning, or, that money or property which comes to one by chance. In the Roman Saturnalia and in the aristocratic life of the Romans the object of the lottery was merely for amusement. Later Nero gave such prizes as a house or a slave. Heliogabulus gave one ticket for a golden race and another for six flies.¹

The first letters patent for a lottery was granted in 1539 by Francis I, of France. In England

¹"Lotteries" Encyclopedia Britannica 11th ed.

the earliest lotteries sanctioned by the government were for the repair of harbors in 1569, and for the Virginia Company in 1612, which brings the story to the opening of Colonial history. In the third charter granted by King James to the Virginia Company of London full power and leave to raise money by lottery for a year was granted. A drawing was held in St. Paul's Churchyard July, 1612. All classes, knights, esquires and the best of citizens were present. Many trade guilds bought tickets. The Grocer's Guild adventured sixty-two pounds and fifteen shillings, and won a silver dish and cover valued at thirteen pounds and ten shillings.²

In the colonial period lotteries played a prominent part in the church history of the time. In the Philadelphia Gazette of August 4, 1748, was published a scheme for a lottery to raise 337 pounds 10 shillings for finishing the English Church in the city of New Brunswick. A note appended to the article said that the lottery tickets would be sold by Benjamin Franklin.³ In volume two of the Newspaper Extracts which covers the

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² Fiske, John, Old Virginia and Her Neighbors 2 vols. (New York, Houghton Mifflin & Co., 1900) Vol.1 p. 171

³ New Jersey Archives, 1st Series Vol. XII. Newspaper Extracts Vol. 2, 1740-1750. (Patterson, New Jersey, Press Printing and Publishing Co., 1895) p. 471.

period from 1740 to 1750 the following lotteries for church purposes are advertized; for the Presbyterian Meeting House at Amwell, New Jersey; to build a new steeple for St. Mary's Episcopal Church, at Burlington; for building a parsonage-house for the Elizabeth-Town church; to buy a parsonage-house and land at Hanover; for completing the Trinity Protestant Episcopal Church of Newark; for charity in New Brunswick; and for building a parsonage-house in Turkey.⁴

For the years 1772-1773 lotteries were drawn for the Campingtown Presbyterian, Christ's Church New Brunswick, Rahway Presbyterian Church, Springfield Church, and Woodbridge Church.⁵ Items concerning lost lottery tickets for building or repairing some church were frequent. Another article was concerning a lottery being drawn in favor of a minister, from which the following quotation is taken: "The Lottery in favor of a Protestant minister will be drawn on the 4th day of January, Next, at the House of Andrew Van Boskirt,

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⁴ Ibid.

⁵ New Jersey Archives First series Vol. 28, Newspaper Extracts Vol. 9 (Patterson, New Jersey, Call Printing & Publishing Co.) 1916.

New Barbados."⁶ Nor did the idea that lotteries were inconsistent with the church and its functions die out with the colonial period. In 1808 the Baltimore Trinity Church Lottery was running.⁷ In 1820 the great Catholic Cathedral Lottery of Baltimore, under the special authority of the state of Maryland was raking in the dollars.⁸ In 1827 the Rhode Island West Baptist Church was raising money by way of the lottery.⁹ The negroes used this method just before the Civil War to build their simple churches. In fact lotteries in connection with church fairs were common up to the war period. These of course gave only small prizes, but the spirit of gambling was there; and there seemed no organized effort on the part of any sect or race to drive the lottery out of polite society.

In the field of education lotteries also played a major part. Only a few instances need be cited. In 1756 a lottery was formed to raise money for a college and academy in Philadelphia. A scheme to raise money for the support of the College of New Jersey was published in the New York Mercury for

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⁶New Jersey Archives 1st series Vol. 29. Newspaper Extracts Vol. 10 "New York Journal Dec. 16, 1773."

⁷National Intelligencer Aug. 5, 1808.

⁸Ibid. April 26, 1820.

⁹Ibid. June 27, 1827.

January 19, 1764. In 1769 a deficit at Princeton was raised in the same way. Harvard's funds ran low in 1772 and the university received special permission for a lottery scheme to erect Stoughton Hall. This lottery continued its drawings for over ten years, producing \$18,400, net. The college authorities invested \$2000 of the school's money in tickets and drew the principal prize of 10,000, on ticket numbered 18,547.¹⁰ Previous to this the General Court of Massachusetts, had permitted Harvard, in 1765, to raise 3200 pounds.¹¹

Jefferson College, Mississippi (1802) Hempstead Academy, Mississippi (1827); University of Virginia (1831; University of Delaware (1832); Leesburg (Va.) Academy 1840; Shelby College; Kentucky (1865); are only a few examples of this approved and prevalent system of raising money.

In 1826 Jefferson was pressed for money. He asked the House of Burgesses to give him permission to dispose of his property by means of a lottery, at that

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¹⁰Spofford, A. R. "Lotteries in American History"
American Historical Association Report 1892 pp.171-195.

¹¹Peirce, Benjamin A History of Harvard Cambridge.
(Brown Shattuck & Co.) 1833.

time a common proceeding. As the legislators did not appear to be willing Jefferson wrote his paper, "Thoughts On Lotteries" in which he upholds the institution of lotteries and gives arguments in support of this then popular gambling device. In this paper, he lists seventy lotteries which had been drawn in the State of Virginia all of which he pointed out had done untold good. Of the number nineteen were for schools and colleges.

In a letter to the Lords of Trade written September 27, 1747, Governor Clinton of New York said "- - - None are of any other moment than in the ordinary way except Ch. 19 for raising 2250 pounds by way of Lottery for the advancement of learning which is absolutely necessary and much wanted in this province."

Many and varied were the purposes for which lotteries were drawn. In 1848 Franklin and others raised 3000 pounds to erect a battery on the Delaware river. The New York Light House and Public Lottery was a famous one. A law was passed in the legislature

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Correspondence and Private Papers of Thomas Jefferson
Vol. IV Randolph ed. pp. 438-448.

Documents Relating to Colonial History of New York
Vol. VI p. 379 (Albany 1855).

of New York in 1765 giving the commissioners the right to hold a lottery to raise funds to build a straight road between New York and Philadelphia.¹² In 1758 the people of Charleston in town meeting, voted to ask the general court for authority for organizing a lottery for paving Main Street. In 1779 one was organized for \$66,000 to repair the streets of Charleston and in 1780, \$200,000 was raised to mend the roads in Berkshire and Hampshire.¹³ Many buildings were built with the proceeds from lotteries. In a town meeting in Boston it was decided to permit the selectmen to grant some suitable person a permit to raise money to rebuild Fanucil Hall, which had burned in 1761. Several drawings were made, the last in 1764.¹⁴

The New York Journal of August 19, 1773, advertized the Biles Island Lottery, "for the purpose of raising 720 pounds for John Dunlap of New York, Merchant, Lately reduced by misfortunes in trade. To enable him to get into business." The Journal of December 24, 1773 carried an urgent appeal to public spirited

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¹²New Jersey Archives 1st series, Vol. 5. p. 91.

¹³Spofford, A. R. "Lotteries in American History"
American Historical Asso. Annual Report 1892. pp.171-195

¹⁴ibid.

citizens "to support and encourage the Road Lottery", by which money was to be raised to build a road from Paulus Hook to Albany.¹⁵ In 1773 John Leacock set up the grape industry and the same year the Kensington glass works raised money in this way to carry on their business.

In 1776 the Continental Congress authorized a United States Lottery to raise money for the army in the field. Four classes were to be drawn, the first class tickets were ten dollars; the second, twenty; the third, thirty; and the fourth, forty. The date of the drawing was set for March 1, 1777.¹⁷ In 1784 John Adams, then minister to Holland, negotiated with Amsterdam bankers a loan of 2,000,000 guilders at 4%. He agreed to distribute 690,000 guilders, among the subscribers by lot, as a bonus or premium on the loan. The United States cashed the obligations within six months after the drawing. Adams was worried about the transaction fearing the government would find the cost excessive,

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¹⁵ New Jersey Archives Vol. 9 p. 232

¹⁶ Spofford, A. R. American Hist. Asso. Report 1892 p.171.

¹⁷ Journal of Continental Congress VI (1776) pp. 917 & 959.

but when the bonus and premium was added to the original four per cent interest, the total was only six and three-fourths per cent.¹⁸

In 1820 the Washington Monument Lottery was running in Washington, D. C. The managers made this appeal, "They (the managers) scarcely deem it necessary to appeal to the patriotism of their fellow citizens for their support and patronage."¹⁹ Others show by their names the purposes for which they were said to be organized: New York Literature (1820); Washington Lodge (1827); Virginia State (1836); Maryland State (1848); Library Association (1865).

Although there was some agitation against lotteries before 1832 it was not until some time after that date that the public took an open stand against the institution. For so long they had been regarded as a legitimate business that it was difficult to shake off the idea. Ministers and statesmen alike, bought tickets and supported lotteries for all sorts of purposes. The Reverend Samuel Sewall in writing to a

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¹⁸Spofford, A. R. American Hist. Asso. Report (1892) p. 171-195.

¹⁹National Intelligencer Nov. 11, 1820.

friend October 12, 1719 said, "I dined with the court last Friday, where many expressed their dislike of the lotteries practiced of late, as differing little from gambling for money; and as being really pernicious to Trade. Taking notice of no less than four lotteries in the enclosed News Letter I would propound it to the Constitution whether it would be expedient to put some stop to the progress of it?"²⁰ Rev. Sewall did not seem to have exactly made up his own mind on the lottery question, so was rather lukewarm in his statements. Another minister the Rev. Samuel Seaberry of Ledyard thanked piously when he drew the five hundred pound prize.

Men like George Washington must have approved of lotteries for they bought tickets and attended the drawings. An entry in George Washington's diary for November 4, 1768 reads: "Dined with several gentlemen at Ayscough's. Col. Byrd's lottery began drawing." A lottery ticket of 1768 reads as follows: This ticket (No. 274) shall entitle the possessor to whatever prize may happen to be drawn against its number in the

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²⁰Massachusetts Historical Collections 6th Series VII
Sewall's Letter Book, Pt. 2 pp. 102-103.

Mountain Road Lottery.²¹

Signed: G. Washington"

Thomas Jefferson was a firm believer in lotteries. He wrote a paper entitled, "Thoughts on Lotteries" at the time he was seeking a permit to dispose of his land by lottery. He expressed his views definitely "It is a common idea that games of chance are immoral. But what is chance? Nothing happens in the world without. If we know the cause we do not call it chance; but if we do not know it, we say it was produced by chance." Such was the reasoning of the great Jefferson and may be taken as typical of much of the thinking before 1832.²²

That lotteries were a part of the daily life of the people and were considered in the same way as any other business corporation is shown by the Abstracts of Wills of the time. It was a common occurrence to have lottery tickets willed just the same as a piece of real estate. The following is taken from the will of Jacob LeRoy, Sr., a New York Merchant, "I have directed a ticket to be purchased for me in the Lottery

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²¹Writings of George Washington Vol. II Ford Ed.(1889)
pp. 254.

²²Writings and Correspondence of Thomas Jefferson Vol.IV
Randolph ed. pp. 438-448

of the States General of Holland and one in the State lottery of England; my will is that in case the said tickets draw a prize or prizes, that my wife Catherine shall have one-fourth part of the said prize or prizes at her disposal during her life and the other parts of the same I give to my children equally."²³

The Rev. Jeremy Belnap wrote to his friend Hazard from Boston, March 23, 1790: You could scarcely imagine what a rage we have here for lotteries, 8000 tickets were sold in four days in the Marblehead lottery, the scheme calculated on the plan of a Dutch lottery.

"I wonder Sec. Hamilton does not hit upon a lottery. It would be more popular than laying a duty on salt, which if he does will greatly injure our fisheries."

Hazard wrote from Philadelphia to Belnap, April 14, 1791, "Your mania reached this city. Jonas and I sold 500 of the semi-annual tickets; and had we had them, I suppose we could have sold 1000."²⁴

The government of the United States for more than thirty years recognized lotteries as a legitimate

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²³Collection of N. Y. Historical Society Vol.38,p.225.

²⁴Massachusetts Historical Collection 5th Series V.3 p.251.

method of taxation. In 1793 when the building funds ran low the Commissioners of the District of Columbia organized a lottery to raise \$350,000 to improve the City of Washington. Tickets to the amount of \$350,000 were to be sold. The principal prize was to be a fine hotel with running water, baths, etc. In 1795 the legislature of Maryland passed an act to authorize two lotteries in the District of Columbia. Daniel Carroll and Thomas Law were given the privilege of raising \$52,500 to improve the means of communication by the construction of a canal in Maryland and the D. of C. Congress fully recognized this act by a law passed May 6, 1812 and approved by President Madison which said that the Maryland law was to be in full force in the D. of C. subject to certain alteration and restrictions. The chief restriction was that the managers must give \$100,000 bond to the United States treasurer, and must use the money within two months after the drawing had been made and all bills settled, to complete the canal in the D. of C. and for draining the swamps adjoining the city.²⁵

This lottery has been called a National

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Lottery although it was not really such. It did have the sanction of the National Government. The lottery was widely advertized. Tickets were placed on sale in all the leading cities. In Norfolk Virginia the ticket venders were arrested because Virginia had passed a law forbidding the sale of foreign tickets within the state. The case was decided against the ticket venders in the Virginia courts but they carried the case to the Supreme Court. While the case was pending the Niles Register published the editor's opinion on the dispute. He was of the opinion that the United States could not force the sale of tickets in any territory forbidding it by law. Five noted lawyers agreed that the United States could sell tickets in states which had laws prohibiting such sales, under authority of Congress.²⁶ The case as it appeared before the Supreme Court was known as the Cohen against Virginia case. Cohen being the lottery broker whose agents had been arrested in Norfolk. The case was tried before Chief Justice Marshall and February, 1821, the Supreme Court delivered this decision: "The Corporation of the City of Washington has no right under the Act of Congress authorizing lotteries in that city to sell tickets in any state

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²⁶Niles Register Vol. 19, (Sept. 2, 1820) p. 3.

of the union, by the laws of which the sale of tickets not authorized by the act of the state legislature are prohibited." The court refused, at the time, to state an opinion as to whether Congress could legalize the sale of tickets through out the Union of a lottery established in the City of Washington.²⁷

The Act of Congress which legalized the sale of lottery tickets in the District of Columbia referred to in the Supreme Court decision above cited was that of May, 15, 1820, which was "An Act to Incorporate the City of Washington." This act was an amendment of the one passed May 4, 1812, which gave the commissioners the right to authorize the drawing of lotteries for effecting any important improvement in the city for which other funds were not available. By this bill not more than \$10,000 was to be raised and the lottery drawing must first be approved by the president.²⁸ The Act of May 15, 1820, provided for the corporation to authorize lotteries for ten years, the sum to be raised to be not more than \$10,000 clear of expenses and gave the corporation the additional power to pass all laws necessary to carry the law into execution.²⁹

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²⁷ Federal Cases 1789-1890, Vol. 25

²⁸ 2 U. S. Statutes at Large, p. 728.

²⁹ Ibid. Vol. 3, p. 588

On January 6, 1821, a Resolution was introduced in the House, to have an inquiry made and report the number of lotteries which had been instituted under the Act of May, 1820. A report was given January 25, that under the act of May, 1820, only one lottery had been authorized. But the Committee understood that the House wished to know about the lotteries that had been drawn since the Act of 1812, so they based their inquiry on that. "The first lottery under that law was for \$10,000 to build two public school houses under the Lancastrian system. Mr. Madison approved the bill November 23, 1812. Seven other lotteries were approved, one each year except 1813. The managers to whom the corporation delegated the power have drawn five lotteries; the first sale of tickets amounted to \$150,000 of which the corporation received \$10,000. From the whole amount of tickets sold in the eight years the corporation should have received \$80,000. The committee committed a resolution to the House, in which they expressed the opinion that it was inexpedient for the House to express an opinion as to whether the acts of corporation had been complied with.³⁰

John Quincy Adams was troubled by constant solicitations to approve a quadruple lottery sanctioned

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by the Corporation of Washington City to raise \$40,000. Mr. Adams did not think he should sign the ordinances so turned to Attorney General Wirt for his opinion. Mr. Wirt agreed with Mr. Adams, so in May 1825 President Adams refused to approve the lotteries.

