

**POWERS AND DUTIES OF THE
STATE AND FEDERAL GOVERNMENTS
IN RELATION
TO FOOD LAWS.**

Address of Jay D. Miller, of Geneva, Ill., before the International Association of Food Commissioners, in session in St. Louis in September, 1904.

I take my text from the 10th Amendment to the Constitution of the United States, which reads as follows:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The States did not, in adopting the Constitution, surrender the police power to the National Government, and they have not been prohibited by the Federal Constitution from exercising such power. Therefore the States have retained the police power, and have complete and absolute authority over matters of this nature, and it is questionable whether Congress has power to enact any of the food measures now pending.

The danger of such legislation being unconstitutional was fully recognized by Congress in enacting a law to control the sale and transportation of butterine, which to prevent its being unconstitutional was prepared and adopted, not as a police measure, but as a revenue law. And the same course was pursued in framing the law governing the sale and transportation of mixed flour.

There is, however, no doubt that complete power rests in the several States to enact and enforce all desired legislation upon this subject. The courts of last resort in nearly all States where food laws have been enacted have held them to be constitutional, and I am aware of no act of this nature which has been pronounced unconstitutional by the Supreme Court of any State.

The Supreme Courts of Michigan and Pennsylvania have held that all persons who sell adulterated foods do so at their peril, and the penalty will be enforced even though the seller had no knowledge of the adulteration. The Supreme Court of Minnesota has held that no person has the constitutional right to keep secret the composition of a substance which he sells to the public for food. On the question of adulteration, the Supreme Court of Massachusetts has held that the addition of harmless foreign matter, even though it be pure water, is, under the statute of the State, unlawful.

To show the complete power of the States over the sale of food products, it is only necessary to refer to the recent decision of the Supreme Court

of the State of Missouri, Vol. 160, page 474, in which a statute absolutely prohibiting the sale of baking powder containing alum was upheld and enforced.

In order to prevent the sale of deleterious foods, and also to prevent commercial fraud, it is only necessary for the several States to pass adequate laws and enforce them.

Food laws, however, should be enforced impartially, not only as to persons and places, but also as to articles of food. When I refer to the impartial enforcement of the law as to all food products, I mean just what I say. For example, I would not exclude or overlook butter and cheese as is now universally the case. If I were a food commissioner, I would endeavor absolutely to prohibit the sale of all food products containing coal tar colors. I believe the use of coal tar colors, commonly known as aniline colors, in food products to be harmful.

About 15 months ago I had a conference with the food commissioner for one of the States concerning butter color. All the butter on the market is colored, and analysis shows that all the leading brands of butter color are made from coal tar, although I find many persons innocently suppose them to be vegetable colors. This food commissioner advised me he had been experimenting with butter color and had taken a teaspoonful of one of the well-known brands of butter color and administered it in milk to a kitten, which resulted in the death of the kitten. He then obtained a strong, healthy tom cat, weighing about 13 pounds, and a little larger dose resulted in his death. Subsequently he obtained a number of Guinea pigs, which he caused to be killed with butter color.

In the month of March of the present year I had a conference with the commissioner of agriculture for another State at his office in the presence of Mr. John C. Puetz, Hinsdale, Ill., at which time the commissioner stated that his chemist, who was somewhat skeptical on this subject, experimented upon himself by taking a teaspoonful of butter color and as a result became dangerously ill, and it required the services of two physicians for about four hours to revive him.

Mr. Charles Fargo, a farmer living near Geneva, Ill., obtained from a local grocer in the month of May of this year some color intended to color butter or butterine. His daughter, aged four years, unfortunately swallowed a quantity of this color intended to color one pound, and immediately thereafter be-

came ill. Dr. R. G. Scott, of Geneva, Ill., who was called to attend her, subsequently advised me that as a result the child was sick about one week.

Dr. Scott further advised me that after having had this experience with Mr. Fargo's little daughter, he procured one of the leading brands of butter color on the market and, by administering small doses of this preparation, succeeded in killing three cats.