In 1827 Congress passed a bill permitting the commissioners of Washington to offer as prizes in lieu of money, such parts of the lands of Thomas Jefferson as they should deem proper. This was to aid the State of Virginia, which was attempting to pay off the debts of Jefferson through the sale of his property by means of the lottery.³¹

The period from 1800 to 1840 was the heyday of lottery history in the United States. It was the time when the lotteries went out to get business and they got it by advertizing and through the appeals which they made in the name of education and philanthropy. Hand bills were sown broadcast, great billboards carried advertizements and lottery ticket venders were on every street corner. Much attention was paid to display ads in the newspapers. The lotteries during this period offered great prizes. The Grand National Lottery of 1821 shows the following prizes were to be given by "Allen's Lucky Office." The first prize was \$50,000;

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³¹4 U. S. Statutes at Large, 205.

2nd, \$25,000; 3rd, \$10,000; 4 of \$5000; 59 of \$1000 and a number of \$100 and down.³² Tickets were fourteen dollars each. In 1824 Tyler's, "Temple of Fortune," a famous lottery office, operating on Pennsylvania Avenue, Washington, advertised thus:

Tune, Hail to the King.

Hail to Ben Tyler, who sells all the prizes,
Honor'd and blest be his flaming red sign,
Hail to the wag who comes boldly and tries his
Fortune - where eagles of Liberty shine.
Gods! How he'll strut about
Crimped ruffles all sticking out.
He'll kick all the waiters, etc. etc.³³

or again.

The Road To Fortune
By Way of Tyler's Turnpike.

It is open to your view. You cannot lose it by mistake and you have no temptation to depart from it by design."³⁴

The lottery offices had such names as, "Davis Truly Fortunate Office", "Cohens", Allen's Lucky Office and "Tyler's Temple of Fortune". Tickets were sold whole, by the halves, quarters or tenths, the fractional parts finding ready sale among the negroes and the laborers. The offices made semi-annual business statements much the same as banking corporations

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³² National Intelligencer July 14, 1821.

³³ National Intelligencer January 28, 1824.

³⁴ Ibid November 15, 1820.

make at the present. The most prominent advertizing space was purchased by the lottery brokers as they were often called. The issue of the National Intelligencer of June 27, 1827, carried notices and display ads of the Virginia Navigation Lottery, the New York Consolidated, the Pennsylvania Canal Company, the Rhode Island West Baptist Church and the Washington Lodge Lottery. Other prominent and popular lotteries of this period were the University of Maryland, the University of Virginia, Washington Monument, Delaware State, Virginia Dismal Swamp, Catholic Church, New York Literature and Popular Lottery.

In 1832 conditions in Massachusetts called attention to the lottery problem. The suicide of a well known man, and an embezzlement from one of the great banks caused Governor Lincoln to ask the General Court to pass legislation to abolish the nuisance of lotteries. The legislature appointed a committee to investigate the lottery problem not only in Massachusetts but in other states. The following table was compiled as a result of this investigation:

State	Number	Am't. of Tickets
New York	80	\$14,387,801
Virginia	72	10,920,066
Connecticut	88	8,332,585
Rhode Island	68	7,837,621
Pennsylvania	26	5,313,056
Delaware & North Carolina	Joint 37	5,462,900
Maryland	18	2,212,546
<u>Delaware</u>	<u>32</u>	<u>670,263</u>
9	420	\$53,136,930

Maine is not included in this list although she had two lotteries. Several southern states had lotteries for which no statistics are available.

An interesting reprint from a southern paper shows that lotteries seem to have been a national habit. The truth of the article is not vouched for, but the mere fact that it occupied a place on the first page with other news items shows that it was not considered unusual at the time. The item tells of a man from the North who was visiting friends in a South Carolina town. These friends were invited to a wedding and he was included in the invitation. After the ceremony a man got

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up and suggested a lottery scheme for matrimony. He said there were numerous young men and women who wished to marry but were too timid to make overtures to the one they loved. He suggested that one man in the company be elected president. By that evening all gentlemen over twenty and all girls over fourteen should send to the president the name of the one they wished to marry. If there chanced to be any reciprocal desires the persons would be notified. Otherwise the names would be kept secret. Twelve young men and twelve young women had chosen each other according to the president's report. A year later the visitor being again in the town inquired concerning the result and found that eleven matches had resulted.³⁶

If there was much feeling against the lottery as an institution before 1832 that sentiment was not aired in the newspapers and magazines. But the growing power and influence of the lotteries; the dabbling of the managers in state political affairs etc., evidently set the tide of public opinion in the opposite direction. Only a few states had legislated against lotteries prior to 1832 and their legislative acts had not been enforced. Tickets were selling in every state

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³⁶ National Intelligencer July 15, 1835.

in the union, and the great Havana Lottery was also finding the United States a fertile field. The National Government had passed no restrictive legislation -- indeed what bills concerning lotteries that had been passed were protective and encouraging measures.

Chapter II

State Legislation to 1890

Massachusetts - Virginia - Rhode Island -
New York - Pennsylvania - Maryland - Kentucky -
Table showing states which had constitutional
provisions 1890 - Michigan - Wisconsin - Missouri -
North Dakota.

The states attempted to handle the lottery question just as they did slavery and other problems. They early passed anti-lottery legislation and attempted to enforce the laws. As on other questions previous to the final decision of the theory of State Rights by the out-come of the rebellion, they felt the national government should not interfere. Beginning as early as 1791 legislation to outlaw lotteries was frequent, but that these laws were not effectively enforced is proved by reading state histories and collections such as Winsor's Memorial History of Boston, Arnold's History of Rhode Island and the collections of the state historical societies of Pennsylvania, New York and Virginia. It was soon realized that as long as lotteries were operating in a part of the states, the tickets would be purchased in the others. To meet this situation some of the states like New York passed laws forbidding tickets from other colonies being sold in the New York Colony. After the constitution was adopted other states tried to pass prohibitive laws against lottery tickets from other states but they found the job of enforcing the law was too big to be done successfully.

Massachusetts

As early as 1719 Massachusetts passed a law which declared that all private lotteries were common and public nuisances. In 1733 a more stringent law was passed, and this was followed by others in 1753. Yet in 1759 two lotteries were drawn, one at York and the other at Roxbury.¹ In 1760 the proprietors of a land grant at Rindge, N. H., petitioned the General Court to permit them to raise a sum of money by lottery with which to pay their taxes. In 1779 the Boston Pier Lottery was drawn and the diary of the devout Puritan minister the Reverend William Smith, shows that he had purchased tickets.² Lotteries were thus frequently authorized by the authorities. The lottery schemes were made alluring. The use of pictures in advertisements were resorted to, so that the great mass of people who could not read might be impressed. One advertisement represented Fortune as a woman, blindfolded and balancing herself on a wheel. One hand of the goddess held a cornucopia from which a stream of coins was pouring into the hat of a ragged young man. In the other she bore a scroll with \$10,000

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¹Massachusetts Historical Collection Series 3, V.3, p.86.

²Ibid. pp. 467-468.

printed upon it.³ In June 1765 the General Court passed an act to raise 3200 pounds by lottery for building another Hall for the students of Harvard College.⁴ The bill stated that the money could best be raised by a lottery. In 1767 Massachusetts was still legalizing lotteries for public purposes although the laws of the state forbade them.⁵

In 1789 the General Court passed a law which repealed the licenses of all lotteries then in existence. These lotteries could be operated until the time which they had been given in their charters.⁶ The same year the legislators started all over again and granted permits for a lottery to raise money to build a school building at Williamstown, for purchasing an orrery for the University at Cambridge; for fortifying Marblehead harbor, and for raising \$10,000 pounds for the use of the Commonwealth.⁷

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³Winsor, Justin Memorial History of Boston, 4 Vols. (James Asgood and Company, Boston, 1881) Vol. IV pp. 16, 501-503.

⁴Pierce, Benjamin A History of Harvard (Brown Shattuck and Company, Cambridge 1833) 229.

⁵Massachusetts Historical Soc. Coll. Series 3.Vol.10,p.56.

⁶Massachusetts Acts and Resolves, 1789 p. 510.

⁷Ibid. p. 83, 37, 507.

In 1800 an act was passed to suppress all lotteries not authorized by law and to prevent the sale of tickets in such lotteries.⁸ From 1803 to 1805 permits were granted for four lotteries for constructing locks on the Connecticut river, building a bridge over the Piscataqua, for locks and a canal around the Amoskeag Falls, and another to complete the improvement on the Amoskeag.⁹ From 1806-1814 five lotteries were authorized.¹⁰

In 1802 the Columbian Sentinel , April 13 published an advertizement which made a strong appeal. It was worded so that it attracted attention and provoked comment. "A curious machine has lately been invented which will churn, scrape potatoes, rock a cradle and darn stockings! However curious and useful this may appear, there is another machine, (old invention) which not only performs all these things but even more -- it enables us to obtain them. This last machine is in the form of a lottery wheel. - - - ."¹¹

By 1821 conditions had grown so bad that Peter C. Brooks began an active campaign to expose the

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⁸ 2 Mass. Acts and Resolves. p. 68.

⁹ Ibid Vol. 3, p. 765, 792, 534, 486.

¹⁰ Ibid Vol. 5, p. 36, 42, 299, 393, 536.

¹¹ Winsor, Justin, Memorial History of Boston Vol.IV p.503.

pernicious effects of the lottery. As a result of his work a joint committee of the legislature was appointed and it was shown that in one case \$500,000 had been collected from Massachusetts by one lottery company operating from another state.¹² Yet in 1825 when a commission was appointed to report on ways and means for building a canal from Boston to New York a lottery scheme was suggested as a means of raising the money. Their report said, "Enquires have been persecuted to ascertain the sum annually expended in this state for the purchase of lottery tickets, and from the best information which can be obtained there is no doubt that it amounts to over \$250,000 annually; and this large expenditure has been made when there is a law of the Commonwealth prohibiting the traffic altogether; which shows conclusively that the public voice is against legislative interference or restraint. --- If it has been proved that the legal countenance which this state has formerly given still induces a disregard of existing statutes, is it not more politic to amend them as shall secure to the Commonwealth those benefits which are now derived by other states?"¹³ The report was

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¹² Mass. Hist. Coll. Series 3. Vol. 2, p. 174.

¹³ 7, Mass. Acts and Resolves. p. 237.

laid before the legislature in 1826 but for some reason the legislature did not permit the scheme to be carried out.

An embezzlement and a suicide in Boston exposed the frauds perpetrated by the dealers in lottery tickets and Governor Lincoln recommended that a stringent law be passed forbidding lotteries or the sale of lottery tickets.¹⁴ The legislature appointed a committee to investigate the evils of lotteries not only in Massachusetts but in other states as well. The report showed that 420 lotteries were operating in nine states and the amount of tickets sold annually was \$53,136,930.¹⁵ The influence and money of the lottery managers could not prevent the surge of public opinion which resulted in the act of 1833 which effectually put a stop to lotteries in Massachusetts.¹⁶

Virginia

Virginia, the home of an aristocracy famed for its love of horse racing and gambling, and whose very foundation was based on a lottery scheme¹⁷ did not

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¹⁴ Winsor, Justin, Memorial History of Boston Vol. IV pp.116.

¹⁵ Mass. Acts and Resolves. Appendix

¹⁶ Mass. Acts and Resolves. p. 281

¹⁷ Original Narratives of Early Virginia (Orig. Nar. of Am. Hist. Series ed. by J. Franklin Jameson) Vol.5, p.437

seem to favor the institution until rather late in the colonial period. In 1739 a law was passed prohibiting private lotteries as productive of all manner of idleness and immorality in the community. No laws were passed providing for lotteries legally until February 27, 1752, when an act was passed to raise 6000 pounds for protection against the French.

In 1769 a severe law against lotteries was passed, the penalty for disobeying this law was to be a fine to the amount of the amount of money to be raised, this money to go to the poor. The preamble to the bill set forth the reasons for passing it: Whereas many pernicious games called Lotteries have been set up in this colony which have a manifest tendency to the corruption of morals, and the impoverishment of families, be it enacted, etc.¹⁸ but provision was made that the House of Burgesses could authorize a lottery by special act.¹⁹ Yet in spite of these laws during the Revolutionary period and for one hundred years after the Burgesses seemed to blow first hot and then cold on the lottery question.

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¹⁸ Virginia Statutes at Large. Ed. by William Hening Franklin Press Richmond 1819 p. 453.

¹⁹ Virginia Statutes at Large p. 353.

In 1777 the trustees of the Hampden Sidney Academy were permitted to set up and operate a lottery.²⁰ In 1779 a law was passed that no person was to raise money either for himself or another by a lottery.²¹ In 1781 a lottery was drawn to build a bridge over Shockoe Creek: for the benefit of a grammar school at Williamsburg 1784²²; for erecting a Mason's Hall 1785²³; for the Washington-Henry Academy and also to a group of Masons to raise money 1786; and from 1789-1792 twenty-two lotteries were provided for by special acts of the legislature.²⁴

From 1784 to 1816 the legislature of Virginia legalized seventy lotteries, the most of which were for educational purposes. Six were for private individuals one of which was to enable a certain William Tatham to complete his library work.²⁵ Between 1813-1820, six lotteries were legalized and the proceeds derived from them formed a substantial part of the state's revenue.²⁶ Jefferson asked for permission to

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²⁰Virginia Statutes at Large p. 321.

²¹Ibid. Vol. 10 p. 206.

²²Ibid. Vol. 11 p. 157, 407.

²³Ibid. Vol. 12 p. 228, 364.

²⁴Ibid. Vol. 13 p. 173,175; 314-316.

²⁵Jefferson's Memoirs (Randolph ed.) Vol. IV p. 428.

²⁶Virginia Laws 1813-1820 p. 427, 501, 527.

sell his lands by lottery but this permission was not granted until 1826, and even then the bill aroused much opposition.²⁷

In 1819 Virginia passed a law forbidding the sale of lottery tickets from other states in Virginia. This gave rise to the famous Cohen-Virginia case. The companies which had been allowed to sell tickets in the District of Columbia were operating also in Virginia. Chief Justice Marshall ruled that the Corporation of Washington had no right, under the act of Congress authorizing lotteries in that city, to sell tickets in any state of the Union, by the laws of which the sale of tickets were not authorized by the acts of the state legislature.²⁸

In 1842 a law allowed licenses to be granted to venders of Virginia lottery tickets, but these licenses must be renewed yearly.²⁹ In 1843 the tax on lottery venders was placed at \$1000. The same year

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²⁷ Jefferson's Memoirs Vol. IV p. 428.

²⁸ Federal Cases 1789-1890 Vol. 25. This case is listed as No. 14827 and cites case No. 14611, the Blodgett case. It says the Cohen case is nowhere reported and the exact opinion is nowhere accessible. The above decision is taken from the National Intelligencer Mar. 5, 1821 which gave the account of the court's decisions of the previous day.

²⁹ Virginia Laws. 1840-1844 p. 378.

a like fine was imposed for setting up a lottery without a license, or selling a lottery ticket.³⁰ In 1850 Virginia rewrote her constitution and prohibited lotteries or the sale of lottery tickets. The same provision was inserted in the constitutions of 1863 and 1872.³¹

RHODE ISLAND

In Rhode Island the lottery system was first introduced by private persons and was suppressed by law January 23, 1723. The reason assigned for the act was that by these "unlawful games called lotteries many people have been led into a foolish expense of money." A penalty of 500 pounds for drawing a lottery, and one of ten pounds for buying a lottery tickets was provided.³² A reversal of opinion had evidently taken place by 1744, because the lottery system was legalized when the legislature passed an act permitting a scheme for raising \$50000 pounds to build the Weybosset Bridge in

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³⁰Virginia Laws 1840-1844 p. 6, 115.

³¹Federal and State Constitutions and Charters Vol.6. p.238.

³²Arnold, Samuel G. History of Rhode Island 2 Vols. (Preston & Rounds, Providence, 1899) Vol. 1 p. 109.

Providence.³³ Records of numerous lotteries being permitted are to be found in the legislative acts. A few of them were: for paving the streets of Newport 1748; for the relief of a debt prisoner in Newport jail 1749; for paving streets and building bridges 1752; for furnishing the Kent County court house, 1753; for a court house and a library at Providence 1756; to erect a Masonic Hall 1759; paving in Providence 1761; to make a passage around Pawtucket Falls so that certain fish could get into fresh water, 1761; to build a steeple on Trinity Church, 1767, and for a Market House in Providence 1774.³⁴

The number of lotteries had increased so by 1822 that the state leaders decided to make them pay a part of the states expenses. No moral question seems to have been raised, rather the public sentiment appears to have supported the legislative action. Every vender of lottery tickets was to pay a fine of \$100. In 1826 a 1% tax was placed on all lotteries. The average amount raised from this tax between the years of 1827-1831 was \$12,000. Beginning in 1831 the state offered

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³³Arnold, Samuel G. History of Rhode Island Vol.1 p.145.