I hold in my hand an official document issued by the State board of health of the State of Iowa, a few days ago, it being Official Bulletin No. 3, Volume 18, for the month of September, 1904. By referring to page 38 you will find an account of the death of the two-year-old son of Mr. Frank Krob, living near Iowa City, Ia., as a result of drinking a quantity of butter color which had been left within his reach.

It appears to me that these cases would indicate to you gentlemen, who are food commissioners representing the several States, and have charge of the gastronomic destiny of the American people, the importance of seeking to prevent the use of coal tar color in all articles of food. You enthusiastically and properly denounce its use in Maraschino cherries, yet you never eat more than one of these cherries at a sitting, and only then in your cocktails, which I assume you rarely take. The masses, however, use butter in large quantities three times per day, and cheese is an article of universal consumption. These are things upon which the people rely for food. Why do you seek to prohibit the use of color in Maraschino cherries, which are so rarely used, and never seek to prevent its appearance in such articles of universal consumption as butter and cheese? Has any dairy and food commissioner ever arrested or otherwise proceeded against any man for selling butter and cheese colored with coal tar? Certainly not. Will any commissioner allow the use of any other product colored with coal tar? Certainly not. Why this discrimination as to articles? What we most need is uniformity in legislation in the several States, and the impartial enforcement of existing laws rather than more laws.

In conclusion, I suggest that I can conceive of no case of adulteration or commercial fraud which cannot effectively be reached by State legislation. If, however, it shall appear that there are cases which cannot be so reached, then it will become the duty of the National Government, in so far as it may have the power, to make pro-

vision therefor, and I believe the manufacturers and dealers in food products will welcome such legislation.

"Well, Snowball," said the patron to the dusky waiter, "how did you ever come by a name like that?"

"Well, sah, I was born in Chicago. Reckon yer never seed a Chicago snowball, sah!"—Yonkers Statesman.

Sunday School Teacher—I hope all the little girls in my class love God?

Eva Brown—I do.

Sunday School Teacher—That's right, Eva. Now tell us why you love Him?

Eva Brown—Got to.—San Francisco Star.

BOOKS

AN IDEAL PEOPLE'S HISTORY OF THE UNITED STATES.

Twenty years ago, Elroy M. Avery was asked by the head of the great publishing house at Cleveland, now known as The Burrows Brothers Company, to join that house in the preparation and publication of an ideal popular history of the United States. It was supposed that less than one decade would be long enough for the task, but a second has almost rounded out as the first of the contemplated 12 volumes appears. If the succeeding volumes equal this one in breadth of historical research, effectiveness of editorial condensation, beauty of publication form, and captivating literary style, the long period of labor devoted to the work will have been well expended.

Of the historical accuracy of the work we disclaim qualifications for expert judgment; but upon this point the assurance of so distinguished an expert as Prof. Edward G. Bourne, of Yale, that Dr. Avery seems to meet disputed questions "with a thoroughly sane judgment," and that his conclusions "are not open to the criticism of ignoring adverse evidence or of distorting the case in any way," is the highest kind of recommendation. The other excellences need no expert approval; they are plain upon the face of the print.

The first volume is described by the author as "the beginning of an attempt to tell the story of the men and measures that have made the United States what it is." This grammatical singular, implying political solidarity, will grate upon the ear of the traditional Democrat; but the fact that these States have almost sunk to the level of larger counties, and the national federation has risen to the power, whether for good or ill, of a Nation, with a big N, is very obtrusive. That fact appears to have been, more emphatically than the abolition of slavery, a result of the Civil

War. Perhaps the historian may no longer be criticised, then, for recognizing it in his literary forms. The attempt which Dr. Avery thus describes begins back in the fogs of prehistoric America. Through this mist he feels his way, confirming himself by submitting the different parts of his work to appropriate experts, down to the appearance of the Northmen, and thence to the advent of Columbus. A tangled skein of fact and fiction is then untangled, so at any rate as to make a consistent and interesting narrative of the period of adventure and discovery, which does not suffer in the least from the author's frank declaration of ignorance whenever research fails to reveal facts heretofore guessed at. The narrative is carried down to the year 1600, and the volume ends with a chapter on the Indians of North America.