³⁴Ibid. p. 145.

to accept a specific bonus instead of a tax, and the state's income from this source averaged \$9400 . It is probable that to pacify the rapidly rising anti-lottery sentiment the legislature in 1828 apportioned these tax receipts to the educational fund. The last one sanctioned was in 1839 and had five years to run. Before that charter expired the state adopted a new constitution, 1842, in which lotteries or the sale of lottery tickets was prohibited.³⁵

NEW YORK

New York was one of the first states to recognize the evils arising from lotteries, but as it was an easy and popular way of raising money it was permitted. July 1721³⁶, the Assembly passed an act to prevent lotteries in the province, except those to which the Assembly should grant licenses by special acts. In 1746 an act was passed to raise money in this manner to erect fortifications for the City of New York. The

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³⁵ State of Rhode Island and The Providence Plantations at The End Of The Century Ed. by Edward Field. 3 Vols. (Mason Pub. Co., Boston) 1902 Vol. 3 p. 240-244.

³⁶ Colonial Laws of New York. p. 61.

tickets did not sell rapidly, so later in the year two laws were passed for the purpose of making the tickets more popular and to extend the time of drawing.³⁷

Between 1743-1774 there was little restriction of lotteries even though two anti-lottery acts were enacted. Ten lotteries were licensed and the total amount to be raised was 26,245 pounds.³⁸ Various purposes for the lotteries were given, for building and endowing schools and colleges, to build lighthouses, jails and to purchase arms to protect the colonists. In 1747 an act was passed to prevent the operation of private lotteries, but like most of these laws it was evidently not enforced.³⁹ In 1750 the sale of lottery tickets from other states was prohibited, but the New York papers carried numerous accounts of New Jersey, Delaware and Pennsylvania drawings so the tickets were evidently being bought in New York as late as 1775.⁴⁰

In 1774 the Assembly passed an act to more effectually prevent private lotteries and gave as the

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³⁷Colonial Laws of New York. p. 61.

³⁸Ibid. Vol. 3 p. 528, 607, 675.

³⁹Ibid. Vol. 4 p. 377.

⁴⁰Archives of the State of New Jersey Vol. 31 p. 101

reason, "They have occasioned idleness and inattention to business and have given birth to a dangerous spirit of gambling."⁴¹

In 1801 the legislature authorized lotteries to provide a fund; and to improve the navigation of the Hudson River.⁴² In 1814 a law was passed granting Union College \$200,000 and the sum was to be raised by a lottery. There was much opposition to the bill, and it was finally passed through the insistent efforts of the Reverend Mr. Noll who explained and warded off objections.⁴³

New York rewrote her constitution in 1821 and provided that no lottery should be authorized in the state, and that the legislature should pass laws to prevent the sale of lottery tickets except in lotteries already provided for by law.⁴⁴ A law was passed in 1822 putting this provision into effect. Under the old system the lottery managers had been appointed by the governor, but on April 5, 1823, a law was passed letting the institutions for whose benefit the lotteries had been

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⁴¹Colonial Laws of New York. p. 351

⁴²New York State Laws 1801-1803 Ch. 126, Ch. 157.

⁴³Hammond, Jabez O., History of Political Parties in New York. 2 Vols. (C. Van Benthuysen New York 1842) Vol. 1, p. 373.

⁴⁴Federal and State Constitutions and Charters. Vol. 5, p. 2638

instituted, assume the supervision and direction. Dr. Holl representing the institutions, appointed two men, who with him were given the exclusive right to issue and vend lottery tickets in New York until the per cent due the institutions paid off the debts.⁴⁵ No time limit was set on the contracts.

Considerable agitation against the lotteries caused the legislature in 1829 to appoint a committee to investigate conditions. The report was read in the legislature April 23, 1829. "It is not now a question whether lotteries are pernicious in their tendency and unworthy of legislative support. - - The Committee does not believe that the state will be disposed in the present state of its finance to advance such a sum, although the evil of lotteries is felt to be a very great one." The amount yet to be received by Union College was \$143,513.58 and the Fever Hospital had \$100,000 due it. A large part of the amount the Albany Grand Lottery was to be allowed had not yet been raised.⁴⁶ In spite of this report nothing was done at

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⁴⁵ Hammond, Jabez D. History of Political Parties in New York Vol. 2 pp. 92-93.

⁴⁶ New York State Laws 1829 p. 576.

the time, evidently because the legislature felt the state could not raise the money. Governor Clinton two years before had pointed out existing conditions and had vetoed a law to regulate the sale of the tickets of the existing lotteries. He felt that the state must keep to the law of 1822 but deplored the existence of lotteries.⁴⁷

By 1831 the opposition against lotteries was gaining ground. The great New York Consolidated Lottery was attracting the most opposition because of its power and influence.⁴⁸

The previous year a grand jury in the city of New York framed a presentment against lotteries. They reported that 52 drawings a year took place, with prizes amounting to \$9,270,000.⁴⁹ In 1833 New York passed a law abolishing lotteries, prohibiting the sale of lottery tickets and the advertisement of lottery schemes after December 31, 1833.⁵⁰ The act was embodied in the constitution which was adopted in 1840.⁵¹

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⁴⁷ Files Register Vol. 32. (April 14, 1827) p. 122.

⁴⁸ National Intelligencer April 9, 1831

⁴⁹ Files Register Vol. 39 (Nov. 27, 1830) pp. 231-232.

⁵⁰ New York State Laws 1833 p. 222

⁵¹ Federal and State Constitutions V. 5 pp. 2638.

PENNSYLVANIA

Perhaps it was the idea that lotteries were games of chance which kept them from becoming so popular in Colonial Pennsylvania. The lottery was not used to raise money as long as the Quakers were in control in the state. No Friends house of worship or school was erected by their aid.⁵² But lotteries were operating in the state by 1720. In 1729 largely through Quaker influence a law was passed forbidding unauthorized lotteries, and a penalty of 100 pounds was set for breaching the law.⁵³

From 1682-1801 sixty-five references were made to lotteries in the Revised Statutes of Pennsylvania.⁵⁴ By 1731 the law of 1729 had become a dead letter. Many were operated to build churches, schools or bridges, but many others, such as to encourage the grape growing industry, to build a glass factory and to repair streets, were doing a big business.

So great did the nuisance become that in 1762

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⁵²Sharpless, Isaac. Political Leaders of Pennsylvania (MacMillan, New York 1919) p. 44

⁵³Laws of the Commonwealth of Pennsylvania 1700-1781
Vol. 1 p. 327

⁵⁴16 Statutes at Large Pennsylvania

the legislature declared lotteries to be a common and public nuisance and a 500 pound penalty was set for organizing a lottery and 20 pounds for selling a lottery ticket.⁵⁵ In 1798 in order to more carefully control the lotteries that were operating a law was passed which gave the Governor the power to appoint the lottery commissioners. All schemes of lotteries must be laid before the governor for his approval.⁵⁶

From 1802-1805 thirteen permits were granted schools and colleges to operate lotteries.⁵⁷ From 1806-1809 nineteen were permitted for churches alone and many others for schools and highways.⁵⁸ In 1809 there were only three offices for the sale of lottery tickets in Pennsylvania; in 1827, after the passage of the law of 1821 which gave companies the right to set up lotteries for public purposes, there were 60; in 1831, 177; and in 1833 more than 200.⁵⁹

The law of 1821 allowed lotteries of all types to spring up and the evils became so great that in 1833

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⁵⁵1 Law of the Commonwealth of Pennsylvania 415

⁵⁶16 Pennsylvania Statutes at Large 323

⁵⁷17 Ibid. Index

⁵⁸18 Ibid. Index

⁵⁹American History Association Report 1892 p. 174.

a law was passed prohibiting lotteries or the sale of lottery tickets.⁶⁰ The next year a 'Society for the Suppression of Lotteries' was organized in Philadelphia. The society stated that the law of 1833 was being openly and systematically violated. In 1843 over \$3000 was raised by public subscription for the purpose of securing an act to legalize lotteries, but the bill was not passed. The constitution of Pennsylvania adopted in 1873 does not mention lotteries but laws to suppress them were passed.

In 1880 when A. K. McClure, editor of the Philadelphia Times was offered a large sum of money to advertize the Louisiana Lottery he made an investigation and found that in spite of the law of 1873 which forbade Pennsylvania papers accepting and publishing lottery advertizements more than \$50,000 a year was being paid the papers of the state for the use of their columns. He brought suit to test the law and found it defective. He framed a more stringent bill, and after a vigorous campaign it was enacted by the Pennsylvania legislature of 1883.⁶¹

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⁶⁰ Pennsylvania State at Large

⁶¹ Bookman Vol. 21 (May, 1905) p. 298.

MARYLAND

In Maryland as in the other states the acts passed by one generation would be modified or repealed by the next. In 1819 all private lottery schemes were declared unlawful, and common nuisances, and no tickets were to be sold.⁶² Eight years later a bill passed stated that all property so offered for sale could be confiscated by the state.⁶³ In 1829 the sale of lottery tickets or any device to evade the lottery system was declared unlawful. This was not to apply to licensed lotteries.⁶⁴ In 1831 the state declared it would grant licenses for one year to permit persons to sell tickets of Maryland lotteries, as well as those of other states.

By 1834 a reversion had taken place and the law of 1827 was repealed.⁶⁵ Certain individuals were granted permission to dispose of their property by means of lotteries. In 1835 the state commissioners were empowered by law to take all grants and draw all lotteries the same as the state lotteries.⁶⁶ The

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⁶²Maryland Statute Law 1819 p. 258

⁶³Ibid. 1827 p. 329

⁶⁴Ibid. 1828 Ch. 105

⁶⁵Ibid. 1834 Ch. 36

⁶⁶Ibid. 1841 Ch. 52, 205.

great State Armory and Town Hall Lottery was to cease operating as soon as \$225,000 was raised. In 1841 a law permitted the governor to appoint two commissioners who would handle all lottery problems.⁶⁷ All lottery schemes and tickets were to be authenticated by those commissioners according to a law of 1843.⁶⁸ In 1851 Maryland rewrote her constitution and provided that no lottery grant should be authorized by legislation and after April 1, 1859 no lottery should be drawn in Maryland.⁶⁹ The law of 1830 which put this provision into effect said that not only were lotteries forbidden but no tickets from other states could be sold in the state. Advertisements of lottery schemes were also forbidden.⁷⁰ Several lottery companies had charters so they were permitted to run until expiration. Again in 1867 Maryland rewrote her constitution and that time there were no provisions -- lotteries were strictly forbidden.⁷¹

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⁶⁷ Ibid. 1841 Ch. 23

⁶⁸ Ibid. 1843 Ch. 255

⁶⁹ Federal and State Charters Vol. 3. p. 1712

⁷⁰ Maryland State Law 1830 Ch. 388.

⁷¹ Federal and State Constitutions and Charters Vol. 3 p. 1741.

KENTUCKY

Kentucky had rather an unpleasant experience with the lottery companies. In 1816 a law was passed prohibiting all lotteries not permitted by state law.⁷² In 1838 the Kentucky legislature empowered the City of Frankfort to raise \$100,000 by lottery for the use of the city schools and the construction of water works.⁷³ For many years the lottery did not operate, then the managers sold certain classes of it to Simons and Dickinson who advertized it as the Kentucky State Lottery although it had no legal sanction. The law of 1838 had set no limit on the charter so the company could operate, even though it was in opposition to the wishes of the people. This lottery was running in 1865.⁷⁴ In 1870 the legislature repealed all lottery grants, and managers refusing to withdraw their lotteries were convicted in the state courts.⁷⁵

In 1880 another bold attempt to operate in

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⁷²Kentucky Stat. Law 1816 p. 91

⁷³Ibid. 1838 p. 210

⁷⁴National Intelligencer June 7, 1865.

⁷⁵Kentucky Statute Law p. 116

Kentucky was tried by the Commonwealth Distribution Company, Kentucky had her lesson so in 1891 she re-wrote her constitution with an anti-lottery provision.⁷⁶

The story of lotteries in the other Middle Atlantic, New England and Southern states is almost a repetition of those already cited. Vermont and Delaware still had laws in 1890 which gave the legislature the right to charter lottery companies, but no lottery existed in either state in 1890. The last Delaware Company to go out of business was the John Morris Company which ceased to do business in 1862.⁷⁷

New Hampshire passed a strict prohibitive law in 1827 and Connecticut in 1854.

In the newer states of the Mississippi Valley there was very little discussion except in the states of Michigan, Wisconsin and Missouri which are given later. It is true lotteries existed and lottery tickets were sold in all the states until after the rigid enforcement of the law of 1890.

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⁷⁶Federal and State Constitutions Vol. 3, 1292-1315.

⁷⁷National Intelligencer January 9, 1862

WISCONSIN

When the constitutional convention of 1846 was in session, Mr. Fuller introduced a resolution inquiring into the expediency of providing an article in the constitution which would prohibit lotteries. While the Constitution was before the people for adoption the press and public speakers urged its adoption on various grounds. Frequently they referred to the anti-lottery provision which showed there must have been a need for such a prohibition. In "Some Resolutions In Support of the Constitution" published March, 6, 1849, one reason given why the constitution should be adopted was that it prohibited lotteries the 'grand scheme of swindling'. The Racine Advertiser of March 3 says, "It is also provided that the legislature shall have no power to authorize the immorality of lotteries".

Isaac P. Walker in an Address to the People of Wisconsin March 31, 1847, said, "But those we have considered are but a fraction of the provisions contained in the constitution which should be cherished by every true American whether native or adopted, that is the prohibition of lotteries." The Prairie Du Chien Patriot of February 19, 1847, printed the "Views of A Farmer of Grant." According to this farmer it was the best of any

of the American Constitutions notwithstanding its numerous faults. It prohibited lotteries and banks two of the most effectual modes of swindling in his estimation. The Constitution was adopted in 1848 with little opposition. Thirty years later Wisconsin adopted a new Constitution but it contained the old provision which prohibited lotteries.⁷⁸

MICHIGAN

One of the earliest territorial acts provided for four successive lotteries in Michigan. The sum of \$20,000 was to be raised for the encouragement of literature and the improvement of the City of Detroit. In 1809 another act was passed for laying out a road, the money to be raised by lottery. An act of 1829 provided for the drawing of a lottery to raise money for the purpose of establishing free communication by land between the City of Detroit and the Village of Monroe. Managers were appointed, but one of them resigned, giving as his reason that he did not believe 'in any such

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Pub. of the State Hist. Society of Wisconsin
 Ed. by Milo Quaife (Published by the Society 1919)
 Vol. 28 p. 193, 453, 481, 602, 682.

schemes'. Michigan when writing her state constitution in 1850 not only prohibited the operation of lotteries in the state but forbade the sale of any lottery ticket for any cause whatsoever.⁷⁹

Missouri permitted lotteries under her territorial government from 1812-1820. By the state constitution of 1820 lotteries were also permitted; as was also the case in the constitution of 1865.⁸⁰ When the Constitutional Convention of 1875 met, letters were received by the President of the Convention suggesting that a clause prohibiting lotteries be inserted in the constitution. This was done and efforts were made to make the provision effective. No opposition against the measure was voiced.⁸¹

The Constitutional Convention reports of Kansas, Iowa, Illinois, California, Minnesota, Washington, Oregon and Nebraska show that there was no opposition to the anti-lottery provisions in the state constitutions. The following table gives the date of the adoption of state constitutions which prohibited lotteries:

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⁷⁹ Campbell, James V. *Outlines of Political History in Michigan* (Scholar and Co. Detroit 1876) Vol. 15 p. 241, Vol. 36, p. 574; Vol. 37, p. 108.

⁸⁰ Federal and State Constitutions and Charters Vol. IV, 1711

⁸¹ Journal of Missouri Constitutional Convention (Pub. by Mo. Hist. Soc. 1920) Vol. 1, p. 329.

Alabama	1836	1875*
Arkansas		1874*
California	1849*	1879*
Colorado		1876*
Florida	1868	1875
Georgia		1868*
Idaho		1889
Illinois	1848	1870*
Indiana		1851*
Iowa	1846*	1857*
Kansas	1855 .. 1857 . 1858*	1859*
Kentucky		1891*
Maryland		1867
Michigan		1850*
Minnesota		1857*
Mississippi	1868	1890*
Missouri		1875*
Montana		1889*
Nebraska	1867	1875
Nevada		1864*
New Jersey		1844*
New York	1821*	1846*
Ohio		1851*
Oregon		1857*
Rhode Island		1842*

South Carolina		1868*
South Dakota		1889
Tennessee	1834*	1870
Texas	1866 . 1868	1876*
Virginia	1850* . 1864*	1873*
Washington		1889
West Virginia	1861 .. 1863*	1872*
Wisconsin	1848	1878*

Thus by 1890 when Congress passed a strict postal law which effectively put a stop to lotteries, 31 states had constitutional provisions prohibiting lotteries, and Kentucky rewrote her constitution in 1891 so she joined the ranks of states whose constitutions definitely prohibited lotteries. Massachusetts, Connecticut, Maine, New Hampshire, North Carolina and Pennsylvania were living under constitutions which were written before the days of anti-lottery legislation, but they had passed prohibitory laws. Delaware and Vermont prohibited lotteries except authorized by law, but in 1890 none were authorized. Delaware lotteries were running as late as

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82* These states prohibited lotteries and the sale of lottery tickets; the others just prohibited lotteries.

83 For information in above table see Federal and State Constitutions Ed. by Francis Thorpe. (Government Printing Office 1909) 6 Vols.

1862.⁸⁴ Only North Dakota and Wyoming had failed to deal with the lottery question, and the Dakota situation was brought out clearly in the Congressional Debates of 1890. Mansborough, representative from North Dakota said, "Mr. Speaker I recently had the misfortune to encounter what has aptly been called the 'lottery octopus' and like the fellow who accidentally collided with a mule I got the worst of it." By a serious oversight a provision prohibiting lotteries had been omitted from the North Dakota Constitution of 1889. The state was poor and several bad crops had reduced the farmers to the worst sort of poverty. So the Louisiana Lottery Company fearing that Louisiana would revoke the company's charter desired a place to move its business. The company also thought that Louisiana would be frightened into a renewal of the lottery's charter. The lottery company offered to pay North Dakota \$100,000 which was to be distributed to the needy farmers, for a charter to operate in the Dakota capitol. When this offer was ignored 150,000 bushels of seed wheat was offered in addition but still these needy people were too brave and too fine to accept the bribe. This

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⁸⁴National Intelligencer January 9, 1862

shows how strong feeling had developed in some sections against the old accepted form of gambling.⁸⁵

The story of Louisiana has been given in detail because it was in this state that the final fight against lotteries centered. Even so, Louisiana had prohibited lotteries by her constitutions of 1845 and 1852, but in 1865 had made provisions which paved the way for the giant Louisiana Lottery.

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⁸⁵Congressional Record Vol. 21 51st Cong. Pt.9, p.8689.

Chapter III

The Lottery in Louisiana

Lotteries in other states - reasons for popularity in Louisiana - Constitution of 1812 - Constitutions of 1845 and 1855 - new constitution of 1868 - law of 1869 - Constitution of 1879 - Growth of the corporation power in the state - net proceeds A. K. McClure incident - plans to gain consent for renewal of charter - annual drawings - meeting of legislature - Morris makes offer - bill passed - vetoed by governor - failed to re-pass senate - decide governor cannot veto amendment - sent to secretary of state - refuses to publish - Morris sues secretary - Morris gets decision - Congress passes bill - Morris withdraws offer.

The final fight against lotteries centered around the great Louisiana lottery which operated in New Orleans from 1868-1893. Because of the far-reaching effects of this infamous institution public opinion against lotteries crystallized to the point where numerous demands were made upon the national Congress for the passage of restrictive measures. By 1880 practically all the other states had articles into their constitutions prohibiting lotteries, or had passed restrictive legislation. Yet these states were suffering from the effects of the lottery at New Orleans. Money at the rate of \$28,000,000 annually was being sent into New Orleans for the purchase of lottery tickets, so while Louisiana was reaping the benefits, if benefits there were, the other states were feeling not only the effect, but also the injustice.

James Ballagh, professor of political science at the University of Pennsylvania suggests that the reason for the popularity of the lottery in Louisiana long after public opinion had grown so strong against it elsewhere, was explained by the large proportion of Latin races in the state.¹ But other reasons entered

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¹The South in the Building of A Nation 12 Vols. Edited by James Ballagh (Southern Historical Publication Society, Richmond, Virginia) 1909. Vol. 3, pp. 171-172.

in, some of which were: the condition of the state at the close of the Civil War and during the Reconstruction period; the inefficient school system; the bankrupt treasury; the great Mississippi floods and the problem of handling the freed slaves.

In the Constitution of 1812, under which Louisiana was admitted to the Union, no mention was made of lotteries², but various allusions in state histories lead to the opinion that lotteries were common there as well as in other states. The constitutions of 1845³ and 1852⁴ expressly prohibited lotteries and the buying and selling of lottery tickets. Until 1864, it was a criminal offense to draw a lottery or buy or sell a lottery ticket in the state.

In 1868 a new constitution was written and adopted. This gave the legislature the power to license the sale of lottery tickets and the keeping of gambling houses, but a ten thousand dollar tax was to be levied on each gambling institution.⁵

During the reconstruction period, the Constitution of 1868 was forced upon the people. Military rule

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² The Federal and State Constitutions 2 Parts. Compiled by Benj. P. Moore. (Government Printing Office) 1877 Pt. 1, p. 700.

³ Ibid. p. 721

⁴ Ibid. p. 735

⁵ Ibid. p. 750

existed under General Sheridan and the residents of Louisiana, too pressed by the emergencies of the time, probably failed to recognize the significance of the fact that lotteries were not mentioned in the constitution.⁶ One of the first acts of the legislature was to incorporate the Louisiana Lottery for a period of twenty-five years, to date from January, 1, 1869.

Governor Henry Clay Warmoth let the bill become a law without his signature, rather than displease some of his friends by vetoing it. That the law was passed by the use of bribery cannot be denied. The Supreme Court of the state pronounced to that effect in the case of C. C. Antoine against D. D. Smith; and again when Wilder and Irwin, two of the parties named in the charter took formal oath to that effect in the Circuit Court of the United States sitting in New Orleans.⁷

In 1879 a democratic state legislature of Louisiana abrogated the charter but Judge E. C. Billings ruled that this bill was in opposition to the Federal Constitution and so was void.⁹

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⁶Ibid. p. 758

⁷Forum Vol. 12(Ja. 1892) pp. 555-568.

⁸An interesting shide light on conditions at the time when Warmoth was governor, J. a full blood negro was lieutenant governor.

⁹Cusing, Marshall, The Story of Our Postoffice. (A. M. Thayer and Company, Boston) 1893 pp.

In the year 1879 a new Constitution was submitted to the people. The lottery managers pleaded that the charter was protected by the United States Government, said it had freed the state from negro domination, had supported schools and churches and that the charter would be renounced at the close of the period provided in the law. Conditions in the state were so bad and money was so scarce that article 172, of the constitution of 1879, declared gambling to be a vice and commanded the legislature to enact laws for its suppression. But another formal clause (167) declared that the Louisiana Lottery could operate until the expiration of its charter January 1, 1893, and after that all lotteries in Louisiana would be unlawful.¹⁰ The people were between two fires, they must either ratify the constitution with the clause, or reject it as a whole. Rather than retain the old constitution they ratified the constitution of 1879, thus permitting the Louisiana Lottery to carry out its tremendous schemes. For this concession the Charity Hospital was to receive \$40,000 annually.

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¹⁰Federal and State Constitutions and Colonial Charters (1492-1908) Vol. 3 pp. 1433-1500.

In the period from 1879 to 1890 the Louisiana Lottery became one of the most powerful corporations in the world. Its business grew to enormous proportions with capital prizes of thirty and one hundred thousand dollars. It owned and operated the New Orleans newspapers and obtained a controlling interest in other large city dailies all over the country. Four advertized banks were the sponsors of the company, "It controlled the police force, owned the opera houses, the cotton and sugar mills and had a certain reserve fund set aside to grease the political wheels of the state - to quicken the wisdom of the press - to aid the unscrupulous who were needy"¹¹. The company even got control of the Metairie Cemetery and used it to further their schemes. The managers could well afford all this for the twelve annual drawings amounted to \$28,000,000. The total of the prizes was \$15,000,000, thus leaving a clear profit of \$13,000,000. All running expenses were met by the daily drawings which exceeded \$2,000,000. It was stated at the time that the proceeds of the lottery exceeded twice the revenues of the United States Government in

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¹¹
Century Vol. 21 (Feb. 1892) pp. 618-632

1800.¹²

Under the leadership of Morris it took an active interest in politics. It made and unmade governors and judges. Quoting from an editorial in the Century: "A National Committeeman is authority for the statement that in the presidential campaigns of 1884 and 1888 the Louisiana lottery made large and equal contributions to the fund of each party."¹³ So the company was adroitly laying its snares so that when the charter should expire the lottery would be so fastened on the people, that the charter would have to be renewed.

Gradually there had been growing up in the state a feeling of opposition to the institution. This was shown openly in the McClure incident of 1885. In 1880 the attention of Alexander K. McClure, editor of the Philadelphia Times was attracted by the perseverance with which the Louisiana Lottery sought to have advertizements put in his paper. He was also startled by the lavish offers of money which were made to buy space. An investigation showed him that although a Pennsylvania law imposed a penalty for such advertizements, not less than \$50,000 a year was paid to the newspapers of the

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¹²Nation Vol. 53 (Dec. 31, 1891) pp. 503-504.

¹³Century Vol. 21 (Feb. 1891) p. 618.

state for the use of their columns. Mr. McClure brought suit to test the bill and finding it to be defective he framed a more stringent bill. After a vigorous campaign he secured its enactment by the Pennsylvania legislature of 1883.

Morris vowed vengeance for McClure's meddling, for other states adopted similar bills. He waited his time. In 1885, McClure went to New Orleans to attend the Louisiana Exposition. Morris through his spies knew of the visit. Upon his arrival Dauphin acting for the company served him with a writ, claiming \$100,000 for libeling the lottery. McClure called upon some of his friends for assistance, but one of them explained the situation, "We are all in it here and I hardly know how to advise you."

Dauphin meanwhile had telegraphed the story, through the Associated Press, to every paper in the country. This was a mistake for it roused the dormant sentiment of the people of the United States. The unbought press of the country took up the fight. A wealthy man in Philadelphia telegraphed McClure funds to fight the case. McClure's lawyers were witty and Dauphin was soon pleading to be permitted to withdraw

the case¹⁴. This was done, but the lottery had started something it could not stop, it had aroused public sentiment to a place where the people began to demand action.

As the time for renewal approached the lottery company adroitly laid their plans to ask for a charter in 1890 so in case one attempt was a failure there would still be a chance to try again. Even the weather seemed to be on the side of the lottery for a time. The great floods of the spring of 1890 wiped out levees, destroyed homes and crops and left disease and death. The managers sent Governor Nichols a check for \$100,000 to be used in flood relief. He promptly returned it. Immediately they sent checks totaling \$150,000 to the levee officers of the flooded districts. Only one was returned. They sent steamships loaded with supplies to the stricken districts and later when the waters receded they sent thousands of dollars worth of seeds. An offer was made to the Archbishop of the New Orleans district to pay all the church debts, but this was refused. The Sanitary Board of the city needed money, so a check for \$50,000 was spent by the lottery.

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¹⁴Bookman Vol. 21 (May 1905) pp. 298-301.

As a result of its acceptance several of the members resigned.¹⁵ This was previous to the election of 1890. A more disastrous flood occurred in 1891 but the company gave no assistance whatever.

Yet the annual drawings, for which great crowds came to New Orleans, were not neglected. The managers made a point to have the news of the winners published all over the country. They did not say that there were 99,999 chances to 1 against winning the \$15,000 prize; 11,110 to 1 for the \$100 and 45 to 1 for the \$5; but they did play up the chance for winning. The drawings were carried out with great dignity and solemnity. William Shaw Bowen, a New York newspaper correspondent, was present at the drawing of March, 11, 1890 and described the scene. The stage was cleared. A parlor set in gold and black was spread. The floor was covered with a plain green cloth like a faro game. Two beautiful mahogany drums one on each side of the stage were in charge of two dignified white haired men in full Confederate uniform, General Early and General Beauregard who had charge of the drawings. The rest of the house was in darkness but the tenseness and anxiety could be felt.

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¹⁵Cushing, Marshall The Story Of Our Postoffice pp. 506.

¹⁶Forum Vol. 12 (Jan. 1892) pp. 569-576.

When the drawings had been made there was a scream. Several women had fainted, white faced disappointed men crowded out of the building.¹⁷ The drawing was over and the lottery company had cleared another \$13,000,000.

The fight against the lottery was a national affair because officials of the company testified that 93% of the tickets for the annual drawings were sold outside of the state. But the immediate problem was in Louisiana. The anti-lottery forces organized into an Anti-Lottery League. This organization was backed by the Farmer's Alliance and the best interests in the state. The legislature met and the two forces began their campaign. The lottery managers thought they had provided for everything.

Finally John Morris offered the state of Louisiana a sum of \$1,250,000 annually to apportioned as follows: \$350,000 to the public schools; \$350,000 for the levees; \$80,000 to hospitals; \$40,000 to insane asylums; \$25,000 to the Deaf and Dumb Institutions; \$5,000 to the Soldiers Home; \$5,000 for pensions; \$100,000 to New Orleans for drainage and \$250,000 for the general fund of the state. These figures had a powerful speaking force to the people of Louisiana for

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¹⁷Bookman Vol. 21, (May 1905) p. 298-305.

the state was badly in debt, her schools were disorganized, her levees were in decay and because of the lack of proper sanitation, yellow fever and cholera were taking an enormous toll. The bill passed both houses, but Governor Nicholls vetoed it saying: "So far as a claim for the necessity of the present is sought to be predicated upon the assumed condition of the poverty of Louisiana, I, as governor, pronounce it totally without justification or warrant." The House immediately passed the bill over the governor's veto but one of the senators was seriously ill so the senate could not muster the required two-thirds. The lottery element evaded this saying that as this bill was in the form of an amendment the governor's signature was not necessary. A resolution to this effect was sent to the House. The House concurred and the bill was ordered sent to the Secretary of State for promulgation. The Secretary of State refused to publish the amendment, as being illegal. Morris brought suit to compel the Secretary of State to publish the bill. The court decided against Morris so he appealed the case to the Supreme Court, where the case was decided in favor of Morris. In the meantime Congress in the fall of 1890 had passed a postal bill that had real teeth in it and suddenly Morris withdrew

his offer of \$1,250,000.¹⁸

The means used by the lottery were so evident that the institution lost many friends in the campaign of 1890. John Wycliffe, editor of the New Delta a newspaper established by the Anti-Lottery forces said: Just after the adjournment of the legislature which passed the lottery bill in July 1890, one of the senators who had been an active anti-lottery man and who was converted to the lottery side, died at the Hotel Dieu in this city. He was a man who never had a dollar in his life. He was one of those men whom you have sometimes met, that were born \$1000 behind hand and who never caught up. He was deeply in debt and had been so ever since he was a man. From his dead body was taken a money belt, which contained \$18,000 in one dollar bills, all new."¹⁹ Such was the condition in Louisiana in the fall of 1890 when the state aided by the Anti-Lottery sentiment of other states began pleading with congress to help them down the octopus that had a strangle hold on their fair land. Morris and his associates were not yet defeated, they had other cards yet to play; but they had an adversary now, one that was backed by the

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¹⁸Fortier, Alice A History of Louisiana 4 Vols.,
(Goupil and Co., Paris) 1904, Vol. IV pp.220-225.

¹⁹Forum Vol. 12 (Ja. 1892) pp. 555-576.

millions of people who were disgusted with the disgraceful conditions in Louisiana. But that was not all. By the lottery company's own statement 93% of the annual \$28,000,000 was coming from outside Louisiana. That meant that more than \$26,000,000 of hard earned money was going out of the other states into Louisiana. Louisiana was to receive a goodly bonus, \$1,250,000, while the other states were left to foot the bill. When realization came as to the real financial situation, the hard headed, clear thinking business men of the north set about repairing their fences. The only way to do this was by a national postal law.

Chapter IV

A Half Century of National Legislation

(1842 - 1894)

Conditions in Washington - European anti-lottery legislation - the law of 1842 - Postal law of 1868 - Amended in 1873 - Proposed amendment in 1876 - Other attempts at legislation - Supreme Court Decision in Stone-Mississippi case - Many bills 1879-1889 - Reasons for agitation in 1889 - Wanamaker's report - Bills in 1889 and 1890 - President Harrison's anti-lottery message - Debate on anti-lottery bill - Passed September 1890 - Lottery's attempt to evade law - Louisiana Court Decision - Effect of Law of 1890 - Dupre-United States case - Lottery tickets subject to duty - Supreme Court Decision - Conrad's action - Attempt to use Express companies settled by decision of 1894 - Laws of 1894 and 1897.