Not only is this volume very readable simply as a story so well arranged that it seems almost to tell itself, but glimpses of a staid humor may be caught now and then through the interstices of serious narration. In connection with the Cabot adventures, for instance, we are told that "almost from Cabot's day to ours, the codfish has risen, at short intervals, to the surface of diplomatic correspondence." Nor is the humor always so playful. Sometimes it is tipped with a wholesome sting. An example appears toward the close of the volume, in an explanation of the international law of discovery. The author correctly attributes the law to two principles—the pagan principle that anything which nobody owns belongs to the finder, and the Christian principle that the heathen are nobody. It was by virtue of this theory of dominion that America was parcelled out by grants from European potentates. Our author tersely comments thus upon it all: "Granted these two premises, there is no escape from the conclusion known as the law of the right of discovery. The premises were assumed and the conclusion universally acted upon. The luster is one of law rather than justice."

A book the preparation of which seems to have been a labor of love with publisher as well as author, calls for some reference to its mechanical side. This is really artistic, and adds greatly to the value of the text. For besides the fine paper and the clear, black, legibly leaded type, there is a wealth of judiciously selected and neatly printed pictures and maps correctly illustrative of the text and not confusingly supplemental to it. Most notable of these illustrations, is a richly printed reproduction, reduced in size but a facsimile in every other respect, including color, of the famous Juan de la Cosa ox-hide map of 1500. The original is the oldest known map of America, and belongs to the Spanish government. Much less pretentious, but quite as interesting in

a minor way, is a reproduction of the earliest known print of an American buffalo. The modern maps, of which there are many, make a free use of color with apparently two objects, both of which are secured—beauty of effect and clearness of distinction of the features intended to be distinguished. A color reproduction of the Madrid Marine Museum portrait of Columbus appears as the frontispiece.

Recurring to the literary part of the work, it may be said that Dr. Avery is not a new hand at exact authorship for popular needs and tastes. Although this is his first important volume in the historical field, it is not his first in kinds of authorship with which the writer of a really valuable popular history ought to have familiarity. Dr. Avery is distinguished as the author of works on physics which are largely used in American and Canadian schools, and has scored a success as an author of books on English composition. He is, moreover, a sociological and political student, and has served with honor as a Senator in the legislature of Ohio; he has been a soldier in actual warfare; he has put out historical monographs of distinctive worth; and, as already stated, he has been engaged for nearly twenty years in gathering, sifting, weighing, arranging and describing the material for the ambitious history of his country on which he is now engaged. ["A History of the United States and Its People, from the Earliest Records to the Present Time." By Elroy McKendree Avery. In twelve volumes. Volume I. Cleveland: The Burrows Brothers Company. MCMIV. Price, per volume, cloth, \$6.25; half leather, \$12.50; full leather, \$17.50. Sold by subscription, but subscribers not obliged to take entire set].

L. F. P.

POEMS FOR TO-DAY.

Frances Margaret Milne's poems "For To-day" (San Francisco: The James H. Barry Company. Price \$1.50) possess a sweetness of expression and sound a depth of feeling which may well make them poems of tomorrow as well as of to-day—even more than of today.

Their chief fault is lack of emphasis and climax. It is difficult to find in them any crisp quotable lines, and such as appear are apt to be in obscure places. Sometimes, too, the meter does not seem the best for the sentiment, as, for example, in the requiem to Henry George, which begins:

Hast thou a requiem strain
Glad, free and strong?

Though glad and free, the strain is not so strong, we think, as it might have been with an additional foot.

But strong thought pervades these verses, and their sweet pathos and sane optimism appeal touchingly to minds attuned to love of justice. Especially welcome are they to those who