By 1840, the lottery companies scarcely attempted to camouflage their real purpose. They were becoming gigantic money-getting corporations, although as a sop, they still operated under the name of educational, religious or benevolent institutions. Few, if any, of the intelligent citizens of the United States now thought of the lotteries as anything but what they really were -- licensed gambling houses -- but the institutions had become so fixed and accepted as a part of their lives, that few voices were raised against them.

Washington, the national capital, was the great center of lottery operation in 1840. On Pennsylvania Avenue were the offices of the most popular lottery companies. The January 4, issue of the National Intelligencer carried a full column of lottery advertizements; some of the most well known of which were: Town Hall of Maryland; Delaware State, Wilmington; and the Peterboro Benevolent Mechanic's Association. It was in the early forties that the great Union Lottery was operating in Washington. For the drawing of March 1, 1842, a total of \$193,500 was offered in prizes. The Grand Prize was \$60,000; second, \$25,000; third \$15,000 and down to the last fifty \$500 prizes.¹

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¹National Intelligencer Jan. 4, 1842.

The operation of this gambling house under the very eyes of Congress and the Foreign Embassies led to the passage of the law of 1842. Congress evidently felt that such legislation was necessary if the United States was to follow in the footsteps of other world powers. England had suppressed lotteries by an act of Parliament in 1826; Belgium had prohibited them in 1830 and France in 1836.²

June 3, 1842, discussion arose on a clause of the bill which gave Georgetown the authority to tax lottery offices. A number of the representatives expressed a desire for the suppression of the sale of Lottery tickets in the District of Columbia. The bill to tax lottery tickets was postponed, and the bill to suppress the sale of lottery tickets was passed with an amendment which protected existing contracts previously made by the government.

The bill went to the Senate where a proposal was made that it be postponed. Bayard of Delaware, objected because he felt the bill should be passed at once. He summed up the reasons for passing the bill: "The suppression of lotteries has been one of the improvements of an enlightened age. It is well known they are seductions of the most demoralizing kind. - - - Many of the government

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²Congressional Record Vol.21 (51 Cong., sess.) Pt. 9, p. 8705.

officials pledged their salaries in advance. - - - The effect was felt by those least able to bear privations. - - - The bill would not interfere with existing contracts. The rights of the City of Alexandria were reserved in the bill, and no other city was authorized to establish lotteries."

Campbell of South Carolina made a rather farseeing prophecy when he said: "The evil of lotteries which public sentiment and morals demand should be abolished will not be abated hereby; but the effect will be to grant a monopoly in the business for several years to come."³

No one opposed the bill proper, the discussion centering around the contract of the City of Alexandria. The bill was passed August 31, 1842. After January 1, 1843, it would not be lawful within the District of Columbia to sell any lottery tickets. Any person who bought such tickets could recover his money as all such tickets would be void. This was not to affect any sale of tickets by companies licensed by the District of Columbia, for a period of one year from the passage of the act, or August 31, 1843.

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³ Congressional Globe Vol. II, 27th Cong. 2nd S. pp. 565, 854, 858, 920, 935.

⁴ United States Statutes at Large 578.

So having performed its duty Congress evidently forgot all about the matter for within the next ten years some of the largest lottery companies were operating in the city of Washington.⁵ Such a farce was the law that on January 23, Representative Lawrence of New York gave notice of a motion for leave to introduce a bill to prohibit the sale of lottery tickets in the District of Columbia. Permission was not given and no further mention is made of the bill.⁶ Either Mr. Lawrence felt he had done his duty by his constituents or he was informed by longer minded representatives that such a law actually existed. Mr. Lawrence was serving his first term as representative from New York and was still evidently under the delusion that when laws were on the book of the United States they were to be enforced. But that did not seem to be the case, for as late as 1859 the Grand Consolidated Lottery Company was offering from its Washington office, tickets for sale in a drawing, in which \$75,000 was offered as first prize.⁷

No further national legislation was attempted

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⁵National Intelligencer Oct. 27, 1859.

⁶Congressional Globe Vol. 20 30th Cong. 2nd S. p.332.

⁷National Intelligencer Oct. 27, 1859.

until 1868. Perhaps this was partly due to the great problems of slavery, secession and Civil War which had so engrossed the people and their legislators. More largely though it seems to have been the passive acceptance of a condition which many deplored, yet which few considered to be immoral. In the bill passed July 27, in which the Postal laws were amended, Section 13 says, "That it shall not be lawful to deposit in a postoffice, to be sent by mail any letter or circular concerning lotteries, so called gift concerts, etc." As originally prepared it gave the postmasters the right to remove from the mail any letter or circular which they suspected concerned lotteries. This was a Senate Amendment to the bill to which the House would not agree. Farnsworth of Illinois, as conference delegate, voiced the House objection to the bill. He said the House considered it dangerous to put so much power in the hands of the postmasters.⁸ As the law stood it was practically valueless and but few attempts were made to enforce it.

That lotteries were still considered a legitimate form of taxation by some is proved by the introduction of a bill, in 1870, to increase the public revenue derived from lotteries. The bill was introduced in the

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⁸15 Revised Statutes At Large p. 196.

Senate by Harlow of Iowa. The bill was referred to its proper committee. This committee reported unfavorably, because they said it was in direct violation of the Constitution, which provides that all revenue bills must originate in the House.⁹

The Postal Laws were again amended in 1872. Section 149 made it unlawful to send lottery tickets or circulars concerning illegal lotteries through the mails. One additional step was taken. A penalty for violation of the law, of not over \$500 and not less than \$100 was set. Although there was much discussion concerning certain provisions of the bill, section 159, was not discussed in either house. But when the committee of conference reported on the disagreeing votes of the two houses the House was asked to remove its objection to section 149. The House agreed to concur in this proposal along with some hundred other amendments to which it removed like objections.¹⁰ Farnsworth of Illinois was father of the bill. Illinois had prohibited lotteries by her constitution of 1848 and 1870.¹¹ The fact that the clause

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⁹Congressional Globe 40th Congress. 2nd Session, p. 4412.

¹⁰Congressional Globe, 42 Congress 1 Session Pt. 1, p. 12.

¹¹Ibid 2nd Session Pt. 5, pp. 51, 71, 171, 172, 2264, 3893, 3949, 4105, 4177, 4187, 4459

aroused no opposition is proof that as yet the lottery question was not a national issue. Whether the section relating to lotteries was inserted by Farnsworth to please his constituents or because he honestly felt the need of such legislation is a question not easily determined.

March 9, 1876 Cannon of Illinois proposed an amendment to the Postal Laws of 1872. He asked that sections 3893 and 3894 be changed. In section 3894 which read "no letter or circular concerning "illegal" lotteries, Cannon proposed to strike out the word "illegal" thus making the bill effective against all lotteries. The House passed this amendment without debate but when it came before the Senate Whyte of Maryland raised strenuous objection. In the discussion which followed there was much mud slinging. Whyte and West of Louisiana were the spokesmen for the opposition; Logan of Illinois, Hamlin of Maine, Morrill of Vermont, Conkling of New York and Maxey of Texas united to secure the acceptance of the amendment.

Whyte said he had been one of the leaders in the fight to oust lotteries from Maryland in 1859. Maryland had put a heavy penalty on the sale of lottery tickets -- jail sentence and a \$1000 fine. He opposed lotteries in general but objected to the change because it would

interfere with the rights of the people within those states like Louisiana and Alabama where lotteries were legalized by the voters. This amendment would make it impossible to send lottery mail from one part of the state to the other, even though the lotteries were protected by law. West supported this argument by saying that the government had no right to go within a state's boundaries, and nullify a state law which was not affecting other states. That what was considered gambling in other states was only a harmless pastime in others."

Logan of Illinois resented any statement that a lottery was not gambling. He spoke of the great lottery frauds of Baltimore that had forced the people to pass restrictive laws in 1859, and said, "Of all swindles in the country the lottery business is the greatest."

Whyte said the Maryland lotteries were not frauds that they were conducted by some of the finest men, of some of the highest families in the state. There had been no swindling, they had been conducted as any other honest business in which chance is involved. With unveiled venom Whyte said, "The gentlemen from these states seem to have forgotten they were not too moral to accept money from the lottery tax during the war; but I am delighted that the Senator from Illinois has become so moralized that he would take this decisive

step.¹²

Morrill attempted to show that as long as one state was allowed to send its lottery tickets through the mail, the laws of the thirty-six states which prohibited lotteries were null and void. Maxey of Texas asked Whyte to explain why he fought to put lotteries out of Maryland in 1859, and in 1876 was struggling to keep a law which was permitting a flood of tickets to be sent into his state for sale.

Logan was exceedingly angry because of Whyte's sarcastic reference to his morality. He said the men of the Congress of 1876 could not be held for the mistakes of the congressmen of 1863. Yet even then the heavy tax they had placed on the tickets, was not only to get money, but to put the lottery companies under such a heavy expense they would cease to exist." No man can be an honest gentleman who conducts a lottery. - - - Men may be wealthy and considered as standing very well in society because of their wealth or their position; but if they have made their wealth by lottery schemes, they are no better than gamblers - - - or the keepers of gambling houses. If a man has made a fortune by gambling, his fortune may give him a position in society

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¹²A law was passed March 3, 1863 which put an internal revenue tax on lottery tickets but definitely stated that this law could not be construed to legalize the sale of lottery tickets in states or territories where prohibited by state statute.

- - - but it is the money and not the man that secures recognition. It is on the principle that if a man owns a jackass, he may vote, and if the jackass dies he shall not, so the jackass is respected and the man is not.

Morrill effectively squelched Whyte the only real opponent to revising the section, when he asked Whyte to explain why the measure should be so vital to him since his state had taken a definite stand against lotteries; and rather pointedly suggested there might be other reasons— as even honest gentlemen often gambled on lotteries. The bill passed both houses and was ratified July 12, 1876.¹³

On March 28, 1876 Representative Goodin had asked consent to submit a resolution which was that the Committee on Judiciary should inquire into the efficiency of enacting legislation to prevent lottery tickets from being carried in the mail. Cannon of Illinois had objected because he said there was a bill before the House which provided for such legislation. July 31, Buckner, of Missouri introduced a bill to prevent the sale of lottery tickets in the District of Columbia,¹⁴ but as there had been such a bill since 1842, no further action was taken

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¹³Congressional Record Vol. 4, 44th Cong. Pt.5, pp.4261-64.

¹⁴Ibid. Vol. 4 Pt. 6, pp. 5030.

This law of 1842 had been further changed December 1, 1873, when the laws for the District of Columbia had been revised. A jail sentence of from one to six months and a fine of from \$100 to \$1000 had been imposed on anyone who sold or offered for sale any lottery ticket or part of lottery ticket.¹⁵

It was during this period from 1870 to 1880 that the states were passing more stringent anti-lottery legislation. Alabama by her constitution adopted in 1869, and by a law passed in 1870 definitely prohibited lotteries. A charter had been granted to a lottery company in 1867 which permitted the company to carry on business for twenty-five years, in consideration for which \$5000 was paid to the state university and an annual fee of \$1000 and $\frac{1}{2}$ of 1% on the sale of lottery tickets was to go to the state annually.

The company had kept its part of the bargain. The company sued to force the state to permit the charter to run its course. The case went to the Supreme Court. The question around which the trial centered was whether a state legislature could defeat the will of the people authoritatively expressed. Chief Justice Waite rendered this decision: No legislature can bargain away the

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¹⁵Revised Statutes Relating To The District of Columbia
(1873-74) Ch. 36 Sec. 1174 p. 135.

public health or the public morals. The people themselves cannot do it much less their servants, --- Lotteries are a species of gambling and wrong in their influences. They destroy the checks and balances of a well ordered community. Society built on such a foundation would almost of necessity bring forth a population of speculators and gamblers, living on the expectation of what by the casting of lots, - - - might be awarded to them by the accumulation of others."¹⁶ This decision was rendered in 1880 and expresses the new conception of lotteries which was gradually gaining ground.

The second session of forty-sixth Congress which met in December 1879 again considered the lottery question. A bill to again amend Section 3894 of the Revised Postal Laws, was introduced by Hinkle, representative from Maryland. It was referred to the Committee on Post-offices and post-roads where it was killed. December 15, Money of Mississippi presented a resolution calling on the Post-master-General for information concerning the extent to which the Lottery companies used the United States mail service. This resolution was adopted and the letter was received but nothing further was done.

Neal of Ohio, January 31, 1880, by unanimous

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¹⁶United States Federal Reports Stone vs. Mississippi
101, 818.

consent introduced a bill to prohibit the publication of lottery schemes in the District of Columbia.¹⁷ When the bill came up for discussion, all the representatives seemed to be in favor of its passage, but let by Cannon they said the bill as prepared would be unconstitutional because it would restrict the freedom of the press. If this law was enforced against the papers published in Washington, it would not be doing away with the lottery advertisements, for other papers published elsewhere would not be affected. In this way the Washington papers would be laboring under a financial handicap, which would not in the end, affect the sale of lottery advertisements. Cannon pointed out the fact that in the states such as Ohio, which had effectively enforced such laws, the constitution said there should be no abridgement of the freedom of the press, "unless the press abused this freedom." The bill was voted upon, and the vote reconsidered three times. The result of the first vote -- Yeas 100, Nays 84, not voting 108; second vote -- Yeas 110, Nays 116, not voting 66; third -- Yeas 104, Nays 119, not voting 69, In the third session another bill was introduced to amend

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¹⁷ Congressional Record Vol. 10 pt. 1 46th Cong. 2nd Session. p. 637.

¹⁸ Congressional Record Vol. 10 pt. 1 pp. 929-931, 948-950.

the sections of the Postal Statutes relating to lottery mail. This bill was also lost in committee.

Neal of Ohio did not give up, and in the first session of the 47th (1881) Congress again introduced his bill to prohibit the publication of lottery schemes in the newspapers printed in the District of Columbia. Two other bills were also introduced one to prohibit the issue of money orders for the purchase of lottery tickets and the second to authorize post-masters to return to the senders all registered letters addressed to lottery companies.¹⁹ In the Second session on February 12, 1883, a bill was introduced "for the more effectual suppression and preventing of lotteries by prohibiting advertisements." It was referred to the Committee on Judiciary to which the majority of these bills were referred. But this bill suffered the fate of its predecessors.²⁰ Although the information from the Postmaster General showed that under the existing laws there could be no effective enforcement, the lottery issue was not yet of interest to but a very small proportion of the members of Congress. The increasing number of bills introduced

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¹⁹ Congressional Record Vol. 12 47th Cong. pt. 1, p. 107; pt. 2 p. 1652 and pt. 6, p. 5091.

²⁰ Congressional Record 47th Cong. Vol. 14 pt. 3, pp.2538.

did show however, that there was a gradual awakening to existing conditions.

A bill was introduced in the Senate January 10, 1884, to prevent all lottery advertisements to be sent through the mail. The committee to which the bill was referred, reported favorably on the bill and said that the government's power on this problem had been settled by the Supreme Court in the Phalen-Virginia case, when it was ruled that: "The suppression of nuisances injurious to public health or morality is among the most important duties of government." The committee also had prepared and presented as a part of their report the constitutional provisions and legislative enactments of 35 of the 38 states, which had already moved to outlaw lotteries. The minority report was signed by Groome of Maryland, Maxey of Texas and Jackson of Tennessee. These men said they opposed lotteries, but believed this bill to be a dangerous precedent because Congress could extend this public-welfare principle until every prerogative of the states was absorbed. It could, they reasoned, be extended to gambling in stocks or farm products. The bill received only 22 votes.²¹ Among the opposition were the southern senators which showed that the old state rights

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²¹Congressional Records 48 Cong. Vol. 15, pt. 5. pp.4380-4384.

idea was still prevalent in the South. Two other bills, one to prohibit the delivery of registered letters addressed to lottery companies, and another to prevent the advertizement and sale of lottery tickets in the District of Columbia. Both bills were reported on adversely by the Committee. During the session three similar bills were introduced in the House, but they were either killed in Committee, reported adversely, or laid over. The Senate made an attempt to amend the Postal laws relating to lotteries but this move was also balked.²²

A new note was introduced into the lottery question when Congress opened in 1885. Seven petitions were received which asked Congress to pass a law to forbid all papers, circulars, etc., containing lottery advertisements from being carried in the mail. All these petitions had come from Philadelphia, and probably had a close connection with the McClure incident of 1885: McClure, a resident of Philadelphia had been active in securing the passage of a bill in 1883, which had made it illegal for any Pennsylvania paper to publish a lottery advertizement. His arrest in New Orleans in 1885 had aroused much opposition to the lottery forces.²³

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²²Congressional Record 48th Cong. Vol. 15 p.5, pp.4384.

²³Bookman Vol. 21 (May 1905) p. 298.

In the 49th Congress (1885-1887), three bills were introduced in the Senate to prohibit lottery advertisements from being sent through the post-office. These bills were postponed from day to day until time for adjournment.

In the House eight similar bills were proposed, none of which reached the debate stage. The Committee on Post-Offices and Post-roads proposed that section 3894 of the Postal laws be again revised, but this was laid on the table. In the second session only one bill on lotteries was introduced and that in the Senate. It passed the Senate with only ten dissenting votes but failed to pass the House.²⁴

Nine bills on lotteries were introduced in the House, and one in the Senate in the first session of 1887. Brown of Indiana, and Wilson of Iowa had tried in each successive House since 1884, to put over an anti-lottery law. Now, as previous, the method of putting the bills over was begun by the Anti-lottery leaders. Browne had brought up a bill to prohibit the advertising of lotteries in the papers of the District of Columbia. When attempts were made to delay the bill, Browne on the floor of the House said that the Washington Press had been able to influence the members of previous committees and he insinuated that the managers of lottery companies were conniving with certain representatives to hinder the passage of laws which

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the public, and unbought press of the country was demanding. The opposition led by Rodgers of Arkansas said they opposed the bill because it was an infringement on the freedom of the press; also that other bills which had been proposed were unconstitutional because they took away the rights of the people to be secure in their effects. Cannon said that he was in favor of even more restrictive legislation so that the police power of the land could be used to stamp out all lotteries. Compton of Maryland became quite melodramatic in his speech, when he said the laws of a nation could not force people to be moral. They must learn right and wrong from their parents and the written word of God. After hours of haggling the bill was referred to the Senate Committee on Judiciary where it was killed.²⁶

Two or three incidents which occurred in 1889 brought about the effective legislation of 1890. First, and foremost perhaps, was the statement made by the Louisiana Lottery Company, that 93% of their business came from outside the state. The managers used this statement in an effort to prove, to the people of Louisiana and the legislature of that state, that the lottery's charter should be renewed. They pointed out that while Louisiana

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only provided 7% of the money for tickets, the company was willing to pay \$1,250,000 into the treasuries of the state educational and charitable institutions. Once more as in the McClure case Dauphin and his associates had overstepped their object. The other states were quick to see that they were paying into the state \$26,040,000 annually and were receiving nothing in return. Moore of New Hampshire voiced this sentiment in Congress when he said, " The states are powerless even to protect themselves from this insidious brigandage",²⁶

Second, was the attempt by the Louisiana Lottery Company in 1889 to secure a charter from the state of North Dakota. Dakota had failed to include a provision prohibiting lotteries from her new constitution, and Dauphin seizing upon the omission had offered the people of the state \$250,000 for a charter. Dakota was badly in need of money but her people refused to even consider the proposition.

The gigantic size and far-reaching effects of the company had been brought to light by the McClure incident of 1885 and the presidential campaign of 1888. The South had not yet been fully forgiven and accepted. Perhaps northern politicians saw the danger of such a gigantic

moneyed corporation acting in New Orleans, and feared this great wealth would be used to secure political power.

Gradually there had been growing a spirit of nationalism, which was cemented and strengthened when the idea of State Rights was settled by the Civil War. The new generation had lost the old fear of a centralized government and was more willing to entrust moral issues to the national laws. A wave of morality was due and one of the clean-up problems was the lottery. The Louisiana Lottery was the most powerful and well known, yet lotteries were operating more or less openly in practically every state of the Union. The churches had in most cases taken an attitude of opposition after the lottery companies had thrown off their disguise of charitable institutions and become private money-making corporations. The politicians saw that something must be done. In this they were probably sincere because they realized that lotteries were an evil, but it is not only probable but quite likely that many of the Congressmen speculated on lotteries. In 1889 President Harrison asked Postmaster-General Wanamaker to give him a report of the lottery business. Wanamaker said that several Louisiana Lottery offices were operating in Washington; that their business was so great that express wagons were used to carry the lottery mail to the post-office. Furniture cars were used by the post-office

to carry the out-going mail. Wanamaker estimated that 50,000 letters a month were sent from Washington to the lottery.²⁷

When Congress met in 1889, Blount of Georgia introduced a bill to amend the Postal laws dealing with the transmission of lottery mail. This was the first of a long list of bills on the subject: Dec. 18 a bill to prevent the advertisements of lotteries in the District of Columbia and the territories of the United States, and to prevent the sale of lottery tickets therein; a bill (H. R. 241) to prohibit the mailing of newspapers containing lottery advertisements; a bill (H. R. 242) to amend the statutes so that the Postmaster-General could prohibit the delivery of registered letters to lotteries; a bill (H. R. 8927) to amend certain sections of the Revised Statutes concerning lotteries. Two such bills were introduced in the Senate.

Had it not been for the infamous machinations of the Louisiana Company in their attempt to secure a charter from the state legislature, it is probable that these bills would have been ignored as those in previous sessions. The people began to make demands through petitions to Congress, and the columns of the newspapers and magazines.

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Cushing Marshall, "The Story of our Post-office", pp. 505-

President Harrison in his lottery message of July 30, 1890, fixed the attention of the people on the issue and Congress was forced to act. President Harrison was direct. He said: "The recent attempt to secure a charter from the state of North Dakota for a lottery company, the pending effort to secure a renewal of the charter from the state of Louisiana for a lottery company, and the establishment of one or more lottery companies at Mexican towns near our borders have served the good purpose of calling attention to an evil of vast proportions. If the baneful effects...were confined to the states that give the company corporate powers, the citizens of other states might clear themselves of the responsibility by the use of such moral agencies as were within their reach, but the case is not so. The people of the states are debauched and defrauded. The vast sums offered to the states for charters are drawn from the people of the United States, and the general government through its mail system is made the effective and profitable medium of intercourse between the lottery company and its victims...It would be practically impossible for these companies to exist if the public mails were once effectively closed against their advertisements.. It is not necessary, I am sure, for me to portray the robbery of the poor and the wide-spread corruption of public and private morals which are the necessary incidents of these lottery schemes.

The National Capital has become a sub-headquarters for the Louisiana State Lottery Company, and its numerous agents and attorneys here are conducting a business involving probably a larger use of the mails than that of any legitimate business enterprise in the District of Columbia...It does not seem possible that there can be any division of sentiment as to the propriety of closing the mails against these companies and I hereby venture to express the hope that such powers as are necessary will at once be given to the Post-office".²⁸

The several proposed bills were considered by the Committee on Post-offices and Post-roads. After deliberation the chairman for the committee proposed a bill, (H. R. 11569) in lieu of those previously offered. The House acted upon the proposal and actual discussion of the bill to prohibit lottery companies from using the mail was begun on Aug. 16, 1890, almost a year after the first bills had been proposed.

In the debate on the bill no representative came out opposing lottery legislation, but in both houses attempts were made to render the law ineffective. Two clauses brought out most of the opposition. The one which said that any person, firm, bank, or corporation to whom lottery remittances were mailed, would be considered as authorized lottery agents. Crain of Texas said some firm or individual

might be an agent without knowing it. Blonnet of Texas said this provision must be left in or the law would be worthless. Under the old law the Postmaster of New Orleans had prohibited the delivery of registered letters and the payment of money orders to the lottery company or its manager, M. A. Dauphin. The company had met the situation by naming in a circular, the New Orleans National Bank, to which mail for the lottery could be directed. The postmaster prohibited the bank from receiving this mail, but the bank got out an injunction and the Supreme Court of Louisiana had sustained the bank in its decision.

Hayes of Iowa submitted the committee minority report in which he listed these objections. 1. It is unconstitutional. 2. It is not necessary as the present laws are sufficient. 3. The provisions of the bill are absolutely dangerous in that the tendency is toward centralization. 4. It abridges the freedom of the press. 5. It gives a power of espionage to public officials. 6. It provides for condemnation without hearing. Hayes said he wished to see an anti-lottery bill passed but believed too much power had been assumed in the present bill.

Moore of New Hampshire said if these clauses were omitted, the bill would be ineffective and would suggest that lottery money was circulating in Congress.

He said, "The mails, the national banks, and the channels of interstate transportation are controlled by the national authority and the national authority alone. The National Congress and the National Executive are alone equal to the overthrow of this pestilent corporation, which has become the richest, the most audacious and the most powerful gambling institution the world has ever known." ²⁹

In the debate on the section of the bill which made it legal to try the offender in the district where the article was mailed or where it was received, Caldwell of Ohio said; "Since 1868 the United States has had anti-lottery laws yet despite these laws the United States mail sacks are carrying tickets into every town, city and community in the land...Some seem to fear the press will be oppressed, but the press is making no objection, in fact all but those papers in New Orleans are upholding the bill."

Wilkinson of Louisiana was the speaker who raised the enthusiasm of the House to the pitch where bickering over the clauses ceased. More than once the House unani- mously consented for him to have more time. He knew his subject, he knew the people with whom the law had to deal, and he insisted that the measure must be one which closed all loop-holes of escape. His arguments were not only con-

vincing, but they carried a certain emotional appeal.

"Who can justify the lottery? It takes from the many to benefit the few. It reaps its amplest harvest from among the poor...It is an adept in the tempter's art...Those intrusted by others with sums of money, large or small, are the easiest victims of its allurements...This corporation which by its daily drawings tempts to the taking of twenty-five cents from the daily market money, has a revenue many times greater than that of Louisiana...And this institution masquerades under the guise of disinterested charity and a magnificent philanthropy...If all its tickets were sold, its revenue would be more than that of seventeen state governments I could name. At the very time the legislature met, a time of distress and danger came to thousands living in the alluvial lands of the Mississippi Valley...To relieve this distress, the lottery company poured out money with lavish, if ostentatious liberality."

Wilkinson's time was up but he was urged to go on.

"The distress came at an opportune time for their purposes. It was a godsend to the lottery company...The good opinion of the people was needed and needed badly. It was a good time to keep the right hand fully informed of what the left hand did, and to spread abroad the accounts of the noble benefactions of the lottery."

Wilkinson went on to explain the adroit method used by the lottery company to get its amendment accepted by the people. It was worded thus: Be it enacted, "That at the next general election, all electors shall write or print upon their ballots these words, For the levees, schools, charities, pensions, drainage and lotteries amendments, and all electors who desire to vote against the amendment shall write...the words, Against the levees, etc.

Again Wilkinson's time was up, but cries of "Go on, Go on," gave him the time to close his argument.

"Congress has the right to say what shall be carried in the mail and what shall not...The highest court in the land ruled upon this point when Justice Field said in delivering the opinion of the court in the Jackson - United States (96 United States Supreme Court Report)--The power possessed by Congress embraces the regulation of the entire postal system of the country--Wilkinson said he did not oppose the lottery as a moral issue only, but as an agent which was operating against the best interests of the nation. "Rid of one era of slavery," he said in closing, "I have no desire to see another."³⁰

Other points brought out led to some changes and additions in the bill. Evans of Tennessee stressed the annual profits of the lottery, \$13,232,000, and insisted

that unless the bill was a carefully worded one, the lottery company would evade its enforcement before they would lose \$13,000,000. He explained some of the ruses they were using to pay postage on their lottery circulars. The Spirit of the South, a cheap sporting paper, carried columns of lottery advertising. Fifty thousand copies, or two and one-half tons of this paper, were mailed monthly. The entire postage was but \$49.67. To have mailed fifty thousand circulars would have cost \$1000.00. Evans also showed that the national banks of the country were buying lottery tickets and had two sworn statements which stated that on July 15, 1890, the National Bank of Tacoma had drawn a \$100,000 prize, and on the same day the First National Bank of Waco, Texas, had drawn the third capital prize of \$50,000.00. He pointed out the danger of such a tendency, and insisted that the national banking laws should not permit such things. He also presented advertisements and circulars to show that Mexican lotteries encouraged by the Louisiana Company's success in evading the laws were also flooding the country with tickets. (This led to the addition of a clause by which the postmaster was to refuse to accept any paper in the mail that carried such advertisements).

Evans saved his most effective bomb until the last. "I am advised too, that not long since,...a well-known gentleman gave a dinner to a number of distinguished

gentlemen, and when the wine flowed freely, one of the speakers of the occasion took the opportunity to put all parties upon notice that if there were any legislation permitted at this session of Congress antagonistic to the interests of the Louisiana Lottery Company, the Company would see during the next campaign that any member favoring such legislation should be relegated to the shades of private life."³¹

Harsborough of North Dakota then told of the experience of his state with the Louisiana Company and explained how they had attempted to bribe the people for a charter.

With these arguments, with these facts, and with the eyes of the anti-lottery press, the great voting public and President Harrison upon Congress, the members did not dare to fail to pass a law which was strong enough that it could be effectively enforced. The vote in the House was not even counted.

The bill evoked little or no discussion in the Senate when it was considered as a Committee of the Whole. It was passed by the Senate Sept. 18, and Sept. 27, the bill was signed by President Harrison.

But the fight was not ended, and the Postmaster-General knew he must put his best men into the field if the

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law were to be enforced. A man was sent to New Orleans to confer with Governor Nicholls and other reliable men to get the names of men who could not be bribed or frightened. From this list, President Harrison appointed D. M. Eaton as postmaster of New Orleans. William Sullivan of the St. Louis division was sent to New Orleans to assume supervision. No attempt was to be made to try cases in New Orleans.

In May 1891 the Louisiana Supreme Court granted the mandamus which compelled the Secretary of State to permit the voters to pass on the lottery amendment. Paul Conrad who had become president of the lottery company on the death of M. A. Dauphin began laying plans to evade the law. He mailed out thousands of circulars on which were printed the Supreme Court decision, and within these were envelopes addressed to the New Orleans National Bank, well known agent of the lottery company. When this scheme was detected, he attempted to send tickets by first-class mail. Again his ruse was discovered. Then he used the plan of mailing his letters, circulars, etc. from widely isolated post stations and mail boxes. This, too, was soon stopped. The amount of business done by the company in September 1890 and July 1891 shows that the law was being effectively enforced.

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Cushing, Marshall The Story of Our Post Office, pp. 505-565

	Sept. 1890	July 1891
Ordinary letters rec'd by lottery	30,000	534
Registered letters rec'd by lottery	8,464	41
Money orders paid to lottery	\$1,635.98	\$93
Postal notes " " "	8,275.86	\$ 200.48 ³³

The post-office department provided a large poster which was hung over every letter drop in the United States. In large letters was printed the warning not to break the law, and the penalty in case the law was broken. El Paso, Texas, and New Orleans were the two places where the most frequent attempts were made to send and receive lottery mail.

George Dupre, one of the editors of the Daily States, went to the post-master at New Orleans, on January 17, 1891, and stated that he had come for the purpose of violating the anti-lottery law that the case might be tried out in the courts. That the fate of the lottery rested upon the decision of the Supreme Court, was not denied by the lottery managers. The managers could not keep going with the loss they were meeting, neither could they afford to pay the \$1,250,000 which they had promised to pay, if the people should vote for the proposed amendment.

During the wait for the final word, the company used many measures to get their tickets advertised and sold. One was to have papers printed in Canada and Mexico carrying full page advertisements. Other foreign lottery tickets also flooded the country. Article 11 of the Universal Postal Union Treaty forbade the mailing of an article from one administration of the Union to another, which under the laws of the country of destination would be liable to custom duties, and as lotteries were dutiable, they could be treated as forfeited goods. Postmasters could stamp the letters "Supposed Liable to Customs Duties", and when a letter so endorsed reached the place of destination, the postmaster could hold the letter until called for by the addressee, and it must be opened in the presence of a customs official. Once again the lottery company was balked.

The Supreme Court handed down its decision in February 1892, and unquestionably stated in this decision that the anti-lottery law was constitutional. ³⁴ Paul Conrad accepted this as final and published extensive notices to the effect that no employee of the company should mail any letter in any way referring directly or indirectly to a lottery. The pro-lottery party immediately withdrew their ticket from the Louisiana state campaign, then in progress,

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United States Federal Reports (Dupre vs. United States)

and a strong anti-lottery legislature was elected.

Only two more laws and one more Supreme Court ruling, and the lottery was relegated to the has-been class. In 1894, Congress passed a law debarring foreign lottery tickets and advertisements from the mails; and in 1897, this law was made more effective.³⁵ The lottery companies had for a time attempted to use the Express companies, but in 1894 the Supreme Court ruled that, as, express companies were interstate carriers, Congress had the right to prohibit the carrying of lottery tickets.³⁶

Public wrath against the lottery was only one phase of a wider agitation. The 51st Congress enacted two very important legislative measures which reflected the rapidly growing hostility to trusts, and to the other lawless corporations, such as the Louisiana Lottery Company. With this great organization fell countless minor lotteries which had been operating, illegally, in other states.

35.

United States Statutes at Large, 53rd Congress, Session 2, Chapter 349.

36.

United States Federal Court Reports (Champion-United States)

Chapter V
Anti-Lottery Sentiment

Early opposition - Why it did not come to
a head earlier - Conditions which contributed to the
continuance of lotteries - Reform movement of 1880 -
Contributing causes leading to opposition - American
love for Chance - Substitutes - National Movement -
Moral sentiment against lotteries - Opinions

The growth of the anti-lottery sentiment which resulted in the abolition of the institution, is just another of those periodic psychological movements which are made up of so many complex motives and cross sections of human thought and action. Gambling crazes are like other fads which sweep the country at times. Mah-johng was popular a few years ago. Now the sets are piled away in garrets or cellars. Today short skirts are accepted not only as healthful, but entirely in keeping with our active feminine life. Another generation will probably consider them as one of the major contributing causes of the so-called loose morals of today. One hundred years ago lotteries were not regarded as gambling devices by the majority of the people; rather they were looked upon as an interesting and extremely successful method of raising money. As all crusades are slow to gather momentum, and are retarded or hastened by contemporary events, so was the anti-lottery movement. It was not until 1832 that the prevalence of lotteries and the abuse of the system brought forth more than the usual opposition to any custom, institution or belief.

The movement at first, as has been shown, was a state force entirely. Two moving factors in the beginning of the agitation were the attitude of the Quakers and the great reform movement that swept over Europe from 1825-1835. Perhaps it would be more correct to say that the Quakers,

who as early as 1759 had begun an active crusade against lotteries, seized upon the European reform movement as a means of carrying out their own ideals.¹ Massachusetts in 1832 passed an anti-lottery bill which attracted wide attention and caused much comment.

Two pamphlets were published in 1833; one was Palmer Canfield's Petition On Lotteries To The Legislature of New York, and J. R. Tyson's, Brief Survey of the Great Extent and Evil Tendencies of The Lottery System As It Exists In The United States. Both were widely read.

Two antagonistic views were presented. The staid old North American Review, always slow to take a stand on any subject, published a highly complimentary article on a lecture given by G. M. Gordon before the Young Men's Christian Association at Boston. Gordon discussed the two prevalent arguments for lotteries: first that they were not gambling, and second, that they were a form of insurance. He said, "Whatever has a tendency to create an excessive thirst for gain, or to excite irregular appetites and desires, must make men vicious." Gordon disposed of the insurance argument by saying that insurance was collected only by those who had property to protect, and who paid for this protection merely as they would hire guards.²

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1. Jones, Rufus M., The Quakers In the American Colonies. (MacMillan Company, New York, 1911) p. 147-8
2. North American Review, Vol. 37, (Oct. 1833) p. 494

The anti-lottery movement which was only one phase of the wider reform wave which embraced temperance, education, prisons and slavery, was lost sight of in the bigger, more overshadowing issue of slavery. After 1840, the United States was being swept rapidly to the verge of Civil War, and statesmen and reformers were too absorbed in the gigantic task to bother with the minor, more personal issue of gambling.

When the Civil War was over, when the problems of reconstruction had been partially met, another wave of reform, growing out of the lax conditions following the war, swept over the country. Historians are agreed that there was a great moral break-down between 1865 to 1875. Confusion naturally attended the attempt at re-organization. Added to this was the rush and stress of great expansion in all lines of business and commercial enterprise. Railroads were being flung across the continent, oil and coal lands were being developed, factories were growing and expanding. Speculators and jobbers stole government money. Fortunes were being made in a few months, dishonestly, of course. Men like Jay Gould were paying \$100,000 bribes to get control of certain vantage points; the Tweed Ring was operating in New York; the gigantic Credit-Mobilier was secretly offering shares of railroad stock to congressmen; the great "Erie War" with all its attendant dishonesty;

and the "Petrolia" scheme was defrauding thousands. It was at this time that Gould and Fish attempted to secure a corner on the gold supply of the nation. So it was but natural that men not qualified to enter the more exacting business-world scramble, begun to revive the lottery, in a bigger more attractive way. To be sure lotteries had never ceased to exist, but now they took on a new lease of life, sponsored by great corporations who made little pretense to any educational or charitable motive.

By 1880 the natural cycle of reform set in. The United States was a little ashamed that she had been so slow to take up the big moral movements. England had abolished slavery in 1832, the lottery in 1826. Other European nations had done likewise, so public sentiment in opposition to open gambling schemes became a real issue.

Other factors as usual contributed to the major cause. Some of these must be placed in the questionable list, yet it is quite likely they played a part in the final abolition of lotteries. For one thing lotteries had lived their day. Men were speculating in the stock market or risking big sums in the development of great business undertakings in the new states. A rather interesting connection between the history of the Stock Exchange in England and the lottery business might be found to exist in the United States. In the early part of the nineteenth century the

lottery companies operated as a sideline of the great London Stock Exchange. One of the advertisements reads, "Tickets and shares are selling by Hazard Burne and Co., Stock Brokers South Gate of the Royal Exchange." Three reasons were given for the discarding of the lottery by the Exchange; first the great clerical force needed to handle the small sums of money for tickets and parts of tickets, the feeling against the wealthy brokers taking the money of the poor, and the enormous increase of the business of the Stock Exchange. At least the lottery died easy in England after the prohibitive bill of 1826.⁴ In the United States the gambling in stocks did not become a wide spread custom until 1870. It seems quite likely that when Big Business turned its attention elsewhere, the lotteries were open to the tide of public opinion from which they had been screened.

The American people have deeply rooted in them that characteristic which may be termed gambling. The colonies had been settled by the most adventurous element of Europe. The spice of risk and adventure played a large part in the settlement of America. The Puritans dared unknown dangers and privations for religious freedom; the Cavaliers came with the hope of making easy money. In fact the basic idea at the root of colonization was a desire for gain, either in the form of religious or personal

4. Duguid, Charles, The Story of the Stock Exchange
(Grant Richards, London, 1901) pp. 215

liberty or the more material one of free land and great undeveloped resources. One writer has said, "Gambling was in the blood of the time. When such a proportion of the population was adventuring forth to build new homes, when those with little capital were risking it in such precarious enterprises as railroads and gas companies, it is not surprising the men bet on horse races, and that lotteries were a feature of the day."⁵ But as the Indians were vanquished and the wilderness conquered, life also changed. Other interests came to the fore. There was more time for wholesome outdoor sports which satisfied the craving for competition and chance. With improved roads and communication, amusements were more general. The vicarious thrills of the stage, the excitement of travels, the appeal of magazines and books all acted as a substitute for the expectations of the lottery.

By 1880 the great nationalist movement was in full swing. The old idea of states rights had been definitely suppressed by the Civil War. New conditions, new phases of life, new trends of thought meant a gradual cession of power to the national government. Attempts had been made by the states to regulate the great corporations, and other gigantic enterprises. These attempts had been useless.

5. Fish, Carl Russell, The Rise of The Common Man (MacMillan, New York, 1927) p. 160

The new nationalist group saw that the only way to control organizations whose business was conducted in various states was by means of congressional legislation. The Louisiana Lottery was now not only a moral issue, it had become a political and business factor. While the debates in Congress and the press of the time urged the passage of the Anti-Lottery bill, because of the demoralizing influence of the lottery, it is quite probable that had the Louisiana Lottery not been a danger in politics and to certain lines of business, even though laws had been passed, they would not have been enforced.

There was a class in the United States that fought the institution on the moral basis alone. The magazines of the period carry articles and editorials voicing the sentiment of the law-abiding, upright citizens of the country. While some of the editors of newspapers and magazines probably believed that the lottery should be allowed to exist, yet they knew that to take this stand at this particular time would not be politic. It is true that a number of Louisiana papers, such as the Spirit of the South and the New Orleans Daily States, were openly and avowedly lottery supporters, but it was a well known fact that they were owned and operated by the Louisiana Company, or had accepted money from the Company. In return their policy was to be dictated by the lottery managers.

It is a rather interesting fact that the magazines

of the better type were almost silent on the lottery question until after the passage of the Postal Bill of 1890. From 1890 - 1895 there was much question whether the law could be effectively enforced. There was also much doubt as to the outcome of the Dupre case which was not decided until 1892; and until that case was definitely settled, the status of the lottery in Louisiana could not be determined. The amendment to the state constitution had not yet been put before the people, but the Supreme Court of Louisiana ruled in 1892 that the amendment should be submitted to the people in 1893. All this furnished an interesting subject of discussion.

The Century's editorial policy was one of open opposition. One writer said: "If the lottery should succeed, it is no figure of speech to say that the life of one of the fairest states of the Union would be crushed out of it for at least one generation....The Louisiana Lottery is a curse from one end of the country to the other. Unless it is crushed out, it will ally itself with every sinister influence in the nation, and breed evil, and that continually, to the end of its pestilent days."⁶

The following month one editorial writer, under the head, "The Louisiana Lottery, a National Infamy", said, "Never before has one state of the Union so prostituted her

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Century, Vol. 21 (Feb. 1891) p. 633

authority to her own reproach and to the injury of her sister states: and never before has the general public been so apathetic toward such imposition, such infection, and such robbery. A point has been reached where the existence of the Louisiana Lottery is not merely the degradation of a State; it is a national infamy."⁷

Newman Smyth writing for the Forum discussed the changed attitude toward lottery gambling. "Frequent agitation in the newspapers and the record of legislation for the past two years, show that a vigorous awakening of public sentiment is taking place concerning modern forms of gambling... A few years ago, lotteries at church fairs, and various devices of philanthropic raffling might have been mentioned among the beginning of evil; and the fair promoters were the thoughtless sowers of seeds whose later fruits fell to the possession of the gamblers. But no respectable church nowadays would permit such temptations in the name of charity."⁸

In this connection the following clipping from the Historical Magazine which in turn was borrowing from the New York Examiner and Chronicle:

A Marked Change

As a marked illustration of the change the

7 Ibid, Vol. 21. (March 1891) p. 789
8. Forum, Vol. 19 (April 1895) p. 238

whirligig of time has brought about concerning certain practices, a New Haven paper publishes the following curious extract from the Diary of the Reverend Samuel Seabury of Sedyard, grandfather of Bishop Seabury,⁹ He esays: "The ticket, 'No. 5886' in the Lighthouse and Public Lotteries of New York, drew in my favor, by the blessing of Almighty God 500 pounds sterling, of which I received 425 pounds, there being a deduction of 15%; for which I now record to my posterity my thanks and praise to Almighty God, the giver of all good gifts." In the light of our more correct appreciation of the immoral tendencies of lotteries and all other forms of gambling, the above pious thanksgiving reads strangely enough.¹⁰

So the opinion and sentiment against lotteries which had always existed within a small group, gradually gained momentum when it was aided by the financial and political interests of the nation. It was not only in the papers and magazines that the people expressed their desire. A flood of petitions went to Congress in 1891 and 1892 asking Congress to pass an amendment to the constitution if they could not legally outlaw the lotteries.

9. Samuel Seabury, 1729-95 was the first Bishop of the Episcopal church in America. His grandson, also Samuel, and also a Bishop died in 1872.

10. Historical Magazine, Vol. VI. Oct. 1869

Some writers even proposed a tax so heavy it would be prohibitory, but the legal opinion of the United States agreed that such a tax would not be constitutional, for its purpose would be to destroy, not simply to raise money.¹¹

C. C. Buell, in his article, "The Degradation of a State" sums up the situation. "The lottery has always been a national issue but the people did not realize it; the moral issue aside, it remains a business and a political issue. A National Committeeman is authority for the statement that in the campaigns of 1884 and 1888 the lottery made large and equal contributions to the fund of each party. What would it not give for a deaf, dumb and blind Postmaster General in Washington, and a friendly postmaster in New Orleans, no matter of what party?--It is first and last a national question. New Orleans is only an incident."¹²

11. Atlantic Monthly, Vol. LXII (April 1892) p. 523

12. Century, Vol. 21 (February 1891) p. 618

Preface to Part II

The chapter on Obscene Literature merely scratches the surface. To make an extensive study it would be necessary to examine the files of all the leading newspapers in the United States, as well as the court proceedings. Magazines like Harper's, Nation, Century, North American Review, and Atlantic Monthly scarcely mention the subject. Perhaps this is because previous to the opening of the twentieth century the discussion of sex morals was not considered a fit subject for conversation or writing. Anthony Comstock represents the old view point; Bennett, Heyword, the Chaplin Sisters, Moses Harmon, Walt Whitman and others took up the fight in defense of an unrestricted press and postal system. The fight is still on, but the success at present has a tendency to swing in favor of the more liberal minded, if such they can be called.

Obscene Literature to 1890

State laws - Law of 1842 - Act of 1842 amended
1857 - Opinion of Livingston - Postal Law of 1865 -
Conditions that led to printing of such literature -
Chaplin Weekly - Anthony Comstock - New York Y. M. C. A.
Comstock appointed to Vice Committee - Law of 1865
revised - Beecher Tilton case - Bill of 1873 - Report
of Comstock's work - Appointed Postal Censor - Trials
and Convictions - Opinions - Bennett case - Heywood
case - Harmon Case

The national attitude toward obscene literature was much the same as that toward lotteries. The states had attempted to handle the problem by state legislation, but they found their efforts futile against the great number of books, magazines and newspapers, whose immense circulation took them into every corner of the country. More and more the people were turning to the national government for a solution of their difficulties and by the seventies this had become a moral question which demanded attention.

During the Reconstruction period which followed the Civil War, a tidal wave of melodramatic crime swept the country. Extravagance in living, gambling, wild speculation, frauds and sex immorality gave the press a chance to print sensational news. Another class of men took advantage of this abnormal condition and began to flood the country with obscene pamphlets and papers for which they found a ready market among the young boys and girls of school age, as well as adults.

One of the first cases which attracted wide attention was the famous Commonwealth of Pennsylvania against Sharples tried in 1815. The indictment charged that certain yoemen being evil disposed persons exhibited in a private house, "a certain lewd, wicked, scandalous, infamous and obscene painting." The case was decided against Sharples for at that time public opinion would not tolerate an acquittal.

The state statute books bear evidence that this problem is not a new one. Evidently such literature has been in circulation ever since printing made books and papers cheap enough to be widely read. Vermont passed a law prohibiting obscene literature in 1821;¹ Massachusetts in 1835,² and Connecticut in 1834.³ But as long as part of the states passed no restrictive legislation, and so long as it could be carried in the mail, the papers and pamphlets went everywhere.

By 1842 there was enough traffic in such books and pictures from foreign countries, for Congress to feel the necessity of adding a provision to the tariff law which prohibited the importation of all indecent and obscene prints, paintings, lithographs, etc.

That it was a moral problem is proved when a reader wrote to the National Intelligencer in 1855. He said, "All such books (obscene) should be suppressed by law and burnt by the police." It is quite probable that someone had suggested then as they now do so frequently, that it would infringe upon the liberty of individuals for he goes on to say, "Would this be contrary to liberty, liberty properly understood? No, too much liberty is not liberty, but the malignant and subtle foe of liberty."⁴

1. Vermont State Laws, 1821. Ch. I, Sec. 23
2. Massachusetts Revised Statutes, 1835, Ch. 130
3. Connecticut State Laws, 1834, Ch. 5.
4. National Intelligencer (April 5, 1855)

In 1857 Congress amended the act of 1842 and added to the proscribed list, engravings, photographs, images, and various other articles. It also provided for the destruction of confiscated articles and for the court procedure in such cases.¹

Edward Livingston, Secretary of State under President Jackson stated the complexity of the problem in a letter to Du Ponceau, a French lawyer friend of Philadelphia. Livingston's opinion in 1834 sounds startlingly similar to statements read today. Livingston at the time was preparing a penal code of laws for Louisiana, which attracted favorable attention at home and abroad. He wrote: "In the revision of my criminal code I have now under consideration the chapter of offenses against public morals. This is intended to comprehend all that class which the English jurists have vaguely designated as offenses contra bonus mores, finding it easier to do this as they do in many cases, to give a Latin phrase that may mean anything rather than a definition. I have serious thoughts of omitting it altogether and leaving the whole class of indecencies to the correction of public opinion. I have been led to this inclination of mind from an examination of the particular acts which in practice have been brought under the purview of this branch of criminal jurisprudence. In the basence of anything like principle or

1. 11 U. S. Stat. p. 168

definition I was obliged to have recourse not only to precedent, but to the books of precedents; and they strongly reminded me of some forms which I have seen in Catholic church books of questions which are to be put by the confessor to his penitent, in which every abomination that could enter into the imagination of a monk is detailed in order to keep the mind of a girl of fifteen from pollution. Turn to any indictment of this kind in the books for the publication of obscene prints or books, or for indecency of behavior, and you will find innuendoes and the exposition of the offense infinitely more indecorous, more often violation of decency, than any of the works they are intended to suppress." 1

This letter of Livingston's indicates that the handling of obscene literature was a problem at the time, and that numerous cases were coming into the courts for decision. In 1865 a bill was passed by Congress as a provision of the Postal Laws, which provided that no obscene book, pamphlet or other publication of a vulgar and indecent character should be admitted to the mail. For mailing such literature a fine of \$500.00 was to be imposed or imprisonment for not over one year.²

In the original bill the postmaster was to have power

1. Hunt, Charles Haven Life of Edward Livingston
(Appleton and Co. New York 1864) pp. 289-290

2. 13 U. S. Stat., 507

to exclude such material but Congress opposed such a radical measure, arguing that it put too much power into the hands of the postmaster and was a dangerous precedent. As finally passed the law was not rigid enough to be practicable.

From 1840 to 1870 many communistic colonies, which advocated and practiced free love were started. Some of the best known of these were the Oneida Creek, Kirtland, Ohio, and Perfect Church at Salina, New York. The advocates openly flaunted and preached their extreme views. Books on the subject were being avidly read, especially those of the Reverend John Humphrey's Noyes. His books The Berean (1847) and Bible Communism (1848) contained passages and discussed conditions which even in modern times would be considered rather too plain. Noyes preached and wrote on the theory that, "In a Holy community there is no more reason why sexual intercourse should be restrained by law than why eating and drinking should be."²

With so much obnoxious material before the people, from the pulpit, in the press and daily conversation, it is not strange that crowds of men and women fought to hear Virginia Claplin Woodhull's lectures on "Free Love",³ and that a mass of dirty, obscene pamphlets and pictures hiding

1. Congressional Record 39th Cong. 1st S. pt. 5, p. 495, 849, 1752, 2934
2. Noyes, John Humphrey, The History of American Socialism (J. B. Lippincott & Co., Philadelphia 1870)
3. Sachs, Emanie, The Terrible Siren (Harper Brothers, New York, 1923) pp. 129-135.

behind the new cults and Spiritualism flooded the country. Publishers who were in the game for making money got the addresses of school children and mailed them advertisements telling about certain rank pamphlets and pictures which could be obtained for a small sum. The children who had heard just enough of the free love communities and such characters as Virginia Woodhull to excite their curiosity became regular readers of this mass of unclean literature that was flooding the mails and which the law of 1865 was not able to stop.

With conditions so bad the reaction was bound to set in. One of the chief factors in the movement to suppress obscene literature was Anthony Comstock, nicknamed the "Roundsman of the Lord". Comstock was born in 1844 and early in life showed those traits that were later to make him the leader in the fight against unclean literature. To tell the story of the crusade on this question, is to tell the story of the life of Anthony Comstock, for around him centered the enforcement problem. He was appointed postal censor in 1873 and served in that capacity until his death in 1915. So widely known did he become for his war on publishers of obscene literature that the word "Comstockian" was formed by his enemies to denote their

contempt for his method of securing information.

In 1866 the Y. M. C. A. had conducted an investigation in New York City and reported that the traffic in obscene literature was extensive, but no effective steps had been taken to stop this traffic. Comstock felt that this literature was the cause of all the social evils of his time. In 1882 when he reviewed his work and the reasons for undertaking it, he said that he found many of his business associates had been ruined by these demoralizing publications. In 1868 a good friend had been led astray, corrupted and diseased, and this incident had led young Comstock into action.¹ He soon became aware that there was an organized business, systematically carried on. After making several arrests he saw that he needed money and help, so he wrote to Mr. ^McBurney of the Young Men's Christian Association. This letter came to the attention of Morris K. Jessup, president of the association. This wealthy man became interested in Comstock and his work, and thereafter held an ever ready open purse for Comstock's schemes. Comstock as a local officer had already done much, but he had been handicapped by a lack of funds. Jessup's check for six hundred and fifty dollars was an answer to the militant young Comstock's prayer.

Next Comstock interested the Y. M. C. A. to the extent that a Committee for the Suppression of Vice was appointed

1. North American Review (Nov. 1882) p. 484

and Comstock was the acknowledged leader. Through the influence of this committee and a few dailies like the New York Tribune, the law of 1865 was revised in 1872. This more clearly defined the scope of the law, but it was still weak in numerous places. When Comstock attempted to prosecute cases he soon found the law was not yet strong enough to be effective.¹ Comstock said: "I found the laws inadequate and public opinion worse than dead because of an appetite that had been formed for salacious reading; and especially because decent people could not be made to see or understand the necessity of doing anything in this line."²

Yet there were many people and some noted men like Judge Charles L. Benedict and Judge Daniel Clark, whose records show that they hated obscene books. Often they ruled that a book was too indecent to be considered in the courts, thus in reality taking the decision out of the hands of the jury. Haynes Ackerman and Farrell, three of the biggest publishers of obscene literature were put out of business by the combined efforts of Comstock and these friendly judges.³

As an example of conditions and Comstock's work, perhaps no case is better known than that of the Woodhull-

1. U. S. Stat., 319

2. Anthony Comstock, Frauds Exposed, p. 38

3. Brown and Leech, Anthony Comstock, pp. 119

Claplin Weekly published by the sisters, Virginia Woodhull and Tennessee Claplin. The first issue was dated May 14, 1872. The editors of this paper were two women whose notorious deeds have indelibly printed their names in the American galaxy of colorful, attractive, notorious law breakers along with the James brothers and others who have broken conventions and laws. Virginia Woodhull and Tennessee Claplin were Spiritualists, advocates of free love and openly opposed to the sanctity of the marriage laws. Virginia Woodhull, the brilliant hypnotic woman, who lived with two husbands at the same time, and openly flaunted her affairs with Theodore Tilton and Henry Ward Beecher, was like a red rag to Anthony Comstock. In 1872 when she accused Beecher of being one thing in the pulpit and living immorally as the lover of Theodore Tilton's wife, Comstock saw his chance. He failed to suppress the "Weekly" because the law as stated did not include newspapers so Comstock went about securing the passage of a law that could handle such papers as The
¹
Weekly.

In the meantime, Theodore Tilton accepted lover of Virginia Woodhull, and official reporter of Beecher's sermons, brought suit against Beecher for the alienation of his (Tilton's) wife's affections and asked \$100,000 damage.

The Scandals reported by the press, the respect and veneration held for Beecher, the filth of moral conditions

as uncovered by Comstock, and the natural disgust of decent people when confronted by the actual facts caused a reversal of opinion and Congress felt that it must pass a law which could be enforced and which would in a measure mitigate the evil. Comstock took advantage of his opportunity and framed the law of 1873. He went to Washington and displayed to the Congressmen a collection of the literature and pictures he had taken in his raids. The law was passed with no opposition. It provided for a fine of \$5000 and a prison sentence of ten years upon conviction. It also gave officials the power to arrest on certain suspicious grounds and provided for the appointment of a postal censor. Merriam, of New York, who sponsored the bill tried to bring it to debate but failed. Merriam's prepared speech was not delivered in Congress, but was printed and widely read. It embraced a report of Comstock's work from March 1872 - March 1873. This was prepared by Comstock. A few of his seizures were: Obscene photographs and other pictures, more than 182,000; obscene books and pamphlets, more than five tons; obscene letter press sheets, more than two tons; sheets of impure song catalogues, handbills etc. more than 21,000; newspapers seized about 4,500; letters from all parts of the country ordering these goods, 15,000; names of dealers in account books seized about 6,000; - - - arrest of dealers since Oct. 9, 1871 over 50; and the last and most surprising was: "Dealers dead since last March, 6." This did not mean that

they had been put to death by law but had either been hounded to death by Anthony or had died a natural death which Comstock attributed to an avenging Diety.¹

Comstock was appointed United States Postal Censor for which he would take no pay. He began a real campaign to clean up the country after the passage of the law of 1873. He did not stop at any measure to obtain evidence and often stooped to lies and deceit. So frequent did his arrests and convictions become that public opinion lined up either for or against his ideas. The question more or less involved the freedom of the press for Comstock was rather fanatical about the definition of the word "obscene".

From 1875- 1890 a great argument was carried on through the press and in the courts. The general public and many newspapers supported Comstock in his work. In 1888, 103 cases were brought to trial, 101 were convicted; in 1889 out of 127 cases, 125 were convicted; 1889 saw 155 convictions out of 156 cases. Out of 227 obscene books published, 225 were seized and destroyed before they went on sale, and the plates of the other two were destroyed by the publishers because they feared conviction.² Up to January, 1893, Comstock made 1796 arrests, seized 45 tons of obscene matter, and 17 tons of gambling, immoral and swindling paraphernalia. Thousands of other cases were investigated and their promoters warned.³

1. Congressional Globe, 42nd Cong. 3rd S. pp. 167-168
2. North American Review, vol. 153 (Aug. 1891) p. 160
3. Cushing Marshall, The Story of our Post-office, pp. 619-22

In the cases which came up in the courts, the trial usually centered about the question of what was obscene. Magazines and newspapers took up the quarrel. A few statements of individuals, organizations, and newspapers show the general tendency of the views.

Walt Whitman: - Every physiologist and physician, who has the good of the people at heart, should pray for the redeeming of this subject from its relegation to the tongues and pens of blackguards. No, it is not the picture or nude statue or text, with clear aim that is indecent; it is the beholders own thought, inference and distorted construction.¹

Editorial: The Woodhull-Claplin Weekly is disgusting in its obscenity. The editors have been indicted by the United States grand jury for sending indecent publications through its mails. They will doubtless get full penalty which they should have received long ago.²

Howard MacQueary - Who shall be our guide in choosing books?---The Bible has many passages that cannot be read aloud in church nor at family prayers. Shakespeare has many chapters that might be questioned. The Heart of Midlothian and David Copperfield turn on seduction. When obscenity is introduced for the mere sake of being vulgar or to create a sensation and make money, then the author should be condemned.³

1. North American Review, vol. 134 (May 1882) pp. 546-550
2. Nation, Vol. 15 (Nov. 7, 1892) p. 290
3. Arena, Vol. 8, (Sept. 1893) p. 446- 454

Robert Ingersoll: The right of free speech is the priceless gem of the human soul. - - - I regard Comstock as infamous beyond expression. I have little respect for these men who endeavor to put down vice by lying, and very little respect for a society that would keep in its employ such a lepro¹us agent.

Arthur Vinton: Cities are cess pools from which printed pages fly all over the country. In them crimes are gilded; lawlessness is valor; murderers, thieves, and criminals are the heroes. And if our national life is growing worse; if society is growing corrupt, it is because our young men and women who are entering into manhood and womanhood have in childhood fed their minds on pernicious literature.²

John Fiske: If we have never felt physical pain we could not recognize physical pleasure. For want of the contrasted background, its pleasureableness would be non-existent. And in just the same way it follows that without knowing what is morally evil, we could not possibly recognize that which is morally good.³

J. M. Buckley: I have been invited by the North American to enter a symposium for the discussion of the prevalent forms of vice, and the way to suppress them. I believe the problem has been to a large extent solved, in respect to

1. New York Mercury, Jan. 27, 1882
2. North American Review, Vol. 146, (March 1888) pp. 343-4
3. John Fiske, Through Nature Up To God, (Houghton Mifflin Company, Boston and New York, 1899) p. 36.

obscene literature, lotteries and policy gambling. "From the corrupting influence of one such book or picture, it is doubtful if many ever wholly recover. The enforcement of laws cannot be left to public sentiment. The subject of licentious publications cannot be thoroughly treated in promiscuous assemblies. Pulpit discussions can only be in vague and general terms."

Albert Ross: - It is a question of the individual. What one sees as pure, another sees as obscene. One may write on the breaking of all the commandments except one and not be censured, yet the effects may be as bad. Oh chastity alone, one must not touch. The New York Society for improving morals made a raid and took the books of Balzac, Dumas, and others. The great stories of literature are founded on illicit love.---We cannot regulate everything by law. - - - It is not safe to permit interference with a free press.

O. B. Frothingham: Mr. Comstock's statement is clear, terse and authoritative. He is a man of purpose, convinced and resolute; backed by a powerful organization as well as by a decided moral sentiment which is prudent, sagacious, and careful to keep well within the limits of the existing

1. North American Review, Vol. 135 (Nov. 1862) p. 493

2. Arena, Vol. 3 (March 1891) p. 438

law. His supporters are men of character, his aims are high; his ends are worthy; the objects he has in view in the main commend themselves to judicious minds. - - - Public opinion may demand discontinuance of the society because they do not approve of the methods used - while a majority of the people do approve of the ends in view.¹

Public opinion in general was opposed to obscene literature, but there was a constantly growing feeling that the rigid censorship was growing fanatical. Much feeling was aroused over Comstock's methods to get evidence. The newspapers of the time took opposite sides as usual. The New York Times strongly commended the work of Comstock and the end to which he was working. The Mercury and the Sun opposed Comstock's methods but not his aims. The women's magazines, Godey's, Petersen's and Graham's took no stand on the question but the vapid, inane, sentimental fiction which they published in the seventies and the eighties was perhaps as harmful in a way as the more open literature of the period.

Two cases of national interest were fought out in the national courts. Ezra Heywood of Princeton, Massachusetts, was convicted in 1876 and sentenced to two years of hard labor in Dedham jail. The following December he was pardoned by President Hayes. The book he had published and sent through the mails was Cupid's Yokes and Judge Daniel Clark

1. North American Review, vol. 135 (Nov. 1882) p. 469

of the U. S. District Court in Boston in his charge to the jury stated that if Heywood's ideas were carried out, Massachusetts would become a vast house of prostitution. The adherents of Heywood said this statement was equivalent to instructions to convict. Heywood was arrested again in 1883 and was tried in April before Judge T. L. Helson of the United States Court in Boston. Heywood appeared in his own defense and his speech lasted over four and a half hours. The jury voted "Not Guilty" and the verdict seemed to please many.

The Bennett case was closely associated with that of the Heywood affair. Dr. Robigne M. Bennett was the publisher of a free-thought weekly, called "The Truth Seeker". In November 1877, Comstock had arrested Bennett on a charge of sending obscene literature through the mails, one was a pamphlet written by Bennett and called "An Open Letter to Jesus Christ", and the other was a scientific treatment of marsupials. But Comstock could not bring Bennett to trial and the case was dismissed. From that time there was open enmity between the two men. Bennett began a campaign against the restrictive postal legislation but he managed to keep out of Comstock's clutches.

In August of 1878, Heywood was in jail and his wife's sister took a number of his pamphlets to the National Liberal League Convention which was meeting at Cincinnati. While she was away from her table, Bennett sold for her a copy of

Cupid's Yokes. He was immediately arrested under the New York law. Angered by this move, Bennett stated in his paper that he would send the pamphlet through the mail to anyone who might want it. Under an assumed name Comstock ordered the pamphlets. Bennett sent them, and was arrested. In March 1879, he was tried in the United States Circuit Court. Only certain sections of the pamphlet were allowed considered in the trial, and on these Bennett was convicted and sentenced to thirteen months at hard labor.¹ Bennett was not pardoned but served his time and his release was celebrated by a great reception.

The case of the United States against Moses Harmon attracted wide attention. Harmon was at the head of the Lucifer Publishing Company of Valley Falls, Kansas. This case really belongs to the really active phase of restriction of obscene literature which began in 1890 and was energetically pushed until the outbreak of the world war.

1. For facts concerning case, Brown and Leech, Anthony Comstock, 179-181. Decision 16 Blatch 338 (U. S.)

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